

STORAGE NAME: s1332s1z.fs

****FINAL ACTION****

DATE: May 27, 1998

****SEE FINAL ACTION STATUS SECTION****

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

BILL #: CS/SB 1332

RELATING TO: Investment of public funds (RAB)

SPONSOR(S): Committee on Governmental Reform and Oversight and Senator Latvala

COMPANION BILL(S): CS/HB 3661 (c)

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

- (1) GOVERNMENTAL REFORM AND OVERSIGHT YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

CS/SB 1332 passed the Senate 35-0 on April 1, 1998, and the House 118-0 April 28, 1998. It became law without the Governor's signature on May 22, 1998: Chapter 98-124, Laws of Florida.

II. SUMMARY:

Some of the rules of the State Board of Administration are not clearly authorized by statute and have been deemed by the SBA to exceed the authority of the SBA to make rules.

CS/SB 1332 provides statutory authority for the State Board of Administration to adopt certain rules. The SBA would be given authority to adopt rules regarding the investment of public funds.

The Prepaid Postsecondary Education Expense Board would be authorized to adopt procedures relating to contract disputes between the board and its vendors.

The bill appears to have no fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Rule authorization requirements

In 1996, the Legislature substantially revised the Administrative Procedure Act (APA).¹ Among many other changes, the revised APA modified the standards which authorize rulemaking and provided for periodic review of rules by agencies with rulemaking authority.²

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards whose rules are not contained in the Florida Administrative Code (F.A.C.). However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

The Division of Bond Finance and the State Board of Administration

The following rules relate to the Division of Bond Finance and the State Board of Administration (SBA):

- Rule 19-4.0082, F.A.C., relating to the reporting of all debt service accounts.
- Rule 19-5.001, F.A.C., allowing bonds issued by any governmental unit may be sold at an interest rate in excess of the maximum allowed by law, if application has been made to the SBA.
- Rule 19-7.001, F.A.C., states the purpose of the rules of that section are to establish the procedures for the Local Government Surplus Funds Trust Fund.
- Rule 19-7.010, F.A.C., relating to pooled investment accounts.
- Rule 19-7.011, F.A.C., calculating the rate of return for pooled investment accounts.

¹ See Ch. 96-159, Laws of Florida.

² Prior to these revisions of the APA, it was generally held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

- Rule 19-7.012, F.A.C., establishing guidelines for participation in the Pooled Investment Account.
- Rule 19-7.013, F.A.C., requiring the SBA to forward a statement of account activity to each pool participant.
- Rule 19-7.014, F.A.C., limiting the maximum number of accounts allowed each pool participant to six.
- Rule 19-7.015, F.A.C., regarding the allocation of earnings.
- Rule 19-7.016, F.A.C., authorizing the SBA to assess charges for overdrafts.
- Rule 19-7.017, F.A.C., authorizing the SBA to establish a reserve fund to protect the Pooled Investment Account.
- Rules 19B-14.003(5) and (6), F.A.C., regarding contract disputes between the Prepaid Postsecondary Education Expense Board and its vendors.

B. EFFECT OF PROPOSED CHANGES:

The State Board of Administration would be given statutory authority to adopt rules regarding the management of public funds. Additionally, the Prepaid Postsecondary Education Expense Board would be authorized to adopt rules relating to contract disputes with its vendors.

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?

Yes. The SBA would be given statutory authority to adopt rules regarding the management of public funds.

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

- (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?

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 215.835, 159.825, 218.405, 218.407, 218.409, and 240.551, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 215.835, F.S., to allow the Division of Bond Finance and the Board to adopt rules to carry out the State Bond Act.

Section 2 amends s. 159.825, F.S., to allow the SBA to adopt rules regarding the terms of bonds.

Section 3 amends s. 218.405, F.S., to authorize the SBA to adopt rules to administer the Local Government Surplus Trust Fund.

Section 4 amends s. 218.407, F.S., to allow all units of local government that qualify to be participants in the Local Government Surplus Funds Trust Fund to have surplus funds deposited into a pooled investment account.

Section 5 amends s. 218.409, F.S., to allow the SBA to charge a fee for any transaction made that results in an overdraft. Additionally, the SBA would be authorized to:

- establish a rate of return for the pooled investment account;

- establish a reserve fund to protect the pooled investment account;
- determine the maximum number of accounts that may be established by each participant; and
- report to each pool participant.

Section 6 amends s. 240.551, F.S., to authorize the Prepaid Postsecondary Education Expense Board to adopt procedures to relating to contract disputes between the board and its vendors.

Section 7 provides an effective date of upon becoming law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VIII. SIGNATURES:

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