

or contract purchaser of ((~~α~~)) single and multiple family residences, the cost of which does not exceed two thousand five hundred dollars;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Any action commenced prior to December 31, 1982, pertaining to (A) the restoration of interim transportation services as may be necessary as a consequence of the destruction of the Hood Canal bridge, including, but not limited to, improvements to highways, development of park and ride facilities, and development of ferry terminal facilities until a new or reconstructed Hood Canal bridge is open to traffic; and (B) the reconstruction of a permanent bridge at the site of the original Hood Canal bridge.

Passed the Senate March 18, 1987.

Passed the House April 16, 1987.

Approved by the Governor May 19, 1987.

Filed in Office of Secretary of State May 19, 1987.

---

## CHAPTER 475

[Engrossed Substitute House Bill No. 844]

### DEPENDENT CARE PROGRAM—STATE EMPLOYEES' SALARY REDUCTION PLAN

AN ACT Relating to dependent care; amending RCW 41.04.260; and adding new sections to chapter 41.04 RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. (1) The state of Washington may enter into salary reduction agreements with employees pursuant to the Internal Revenue Code, 26 U.S.C. Sec. 125 for the purpose of making it possible for employees to select on a "before-tax basis" certain taxable and nontaxable benefits pursuant to 26 U.S.C. Sec. 125. The purpose of the salary reduction plan established in this chapter is to attract and retain individuals in governmental service by permitting them to enter into agreements with the state to provide for benefits pursuant to 26 U.S.C. Sec. 129.

(2) Nothing in the salary reduction plan constitutes an employment agreement between the participant and the state, and nothing contained in

the participant's salary reduction agreement, the plan, or sections 2 through 10 of this act gives a participant any right to be retained in state employment.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 3 through 8 of this act.

(1) "Salary reduction plan" means a plan whereby state employees and officers may agree to a reduction of salary which reduction will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125.

(2) "Committee" means the committee for deferred compensation.

(3) "Salary" means a state employee's or officer's monthly salary or wages.

(4) "Dependent care program" means the program for the care of dependents pursuant to 26 U.S.C. Sec. 129 financed from funds deposited in the salary reduction account in the state treasury for the purpose of holding and disbursing the funds deposited under the auspices of the salary reduction plan.

(5) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(6) "Plan year" means the time period established by the committee.

**NEW SECTION.** Sec. 3. The committee shall have responsibility for the formulation and adoption of a plan and policies and procedures designed to guide, direct, and administer the salary reduction plan.

**NEW SECTION.** Sec. 4. (1) A plan document describing the salary reduction plan shall be adopted and administered by the committee. The committee shall represent the state in all matters concerning the administration of the plan. The state through the committee, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the committee in carrying out the purposes of sections 1 through 10 of this act.

(2) The committee shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) The funds held by the state for the dependent care program shall be deposited in the salary reduction account in the state treasury. Any interest in excess of the amount used to defray the cost of administering the salary reduction plan shall become a part of the general fund as shall unclaimed moneys remaining in the salary reduction account at the end of a plan year. The committee may assess each participant a fee for administering the salary reduction plan. In addition to moneys for initial costs, moneys shall be appropriated from the general fund for any expense relating to the

administration of the salary reduction plan. The appropriation may be funded from an amount equivalent to actually realized savings experienced due to reductions in employer contributions required under the social security act, from other similar savings, from interest earned from the salary reduction account credited to the general fund, from any unclaimed moneys in the salary reduction account at the end of the plan year, and from fees charged to the participants.

(4) Every action taken by the committee in administering sections 1 through 10 of this act shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The committee shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence.

NEW SECTION. Sec. 5. (1) Elected officials and all permanent officers and employees of the state are eligible to participate in the salary reduction plan and reduce their salary by agreement with the committee. The committee may adopt rules to permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into salary reduction agreements with the state.

(3)(a) In the initial year of the salary reduction plan, an eligible person may become a participant after the adoption of the plan and before its effective date by agreeing to have a portion of his or her gross salary reduced and deposited into a dependent care account to be used for reimbursement of expenses covered by the plan.

(b) After the initial year of the salary reduction plan, an eligible person may become a participant for a full plan year, with annual benefit selection for each new plan year made before the beginning of the plan year, as determined by the committee, or upon becoming eligible.

(c) Once an eligible person elects to participate and determines the amount his or her salary shall be reduced and the benefit for which the funds are to be used during the plan year, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (d) of this subsection. Prior to making an election to participate in the salary reduction plan, the eligible person shall be informed in writing of all the benefits and reductions that will occur as a result of such election.

(d) The committee shall provide in the salary reduction plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section.

(4) The committee shall establish as part of the salary reduction plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the committee shall protect participants from forfeiture of rights under the plan.

(5) Any salary reduced under the salary reduction plan shall continue to be included as regular compensation for the purpose of computing the state retirement and pension benefits earned by the employee.

NEW SECTION. Sec. 6. The salary reduction account is established in the state treasury. All fees paid to reimburse participants or service providers pursuant to the provisions of sections 1 through 10 of this act shall be paid from the salary reduction account.

NEW SECTION. Sec. 7. (1) The committee shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under section 4 of this act.

(2) The committee shall file an annual report of the financial condition, transactions, and affairs of the salary reduction plan under the committee's jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.

(3) Members of the committee shall be deemed to stand in a fiduciary relationship to the employees participating in the salary reduction plan and shall discharge their duties in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.

NEW SECTION. Sec. 8. (1) The state may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The committee may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' dependent care accounts.

NEW SECTION. Sec. 9. The committee shall adopt rules to implement sections 3 through 8 of this act.

NEW SECTION. Sec. 10. Sections 1 through 9 of this act shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125.

Sec. 11. Section 1, chapter 274, Laws of 1975 1st ex. sess. as last amended by section 23, chapter 57, Laws of 1985 and RCW 41.04.260 are each amended to read as follows:

(1) There is hereby created a committee for deferred compensation to be composed of five members appointed by the governor, one of whom shall be a representative of an employee association or union certified as an exclusive representative of at least one bargaining unit of classified employees,

one who shall be a representative of either a credit union, savings and loan association, mutual savings bank or bank, one who possesses expertise in the area of insurance or investment of public funds, one who shall be the state attorney general or his designee, and one additional member selected by the governor. The committee shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The deferred compensation revolving fund is hereby created in the state treasury. All expenses of the committee including staffing and administrative expenses shall be paid out of the deferred compensation revolving fund.

The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.04.250 shall be paid into the revolving fund and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by this committee. The revolving fund shall be used to carry out the purposes of RCW 41.04.250. All eligible state employees shall be given the opportunity to participate in agreements entered into by the committee under RCW 41.04.250. State agencies shall cooperate with the committee in providing employees with the opportunity to participate. Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the committee under RCW 41.04.250, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the revolving fund shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein. All moneys in the revolving fund, all property and rights purchased therewith, and all income attributable thereto, shall remain (until made available to the participating employee or other beneficiary) solely the money, property, and rights of the state and participating counties, municipalities and subdivisions (without being restricted to the provision of benefits under the plan) subject only to the claims of the state's and participating jurisdictions' general creditors. Participating jurisdictions shall each retain property rights separately.

(3) The state investment board, at the request of the deferred compensation committee, is authorized to invest moneys in the deferred compensation revolving fund in accordance with RCW 43.84.150. Except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation revolving fund. The earnings on any surplus balances in the deferred compensation revolving fund shall be credited to the deferred compensation fund, notwithstanding RCW 43.84.090.

(4) In addition to the duties specified in this section and RCW 41.04-.250, the deferred compensation committee shall administer the salary reduction plan established in sections 1 through 10 of this 1987 act.

(5) The deferred compensation committee shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.04.250 through 41.04.260.

The deferred compensation committee shall file an annual report of the financial condition, transactions, and affairs of the deferred compensation plans under the committee's jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.

~~((5))~~ (6) Members of the deferred compensation committee shall be deemed to stand in a fiduciary relationship to the employees participating in the deferred compensation plans created under RCW 41.04.250 through 41.04.260 and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.

~~((6))~~ (7) The committee may adopt rules necessary to carry out the purposes of RCW 41.04.250 and 41.04.260.

NEW SECTION. Sec. 12. Sections 1 through 10 of this act are each added to chapter 41.04 RCW.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 22, 1987.

Passed the Senate April 15, 1987.

Approved by the Governor May 19, 1987.

Filed in Office of Secretary of State May 19, 1987.

---

## CHAPTER 476

[Engrossed Second Substitute House Bill No. 1006]

### NURSING HOMES—QUALITY OF CARE

AN ACT Relating to quality of care in nursing homes; amending RCW 74.46.180, 74.46.430, 74.46.460, 74.46.470, 74.46.481, 74.46.020, 18.52A.030, 18.51.060, 18.51.091, 18.51.220, 18.51.260, 74.42.580, 74.42.600, 70.38.115, and 74.42.055; adding new sections to chapter 18.51 RCW; adding a new section to chapter 74.46 RCW; creating new sections; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 18, chapter 177, Laws of 1980 as last amended by section 1, chapter 361, Laws of 1985 and RCW 74.46.180 are each amended to read as follows: