1989

Session Law 89-123

Florida Senate & House of Representatives

Florida Information Associates
Florida Legislature
Staff Analyses
1989 Sessions

89-123

B I L L H I S T O R Y

S 742 GENERAL BILL/CS by Governmental Operations; Kiser
(Similar CS/H 893)
~~Deferred Compensation Plan Providers~~; exempts certain deferred compensation plan providers from requirements of Fla. Security for Public Deposits Act under certain circumstances. Amends 112.215. Effective Date: 10/01/89.

03/29/89	SENATE	Prefiled
04/07/89	SENATE	Introduced, referred to Governmental Operations; Personnel, Retirement and Collective Bargaining; Appropriations -SJ 108
04/14/89	SENATE	On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room-H-(428); Extension of time granted Committee Governmental Operations
04/18/89	SENATE	Comm. Report: CS by Governmental Operations -SJ 199
04/20/89	SENATE	CS read first time -SJ 201; Now in Personnel, Retirement and Collective Bargaining -SJ 199
04/28/89	SENATE	Extension of time granted Committee Personnel, Retirement and Collective Bargaining
05/01/89	SENATE	On Committee agenda—Personnel, Retirement and Collective Bargaining, 05/03/89, 1:00 pm, Room-H-(428)
05/03/89	SENATE	Comm. Report: Favorable by Personnel, Retirement and Collective Bargaining -SJ 256
05/04/89	SENATE	Now in Appropriations -SJ 256
05/18/89	SENATE	Withdrawn from Appropriations -SJ 386; Placed on Calendar
05/25/89	SENATE	Placed on Special Order Calendar -SJ 450; CS passed; YEAS 35 NAYS 0 -SJ 467
05/26/89	HOUSE	In Messages
06/02/89	HOUSE	Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 111 NAYS 0 -HJ 1138
06/02/89		Ordered enrolled -SJ 1406
06/12/89		Signed by Officers and presented to Governor
06/26/89		Approved by Governor; Chapter No. 89-123

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

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REVISED: ____________________ BILL NO. CS/SB 742

DATE: May 2, 1989 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hosack	Stengle	1. GO	Fav./CS
2. Jones	Jones	2. PRCB	Favorable
3.		3. AP	
4.		4.	

SUBJECT:

Deferred Compensation Plan;
Exemptions for Certain Providers

BILL NO. AND SPONSOR:

CS/SB 742 by Governmental Operations and Senator Kiser

I. SUMMARY:

A. Present Situation:

The Government Employees Deferred Compensation Plan Act, which is contained in s. 112.215, F.S., authorizes state and local governments to adopt a deferred compensation plan for their employees. A portion of an employee's otherwise payable compensation (up to $7,500) may be deducted through payroll deduction and placed in a savings account, or used to purchase a fixed or variable annuity offer under an approved plan. The deferred portion of an employee's compensation is not considered taxable income under the regulations of the Internal Revenue Service until it is withdrawn upon retirement, termination of employment, or under certain circumstances of extreme financial hardship.

The State Treasurer, with the approval of the State Board of Administration, is directed in the law to establish and implement a plan of deferred compensation for state employees. The plan is administered by the Bureau of Deferred Compensation of the Department of Insurance. There are currently approximately 28,000 participants. The investment products are offered by seven companies which were selected pursuant to the state bidding procedures. The companies are Aetna Life Insurance and Annuity Co., Capital Life Insurance Co., Nationwide Life Insurance Co., Great American Reserve Insurance Co., Great West Life, T. Rowe Price, and Great Western Bank.

The Government Employees Deferred Compensation Act also authorizes local governments and political subdivisions to adopt ordinances establishing deferred compensation programs for their employees. Such plans are to be approved and administered by an "appropriate" local official as designated in the ordinance. The majority of local governments and political subdivisions offer deferred compensation plans for their employees. Currently, the providers of these plans are either insurance companies or mutual funds, with the exception of the Great Western Bank, which is a provider under some local plans.

Chapter 280, F.S., establishes the Florida Security for Public Deposits Act to protect the safety of public funds. The act regulates the deposit of public funds in qualified public depositories. Public deposits are defined to be the moneys of the state or of any county, school district, community college district, special district, metropolitan government, or municipality, and includes moneys of any of their respective agencies, boards, bureaus, commissions, institutions, and county officials. Moneys used for investments are not considered public deposits as defined in the act.

Banks and savings associations chartered by Florida or the federal government are eligible to qualify to receive public deposits. The Treasurer must designate any eligible financial institution as a qualified public depository if it meets the basic criteria specified in the act, such as signing a contingent liability agreement and designating a custodian to hold its collateral. Currently, approximately 400 financial institutions are participating in the program, with public deposits in excess of $5 billion.

Public funds which are deposited in qualified public depositories are protected against loss. Banks and savings associations which are designated by the Treasurer as qualified public depositories are required to deposit securities as collateral in an amount based on criteria as specified in s. 280.04, F.S., 1988 Supp. Additionally, qualified public depositories must enter into a contingent liability agreement under which each depository guarantees to repay any loss caused by another depository.

Great Western Bank is the only current provider in the State Deferred Compensation Program which is a banking institution and is therefore subject to the qualified public depository provisions of ch. 280, F.S. As such, it must enter into the required contingent liability agreement to cover losses caused by other public depositories. According to the Department of Insurance, Great Western Bank has determined that the small pool of assets (approximately $5 million) which it holds as a provider under the state plan does not offset the liability risk it assumes for the default or insolvency of other public depositories of state funds. The company has notified the department that it will no longer be a provider under the plan if it must continue to assume this risk.

B. Effect of Proposed Changes:

The Government Employees Deferred Compensation Act, s. 112.215, F.S., would be amended to exempt certain providers under government deferred compensation plans from the provisions of ch. 280, F.S., the Florida Public Deposits Act. Such providers would include banks or savings associations which provide time deposit accounts or certificates of deposit as an investment product to participants of government deferred compensation programs. The exemption of such providers under the state plan would be required to be approved by the State Board of Administration or, for such providers under other plans, be approved by the appropriate official or body as designated in the establishing ordinances.

To be eligible for such exemption, a bank or savings association would be required to pledge collateral with the Treasurer for all state funds held by it under the state deferred compensation plan, or with the appropriate designated official or body for funds held under other plans, which are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The collateral pledged would be required to be in an amount which equals at least 150 percent of the value of such uninsured funds, and to be collateral of a type defined in ss. 280.13 and 280.14, F.S.

The State Treasurer would be authorized to require additional collateral, to decline to accept collateral, and to take other actions relative to the sale and disposition of collateral as provided to public depositories under ch. 280, F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

The Department of Insurance maintains that deferred compensation options under the state plan will be limited without the product offered by Great Western Bank, which offers the only federally insured option in the plan.

Chapter 280, F.S. provides for the regulation of public deposits by the State Treasurer. The bill provides that the Treasurer would have "all the applicable powers in ss. 280.04, 280.05, and 280.08, F.S., relating to the sale or other disposition of pledged collateral." It is not clear if the type of authority provided in those sections is necessary to be provided for the sale or disposition of collateral pledged to the officials or bodies of the deferred compensation plans for a county, municipality, or other political subdivision.

IV. AMENDMENTS:

None.

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AS PASSED BY THE 1989 LEGISLATURE

STORAGE NAME: h0893s-f.emr
DATE: June 9, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON EMPLOYEE & MANAGEMENT RELATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 893 **(passed as CS/SB 742)**

RELATING TO: Deferred Compensation Plan Providers

SPONSOR(S): Committee on Employee & Management Relations and Representative Holland

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 26, 1989

CHAPTER #: 89-123, Laws of Florida

COMPANION BILL(S): CS/SB 742 (Kiser)

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

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I. SUMMARY:

With the approval of the State Board of Administration or its local counterpart, CS/HB 893 (CS/SB 742) exempts deferred compensation funds of certain providers under state or local deferred compensation plans from the provisions of ch. 280, F.S., the Florida Security for Public Deposits Act, subject to specified conditions. Exempted are the deferred compensation funds of any "bank or savings association ... which provides time deposit accounts and certificates of deposit as an investment product to the plan participants." For the state plan, this means Great Western Bank of California, the only bank or savings association presently in the plan.

A. PRESENT SITUATION:

In 1975, in response to opportunities available to the states under the federal tax laws, the Legislature adopted the Government Employees Deferred Compensation Act. Under this act, state and local governments and agencies were authorized to establish deferred compensation plans or programs for their employees, to be administered by the State Treasurer or comparable local officer.

Under these plans, a public employee can choose to defer a portion of his compensation (up to a maximum of $7,500 per year) and contract to have the money deposited with an authorized provider to be invested as directed by the participant. Any dollars so deferred are not treated as current "income" and thus are exempt from federal income taxes until such time as the proceeds are withdrawn. While he participates in the program, the employee's taxable income is effectively reduced while he builds a "nestegg" which can provide him a supplementary retirement income.

At present, there are seven providers participating in the state program: One mutual fund, five annuity companies, and one bank (Great Western Bank). Local programs are independently operated, so it is not known how many providers participating in local plans may be affected.

Under the Florida Security for Public Deposits Act, any bank or savings association (S&L) having public funds on deposit must secure and collateralize its deposits as provided in ss. 280.03 and 280.04, F.S. Additionally, under s. 280.07, F.S., all such public depositories are placed in a "risk pool" and **held mutually liable for any losses resulting from the default or insolvency of any other public depository.**

Since ch. 280, F.S., applies only to banks and savings and loan associations (and NOT to other types of investment providers receiving public funds), Great Western Bank is the only provider in the state deferred compensation program subject to such risk.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 893 (CS/SB 742) amends s. 112.215, F.S., to exempt, with the approval of the State Board of Administration or its local counterpart, any deferred compensation plan provider that is a bank or S&L from the requirements of ch. 280, F.S., with respect to any deferred compensation funds held thereby. The provider must pledge approved collateral with the Treasurer or his local counterpart for all deferred compensation funds held, in an amount which equals at least 150 percent of any uninsured deferred compensation funds then held (i.e., to the extent such funds are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation).

The bill empowers the Treasurer to require additional collateral, decline to accept collateral, and take other actions relative to the sale or other disposition of collateral as provided for other public depositories under ch. 280, F.S.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds a new subsection (11) to s. 112.215, F.S., exempting any deferred compensation plan provider that is a bank or S&L from ch. 280, F.S., under specified conditions.

Section 2. Provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   By removing Great Western Bank's $5 million in deferred compensation funds from the risk pool under ch. 280, F.S., the risk to the other members of the pool, proportionate to the bank's share of public funds in the pool, will be spread more thinly. However, according to DOI regulators, since there are about 300 banks and 100 S&L's in the risk pool (with a total of about $5.5 billion in public deposits), the impact should be minimal.

2. Recurring or Annualized Continuation Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Appropriations Consequences:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   [SEE FOREGOING SECTION A.1.]

2. Recurring or Annualized Continuation 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:

Because federal insurance programs (FDIC and FSLIC) only insure deposits in banks and savings associations up to the first $100,000, there is a real need to provide for the protection offered by ch. 280, F.S., **for large public deposits**. However, when deposits under $100,000 are held in federally insured accounts, as the vast majority of deferred compensation accounts are, the need becomes far less obvious. However, if the **institution** had been afforded the exemption, rather than the deferred compensation **accounts** only, there could have been a potential problem, since large uninsured deposits of other types of public funds held by that same institution could be left unprotected. For this reason, the bill as originally introduced was amended to cure this problem.

III. LONG RANGE CONSEQUENCES:

The changes proposed by CS/HB 893 (CS/SB 742) will place any bank or S&L designated by the Treasurer or comparable local official as a provider under an approved deferred compensation plan on a more level playing field with other types of deferred compensation plan providers (such as mutual funds and annuity companies).

IV. COMMENTS:

According to an analysis prepared by the Department of Insurance (DOI), this situation is "particularly onerous" to Great Western Bank because of "the small amount of client funds invested ... compared with their liability risk for the default or insolvency of a major depository of state funds." The DOI analysis further finds that:

> This requirement threatens to severely limit and quite possibly eliminate the availability of time deposit accounts or certificates of deposit as an investment product under the [deferred compensation] plan.

There is precedent for exempting certain public depositories from the provisions of ch. 280, F.S. With the passage of CS/HB 389 in 1986, the Legislature amended s. 280.03, F.S., to exempt public depositories holding Florida Retirement System Trust Fund moneys from the requirements of the Florida Security for Public Deposits Act.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Sharon K. Lowe

Sharon K. Lowe

Staff Director:

Ron Poppell

Ron Poppell

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director: