

STORAGE NAME: h1097.fs

DATE: March 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1097 (PCB FS 97-02)

RELATING TO: Securities Transactions

SPONSOR(S): Committee on Financial Services, Representative Safley & others

STATUTE(S) AFFECTED: Sections 517.021, 517.051, 517.07, 517.081, 517.082, 517.101, 517.12, 517.023, and 517.131, Florida Statutes

COMPANION BILL(S): SB 700 (s)

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

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This legislation requires the Department of Banking and Finance to adopt a simplified securities offering circular to be used by corporate issuers attempting to raise \$5 million or less.

The annual assessments on persons registered in Florida as "associated persons" will be reduced from \$40 to \$30. Such reduction will occur after the Department of Banking and Finance determines that all claims against GIC Government Securities, Inc. are satisfied.

Consistent with federal law, certain commodity trading advisers registered with the Philadelphia Stock Exchange will be exempt from registering in Florida as "investment advisers" or "associated persons."

A \$1000 registration fee on certain investment companies and mutual funds offering securities in Florida will no longer be required given the changes in federal securities law.

This legislation is estimated to have a negative fiscal impact of \$2.0 million on the General Revenue Fund in FY 1997-98 and thereafter based on the repeal of the assessment on investment companies and mutual funds. The General Revenue Fund is also expected to experience a positive but insignificant increase in revenues based on additional registrations of small corporate offerings. In the long term (beginning in 7 to 10 years), the Anti-fraud Trust Fund of the Department of Banking and Finance will experience an annual reduction of \$1.7 million in revenues.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Registration of Securities offered by Investment Companies

In 1996, the U.S. Congress adopted the National Securities Markets Act of 1996. This Act preempts the states' authority to require the registration of certain "covered securities." "Covered securities" are defined by federal law to include those securities listed or authorized for listing on certain national securities exchanges, securities issued by a registered investment company, securities offered to qualified purchasers (as defined by the Securities and Exchange Commission). The federal law allows the states to retain the authority to investigate fraud allegations in connection with securities transactions. The states also retain the authority to collect filing and registration fees in effect on October 11, 1996.

Section 517.07, F.S., requires all securities sold in Florida to be registered with the Department of Banking and Finance unless such security is exempt under s. 517.051, F.S., or the transaction is exempt under s. 517.061, F.S. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee.

Section 517.051, F.S., exempts certain types of securities from the registration requirements. These exemptions include securities issued by the United States or a state, securities issued by national banks or certain financial institutions subject to supervision by Florida, the Federal Deposit Insurance Corporation or the National Credit Union Association, and securities issued by an open-end management company or unit-investment trust (mutual fund) pursuant to the Investment Company Act of 1940. However, unlike other exempt securities, those exempt securities issued by an investment company or mutual fund must remit a \$1000 fee.

Small Corporate Offering Registration

Federal law requires all securities to be registered with the Securities and Exchange Commission (Commission) unless the securities are exempt under 15 USCS s. 77c or the transactions are exempt under 15 USCS s. 77d. Those securities required to be registered will undergo a review by the Commission to determine if the disclosures adequately protect the interests of the public. Under 15 USCS s. 77c, the federal law grants the Commission the authority to grant an additional exemption to certain small public offerings. To that end, the Commission has promulgated Regulation A to allow certain entities to issue offerings in the amount of \$5 million or less without registering with the Commission.

Similarly, section 517.07, F.S., requires all securities sold in Florida to be registered with the Department of Banking and Finance unless such security is exempt under s. 517.051, F.S., or the transaction is exempt under s. 517.061, F.S. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee. The required documents include a detailed prospectus.

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Forty-one states accept a simplified form called the Small Corporate Offering Registration (SCOR) Form or U-7. This form was designed in 1989 by the North American Securities Administrators Association, Inc. The SCOR Form is in a question and answer format for the purpose of disclosing to the investors specific information that is important in small offerings. The SCOR Form is suggested for use in offerings limited to \$1 million in a 12-month period.

Registration of Investment Advisers

Section 517.012, F.S., requires all dealers, issuers, and associated persons to register before selling or offering for sale from any location in this state or to any person located in this state. Likewise, investment advisers must register prior to engaging in business in this state or rendering advice to persons located in this state.

The Philadelphia Stock Exchange offers investment opportunities related to foreign currency options. Those investment advisers are regulated by the Commodity Futures Trading Commission pursuant to Title 7 of the United States Code and must register with the respective states in which their activities occur unless the state has exempted such advisers.

Securities Guaranty Fund

Section 517.131, F.S., establishes the Securities Guaranty Fund within the Department of Banking and Finance. The purpose of this Fund is to reimburse those persons who have suffered monetary damages as a result of certain acts committed by a dealer, investment adviser or associated person licensed under chapter 517. To be eligible for reimbursement by the Fund, the claimant must have a money judgment against the licensed person, must have attempted to collect the judgment, and must have some portion of the judgment remaining unsatisfied (not paid). Section 517.141, F.S., limits any claimant's award to \$10,000, and the aggregate claims related to any dealer, investment adviser, or associated person to \$100,000.

However, s. 517.1203, F.S., provides an exception to the claim reimbursement limitations for investors who have been injured by acts or actions of GIC Government Securities, Inc. (GIC). To be eligible for payment of GIC claims under s. 517.1203, F.S., the investor must file a claim with the Department of Banking and Finance between October 1, 1996 and December 31, 1997, and must have a final judgment against an associated person of GIC. The payment of GIC claims is limited to the amount of the investment less any amounts received from a bankruptcy proceeding or any other source. Thus, the payment of GIC claims may exceed \$10,000 per claim and \$100,000 in the aggregate.

According to the Department of Banking and Finance, the total liability associated with the actions of GIC approximately \$25.5 million. Approximately \$10.2 million have been satisfied through bankruptcy proceedings and another \$1.2 million has been paid by the Securities Guaranty Fund prior to October 1996.

Section 517.12, F.S., requires the registration of dealers, associated persons, investment advisers and branch offices prior to the sale or offering of securities in this state. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment

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advisor is typically a person who engages in the business of advising others as to the value of securities or the advisability of investments in securities. An associated person is a person employed by a dealer or investment adviser other than clerical staff. The annual registration fee for dealers and investment advisors is \$200 and \$100 for each branch office. The assessment on associated persons is \$40. This assessment was increased in 1996 to fund the payment of GIC claims and fund additional personnel for the Department of Banking and Finance. The distribution of the revenues generated by the assessment is as follows:

\$40 assessment fee paid by associated persons

10%	\$ 4 to Securities Guaranty Fund (SGF)
25%	\$10 to SGF for GIC Claims
65%	\$26 to the General Revenue Fund

After the GIC claims are satisfied, the 25% portion will be reallocated to the Anti-fraud Trust Fund.

B. EFFECT OF PROPOSED CHANGES:

Registration of Securities offered by Investment Companies
(Sections 1 through 3 and 5 and 6)

Consistent with federal law, the Department of Banking and Finance will no longer register securities offered or sold pursuant to the Investment Company Act of 1940 by investment companies or mutual funds. The Department will also cease collecting a registration fee from such securities.

Small Corporate Offering Registration
(Section 4)

This legislation requires the Department of Banking and Finance to adopt a simplified offering circular for use by corporations seeking to raise \$5 million or less. The use of the simplified form is not permitted when the issuer is subject to disqualification under Regulation A or has committed certain acts related to fraudulent behavior, or the form would not provide full and fair disclosure of material information, such as when the specific business cannot be described. Those corporations electing to use the simplified offering circular will be required to report certain financial information to the Department of Banking and Finance for a period of 5 years.

The Department of Banking and Finance has indicated that the SCOR Form is the preferred form to be adopted by rule. If the SCOR Form is adopted, corporations using this method of disclosure should experience a reduction in the cost of entering the securities market since the SCOR Form will be acceptable for registration purposes in at least 42 states.

Registration of Investment Advisers
(Section 7)

This legislation exempts from registration in Florida those investment advisers and associated persons acting in the capacity of a commodity trading adviser registered by

the Commodity Futures Trading Commission and whose clientele is limited to sophisticated institutional investors. Any action as an investment adviser or associated person outside the limits of this exemption will require registration in this state.

Securities Guaranty Fund
(Sections 8 and 9)

This legislation reduces the assessment imposed on associated persons from \$40 to \$30 upon a determination by the Department of Banking and Finance that all valid claims associated with GIC have been satisfied. The distribution of revenues from the assessment will be as follows:

\$30 assessment fee paid by associated persons

13.5%	\$4.05 to the Securities Guaranty Fund
0%	\$0 to the Anti-Fraud Trust Fund (assumes all GIC claims paid)
86.5%	\$25.95 to the General Revenue Fund

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?

This legislation requires the Department of Banking and Finance to adopt rules regarding simplified offering circulars.

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

Corporations electing to offer small capital offerings of \$5 million or less will have a reduced burden in registering such securities in Florida. Rather than providing a formal prospectus which is typically expensive in preparing, the corporation will be eligible to use a simplified disclosure form which is less costly to provide for the benefit of the investors and the Department.

(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?

None.

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

Not applicable.

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

Not applicable.

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?

Yes, this legislation exempts securities offered pursuant to the Investment Company Act of 1940 from the payment of registration fees and exempts certain investment advisers registered with the Commodity Futures Trading Commission from registering in Florida. In the long run, persons registered as associated persons under ch. 517 will have the annual assessments reduced by \$10 (from \$40 to \$30).

- 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?

Not applicable.

- 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:

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

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

- 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:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 517.021, F.S., to define “federal covered security” consistent with the federal securities laws. This section is effective upon becoming a law.

Section 2 amends s. 517.051, F.S., to repeal an exemption from registration requirements granted to securities offered for sale or sold pursuant to the Investment Company Act of 1940. Such exemption is consistent with federal preemption of the registration of such securities. Although not mandated by federal law, the state fee associated with the state registration is also repealed. This section is effective upon becoming a law.

Section 3 amends s. 517.07, F.S., to specify that it is unlawful to offer or sell a security within Florida unless the security is exempt under s. 517.051, F.S., the transaction is exempt under s. 517.061, F.S., the security is a federal covered security or the security is registered in Florida. This section is effective upon becoming a law.

Section 4 amends s. 517.081, F.S., to require the Department of Banking and Finance to accept a simplified offering statement from certain corporate issuers attempting to raise \$5 million or less.

Section 5 amends s. 517.082, F.S., deletes an obsolete cross-reference. This section is effective upon becoming a law.

Section 6 amends s. 517.101, F.S., deletes an obsolete cross-reference. This section is effective upon becoming a law.

Section 7 amends s. 517.12, F.S., to provide for the reduction in the amount of the assessment fee charged an “associated person” after certain conditions have been met. This section also exempts from registration requirements those commodity trading advisors who advise sophisticated institutional investors regarding certain foreign currency options.

Section 8 amends s. 517.1203, F.S., to reduce the registration fee for associated persons from \$40 to \$30 after the Department of Banking and Finance determines sufficient funds have been generated to satisfy claims of GIC investors.

Section 9 amends s. 517.131, F.S., to adjust the percentage of revenues distributed to the Securities Guaranty Fund.

Section 10 provides that the provisions of this act are effective October 1, 1997, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department of Banking and Finance preliminarily has estimated that the repeal of the fee on investment company registrations will result in approximately \$2 million reduction in the fees deposited into the General Revenue Fund in FY 1997-98 and thereafter.

The use of a simplified offering circular similar to the SCOR Form is expected to stimulate a small number of small offerings. The fiscal impact of the new fees generated by such activities is estimated to be positive but insignificant on the General Revenue Fund.

The exemption from registration for certain commodity trading advisers is estimated to have an insignificant fiscal impact on the General Revenue Fund and the Security Guaranty Fund.

The Department of Banking and Finance does not anticipate any reduction in expenditures.

3. Long Run Effects Other Than Normal Growth:

In the long run, the reduction in the assessment paid by associated persons will result in a \$1.7 million annual reduction in the revenue deposited into the Anti-Fraud Trust Fund. Likewise, the revenues flowing to the General Revenue Fund will be reduced by approximately \$0.1 million annually as a result of less service charges.

Based on the reallocation of the revenues generated by the assessment on "associated persons", the Securities Guaranty Fund is expected to receive an additional \$0.5 million annually. The General Revenue Fund will experience a corresponding decrease in revenues. See Fiscal Comments below.

4. Total Revenues and Expenditures:

See 1., 2., and 3. above.

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:

This legislation is intended to reduce the costs borne by the private sector. Specifically, corporations electing to raise capital through a small securities offering of \$5 million or less will be permitted to use a simplified offering circular rather than meet the more expensive prospectus requirements.

2. Direct Private Sector Benefits:

Investment companies registered with the Commission will no longer be required to pay a \$1000 assessment for securities offered in Florida.

Persons registered as "associated persons" will pay reduced assessments in the future after all GIC claims are satisfied.

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

Private enterprises will be given a less costly method of accessing the securities markets through the use of the simplified offering circular.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. APPLICABILITY OF THE MANDATES PROVISION:

This legislation 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 legislation does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This legislation does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen T. Hogge