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**HOUSE BILL 2341**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representative Fitzgibbon; by request of Select Committee on Pension Policy

Prefiled 01/09/20.

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.

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