

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to affect any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 112.215, F.S., the Government Employees' Deferred Compensation Act,¹ allows the state or any state agency, county, municipality, other political subdivision, or constitutional county officer to permit an employee to defer all or any portion of that employee's otherwise payable compensation.² Deferred compensation can be placed in a savings account or be used to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or other approved investment products.³ Federal taxation is deferred up to an annually indexed amount for placement in a fund or funds of a prequalified investment provider and account earnings are similarly sheltered from federal taxation until a distribution occurs.⁴

The State of Florida's Chief Financial Officer is charged with the responsibility for establishing the deferred compensation plans for state employees and directs the program through the Department of Financial Services (DFS), which acts as the administering agency. The DFS:

- competitively selects several investment providers along with a third-party financial administrator;
- seeks the advice of the State Board of Administration, the investment entity for the State of Florida and Florida Retirement System, before approving investment vehicles or products; and
- periodically reviews provider company funds and may terminate them if their performance falls below a designated level.⁵

Five of the six participating firms in the deferred compensation program for state employees are insurance companies; the sixth is a mutual fund.⁶ The participating employee bears all of the investment risk and is responsible for the payment of associated fees and costs charged by the provider.⁷ The state's fees and associated participant costs, or total investment management expenses, generally fall within a range between institutional—the lowest, and retail—the highest.⁸ The state plan operates under a long-term contract that was last amended in 1997.⁹

Counties, municipalities and other political subdivisions may adopt and establish their own deferred compensation program.¹⁰ Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.¹¹ The county, municipality, other political subdivision, or constitutional officers are responsible for the programs which they establish.

¹ Section 112.215(1), F.S.

² Section 112.215(3), F.S.

³ *Id.*

⁴ Fla. H.R. Govtl. Ops. Comm., HB 787 (2005) Staff Analysis 2 (March 30, 2005) (on file with committee.).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 112.215(5), F.S.

¹¹ *Id.*

Under current Florida law, counties, municipalities, other political subdivisions, or constitutional officers may not participate in the deferred compensation program sponsored by the DFS. According to the 2001 Survey of 457 Plans by the National Association of Government Defined Contribution Administrators, 47 percent of the 36 responding state plans allow local governments to choose to participate in the state plan.¹² Staff of the Department of Financial Services has indicated that Internal Revenue Service regulations permit 457 plans to include multiple jurisdictions.¹³

Proposed Changes

The bill amends s. 20.121, F.S., to remove a restriction which provides that the Government Employees Deferred Compensation Plan is for “state employees.”

The bill also amends s.112.215, F. S., to change the definition of “employee” to “any person, whether appointed, elected, or under contract, providing services for a governmental entity.” The bill groups the organizations and officers previously included in the definition of “employee” into a new definition of “governmental entity” which means “the state; any state agency or county or other political subdivision of the state; any municipality; any state university board of trustees; or any constitutional county officer under s. 1(d), Article VIII of the State Constitution.”

The bill permits participation in the deferred compensation plan or plans established by the Chief Financial Officer by “employees of governmental entities” rather than only “state employees.” The bill clarifies that the State Board of Administration will remain responsible for approving the initial establishment of deferred compensation plans for state employees, and that local governments will continue to approve the establishment of their plans and products.

Based on these changes, the bill creates two new options for counties, municipalities, other political subdivisions, or constitutional officers in addition to adopting and establishing their own deferred compensation program: (1) allowing them to adopt the deferred compensation plan or plans of the state; or (2) allowing them to adopt and establish a deferred compensation program and adopt the state’s deferred compensation plan or plans.

The bill changes the rulemaking authority of the Chief Financial Officer to include the “deferred compensation plans for employees of governmental entities that have adopted the state’s plan” rather than only the “deferred compensation plans for state employees.”

The bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends paragraph (d) of subsection (2) of s. 20.121, F. S., to make conforming changes.

Section 2: Amends subsection (2), paragraphs (a) and (d) of subsection (4), and subsections (5), (6), and (12) of s. 112.215, F. S., to revise definitions and to permit expanded participation in the deferred compensation program of the state.

Section 3: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹² Fla. H.R. Govtl. Ops. Comm., *supra* note 4.

¹³ *Id.*

1. Revenues:

None. This bill does not appear to create, modify, amend or eliminate a state revenue source.

2. Expenditures:

The bill may have a fiscal impact on state government (associated with fiduciary duties and additional administrative burdens) which has not been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not appear to create, modify, amend or eliminate a local revenue source.

2. Expenditures:

None. This bill does not appear to create, modify, amend or eliminate a local expenditure because participants would pay all fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that local governments add the state plan as another option for their employees or drop their vendors and transition to offering solely the state plan, current providers of deferred compensation services to those local governments may lose business, while the providers under the state plan may gain business. However, there is some degree of overlap between vendors in the state and various local government plans.

To the extent that the state plan's fees are lower than the local governments' plans, participants would experience savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Currently, the Chief Financial Officer may adopt any rule "necessary to administer and implement this act with respect to deferred compensation plans for state employees." This bill changes that authority to include the "deferred compensation plans for employees of governmental entities that have adopted the state's plan."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Governmental Operations Committee adopted an amendment which makes references to “the plan or plans of deferred compensation for employees of governmental entities” consistent with the subsection that authorizes the plan or plans.¹⁴ The bill was reported favorably with committee substitute.

On March 8, 2006, the Local Government Council adopted an amendment which clarifies that the State Board of Administration will remain responsible for approving the initial establishment of deferred compensation plans for state employees, and that local governments will continue to approve the establishment of their plans and products.

¹⁴ Although neutral on the bill, this issue was raised by the Florida League of Cities. Telephone Conversation with the Deputy General Counsel of the Florida League of Cities (Jan. 12, 2006).