

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, Florida Statutes, is the Government Employees' Deferred Compensation Act.¹ This section allows the state or any state agency, county, municipality, other political subdivision, or constitutional county officer to permit any 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 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;
- The DFS seeks the advice of the State Board of Administration, the investment entity for the State of Florida and the Florida Retirement System, before approving investment vehicles or products; and
- The DFS 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 state 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

¹ Fla. Stat. § 112.215(1) (2005).

² Fla. Stat. § 112.215(3) (2005).

³ *Id.*

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

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Fla. Stat. § 112.215(5) (2005).

¹¹ *Id.*

county, municipality, other political subdivision, or constitutional officers are responsible for the programs which they establish.

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

Proposed Changes

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

The bill also amends section 112.215, Florida Statutes, 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 section 1(d), Article VIII of the State Constitution.”

The bill permits participation in the deferred compensation plan established by the Chief Financial Officer, with the approval of the State Board of Administration, by “employees of governmental entities” rather than only “state employees.”

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 program of the state; or (2) allowing them to adopt and establish a deferred compensation program and adopt the state’s deferred compensation program.

The bill changes the rulemaking authority of the Chief Financial Officer to include “employees of governmental entities” rather than only “state employees.”

C. SECTION DIRECTORY:

Section 1: Amends paragraph (d) of subsection (2) of section 20.121, Florida Statutes, to make conforming changes.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

¹³ *Id.*

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

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill might benefit from changing the references to the "deferred program of the state" and "state's deferred compensation program" at lines 75-78 to be more consistent with the language which authorizes the Chief Financial Officer to establish such "plan or plans of deferred compensation for employees of governmental entities" in subsection (4) of section 112.215, Florida Statutes.¹⁴

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).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.