

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 7024

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: State Board of Administration

DATE: March 17, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|----------------------------------|
| | Peacock | McVaney | | GO SPB 7024 as introduced |
| 1. | Davis/McSwain | DeLoach | AGG | Recommend: Favorable |
| 2. | Davis/McSwain | Kynoch | AP | Pre-meeting |

I. Summary:

SB 7024 repeals the current limitation on the authority of the State Board of Administration to invest the funds of the Florida Retirement System Trust Fund in institutions doing business in or with Northern Ireland.

The bill directs the State Board of Administration to distribute any residual balance in the Fund B Surplus Funds Trust Fund, after the original principal balance has been repaid to the trust fund participants, based on each's participant's proportional share of the November 2007 interest earnings that were withheld from distribution and transferred to the Fund B Surplus Funds Trust Fund. The bill has no impact on state funds.

The bill establishes an effective date of July 1, 2015.

II. Present Situation:

State Board of Administration

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General serve as the trustees of the SBA. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution. The SBA provides a variety of investment services to various governmental entities at both the state and local government levels.

The SBA has the responsibility to invest the funds of the Florida Retirement System (FRS) Trust Fund which holds the assets of the FRS Pension Plan and the FRS Investment Plan. The FRS is the primary retirement system for employees of the state, universities, state colleges, school

boards, counties, and various other local governments in Florida. The table below shows the primary funds the SBA invests and the balances of those funds as of February 25, 2015.¹

| All SBA Funds - Estimated Market Values As of February 25, 2015, Market Close | |
|--|--------------------------------|
| Fund Name | Estimated Current Value |
| Florida Retirement System Pension Plan | \$150,169,315,001 |
| Florida PRIME | \$7,708,345,539 |
| Fund B Surplus Funds Trust Fund | \$43,223,777 |
| Florida Retirement System Investment Plan | \$8,874,130,206 |
| Lawton Chiles Endowment Fund | \$635,027,365 |
| Other SBA Mandates | \$16,352,489,404 |
| Total | \$183,782,531,292 |

In investing assets, the SBA is statutorily directed to follow the fiduciary standards of care set forth in the Employee Retirement Income Security Act (ERISA), subject to certain limitations.² Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA’s ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a “legal list” of the types of investments and for how much of the total fund may be invested in each investment type.

Restrictions on Investments in Northern Ireland

Section 121.153, F.S., was enacted by the Florida Legislature in 1988 and requires the SBA to determine the existence of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof.

Section 121.153(1)(b), F.S., lists nine (9) types of affirmative actions to eliminate the ethnic or religious discrimination practiced by the Northern Ireland government, agencies and instrumentalities thereof. These affirmative actions include:

- Increasing the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs;
- Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;
- Banning provocative religious or political emblems from the workplace;
- Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;
- Providing that layoff, recall, and termination procedures should not in practice favor particular religious groupings;
- Abolishing job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin;

¹ State Board of Administration “Daily Estimate Report” as of February 25, 2015, provided February 26, 2015.

² Sections 215.44 and 215.47, F.S.

- Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;
- Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and
- Appointing senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

These above 9 affirmative actions are known as the MacBride Principles.³

To assure compliance with the statutory restrictions, the SBA subscribes to several research services, which collect and analyze employment and other data on businesses operating within Northern Ireland (either through direct owned businesses, wholly-owned subsidiaries, or partially-owned subsidiaries). These research services provide the SBA with summaries of corporate fair employment practices, regulatory developments, and other information relevant to the corporate governance of companies with business operations in Northern Ireland.

In regard to FRS Trust Fund assets deposited in any financial institution, the SBA requires each financial institution to report whether it makes loans or extends credit to Northern Ireland or national corporations of Northern Ireland or agencies or instrumentalities thereof. To comply, the SBA annually solicits input from Bank of America, BNY Mellon, BlackRock, and Wells Fargo. During the 2014 fiscal year, Bank of America, BNY Mellon, BlackRock, and Wells Fargo reported no Northern Ireland lending activity or operations, consistent with the last several years.

Additionally, the SBA's Corporate Governance Principles and Proxy Voting Guidelines incorporate these statutory requirements, and the SBA has historically supported any investor proposals advocating the elimination of ethnic or religious discrimination practices in Northern Ireland. Since 2011, there have been no shareowner proposals submitted covering Northern Ireland and the implementation of the MacBride principles.⁴

Local Government Surplus Trust Fund and Fund B Surplus Funds Trust Fund

The Local Government Surplus Trust Fund (now known as "Florida Prime") was created by the Florida Legislature in 1977.⁵ The Local Government Surplus Funds Trust Fund is open to all units of local government in Florida to invest their surplus funds. The primary investment objectives are safety, liquidity, and competitive returns with minimization of risks.⁶ This fund currently serves over 800 participants across the state, and the fund has pool assets of \$7.86 billion as of February 12, 2015.

In November 2007, the Local Government Surplus Funds Trust Fund experienced an unanticipated liquidity crisis when participants withdrew an unprecedented \$14 billion in funds

³ Neil J. Conway, *Investment Responsibility in Northern Ireland: The MacBride Principles of Fair Employment*, 24 Loy. L.A. Int'l & Comp. L. Rev 1 (Jan. 2002).

⁴ SBA analysis of SB 7024, dated February 11, 2015 (on file with the Committee on Governmental Oversight and Accountability).

⁵ Section 218.405, F.S.

⁶ Section 218.405(2), F.S.

in a single month. The withdrawals were triggered by fears of exposure to so-called “subprime commercial paper.”

Although less than one half of one percent of the fund was comprised of securities that, while rated top-tier at the time of purchase, subsequently became distressed, media reports fueled investor fears about the quality and security of the investments. Many participants lost confidence in the fund, leading to what can best be described as a classic “run on the bank” that significantly diminished the liquidity in the investment pool.

Faced with this liquidity crisis, the SBA’s Trustees implemented a temporary four-day freeze on withdrawals and deposits and created a separate second fund, the “Fund B Surplus Funds Trust Fund,” to hold these distressed securities. Fund B was also seeded with additional funding coming from the reserve account that existed in the Local Government Surplus Funds Trust Fund and the approximately \$95 million in November 2007 interest payments, which would have been distributed to all local government investment pool participants at month-end.

In 2008, the Florida Legislature passed a law to address the repayment of principal to Local Government Surplus Funds Trust Fund participants⁷ and statutorily created the Fund B Surplus Funds Trust Fund.⁸ Fund B’s goal was to maximize the present value of original principal balances. As of September 2014, Fund B participants have received 100% of their original principal. Since returning 100% of participant’s principal, additional returns and legal settlements have produced a residual balance within Fund B of approximately \$43 million.

The current statute has been interpreted to only allow residual proceeds to be returned to the fund from which they came (i.e., the Local Government Surplus Funds Trust Fund). The Participant Local Government Advisory Council, created in law in 2008, met to discuss the fair and appropriate distribution of residual proceeds. The Council determined the most equitable method of distribution would be the transfer of residual proceeds to those who were members in November 2007, on a pro-rata share of the interest withheld in November 2007.

III. Effect of Proposed Changes:

Section 1 repeals s. 121.153, F.S. to remove the restrictions placed on the SBA authority to invest FRS Trust Fund assets in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland.

Section 2 amends s. 218.421, F.S., to direct the SBA to distribute the residual balance of the Fund B Surplus Funds Trust Fund to fund participants who were members in November 2007, on a pro-rata share of the interest earnings withheld in November 2007.

Section 3 provides an effective date of July 1, 2015.

⁷ Section 218.422, F.S.

⁸ Section 218.417, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to take an action requiring an expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 2 of SB 7024 directs the SBA to distribute the remaining balance of the Pool B (approximately \$43.2 million as of February 25, 2015) to local governments who were participants of the Local Government Surplus Funds Trust Fund in November 2007 and did not receive an interest distribution during that month.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 121.153 of the Florida Statutes.

This bill substantially amends section 218.421 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
