

**STORAGE NAME:** h0351.fpr.doc

**DATE:** March 13, 2001

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FISCAL POLICY & RESOURCES  
ANALYSIS**

**BILL #:** HB 351

**RELATING TO:** Deferred Compensation Programs for Governmental Employees

**SPONSOR(S):** Representative Mayfield

**TIED BILL(S):** None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
  - (2) FISCAL POLICY & RESOURCES
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
- 

**I. SUMMARY:**

The Division of the Treasury under the Department of Insurance administers the State of Florida Deferred Compensation Plan. This Division periodically procures provider companies to act as fund managers for employees participating in the deferred compensation program.

Within the state deferred compensation plan, state employees may choose among several provider companies representing insurance companies, mutual funds, and savings institutions. Each provider entity permits the participant to allocate funds among a variety of fixed and variable products according to the individual's perceived degree of comfort and personal financial objectives.

County officers, as defined by the State Constitution, are sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of the circuit courts. This bill amends s. 112.215, F.S., to add "constitutional county officers", to the definition of "employee" for the purposes of electing to participate in deferred compensation programs. Accordingly, these constitutional officers can elect to defer a portion of their compensation, pursuant to the terms and proportions designated by the deferred compensation program, to the State of Florida Deferred Compensation Plan.

This bill also provides that any constitutional county officer may by contract agreement or other documentation, adopt and establish for itself and its employees a deferred compensation program. New language is added to provide that such officer is responsible for the program's development and implementation, including acquisition of necessary federal opinions regarding the program's tax status under federal law.

This bill also affirmatively states that its provisions "may not impair an existing contract." In addition, the board of county commissioners and constitutional officers in local government entities must combine their deferred compensation program operations by entering into a joint deferred compensation program or interlocal agreement. However, any such agreement is voluntary for each constitutional officer.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not support less government because it creates new responsibilities for governmental entities and for individuals. It also increases an entitlement to a service provided by the government (deferred compensation).

B. PRESENT SITUATION:

Section 457 of Title 26 of the United States Code permits the establishment of a salary deferral program to shield income from payment of federal income taxes. While an employer sponsors the creation of such a plan, all of the contributions are made by the employee who, through the provider companies authorized to manage the deposited funds, bears all of the investment risk. In this sense a Section 457 plan is not a pension account for which the public employer is a fiduciary.

The Division of the Treasury under the Department of Insurance administers the State of Florida Deferred Compensation Plan. This Division periodically procures provider companies to act as fund managers for employees participating in the deferred compensation program. The employees currently eligible to elect to use the deferred compensation plan are persons "whether appointed, elected, or under contract, providing services to the state; any state agency or county or other political subdivision of the state; or any municipality for which compensation or statutory fees are paid." s. 112.215(2), F.S.

Within the state deferred compensation plan, state employees may choose among several provider companies representing insurance companies, mutual funds, and savings institutions. Each provider entity permits the participant to allocate funds among a variety of fixed and variable products according to the individual's perceived degree of comfort and personal financial objectives.

At the end of employment, the employee may withdraw contributions and earnings in a full or partial lump sum or structure the payments over a fixed number of years, subject to the contract provisions of the provider company and any premature distribution penalties set by the Internal Revenue Code. Employees may withdraw funds for specified hardship reasons; unlike corporate-type 401(k) pension plans, they are under no obligation to repay these withdrawn amounts with interest.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 112.215, F.S., to add “constitutional county officers”,<sup>1</sup> to the definition of “employee” thereby authorizing such officers to elect to participate in deferred compensation programs. Accordingly, constitutional officers can elect to defer a portion<sup>2</sup> of their compensation, pursuant to the terms and proportions designated by the deferred compensation program.

Also, this bill provides that any constitutional county officer may by contract agreement or other documentation, adopt and establish for itself and its employees a deferred compensation program. New language is added to provide that such officer is responsible for the program’s development and implementation, including acquisition of necessary federal opinions regarding the program’s tax status under federal law.

In addition, this bill affirmatively states that its provisions “may not impair an existing contract.” In addition, the board of county commissioners and constitutional officers in local government entities must combine their deferred compensation program operations by entering into a joint deferred compensation program or interlocal agreement to that effect. An interlocal agreement is an agreement pursuant to s. 163.01, F.S., Florida Interlocal Cooperation Act of 1969.<sup>3</sup> However, any such agreement is voluntary for each constitutional officer.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>1</sup> Section 1(d) of Article VIII of the State Constitution provides that the constitutional county officers are “a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.”

<sup>2</sup> Treasury Regulation section 1.457-2(e), regarding Deferred Compensation Plans, provides that employees can defer a maximum of \$7,500 or 33 1/3 percent of the employee’s eligible compensation for the taxable year.

<sup>3</sup> Section 163.01(2), F.S., provides that the purpose of Florida Interlocal Cooperation Act of 1969 is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Should a constitutional officer decide to start a deferred compensation program, private investment provider companies will have an opportunity to operate such a program.

D. FISCAL COMMENTS:

The Department of Insurance does not anticipate a fiscal impact. Legislative Information Sheet on HB 351, Department of Insurance and Treasurer, February 9, 2001.

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 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2001, the Committee on State Administration heard this bill and adopted one amendment. The amendment addressed a drafting error on page 3, line 27, and revised the bill to consistently refer to "officers" as "constitutional officers."

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VII. SIGNATURES:

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