
ENGROSSED SUBSTITUTE SENATE BILL 5851

State of Washington

63rd Legislature

2013 Regular Session

By Senate Ways & Means (originally sponsored by Senators Bailey, Hill, and Baumgartner)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to creating a defined contribution retirement plan
2 option for public employees; 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.

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

10 PART I

11 SHORT TITLE AND INTENT

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

14 NEW SECTION. **Sec. 102.** The legislature recognizes the need for
15 public employees, public safety employees, teachers, and school
16 employees, to have a secure and viable retirement benefit, not only for
17 their own financial protection, but also so that public funds are spent

1 prudently for their intended purpose. The legislature also recognizes
2 the need for public employers and taxpayers to have consistent and
3 predictable pension funding obligations in support of employee
4 retirement benefits. Therefore, it is the intent of the legislature to
5 provide a defined contribution retirement plan option for new public
6 employees, teachers, and school employees that uses best practices of
7 defined contribution plans to provide opportunity and flexibility to
8 accrue a viable retirement benefit, while providing stable funding
9 requirements for public employers and taxpayers. These best practices
10 include minimizing the investment risk borne by the participants,
11 whether through lack of investment knowledge or lack of access to the
12 full variety of investment classes, and providing a distribution option
13 that would ensure participants do not outlive their savings.

14

PART II

15

RETIREMENT SYSTEM

16 NEW SECTION. **Sec. 201.** This chapter applies only to members of
17 the Washington public employees' savings plan created under this
18 chapter.

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

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

24 (2)(a) "Compensation earnable" means salaries or wages earned by a
25 member during a payroll period for personal services, including
26 overtime payments, and shall include wages and salaries deferred under
27 provisions established pursuant to sections 403(b), 414(h), and 457 of
28 the internal revenue code, but excludes nonmoney maintenance
29 compensation and lump sum or other payments for deferred annual sick
30 leave, unused accumulated vacation leave, unused accumulated annual
31 leave, or any form of severance pay.

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

34 (i) Retroactive payments to an individual by an employer on
35 reinstatement of the employee in a position, or payments by an employer

1 to an individual in lieu of reinstatement in a position which are
2 awarded or granted as the equivalent of the salary or wage which the
3 individual would have earned during a payroll period is considered
4 compensation earnable to the extent provided in this subsection (2),
5 and the individual shall receive the equivalent service;

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

8 (iii) Compensation that a member would have received but for a
9 disability occurring in the line of duty only as authorized by RCW
10 41.40.038;

11 (iv) Compensation that a member receives due to participation in
12 the leave sharing program only as authorized by RCW 41.04.650 through
13 41.04.670; and

14 (v) Compensation that a member receives for being in standby
15 status. For the purposes of this section, a member is in standby
16 status when not being paid for time actually worked and the employer
17 requires the member to be prepared to report immediately for work, if
18 the need arises, although the need may not arise.

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

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

22 (5) "Eligible position" means any position that meets the
23 definition of eligible position in chapters 41.32, 41.35, 41.37, and
24 41.40 RCW shall be considered an eligible position under this chapter.

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

30 (7)(a) "Employer" means every branch, department, agency,
31 commission, board, and office of the state, and any political
32 subdivision and municipal corporation of the state admitted into the
33 retirement system, including school districts, educational service
34 districts, and public agencies created pursuant to RCW 35.63.070,
35 36.70.060, and 39.34.030. Any employer who is participating in the
36 retirement systems established in chapters 41.32, 41.35, 41.37, and
37 41.40 RCW on the effective date of this section is an employer under

1 this chapter. Any entity that becomes an employer under chapters
2 41.32, 41.35, 41.37, and 41.40 RCW after the effective date of this
3 section is also an employer under this chapter.

4 (b) Except as otherwise specifically provided in this chapter,
5 "employer" does not include a government contractor. For purposes of
6 this subsection, a "government contractor" is any entity, including a
7 partnership, limited liability company, for-profit or nonprofit
8 corporation, or person, that provides services pursuant to a contract
9 with an employer. The determination whether an employer-employee
10 relationship has been established is not based on the relationship
11 between a government contractor and an employer, but is based solely on
12 the relationship between a government contractor's employee and an
13 employer under this chapter.

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

16 (9) "Leave of absence" means the period of time a member is
17 authorized by the employer to be absent from service without being
18 separated from membership.

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

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

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

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

26 (14) "Separation from service" occurs when a person has terminated
27 all employment with an employer. Separation from service or employment
28 does not occur, and if claimed by an employer or employee may be a
29 violation of RCW 41.40.055, when an employee and employer have a
30 written or oral agreement to resume employment with the same employer
31 following termination. Mere expressions or inquiries about
32 postretirement employment by an employer or employee that do not
33 constitute a commitment to reemploy the employee after retirement are
34 not an agreement under this subsection.

35 (15)(a) "Service" means periods of employment by a member in an
36 eligible position or positions for one or more employers for which
37 compensation earnable is paid. Time spent in standby status, whether

1 compensated or not, is not service. Educational employees who are
2 compensated for work in at least nine months from September to August
3 shall be provided one year of service.

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

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

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

10 (18) "State treasurer" means the treasurer of the state of
11 Washington.

12 (19) "Substitute employee" means any substitute employee as defined
13 in RCW 41.35.010 and any substitute teacher as defined in RCW
14 41.32.010.

15 (20) "Transferable plan" means the plans 2 and plans 3 of the
16 retirement systems established under chapters 41.32, 41.34, 41.35,
17 41.37, and 41.40 RCW.

18 NEW SECTION. **Sec. 203.** A public employees' savings plan is hereby
19 created for the employees of the state of Washington and its political
20 subdivisions. The administration and management of the savings plan,
21 the responsibility for making effective the provisions of this chapter,
22 and the authority to make all rules and regulations necessary therefor
23 are hereby vested in the department. All such rules and regulations
24 shall be governed by the provisions of chapter 34.05 RCW. The
25 retirement system created in this chapter shall be known as the
26 Washington public employees' savings plan.

27 NEW SECTION. **Sec. 204.** Membership in the retirement system
28 consists of:

29 (1) All regularly compensated employees, substitute employees, and
30 appointive and elective officials who:

31 (a) Are eligible for membership in plan 2 or plan 3 of the
32 retirement systems established under chapters 41.32, 41.35, 41.37, or
33 41.40 RCW;

34 (b) First become employed by an employer on or after July 1, 2014;
35 and

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

5 (2) All regularly compensated employees and appointive and elective
6 officials employed by an employer who first established service in a
7 transferable plan prior to July 1, 2014, and who made an irrevocable
8 choice to transfer into the system as provided in section 206 of this
9 act.

10 (3)(a) All individuals who meet the requirements of subsection (1)
11 of this section have a period of ninety days to make a choice to either
12 become a member of the public employees' savings plan or to instead
13 elect to become a member, if eligible, of plan 2 or plan 3 of a
14 retirement system established under chapters 41.32, 41.35, 41.37, and
15 41.40 RCW. At the end of ninety days, if the individual has not made
16 a choice of a retirement plan, he or she becomes a member of plan 3 of
17 the applicable retirement system or plan 2 of the retirement system
18 established under chapter 41.37 RCW.

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

31 NEW SECTION. **Sec. 205.** Substitute employees may establish
32 membership and service in the plan under the provisions of RCW
33 41.32.013 or 41.35.033.

34 NEW SECTION. **Sec. 206.** (1) Between January 1, 2015, and July 1,
35 2015, every member of a transferable plan employed by an employer in an
36 eligible position has a one-time option to transfer to the public

1 employees' savings plan. Contributions to this plan shall begin the
2 first day of the pay cycle in which the employee becomes a member.
3 Members electing this option must transfer service from each
4 transferable plan in which the member has established service credit.

5 (2) Service in each transferable plan for which a transferring
6 member has established service credit will be transferred to the public
7 employees' savings plan on July 1, 2015. This service applies to the
8 eligibility for vesting in employer matching contributions as provided
9 in section 207 of this act.

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

14 (a) Plan 2 members' accumulated contributions from each
15 transferable plan 2 will be transferred on July 1, 2015, including all
16 accrued interest as of the transfer date;

17 (b) Plan 3 members' member accounts from each transferable plan 3
18 will be transferred on July 1, 2015;

19 (c) An additional transfer payment from each transferable plan will
20 be credited to qualified members' accounts in the public employees'
21 savings plan on July 1, 2017. The transfer payment represents the
22 employer provided portion of the member's accrued retirement benefit
23 and is equal to the actuarial equivalent value of the member's accrued
24 retirement benefit on June 30, 2015, as determined by the director in
25 consultation with the state actuary, less any amounts transferred under
26 (a) of this subsection. In no event may the additional transfer
27 payment result in a decrease in the value of a member's account;

28 (d) For purposes of determining the actuarial equivalent value of
29 the accrued benefit transferred under (c) of this subsection, the
30 department shall include both expected future salary increases and
31 expected future service credit for benefit eligibility purposes.
32 However, only service credit earned as of June 30, 2015, shall be used
33 to determine the portion of the present value of future benefits that
34 the transferring member has accrued at the date of the transfer;

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

1 (f) To qualify for the transfer payment provided under (c) of this
2 subsection, a transferring member must remain employed by an employer
3 in an eligible position through July 1, 2017;

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

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

12 (5) The department shall notify potentially eligible members of
13 their option to transfer to the public employees' savings plan and
14 shall provide estimates of the amounts potentially available for
15 transfer to their member accounts.

16 NEW SECTION. **Sec. 207.** (1) Except as provided in subsection (5)
17 of this section, a member shall contribute five percent of his or her
18 compensation earnable until age thirty-five, and seven and one-half
19 percent thereafter.

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

23 (3) Members with less than five years of service are not vested in
24 employer contributions to member accounts and the earnings on those
25 contributions. Once members have attained five years of service, they
26 become fully vested in the employer contributions and the earnings on
27 those contributions. Members do not have any right to receive employer
28 contributions or the earnings on those contributions in which they are
29 not vested.

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

32 (5) If required by the federal internal revenue service pursuant to
33 a private letter ruling issued pursuant to section 213 of this act, the
34 member contribution rate for persons who transfer to the retirement
35 plan pursuant to section 206 of this act shall be identical to the
36 member contribution rate they had immediately prior to transferring to

1 the retirement plan. The employers of those members shall contribute
2 to those members' accounts four percent of the member's compensation
3 earnable until age thirty-five, and six percent thereafter.

4 NEW SECTION. **Sec. 208.** In addition to contributions made to
5 members' accounts, employers shall make contributions to the unfunded
6 actuarial accrued liability in plan 1 of the teachers' retirement
7 system and plan 1 of the public employees' retirement system as
8 follows:

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

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

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

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

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

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

8 (2) All investment and operating costs of the state investment
9 board associated with making self-directed investments shall be paid by
10 members and recovered under procedures agreed to by the department and
11 the state investment board pursuant to the principles set forth in RCW
12 43.33A.160 and 43.84.160. All other expenses caused by self-directed
13 investment shall be paid by the member in accordance with rules
14 established by the department. With the exception of these expenses,
15 all earnings from self-directed investments shall accrue to the
16 member's account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) The department, in consultation with the state investment
37 board, shall adopt rules providing members and survivors an option to

1 purchase, using funds in the member's account, an annuity from a
2 state-administered fund. The offering of this option is subject to
3 favorable tax determination by the internal revenue service.

4 NEW SECTION. **Sec. 212.** (1) Subject to subsections (2) and (3) of
5 this section, the right of a person to an annuity or any other right
6 accrued or accruing to any person under the provisions of this chapter,
7 the various funds created by this chapter, and all moneys and
8 investments and income thereof, are hereby exempt from any state,
9 county, municipal, or other local tax, and is not subject to execution,
10 garnishment, attachment, the operation of bankruptcy or insolvency
11 laws, or other process of law whatsoever, whether the same be in actual
12 possession of the person or be deposited or loaned and shall be
13 unassignable.

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

27 (b) This section does not prohibit a beneficiary of an annuity from
28 authorizing deductions from that allowance for charitable purposes on
29 the same terms as employees and public officers under RCW 41.04.035 and
30 41.04.036.

31 (3) Subsection (1) of this section does not prohibit the department
32 from complying with (a) a wage assignment order for child support
33 issued pursuant to chapter 26.18 RCW, (b) an order to withhold and
34 deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll
35 deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits
36 assignment order issued by the department, (e) a court order directing
37 the department of retirement systems to pay benefits directly to an

1 obligee under a dissolution order as defined in RCW 41.50.500(3) which
2 fully complies with RCW 41.50.670 and 41.50.700, or (f) any
3 administrative or court order expressly authorized by federal law.

4 NEW SECTION. **Sec. 213.** (1) The retirement plan created by this
5 chapter must be administered so as to comply with the internal revenue
6 code, Title 26 U.S.C., and specifically with plan qualification
7 requirements imposed on governmental plans by section 401(a) of the
8 internal revenue code. The department shall submit a request for a
9 private letter ruling to the federal internal revenue service to
10 confirm that permitting persons who transfer to the retirement plan
11 pursuant to section 206 of this act to make contributions at the rates
12 provided in section 207(1) of this act, will not prevent the retirement
13 plan from being a qualified plan.

14 (2) Any section or provision of this chapter which is susceptible
15 to more than one construction must be interpreted in favor of the
16 construction most likely to satisfy requirements imposed by section
17 401(a) of the internal revenue code.

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

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

28 (2) Neither the department, nor director or any employee, nor the
29 state investment board, nor any officer, employee, or member thereof,
30 is liable for any loss or deficiency resulting from a member investment
31 in the default option pursuant to section 209 of this act or reasonable
32 efforts to implement investment directions pursuant to section 210 (1)
33 or (3) of this act.

34 (3) The state investment board, or any officer, employee, or member
35 thereof, is not liable with respect to any declared unit valuations or

1 crediting of rates of return, or any other exercise of powers or
2 duties, including discretion, under section 210(2) of this act.

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

7 NEW SECTION. **Sec. 215.** For the purposes of this chapter, the
8 terms spouse, marriage, marital, husband, wife, widow, widower, next of
9 kin, and family apply equally to state registered domestic partnerships
10 or individuals in state registered domestic partnerships as well as to
11 marital relationships and married persons, and references to
12 dissolution of marriage apply equally to state registered domestic
13 partnerships that have been terminated, dissolved, or invalidated, to
14 the extent that such interpretation does not conflict with federal law.
15 When necessary to implement chapter 521, Laws of 2009, gender-specific
16 terms such as husband and wife used in any statute, rule, or other law
17 are gender neutral, and applicable to individuals in state registered
18 domestic partnerships.

19 NEW SECTION. **Sec. 216.** A person who has made an election to
20 become a member of the public employees' savings plan may, if otherwise
21 eligible, elect to transfer to membership in plan 3 of a retirement
22 system established under chapter 41.32, 41.35, 41.37, or 41.40 RCW. A
23 person who transfers membership under this section may establish
24 service credit in the applicable plan 3 for periods of time in the
25 public employees' savings plan by making payment for the actuarial
26 value of the service credit pursuant to RCW 41.50.165.

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

29 **PART III**
30 **CHANGES TO EXISTING RETIREMENT SYSTEMS**

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

33 (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the

1 members of the retirement systems created in chapters 2.10, 2.12,
2 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, 41.--- (the new chapter
3 created in section 217 of this act), and 43.43 RCW to enjoy the tax
4 deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of
5 1984 does not alter in any manner the provisions of RCW 41.45.060,
6 41.45.061, and 41.45.067 which require that the member contribution
7 rates shall be set so as to provide fifty percent of the cost of the
8 respective retirement plans.

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

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

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

15 (a) Judges under the retirement system established under chapter
16 2.10, 2.12, or 2.14 RCW;

17 (b) Employees of the state under the retirement system established
18 by chapter 41.32, 41.37, 41.40, 41.--- (the new chapter created in
19 section 217 of this act), or 43.43 RCW;

20 (c) Employees of school districts under the retirement system
21 established by chapter 41.32 (~~((\otimes))~~), 41.40, or 41.--- (the new chapter
22 created in section 217 of this act) RCW, except for substitute teachers
23 as defined by RCW 41.32.010;

24 (d) Employees of educational service districts under the retirement
25 system established by chapter 41.32 (~~((\otimes))~~), 41.40, or 41.--- (the new
26 chapter created in section 217 of this act) RCW; or

27 (e) Employees of community college districts under the retirement
28 system established by chapter 41.32 (~~((\otimes))~~), 41.40, or 41.--- (the new
29 chapter created in section 217 of this act) RCW.

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

35 (a) RCW 2.10.090(1);

36 (b) RCW 2.12.060;

37 (c) RCW 2.14.090;

- 1 (d) RCW 41.32.263;
- 2 (e) RCW 41.32.350;
- 3 (f) RCW 41.40.330 (1) and (3);
- 4 (g) RCW 41.45.061 and 41.45.067;
- 5 (h) RCW 41.34.070; and
- 6 (i) ((~~RCW 43.43.300~~; and
- 7 (~~+~~)) RCW 41.34.040.

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

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

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

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

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

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

24 (1) Employers of those members under chapters 41.26, 41.34, 41.35,
25 41.37, 41.--- (the new chapter created in section 217 of this act), and
26 41.40 RCW who are not specified in RCW 41.04.445 may choose to
27 implement the employer pick up of all member contributions without
28 exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1),
29 41.45.060, 41.45.061, and 41.45.067 and chapters 41.34, and 41.--- (the
30 new chapter created in section 217 of this act) RCW. If the employer
31 does so choose, the employer and members shall be subject to the
32 conditions and limitations of RCW 41.04.445 (3), (4), and (5) and
33 41.04.455.

34 (2) An employer exercising the option under this section may later
35 choose to withdraw from and/or reestablish the employer pick up of
36 member contributions only once in a calendar year following forty-five

1 days prior notice to the director of the department of retirement
2 systems.

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

5 (1) All teachers who first become employed by an employer in an
6 eligible position on or after July 1, 2014, must make a choice to
7 become a member of either the teacher's retirement system, or the
8 public employees' savings plan established under chapter 41.--- RCW
9 (the new chapter created in section 217 of this act). At the end of
10 ninety days, if the employee has not made a choice, he or she becomes
11 a member of plan 3 of the teachers' retirement system.

12 (2) For administrative efficiency, until a member makes a choice or
13 becomes a plan 3 member by default, as provided in subsection (1) of
14 this section, the member shall be reported to the department in plan 2
15 of the state defined benefit retirement system listed in subsection (1)
16 of this section for which they are eligible, with member and employer
17 contributions. Upon becoming a member of the public employees' savings
18 plan or plan 3, all member and employer accumulated contributions shall
19 be credited to the member's account in the public employees' savings
20 plan, subject to the vesting requirements in section 207 of this act,
21 or in the member's plan 3 defined contribution account. Upon becoming
22 a member of plan 3 all service credit shall be transferred to the
23 member's plan 3 defined benefit.

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

26 (1) All classified employees who first become employed by an
27 employer in an eligible position on or after July 1, 2014, must make a
28 choice to become a member of either the school employees' retirement
29 system, or the public employees' savings plan established under chapter
30 41.--- RCW (the new chapter created in section 217 of this act). At
31 the end of ninety days, if the employee has not made a choice, he or
32 she becomes a member of plan 3 of the school employees' retirement
33 system.

34 (2) For administrative efficiency, until a member makes a choice or
35 becomes a plan 3 member by default, as provided in subsection (1) of
36 this section, the member shall be reported to the department in plan 2

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

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

12 (1) All public safety employees who first become employed by an
13 employer in an eligible position on or after July 1, 2014, must make a
14 choice to become a member of either the public safety employees'
15 retirement system, or the public employees' savings plan established
16 under chapter 41.--- RCW (the new chapter created in section 217 of
17 this act). At the end of ninety days, if the employee has not made a
18 choice, he or she becomes a member of plan 2 of the school employees'
19 retirement system.

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

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

31 (1) All employees who first become employed by an employer in an
32 eligible position on or after July 1, 2014, must make a choice to
33 become a member of either the public employees' retirement system, or
34 the public employees' savings plan established under chapter 41.--- RCW
35 (the new chapter created in section 217 of this act). At the end of

1 ninety days, if the employee has not made a choice, he or she becomes
2 a member of plan 3 of the public employees' retirement system.

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

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

17 If the department determines that due to employer error a member of
18 the public employees' savings plan has suffered a loss of investment
19 return, the employer shall pay the department for credit to the
20 member's account the amount determined by the department as necessary
21 to correct the error.

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

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

- 28 (a) The Washington public employees' retirement system;
- 29 (b) The Washington state teachers' retirement system;
- 30 (c) The Washington law enforcement officers' and firefighters'
31 retirement system;
- 32 (d) The Washington state patrol retirement system;
- 33 (e) The Washington judicial retirement system; and
- 34 (f) The state treasurer with respect to the administration of the
35 judges' retirement fund imposed pursuant to chapter 2.12 RCW.

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

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

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

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

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

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

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

17 (1) Except as provided by RCW 41.50.255 and subsection (6) of this
18 section, all expenses of the administration of the department, the
19 expenses of administration of the retirement systems, and the expenses
20 of the administration of the office of the state actuary created in
21 chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37,
22 41.--- (the new chapter created in section 217 of this act), 43.43, and
23 44.44 RCW shall be paid from the department of retirement systems
24 expense fund.

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

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

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

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

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

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

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

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

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

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

35 Pursuant to RCW 41.34.130 and section 210 of this act, the state
36 investment board shall invest all self-directed investment moneys under
37 the public employees' savings plan, the teachers' retirement system

1 plan 3, the school employees' retirement system plan 3, and the public
2 employees' retirement system plan 3 with full power to establish
3 investment policy, develop investment options, and manage self-directed
4 investment funds.

5 **PART IV**
6 **ADDITIONAL PROVISIONS**

7 NEW SECTION. **Sec. 401.** This act takes effect July 1, 2014.

8 NEW SECTION. **Sec. 402.** The benefits provided pursuant to this act
9 are not provided to employees as a matter of contractual right prior to
10 July 1, 2014. The legislature retains the right to alter or abolish
11 these benefits at any time prior to July 1, 2014.

--- END ---