

CERTIFICATION OF ENROLLMENT

SENATE BILL 6383

Chapter 160, Laws of 2020

66th Legislature
2020 Regular Session

RETIREMENT STRATEGY FUNDS--PLAN 3 AND DEFERRED COMPENSATION
PROGRAMS--STATE INVESTMENT BOARD COMMINGLED FUNDS

EFFECTIVE DATE: June 11, 2020

Passed by the Senate February 13,
2020

Yeas 47 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House March 5, 2020

Yeas 97 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved March 25, 2020 3:47 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6383** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 26, 2020

**Secretary of State
State of Washington**

SENATE BILL 6383

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By Senators Conway, Schoesler, and Mullet; by request of Select Committee on Pension Policy

Read first time 01/15/20. Referred to Committee on Ways & Means.

1 AN ACT Relating to the retirement strategy funds in the plan 3
2 and the deferred compensation programs; and amending RCW 41.34.060,
3 41.34.140, 41.50.770, and 41.50.780; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that participants in
6 the retirement strategy funds of the deferred compensation and plan 3
7 defined contribution plans would gain broader investment exposure to
8 a diversified asset mix by including the state investment board's
9 commingled pension fund in the asset mix. It is the intent of the
10 legislature to confirm participant access to a broader scope of
11 assets.

12 **Sec. 2.** RCW 41.34.060 and 2011 c 80 s 2 are each amended to read
13 as follows:

14 (1) Members may select investments as provided in subsections (2)
15 and (4) of this section. If a member of the public employees'
16 retirement system entering plan 3 under RCW 41.40.785, a member of
17 the teachers' retirement system entering plan 3 under RCW 41.32.835,
18 or a member of the school employees' retirement system entering plan
19 3 under RCW 41.35.610 does not select investments, the member's
20 account shall be invested in the default investment option of the

1 retirement strategy fund that is closest to the retirement target
2 date of the member. Retirement strategy fund means one of several
3 diversified asset allocation portfolios managed by investment
4 advisors under contract to the state investment board. The asset mix
5 of the portfolios adjusts over time depending on a target retirement
6 date. The retirement strategy fund asset mix may include investment
7 in state investment board commingled funds as authorized in RCW
8 43.33A.170.

9 (2) Members may elect to have their account invested by the state
10 investment board. In order to reduce transaction costs and address
11 liquidity issues, based upon recommendations of the state investment
12 board, the department may require members to provide up to ninety
13 days' notice prior to moving funds from the state investment board
14 portfolio to self-directed investment options provided under
15 subsection (4) of this section.

16 (a) For members of the retirement system as provided for in
17 chapter 41.32 RCW of plan 3, investment shall be in the same
18 portfolio as that of the teachers' retirement system combined plan 2
19 and 3 fund under RCW 41.50.075(2).

20 (b) For members of the retirement system as provided for in
21 chapter 41.35 RCW of plan 3, investment shall be in the same
22 portfolio as that of the school employees' retirement system combined
23 plan 2 and 3 fund under RCW 41.50.075(4).

24 (c) For members of the retirement system as provided for in
25 chapter 41.40 RCW of plan 3, investment shall be in the same
26 portfolio as that of the public employees' retirement system combined
27 plan 2 and 3 fund under RCW 41.50.075(3).

28 (3) The state investment board shall declare (~~monthly~~) unit
29 values no less than monthly for the portfolios or funds, or portions
30 thereof, utilized under subsection (2)(a), (b), and (c) of this
31 section. The declared values shall be an approximation of portfolio
32 or fund values, based on internal procedures of the state investment
33 board. Such declared unit values and internal procedures shall be in
34 the sole discretion of the state investment board. The state
35 investment board may delegate any of the powers and duties under this
36 subsection, including discretion, pursuant to RCW 43.33A.030. Member
37 accounts shall be credited by the department with a rate of return
38 based on changes to such unit values.

39 (4) Members may elect to self-direct their investments as set
40 forth in RCW 41.34.130 and 43.33A.190.

1 **Sec. 3.** RCW 41.34.140 and 2011 c 80 s 3 are each amended to read
2 as follows:

3 (1) A state board or commission, agency, or any officer,
4 employee, or member thereof is not liable for any loss or deficiency
5 resulting from member defined contribution investments selected,
6 made, or required pursuant to RCW 41.34.060 (1), (2), or (4).

7 (2) Neither the department, nor director or any employee, nor the
8 state investment board, nor any officer, employee, or member thereof
9 is liable for any loss or deficiency resulting from a member
10 investment in the default option pursuant to RCW 41.34.060(1) or
11 reasonable efforts to implement investment directions pursuant to RCW
12 41.34.060 (1), (2), or (4).

13 (3) The state investment board, or any officer, employee, or
14 member thereof is not liable with respect to any declared monthly
15 unit valuations or crediting of rates of return, or any other
16 exercise of powers or duties, including discretion, under RCW
17 41.34.060(3).

18 (4) The department, or any officer or employee thereof, is not
19 liable for crediting rates of return which are consistent with the
20 state investment board's declaration of ((monthly)) unit valuations
21 pursuant to RCW 41.34.060(3).

22 **Sec. 4.** RCW 41.50.770 and 2016 c 112 s 1 are each amended to
23 read as follows:

24 (1) "Employee" as used in this section and RCW 41.50.780 includes
25 all full-time, part-time, and career seasonal employees of the state,
26 a county, a municipality, or other political subdivision of the
27 state, whether or not covered by civil service; elected and appointed
28 officials of the executive branch of the government, including full-
29 time members of boards, commissions, or committees; justices of the
30 supreme court and judges of the court of appeals and of the superior
31 and district courts; and members of the state legislature or of the
32 legislative authority of any county, city, or town.

33 (2) The state, through the department, and any county,
34 municipality, or other political subdivision of the state acting
35 through its principal supervising official or governing body is
36 authorized to contract with an employee to defer a portion of that
37 employee's income, which deferred portion shall in no event exceed
38 the amount allowable under 26 U.S.C. Sec. 401(a) or 457, and deposit
39 or invest such deferred portion in a credit union, savings and loan

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

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

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

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

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

1 recommendations made pursuant to RCW 41.50.088(2), shall provide a
2 set of options for participants to choose from for investment of the
3 deferred portion of their income. Any income deferred under these
4 plans shall continue to be included as regular compensation, for the
5 purpose of computing the state or local retirement and pension
6 benefits earned by any employee.

7 (7) Any retirement strategy fund asset mix may include investment
8 in a state investment board commingled fund. Retirement strategy fund
9 means one of several diversified asset allocation portfolios managed
10 by investment advisors under contract to the state investment board.
11 The state investment board shall declare unit values for its
12 commingled funds no less than monthly for the funds or portions
13 thereof requiring valuation. The declared values shall be an
14 approximation of portfolio or fund values, and both the values and
15 the frequency of the valuation shall be based on internal procedures
16 of the state investment board. Such declared unit values, the
17 frequency of their valuation, and internal procedures shall be in the
18 sole discretion of the state investment board. The state investment
19 board may delegate any of the powers and duties under this
20 subsection, including discretion, pursuant to RCW 43.33A.030.

21 (8) Coverage of an employee under optional salary deferral
22 programs under this section shall not render such employee ineligible
23 for simultaneous membership and participation in any pension system
24 for public employees.

25 **Sec. 5.** RCW 41.50.780 and 2016 c 112 s 2 are each amended to
26 read as follows:

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

29 (2) The amount of compensation deferred under 26 U.S.C. Sec. 457
30 by employees under agreements entered into under the authority
31 contained in RCW 41.50.770 shall be paid into the deferred
32 compensation principal account and shall be sufficient to cover costs
33 of administration and staffing in addition to such other amounts as
34 determined by the department. The deferred compensation principal
35 account shall be used to carry out the purposes of RCW 41.50.770. All
36 eligible state employees shall be given the opportunity to
37 participate in agreements entered into by the department under RCW
38 41.50.770. State agencies shall cooperate with the department in
39 providing employees with the opportunity to participate.

1 (3) Any county, municipality, or other subdivision of the state
2 may elect to participate in any agreements entered into by the
3 department under RCW 41.50.770, including the making of payments
4 therefrom to the employees participating in a deferred compensation
5 plan upon their separation from state or other qualifying service.
6 Accordingly, the deferred compensation principal account shall be
7 considered to be a public pension or retirement fund within the
8 meaning of Article XXIX, section 1 of the state Constitution, for the
9 purpose of determining eligible investments and deposits of the
10 moneys therein.

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

25 (5) The state investment board has the full power to invest
26 moneys in the state deferred compensation principal account and the
27 state deferred compensation administrative account in accordance with
28 RCW 43.84.150, 43.33A.140, 43.33A.170, and 41.50.770, and cumulative
29 investment directions received pursuant to RCW 41.50.770. All
30 investment and operating costs of the state investment board
31 associated with the investment of the deferred compensation plan
32 assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With
33 the exception of these expenses, one hundred percent of all earnings
34 from these investments shall accrue directly to the deferred
35 compensation principal account.

36 (6) (a) No state board or commission, agency, or any officer,
37 employee, or member thereof is liable for any loss or deficiency
38 resulting from participant investments selected pursuant to RCW
39 41.50.770 (5).

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

6 (c) The state investment board, or any officer, employee, or
7 member thereof is not liable with respect to any declared unit
8 valuations or crediting of rates of return, or any other exercise of
9 powers or duties.

10 (d) The department, or any officer or employee thereof, is not
11 liable for crediting rates of return which are consistent with the
12 state investment board's declaration of unit valuations.

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

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

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

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

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

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

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

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

Passed by the Senate February 13, 2020.

Passed by the House March 5, 2020.

Approved by the Governor March 25, 2020.

Filed in Office of Secretary of State March 26, 2020.

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