

---

SENATE BILL 5435

---

State of Washington

64th Legislature

2015 Regular Session

By Senators Bailey and Schoesler

Read first time 01/21/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to expanding participation in the Washington  
2 state deferred compensation program; and amending RCW 41.50.770 and  
3 41.50.780.

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

5 **Sec. 1.** RCW 41.50.770 and 2014 c 172 s 1 are each amended to  
6 read as follows:

7 (1) "Employee" as used in this section and RCW 41.50.780 includes  
8 all full-time, part-time, and career seasonal employees of the state,  
9 a county, a municipality, or other political subdivision of the  
10 state, whether or not covered by civil service; elected and appointed  
11 officials of the executive branch of the government, including full-  
12 time members of boards, commissions, or committees; justices of the  
13 supreme court and judges of the court of appeals and of the superior  
14 and district courts; and members of the state legislature or of the  
15 legislative authority of any county, city, or town.

16 (2) The state, through the department, and any county,  
17 municipality, or other political subdivision of the state acting  
18 through its principal supervising official or governing body is  
19 authorized to contract with an employee to defer a portion of that  
20 employee's income, which deferred portion shall in no event exceed  
21 the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest

1 such deferred portion in a credit union, savings and loan  
2 association, bank, or mutual savings bank or purchase life insurance,  
3 shares of an investment company, individual securities, or fixed  
4 and/or variable annuity contracts from any insurance company or any  
5 investment company licensed to contract business in this state.

6 (3) Beginning no later than January 1, 2017, all counties,  
7 municipalities, and other subdivisions of the state that participate  
8 in one or more of the state retirement systems listed in RCW  
9 41.50.030 must offer the state deferred compensation program as an  
10 option to all employees eligible to participate in a deferred  
11 compensation plan under 26 U.S.C. Sec. 457.

12 (4) Beginning no later than January 1, 2016, all persons newly  
13 employed by the state who are eligible to participate in a deferred  
14 compensation plan under U.S.C. Sec. 457 shall be enrolled in the  
15 state deferred compensation plan unless the employee affirmatively  
16 elects to waive participation in the plan. Persons who participate in  
17 the plan without having selected a deferral amount or investment  
18 option shall contribute three percent of taxable compensation to  
19 their plan account which shall be invested in a default option  
20 selected by the state investment board in consultation with the  
21 director. This subsection shall be administered consistent with the  
22 requirements of the federal internal revenue code.

23 (5) Employees participating in the state deferred compensation  
24 plan administered by the department shall self-direct the investment  
25 of the deferred portion of their income through the selection of  
26 investment options as set forth in subsection ((+4)) (6) of this  
27 section.

28 ((+4)) (6) The department can provide such plans as it deems are  
29 in the interests of state employees. In addition to the types of  
30 investments described in this section, the state investment board,  
31 with respect to the state deferred compensation plan, shall invest  
32 the deferred portion of an employee's income, without limitation as  
33 to amount, in accordance with RCW 43.84.150, 43.33A.140, and  
34 41.50.780, and pursuant to investment policy established by the state  
35 investment board for the state deferred compensation plans. The state  
36 investment board, after consultation with the director regarding any  
37 recommendations made pursuant to RCW 41.50.088(2), shall provide a  
38 set of options for participants to choose from for investment of the  
39 deferred portion of their income. Any income deferred under such a  
40 plan shall continue to be included as regular compensation, for the

1 purpose of computing the state or local retirement and pension  
2 benefits earned by any employee.

3 ((+5)) (7) Coverage of an employee under a deferred compensation  
4 plan under this section shall not render such employee ineligible for  
5 simultaneous membership and participation in any pension system for  
6 public employees.

7 **Sec. 2.** RCW 41.50.780 and 2010 1st sp.s. c 7 s 30 are each  
8 amended to read as follows:

9 (1) The deferred compensation principal account is hereby created  
10 in the state treasury.

11 (2) The amount of compensation deferred by employees (~~under~~  
12 ~~agreements entered into~~) under the authority contained in RCW  
13 41.50.770 shall be paid into the deferred compensation principal  
14 account and shall be sufficient to cover costs of administration and  
15 staffing in addition to such other amounts as determined by the  
16 department. The deferred compensation principal account shall be used  
17 to carry out the purposes of RCW 41.50.770. All eligible state  
18 employees shall be given the opportunity to participate in agreements  
19 entered into by the department under RCW 41.50.770. State agencies  
20 shall cooperate with the department in providing employees with the  
21 opportunity to participate and shall administer the default  
22 enrollment of new employees after January 1, 2016, pursuant to RCW  
23 41.50.770(4).

24 (3) Any county, municipality, or other subdivision of the state  
25 may elect to participate in any agreements entered into by the  
26 department under RCW 41.50.770, including the making of payments  
27 therefrom to the employees participating in a deferred compensation  
28 plan upon their separation from state or other qualifying service.  
29 Beginning no later than January 1, 2017, all counties,  
30 municipalities, and other subdivisions of the state that participate  
31 in one or more of the state retirement systems listed in RCW  
32 41.50.030 must offer the state deferred compensation program as an  
33 option to all employees eligible to participate in a deferred  
34 compensation plan under 26 U.S.C. Sec. 457. Employers that offer the  
35 state deferred compensation program must cooperate with the  
36 department in providing employees with the opportunity to  
37 participate. Accordingly, the deferred compensation principal account  
38 shall be considered to be a public pension or retirement fund within  
39 the meaning of Article XXIX, section 1 of the state Constitution, for

1 the purpose of determining eligible investments and deposits of the  
2 moneys therein.

3 (4) All moneys in the state deferred compensation principal  
4 account and the state deferred compensation administrative account,  
5 all property and rights purchased therewith, and all income  
6 attributable thereto, shall be held in trust by the state investment  
7 board, as set forth under RCW 43.33A.030, for the exclusive benefit  
8 of the state deferred compensation plan's participants and their  
9 beneficiaries. Neither the participant, nor the participant's  
10 beneficiary or beneficiaries, nor any other designee, has any right  
11 to commute, sell, assign, transfer, or otherwise convey the right to  
12 receive any payments under the plan. These payments and right thereto  
13 are nonassignable and nontransferable. Unpaid accumulated deferrals  
14 are not subject to attachment, garnishment, or execution and are not  
15 transferable by operation of law in event of bankruptcy or  
16 insolvency, except to the extent otherwise required by law.

17 (5) The state investment board has the full power to invest  
18 moneys in the state deferred compensation principal account and the  
19 state deferred compensation administrative account in accordance with  
20 RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment  
21 directions received pursuant to RCW 41.50.770. All investment and  
22 operating costs of the state investment board associated with the  
23 investment of the deferred compensation plan assets shall be paid  
24 pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these  
25 expenses, one hundred percent of all earnings from these investments  
26 shall accrue directly to the deferred compensation principal account.

27 (6)(a) No state board or commission, agency, or any officer,  
28 employee, or member thereof is liable for any loss or deficiency  
29 resulting from participant investments selected pursuant to RCW  
30 41.50.770(~~(+3)~~) (5).

31 (b) Neither the department, nor the director or any employee, nor  
32 the state investment board, nor any officer, employee, or member  
33 thereof is liable for any loss or deficiency resulting from  
34 reasonable efforts to implement investment directions pursuant to RCW  
35 41.50.770(~~(+3)~~) (5).

36 (7) The deferred compensation administrative account is hereby  
37 created in the state treasury. All expenses of the department  
38 pertaining to the deferred compensation plan including staffing and  
39 administrative expenses shall be paid out of the deferred  
40 compensation administrative account. Any excess balances credited to

1 this account over administrative expenses disbursed from this account  
2 shall be transferred to the deferred compensation principal account  
3 at such time and in such amounts as may be determined by the  
4 department with the approval of the office of financial management.  
5 Any deficiency in the deferred compensation administrative account  
6 caused by an excess of administrative expenses disbursed from this  
7 account shall be transferred to this account from the deferred  
8 compensation principal account.

9 (8)(a)(i) The department shall keep or cause to be kept full and  
10 adequate accounts and records of the assets of each individual  
11 participant, obligations, transactions, and affairs of any deferred  
12 compensation plans created under RCW 41.50.770 and this section. The  
13 department shall account for and report on the investment of state  
14 deferred compensation plan assets or may enter into an agreement with  
15 the state investment board for such accounting and reporting.

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

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

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

27 (ii) The state investment board has sole responsibility for  
28 contracting with outside investment firms to provide investment  
29 management for the deferred compensation funds and shall manage the  
30 performance of investment managers under those contracts.

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

33 (9) The department may adopt rules necessary to carry out its  
34 responsibilities under RCW 41.50.770 and this section.

--- END ---