

STORAGE NAME: h0169.gg

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: HB 169

RELATING TO: Treasurer/Deferred Compensation Plan

SPONSOR(S): Representative Turnbull

COMPANION BILL(S): SB 326 (identical)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (2) FINANCIAL SERVICES YEAS 6 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill provides that any surplus fees contributed by participants in the state's Deferred Compensation Plan will not be included in the unencumbered balance of the Administrative and Investment Trust Fund (A&I). Currently, s. 18.125, F.S., requires that any unencumbered balance in this fund exceeding \$750,000 at the end of a quarter must revert to the General Revenue Fund. The bill does not specify a use for the surplus funds beyond the general authorization in s. 18.125, F.S., to use these funds for the Division of Treasury's costs associated with administering trust fund accounts. However, the Federal law governing state and local government deferred compensation plans mandates that all assets and income of the plans are to be held in trust for the exclusive benefit of participants and their beneficiaries. Additionally, fund administrators in the Treasurer's office and other proponents have indicated that such funds are expected to be used for purposes related to the Deferred Compensation Plan.

This bill also clarifies that assets accrued or accruing under, and pursuant to the federal statute dealing with deferred compensation plans, are being handled by the Treasurer, as *trustee* for the plan participants and their beneficiaries.

Based on current practice relative to the fund balance of the Administrative and Investment Trust Fund, the bill has no fiscal impact on either state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Federal Law

Section 457 of 26 U.S.C., governs deferred compensation plans of state and local governments and tax-exempt organizations. In 1996, Section 457 was amended to add subsection (g). Subsection (g), through paragraph (1), reads as follows:

(g) Governmental plans must maintain set-asides for exclusive benefit of participants.

(1) In general.

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

State Law

In 1975, the Florida Legislature enacted the "government employees deferred compensation plan act" pursuant to ch. 75-295, L.O.F. The plan authorized state agencies and other political subdivisions of the state to adopt a deferred compensation plan (plan). The plan permits employees to defer Compensation for federal tax purposes except for social security taxes. The plan was authorized to contract with any licensed insurance company, bank, savings and loan association, or mutual fund company for the employee's investment of the deferred compensation funds. The State Treasurer was designated as the plan administrator.

Pursuant to s. 112.215(4)(a), F.S., the State Treasurer, with the approval of the State Board of Administration (SBA), established the plan. Section 2.12 of the plan states that the State Treasurer is responsible for determining the cost of administering the plan to the state and shall reimburse the state for those expenses from funds administered within the plan.

The Treasurer's Division of Benefits, which originally administered the plan, was legislatively eliminated in 1994. The plan was transferred to the Administrative and Investment Trust Fund (A&I) existing pursuant to s. 18.125(4)(a), F.S. Subsequently, pursuant to ch. 97-8, L.O.F., a separate trust fund was created in response to the amendment to 26 U.S.C. 457 which required all state and local governments to establish separate trust funds to protect the assets of deferred compensation participants.

The Treasurer's Bureau of Deferred Compensation is currently responsible for administering and monitoring plan contracts for the state, two special districts, and the SBA. A \$1 fee per investment account is contributed on a monthly basis to the state's treasury for plan administrative expenditures.

Such fees associated with the plan are combined with fees associated with the administration of other fund assets. The Treasurer is permitted to use such fees to defray the expenses of his or her office in the discharge of the administrative and investment powers and duties prescribed by statute. These fees are held in the A&I Trust Fund and at the close of each quarter any

unencumbered trust fund monies in excess of \$750,000 are mandated by statute to revert to the General Revenue Fund unallocated.

Since the end of FY 1997, administrators in the Treasury have retained monies attributable to the deferred compensation plan in the A&I Trust Fund beyond the \$750,000 limit in order to be in compliance with Federal law. A concern was raised by the Auditor General (Report No. 13372) regarding the Treasury's statutory authority to hold such unencumbered funds in the A&I Trust Fund in light of the \$750,000 statutory limit.

In 1997 statutory language was created in s.112.215, F.S., creating the Government Employees Deferred Compensation Trust Fund in the State Treasury. This section specifies that all of the assets identified therein as plan participants' deferred compensation assets will be held in trust for the exclusive benefit of the participants and their beneficiaries, as mandated by Federal law.

B. EFFECT OF PROPOSED CHANGES:

This bill provides additional language to s. 112.215(10)(b)1, F.S., clarifying that the Treasurer is the trustee of the Deferred Compensation Trust Fund, and that he or she "hold(s)" such assets.

This bill also provides that the fees which are contributed by deferred compensation participants shall *not be included* in the \$750,000 of unencumbered funds in the A&I Trust Fund. This legislation appears to permit the Treasurer to retain surplus unencumbered Deferred Compensation Fund fees in the A&I Trust Fund beyond the \$750,000 limit. The bill does not specify what the funds are to be used for beyond the general authorization in s. 18.125, F.S., to use these funds for the Division of Treasury's costs associated with administering trust fund accounts. However, the Federal law governing state and local government deferred compensation plans mandates that all assets and income of the plans are to be held in trust for the exclusive benefit of participants and their beneficiaries. Additionally, fund administrators in the Treasurer's office and other proponents have indicated that such funds are expected to be used for purposes related to the Deferred Compensation Plan.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not Applicable.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 18.125 and 112.215, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See II B, EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown. See V, COMMENTS.

3. Long Run Effects Other Than Normal Growth:

Unknown. See V, COMMENTS.

4. Total Revenues and Expenditures:

Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

Surplus fees contributed by deferred compensation participants may be used through the Deferred Compensation Trust Fund, but must be appropriated by the Legislature.

The plan participant fee is paid through a contractual arrangement with each plan provider or investment money manager, consequently, any consideration for a reduction in the plan participant administrative fee could not be realized until the next contract period.

See attached Deferred Compensation cash analysis.

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 an 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:

Committee on Governmental Operations:

It is possible that some confusion may arise as to just what the status of the fees related to the Deferred Compensation Fund should be. Such fees are specifically not included in the \$750,000 unencumbered balance, but there is no language indicating what the fees are to be used for. This lack of specificity about how such fees are to be used may lead to unintended demands on those funds.

Proponents of the bill believe any assets directly related to the Deferred Compensation Fund, including associated fees, should be used for purposes related to the plan.

In Senate hearings on a companion bill, the Treasurer's office stated that some of the fees associated with the plan will be used for capital outlay, and some may be used for information and education related to the Plan. It is also possible that fee adjustments may be considered.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on February 17, 1999, the Committee on Governmental Operations adopted one amendment offered by Representative Turnbull. The amendment clarifies that the fees associated with the Deferred Compensation Trust Fund are not to be transferred to the General Revenue Fund, and such fees shall be used to operate the deferred compensation program. The amendment will be traveling with this bill.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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APPROPRIATIONS:

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