

By Senator Pruitt

27-358-01

1                                   A bill to be entitled  
2           An act relating to deferred compensation  
3           programs for government employees; amending s.  
4           112.215, F.S.; redefining the term "employee,"  
5           for purposes of participation in such programs,  
6           to include employees of constitutional county  
7           officers; prescribing duties of constitutional  
8           county officers with respect to their  
9           employees; providing for negotiation of a joint  
10          deferred compensation program for certain local  
11          employees currently eligible for participation  
12          in such programs and employees of  
13          constitutional county officers; providing an  
14          effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Section 112.215, Florida Statutes, is  
19          amended to read:  
20           112.215 Government employees; deferred compensation  
21          program.--

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

24           (2) For the purposes of this section, the term  
25          "employee" means any person, whether appointed, elected, or  
26          under contract, providing services for the state; any state  
27          agency or county or other political subdivision of the state;  
28          ~~or any municipality; or any constitutional county officer~~  
29          under s. 1(d), Article VIII of the State Constitution for  
30          which compensation or statutory fees are paid.

31

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

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

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

1 deferred at the request of employees of the state or its  
2 agencies and for the administration of such program.

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

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

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

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

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

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

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

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

23 (8)(a) There is hereby created a Deferred Compensation  
24 Advisory Council composed of seven members.

25 1. One member shall be appointed by the Speaker of the  
26 House of Representatives and the President of the Senate  
27 jointly and shall be an employee of the legislative branch.

28 2. One member shall be appointed by the Chief Justice  
29 of the Supreme Court and shall be an employee of the judicial  
30 branch.

31

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

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

6           a. One member shall be appointed by the Chancellor of  
7 the State University System and shall be an employee of the  
8 university system.

9           b. One member shall be appointed by the Treasurer and  
10 shall be an employee of the Treasurer.

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

13           d. One member shall be appointed by the Comptroller  
14 and shall be an employee of the Comptroller.

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

18           (c) Members shall elect a chair annually.

19           (d) The council shall meet at the call of its chair,  
20 at the request of a majority of its membership, or at the  
21 request of the Treasurer, but not less than twice a year. The  
22 business of the council shall be presented to the council in  
23 the form of an agenda. The agenda shall be set by the  
24 Treasurer and shall include items of business requested by the  
25 council members.

26           (e) A majority of the members shall constitute a  
27 quorum, and action by a majority of a quorum shall be  
28 official.

29           (f) The council shall make a report of each meeting to  
30 the Treasurer, which shall show the names of the members  
31 present and shall include a record of its discussions,

1 recommendations, and actions taken. The Treasurer shall keep  
2 the records of the proceedings of each meeting on file and  
3 shall make the records available to any interested person or  
4 group.

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

8 (h) The advisory council shall provide assistance and  
9 recommendations to the Treasurer relating to the provisions of  
10 the plan, the insurance or investment options to be offered  
11 under the plan, and any other contracts or appointments deemed  
12 necessary by the council and the Treasurer to carry out the  
13 provisions of this act. The Treasurer shall inform the  
14 council of the manner in which each council recommendation is  
15 being addressed. The Treasurer shall provide the council, at  
16 least annually, a report on the status of the deferred  
17 compensation program, including, but not limited to,  
18 information on participant enrollment, amount of compensation  
19 deferred, total plan assets, product provider performance, and  
20 participant satisfaction with the program.

21 (9) The purchase of any insurance contract or annuity  
22 or the investment in another investment option under any plan  
23 of deferred compensation provided for in the United States  
24 Internal Revenue Code and not prohibited under the laws of  
25 this state for an employee shall impose no liability or  
26 responsibility whatsoever on the state, county, municipality,  
27 ~~or~~ other political subdivision, or constitutional county  
28 officer, except to show that the payments have been remitted  
29 for the purposes for which the compensation has been deferred.

30 (10)(a) The moneys, pensions, annuities, or other  
31 benefits accrued or accruing to any person under the

1 provisions of any plan providing for the deferral of  
2 compensation and the accumulated contributions and the cash  
3 and securities in the funds created thereunder are hereby  
4 exempt from any state, county, or municipal tax. They shall  
5 not be subject to execution or attachment or to any legal  
6 process whatsoever by a creditor of the employee and shall be  
7 unassignable by the employee.

8 (b)1. There is created in the State Treasury the  
9 Deferred Compensation Trust Fund, through which the Treasurer  
10 as trustee shall hold moneys, pensions, annuities, or other  
11 benefits accrued or accruing under and pursuant to 26 U.S.C.  
12 s. 457 and the deferred compensation plan provided for therein  
13 and adopted by this state; and

14 a. All amounts of compensation deferred thereunder;

15 b. All property and rights purchased with such  
16 amounts; and

17 c. All income attributable to such amounts, property,  
18 or rights.

19 2. Notwithstanding the mandates of 26 U.S.C. s.  
20 457(b)(6), all of the assets specified in subparagraph 1.  
21 shall be held in trust for the exclusive benefit of  
22 participants and their beneficiaries as mandated by 26 U.S.C.  
23 s. 457(g)(1).

24 (11) With respect to any funds held pursuant to a  
25 deferred compensation plan, any plan provider which is a bank  
26 or savings association and which provides time deposit  
27 accounts and certificates of deposit as an investment product  
28 to the plan participants may, with the approval of the State  
29 Board of Administration for providers in the state plan, or  
30 with the approval of the appropriate official or body  
31 designated under subsection (5) ~~by ordinance~~ for a plan of a



1 county, municipality ~~municipal~~, ~~or~~ other political  
2 subdivision, or constitutional county officer plan, be exempt  
3 from the provisions of chapter 280 requiring it to be a  
4 qualified public depository, provided:

5 (a) The bank or savings association shall, to the  
6 extent that the time deposit accounts or certificates of  
7 deposit are not insured by the Federal Deposit Insurance  
8 Corporation or the Federal Savings and Loan Insurance  
9 Corporation, pledge collateral with the Treasurer for all  
10 state funds held by it under a deferred compensation plan, or  
11 with such other appropriate official for all public funds held  
12 by it under a deferred compensation plan of a county,  
13 municipality, ~~or~~ other political subdivision, or  
14 constitutional county officer, in an amount which equals at  
15 least 150 percent of all uninsured deferred compensation funds  
16 then held.

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

20  
21 The Treasurer shall have all the applicable powers provided in  
22 ss. 280.04, 280.05, and 280.08 relating to the sale or other  
23 disposition of the pledged collateral.

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

27 (13) This subsection may not impair an existing  
28 contract. In each county that has one or more constitutional  
29 county officers, the board of county commissioners and the  
30 constitutional county officers shall negotiate a joint  
31 deferred compensation program for all their respective

1 employees under s. 163.01. If all parties to the negotiation  
2 cannot agree upon a joint deferred compensation program, the  
3 provisions of subsection (5) apply.

4 Section 2. This act shall take effect October 1, 2001.

6 \*\*\*\*\*

7 SENATE SUMMARY

8 Extends to employees of constitutional county officers  
9 under Section 1(d), Article VIII of the State  
10 Constitution the same eligibility to participate in a  
11 deferred compensation program as is currently provided to  
12 state and local employees. Without impairing any existing  
13 contract, boards of county commissioners must negotiate  
14 with constitutional officers to establish a joint  
15 deferred compensation program, but if all negotiating  
16 parties cannot agree on a joint program, each employer is  
17 responsible for its own employees.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31