Senate Bill No. 304

An act relating to deferred compensation programs for government employees; and to the judiciary; amending s. 24 of ch. 2000-237, Laws of Florida, to revise the effective date thereof; amending s. 112.215, F.S.; redefining the term "employee," for purposes of participation in such programs, to include employees of constitutional county officers; prescribing duties of constitutional county officers with respect to their employees; providing for negotiation of a joint deferred compensation program for certain local employees currently eligible for participation in such programs and employees of constitutional county officers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 24 of chapter 2000-237, Laws of Florida, is amended to read:

Section 24. This act shall take effect upon becoming a law, except for section 8 of this act, which shall take effect July 1, <u>2003</u> ~~2001~~.

Section 2. Section 112.215, Florida Statutes, is amended to read:

112.215 Government employees; deferred compensation program.—

(1) This section shall be known and may be cited as the "Government Employees' Deferred Compensation Plan Act."

(2) For the purposes of this section, the term "employee" means any person, whether appointed, elected, or under contract, providing services for the state; any state agency or county or other political subdivision of the state; ~~or~~ any municipality<u>; or any constitutional county officer under s. 1(d), Article VIII of the State Constitution</u> for which compensation or statutory fees are paid.

(3) In accordance with a plan of deferred compensation which has been approved as herein provided, the state or any state agency, county, municipality, ~~or~~ other political subdivision<u>, or constitutional county officer</u> may, by contract or a collective bargaining agreement, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of such approved plan and in such proportions as may be designated or directed under that plan, place such deferred compensation in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or such other investment products as may have been approved for the purposes of carrying out the objectives of such plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities.

(4)(a) The Treasurer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees.

(b) If the Treasurer deems it advisable, he or she shall have the power, with the approval of the State Board of Administration, to create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred at the request of employees of the state or its agencies and for the administration of such program.

(c) The Treasurer, with the approval of the State Board of Administration, may delegate responsibility for administration of the plan to a person the Treasurer determines to be qualified, compensate such person, and, directly or through such person or pursuant to a collective bargaining agreement, contract with a private corporation or institution to provide such services as may be part of any such plan or as may be deemed necessary or proper by the Treasurer or such person, including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, asset purchase, control, and safekeeping, and direct disbursement of funds to employees or other beneficiaries. The Treasurer may authorize a person, private corporation, or institution to make direct disbursement of funds under the plan to an employee or other beneficiary only upon the order of the Comptroller to the Treasurer.

(d) In accordance with such approved plan, and upon contract or agreement with an eligible employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer or officers of the state, with such funds being thereafter held and administered in accordance with the plan.

(5) Any county, municipality, or other political subdivision of the state may by ordinance<u>, and any constitutional county officer under s. 1(d), Article VIII of the State Constitution of 1968 may by contract agreement or other documentation constituting approval,</u> adopt and establish for itself and its employees a deferred compensation program. The ordinance shall designate an appropriate official of the county, municipality, or political subdivision to approve and administer a deferred compensation plan or otherwise provide for such approval and administration. The ordinance shall also designate a public official or body to make the determinations provided for in paragraph (6)(b). <u>If a constitutional county officer elects to adopt and establish for that office and its employees a deferred compensation program, the constitutional county officer shall be the appropriate official to make the determinations provided for in this subsection and in paragraph (6)(b).</u>

(6)(a) No deferred compensation plan of the state shall become effective until approved by the State Board of Administration and the Treasurer is satisfied by opinion from such federal agency or agencies as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law until it is actually received by such employee under the terms of the plan, and that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of social security coverage, for the purposes of the state retirement system, and for any other retirement, pension, or benefit program established by law.

(b) No deferred compensation plan of a county, municipality, ~~or~~ other political subdivision, or constitutional county officer shall become effective until the appropriate official or body designated under subsection (5) ~~by ordinance~~ is satisfied by opinion from such federal agency or agencies as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law until it is actually received by such employee under the terms of the plan, and that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of social security coverage, for the purposes of the retirement system of the appropriate county, municipality, ~~or~~ political subdivision, or constitutional county officer, and for any other retirement, pension, or benefit program established by law.

(7) The deferred compensation programs authorized by this section, and any plan approved and adopted as herein provided, shall exist and serve in addition to any other retirement, pension, or benefit systems established by the state or its agencies, counties, municipalities, ~~or~~ other political subdivisions, or constitutional county officers and shall not supersede, make inoperative, or reduce any benefits provided by the Florida Retirement System or by another retirement, pension, or benefit program established by law. All records identifying individual participants in any plan under this section and their personal account activities shall be confidential and are exempt from the provisions of s. 119.07(1).

(8)(a) There is hereby created a Deferred Compensation Advisory Council composed of seven members.

1. 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.

2. One member shall be appointed by the Chief Justice of the Supreme Court and shall be an employee of the judicial branch.

3. One member shall be appointed by the chair of the Public Employees Relations Commission and shall be a nonexempt public employee.

4. The remaining four members shall be employed by the executive branch and shall be appointed as follows:

a. One member shall be appointed by the Chancellor of the State University System and shall be an employee of the university system.

b. One member shall be appointed by the Treasurer and shall be an employee of the Treasurer.

c. One member shall be appointed by the Governor and shall be an employee of the executive branch.

d. One member shall be appointed by the Comptroller and shall be an employee of the Comptroller.

(b) Each member shall serve for a term of 4 years from the date of appointment, except that a vacancy shall be filled by appointment for the remainder of the term.

(c) Members shall elect a chair annually.

(d) The council shall meet at the call of its chair, at the request of a majority of its membership, or at the request of the Treasurer, but not less than twice a year. The business of the council shall be presented to the council in the form of an agenda. The agenda shall be set by the Treasurer and shall include items of business requested by the council members.

(e) A majority of the members shall constitute a quorum, and action by a majority of a quorum shall be official.

(f) The council shall make a report of each meeting to the Treasurer, which shall show the names of the members present and shall include a record of its discussions, recommendations, and actions taken. The Treasurer shall keep the records of the proceedings of each meeting on file and shall make the records available to any interested person or group.

(g) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(h) The advisory council shall provide assistance and recommendations to the Treasurer 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 Treasurer to carry out the provisions of this act. The Treasurer shall inform the council of the manner in which each council recommendation is being addressed. The Treasurer shall provide the council, at least annually, a report on the status of the deferred compensation program, including, but not limited to, information on participant enrollment, amount of compensation deferred, total plan assets, product provider performance, and participant satisfaction with the program.

(9) The purchase of any insurance contract or annuity or the investment in another investment option under any plan of deferred compensation provided for in the United States Internal Revenue Code and not prohibited under the laws of this state for an employee shall impose no liability or responsibility whatsoever on the state, county, municipality, ~~or~~ other political subdivision, <u>or constitutional county officer,</u> except to show that the payments have been remitted for the purposes for which the compensation has been deferred.

(10)(a) The moneys, pensions, annuities, or other benefits accrued or accruing to any person under the provisions of any plan providing for the deferral of compensation and the accumulated contributions and the cash and securities in the funds created thereunder are hereby exempt from any state, county, or municipal tax. They shall not be subject to execution or attachment or to any legal process whatsoever by a creditor of the employee and shall be unassignable by the employee.

(b)1. There is created in the State Treasury the Deferred Compensation Trust Fund, through which the Treasurer as trustee shall hold moneys, pensions, annuities, or other benefits accrued or accruing under and pursuant to 26 U.S.C. s. 457 and the deferred compensation plan provided for therein and adopted by this state; and

a. All amounts of compensation deferred thereunder;

b. All property and rights purchased with such amounts; and

c. All income attributable to such amounts, property, or rights.

2. Notwithstanding the mandates of 26 U.S.C. s. 457(b)(6), all of the assets specified in subparagraph 1. shall be held in trust for the exclusive benefit of participants and their beneficiaries as mandated by 26 U.S.C. s. 457(g)(1).

(11) With respect to any funds held pursuant to a deferred compensation plan, any plan provider which is a bank or savings association and which provides time deposit accounts and certificates of deposit as an investment product to the plan participants may, with the approval of the State Board of Administration for providers in the state plan, or with the approval of the appropriate official or body designated under subsection (5) ~~by ordinance~~ for a plan of a county, municipality ~~municipal~~, ~~or~~ other political subdivision, or constitutional county officer ~~plan~~, be exempt from the provisions of chapter 280 requiring it to be a qualified public depository, provided:

(a) The bank or savings association shall, to the extent that the time deposit accounts or certificates of deposit are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, pledge collateral with the Treasurer for all state funds held by it under a deferred compensation plan, or with such other appropriate official for all public funds held by it under a deferred compensation plan of a county, municipality, ~~or~~ other political subdivision, or constitutional county officer, in an amount which equals at least 150 percent of all uninsured deferred compensation funds then held.

(b) Said collateral shall be of the kind permitted by s. 280.13 and shall be pledged in the manner provided for by the applicable provisions of chapter 280.

The Treasurer shall have all the applicable powers provided in ss. 280.04, 280.05, and 280.08 relating to the sale or other disposition of the pledged collateral.

(12) The Treasurer may adopt any rule necessary to administer and implement this act with respect to deferred compensation plans for state employees.

<u>(13) This subsection may not impair an existing contract. In each county that has one or more constitutional county officers, the board of county commissioners and the constitutional county officers shall negotiate a joint deferred compensation program for all their respective employees under s. 163.01. If all parties to the negotiation cannot agree upon a joint deferred compensation program, the provisions of subsection (5) apply.</u>

Section 3. This act shall take effect October 1, 2001.

Approved by the Governor June 19, 2001.

Filed in Office Secretary of State June 19, 2001.