HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 257

RELATING TO: Government Employees Deferred Compensation Trust Fund

SPONSOR(S): Representative Turnbull

STATUTE(S) AFFECTED: s. 121.215

COMPANION BILL(S): SB 284 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
(2) GENERAL GOVERNMENT (Fiscal)
(3)
(4)
(5)

I. SUMMARY:

This bill will statutorily establish a trust fund and create a trust for deferred compensation participants, complying with federal statutory changes to 26 U.S.C.A., s. 457 (Deferred compensation plans of State and local governments and tax-exempt organizations) and will require that qualified governmental plans maintain set-asides for the exclusive benefit of participants and their beneficiaries.

This bill does not have a fiscal impact as filed.

This bill has an effective date of upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Current state law provides that "moneys, pensions, annuities, or other benefits accrued or accruing under and pursuant to 26 U.S.C. s. 457 and the deferred compensation plan" adopted by the state, are "solely the property rights of this state until made available to the employee or other beneficiary, ... subject only to the claims of the state's general creditors." s. 112.215 (10), F.S.

Federal law which governs deferred compensation plans of state and local governments and tax-exempt organizations can be found in 26 U.S.C. s. 457. Section 457 was recently amended to add subsection (g), which 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.

B. EFFECT OF PROPOSED CHANGES:

New statutory language is created in s.112.215 (13), F.S., creating the Government Employees Deferred Compensation Trust Fund in the State Treasury as a set-aside for plan participants' deferred compensation assets. Furthermore, 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 was not created, the 403 (b) plan adopted by this state would no longer be considered a qualified plan and the benefits accrued or accruing to the plans participants would lose tax deferral status.

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?

It does not appear to do so.

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

It does not appear to do so.

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

It provides greater protection for government employees deferred compensation assets.

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

An agency or program is not eliminated or reduced.

(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. <u>Lower Taxes:</u>

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?

This bill deals with assets contributed by employees to a deferred compensation plan. This legislation will comply with requirements of federal law and will provide greater safeguards to these assets.

4. Individual Freedom:

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

It provides greater security for contributions of employees to qualified deferred compensation plans so that these assets will be available to employees when needed.

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

Conversely, this bill complies with recently changed federal statutes.

5. Family Empowerment:

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

(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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 112.215, F.S. It creates in the State Treasury the Government Employees Deferred Compensation Trust Fund to hold various assets as otherwise specified and provides that specified assets shall be held in trust for the exclusive benefit of participants and their beneficiaries as mandated by 26 U.S.C. s. 457 (g) (1).

Section 2. Provides an effective date of upon becoming a law.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

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.

D. FISCAL COMMENTS:

None.

IV. <u>CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION</u>:

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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

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

V. <u>COMMENTS</u>:

Constitutional Restrictions:

Article III, s. 19 (f) (1), Fla. Const., provides that no trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the Legislature in a **<u>separate bill</u>** for that purpose only.

In *American Bankers Insurance Company vs. Lawton Chiles*, 675 So.2d 922 (Fla. 1996), the Florida Supreme Court concluded that "the Legislature reasonably interpreted the constitutional provision [art. III, s. 19 (f) (1)] to mean that items related to the purpose, administration, and funding should be included within a bill creating a trust fund." The Supreme Court's conclusions do not contradict the provisions of s. 215.3207, F.S.

VI. <u>AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES</u>:

HB 257, as drafted, retained current language in s. 112.215 (10) (b), F.S., indicating that deferred compensation plan assets shall remain solely the property and rights of this state until made available to employees, subject only to claims of the state's general creditors. This is now contradictory language since the bill tracks new federal statutory requirements and establishes a higher standard of holding assets in trust for the exclusive benefit of participants and their beneficiaries. Therefore, it was necessary to remove this language. A strike everything after the enacting clause amendment was adopted to bring the bill into conformity with the new federal requirements.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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