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:	SB 1352
INTRODUCER:	Senator Smith
SUBJECT:	Deferred Compensation
DATE:	March 30, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Pre-meeting**
2.			AGG	
3.			AP	

I. Summary:

SB 1352 prohibits the Chief Financial Officer (CFO), a county, municipality, political subdivision or constitutional county officer from entering into contracts with investment providers and recordkeepers for state or local deferred compensation programs from exceeding a five-year term. The bill specifies requirements for the competitive solicitation or bidding process for investment providers and recordkeepers. The bill defines the term "professionally qualified independent consultant." Also, 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:

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 compensation until a later date.[3] Typically, employees participate in order to supplement their

[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.

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

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]

State of Florida Deferred Compensation Program

The 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 (BDC), 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] Currently, the following investment providers provide investment options for the state deferred compensation program: Charles Schwab, Empower Retirement (formerly GreatWest Retirement Services), Nationwide, T. Rowe Price, VALIC, and VOYA.[10] Investment and other informational data (balances, identifiers, historical reporting, etc.) is centralized among the BDC and the investment providers through a recordkeeper, SunGard.[11]

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.[12] The participating employee bears all of the investment risk and is responsible for the payment of associated fees and costs charged by the provider.[13]

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[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(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 March 26, 2015).

[11] DFS Legislative Analysis of SB 1352 dated March 24, 2015, on file with the Governmental and Oversight Committee.

[12] Florida Deferred Compensation Website, *FAQ*, *supra* note 4.

[13] Section 112.215(4)(e), F.S.

The deferred compensation investment provider and recordkeeper contracts are solicited via an Invitation to Negotiate (ITN) or Request for Proposal (RFP) based on the existing 457(b) deferred compensation landscape and available features and benefits in the industry.[14] At each ITN/RFP period, a 3-5 member review board is established to evaluate the responses.[15] The DFS contract process follows the procurement law pursuant to ch. 287, F.S.[16]

Deferred Compensation Advisory Council

Government Employees' Deferred Compensation Plan Act created a seven member Deferred Compensation Advisory Council (Council).[17] The membership the Council consists of:

- One member shall be appointed by the Speaker of the House of Representatives and the President of the Senate jointly and shall be an employee of the legislative branch.
- One member shall be appointed by the Chief Justice of the Supreme Court and shall be an employee of the judicial branch.
- One member shall be appointed by the chair of the Public Employees Relations Commission and shall be a nonexempt public employee.
- One member shall be appointed by the Chancellor of the State University System and shall be an employee of the university system.
- One member shall be appointed by the CFO and shall be an employee of the CFO.
- One member shall be appointed by the Governor and shall be an employee of the executive branch.
- One member shall be appointed by the Executive Director of the State Board of Administration (SBA) and shall be an employee of the SBA.

The duties of the Council include providing assistance and recommendations to the CFO relating to the provisions of the plan, the insurance or investment options to be offered under the plan, and any other contracts or appointments deemed necessary by the council and the CFO to carry out the provisions of this act.[18]

Contract Renewal

Current procurement law allows for discretionary contractual renewal for the length of the initial contract without additional process, so long as the initial contract contains an extension clause and the vendor performance is satisfactory.[19]

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[14] DFS Legislative Analysis of SB 1352.
[15] *Id*.
[16] *Id*.
[17] Section 112.215(8)(a), F.S.
[18] Section 112.215(8)(h), F.S.
[19] Section 287.057(13), F.S., provides, in part, that "[c]ontracts for commodities or contractual services may be renewed for a period that may not exceed three years or the term of the original contract."

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.[20] Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.[21] The county, municipality, other political subdivision, or county constitutional officers are responsible for the programs which they establish.

Under current law, counties, municipalities, other political subdivisions, or county constitutional officers may not participate in the deferred compensation program sponsored by DFS.

III. Effect of Proposed Changes:

State Of Florida Deferred Compensation Program

Section 1 amends s. 112.215(4), F.S., to prohibit the Chief Financial Officer (CFO) or the administrator delegated responsibility for administration of the deferred compensation plan, from entering into a contract with an investment advisor 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 five years. Before the end of each contract term, the CFO must initiate a competitive solicitation for procurement of investment providers and recordkeepers.

The bill requires that the solicitation be overseen by a professionally qualified independent consultant procured through the competitive solicitation processes authorized in s. 287.057, F.S. The bill defines the term "professionally qualified independent consultant" as:

> a consultant who is professionally qualified based on education and experience to evaluate the performance of investment providers and recordkeepers, not associated in any manner with an investment provider or recordkeeper responding to the competitive solicitation, and not offering any products or services other than overseeing the procurement process.

If the CFO, deferred compensation plan administrator, or any other person involved with the selection of an investment provider or recordkeeper has had any direct interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding two years, such person is prohibited 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.

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[20] Section 112.215(5), F.S.
[21] *Id*.

Contract Renewal

The bill limits the contract term to no more than 5 years. This may prohibit the state from using the current contracts to execute permissive contract renewals beyond the 5 year threshold that is allowed pursuant to s. 287.057(13), F.S.

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 requires that the public bid must be overseen by a professionally qualified independent consultant procured through public bid. The bill defines the term “professionally qualified independent consultant” as:

> a consultant who is professionally qualified based on education and experience to evaluate the performance of investment providers and recordkeepers, not associated in any manner with an investment provider or recordkeeper responding to the public bid, and not offering any products or services other than overseeing the bid process.

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 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:

None.

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:

DFS notes the following potential for increased costs to participants in state deferred compensation programs:

> With the potential for a longer than 5 year contract period, the investment providers (IPs) can respond with a potentially longer period to allocate start-up costs, technical system enhancements cost, and any other associated costs. Without such potential, the IPs would likely charge Participants more through increased fees or other cost, or otherwise decrease expenses through reduced marketing, communication, customer service, or other important services that are required by the existing contract.[22]

C. Government Sector Impact:

To the extent this bill limits the contract term for investment providers and recordkeepers, the DFS will be required to competitively procure these services more often. This means the costs incurred for such procurements will be experienced more often by the state. In addition, to the extent that the state does not use an independent consultant for the procurements today, the state will incur additional costs to meet this new statutory requirement. [23] DFS estimates recurring costs of approximately $100,000 every five years.[24]

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[22] DFS Legislative Analysis of SB 1352.
[23] *Id*.
[24] *Id*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.215.

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.