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 Governmental Oversight and Accountability

BILL: CS/SB 1352

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Smith

SUBJECT: Deferred Compensation

DATE: April 1, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Fav/CS**
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1352 prohibits a county, municipality, political subdivision or constitutional county officer from entering into contracts with investment providers and recordkeepers for local deferred compensation programs from exceeding a five-year term. The bill prohibits specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances.

The bill further requires the administrator of a local deferred compensation program to comply with certain fiduciary standards. The bill authorizes a public body or official that establishes a local deferred compensation program to organize an oversight committee.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Government Employees' Deferred Compensation Act

The Government Employees' Deferred Compensation Act[1] allows the state and local governments[2] to permit an employee to defer a portion of that employee's otherwise payable

[1] Section 112.215(1), F.S.

[2] Including, any state agency, county, municipality, other political subdivision, or constitutional county officer. Section 112.215(3), F.S.

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 the “50+ Catch-up” provision, which currently allows a maximum annual 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]

County, Municipal, and Other Political Subdivision and Constitutional County Officer Deferred Compensation Programs

Counties, municipalities, and other political subdivisions may adopt and establish their own deferred compensation program by ordinance.[8] Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.[9] The county, municipality, other political subdivision, or county constitutional officers are responsible for the programs which they establish.

III. Effect of Proposed Changes:

County, Municipal, Political Subdivision or Constitutional County Officer Deferred Compensation Plan

Section 1 amends s. 112.215(5), F.S., to prohibit a county, municipality, political subdivision, or constitutional county officer from entering into a contract with an investment provider or recordkeeper for purposes of offering investment vehicles or products to participants in the deferred compensation program or recordkeeping services for the program that exceeds 5 years.

Before the end of each contract term, the public official or body must initiate a public bid for the procurement of investment providers and recordkeepers.

The bill provides that if the administrator of a deferred compensation program or any other person involved with the selection of an investment provider or recordkeeper has had any direct

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[3] Section 112.215(3), F.S.
[4] Florida Deferred Compensation Website, *FAQ*, https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/FAQs1.pdf. (last visited March 26, 2015).
[5] Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *available at* https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf. (last visited March 26, 2015) (See Section 3.05: Maximum Deferral, at 10).
[6] Florida Deferred Compensation Website, *FAQ*, *supra*.
[7] *Id*.
[8] Section 112.215(5), F.S.
[9] *Id*.

interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding two years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper.

The bill clarifies that establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest.

Additionally, the bill requires that the administrator of a deferred compensation program must comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974, as amended, at 29 U.S.C. s. 1104(a)(1)(A)-(C).

Oversight Committee

Further, the bill provides that a county, municipality, or political subdivision or constitutional county officer that establishes a deferred compensation plan may evaluate the performance of the plan administrator through an oversight committee. The oversight committee is required to provide assistance and recommendations with respect to the administration of the plan, including, but not limited to, investment options offered under the plan. A county, municipality, or political subdivision or constitutional county officer must determine the authority, activities, and composition of the oversight committee.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms (competitively procure services related to deferred compensation plans on a more frequent basis), the provisions of Art. VII, s. 18(a) of the Florida Constitution, may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

However, based on the limited fiscal impact that is likely be incurred, the bill may be exempt from those provisions based on the anticipated insignificant annual fiscal impact on counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. Counties, municipalities, political subdivisions and constitutional county officers may incur costs in the bid and procurement process for deferred compensation programs and record keeping services every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.215 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 31, 2015:
The provisions that applied to the State of Florida's deferred compensation plan are deleted.

The requirement that local government procurements for services related to deferred compensation programs be overseen by a professionally qualified independent consultant is deleted.

B. Amendments:

None.