

By the Committee on Governmental Oversight and Productivity

302-675-00

1 A bill to be entitled
2 An act relating to deferred compensation
3 programs; amending s. 112.215, F.S.; clarifying
4 and defining the term "employee" to include any
5 constitutional county officer under Section
6 1(d), Article VIII of the State Constitution;
7 providing for protection of existing
8 contractual relationships; providing for
9 negotiation of a joint deferred compensation
10 program interlocal government agreement for the
11 respective employees of county political
12 subdivisions and county constitutional
13 officers; authorizing the creation of an
14 additional salary deferral program; providing
15 procedures for implementation by state and
16 local governments; providing an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 112.215, Florida Statutes, is
21 amended to read:

22 112.215 Government employees; deferred compensation
23 program.--

24 (1) This section shall be known and may be cited as
25 the "Government Employees' Deferred Compensation Plan Act."

26 (2) For the purposes of this section, the term
27 "employee" means any person, whether appointed, elected, or
28 under contract, providing services for the state; any state
29 agency or county or other political subdivision of the state;
30 ~~or~~ any municipality; or any constitutional county officer

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1 under s. 1(d), Article VIII of the State Constitution for
2 which compensation or statutory fees are paid.

3 (3) In accordance with a plan of deferred compensation
4 which has been approved as herein provided, the state or any
5 state agency, county, municipality, ~~or~~ other political
6 subdivision, or constitutional county officer may, by contract
7 or a collective bargaining agreement, agree with any employee
8 to defer all or any portion of that employee's otherwise
9 payable compensation and, pursuant to the terms of such
10 approved plan and in such proportions as may be designated or
11 directed under that plan, place such deferred compensation in
12 savings accounts or use the same to purchase fixed or variable
13 life insurance or annuity contracts, securities, evidence of
14 indebtedness, or such other investment products as may have
15 been approved for the purposes of carrying out the objectives
16 of such plan. Such insurance, annuity, savings, or investment
17 products shall be underwritten and offered in compliance with
18 the applicable federal and state laws and regulations by
19 persons who are duly authorized by applicable state and
20 federal authorities.

21 (4)(a) The Treasurer, with the approval of the State
22 Board of Administration, shall establish such plan or plans of
23 deferred compensation for state employees, including all such
24 investment vehicles or products incident thereto, as may be
25 available through, or offered by, qualified companies or
26 persons, and may approve one or more such plans for
27 implementation by and on behalf of the state and its agencies
28 and employees.

29 (b) If the Treasurer deems it advisable, he or she
30 shall have the power, with the approval of the State Board of
31 Administration, to create a trust or other special funds for

1 the segregation of funds or assets resulting from compensation
2 deferred at the request of employees of the state or its
3 agencies and for the administration of such program.

4 (c) The Treasurer, with the approval of the State
5 Board of Administration, may delegate responsibility for
6 administration of the plan to a person the Treasurer
7 determines to be qualified, compensate such person, and,
8 directly or through such person or pursuant to a collective
9 bargaining agreement, contract with a private corporation or
10 institution to provide such services as may be part of any
11 such plan or as may be deemed necessary or proper by the
12 Treasurer or such person, including, but not limited to,
13 providing consolidated billing, individual and collective
14 recordkeeping and accountings, asset purchase, control, and
15 safekeeping, and direct disbursement of funds to employees or
16 other beneficiaries. The Treasurer may authorize a person,
17 private corporation, or institution to make direct
18 disbursement of funds under the plan to an employee or other
19 beneficiary only upon the order of the Comptroller to the
20 Treasurer.

21 (d) In accordance with such approved plan, and upon
22 contract or agreement with an eligible employee, deferrals of
23 compensation may be accomplished by payroll deductions made by
24 the appropriate officer or officers of the state, with such
25 funds being thereafter held and administered in accordance
26 with the plan.

27 (5) Any county, municipality, or other political
28 subdivision of the state may by ordinance, and any county
29 officer under s. 1(d), Article VIII of the State Constitution
30 of 1968 may by contract agreement or other documentation
31 constituting approval, adopt and establish for itself and its

1 employees a deferred compensation program. The ordinance shall
2 designate an appropriate official of the county, municipality,
3 or political subdivision to approve and administer a deferred
4 compensation plan or otherwise provide for such approval and
5 administration. The ordinance shall also designate a public
6 official or body to make the determinations provided for in
7 paragraph (6)(b). If a constitutional county officer elects to
8 adopt and establish for that office and its employees a
9 deferred compensation program, the constitutional county
10 officer shall be the appropriate official or public official
11 to make the determinations provided for in this paragraph and
12 in paragraph (6)(b).

13 (6)(a) No deferred compensation plan of the state
14 shall become effective until approved by the State Board of
15 Administration and the Treasurer is satisfied by opinion from
16 such federal agency or agencies as may be deemed necessary
17 that the compensation deferred thereunder and/or the
18 investment products purchased pursuant to the plan will not be
19 included in the employee's taxable income under federal or
20 state law until it is actually received by such employee under
21 the terms of the plan, and that such compensation will
22 nonetheless be deemed compensation at the time of deferral for
23 the purposes of social security coverage, for the purposes of
24 the state retirement system, and for any other retirement,
25 pension, or benefit program established by law.

26 (b) No deferred compensation plan of a county,
27 municipality, ~~or~~ other political subdivision, or
28 constitutional county officer shall become effective until the
29 appropriate official or body designated under subsection (5)
30 ~~by ordinance~~ is satisfied by opinion from such federal agency
31 or agencies as may be deemed necessary that the compensation

1 deferred thereunder and/or the investment products purchased
2 pursuant to the plan will not be included in the employee's
3 taxable income under federal or state law until it is actually
4 received by such employee under the terms of the plan, and
5 that such compensation will nonetheless be deemed compensation
6 at the time of deferral for the purposes of social security
7 coverage, for the purposes of the retirement system of the
8 appropriate county, municipality, ~~or~~ political subdivision, or
9 constitutional county officer, and for any other retirement,
10 pension, or benefit program established by law.

11 (7) The deferred compensation programs authorized by
12 this section, and any plan approved and adopted as herein
13 provided, shall exist and serve in addition to any other
14 retirement, pension, or benefit systems established by the
15 state or its agencies, counties, municipalities, ~~or~~ other
16 political subdivisions, or constitutional county officer, and
17 shall not supersede, make inoperative, or reduce any benefits
18 provided by the Florida Retirement System or by another
19 retirement, pension, or benefit program established by law.
20 All records identifying individual participants in any plan
21 under this section and their personal account activities shall
22 be confidential and are exempt from the provisions of s.
23 119.07(1).

24 (8) The Treasurer, on behalf of state agencies and the
25 governing body of a county, municipality, other political
26 subdivision, or any constitutional county officer under s.
27 1(d), Article VIII of the State Constitution of 1968, may
28 adopt a defined contribution plan under the authority of 26
29 U.S.C. s. 401(a) for the purpose of matching all or a
30 specified portion of public employees' contributions to a
31 deferred compensation program. Employer contributions to such

1 a plan by the state must be determined annually by the
2 Legislature in the General Appropriations Act, or other
3 legislation implementing that act, and employer contributions
4 by a local government must be determined annually by the local
5 governing body in its annual budget. Employer contributions
6 may take the form of a shared percentage or fixed dollar
7 amount to be made by the employer and employee. There must be
8 a separate accounting for funds credited to such a deferred
9 compensation account, but the funds for those accounts may be
10 commingled for investment purposes.

11 (9)(8)(a) There is hereby created a Deferred
12 Compensation Advisory Council composed of seven members.

13 1. One member shall be appointed by the Speaker of the
14 House of Representatives and the President of the Senate
15 jointly and shall be an employee of the legislative branch.

16 2. One member shall be appointed by the Chief Justice
17 of the Supreme Court and shall be an employee of the judicial
18 branch.

19 3. One member shall be appointed by the chair of the
20 Public Employees Relations Commission and shall be a nonexempt
21 public employee.

22 4. The remaining four members shall be employed by the
23 executive branch and shall be appointed as follows:

24 a. One member shall be appointed by the Chancellor of
25 the State University System and shall be an employee of the
26 university system.

27 b. One member shall be appointed by the Treasurer and
28 shall be an employee of the Treasurer.

29 c. One member shall be appointed by the Governor and
30 shall be an employee of the executive branch.

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1 d. One member shall be appointed by the Comptroller
2 and shall be an employee of the Comptroller.

3 (b) Each member shall serve for a term of 4 years from
4 the date of appointment, except that a vacancy shall be filled
5 by appointment for the remainder of the term.

6 (c) Members shall elect a chair annually.

7 (d) The council shall meet at the call of its chair,
8 at the request of a majority of its membership, or at the
9 request of the Treasurer, but not less than twice a year. The
10 business of the council shall be presented to the council in
11 the form of an agenda. The agenda shall be set by the
12 Treasurer and shall include items of business requested by the
13 council members.

14 (e) A majority of the members shall constitute a
15 quorum, and action by a majority of a quorum shall be
16 official.

17 (f) The council shall make a report of each meeting to
18 the Treasurer, which shall show the names of the members
19 present and shall include a record of its discussions,
20 recommendations, and actions taken. The Treasurer shall keep
21 the records of the proceedings of each meeting on file and
22 shall make the records available to any interested person or
23 group.

24 (g) Members of the council shall serve without
25 compensation but shall be entitled to receive reimbursement
26 for per diem and travel expenses as provided in s. 112.061.

27 (h) The advisory council shall provide assistance and
28 recommendations to the Treasurer relating to the provisions of
29 the plan, the insurance or investment options to be offered
30 under the plan, and any other contracts or appointments deemed
31 necessary by the council and the Treasurer to carry out the

1 provisions of this act. The Treasurer shall inform the
2 council of the manner in which each council recommendation is
3 being addressed. The Treasurer shall provide the council, at
4 least annually, a report on the status of the deferred
5 compensation program, including, but not limited to,
6 information on participant enrollment, amount of compensation
7 deferred, total plan assets, product provider performance, and
8 participant satisfaction with the program.

9 (10)~~(9)~~ The purchase of any insurance contract or
10 annuity or the investment in another investment option under
11 any plan of deferred compensation provided for in the United
12 States Internal Revenue Code and not prohibited under the laws
13 of this state for an employee shall impose no liability or
14 responsibility whatsoever on the state, county, municipality,
15 ~~or~~ other political subdivision, or constitutional county
16 officer, except to show that the payments have been remitted
17 for the purposes for which the compensation has been deferred.

18 (11)~~(10)~~(a) The moneys, pensions, annuities, or other
19 benefits accrued or accruing to any person under the
20 provisions of any plan providing for the deferral of
21 compensation and the accumulated contributions and the cash
22 and securities in the funds created thereunder are hereby
23 exempt from any state, county, or municipal tax. They shall
24 not be subject to execution or attachment or to any legal
25 process whatsoever by a creditor of the employee and shall be
26 unassignable by the employee.

27 (b)1. There is created in the State Treasury the
28 Deferred Compensation Trust Fund, through which the Treasurer
29 as trustee shall hold moneys, pensions, annuities, or other
30 benefits accrued or accruing under and pursuant to 26 U.S.C.

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1 s. 457 and the deferred compensation plan provided for therein
2 and adopted by this state; and
3 a. All amounts of compensation deferred thereunder;
4 b. All property and rights purchased with such
5 amounts; and
6 c. All income attributable to such amounts, property,
7 or rights.
8 2. Notwithstanding the mandates of 26 U.S.C. s.
9 457(b)(6), all of the assets specified in subparagraph 1.
10 shall be held in trust for the exclusive benefit of
11 participants and their beneficiaries as mandated by 26 U.S.C.
12 s. 457(g)(1).
13 (12)~~(11)~~ With respect to any funds held pursuant to a
14 deferred compensation plan, any plan provider which is a bank
15 or savings association and which provides time deposit
16 accounts and certificates of deposit as an investment product
17 to the plan participants may, with the approval of the State
18 Board of Administration for providers in the state plan, or
19 with the approval of the appropriate official or body
20 designated under subsection (5)~~by ordinance~~ for a plan of a
21 county, municipal, or other political subdivision, or
22 constitutional county officer plan, be exempt from the
23 provisions of chapter 280 requiring it to be a qualified
24 public depository, provided:
25 (a) The bank or savings association shall, to the
26 extent that the time deposit accounts or certificates of
27 deposit are not insured by the Federal Deposit Insurance
28 Corporation or the Federal Savings and Loan Insurance
29 Corporation, pledge collateral with the Treasurer for all
30 state funds held by it under a deferred compensation plan, or
31 with such other appropriate official for all public funds held

1 by it under a deferred compensation plan of a county,
2 municipality, ~~or~~ other political subdivision or constitutional
3 county officer, in an amount which equals at least 150 percent
4 of all uninsured deferred compensation funds then held.

5 (b) Said collateral shall be of the kind permitted by
6 s. 280.13 and shall be pledged in the manner provided for by
7 the applicable provisions of chapter 280.

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9 The Treasurer shall have all the applicable powers provided in
10 ss. 280.04, 280.05, and 280.08 relating to the sale or other
11 disposition of the pledged collateral.

12 ~~(13)(12)~~ The Treasurer may adopt any rule necessary to
13 administer and implement this act with respect to deferred
14 compensation plans for state employees.

15 (14) No existing contractual relationships shall be
16 impaired by the provisions of this section. In county
17 political subdivisions of this state with one or more county
18 constitutional officers, the board of county commissioners as
19 the legislative body for the county political subdivision and
20 the one or more county constitutional officers in that county
21 shall negotiate a joint deferred compensation program for all
22 of their respective employees under s. 163.01. If neither the
23 county nor any one or more of the constitutional county
24 officers can agree to adopt such a deferred compensation
25 program, the provisions of subsection (5) shall apply.

26 Section 2. This act shall take effect July 1, 2000.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 210

The Committee Substitute provides for the negotiation of an interlocal agreement among local constitutional officers for the combination of separately operated deferred compensation programs.