

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Ring

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1                                   A bill to be entitled  
2           An act relating to the State Board of Administration;  
3           amending s. 121.4501, F.S.; requiring that certain  
4           investment products and approved providers conform  
5           with the Public Employee Optional Retirement Program  
6           Investment Policy Statement as approved by the  
7           executive director of the board and approved by the  
8           Investment Advisory Council; requiring that such  
9           statement be presented to the council for approval;  
10          amending s. 215.44, F.S.; requiring that the board  
11          establish and maintain the salaries of its officers  
12          and employees in a manner consistent with its  
13          fiduciary duties; requiring that the council initiate  
14          an investigation at specified intervals for specified  
15          purposes; requiring that the council present the  
16          results of such study to the board; authorizing the  
17          board to delegate certain authority and duties to the  
18          executive director; requiring that the board create an  
19          audit committee for specified purposes; providing for  
20          membership on the committee and term limits of  
21          committee members; providing purposes and duties of  
22          the committee; requiring that the board produce  
23          certain financial statements on an annual basis and  
24          report the information contained in such statements to  
25          the Legislature; requiring that such statements be  
26          audited by an independent third-party firm working  
27          under the direction of the audit committee; requiring  
28          that the board meet at specified intervals and receive  
29          reports containing certain information from specified

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30 entities; amending s. 215.441, F.S.; requiring that  
31 the board appoint an executive director; providing  
32 duties of the executive director; providing  
33 requirements for appointment as executive director;  
34 removing a requirement that the Governor vote in favor  
35 of the selection of the executive director; providing  
36 for the determination of the executive director's  
37 compensation; providing for the creation, operation,  
38 and membership of a search committee for the purpose  
39 of selecting the executive director; amending s.  
40 215.442, F.S.; requiring that the executive director  
41 present certain information quarterly to the  
42 Investment Advisory Council; creating s. 215.443,  
43 F.S.; creating the Agency for Professional Fund  
44 Management; providing for the makeup of the agency;  
45 amending s. 215.444, F.S.; requiring that the council  
46 meet with the board's staff at specified intervals and  
47 provide a quarterly report to the board's trustees;  
48 clarifying the function of council members; expanding  
49 prerequisites for membership on the council to include  
50 knowledge of and experience with institutional  
51 investments and fiduciary responsibilities; providing  
52 that a council member is an officer, employee, or  
53 agent of the state for specified purposes; requiring  
54 that appointees to the council undergo specified  
55 training; requiring that council members make  
56 recommendations consistent with fiduciary  
57 responsibilities applicable to the board; specifying  
58 duties of the council; authorizing the council to

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59 create subcommittees and direct the executive director  
60 to enter into certain contracts; amending s. 215.475,  
61 F.S.; conforming provisions to changes made by the  
62 act; creating s. 215.4754, F.S.; providing intent;  
63 requiring that the contract for an investment adviser  
64 or manager include a standard of conduct; providing  
65 for termination of the contract of an adviser or  
66 manager who violates the standard of conduct;  
67 prohibiting a member of the Investment Advisory  
68 Council from contracting with or providing services  
69 for the investment of certain funds during his or her  
70 service on the board and for a specified period  
71 thereafter; creating s. 215.4755, F.S.; requiring that  
72 an investment advisor or manager annually certify to  
73 the board certain activities regarding investment  
74 decisions and standards of behavior; requiring that  
75 certain disclosures be made at the request of the  
76 board regarding pecuniary interests of an investment  
77 adviser or manager; amending s. 215.52, F.S.;  
78 authorizing the board to implement certain policies,  
79 restrictions, or guidelines; providing an effective  
80 date.

81

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

83

84 Section 1. Subsection (14) of section 121.4501, Florida  
85 Statutes, is amended to read:

86 121.4501 Public Employee Optional Retirement Program.—

87 (14) INVESTMENT POLICY STATEMENT.—

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88 (a) Investment products and approved providers selected for  
89 the Public Employee Optional Retirement Program shall conform  
90 with the Public Employee Optional Retirement Program Investment  
91 Policy Statement, herein referred to as the "statement," as  
92 developed by the executive director of the state board and  
93 approved by the Investment Advisory Council and Trustees of the  
94 State Board of Administration. The statement must include, among  
95 other items, the investment objectives of the Public Employee  
96 Optional Retirement Program, manager selection and monitoring  
97 guidelines, and performance measurement criteria. As required  
98 from time to time, the executive director of the state board may  
99 present recommended changes in the statement to the board for  
100 approval.

101 (b) Before ~~Prior to~~ presenting the statement, or any  
102 recommended changes thereto, to the state board, the executive  
103 director of the board shall present such statement or changes to  
104 the Investment Advisory Council for review and approval. The  
105 council shall present the results of its review to the board  
106 prior to the board's final approval of the statement or changes  
107 in the statement.

108 Section 2. Subsections (1) and (2) of section 215.44,  
109 Florida Statutes, are amended to read:

110 215.44 Board of Administration; powers and duties in  
111 relation to investment of trust funds.—

112 (1) Except when otherwise specifically provided by the  
113 State Constitution and subject to any limitations of the trust  
114 agreement relating to a trust fund, the Board of Administration,  
115 hereinafter sometimes referred to as "trustees" or "board,"  
116 composed of the Governor as chair, the Chief Financial Officer,

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117 and the Attorney General, shall invest all the funds in the  
118 System Trust Fund, as defined in s. 121.021(36), and all other  
119 funds specifically required by law to be invested by the board  
120 pursuant to ss. 215.44-215.53 to the fullest extent that is  
121 consistent with the cash requirements, trust agreement, and  
122 investment objectives of the fund. Notwithstanding any other law  
123 to the contrary, the State Board of Administration may invest  
124 any funds of any state agency or any unit of local government  
125 pursuant to the terms of a trust agreement with the head of the  
126 state agency or the governing body of the unit of local  
127 government, which trust agreement shall govern the investment of  
128 such funds, provided that the board shall approve the  
129 undertaking of such investment before execution of the trust  
130 agreement by the State Board of Administration. The funds and  
131 the earnings therefrom are exempt from the service charge  
132 imposed by s. 215.20. As used in this subsection, the term  
133 "state agency" has the same meaning as that provided in s.  
134 216.001, and the terms "governing body" and "unit of local  
135 government" have the same meaning as that provided in s.  
136 218.403.

137 (2) (a) The board shall have the power to make purchases,  
138 sales, exchanges, investments, and reinvestments for and on  
139 behalf of the funds referred to in subsection (1), and it shall  
140 be the duty of the board to see that moneys invested under the  
141 provisions of ss. 215.44-215.53 are at all times handled in the  
142 best interests of the state.

143 (b) Pursuant to s. 110.205, the State Board of  
144 Administration shall establish and maintain the salaries and  
145 benefits of its officers and employees in a manner consistent

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146 with the board's fiduciary responsibility to recruit and retain  
147 highly qualified and effective key personnel. Not less than  
148 every 5 years, the Investment Advisory Council shall cause a  
149 total compensation study to be conducted by a private consulting  
150 firm having expertise in institutional investments salary and  
151 benefit administration. The study shall be designed to determine  
152 competitive salary ranges, other compensation, and benefits for  
153 positions within the board based on comparable public-sector  
154 peer investment entities. The Investment Advisory Council shall  
155 present the total compensation study along with its  
156 recommendations to the board, and such recommendations are  
157 subject to review and ratification or reversal by the board. The  
158 board may delegate to the executive director the authority and  
159 duty to set staff salaries within the ranges approved by the  
160 board.

161 (c) ~~(b)~~ In exercising investment authority pursuant to s.  
162 215.47, the board may retain investment advisers or managers, or  
163 both, external to in-house staff, to assist the board in  
164 carrying out the power specified in paragraph (a).

165 (d) The board shall create an audit committee to assist the  
166 board in fulfilling its oversight responsibilities. The  
167 committee shall consist of three members appointed by the board.  
168 Members shall be appointed for 4-year terms. A vacancy shall be  
169 filled for the remainder of the unexpired term. The committee  
170 shall annually elect a chair and vice chair from its membership.  
171 A member may not be elected to consecutive terms as chair or  
172 vice chair. Persons appointed to the audit committee must have  
173 relevant knowledge and expertise as determined by the board. The  
174 audit committee shall serve as an independent and objective

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175 party to monitor processes for financial reporting, internal  
176 controls and risk assessment, audit processes, and compliance  
177 with laws, rules, and regulations. The audit committee shall  
178 direct the efforts of the board's independent external auditors  
179 and the board's internal audit staff. The committee shall  
180 periodically, but no less than quarterly, report to the  
181 executive director of the state board and the board. The board  
182 shall produce a set of financial statements for the Florida  
183 Retirement System programs on an annual basis, which shall be  
184 reported to the Legislature and audited by a commercial  
185 independent third-party audit firm under the direction of the  
186 audit committee.

187 (e) The board shall meet at least quarterly and shall  
188 receive reports from the audit committee, investment advisory  
189 committee, inspector general, general counsel, executive  
190 director, and such other persons or entities as the board may  
191 require about the financial status, operations, and investment  
192 activities of the board.

193 Section 3. Section 215.441, Florida Statutes, is amended to  
194 read:

195 215.441 Board of Administration; appointment of executive  
196 director.—

197 (1) The board shall appoint an executive director to manage  
198 and invest funds as directed by the board. The executive  
199 director shall, at a minimum, possess substantial experience,  
200 proven knowledge, and expertise in the oversight of  
201 institutional investment portfolios and must meet any other  
202 requirements determined by the board to be necessary to the  
203 overall management and investment of funds.

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204       (2) The appointment of the executive director of the State  
205 Board of Administration shall be subject to the approval by a  
206 majority vote of the Board of Trustees of the State Board of  
207 Administration, ~~and the Governor must vote on the prevailing~~  
208 ~~side~~. Such appointment must be reaffirmed in the same manner by  
209 the board of trustees on an annual basis.

210       (3) The compensation for the executive director shall be  
211 determined by the board, consistent with the requirements of s.  
212 215.44 (2) (b) .

213       (4) Before the appointment of the executive director, the  
214 board shall appoint a search committee to develop minimum  
215 position requirements, review applications, and make  
216 recommendations to the board with regard to qualified applicants  
217 for the position. At a minimum, the search committee shall  
218 consist of at least three members of the Investment Advisory  
219 Council.

220       Section 4. Subsection (1) of section 215.442, Florida  
221 Statutes, is amended to read:

222       215.442 Executive director; reporting requirements; public  
223 meeting.—

224       (1) Beginning October 2007 and quarterly thereafter, the  
225 executive director shall present to the Board of Trustees and  
226 the Investment Advisory Council of the State Board of  
227 Administration a quarterly report to include the following:

228       (a) The name of each equity in which the State Board of  
229 Administration has invested for the quarter.

230       (b) The industry category of each equity.

231       Section 5. Section 215.443, Florida Statutes, is created to  
232 read:

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233 215.443 Agency for Professional Fund Management.-

234 (1) Effective January 1, 2011, there is created within the  
235 State Board of Administration the Agency for Professional Fund  
236 Management which shall provide active oversight of the  
237 investment portfolios under the authority of the board.

238 (2) The agency shall consist of five members appointed by  
239 the board and subject to confirmation by the Senate. The members  
240 shall annually elect a chair from among their membership.

241 Members shall meet at least every other month; however, an  
242 emergency meeting may be convened at the call of the chair. The  
243 members shall receive no compensation for their services but are  
244 entitled to receive reimbursement for expenses pursuant to s.  
245 112.061. Members shall serve 4-year terms and may be suspended  
246 or removed for cause by the board.

247 (3) Members of the agency shall be considered fiduciaries  
248 in the discharge of their duties and shall be required to file  
249 financial disclosure as required of state officers pursuant to  
250 s. 112.3145.

251 (4) Members of the agency must be distinguished by the  
252 attainment of the highest professional and experiential  
253 requirements consistent with the investment responsibilities  
254 they bear. Each must have a minimum of 5 years of progressively  
255 responsible experience in the direct management, analysis,  
256 supervision, or investment of financial assets as an officer or  
257 a named fiduciary with a public or private organization that has  
258 at least \$1 billion in investable assets. Members who possess  
259 licenses or certification from professional organizations or  
260 other federal or state regulatory bodies must maintain those  
261 licenses in good standing, free from sanction, limitation, or

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262 compromise by the issuing authority, through the duration of  
263 their service.

264 (5) The members shall have active oversight of the  
265 investment decisions made on behalf of the participants in each  
266 of the portfolios managed by the board and decisions made by the  
267 executive director or staff on the allocation of funds within  
268 the permitted statutory ranges.

269 (6) Decisions made by the agency may be altered only by  
270 unanimous vote of all three members of the board in a public  
271 meeting.

272 Section 6. Section 215.444, Florida Statutes, is amended to  
273 read:

274 215.444 Investment Advisory Council.—

275 (1) There is created a six-member Investment Advisory  
276 Council to review the investments made by the staff of the Board  
277 of Administration and to make recommendations to the board  
278 regarding investment policy, strategy, and procedures. The  
279 council shall meet with staff of the board no less than  
280 quarterly and shall provide a quarterly report directly to the  
281 trustees at a meeting of the board.

282 (2) The members of the council shall be appointed by the  
283 board as a resource to the trustees and shall be subject to  
284 confirmation by the Senate. These individuals shall possess  
285 special knowledge, experience, and familiarity with ~~financial~~  
286 ~~investments and portfolio management,~~ institutional investments,  
287 and fiduciary responsibilities. Members shall be appointed for  
288 4-year terms. A vacancy shall be filled for the remainder of the  
289 unexpired term. The council shall annually elect a chair and a  
290 vice chair from its membership. A member may not be elected to

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291 consecutive terms as chair or vice chair.

292 (3) In carrying out the provisions of this section, a  
293 member of the council is an officer, employee, or agent of the  
294 state for purposes of the state's waiver of sovereign immunity  
295 contained in s. 768.28. Appointees to the council must undergo  
296 regular fiduciary training as required by the board, and must  
297 complete an annual conflict disclosure statement. In carrying  
298 out their duties, council members must make recommendations  
299 consistent with the fiduciary standards applicable to the board.

300 (4) The duties of the council shall include approval of the  
301 investment policy statements of the board, participation in the  
302 selection process regarding an executive director, engaging  
303 periodic compensation studies and providing recommendations  
304 thereon, meeting quarterly to review the investment performance  
305 of funds, and any other duties as determined by the board. The  
306 council may create subcommittees as necessary to carry out its  
307 duties and responsibilities and may direct the executive  
308 director to enter into contracts with independent compensation  
309 consultants.

310 Section 7. Subsection (1) of section 215.475, Florida  
311 Statutes, is amended to read:

312 215.475 Investment policy statement.—

313 (1) In making investments for the System Trust Fund  
314 pursuant to ss. 215.44-215.53, the board shall make no  
315 investment which is not in conformance with the Florida  
316 Retirement System Defined Benefit Plan Investment Policy  
317 Statement, hereinafter referred to as "the IPS," as developed by  
318 the executive director and approved by the Investment Advisory  
319 Council and the board. The IPS must include, among other items,

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320 the investment objectives of the System Trust Fund; permitted  
321 types of securities in which the board may invest; and  
322 evaluation criteria necessary to measure the investment  
323 performance of the fund. As required from time to time, the  
324 executive director of the board may present recommended changes  
325 in the IPS to the Investment Advisory Council and the board for  
326 approval.

327 Section 8. Section 215.4754, Florida Statutes, is created  
328 to read:

329 215.4754 Ethics requirements for investment advisers and  
330 managers and members of the Investment Advisory Council.—The  
331 intent of this section is to promote independence and the  
332 avoidance of conflicts and improper influence by certain  
333 investment advisers and managers without creating unnecessary  
334 barriers to the board performing its investment duties  
335 consistent with its fiduciary standards, investment performance,  
336 and business relationships.

337 (1) A contract under which an investment adviser or manager  
338 has been retained to exercise investment authority on behalf of  
339 the board for direct holdings, as defined in s. 215.473(1)(e),  
340 shall require that the investment adviser or manager abide by a  
341 standard of conduct pursuant to s. 215.4755, and any such  
342 contract may be terminated by the board if the investment  
343 adviser or manager violates such standard of conduct.

344 (2) An Investment Advisory Council member or any business  
345 organization or any affiliate thereof which is owned by or  
346 employs such member may not directly or indirectly contract with  
347 or provide any services for the investment of trust funds  
348 invested by the board during the time of such member's service

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349 on the council or for 2 years thereafter.

350 Section 9. Section 215.4755, Florida Statutes, is created  
351 to read:

352 215.4755 Certification and disclosure requirements for  
353 investment advisers and managers.—

354 (1) An investment adviser or manager who has discretionary  
355 investment authority for direct holdings, as defined in s.  
356 215.473(1)(e), and who is retained as provided in s.  
357 215.44(2)(c) shall agree pursuant to contract to annually  
358 certify in writing to the board that:

359 (a) All investment decisions made on behalf of the trust  
360 funds and the board are made in the best interests of the trust  
361 funds and the board, and not made in a manner to the advantage  
362 of such investment adviser or manager, other persons, or clients  
363 to the detriment of the trust funds and the board.

364 (b) Appropriate policies, procedures, or other safeguards  
365 have been adopted and implemented to ensure that relationships  
366 with any affiliated persons or entities do not adversely  
367 influence the investment decisions made on behalf of the trust  
368 funds and the board.

369 (c) A written code of ethics, conduct, or other set of  
370 standards, which governs the professional behavior and  
371 expectations of owners, general partners, directors or managers,  
372 officers, and employees of the investment adviser or manager,  
373 has been adopted and implemented and is effectively monitored  
374 and enforced. The investment advisers' and managers' code of  
375 ethics shall require that:

376 1. Officers and employees involved in the investment  
377 process shall refrain from personal business activity that could

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378 conflict with the proper execution and management of the  
379 investment program over which the investment adviser or manager  
380 has discretionary investment authority or that could impair  
381 their ability to make impartial decisions with respect to such  
382 investment program; and

383 2. Officers and employees shall refrain from undertaking  
384 personal investment transactions with the same individual with  
385 whom business is conducted on behalf of the board.

386 (d) The investment adviser or manager has proactively and  
387 promptly disclosed to the board, notwithstanding subsection (2),  
388 any known circumstances or situations that a prudent person  
389 could expect to create an actual, potential, or perceived  
390 conflict of interest, including specifically:

391 1. Any material interests in or with financial institutions  
392 with which officers and employees conduct business on behalf of  
393 the trust funds and the board; and

394 2. Any personal financial or investment positions of the  
395 investment advisor or manager which could be related to the  
396 performance of an investment program over which the investment  
397 adviser or manager has discretionary investment authority on  
398 behalf of the board.

399 (2) At the board's request, an investment adviser or  
400 manager who has discretionary investment authority over direct  
401 holdings, as defined in s. 215.473(1)(e), and who is retained as  
402 provided in s. 215.44(2)(c) shall disclose in writing to the  
403 board:

404 (a) Any nonconfidential, nonproprietary information or  
405 reports to substantiate the certifications required under  
406 subsection (1).

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407       (b) All direct or indirect pecuniary interests that the  
408 investment adviser or manager has in or with any party to a  
409 transaction with the board, if the transaction is related to any  
410 discretionary investment authority that the investment adviser  
411 or manager exercises on behalf of the board.

412       (3) An investment adviser or manager certification required  
413 under subsection (1) shall be provided annually, no later than  
414 January 31, for the reporting period of the previous calendar  
415 year on a form prescribed by the board.

416       Section 10. Section 215.52, Florida Statutes, is amended to  
417 read:

418       215.52 Rules and regulations.—The board shall have the  
419 power and authority to make reasonable rules, policies, and  
420 regulations necessary or appropriate to carry out the provisions  
421 of ss. 215.44-215.53. To ensure full transparency and  
422 accountability in fulfillment of its fiduciary duties, the board  
423 may implement any policies, restrictions, or guidelines  
424 necessary to the application of relevant provisions, including,  
425 but not limited to, policy in the areas of compliance, ethics,  
426 training, audit procedures, service providers, vendors, and  
427 third parties who do business with the board.

428       Section 11. This act shall take effect July 1, 2010.