

STORAGE NAME: h4009.fs
DATE: March 19, 1998

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

BILL #: HB 4009
RELATING TO: Securities transactions
SPONSOR(S): Representative Tamargo and others
COMPANION BILL(S): SB 2122 (i)

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

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Legislation passed in 1996 allowed the Department of Banking and Finance (the department) to collect an assessment fee on every dealer, investment adviser, and associated person licensed by the department. The legislation directed money collected from this assessment be deposited in the Securities Guaranty Fund (SGF) and used to pay claims filed with the department by people who suffered monetary losses as a result of actions by the GIC Government Securities, Inc. (GIC). According to the department, there were originally 1,400 investors, 200 of which are now deceased. The total amount of losses was approximately \$25 million, with 40 percent of that paid in bankruptcy proceedings. After some claims were settled in bankruptcy court, the department estimates that there are still approximately 1,200 claimants with losses of approximately \$14-15 million left unpaid. Claims were required to be filed between October 1, 1996 and December 31, 1997. The department estimates it would take no less than 4 years to satisfy all the claims filed on October 1, 1996, alone.

HB 4009 amends Chapter 517, Florida Statutes, and would establish the Investment Fraud Restoration Financing Corporation as a nonprofit public benefit corporation. This corporation would simultaneously satisfy all valid GIC claims filed with the department. The corporation would be authorized to "borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness." This corporation would terminate on July 1, 2021, or upon fulfillment of all its duties, whichever occurs first. The filing deadline for GIC claims would be extended to December 31, 1998.

The department would delay reducing the amount of the assessment fee collected from dealers, associated persons, and investment advisers not only until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

The department would delay reducing the amount of the assessment fee allocated to the SGF not only until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

This bill has a negative fiscal impact on the Securities Guaranty Fund of (\$242,935) in fiscal year 1998-1999.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 517.131, Florida Statutes, establishes the Securities Guaranty Fund (SGF) within the Department of Banking and Finance (the department). The purpose of this fund is to reimburse investors who have suffered monetary loss as the result of violations relating to the registration of securities and fraudulent transactions, committed by a dealer, associated person or investment adviser. To be eligible for reimbursement from this fund, a person must have a money judgment against the licensed person, must have attempted to collect the judgement, and must have at least a portion of the judgement unpaid.

Moneys in the fund come from an assessment fee collected by the department from every dealer, investment adviser, or associated person licensed in the state. Dealers and investment advisers are assessed a fee of \$200 with 20 percent of that fee going to the SGF. Associated persons are assessed a fee of \$40 with 10 percent of that fee going to the SGF. Until the department determines that all valid GIC claims have been paid, an additional amount of up to 3.5 percent of the fee collected from associated persons will go to the SGF.

Pursuant to s. 517.141, F.S., a person who meets all of the requirements may apply to the department for payment. The amount paid to the person from the SGF is the unsatisfied portion of the person's judgement or \$10,000, whichever is less. This amount excludes costs and attorney's fees. Payments for claims are limited to \$100,000 in the aggregate against any one dealer, investment adviser or associated person. If the claims exceed the \$100,000 aggregate limit, the department prorates the payment based upon the ratio of a person's claim to the total claims filed.

During the 1996 legislative session, the Legislature enacted s. 517,1203, F.S., to allow persons with judgements against GIC Government Securities, Inc. (GIC) or are able to demonstrate to the department that they have suffered monetary damages as the result of action by the GIC to receive payment from the SGF. These claims may exceed the maximum of \$10,000 per individual and \$100,000 per the aggregate of claims. The amount of the claim is limited to the amount of the investment, less any amount that may have been received from bankruptcy proceedings. If a claimant is deceased, the money is awarded to the surviving spouse.

According to the department, there were originally 1,400 investors, 200 of which are now deceased. The total amount of losses was approximately \$25 million, with 40 percent of that paid in bankruptcy proceedings. After some claims were settled in bankruptcy court, the department estimates that there are still approximately 1,200 claimants with losses of approximately \$14-15 million left unpaid. Persons who suffered monetary losses due to the actions by the GIC were required to file claims between October 1, 1996 through December 31, 1997.

According to the department, on October 1, 1996, 435 claims were filed with the average claim being \$18,000. Between October 2, 1996 and the filing deadline, December 31,

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1997, a total of 180 claims were filed. The department estimates that there are another 600 claimants who have not filed claims. The total amount of claims is approximately \$8 million, and the amount collected into the SGF for the purposes of paying such claims is approximately \$1.7 million per year. The department estimates that it will take no less than 4 years to pay all claims filed on October 1, 1996, alone.

B. EFFECT OF PROPOSED CHANGES:

The Investment Fraud Restoration Financing Corporation would be created as a nonprofit public benefit corporation. The purpose of this corporation would be to finance "the remedial measures instituted by the Legislature with respect to the victims of GIC Government Securities, Inc., and the payment of approved claims pursuant to s. 517.1203."

The Investment Fraud Restoration Financing Corporation would be authorized to "borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness" necessary to pay all valid GIC claims filed with the department. The department would enter into service contracts with the corporation for the purpose of the "simultaneous payment" of all valid GIC claims filed with the department.

The deadline for filing GIC claims would be extended for one year to December 31, 1998.

Another condition would be imposed before the department could reduce the amount of the assessment fee collected from dealers, investment advisers and associated persons. The department would delay reducing the amount of the assessment fee not only until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

Another condition would be imposed before the department could discontinue allocating to the SGF an amount not to exceed 3.5 percent of the assessment fee collected from associated persons. The department would delay reducing the amount of the assessment fee not only until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

The corporation would terminate on July 1, 2021 or upon fulfillment of its duties, whichever occurs earlier.

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 department would be authorized to adopt "any rules necessary" to implement the changes to s. 517.1203, F.S.

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

Yes. A corporation would be established for the purpose of paying all valid GIC claims filed with the department.

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

Yes. All valid GIC claims filed with the department would be paid.

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?

Yes. Once the department determines all valid GIC claims have been paid, the assessment fee for associated persons would be lowered.

- 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?

No. All valid GIC claims would be paid to the claimant.

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. 517.12, 517.1203, and 517.131, F.S. Creates s. 517.1204, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 517.12, F.S., to add another condition that would be imposed before the department could reduce the amount of the assessment fee that is collected from a dealer, investment adviser, or associated person. The department would continue collecting the assessment fee not only until all valid GIC claims have been satisfied as required by current law, but it would also continue collecting this fee until the department determines that any contract entered into with the Investment Fraud Restoration Financing Corporation has been satisfied.

Section 2 amends s. 517.1203, F.S., to require that the SGF would receive allocations of assessment fees until all valid GIC claims have been satisfied and all amounts payable under any contract entered into by the department with the Investment Fraud Restoration Financing Corporation and any indebtedness has been paid or provisions have been made for the payment of any indebtedness. The deadline for filing claims with the department would be extended from December 31, 1997 until December 31, 1998, in order to allow investors who have not yet filed claims to do so. The department would be authorized to adopt "any rules necessary" to implement this section.

Section 3 creates s. 517.1204, F.S., to establish the Investment Fraud Restoration Financing Corporation as a nonprofit public benefit corporation. The corporation would be governed by a board of directors consisting of the assistant comptroller, the Secretary of Elder Affairs or his designee, and the executive director of the Department of Veteran's Affairs or his designee. The executive director of the State Board of Administration would be the chief executive officer of the corporation. Among other powers, this corporation would have the power to borrow money, issue notes and bonds, or incur other forms of indebtedness in order to pay all valid GIC claims filed with the department. This corporation would be authorized to enter into service contracts with the department to satisfy all valid GIC claims filed with the department. The debt incurred by this corporation would not be a debt of the state of Florida. The corporation would be tax exempt. The corporation would terminate on July 1, 2021, or upon completion of all purposes of this section, whichever occurs first.

Section 4 amends s. 517.131, F.S., to add another condition that would be imposed before the department could discontinue the additional allocation of up to 3.5 percent from the assessed fee on an associated person to the SGF. The department would continue allocating this amount not only until all valid GIC claims have been satisfied as required by current law, but it would also continue allocating this additional amount until the department determines that any contract entered into with the Investment Fraud Restoration Financing Corporation has been satisfied.

Section 5 provides this act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

According to the Department of Banking and Finance, the fiscal impact of the bill would be as follows:

| | <u>FY 98-99</u> | <u>FY 99-00</u> |
|--------------------------|-----------------|-----------------|
| Securities Guaranty Fund | (\$80,000) | |

2. Recurring Effects:

| | <u>FY 98-99</u> | <u>FY 99-00</u> |
|--------------------------|-----------------|-----------------|
| Securities Guaranty Fund | (\$162,935) | (\$ 277,351) |

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

| | <u>FY 1998-99</u> | <u>FY 1999-00</u> |
|--------------------------|-------------------|-------------------|
| Securities Guaranty Fund | (\$ 242,935) | (\$ 277,351) |

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:

The department would delay reducing the amount of the assessment fee collected from dealers, associated persons, and investment advisers not only until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

2. Direct Private Sector Benefits:

All persons who have filed GIC claims with the department would have those claims satisfied.

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

N/A

D. FISCAL COMMENTS:

N/A

IV. 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

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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