

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5435

64th Legislature
2016 Regular Session

Passed by the Senate March 8, 2016
Yeas 49 Nays 0

President of the Senate

Passed by the House March 4, 2016
Yeas 94 Nays 3

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5435** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5435

AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Bailey and Schoesler)

READ FIRST TIME 02/25/15.

1 AN ACT Relating to optional salary deferral programs; amending
2 RCW 41.50.770 and 41.50.780; reenacting and amending RCW 43.84.092;
3 adding a new section to chapter 41.50 RCW; and creating a new
4 section.

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

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

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

17 (2) The state, through the department, and any county,
18 municipality, or other political subdivision of the state acting
19 through its principal supervising official or governing body is
20 authorized to contract with an employee to defer a portion of that
21 employee's income, which deferred portion shall in no event exceed

1 the amount allowable under 26 U.S.C. Sec. 401(a) or 457, and deposit
2 or invest such deferred portion in a credit union, savings and loan
3 association, bank, or mutual savings bank or purchase life insurance,
4 shares of an investment company, individual securities, or fixed
5 and/or variable annuity contracts from any insurance company or any
6 investment company licensed to contract business in this state.

7 (3) Beginning no later than January 1, 2017, all persons newly
8 employed by the state on a full-time basis who are eligible to
9 participate in a deferred compensation plan under 26 U.S.C. Sec. 457
10 shall be enrolled in the state deferred compensation plan unless the
11 employee affirmatively elects to waive participation in the plan.
12 Persons who participate in the plan without having selected a
13 deferral amount or investment option shall contribute three percent
14 of taxable compensation to their plan account which shall be invested
15 in a default option selected by the state investment board in
16 consultation with the director. This subsection does not apply to
17 higher education undergraduate and graduate student employees and
18 shall be administered consistent with the requirements of the federal
19 internal revenue code.

20 (4) Beginning no later than January 1, 2017, any county,
21 municipality, or other political subdivision offering the state
22 deferred compensation plan authorized under this section, may choose
23 to administer the plan with an opt-out feature for new employees as
24 described in subsection (3) of this section.

25 (5) Employees participating in the state deferred compensation
26 plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings
27 plan under 26 U.S.C. Sec. 401(a) administered by the department shall
28 self-direct the investment of the deferred portion of their income
29 through the selection of investment options as set forth in
30 subsection ((4)) (6) of this section.

31 ((4)) (6) The department can provide such plans as it deems are
32 in the interests of state employees. In addition to the types of
33 investments described in this section, the state investment board,
34 with respect to the state deferred compensation plan under 26 U.S.C.
35 Sec. 457 or money-purchase retirement savings plan under 26 U.S.C.
36 Sec. 401(a), shall invest the deferred portion of an employee's
37 income, without limitation as to amount, in accordance with RCW
38 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment
39 policy established by the state investment board for the state
40 deferred compensation plan((s)) under 26 U.S.C. Sec. 457 or money-

1 purchase retirement savings plan under 26 U.S.C. Sec. 401(a). The
2 state investment board, after consultation with the director
3 regarding any recommendations made pursuant to RCW 41.50.088(2),
4 shall provide a set of options for participants to choose from for
5 investment of the deferred portion of their income. Any income
6 deferred under ~~((such a plan))~~ these plans shall continue to be
7 included as regular compensation, for the purpose of computing the
8 state or local retirement and pension benefits earned by any
9 employee.

10 ~~((+5))~~ (7) Coverage of an employee under ~~((a deferred~~
11 ~~compensation plan))~~ optional salary deferral programs under this
12 section shall not render such employee ineligible for simultaneous
13 membership and participation in any pension system for public
14 employees.

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

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

19 (2) The amount of compensation deferred under 26 U.S.C. Sec. 457
20 by employees under agreements entered into under the authority
21 contained in RCW 41.50.770 shall be paid into the deferred
22 compensation principal account and shall be sufficient to cover costs
23 of administration and staffing in addition to such other amounts as
24 determined by the department. The deferred compensation principal
25 account shall be used to carry out the purposes of RCW 41.50.770. All
26 eligible state employees shall be given the opportunity to
27 participate in agreements entered into by the department under RCW
28 41.50.770. State agencies shall cooperate with the department in
29 providing employees with the opportunity to participate.

30 (3) Any county, municipality, or other subdivision of the state
31 may elect to participate in any agreements entered into by the
32 department under RCW 41.50.770, including the making of payments
33 therefrom to the employees participating in a deferred compensation
34 plan upon their separation from state or other qualifying service.
35 Accordingly, the deferred compensation principal account shall be
36 considered to be a public pension or retirement fund within the
37 meaning of Article XXIX, section 1 of the state Constitution, for the
38 purpose of determining eligible investments and deposits of the
39 moneys therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.50
34 RCW to read as follows:

35 (1) The money-purchase retirement savings principal account is
36 hereby created in the state treasury.

37 (2) The amount of compensation deferred under 26 U.S.C. Sec.
38 401(a) by employees under agreements entered into under the authority
39 contained in RCW 41.50.770 shall be paid into the money-purchase

1 retirement savings principal account and shall be sufficient to cover
2 costs of administration and staffing in addition to such other
3 amounts as determined by the department. The money-purchase
4 retirement savings principal account shall be used to carry out the
5 purposes of RCW 41.50.770. All eligible state employees shall be
6 given the opportunity to participate in agreements entered into by
7 the department under RCW 41.50.770. State agencies shall cooperate
8 with the department in providing employees with the opportunity to
9 participate.

10 (3) Any county, municipality, or other subdivision of the state
11 may elect to participate in any agreements entered into by the
12 department under RCW 41.50.770, including the making of payments
13 therefrom to the employees participating in a 26 U.S.C. Sec. 401(a)
14 plan upon their separation from state or other qualifying service.
15 Accordingly, the money-purchase retirement savings principal account
16 shall be considered to be a public pension or retirement fund within
17 the meaning of Article XXIX, section 1 of the state Constitution, for
18 the purpose of determining eligible investments and deposits of the
19 moneys therein.

20 (4) All moneys in the state money-purchase retirement savings
21 principal account and the state money-purchase retirement savings
22 administrative account, all property and rights purchased therewith,
23 and all income attributable thereto, shall be held in trust by the
24 state investment board, as set forth under RCW 43.33A.030, for the
25 exclusive benefit of the state 26 U.S.C. Sec. 401(a) plan's
26 participants and their beneficiaries. Neither the participant, nor
27 the participant's beneficiary or beneficiaries, nor any other
28 designee, has any right to commute, sell, assign, transfer, or
29 otherwise convey the right to receive any payments under the plan.
30 These payments and right thereto are nonassignable and
31 nontransferable. Unpaid accumulated deferrals are not subject to
32 attachment, garnishment, or execution and are not transferable by
33 operation of law in event of bankruptcy or insolvency, except to the
34 extent otherwise required by law.

35 (5) The state investment board has the full power to invest
36 moneys in the state money-purchase retirement savings principal
37 account and the state money-purchase retirement savings
38 administrative account in accordance with RCW 43.84.150, 43.33A.140,
39 and 41.50.770, and cumulative investment directions received pursuant
40 to RCW 41.50.770. All investment and operating costs of the state

1 investment board associated with the investment of the money-purchase
2 retirement savings plan assets shall be paid pursuant to RCW
3 43.33A.160 and 43.84.160. With the exception of these expenses, one
4 hundred percent of all earnings from these investments shall accrue
5 directly to the money-purchase retirement savings principal account.

6 (6)(a) No state board or commission, agency, or any officer,
7 employee, or member thereof is liable for any loss or deficiency
8 resulting from participant investments selected pursuant to RCW
9 41.50.770(5).

10 (b) Neither the department, nor the director or any employee, nor
11 the state investment board, nor any officer, employee, or member
12 thereof is liable for any loss or deficiency resulting from
13 reasonable efforts to implement investment directions pursuant to RCW
14 41.50.770(5).

15 (7) The money-purchase retirement savings administrative account
16 is hereby created in the state treasury. All expenses of the
17 department pertaining to the money-purchase retirement savings plan
18 including staffing and administrative expenses shall be paid out of
19 the money-purchase retirement savings administrative account. Any
20 excess balances credited to this account over administrative expenses
21 disbursed from this account shall be transferred to the money-
22 purchase retirement savings principal account at such time and in
23 such amounts as may be determined by the department with the approval
24 of the office of financial management. Any deficiency in the money-
25 purchase retirement savings administrative account caused by an
26 excess of administrative expenses disbursed from this account shall
27 be transferred to this account from the money-purchase retirement
28 savings principal account.

29 (8)(a)(i) The department shall keep or cause to be kept full and
30 adequate accounts and records of the assets of each individual
31 participant, obligations, transactions, and affairs of any deferred
32 compensation plans created under RCW 41.50.770 and this section. The
33 department shall account for and report on the investment of state
34 money-purchase retirement savings plan assets or may enter into an
35 agreement with the state investment board for such accounting and
36 reporting.

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

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

4 (b)(i) The department's duties under (a)(ii) of this subsection
5 do not limit the authority of the state investment board to conduct
6 its responsibilities for asset management and balancing of the money-
7 purchase retirement savings funds.

8 (ii) The state investment board has sole responsibility for
9 contracting with outside investment firms to provide investment
10 management for the money-purchase retirement savings funds and shall
11 manage the performance of investment managers under those contracts.

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

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

16 **Sec. 4.** RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd
17 sp.s. c 12 s 3 are each reenacted and amended to read as follows:

18 (1) All earnings of investments of surplus balances in the state
19 treasury shall be deposited to the treasury income account, which
20 account is hereby established in the state treasury.

21 (2) The treasury income account shall be utilized to pay or
22 receive funds associated with federal programs as required by the
23 federal cash management improvement act of 1990. The treasury income
24 account is subject in all respects to chapter 43.88 RCW, but no
25 appropriation is required for refunds or allocations of interest
26 earnings required by the cash management improvement act. Refunds of
27 interest to the federal treasury required under the cash management
28 improvement act fall under RCW 43.88.180 and shall not require
29 appropriation. The office of financial management shall determine the
30 amounts due to or from the federal government pursuant to the cash
31 management improvement act. The office of financial management may
32 direct transfers of funds between accounts as deemed necessary to
33 implement the provisions of the cash management improvement act, and
34 this subsection. Refunds or allocations shall occur prior to the
35 distributions of earnings set forth in subsection (4) of this
36 section.

37 (3) Except for the provisions of RCW 43.84.160, the treasury
38 income account may be utilized for the payment of purchased banking
39 services on behalf of treasury funds including, but not limited to,

1 depository, safekeeping, and disbursement functions for the state
2 treasury and affected state agencies. The treasury income account is
3 subject in all respects to chapter 43.88 RCW, but no appropriation is
4 required for payments to financial institutions. Payments shall occur
5 prior to distribution of earnings set forth in subsection (4) of this
6 section.

7 (4) Monthly, the state treasurer shall distribute the earnings
8 credited to the treasury income account. The state treasurer shall
9 credit the general fund with all the earnings credited to the
10 treasury income account except:

11 (a) The following accounts and funds shall receive their
12 proportionate share of earnings based upon each account's and fund's
13 average daily balance for the period: The aeronautics account, the
14 aircraft search and rescue account, the Alaskan Way viaduct
15 replacement project account, the brownfield redevelopment trust fund
16 account, the budget stabilization account, the capital vessel
17 replacement account, the capitol building construction account, the
18 Cedar River channel construction and operation account, the Central
19 Washington University capital projects account, the charitable,
20 educational, penal and reformatory institutions account, the cleanup
21 settlement account, the Columbia river basin water supply development
22 account, the Columbia river basin taxable bond water supply
23 development account, the Columbia river basin water supply revenue
24 recovery account, the common school construction fund, the community
25 forest trust account, the connecting Washington account, the county
26 arterial preservation account, the county criminal justice assistance
27 account, the deferred compensation administrative account, the
28 deferred compensation principal account, the department of licensing
29 services account, the department of retirement systems expense
30 account, the developmental disabilities community trust account, the
31 diesel idle reduction account, the drinking water assistance account,
32 the drinking water assistance administrative account, the drinking
33 water assistance repayment account, the Eastern Washington University
34 capital projects account, the Interstate 405 express toll lanes
35 operations account, the education construction fund, the education
36 legacy trust account, the election account, the electric vehicle
37 charging infrastructure account, the energy freedom account, the
38 energy recovery act account, the essential rail assistance account,
39 The Evergreen State College capital projects account, the federal
40 forest revolving account, the ferry bond retirement fund, the freight

1 mobility investment account, the freight mobility multimodal account,
2 the grade crossing protective fund, the public health services
3 account, the high capacity transportation account, the state higher
4 education construction account, the higher education construction
5 account, the highway bond retirement fund, the highway infrastructure
6 account, the highway safety fund, the high occupancy toll lanes
7 operations account, the hospital safety net assessment fund, the
8 industrial insurance premium refund account, the judges' retirement
9 account, the judicial retirement administrative account, the judicial
10 retirement principal account, the local leasehold excise tax account,
11 the local real estate excise tax account, the local sales and use tax
12 account, the marine resources stewardship trust account, the medical
13 aid account, the mobile home park relocation fund, the money-purchase
14 retirement savings administrative account, the money-purchase
15 retirement savings principal account, the motor vehicle fund, the
16 motorcycle safety education account, the multimodal transportation
17 account, the multiuse roadway safety account, the municipal criminal
18 justice assistance account, the natural resources deposit account,
19 the oyster reserve land account, the pension funding stabilization
20 account, the perpetual surveillance and maintenance account, the
21 public employees' retirement system plan 1 account, the public
22 employees' retirement system combined plan 2 and plan 3 account, the
23 public facilities construction loan revolving account beginning July
24 1, 2004, the public health supplemental account, the public works
25 assistance account, the Puget Sound capital construction account, the
26 Puget Sound ferry operations account, the Puget Sound taxpayer
27 accountability account, the real estate appraiser commission account,
28 the recreational vehicle account, the regional mobility grant program
29 account, the resource management cost account, the rural arterial
30 trust account, the rural mobility grant program account, the rural
31 Washington loan fund, the site closure account, the skilled nursing
32 facility safety net trust fund, the small city pavement and sidewalk
33 account, the special category C account, the special wildlife
34 account, the state employees' insurance account, the state employees'
35 insurance reserve account, the state investment board expense
36 account, the state investment board commingled trust fund accounts,
37 the state patrol highway account, the state route number 520 civil
38 penalties account, the state route number 520 corridor account, the
39 state wildlife account, the supplemental pension account, the Tacoma
40 Narrows toll bridge account, the teachers' retirement system plan 1

1 account, the teachers' retirement system combined plan 2 and plan 3
2 account, the tobacco prevention and control account, the tobacco
3 settlement account, the toll facility bond retirement account, the
4 transportation 2003 account (nickel account), the transportation
5 equipment fund, the transportation fund, the transportation future
6 funding program account, the transportation improvement account, the
7 transportation improvement board bond retirement account, the
8 transportation infrastructure account, the transportation partnership
9 account, the traumatic brain injury account, the tuition recovery
10 trust fund, the University of Washington bond retirement fund, the
11 University of Washington building account, the volunteer
12 firefighters' and reserve officers' relief and pension principal
13 fund, the volunteer firefighters' and reserve officers'
14 administrative fund, the Washington judicial retirement system
15 account, the Washington law enforcement officers' and firefighters'
16 system plan 1 retirement account, the Washington law enforcement
17 officers' and firefighters' system plan 2 retirement account, the
18 Washington public safety employees' plan 2 retirement account, the
19 Washington school employees' retirement system combined plan 2 and 3
20 account, the Washington state health insurance pool account, the
21 Washington state patrol retirement account, the Washington State
22 University building account, the Washington State University bond
23 retirement fund, the water pollution control revolving administration
24 account, the water pollution control revolving fund, the Western
25 Washington University capital projects account, the Yakima integrated
26 plan implementation account, the Yakima integrated plan
27 implementation revenue recovery account, and the Yakima integrated
28 plan implementation taxable bond account. Earnings derived from
29 investing balances of the agricultural permanent fund, the normal
30 school permanent fund, the permanent common school fund, the
31 scientific permanent fund, the state university permanent fund, and
32 the state reclamation revolving account shall be allocated to their
33 respective beneficiary accounts.

34 (b) Any state agency that has independent authority over accounts
35 or funds not statutorily required to be held in the state treasury
36 that deposits funds into a fund or account in the state treasury
37 pursuant to an agreement with the office of the state treasurer shall
38 receive its proportionate share of earnings based upon each account's
39 or fund's average daily balance for the period.

1 (5) In conformance with Article II, section 37 of the state
2 Constitution, no treasury accounts or funds shall be allocated
3 earnings without the specific affirmative directive of this section.

4 NEW SECTION. **Sec. 5.** If specific funding for the purposes of
5 this act, referencing this act by bill or chapter number, is not
6 provided by June 30, 2016, in the omnibus appropriations act, this
7 act is null and void.

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