

STORAGE NAME: h3661s1b.go

DATE: April 14, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3661

RELATING TO: Authority of the State Board of Administration to invest public funds

SPONSOR(S): Committee on Governmental Operations, Representative Garcia and others

COMPANION BILL(S): CS/SB 1332(c) and CS/SB 1352(c)

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

- (1) FINANCIAL SERVICES YEAS 7 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3) FINANCE & TAXATION (W/D)
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

The State Board of Administration (SBA), created pursuant to Art. XII, s. 9 of the Florida Constitution, is composed of the Governor, who serves as Chairman, the Treasurer and the Comptroller. Pursuant to s. 215.44, F.S., the SBA has the authority to invest certain state funds. The SBA is responsible for managing and investing the funds of the following: the Florida Retirement System, the Local Government Surplus Funds Trust Fund, Debt Service accounts for state bonds, and the assets of other trust funds. Section 215.47, Florida Statutes, delineates how the money managed by the SBA may be invested.

This bill increases the maximum that the SBA would be able to invest in foreign markets from 10 percent, to 20 percent. Additionally, the amount that the SBA would be able to invest in internally managed common stock would be raised from 50 percent to 75 percent.

The Department of Management Services would no longer have the authority to review what the SBA charges other agencies and the judicial branch for its investment services, and the Office of Program Policy Analysis and Government Accountability (OPPAGA), would be required to perform a performance audit of the SBA only once every other year.

The bill removes from statute lists of specific agencies or institutions in which the SBA has the authority to invest. These lists are replaced with more general language giving the SBA more freedom in its investment choices.

The bill authorizes the SBA to manage the equity portfolio of the Division of Blind Services.

The bill establishes rulemaking authority in s. 159.825, F.S., ch. 215, F.S., and in ch. 218, F.S.

The bill appears to have no direct fiscal impact on state or local governments, except that the number of SBA performance audits by the Office of Program Policy Analysis and Government Accountability will be halved, resulting in reduced audit-related expenses.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The SBA is created pursuant to Art. XII, s. 9 of the Florida Constitution. The SBA is composed of the Treasurer, the Comptroller, and the Governor, who serves as Chairman. Pursuant to s. 215.44, F.S., the SBA has the authority to manage 18 state funds in trust, including managing and investing the funds of the following: the Florida Retirement System, the Local Government Surplus Funds Trust Fund, Debt Service accounts for state bonds, and the assets of other trust funds.

According to the SBA, the current market value of all of the funds managed by the SBA is approximately \$96.6 billion. The balance of some of the funds managed by the SBA is as follows:

- The Florida Retirement System Trust Fund (\$78 billion)
- Local Government Surplus Trust Fund (\$12.3 billion)
- The Department of the Lottery Fund (\$2.2 billion)
- The Florida Hurricane Catastrophe Fund (\$2 billion)
- The Florida Prepaid Education Expense Program (\$1.7 billion)
- Police and Firefighters Premium Tax Trust Fund (\$51.4 million)

Section 215.47, Florida Statutes, delineates how the money managed by the SBA may be invested.

According to s. 215.47(1), F.S., the SBA may invest "without limitation" in the obligations of certain specific federal agencies. These include the Federal Farm Credit Banks, the Federal Home Loan Bank and its district banks, the Federal Home Loan Mortgage Corporation, and the obligations guaranteed by the Government National Mortgage Association.

Pursuant to s. 215.47(2), F.S., the SBA may invest 25 percent of all funds in the interest bearing obligations of the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, the European Investment Bank or the Nordic Investment Bank. The SBA may also invest 25 percent of any fund in mortgage pass-through certificates, and the obligations of the Federal National Mortgage Association.

Currently, the SBA may not invest more than 80 percent of the money it manages in common stock, preferred stock, and interest-bearing obligations of a corporation, provided that not more than 50 percent of the fund may be in domestic equities. According to the SBA, 40 percent of its domestic equities are managed internally, that is, equities managed by SBA staff.

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The SBA may not invest more than 10 percent of any fund in foreign stock. According to the SBA, 7.5 - 8 percent of its investments are in international markets.

Section 215.515, F.S., allows the SBA to charge any agency, the judicial branch, or any fund, for investment services. The Department of Management Services may review these charges.

B. EFFECT OF PROPOSED CHANGES:

Section 215.44 is amended requiring the Office of Program Policy Analysis and Government Accountability to conduct a performance audit of the SBA only once every other year.

Section 215.47(1), F.S., is amended authorizing the SBA to invest without limitation in "notes, bonds, and other obligations of agencies of the United States." Reference to several specified banks, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, would be removed from the statute (s. 215.47(1)(i)-(k), F.S.).

The SBA would also be authorized to invest, without limitation, in "negotiable certificates of deposit" issued by foreign or domestic financial institutions, in U.S. dollars.

The 25 percent limitation on investments in mortgage pass-through certificates would be broadened to include mortgage securities issued by agencies of the U.S. Government, including, but not limited to, the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Section 215.47(2)(j), F.S., would authorize the SBA to invest in United States dollar-denominated obligations issued by "supranational agencies." According to the SBA, a supranational agency is an agency formed by sovereign nations through international treaties. References to specific "supranational agencies" including the International Bank for Reconstruction and Development, or other institution listed in s. 215.47(2)(c), F.S., would be removed by this bill.

The limit to the portion of a fund which could be invested in any internally managed common stock would be raised from 50 percent, to 75 percent.

The limit to the portion of a fund which could be invested in foreign investments would be raised from 10 percent to 20 percent.

The Department of Management Services would no longer review the charges made by the SBA to other agencies and the judicial branch.

The SBA would be authorized to adopt rules that it deemed necessary to carry out certain provisions of this bill.

Section 413.0111, F.S., authorizing the SBA to invest the portfolio of stocks, bonds and mutual funds held by the Division of Blind Services.

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 authorized to adopt rules.

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

No.

(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?

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?

No.

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

Not directly, but unspecified rulemaking authority provisions could be interpreted as authority to charge or increase fees.

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

No.

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

Not directly. See "(b)", above.

- 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?

No.

- 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?

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

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D. STATUTE(S) AFFECTED:

Amends ss. 215.44, 215.47, 215.50, 215.515, 215.835, 159.825, 190.016, and 218.407, F.S. Repeals s. 215.455, F.S. Creates ss. 218.412, and 413.0111, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - Amends s. 215.44, F.S., requiring that OPPAGA shall perform, or cause to be performed, a performance audit of the SBA once every two years.

Section 2 - Amends s. 215.47, F.S., to broaden the ability of the SBA to invest in the notes, bonds, and other obligations of agencies of the U.S. government. This would include the banks and other agencies that are removed from the statute in s. 215.47(1)(i)-(k). The SBA would be authorized to invest in negotiable certificates of deposit issued in U.S. dollars by foreign or domestic institutions. The SBA would be allowed to invest in "supranational" agencies. The SBA would be authorized to invest 20 percent of a fund in foreign markets, which is a change from 10 percent. Additionally, the SBA would be authorized to invest 75 percent of any fund in an internally managed common stock, which is a change from 50 percent.

Section 3 - Repeals s. 215.455, F.S. This language, relating to the lending of securities, is moved to s. 215.47(16), F.S.

Section 4 - Amends s. 215.50, F.S., to correct a cross reference.

Section 5 - Amends s. 215.515, F.S., to delete the authority of the Department of Management Services to review the fees the SBA charges other agencies, the judicial branch or any fund for investment services.

Section 6 - Amends s. 215.835, F.S., to allow the SBA to adopt rules "deemed necessary to carry out the provisions and intent of this act."

Section 7 - Amends s. 159.825, F.S., to allow the SBA to adopt rules it "deems necessary to carry out the provisions of this section."

Section 8 - Amends s. 190.016, F.S., to correct a cross reference.

Section 9 - Amends s. 218.407, F.S., to conform this section to changes made to s. 215.47, F.S.

Section 10 - Creates s. 218.412, F.S., to allow the SBA to adopt rules for the purpose of carrying out part IV of Chapter 218, relating to the investment of local government surplus funds.

Section 11 - Creates s. 413.0111, F.S., authorizing the SBA to manage equities in the portfolio of the Division of Blind Services.

Section 12 - Provides an effective date of upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown, but with an increase in authority for the SBA to internally manage domestic common stock, there is potential for an impact on fees paid to non-governmental equity portfolio managers.

2. Direct Private Sector Benefits:

Unknown.

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

No direct impact.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on March 23, 1998, the Committee on Financial Services adopted one amendment offered by Representative Effman, which creates s. 413.0111, F.S., authorizing the SBA to invest the portfolio of stocks, bonds and mutual funds held by the Division of Blind Services.

At its meeting on April 7, 1998, the Committee on Governmental Operations adopted six amendments, and reported the bill out as a committee substitute. Four of the amendments added rulemaking authority language, one permitted the SBA to manage the portfolio of the Bureau of Blind Services, and one reduced the requirement for OPPAGA to conduct a performance audit of the SBA from once a year, to once every other year.

Pursuant to s. 413.011(1)(j), F.S., the Division of Blind Services may receive gifts or bequests. According to the Division of Blind Services, this fund is currently valued at approximately \$2.78 million. In June 1997, the Department of Labor and Employment Security sought an opinion from the Attorney General as to whether the Division of Blind Services may place the gifts received pursuant to s. 413.011(1)(j), F.S., with a financial services organization for professional management. In Attorney General Opinion 97-41, the

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Attorney General found that the Division of Blind Services had “no authority to invest such moneys for the sole purpose of generating interest or dividend income.” The Attorney General advised the division “to seek a legislative amendment of the division’s enabling legislation” in order to be authorized to make investments of the funds it receives.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Meredith Woodrum Snowden

Stephen Hogge

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms