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**SENATE BILL 5980**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senator Braun

AN ACT Relating to creating a defined contribution retirement plan option for elected officials; amending RCW 41.04.440, 41.04.445, 41.04.450, 41.50.030, and 43.33A.190; reenacting and amending RCW 41.50.110; adding a new section to chapter 41.50 RCW; adding a new chapter to Title 41 RCW; and providing an effective date.

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

**PART I**

**SHORT TITLE AND INTENT**

NEW SECTION. **Sec.**  This act may be known and cited as the elected official retirement savings plan act.

NEW SECTION. **Sec.**  The legislature recognizes the need for persons who offer public service as an elected official to have the option of participating in a retirement savings plan that can contribute towards a secure and viable retirement benefit. The legislature also recognizes the need for public employers and taxpayers to have consistent and predictable pension funding obligations in support of employee retirement benefits. Therefore, it is the intent of the legislature to provide a defined contribution retirement plan option for elected officials that uses best practices to provide the opportunity and flexibility to accrue a viable retirement benefit, while providing stable funding requirements for public employers and taxpayers.

**PART II**

**RETIREMENT SYSTEM**

NEW SECTION. **Sec.**  This chapter applies only to members of the Washington elected officials retirement savings plan created under this chapter.

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

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

(2) "Compensation earnable" means salaries or wages earned by a member during a payroll period for service as an elected official, including wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the internal revenue code, but excludes nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation leave, unused accumulated annual leave, or any form of severance pay.

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

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

(5) "Eligible position" means any position as a state or local elected official, but not including elected judges and justices, that also meets the definition of eligible position in chapter 41.40 RCW.

(6) "Employee" or "employed" means a person who is providing services as an elected official for an employer.

(7) "Employer" means every branch, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system. Any employer who is participating in the retirement systems established in chapter 41.40 RCW on the effective date of this section is an employer under this chapter. Any entity that becomes an employer under chapter 41.40 RCW after the effective date of this section is also an employer under this chapter.

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

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

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

(11) "Regular interest" means the rate the director determines.

(12) "Retirement system" means the Washington elected officials retirement savings plan created in this chapter.

(13) "Separation from service" occurs when a person has terminated all elected service with an employer.

(14) "Service" means periods of elected service by a member.

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

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

(17) "State treasurer" means the treasurer of the state of Washington.

NEW SECTION. **Sec.**  A Washington elected officials retirement savings plan is hereby created for the elected officials of the state of Washington and its political subdivisions. The administration and management of the savings plan, the responsibility for making effective the provisions of this chapter, and the authority to make all rules and regulations necessary therefor are hereby vested in the department. All such rules and regulations shall be governed by the provisions of chapter 34.05 RCW. The retirement system created in this chapter shall be known as the Washington elected officials retirement savings plan.

NEW SECTION. **Sec.**  (1) Except as provided in subsection (2) of this section, membership in the retirement system consists of all persons elected to state or local government office, but not an elected judicial office, on or after July 1, 2017, including persons who have previously served as elected officials, who make an irrevocable election within ninety days of taking office to become a member of the system. Membership in the retirement system will begin on the first day of the term of office for those who elect to join the retirement system. Those who do not elect to become members of the system may not be a member of any other retirement plan for their service as elected officials.

(2) Persons who are age fifty or older at the time of being elected to state or local government office after July 1, 2017, and who are members of a retirement plan established under chapter 41.40 RCW prior to being elected may continue membership in the plan under chapter 41.40 RCW for their elected service or may make an irrevocable election to become a member of the retirement system pursuant to subsection (1) of this section.

(3) Membership in the retirement system shall not prevent persons from also participating in a retirement plan established under chapter 41.26, 41.32, 41.35, 41.37, or 41.40 RCW for periods of nonelected service. The hours of service rendered in elected positions eligible for coverage in the retirement system, and the compensation received in the elected positions, may not be included in the calculation of benefits provided pursuant to chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW.

NEW SECTION. **Sec.**  (1) A member shall contribute five percent of his or her compensation earnable until age thirty-five, and seven and one-half percent thereafter. Persons who are age fifty or older at the time of being elected to state or local government office and who elect to become a member of the retirement system pursuant to section 204(2) of this act shall contribute an amount equal to their prior contribution rate under chapter 41.40 RCW.

(2) The employer of a member shall contribute to the member's account an amount equal to eighty percent of the contributions made by a member. The employers of members who elected to join the retirement system pursuant to section 204(2) of this act shall contribute four percent of compensation earnable until age thirty-five and six percent thereafter for those members.

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

NEW SECTION. **Sec.**  In addition to contributions made to members' accounts, employers shall make contributions to the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system in the amounts specified in RCW 41.45.060(6) (b) and (c).

NEW SECTION. **Sec.**  (1) Members may self-direct their investments as set forth in section 208 of this act and RCW 43.33A.190. If a member does not select investments, the member's account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. "Retirement strategy fund" means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date.

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

NEW SECTION. **Sec.**  (1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, and cumulative investment directions received pursuant to section 207 of this act and this section. In carrying out this authority the state investment board, after consultation with the department, shall provide a set of options for members to choose from for self-directed investment.

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (1) If the member terminates service as an elected official, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the department.

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

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

(b) If there is no designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation;

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

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

(3) The distribution under subsections (1) and (2) of this section is less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670.

(4) The department, in consultation with the state investment board, may adopt rules providing members and survivors an option to purchase, using funds in the member's account, an annuity. The offering of this option is subject to favorable tax determination by the internal revenue service.

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

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

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

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

NEW SECTION. **Sec.**  (1) The retirement plan created by this chapter must be administered so as to comply with the internal revenue code, Title 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans by section 401(a) of the internal revenue code.

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

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

NEW SECTION. **Sec.**  (1) A state board, commission, or agency, or any officer, employee, or member thereof, is not liable for any loss or deficiency resulting from member investments selected or required pursuant to section 208 (1) or (3) of this act.

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof, is liable for any loss or deficiency resulting from a member investment in the default option pursuant to section 207 of this act or reasonable efforts to implement investment directions pursuant to section 208 (1) or (3) of this act.

(3) The state investment board, or any officer, employee, or member thereof, is not liable with respect to any declared unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under section 208(2) of this act.

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of unit valuations pursuant to section 208(2) of this act.

NEW SECTION. **Sec.**  For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family apply equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. When necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law are gender neutral, and applicable to individuals in state registered domestic partnerships.

NEW SECTION. **Sec.**  Sections 201 through 213 of this act constitute a new chapter in Title 41 RCW.

**PART III**

**CHANGES TO EXISTING RETIREMENT SYSTEMS**

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

(1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, 41.-- (the new chapter created in section 214 of this act), and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of 1984 does not alter in any manner the provisions of RCW 41.45.060, 41.45.061, and 41.45.067 which require that the member contribution rates shall be set so as to provide fifty percent of the cost of the respective retirement plans.

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

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

(1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.37, 41.40, 41.-- (the new chapter created in section 214 of this act), or 43.43 RCW;

(c) Employees of school districts under the retirement system established by chapter 41.32 ((~~or~~)), 41.40, or 41.-- (the new chapter created in section 214 of this act) RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 ((~~or~~)), 41.40, or 41.-- (the new chapter created in section 214 of this act) RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 ((~~or~~)), 41.40, or 41.-- (the new chapter created in section 214 of this act) RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

(a) RCW 2.10.090(1);

(b) RCW 2.12.060;

(c) RCW 2.14.090;

(d) RCW 41.32.263;

(e) RCW 41.32.350;

(f) RCW 41.40.330 (1) and (3);

(g) RCW 41.45.061 and 41.45.067;

(h) RCW 41.34.070; and

(i) ((~~RCW 43.43.300; and~~

~~(j)~~)) RCW 41.34.040.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump sum payment of accumulated contributions as provided under the provisions of the retirement systems.

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

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

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

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

(1) Employers of those members under chapters 41.26, 41.34, 41.35, 41.37, 41.-- (the new chapter created in section 214 of this act), and 41.40 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1), 41.45.060, 41.45.061, and 41.45.067 and chapters 41.34, and 41.-- (the new chapter created in section 214 of this act) RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and 41.04.455.

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

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

If the department determines that due to employer error a member of the elected officials retirement savings plan has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

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

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

(a) The Washington public employees' retirement system;

(b) The Washington state teachers' retirement system;

(c) The Washington law enforcement officers' and firefighters' retirement system;

(d) The Washington state patrol retirement system;

(e) The Washington judicial retirement system; and

(f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

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

(3) The department shall administer chapter 41.34 RCW.

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

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

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

(7) The department shall administer the Washington elected officials retirement savings plan created in chapter 41.-- RCW (the new chapter created in section 214 of this act).

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

(1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 41.-- (the new chapter created in section 214 of this act), 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

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

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

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

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

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

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

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

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

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

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

Pursuant to RCW 41.34.130 and section 208 of this act, the state investment board shall invest all self-directed investment moneys under the elected officials retirement savings plan, the teachers' retirement system plan 3, the school employees' retirement system plan 3, and the public employees' retirement system plan 3 with full power to establish investment policy, develop investment options, and manage self-directed investment funds.

**PART IV**

**ADDITIONAL PROVISIONS**

NEW SECTION. **Sec.**  This act takes effect July 1, 2017.

NEW SECTION. **Sec.**  The benefits provided pursuant to this act are not provided to employees as a matter of contractual right prior to July 1, 2017. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2017.

**--- END ---**