The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1110

INTRODUCER: Community Affairs Committee

SUBJECT: Deferred Compensation

DATE: February 19, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman		**CA SPB 7038 as introduced**

I. Summary:

SB 1110 automatically enrolls state employees in the deferred compensation program. The bill requires each state agency to notify employees of the automatic enrollment and allows employees to opt out. State employees participating in the program will be required to contribute a minimum amount and each state agency must match the employee contribution up to a specified limit.

Finally, the bill allows local governments and other governmental entities with deferred contribution plans to automatically enroll employees, and provide employer contribution-matching.

II. Present Situation:

The Government Employees' Deferred Compensation Act[1] allows the state or a local government[2] to permit an employee to defer any portion of that employee's otherwise payable compensation until a later date.[3] Typically, employees participate in order to supplement their retirement income with an additional income stream that may have realized a variety of tax advantages.[4]

Deferment of federal taxation on funds is allowed up to an annually indexed amount.[5] The maximum amount of salary that can be deferred is set by IRS regulations, and is currently the lesser of 80 percent of compensation or $17,500. Participants aged 50 or older, may participate in

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[1] Section 112.215, F.S.

[2] Including, any state agency, county, municipality, other political subdivision, or constitutional county officer. Section 112.215(2), F.S.

[3] Section 112.215(3), F.S.

[4] Florida Deferred Compensation Website, *FAQ*, https://www.myfloridadeferredcomp.com/SOFWeb/plan.aspx (last visited Feb. 11, 2014).

[5] Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *available at* https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf (last visited Feb. 11, 2014) (See Section 3.05: Maximum Deferral, at 10).

the "50+ Catch-up" provision, which currently allows a maximum contribution of $23,000. Making contributions into a deferred compensation account immediately lowers an employee's amount of taxable income during working years. Account earnings are similarly sheltered from federal taxation until a distribution occurs.[6] A participant reports the income and earnings on their federal tax return only upon receiving distributions from the plan.[7]

The State of Florida's Chief Financial Officer (CFO), with the approval of the State Board of Administration (SBA), serves as the plan administrator and establishes the deferred compensation plan for state employees.[8] The Department of Financial Services (DFS), through its Bureau of Deferred Compensation, acts as the administering agency.

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.[9] Funds are maintained by the following prequalified investment providers: GreatWest Retirement Solutions, ING, Nationwide Retirement Solutions, T. Rowe Price, and Valic.[10] By way of an automatic payroll deduction, the DFS wires a participating employee's deferral amount to the chosen investment provider, where it is immediately deposited into their account.[11] The participating employee bears all of the investment risk and is responsible for the payment of associated fees and costs charged by the provider.[12]

Counties, municipalities and other political subdivisions may adopt and establish their own deferred compensation program.[13] Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.[14] The county, municipality, other political subdivision, or constitutional officers are responsible for the programs which they establish.

III. Effect of Proposed Changes:

Section 1 creates s. 112.2151, F.S., to provide that state employees[15] be automatically enrolled in the deferred compensation program, established in s. 112.215, F.S., and allows employees to opt out. State employees hired before October 1, 2014, would be automatically enrolled on January 1, 2015. By October 1, 2014, each state agency, in consultation with the CFO, must notify state

[6] Florida Deferred Compensation Website, *FAQ*, *supra* note 4.
[7] "There will be a mandatory 20% Federal income tax deduction withheld from lump sum distributions, partial distributions, and any distribution with less than a 10-year payout." *Id*.
[8] Section 112.215(4)(a), F.S.; see also Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *supra* note 5.
[9] Section 112.215(3), F.S.
[10] For a comparison of investment performance, historical returns, and fees, see Florida Deferred Compensation Plan, *Quarterly Performance Report*, *available at* https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/QuarterlyPerformanceReport.pdf (last visited Feb. 11, 2014).
[11] Florida Deferred Compensation Website, *FAQ*, *supra* note 4.
[12] *Id*.
[13] Section 112.215(5), F.S.
[14] *Id*.
[15] The bill defines "State employee" as an employee or officer of a state agency who works an average of at least 20 hours per week, and is paid by state warrant from salary appropriations or other agency funds. Other Personnel Services (OPS) and FTE personnel are already eligible to participate in the Deferred Compensation Program, and would also be automatically enrolled under this bill so long as they work an average of at least 20 hours per week.

employees about the automatic enrollment, including procedures and tax consequences if they choose to opt out of the program.

State employees hired on or after October 1, 2014, would be automatically enrolled 90 days after the date of hire, but may opt out within 90 days of employment by making the appropriate filing with the program administrator.

Contributions for participation in the deferred compensation program are as follows:

- From January 1, 2015, through December 31, 2017, employees contribute at least:
  - $25, if paid on a monthly basis; or
  - $12.50, if paid on a biweekly basis.
- On or after January 1, 2018, employees contribute at least:
  - $50, if paid on a monthly basis; or
  - $25, if paid on a biweekly basis.
- On or after January 1, 2015, state agencies would match employee contributions, not to exceed the lesser of:
  - $100, if paid on a monthly basis or $46.15, if paid on a biweekly basis; or
  - Two percent of the employee's salary for the pay period.

In the case of bonuses, state agencies will match the employee contribution up to the lesser of $500 or 25 percent of the bonus.

The bill allows counties, municipalities, political subdivisions, and county constitutional officers to amend their deferred compensation programs to provide automatic enrollment and employer contribution-matching.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provision does not apply because this bill does not require cities or counties to spend money or take action that requires the expenditure of money. The bill allows local governments to amend their deferred compensation programs, but does not require them to spend funds on employer contribution-matching.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill may have tax implications for state employees who would not otherwise have enrolled as participants. Their before-tax contributions to the program will not be "included in their gross income for federal income tax purposes at the time of contribution."[16]

The bill may also result in additional fees collected from Investment Providers to offset additional administrative costs incurred by the CFO, or DFS.[17]

B. Private Sector Impact:

Providers of deferred compensation services under the state plan may gain additional business, to the extent that state employees who become enrolled in the deferred compensation plan do not opt out, and make contributions. Similarly, if local government deferred compensation plans determine to offer automatic enrollment and employer contribution-matching, providers of local deferred compensation plans may gain business.

C. Government Sector Impact:

DFS estimates indeterminate additional costs associated with increased program participation and computer-related system upgrades.

State agencies must match employee contributions made to the deferred compensation program. The resulting expense is currently not available.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.2151 of the Florida Statutes.

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[16] Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *available at* https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf (last visited Feb. 11, 2014) (See Section 1.03: Definitions, at 6).
[17] *Id*. (Section 12.05: Administrative Costs, at 36).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.