

By Senators Lee and Bronson

23-968A-98

See HB

1 A bill to be entitled
2 An act relating to securities transactions;
3 amending s. 517.12, F.S.; limiting certain
4 assessment fee reductions under certain
5 circumstances; amending s. 517.1203, F.S.;
6 providing for allocations from the Securities
7 Guaranty Fund for certain purposes; providing
8 for certain additional disbursements from the
9 fund; extending the period for filing claims;
10 authorizing the Department of Banking and
11 Finance to adopt rules; creating s. 517.1204,
12 F.S.; creating the Investment Fraud Restoration
13 Financing Corporation; providing purposes;
14 providing for a board of directors; providing
15 powers and duties of the corporation;
16 authorizing the department and the corporation
17 to enter into service contracts for certain
18 purposes; authorizing the corporation to issue
19 evidences of indebtedness for payment of
20 certain claims; providing requirements and
21 limitations; authorizing the corporation to
22 validate bond obligations; exempting the
23 corporation from certain taxes and assessments;
24 providing application; prohibiting benefits or
25 earnings of the corporation from inuring to
26 private persons; providing for reversion of
27 corporate property to the Securities Guaranty
28 Fund upon dissolution of the corporation;
29 providing for the State Board of Administration
30 to be trustee of the corporation's securities;
31 amending s. 517.131, F.S.; providing a

1 limitation on allocations from the Securities
2 Guaranty Fund under certain circumstances;
3 providing an effective date.

4
5 WHEREAS, it is a fundamental regulatory duty of the
6 Division of Securities and Investor Protection of the
7 Department of Banking and Finance to ensure the integrity of
8 the Florida securities market in accordance with chapter 517,
9 Florida Statutes, and

10 WHEREAS, it is the duty of the Division of Securities
11 and Investor Protection to successfully conduct investigations
12 of fraudulent securities transactions and to discover
13 falsification or concealment of facts for the benefit of the
14 investing public, and

15 WHEREAS, during the period beginning in April 1985
16 through October 1985, personnel in the Division of Securities
17 and Investor Protection, with regard to investors doing
18 business with GIC Government Securities, Inc., were remiss in
19 permitting the sale of securities which should not have been
20 allowed to be sold pursuant to chapter 517, Florida Statutes,
21 and failed to prevent the falsification or concealment of
22 facts, and

23 WHEREAS, as a result of that failure, over 1,300
24 Florida citizens, many of whom were elderly, lost their life
25 savings or suffered devastating monetary losses because of
26 doing business with GIC Government Securities, Inc., which at
27 the time was inadequately regulated by the Division of
28 Securities and Investor Protection, and

29 WHEREAS, the victimization by GIC Government
30 Securities, Inc., of investors has harmed the integrity of the
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1 Florida securities market as well as the trust vested in the
2 state to regulate this market, and

3 WHEREAS, such harm threatens the viability of these
4 markets and consequently the economic welfare of the state and
5 its citizens, and

6 WHEREAS, the Legislature has sought to repair the harm
7 these fraudulent securities activities have inflicted on the
8 integrity of the Florida securities market and the trust
9 vested in the state to regulate this market by establishing a
10 program to reimburse these victims for unrecoverable losses
11 due to unsatisfied judgments and unrecompensable bankruptcy
12 claims, and

13 WHEREAS, many of the victims of GIC Government
14 Securities, Inc., were unable to obtain adequate reimbursement
15 for claims filed with the Securities Guaranty Fund under s.
16 517.131, Florida Statutes, and

17 WHEREAS, many of the victims of GIC Government
18 Securities, Inc., obtained judgments which were unsatisfied,
19 failed to be recompensed by the bankruptcy courts, and were
20 unable to obtain adequate reimbursement from the Securities
21 Guaranty Fund under s. 517.131, Florida Statutes, and

22 WHEREAS, the Legislature created s. 517.1203, Florida
23 Statutes, for the purpose of reimbursing victims of GIC
24 Government Securities, Inc., for the full amount of their
25 monetary losses, and

26 WHEREAS, annual revenues allocated to reimburse victims
27 of GIC Government Securities, Inc., are limited and have
28 proven insufficient to meet claims as they are approved, and

29 WHEREAS, many of the victims of GIC Government
30 Securities, Inc., are elderly and may not live long enough to
31 have funds sufficient to reimburse them become available, and

1 WHEREAS, it is necessary to fulfill the intent and
2 purposes of chapter 517, Florida Statutes, and further it is
3 hereby determined to be in the best interest of, and necessary
4 for the protection of, the public health, safety, and general
5 welfare of the residents of this state, and therefore a
6 paramount public purpose, to provide for the creation of a
7 nonprofit public benefit corporation to assist in reimbursing
8 the victims of GIC Government Securities, Inc., and to
9 authorize the department to enter into one or more service
10 contracts with such corporation for the provision of financing
11 services related to such functions and to make payments
12 thereunder from the amount on deposit in the Securities
13 Guaranty Fund, subject to annual appropriation by the
14 Legislature, and

15 WHEREAS, to achieve these purposes and in order to
16 facilitate and expedite the remedial measures instituted by
17 the Legislature with respect to the victims of GIC Government
18 Securities, Inc., it is in the best interest of the residents
19 of this state to authorize such corporation to issue evidences
20 of indebtedness payable from amounts paid by the Department of
21 Banking and Finance under any such service contract entered
22 into between the department and such corporation, and

23 WHEREAS, the Legislature is taking this action only
24 after balancing all the competing needs of the state, NOW,
25 THEREFORE,

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

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29 Section 1. Subsection (10) of section 517.12, Florida
30 Statutes, is amended to read:

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1 517.12 Registration of dealers, associated persons,
2 investment advisers, and branch offices.--

3 (10) An applicant for registration shall pay an
4 assessment fee of \$200, in the case of a dealer or investment
5 adviser, or \$40, in the case of an associated person. The
6 assessment fee of an associated person shall be reduced to \$30
7 but only after the department determines upon a determination,
8 by final order of the department, that sufficient funds have
9 been allocated to the Securities Guaranty Fund pursuant to s.
10 517.1203 to satisfy all valid claims filed in accordance with
11 s. 517.1203(2) and after all amounts payable under any service
12 contract entered into by the department pursuant to s.
13 517.1204, and all notes, bonds, certificates of indebtedness,
14 other obligations, or evidences of indebtedness secured by
15 such notes, bonds, certificates of indebtedness, or other
16 obligations, have been paid or provision has been made for the
17 payment of such amounts, notes, bonds, certificates of
18 indebtedness, other obligations, or evidences of indebtedness.

19 An associated person not having current fingerprint cards
20 filed with the National Association of Securities Dealers or a
21 national securities exchange registered with the Securities
22 and Exchange Commission shall be assessed an additional fee to
23 cover the cost for said fingerprint cards to be processed by
24 the department. Such fee shall be determined by rule of the
25 department. Each dealer and each investment adviser shall pay
26 an assessment fee of \$100 for each office in this state,
27 except its designated principal office. Such fees become the
28 revenue of the state, except for those assessments provided
29 for under s. 517.131(1) until such time as the Securities
30 Guaranty Fund satisfies the statutory limits, and are not

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1 returnable in the event that registration is withdrawn or not
2 granted.

3 Section 2. Section 517.1203, Florida Statutes, is
4 amended to read:

5 517.1203 Allocation and disbursement of assessment
6 fees.--

7 (1) Notwithstanding s. 517.131(1) ~~and until the~~
8 ~~department determines by final order that sufficient funds~~
9 ~~have been allocated to the Securities Guaranty Fund pursuant~~
10 ~~to this section to satisfy all valid claims filed in~~
11 ~~accordance with subsection (2)~~, an additional amount equal to
12 25 percent of all revenues received as assessment fees
13 pursuant to s. 517.12(10) and (11) from persons applying for
14 or renewing registrations as associated persons shall be
15 allocated to the Securities Guaranty Fund and disbursed as
16 provided in this section. This allocation shall continue until
17 the department determines, by final order, that sufficient
18 funds have been allocated to the Securities Guaranty Fund
19 pursuant to this section to satisfy all valid claims filed in
20 accordance with subsection (2) and until all amounts payable
21 under any service contract entered into by the department
22 pursuant to s. 517.1204, and all notes, bonds, certificates of
23 indebtedness, other obligations, or evidences of indebtedness
24 secured by such notes, bonds, certificates of indebtedness or
25 other obligations, have been paid or provision has been made
26 for the payment of such amounts, notes, bonds, certificates of
27 indebtedness, other obligations, or evidences of indebtedness.
28 This assessment fee shall be part of the regular license fee
29 and shall be transferred to or deposited into the Securities
30 Guaranty Fund. The moneys allocated to the Securities
31 Guaranty Fund under this section shall not be included in the

1 calculation of the allocation of the assessment fees referred
2 to in s. 517.131(1)(b). Moneys allocated under this section
3 in excess of the valid claims filed pursuant to subsection (2)
4 shall be allocated to the Anti-Fraud Trust Fund.

5 (2)(a) Notwithstanding the provisions of ss. 517.131
6 and 517.141, moneys allocated to ~~in~~ the Securities Guaranty
7 Fund under this section shall be used to pay amounts payable
8 under any service contract entered into by the department
9 pursuant to s. 517.1204, subject to annual appropriation by
10 the Legislature, and to pay investors who have filed claims
11 with the Department of Banking and Finance after October 1,
12 1996, and on or before December 31, 1998 ~~1997~~, who have:

13 1. Received a final judgment against an associated
14 person of GIC Government Securities, Inc., based upon
15 allegations which would amount to a violation of s. 517.07 or
16 s. 517.301; or

17 2. Demonstrated to the department that the claimant
18 has suffered monetary damages as a result of the acts or
19 actions of GIC Government Securities, Inc., or any associated
20 person thereof, based upon allegations which would amount to a
21 violation of s. 517.07 or s. 517.301.

22 (b)1. Claims shall be paid in the order that they have
23 been filed with the department, unless the department has
24 noticed its intent to deny the claim in whole or in part. If
25 a notice of intent to deny a claim in whole or in part is
26 issued, the claim shall not be paid until a final order has
27 been entered which is not subject to an order staying its
28 effect.

29 2. If at any time the money in the Securities Guaranty
30 Fund allocated under this section is insufficient to satisfy
31 any valid claim or portion of a valid claim approved by the

1 department under this section, the department shall prorate
2 the payment based upon the ratio that the person's claim bears
3 to the total approved claims filed on the same day. The
4 department shall satisfy the unpaid claims as soon as a
5 sufficient amount of money has been deposited in or
6 transferred to the fund as provided in this section.

7 3. A claimant shall not be substantially affected by
8 the payment of another person's claim.

9 (c) Claims shall be limited to the amount of the
10 investment, reduced by any amounts received from a bankruptcy
11 proceeding or from any other source. If an investor is
12 deceased, the award shall be made to the surviving spouse. If
13 the investor and surviving spouse are both deceased, the award
14 shall be made pursuant to the laws of descent and
15 distribution. Neither the department nor the Investment Fraud
16 Restoration Financing Corporation shall make payment to
17 assignees, secured parties, lien creditors, or other such
18 entities.

19 (3) In rendering a determination, the department may
20 rely on records from the bankruptcy proceeding regarding GIC
21 Government Securities, Inc., unless there is good cause to
22 believe that the record is not genuine.

23 (4) Amounts deposited into the Securities Guaranty
24 Fund pursuant to this section shall be applied to or allocated
25 for payment of amounts payable by the department pursuant to
26 paragraph (2)(a), under a service contract entered into by the
27 department pursuant to s. 517.1204, subject to annual
28 appropriation by the Legislature, before making or providing
29 for any other disbursements from the fund.

30 (5) The department shall adopt any rules necessary to
31 implement this section.

1 Section 3. Section 517.1204, Florida Statutes, is
2 created to read:

3 517.1204 Investment Fraud Restoration Financing
4 Corporation.--

5 (1) The Investment Fraud Restoration Financing
6 Corporation is hereby created as a nonprofit public benefit
7 corporation for the purpose of financing the remedial measures
8 instituted by the Legislature with respect to the victims of
9 GIC Government Securities, Inc., and the payment of approved
10 claims pursuant to s. 517.1203. The fulfillment of the
11 purposes of the corporation promotes the health, safety, and
12 general welfare of the people of the state and serves
13 essential governmental functions and a paramount public
14 purpose. The corporation shall terminate on July 1, 2021, or
15 upon fulfillment of all of the purposes of this section,
16 whichever occurs earlier.

17 (2) The corporation shall be governed by a board of
18 directors consisting of the assistant comptroller, the
19 Secretary of Elderly Affairs or the secretary's designee and
20 the executive director of the Department of Veterans' Affairs
21 or the executive director's designee. The executive director
22 of the State Board of Administration shall be the chief
23 executive officer of the corporation and shall direct and
24 supervise the administrative affairs of the corporation and
25 shall control, direct, and supervise the operation of the
26 corporation. The corporation shall also have such other
27 officers as may be determined by the board of directors.

28 (3) The corporation shall have all the powers of a
29 corporate body under the laws of this state to the extent not
30 inconsistent with or restricted by the provisions of this
31 section, including, but not limited to, the power to:

1 (a) Adopt, amend, and repeal bylaws not inconsistent
2 with this section.

3 (b) Sue and be sued.

4 (c) Adopt and use a common seal.

5 (d) Acquire, purchase, hold, lease, and convey such
6 real and personal property as may be proper or expedient to
7 carry out the purposes of the corporation and this section,
8 and to sell, lease, or otherwise dispose of such property.

9 (e) Elect or appoint and employ such officers, agents,
10 and employees as the corporation deems advisable to operate
11 and manage the affairs of the corporation, which officers,
12 agents, and employees may be officers or employees of the
13 department and the state agencies represented on the board of
14 directors of the corporation.

15 (f) Borrow money and issue notes, bonds, certificates
16 of indebtedness, or other obligations or evidences of
17 indebtedness necessary to pay claims approved pursuant to s.
18 517.1203 payable from the Securities Guaranty Fund.

19 (g) Make and execute any and all contracts, trust
20 agreements, and other instruments and agreements necessary or
21 convenient to accomplish the purposes of the corporation and
22 this section.

23 (h) Select, retain, and employ professionals,
24 contractors, or agents, which may include the Division of Bond
25 Finance of the State Board of Administration, as is necessary
26 or convenient to enable or assist the corporation in carrying
27 out the purposes of the corporation and this section.

28 (i) Do any act or thing necessary or convenient to
29 carry out the purposes of the corporation and this section and
30 the powers provided in this section.

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1 (4) The corporation is authorized to enter into one or
2 more service contracts with the department pursuant to which
3 the corporation shall provide services to the department in
4 connection with financing the functions and activities
5 provided for in s. 517.1203. The department may enter into
6 one or more such service contracts with the corporation and
7 provide for payments under such contracts pursuant to s.
8 517.1203(2)(a), subject to annual appropriation by the
9 Legislature. The proceeds from such service contracts may be
10 used for the costs and expenses of administration of the
11 corporation after payments as set forth in subsection (5).
12 Each service contract shall have a term not to exceed 15 years
13 and shall terminate no later than July 1, 2021. The aggregate
14 amount payable from the Securities Guaranty Fund under all
15 such service contracts shall not exceed the amount provided by
16 s. 517.1203(1). In compliance with provisions of s. 287.0641
17 and other applicable provisions of law, the obligations of the
18 department under such service contracts shall not constitute a
19 general obligation of the state or a pledge of the faith and
20 credit or taxing power of the state nor shall such obligations
21 be construed in any manner as an obligation of the State Board
22 of Administration or entities for which it invests funds,
23 other than the department as provided in this section, but
24 shall be payable solely from amounts available in the
25 Securities Guaranty Fund, subject to annual appropriation. In
26 compliance with this subsection and s. 287.0582, such service
27 contracts shall expressly include the following statement:
28 "The State of Florida's performance and obligation to pay
29 under this contract is contingent upon an annual appropriation
30 by the Legislature."

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1 (5) The corporation may issue and incur notes, bonds,
2 certificates of indebtedness, or other obligations or
3 evidences of indebtedness payable from and secured by amounts
4 payable to the corporation by the department under a service
5 contract entered into pursuant to subsection (4) for the
6 purpose of the simultaneous payment of all claims approved
7 pursuant to s. 517.1203. The term of any such note, bond,
8 certificate of indebtedness, or other obligation or evidence
9 of indebtedness shall not exceed 15 years. The corporation may
10 select a financing team and issue obligations through
11 competitive bidding or negotiated contracts, whichever is most
12 cost-effective. Any such indebtedness of the corporation
13 shall not constitute a debt or obligation of the state or a
14 pledge of the faith and credit or taxing power of the state,
15 but shall be payable from and secured by payments made by the
16 department under the service contract pursuant to subsection
17 (4).

18 (6) The corporation shall pay all claims approved
19 pursuant to s. 517.1203 as determined by and at the direction
20 of the department.

21 (7) The corporation is exempt from taxation and
22 assessments of any nature whatsoever upon its income and any
23 property, assets, or revenues acquired, received, or used in
24 the furtherance of the purposes provided in this chapter. The
25 obligations of the corporation incurred pursuant to subsection
26 (5) and the interest and income on such obligations and all
27 security agreements, letters of credit, liquidity facilities,
28 or other obligations or instruments arising out of, entered
29 into in connection with, or given to secure payment of such
30 obligations are exempt from all taxation, provided such
31 exemption does not apply to any tax imposed by chapter 220 on

1 the interest, income, or profits on debt obligations owned by
2 corporations.

3 (8) The corporation may validate any bonds issued
4 pursuant to this section, as provided in chapter 75. The
5 validation complaint shall be filed only in the circuit court
6 for Leon County. The notice required under s. 75.06 shall be
7 published in Leon County and the complaint and order of the
8 circuit court shall be served only on the State Attorney for
9 the Second Judicial Circuit. The provisions of ss. 75.04(2)
10 and 75.06(2) shall not apply to a validation complaint filed
11 as authorized in this subsection. The validation of the first
12 bonds issued pursuant to this section may be appealed to the
13 Supreme Court and such appeal shall be handled on an expedited
14 basis.

15 (9) The corporation shall not take any action which
16 will materially and adversely affect the rights of holders of
17 any obligations issued under this section as long as such
18 obligations are outstanding.

19 (10) The corporation shall not be deemed to be a
20 special district for purposes of chapter 189 or a unit of
21 local government for purposes of part III of chapter 218. The
22 provisions of chapters 120 and 215, except the limitation on
23 interest rates provided by s. 215.84 which applies to
24 obligations of the corporation issued pursuant to this
25 section, and part I of chapter 287, except ss. 287.0582 and
26 287.0641, shall not apply to this section, the corporation
27 created in this section, the service contracts entered into
28 pursuant to this section, or debt obligations issued by the
29 corporation as provided in this section.

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1 (11) In no event shall any of the benefits or earnings
2 of the corporation inure to the benefit of any private person,
3 except those persons identified pursuant to s. 517.1203.

4 (12) Upon dissolution of the corporation, title to all
5 property owned by the corporation shall revert to the
6 Securities Guaranty Fund.

7 (13) The corporation may contract with the State Board
8 of Administration to serve as trustee with respect to debt
9 obligations issued by the corporation as provided by this
10 section and to hold, administer, and invest proceeds of such
11 debt obligations and other funds of the corporation and to
12 perform other services required by the corporation. The State
13 Board of Administration may perform such services and may
14 contract with others to provide all or a part of such services
15 and to recover the costs and expenses of providing such
16 services.

17 Section 4. Paragraph (a) of subsection (1) of section
18 517.131, Florida Statutes, is amended to read:

19 517.131 Securities Guaranty Fund.--

20 (1)(a) The Treasurer shall establish a Securities
21 Guaranty Fund. An amount not exceeding 20 percent of all
22 revenues received as assessment fees pursuant to s. 517.12(10)
23 and (11) for dealers and investment advisers and an amount not
24 exceeding 10 percent of all revenues received as assessment
25 fees pursuant to s. 517.12(10) and (11) for associated persons
26 shall be allocated to the fund. An additional amount not
27 exceeding 3.5 percent of all revenues received as assessment
28 fees for associated persons pursuant to s. 517.12(10) and (11)
29 shall be allocated to the Securities Guaranty Fund but only
30 after the department determines ~~upon a determination~~, by final
31 ~~order of the department~~, that sufficient funds have been

1 allocated to the fund pursuant to s. 517.1203 to satisfy all
2 valid claims filed in accordance with s. 517.1203(2) and after
3 all amounts payable under any service contract entered into by
4 the department pursuant to s. 517.1204, and all notes, bonds,
5 certificates of indebtedness, other obligations, or evidences
6 of indebtedness secured by such notes, bonds, certificates of
7 indebtedness or other obligations, have been paid or provision
8 has been made for the payment of such amounts, notes, bonds,
9 certificates of indebtedness, other obligations, or evidences
10 of indebtedness. This assessment fee shall be part of the
11 regular license fee and shall be transferred to or deposited
12 in the Securities Guaranty Fund.

13 Section 5. This act shall take effect upon becoming a
14 law.

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17 HOUSE SUMMARY

18
19 Creates the Investment Fraud Restoration Financing
20 Corporation to provide for financing payments of claims
21 from the Securities Guaranty Fund to indemnify losses of
22 investors in securities of GIC Government Securities,
23 Inc. Provides for allocations from the Securities
24 Guaranty Fund to pay such claims. Provides for continuing
25 assessments to fund payment of such claims. See bill for
26 details.
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