

STORAGE NAME: h0169.go
DATE: January 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 169

RELATING TO: Treasurer/Deferred Compensation Plan

SPONSOR(S): Representative Turnbull

COMPANION BILL(S): SB 326 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2) FINANCIAL SERVICES
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides that fees contributed by participants in the state's Deferred Compensation Plan will not be included in the unencumbered balance of the administrative and investment fund balance. Currently any unencumbered balance in this fund exceeding \$750,000 at the end of a quarter must be reverted to the General Revenue Fund.

This bill places the Treasurer's fees related to the Deferred Compensation Fund outside the unencumbered amount. It is not clear what will happen to such funds, as they will be neither "unencumbered", nor clearly "encumbered".

Fund administrators in the Treasurer's office and other proponents have indicated, however, that they expect such funds to be used for purposes related to the Deferred Compensation Plan.

This bill also clarifies that assets accrued or accruing under, and pursuant to the federal statute dealing with deferred compensation plans, are being handled by the Treasurer, as *trustee* for the plan participants and their beneficiaries.

There appears to be no significant fiscal impact on either state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Federal Law

Section 457 of 26 U.S.C., governs deferred compensation plans of state and local governments and tax-exempt organizations. In 1996, Section 457 was amended to add subsection (g). Subsection (g), through paragraph (1), reads as follows:

(g) Governmental plans must maintain set-asides for exclusive benefit of participants.

(1) In general.

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

State Law

In 1975, the Florida Legislature enacted the "government employees deferred compensation plan act" pursuant to ch. 75-295, L.O.F. The plan authorized state agencies and other political subdivisions of the state to adopt a deferred compensation plan (plan). The plan permits employees to defer compensation for federal tax purposes except for social security taxes. The plan was authorized to contract with any licensed insurance company, bank, savings and loan association, or mutual fund company for the employee's investment of the deferred compensation funds. The State Treasurer was designated as the plan administrator.

Pursuant to s. 215.215(4)(a), F.S., the State Treasurer, with the approval of the State Board of Administration (SBA), established the plan. Section 2.11 of the plan states that the state treasurer is responsible for determining the cost of administering the plan to the state and shall reimburse the state for those expenses from funds administered within the plan.

The Treasurer's Division of Benefits, which originally administered the plan, was legislatively eliminated in 1994. The plan was transferred to the Administrative and Investment Trust Fund (A&I) existing pursuant to s. 18.125(4)(a), F.S. Subsequently, pursuant to ch. 97-8, L.O.F., a separate trust fund was created.

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The Treasurer's Bureau of Deferred Compensation is currently responsible for administering and monitoring plan contracts for the state, two special districts, and the SBA. Each plan participant pays a \$1 fee per investment account monthly to the state's treasury for plan expenditures.

Such fees associated with the plan are combined with fees associated with the administration of other fund assets. The Treasurer is permitted to use such fees to defray the expenses of his or her office in the discharge of the administrative and investment powers and duties prescribed by statute.

These fees are held in an administrative and investment trust fund. The fees in this trust fund are generally considered unencumbered. However, the unencumbered balance in the trust fund at the close of each quarter is limited to \$750,000. Any funds in excess of \$750,000 must be transferred unallocated to the General Revenue Fund.

In 1997 statutory language was created in s.112.215, F.S., specifying the Government Employees Deferred Compensation Trust Fund in the State Treasury is a set-aside for plan participants' deferred compensation assets. Furthermore, the language provided that plan assets will be held in trust for the exclusive benefit of the participants and their beneficiaries, as mandated by federal law. If a trust fund had not been created, the 403 (b) plan adopted by this state would not be considered a qualified plan pursuant to 26 U.S.C. 457, s. (g), and the benefits accrued or accruing to the plan's participants would lose tax deferral status.

B. EFFECT OF PROPOSED CHANGES:

This bill provides additional language to s. 112.215(10)(b)1, F.S., clarifying that the Treasurer is the trustee of the Deferred Compensation Trust Fund, and that he or she "hold(s)" such assets.

This bill also provides that the fees which are contributed by deferred compensation participants shall *not be included* in the \$750,000 of unencumbered funds in the administrative and investment fund. In the context of s. 18.125, F.S., it appears that the intent is to permit the Treasurer to retain Deferred Compensation Fund fees in addition to the current limit of \$750,000 for purposes of defraying expenses of his or her office, particularly expenses related to the Plan.

It is possible, however, that some confusion may arise as to just what the status of the fees related to the Deferred Compensation Fund should be. Such fees are specifically not included in the (\$750,000)

unencumbered balance, but there is no language indicating what the fees are to be used for. This lack of specificity about how such fees are to be used may lead to unintended demands on those funds.

Proponents of the bill believe any assets directly related to the Deferred Compensation Fund, including associated fees, should be used for purposes related to the plan.

In Senate hearings on a companion bill, the Treasurer's office stated that some of the fees associated with the plan will be used for capital outlay, and some may be used for information and education related to the Plan. It is also possible that fee adjustments may be considered.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not Applicable.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 18.125 and 112.215, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See II B, EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown. See V, COMMENTS.

3. Long Run Effects Other Than Normal Growth:

Unknown. See V, COMMENTS.

4. Total Revenues and Expenditures:

Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

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D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

By removing the fees associated with the Deferred Compensation Fund from the unencumbered balance, there seems to be some ambiguity created as to the actual status and purpose of such fees.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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