

ESSB 5851 - S AMD 417
By Senator Bailey

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART I
4 SHORT TITLE AND INTENT

5 NEW SECTION. **Sec. 101.** This act may be known and cited as the
6 public employee defined contribution retirement plan act.

7 NEW SECTION. **Sec. 102.** The legislature recognizes the need for
8 public employees, public safety employees, teachers, and school
9 employees, to have a secure and viable retirement benefit, not only for
10 their own financial protection, but also so that public funds are spent
11 prudently for their intended purpose. The legislature also recognizes
12 the need for public employers and taxpayers to have consistent and
13 predictable pension funding obligations in support of employee
14 retirement benefits. Therefore, it is the intent of the legislature to
15 provide a defined contribution retirement plan option for new public
16 employees, teachers, and school employees that uses best practices of
17 defined contribution plans to provide opportunity and flexibility to
18 accrue a viable retirement benefit, while providing stable funding
19 requirements for public employers and taxpayers. These best practices
20 include minimizing the investment risk borne by the participants,
21 whether through lack of investment knowledge or lack of access to the
22 full variety of investment classes, and providing a distribution option
23 that would ensure participants do not outlive their savings.

24 PART II
25 RETIREMENT SYSTEM

1 NEW SECTION. **Sec. 201.** This chapter applies only to members of
2 the Washington public employees' savings plan created under this
3 chapter.

4 NEW SECTION. **Sec. 202.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Accumulated contributions" means the sum of all contributions
7 standing to the credit of a member in the member's individual account,
8 together with the earnings thereon.

9 (2)(a) "Compensation earnable" means salaries or wages earned by a
10 member during a payroll period for personal services, including
11 overtime payments, and shall include wages and salaries deferred under
12 provisions established pursuant to sections 403(b), 414(h), and 457 of
13 the internal revenue code, but excludes nonmoney maintenance
14 compensation and lump sum or other payments for deferred annual sick
15 leave, unused accumulated vacation leave, unused accumulated annual
16 leave, or any form of severance pay.

17 (b) "Compensation earnable" also includes the following actual or
18 imputed payments, which are not paid for personal services:

19 (i) Retroactive payments to an individual by an employer on
20 reinstatement of the employee in a position, or payments by an employer
21 to an individual in lieu of reinstatement in a position which are
22 awarded or granted as the equivalent of the salary or wage which the
23 individual would have earned during a payroll period is considered
24 compensation earnable to the extent provided in this subsection (2),
25 and the individual shall receive the equivalent service;

26 (ii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
27 and 72.09.240;

28 (iii) Compensation that a member would have received but for a
29 disability occurring in the line of duty only as authorized by RCW
30 41.40.038;

31 (iv) Compensation that a member receives due to participation in
32 the leave sharing program only as authorized by RCW 41.04.650 through
33 41.04.670; and

34 (v) Compensation that a member receives for being in standby
35 status. For the purposes of this section, a member is in standby
36 status when not being paid for time actually worked and the employer

1 requires the member to be prepared to report immediately for work, if
2 the need arises, although the need may not arise.

3 (3) "Department" means the department of retirement systems created
4 in chapter 41.50 RCW.

5 (4) "Director" means the director of the department.

6 (5) "Eligible position" means any position that meets the
7 definition of eligible position in chapters 41.32, 41.35, 41.37, and
8 41.40 RCW shall be considered an eligible position under this chapter.

9 (6) "Employee" or "employed" means a person who is providing
10 services for compensation to an employer, unless the person is free
11 from the employer's direction and control over the performance of work.
12 The department shall adopt rules and interpret this subsection
13 consistent with common law.

14 (7)(a) "Employer" means every branch, department, agency,
15 commission, board, and office of the state, and any political
16 subdivision and municipal corporation of the state admitted into the
17 retirement system, including school districts, educational service
18 districts, and public agencies created pursuant to RCW 35.63.070,
19 36.70.060, and 39.34.030. Any employer who is participating in the
20 retirement systems established in chapters 41.32, 41.35, 41.37, and
21 41.40 RCW on the effective date of this section is an employer under
22 this chapter. Any entity that becomes an employer under chapters
23 41.32, 41.35, 41.37, and 41.40 RCW after the effective date of this
24 section is also an employer under this chapter.

25 (b) Except as otherwise specifically provided in this chapter,
26 "employer" does not include a government contractor. For purposes of
27 this subsection, a "government contractor" is any entity, including a
28 partnership, limited liability company, for-profit or nonprofit
29 corporation, or person, that provides services pursuant to a contract
30 with an employer. The determination whether an employer-employee
31 relationship has been established is not based on the relationship
32 between a government contractor and an employer, but is based solely on
33 the relationship between a government contractor's employee and an
34 employer under this chapter.

35 (8) "Ineligible position" means any position that does not conform
36 with the requirements set forth in subsection (5) of this section.

37 (9) "Leave of absence" means the period of time a member is

1 authorized by the employer to be absent from service without being
2 separated from membership.

3 (10) "Member" means any employee included in the membership of the
4 retirement system, as provided for in section 204 of this act.

5 (11) "Member account" or "member's account" means the sum of the
6 member and employer contributions and earnings on behalf of the member.

7 (12) "Regular interest" means the rate the director determines.

8 (13) "Retirement system" means the Washington public employees'
9 savings plan created in this chapter.

10 (14) "Separation from service" occurs when a person has terminated
11 all employment with an employer. Separation from service or employment
12 does not occur, and if claimed by an employer or employee may be a
13 violation of RCW 41.40.055, when an employee and employer have a
14 written or oral agreement to resume employment with the same employer
15 following termination. Mere expressions or inquiries about
16 postretirement employment by an employer or employee that do not
17 constitute a commitment to reemploy the employee after retirement are
18 not an agreement under this subsection.

19 (15)(a) "Service" means periods of employment by a member in an
20 eligible position or positions for one or more employers for which
21 compensation earnable is paid. Time spent in standby status, whether
22 compensated or not, is not service. Educational employees who are
23 compensated for work in at least nine months from September to August
24 shall be provided one year of service.

25 (b) Service in any state elective position is service.

26 (16) "State actuary" or "actuary" means the person appointed
27 pursuant to RCW 44.44.010(2).

28 (17) "State elective position" means any position held by any
29 person elected or appointed to statewide office or elected or appointed
30 as a member of the legislature.

31 (18) "State treasurer" means the treasurer of the state of
32 Washington.

33 (19) "Substitute employee" means any substitute employee as defined
34 in RCW 41.35.010 and any substitute teacher as defined in RCW
35 41.32.010.

36 (20) "Transferable plan" means the plans 2 and plans 3 of the
37 retirement systems established under chapters 41.32, 41.34, 41.35,
38 41.37, and 41.40 RCW.

1 NEW SECTION. **Sec. 203.** A public employees' savings plan is hereby
2 created for the employees of the state of Washington and its political
3 subdivisions. The administration and management of the savings plan,
4 the responsibility for making effective the provisions of this chapter,
5 and the authority to make all rules and regulations necessary therefor
6 are hereby vested in the department. All such rules and regulations
7 shall be governed by the provisions of chapter 34.05 RCW. The
8 retirement system created in this chapter shall be known as the
9 Washington public employees' savings plan.

10 NEW SECTION. **Sec. 204.** Membership in the retirement system
11 consists of:

12 (1) All regularly compensated employees, substitute employees, and
13 appointive and elective officials who:

14 (a) Are eligible for membership in plan 2 or plan 3 of the
15 retirement systems established under chapters 41.32, 41.35, 41.37, or
16 41.40 RCW;

17 (b) First become employed by an employer on or after July 1, 2015;
18 and

19 (c) Make a choice to become a member of the system. However, a
20 member may not participate in another defined contribution retirement
21 plan or annuity retirement plan which includes an employer contribution
22 for the same period of employment with an employer.

23 (2) All regularly compensated employees and appointive and elective
24 officials employed by an employer who first established service in a
25 transferable plan prior to July 1, 2015, and who made an irrevocable
26 choice to transfer into the system as provided in section 206 of this
27 act.

28 (3)(a) All individuals who meet the requirements of subsection (1)
29 of this section have a period of ninety days to make a choice to either
30 become a member of the public employees' savings plan or to instead
31 elect to become a member, if eligible, of plan 2 or plan 3 of a
32 retirement system established under chapters 41.32, 41.35, 41.37, and
33 41.40 RCW. At the end of ninety days, if the individual has not made
34 a choice of a retirement plan, he or she becomes a member of plan 3 of
35 the applicable retirement system or plan 2 of the retirement system
36 established under chapter 41.37 RCW.

1 (b) For administrative efficiency, until a member makes a choice or
2 becomes a plan 3 member by default, as provided in (a) of this
3 subsection, the member shall be reported to the department in plan 2 of
4 the state defined benefit retirement system listed in (a) of this
5 subsection for which they are eligible, with member and employer
6 contributions. Upon becoming a member of the public employees' savings
7 plan or of plan 3, all member and employer accumulated contributions
8 will be credited to the member's account in the public employees'
9 savings plan, subject to the vesting requirements in section 207 of
10 this act, or in the member's plan 3 defined contribution account. If
11 the individual becomes a member of plan 3, all service credit shall be
12 transferred to the member's plan 3 defined benefit.

13 NEW SECTION. **Sec. 205.** Substitute employees may establish
14 membership and service in the plan under the provisions of RCW
15 41.32.013 or 41.35.033.

16 NEW SECTION. **Sec. 206.** (1) Between January 1, 2016, and July 1,
17 2016, every member of a transferable plan employed by an employer in an
18 eligible position has a one-time option to transfer to the public
19 employees' savings plan. Contributions to this plan shall begin the
20 first day of the pay cycle in which the employee becomes a member.
21 Members electing this option must transfer service from each
22 transferable plan in which the member has established service credit.

23 (2) Service in each transferable plan for which a transferring
24 member has established service credit will be transferred to the public
25 employees' savings plan on July 1, 2016. This service applies to the
26 eligibility for vesting in employer matching contributions as provided
27 in section 207 of this act.

28 (3) Retirement benefits in each transferable plan for which a
29 transferring member has established service credit will be transferred
30 to the public employees' savings plan and credited to member accounts
31 in the public employees' savings plan as follows:

32 (a) Plan 2 members' accumulated contributions from each
33 transferable plan 2 will be transferred on July 1, 2016, including all
34 accrued interest as of the transfer date;

35 (b) Plan 3 members' member accounts from each transferable plan 3
36 will be transferred on July 1, 2016;

1 (c) An additional transfer payment from each transferable plan will
2 be credited to qualified members' accounts in the public employees'
3 savings plan on July 1, 2018. The transfer payment represents the
4 employer provided portion of the member's accrued retirement benefit
5 and is equal to the actuarial equivalent value of the member's accrued
6 retirement benefit on June 30, 2016, as determined by the director in
7 consultation with the state actuary, less any amounts transferred under
8 (a) of this subsection. In no event may the additional transfer
9 payment result in a decrease in the value of a member's account;

10 (d) For purposes of determining the actuarial equivalent value of
11 the accrued benefit transferred under (c) of this subsection, the
12 department shall include both expected future salary increases and
13 expected future service credit for benefit eligibility purposes.
14 However, only service credit earned as of June 30, 2016, shall be used
15 to determine the portion of the present value of future benefits that
16 the transferring member has accrued at the date of the transfer;

17 (e) The additional transfer payment provided under (c) of this
18 subsection must be increased with regular interest, as determined by
19 the director, for the period of time between the transfer date and the
20 date of the additional transfer payment;

21 (f) To qualify for the transfer payment provided under (c) of this
22 subsection, a transferring member must remain employed by an employer
23 in an eligible position through July 1, 2018;

24 (g) Members and beneficiaries are fully vested in each amount
25 transferred under (a), (b), (c), and (e) of this subsection when the
26 amount is credited to the member's account in the public employees'
27 savings plan.

28 (4) Members transferring to the public employees' savings plan
29 forfeit all service and benefits from all transferable plans and may
30 not reestablish membership in any transferable plan except as provided
31 in section 216 of this act.

32 (5) The department shall notify potentially eligible members of
33 their option to transfer to the public employees' savings plan and
34 shall provide estimates of the amounts potentially available for
35 transfer to their member accounts.

36 NEW SECTION. **Sec. 207.** (1) Except as provided in subsection (5)

1 of this section, a member shall contribute five percent of his or her
2 compensation earnable until age thirty-five, and seven and one-half
3 percent thereafter.

4 (2) The employer of a member shall contribute to the member's
5 account an amount equal to eighty percent of the contributions made by
6 a member.

7 (3) Members with less than five years of service are not vested in
8 employer contributions to member accounts and the earnings on those
9 contributions. Once members have attained five years of service, they
10 become fully vested in the employer contributions and the earnings on
11 those contributions. Members do not have any right to receive employer
12 contributions or the earnings on those contributions in which they are
13 not vested.

14 (4) Contributions shall begin the first day of the pay cycle in
15 which the employee becomes a member.

16 (5) If required by the federal internal revenue service pursuant to
17 a private letter ruling issued pursuant to section 213 of this act, the
18 member contribution rate for persons who transfer to the retirement
19 plan pursuant to section 206 of this act shall be identical to the
20 member contribution rate they had immediately prior to transferring to
21 the retirement plan. The employers of those members shall contribute
22 to those members' accounts four percent of the member's compensation
23 earnable until age thirty-five, and six percent thereafter.

24 NEW SECTION. **Sec. 208.** In addition to contributions made to
25 members' accounts, employers shall make contributions to the unfunded
26 actuarial accrued liability in plan 1 of the teachers' retirement
27 system and plan 1 of the public employees' retirement system as
28 follows:

29 (1) School districts and educational service districts shall
30 contribute to plan 1 of the teachers' retirement system the amounts
31 specified in RCW 41.45.060(8) (b) and (c) on earnable compensation paid
32 to teachers as defined in RCW 41.32.010.

33 (2) School districts and educational service districts shall
34 contribute to plan 1 of the public employees' retirement system the
35 amounts specified in RCW 41.45.060(6) (b) and (c) on earnable
36 compensation paid to classified employees as defined in RCW 41.35.010.

1 (3) Employers other than school districts and educational service
2 districts shall contribute to plan 1 of the public employees'
3 retirement system the amounts specified in RCW 41.45.060(6) (b) and
4 (c).

5 NEW SECTION. **Sec. 209.** (1) Members may self-direct their
6 investments as set forth in section 210 of this act and RCW 43.33A.190.
7 If a member does not select investments, the member's account shall be
8 invested in the default investment option of the retirement strategy
9 fund that is closest to the retirement target date of the member.
10 "Retirement strategy fund" means one of several diversified asset
11 allocation portfolios managed by investment advisors under contract to
12 the state investment board. The asset mix of the portfolios adjusts
13 over time depending on a target retirement date.

14 (2) The department shall adopt rules that will allow members the
15 option to roll over moneys from other tax qualified accounts into their
16 public employees' savings plan member account. This option is subject
17 to internal revenue service requirements for favorable tax
18 qualification. The department is not required to allow all roll-overs
19 that may be permitted under internal revenue service regulations.

20 NEW SECTION. **Sec. 210.** (1) The state investment board has the
21 full authority to invest all self-directed investment moneys in
22 accordance with RCW 43.84.150 and 43.33A.140, and cumulative investment
23 directions received pursuant to section 209 of this act and this
24 section. In carrying out this authority the state investment board,
25 after consultation with the department, shall provide a set of options
26 for members to choose from for self-directed investment.

27 (2) All investment and operating costs of the state investment
28 board associated with making self-directed investments shall be paid by
29 members and recovered under procedures agreed to by the department and
30 the state investment board pursuant to the principles set forth in RCW
31 43.33A.160 and 43.84.160. All other expenses caused by self-directed
32 investment shall be paid by the member in accordance with rules
33 established by the department. With the exception of these expenses,
34 all earnings from self-directed investments shall accrue to the
35 member's account.

1 (3)(a)(i) The department shall keep or cause to be kept full and
2 adequate accounts and records of each individual member's account. The
3 department shall account for and report on the investment of defined
4 contribution assets or may enter into an agreement with the state
5 investment board for such accounting and reporting under this chapter.

6 (ii) The department's duties related to individual member accounts
7 include conducting the activities of trade instruction, settlement
8 activities, and direction of cash movement and related wire transfers
9 with the custodian bank and outside investment firms.

10 (iii) The department has sole responsibility for contracting with
11 any recordkeepers for individual member accounts and shall manage the
12 performance of recordkeepers under those contracts.

13 (b)(i) The department's duties under (a)(ii) of this subsection do
14 not limit the authority of the state investment board to conduct its
15 responsibilities for asset management and balancing of the defined
16 contribution funds.

17 (ii) The state investment board has sole responsibility for
18 contracting with outside investment firms to provide investment
19 management for the defined contribution funds and shall manage the
20 performance of investment managers under those contracts.

21 (c) The state treasurer shall designate and define the terms of
22 engagement for the custodial banks.

23 NEW SECTION. **Sec. 211.** (1) If the member terminates employment,
24 the balance in the member's account may be distributed in accordance
25 with an option selected by the member either as a lump sum or pursuant
26 to other options authorized by the department. A distribution from the
27 member account shall not result in loss of service for purposes of
28 vesting in employer contributions under section 207 of this act.

29 (2) If the member dies while in service, the balance of the
30 member's account may be distributed in accordance with an option
31 selected by the member either as a lump sum or pursuant to other
32 options authorized by the department. The distribution is as follows:

33 (a) The distribution shall be made to the person or persons the
34 member nominated by written designation duly executed and filed with
35 the department;

36 (b) If there is no designated person or persons still living at the

1 time of the member's death, the balance of the member's account in the
2 retirement system shall be paid to the member's surviving spouse as if
3 in fact the spouse had been nominated by written designation;

4 (c) If there is no surviving spouse, then to the person or persons,
5 trust, or organization as the member has nominated by written
6 designation duly executed and filed with the department; or

7 (d) If there is no designated person or persons still living at the
8 time of the member's death, then to the member's legal representatives.

9 (3) The distribution under subsections (1) and (2) of this section
10 is less:

11 (a) Any amount identified as owing to an obligee upon withdrawal
12 pursuant to a court order filed under RCW 41.50.670; and

13 (b) Any employer contributions and the earnings on those
14 contributions in which the member is not vested as provided for in
15 section 207 of this act.

16 (4) Upon any distribution from a member account under this section,
17 any employer contributions and the earnings on those contributions in
18 which the member is not vested as provided for in section 207 of this
19 act are forfeited by the member. Amounts forfeited under this
20 subsection will be credited, under rules developed by the department,
21 to the employers that made the contributions.

22 (5) The department, in consultation with the state investment
23 board, shall adopt rules providing members and survivors an option to
24 purchase, using funds in the member's account, an annuity from a
25 state-administered fund. The offering of this option is subject to
26 favorable tax determination by the internal revenue service.

27 NEW SECTION. **Sec. 212.** (1) Subject to subsections (2) and (3) of
28 this section, the right of a person to an annuity or any other right
29 accrued or accruing to any person under the provisions of this chapter,
30 the various funds created by this chapter, and all moneys and
31 investments and income thereof, are hereby exempt from any state,
32 county, municipal, or other local tax, and is not subject to execution,
33 garnishment, attachment, the operation of bankruptcy or insolvency
34 laws, or other process of law whatsoever, whether the same be in actual
35 possession of the person or be deposited or loaned and shall be
36 unassignable.

1 (2)(a) This section does not prohibit a beneficiary of an annuity
2 from authorizing deductions therefrom for payment of premiums due on
3 any group insurance policy or plan issued for the benefit of a group
4 comprised of public employees of the state of Washington or its
5 political subdivisions and which has been approved for deduction in
6 accordance with rules that may be adopted by the state health care
7 authority and/or the department. This section does not prohibit a
8 beneficiary of an annuity from authorizing deductions therefrom for
9 payment of dues and other membership fees to any retirement association
10 or organization the membership of which is composed of retired public
11 employees, if a total of three hundred or more of such retired
12 employees have authorized such deduction for payment to the same
13 retirement association or organization.

14 (b) This section does not prohibit a beneficiary of an annuity from
15 authorizing deductions from that allowance for charitable purposes on
16 the same terms as employees and public officers under RCW 41.04.035 and
17 41.04.036.

18 (3) Subsection (1) of this section does not prohibit the department
19 from complying with (a) a wage assignment order for child support
20 issued pursuant to chapter 26.18 RCW, (b) an order to withhold and
21 deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll
22 deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits
23 assignment order issued by the department, (e) a court order directing
24 the department of retirement systems to pay benefits directly to an
25 obligee under a dissolution order as defined in RCW 41.50.500(3) which
26 fully complies with RCW 41.50.670 and 41.50.700, or (f) any
27 administrative or court order expressly authorized by federal law.

28 NEW SECTION. **Sec. 213.** (1) The retirement plan created by this
29 chapter must be administered so as to comply with the internal revenue
30 code, Title 26 U.S.C., and specifically with plan qualification
31 requirements imposed on governmental plans by section 401(a) of the
32 internal revenue code. The department shall submit a request for a
33 private letter ruling to the federal internal revenue service to
34 confirm that permitting persons who transfer to the retirement plan
35 pursuant to section 206 of this act to make contributions at the rates
36 provided in section 207(1) of this act, will not prevent the retirement
37 plan from being a qualified plan.

1 (2) Any section or provision of this chapter which is susceptible
2 to more than one construction must be interpreted in favor of the
3 construction most likely to satisfy requirements imposed by section
4 401(a) of the internal revenue code.

5 (3) If any section or provision of this chapter is found to be in
6 conflict with the plan qualification requirements for governmental
7 plans in section 401(a) of the internal revenue code, the conflicting
8 part of this chapter is hereby inoperative solely to the extent of the
9 conflict, and such finding does not affect the operation of the
10 remainder of this chapter.

11 NEW SECTION. **Sec. 214.** (1) A state board, commission, or agency,
12 or any officer, employee, or member thereof, is not liable for any loss
13 or deficiency resulting from member investments selected or required
14 pursuant to section 210 (1) or (3) of this act.

15 (2) Neither the department, nor director or any employee, nor the
16 state investment board, nor any officer, employee, or member thereof,
17 is liable for any loss or deficiency resulting from a member investment
18 in the default option pursuant to section 209 of this act or reasonable
19 efforts to implement investment directions pursuant to section 210 (1)
20 or (3) of this act.

21 (3) The state investment board, or any officer, employee, or member
22 thereof, is not liable with respect to any declared unit valuations or
23 crediting of rates of return, or any other exercise of powers or
24 duties, including discretion, under section 210(2) of this act.

25 (4) The department, or any officer or employee thereof, is not
26 liable for crediting rates of return which are consistent with the
27 state investment board's declaration of unit valuations pursuant to
28 section 210(2) of this act.

29 NEW SECTION. **Sec. 215.** For the purposes of this chapter, the
30 terms spouse, marriage, marital, husband, wife, widow, widower, next of
31 kin, and family apply equally to state registered domestic partnerships
32 or individuals in state registered domestic partnerships as well as to
33 marital relationships and married persons, and references to
34 dissolution of marriage apply equally to state registered domestic
35 partnerships that have been terminated, dissolved, or invalidated, to
36 the extent that such interpretation does not conflict with federal law.

1 When necessary to implement chapter 521, Laws of 2009, gender-specific
2 terms such as husband and wife used in any statute, rule, or other law
3 are gender neutral, and applicable to individuals in state registered
4 domestic partnerships.

5 NEW SECTION. **Sec. 216.** A person who has made an election to
6 become a member of the public employees' savings plan may, if otherwise
7 eligible, elect to transfer to membership in plan 3 of a retirement
8 system established under chapter 41.32, 41.35, or 41.40 RCW or to
9 membership in plan 2 of the retirement system established under chapter
10 41.37 RCW. A person who transfers membership under this section may
11 establish service credit in the applicable plan 3 for periods of time
12 in the public employees' savings plan by making payment for the
13 actuarial value of the service credit pursuant to RCW 41.50.165.

14 NEW SECTION. **Sec. 217.** Sections 201 through 216 of this act
15 constitute a new chapter in Title 41 RCW.

16 **PART III**

17 **CHANGES TO EXISTING RETIREMENT SYSTEMS**

18 **Sec. 301.** RCW 41.04.440 and 2007 c 492 s 3 are each amended to
19 read as follows:

20 (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the
21 members of the retirement systems created in chapters 2.10, 2.12,
22 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, 41.--- (the new chapter
23 created in section 217 of this act), and 43.43 RCW to enjoy the tax
24 deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of
25 1984 does not alter in any manner the provisions of RCW 41.45.060,
26 41.45.061, and 41.45.067 which require that the member contribution
27 rates shall be set so as to provide fifty percent of the cost of the
28 respective retirement plans.

29 (2) Should the legislature revoke any benefit allowed under 26
30 U.S.C. 414(h), no affected employee shall be entitled thereafter to
31 receive such benefit as a matter of contractual right.

32 **Sec. 302.** RCW 41.04.445 and 2007 c 492 s 4 are each amended to
33 read as follows:

1 (1) This section applies to all members who are:
2 (a) Judges under the retirement system established under chapter
3 2.10, 2.12, or 2.14 RCW;
4 (b) Employees of the state under the retirement system established
5 by chapter 41.32, 41.37, 41.40, 41.--- (the new chapter created in
6 section 217 of this act), or 43.43 RCW;
7 (c) Employees of school districts under the retirement system
8 established by chapter 41.32 (~~(e)~~), 41.40, or 41.--- (the new chapter
9 created in section 217 of this act) RCW, except for substitute teachers
10 as defined by RCW 41.32.010;
11 (d) Employees of educational service districts under the retirement
12 system established by chapter 41.32 (~~(e)~~), 41.40, or 41.--- (the new
13 chapter created in section 217 of this act) RCW; or
14 (e) Employees of community college districts under the retirement
15 system established by chapter 41.32 (~~(e)~~), 41.40, or 41.--- (the new
16 chapter created in section 217 of this act) RCW.
17 (2) Only for compensation earned after the effective date of the
18 implementation of this section and as provided by section 414(h) of the
19 federal internal revenue code, the employer of all the members
20 specified in subsection (1) of this section shall pick up only those
21 member contributions as required under:
22 (a) RCW 2.10.090(1);
23 (b) RCW 2.12.060;
24 (c) RCW 2.14.090;
25 (d) RCW 41.32.263;
26 (e) RCW 41.32.350;
27 (f) RCW 41.40.330 (1) and (3);
28 (g) RCW 41.45.061 and 41.45.067;
29 (h) RCW 41.34.070; and
30 (i) (~~RCW 43.43.300; and~~
31 ~~(j)~~) RCW 41.34.040.
32 (3) Only for the purposes of federal income taxation, the gross
33 income of the member shall be reduced by the amount of the contribution
34 to the respective retirement system picked up by the employer.
35 (4) All member contributions to the respective retirement system
36 picked up by the employer as provided by this section, plus the accrued
37 interest earned thereon, shall be paid to the member upon the

1 withdrawal of funds or lump sum payment of accumulated contributions as
2 provided under the provisions of the retirement systems.

3 (5) At least forty-five days prior to implementing this section,
4 the employer shall provide:

5 (a) A complete explanation of the effects of this section to all
6 members; and

7 (b) Notification of such implementation to the director of the
8 department of retirement systems.

9 **Sec. 303.** RCW 41.04.450 and 2007 c 492 s 5 are each amended to
10 read as follows:

11 (1) Employers of those members under chapters 41.26, 41.34, 41.35,
12 41.37, 41.--- (the new chapter created in section 217 of this act), and
13 41.40 RCW who are not specified in RCW 41.04.445 may choose to
14 implement the employer pick up of all member contributions without
15 exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1),
16 41.45.060, 41.45.061, and 41.45.067 and chapters 41.34, and 41.--- (the
17 new chapter created in section 217 of this act) RCW. If the employer
18 does so choose, the employer and members shall be subject to the
19 conditions and limitations of RCW 41.04.445 (3), (4), and (5) and
20 41.04.455.

21 (2) An employer exercising the option under this section may later
22 choose to withdraw from and/or reestablish the employer pick up of
23 member contributions only once in a calendar year following forty-five
24 days prior notice to the director of the department of retirement
25 systems.

26 NEW SECTION. **Sec. 304.** A new section is added to chapter 41.32
27 RCW under the subchapter heading "plan 3" to read as follows:

28 (1) All teachers who first become employed by an employer in an
29 eligible position on or after July 1, 2015, must make a choice to
30 become a member of either the teacher's retirement system, or the
31 public employees' savings plan established under chapter 41.--- RCW
32 (the new chapter created in section 217 of this act). At the end of
33 ninety days, if the employee has not made a choice, he or she becomes
34 a member of plan 3 of the teachers' retirement system.

35 (2) For administrative efficiency, until a member makes a choice or
36 becomes a plan 3 member by default, as provided in subsection (1) of

1 this section, the member shall be reported to the department in plan 2
2 of the state defined benefit retirement system listed in subsection (1)
3 of this section for which they are eligible, with member and employer
4 contributions. Upon becoming a member of the public employees' savings
5 plan or plan 3, all member and employer accumulated contributions shall
6 be credited to the member's account in the public employees' savings
7 plan, subject to the vesting requirements in section 207 of this act,
8 or in the member's plan 3 defined contribution account. Upon becoming
9 a member of plan 3 all service credit shall be transferred to the
10 member's plan 3 defined benefit.

11 NEW SECTION. **Sec. 305.** A new section is added to chapter 41.35
12 RCW under the subchapter heading "plan 3" to read as follows:

13 (1) All classified employees who first become employed by an
14 employer in an eligible position on or after July 1, 2015, must make a
15 choice to become a member of either the school employees' retirement
16 system, or the public employees' savings plan established under chapter
17 41.--- RCW (the new chapter created in section 217 of this act). At
18 the end of ninety days, if the employee has not made a choice, he or
19 she becomes a member of plan 3 of the school employees' retirement
20 system.

21 (2) For administrative efficiency, until a member makes a choice or
22 becomes a plan 3 member by default, as provided in subsection (1) of
23 this section, the member shall be reported to the department in plan 2
24 of the state defined benefit retirement system listed in subsection (1)
25 of this section for which they are eligible, with member and employer
26 contributions. Upon becoming a member of the public employees' savings
27 plan or plan 3, all member and employer accumulated contributions shall
28 be credited to the member's account in the public employees' savings
29 plan, subject to the vesting requirements in section 207 of this act,
30 or in the member's plan 3 defined contribution account. Upon becoming
31 a member of plan 3 all service credit shall be transferred to the
32 member's plan 3 defined benefit.

33 NEW SECTION. **Sec. 306.** A new section is added to chapter 41.37
34 RCW to read as follows:

35 (1) All public safety employees who first become employed by an
36 employer in an eligible position on or after July 1, 2015, must make a

1 choice to become a member of either the public safety employees'
2 retirement system, or the public employees' savings plan established
3 under chapter 41.--- RCW (the new chapter created in section 217 of
4 this act). At the end of ninety days, if the employee has not made a
5 choice, he or she becomes a member of plan 2 of the school employees'
6 retirement system.

7 (2) For administrative efficiency, until a member makes a choice or
8 becomes a plan 2 member by default, as provided in subsection (1) of
9 this section, the member shall be reported to the department in plan 2
10 of the state defined benefit retirement system listed in subsection (1)
11 of this section for which they are eligible, with member and employer
12 contributions. Upon becoming a member of the public employees' savings
13 plan, all member and employer accumulated contributions shall be
14 credited to the member's account in the public employees' savings plan,
15 subject to the vesting requirements in section 207 of this act.

16 NEW SECTION. **Sec. 307.** A new section is added to chapter 41.40
17 RCW under the subchapter heading "plan 3" to read as follows:

18 (1) All employees who first become employed by an employer in an
19 eligible position on or after July 1, 2015, must make a choice to
20 become a member of either the public employees' retirement system, or
21 the public employees' savings plan established under chapter 41.--- RCW
22 (the new chapter created in section 217 of this act). At the end of
23 ninety days, if the employee has not made a choice, he or she becomes
24 a member of plan 3 of the public employees' retirement system.

25 (2) For administrative efficiency, until a member makes a choice or
26 becomes a plan 3 member by default, as provided in subsection (1) of
27 this section, the member shall be reported to the department in plan 2
28 of the state defined benefit retirement system listed in subsection (1)
29 of this section for which they are eligible, with member and employer
30 contributions. Upon becoming a member of the public employees' savings
31 plan or plan 3, all member and employer accumulated contributions shall
32 be credited to the member's account in the public employees' savings
33 plan, subject to the vesting requirements in section 207 of this act,
34 or in the member's plan 3 defined contribution account. Upon becoming
35 a member of plan 3 all service credit shall be transferred to the
36 member's plan 3 defined benefit.

1 NEW SECTION. **Sec. 308.** A new section is added to chapter 41.50
2 RCW to read as follows:

3 If the department determines that due to employer error a member of
4 the public employees' savings plan has suffered a loss of investment
5 return, the employer shall pay the department for credit to the
6 member's account the amount determined by the department as necessary
7 to correct the error.

8 **Sec. 309.** RCW 41.50.030 and 2011 1st sp.s. c 47 s 20 are each
9 amended to read as follows:

10 (1) As soon as possible but not more than one hundred and eighty
11 days after March 19, 1976, there is transferred to the department of
12 retirement systems, except as otherwise provided in this chapter, all
13 powers, duties, and functions of:

- 14 (a) The Washington public employees' retirement system;
- 15 (b) The Washington state teachers' retirement system;
- 16 (c) The Washington law enforcement officers' and firefighters'
17 retirement system;
- 18 (d) The Washington state patrol retirement system;
- 19 (e) The Washington judicial retirement system; and
- 20 (f) The state treasurer with respect to the administration of the
21 judges' retirement fund imposed pursuant to chapter 2.12 RCW.

22 (2) On July 1, 1996, there is transferred to the department all
23 powers, duties, and functions of the deferred compensation committee.

24 (3) The department shall administer chapter 41.34 RCW.

25 (4) The department shall administer the Washington school
26 employees' retirement system created under chapter 41.35 RCW.

27 (5) The department shall administer the Washington public safety
28 employees' retirement system created under chapter 41.37 RCW.

29 (6) The department shall administer the collection of employer
30 contributions and initial prefunding of the higher education retirement
31 plan supplemental benefits, also referred to as the annuity or
32 retirement income plans created under chapter 28B.10 RCW.

33 (7) The department shall administer the Washington public
34 employees' savings plan created in chapter 41.--- RCW (the new chapter
35 created in section 217 of this act).

1 **Sec. 310.** RCW 41.50.110 and 2011 1st sp.s. c 50 s 936 and 2011 1st
2 sp.s. c 47 s 22 are each reenacted and amended to read as follows:

3 (1) Except as provided by RCW 41.50.255 and subsection (6) of this
4 section, all expenses of the administration of the department, the
5 expenses of administration of the retirement systems, and the expenses
6 of the administration of the office of the state actuary created in
7 chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37,
8 41.--- (the new chapter created in section 217 of this act), 43.43, and
9 44.44 RCW shall be paid from the department of retirement systems
10 expense fund.

11 (2) In order to reimburse the department of retirement systems
12 expense fund on an equitable basis the department shall ascertain and
13 report to each employer, as defined in RCW 28B.10.400, 41.26.030,
14 41.32.010, 41.35.010, 41.37.010, section 202 of this act, or 41.40.010,
15 the sum necessary to defray its proportional share of the entire
16 expense of the administration of the retirement system that the
17 employer participates in during the ensuing biennium or fiscal year
18 whichever may be required. Such sum is to be computed in an amount
19 directly proportional to the estimated entire expense of the
20 administration as the ratio of monthly salaries of the employer's
21 members bears to the total salaries of all members in the entire
22 system. It shall then be the duty of all such employers to include in
23 their budgets or otherwise provide the amounts so required.

24 (3) The department shall compute and bill each employer, as defined
25 in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, section
26 202 of this act, or 41.40.010, at the end of each month for the amount
27 due for that month to the department of retirement systems expense fund
28 and the same shall be paid as are its other obligations. Such
29 computation as to each employer shall be made on a percentage rate of
30 salary established by the department. However, the department may at
31 its discretion establish a system of billing based upon calendar year
32 quarters in which event the said billing shall be at the end of each
33 such quarter.

34 (4) The director may adjust the expense fund contribution rate for
35 each system at any time when necessary to reflect unanticipated costs
36 or savings in administering the department.

37 (5) An employer who fails to submit timely and accurate reports to
38 the department may be assessed an additional fee related to the

1 increased costs incurred by the department in processing the deficient
2 reports. Fees paid under this subsection shall be deposited in the
3 retirement system expense fund.

4 (a) Every six months the department shall determine the amount of
5 an employer's fee by reviewing the timeliness and accuracy of the
6 reports submitted by the employer in the preceding six months. If
7 those reports were not both timely and accurate the department may
8 prospectively assess an additional fee under this subsection.

9 (b) An additional fee assessed by the department under this
10 subsection shall not exceed fifty percent of the standard fee.

11 (c) The department shall adopt rules implementing this section.

12 (6) Expenses other than those under RCW 41.34.060(~~(+3)~~) (4) shall
13 be paid pursuant to subsection (1) of this section.

14 (7) During the 2009-2011 and 2011-2013 fiscal biennia, the
15 legislature may transfer from the department of retirement systems'
16 expense fund to the state general fund such amounts as reflect the
17 excess fund balance of the fund.

18 **Sec. 311.** RCW 43.33A.190 and 2000 c 247 s 701 are each amended to
19 read as follows:

20 Pursuant to RCW 41.34.130 and section 210 of this act, the state
21 investment board shall invest all self-directed investment moneys under
22 the public employees' savings plan, the teachers' retirement system
23 plan 3, the school employees' retirement system plan 3, and the public
24 employees' retirement system plan 3 with full power to establish
25 investment policy, develop investment options, and manage self-directed
26 investment funds.

27 **PART IV**

28 **ADDITIONAL PROVISIONS**

29 NEW SECTION. **Sec. 401.** This act takes effect July 1, 2015.

30 NEW SECTION. **Sec. 402.** The benefits provided pursuant to this act
31 are not provided to employees as a matter of contractual right prior to
32 July 1, 2015. The legislature retains the right to alter or abolish
33 these benefits at any time prior to July 1, 2015."

ESSB 5851 - S AMD

By Senator

1 On page 1, line 2 of the title, after "employees;" strike the
2 remainder of the title and insert "amending RCW 41.04.440, 41.04.445,
3 41.04.450, 41.50.030, and 43.33A.190; reenacting and amending RCW
4 41.50.110; adding a new section to chapter 41.32 RCW; adding a new
5 section to chapter 41.35 RCW; adding a new section to chapter 41.37
6 RCW; adding a new section to chapter 41.40 RCW; adding a new section to
7 chapter 41.50 RCW; adding a new chapter to Title 41 RCW; creating new
8 sections; and providing an effective date."

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