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**SUBSTITUTE HOUSE BILL 1527**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Appropriations (originally sponsored by Representatives Linville and Locke; by request of Office of Financial Management)

Read first time 03/01/93.

1 AN ACT Relating to funding of the dependent care program; amending  
2 RCW 41.04.615 and 41.04.260; providing an effective date; and declaring  
3 an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.04.615 and 1987 c 475 s 4 are each amended to read  
6 as follows:

7 (1) A plan document describing the salary reduction plan shall be  
8 adopted and administered by the committee. The committee shall  
9 represent the state in all matters concerning the administration of the  
10 plan. The state through the committee, may engage the services of a  
11 professional consultant or administrator on a contractual basis to  
12 serve as an agent to assist the committee in carrying out the purposes  
13 of RCW 41.04.600 through 41.04.645.

14 (2) The committee shall formulate and establish policies and  
15 procedures for the administration of the salary reduction plan that are  
16 consistent with existing state law, the internal revenue code, and the  
17 regulations adopted by the internal revenue service as they may apply  
18 to the benefits offered to participants under the plan.

1 (3) The funds held by the state for the dependent care program  
2 shall be deposited in the salary reduction account in the state  
3 treasury. Any interest in excess of the amount used to defray the cost  
4 of administering the salary reduction plan shall become a part of the  
5 general fund (~~as shall~~). Unclaimed moneys remaining in the salary  
6 reduction account at the end of a plan year after all timely submitted  
7 claims for that plan year have been processed shall become a part of  
8 the dependent care administrative account. The committee may assess  
9 each participant a fee for administering the salary reduction plan. In  
10 addition to moneys for initial costs, moneys (~~shall~~) may be  
11 appropriated from the general fund or dependent care administrative  
12 account for any expense relating to the administration of the salary  
13 reduction plan. ((The appropriation may be funded from an amount  
14 equivalent to actually realized savings experienced due to reductions  
15 in employer contributions required under the social security act, from  
16 other similar savings, from interest earned from the salary reduction  
17 account credited to the general fund, from any unclaimed moneys in the  
18 salary reduction account at the end of the plan year, and from fees  
19 charged to the participants.))

20 (4) The dependent care administrative account is created in the  
21 state treasury. The committee may periodically bill agencies for  
22 employer savings experienced as the result of dependent care program  
23 participation by employees. All receipts from the following shall be  
24 deposited in the account: (a) Charges to agencies for all or a portion  
25 of the estimated savings due to reductions in employer contributions  
26 under the social security act; (b) charges for other similar savings;  
27 (c) unclaimed moneys in the salary reduction account at the end of the  
28 plan year after all timely submitted claims for that plan year have  
29 been processed; and (d) fees charged to participants. Moneys in the  
30 account may be spent only after appropriation. Expenditures from the  
31 account may be used only for any expense related to the administration  
32 of the salary reduction plan.

33 (5) Every action taken by the committee in administering RCW  
34 41.04.600 through 41.04.645 shall be presumed to be a fair and  
35 reasonable exercise of the authority vested in or the duties imposed  
36 upon it. The committee shall be presumed to have exercised reasonable  
37 care, diligence, and prudence and to have acted impartially as to all  
38 persons interested unless the contrary be proved by clear and  
39 convincing affirmative evidence.

1       **Sec. 2.** RCW 41.04.260 and 1991 sp.s. c 13 s 101 are each amended  
2 to read as follows:

3       (1) There is hereby created a committee for deferred compensation  
4 to be composed of five members appointed by the governor, one of whom  
5 shall be a representative of an employee association or union certified  
6 as an exclusive representative of at least one bargaining unit of  
7 classified employees, one who shall be a representative of either a  
8 credit union, savings and loan association, mutual savings bank or  
9 bank, one who possesses expertise in the area of insurance or  
10 investment of public funds, one who shall be the state attorney general  
11 or his designee, and one additional member selected by the governor.  
12 The committee shall serve without compensation but shall receive travel  
13 expenses as provided for in RCW 43.03.050 and 43.03.060 as now existing  
14 or hereafter amended.

15       (2) The deferred compensation principal account is hereby created  
16 in the state treasury. Any deficiency in the deferred compensation  
17 administrative account caused by an excess of administrative expenses  
18 disbursed from that account over earnings of investments of balances  
19 credited to that account shall be eliminated by transferring moneys to  
20 that account from the deferred compensation principal account.

21       The amount of compensation deferred by employees under agreements  
22 entered into under the authority contained in RCW 41.04.250 shall be  
23 paid into the deferred compensation principal account and shall be  
24 sufficient to cover costs of administration and staffing in addition to  
25 such other amounts as determined by this committee. The deferred  
26 compensation principal account shall be used to carry out the purposes  
27 of RCW 41.04.250. All eligible state employees shall be given the  
28 opportunity to participate in agreements entered into by the committee  
29 under RCW 41.04.250. State agencies shall cooperate with the committee  
30 in providing employees with the opportunity to participate. Any  
31 county, municipality, or other subdivision of the state may elect to  
32 participate in any agreements entered into by the committee under RCW  
33 41.04.250, including the making of payments therefrom to the employees  
34 participating in a deferred compensation plan upon their separation  
35 from state or other qualifying service. Accordingly, the deferred  
36 compensation principal account shall be considered to be a public  
37 pension or retirement fund within the meaning of Article XXIX, section  
38 1 of the state Constitution, for the purpose of determining eligible  
39 investments and deposits of the moneys therein. All moneys in the

1 deferred compensation principal account, all property and rights  
2 purchased therewith, and all income attributable thereto, shall remain  
3 (until made available to the participating employee or other  
4 beneficiary) solely the money, property, and rights of the state and  
5 participating counties, municipalities and subdivisions (without being  
6 restricted to the provision of benefits under the plan) subject only to  
7 the claims of the state's and participating jurisdictions' general  
8 creditors. Participating jurisdictions shall each retain property  
9 rights separately.

10 (3) The state investment board, at the request of the deferred  
11 compensation committee, is authorized to invest moneys in the deferred  
12 compensation principal account in accordance with RCW 43.84.150.  
13 Except as provided in RCW 43.33A.160, one hundred percent of all  
14 earnings from these investments shall accrue directly to the deferred  
15 compensation principal account.

16 (4) The deferred compensation administrative account is hereby  
17 created in the state treasury. All expenses of the committee  
18 pertaining to the deferred compensation plan including staffing and  
19 administrative expenses shall be paid out of the deferred compensation  
20 administrative account. Any excess of earnings of investments of  
21 balances credited to this account over administrative expenses  
22 disbursed from this account shall be transferred to the deferred  
23 compensation principal account. Any deficiency in the deferred  
24 compensation administrative account caused by an excess of  
25 administrative expenses disbursed from this account over earnings of  
26 investments of balances credited to this account shall be transferred  
27 to this account from the deferred compensation principal account.

28 (5) In addition to the duties specified in this section and RCW  
29 41.04.250, the deferred compensation committee shall administer the  
30 salary reduction plan established in RCW 41.04.600 through 41.04.645.

31 (6) The deferred compensation committee shall keep or cause to be  
32 kept full and adequate accounts and records of the assets, obligations,  
33 transactions, and affairs of any deferred compensation plans created  
34 under RCW 41.04.250 through 41.04.260.

35 The deferred compensation committee shall file an annual report of  
36 the financial condition, transactions, and affairs of the deferred  
37 compensation plans under the committee's jurisdiction. A copy of the  
38 annual report shall be filed with the speaker of the house of

1 representatives, the president of the senate, the governor, and the  
2 state auditor.

3 (7) Members of the deferred compensation committee shall be deemed  
4 to stand in a fiduciary relationship to the employees participating in  
5 the deferred compensation plans created under RCW 41.04.250 through  
6 41.04.260 and shall discharge the duties of their respective positions  
7 in good faith and with that diligence, care, and skill which ordinary  
8 prudent persons would exercise under similar circumstances in like  
9 positions.

10 (8) The committee may adopt rules necessary to carry out the  
11 purposes of RCW 41.04.250 and 41.04.260.

12 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of the  
14 state government and its existing public institutions, and shall take  
15 effect July 1, 1993.

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