

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 Governmental Oversight and Accountability

BILL: SPB 7060

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Foreign Investments by the State Board of Administration

DATE: February 5, 2024 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. McVaney	McVaney		Pre-meeting

I. Summary:

SPB 7060 limits the investments the State Board of Administration (SBA), on behalf of the Florida Retirement System, may have hold relating to companies owned by the Chinese government. The bill prohibits the SBA from making new investments in Chinese companies (those companies in which the government of the People’s Republic of China, the Chinese Communist Party, or the Chinese military have majority-ownership). The SBA must identify any current holdings in Chinese companies and divest from such interests no later than September 1, 2025. Actions taken pursuant to these new limitations must be incorporated into the investment policy statement for the Florida Retirement System Trust Fund.

The bill has in indeterminate impact on state expenditures. The bill is not expected to impact state revenues or local government revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

State Board of Administration - Generally

The State Board of Administration (SBA or board) is established by the State Constitution.¹ The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution and ch. 215, F.S. The board serves as the state’s investment management organization, with authority over 30 funds collectively valued at about \$237.7 billion as of June 30, 2023, including \$200.2 billion in the state’s pension and investment plans for public employees, which accounts for 84.2 percent of assets under management.² Other funds under management, with total combined assets of \$26.7 billion, include the Florida Hurricane Catastrophe Fund, Department of the

¹ Art. IV, s. 4(e) Fla. Const. (1968).

² State Board of Administration, *Annual Investment Report: July 1, 2022-June 30, 2023*, p. 5, <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Annual/2022-2023%20AIR.pdf?ver=2023-12-22-100527-123> (last visited Feb. 5, 2024).

Lottery Fund, Florida Prepaid College and Florida College Investment Plan, FSU Research Foundation, Florida PRIME (surplus funds of local governments) and the Police and Firefighters' Premium Tax Trust Fund.³ The Governor, Chief Financial Officer, and Attorney General serve as the SBA's Board of Trustees (Trustees), and delegate operational authority to an executive director and chief investment officer, who oversee about 200 employees.⁴

State Board of Administration Investing Duties Relating to the FRS Pension Plan

The State Board of Administration (SBA or board) is charged with investing the assets of the Florida Retirement System (both the Pension Plan and the Investment Plan). The SBA does not manage investments for the Investment Plan. The Investment Plan offers a diversified mix of primary investment funds in which the member can choose to invest his or her funds. These investment funds are managed by private providers (such as Fidelity, Prudential, Stephens, T Rowe Price, and others).⁵

Pecuniary Interest

As fiduciaries, the Board and its Trustees must act in the best interests of the plan's participants and beneficiaries. Generally, when deciding whether to invest, the Board and the Trustees must make decisions based solely on pecuniary factors and may not subordinate the interests of participants and beneficiaries to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary interest.⁶

In this instance, "pecuniary factor" means "a factor the that the Board prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests."⁷

Authorized Investments

Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's authority to invest the funds, including 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 any fund may be invested in each investment

³ A full list of SBA-managed investment funds is available at <https://www.sbafla.com/fsb/FundsWeManage.aspx> (last visited Feb. 5, 2024). See also, *SBA 2023 Annual Investment Report*, *supra* note 2.

⁴ Section 215.44, F.S.; SBA, *Summary Overview of the State Board of Administration of Florida*, p. 3 (Oct. 8, 2021) https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217.

⁵ Florida Retirement System, *Investment Plan—Investment Fund Summary, January 2024*, p. 5, https://www.myfrs.com/pdf/forms/invest_fund_summary.pdf (last visited Feb. 5, 2024).

⁶ Section 214.47(10)(b), F.S.

⁷ Section 215.47(10)(a), F.S.

type.⁸ Additionally, the SBA may invest up to 5 percent of any fund as it deems appropriate. However, the Investment Advisory Council must approve any such plan.⁹

As part of its best interests, maximization, and diversification actions, the SBA invests in multiple asset classes: global equities, fixed income, real estate, strategic investments, and private equity.

As of June 30, 2023, the total market value of the FRS Pension Plan's foreign equity investments was \$31,684,093,180.¹⁰

SBA Divestment and Prohibited Investments

In addition to the limitations provided by the “legal list,” the Legislature has enacted three statutory exceptions to the normal fiduciary standards relating to investments of the FRS. The exceptions apply to investments in (a) certain companies doing business in Cuba, Syria, and Venezuela,¹¹ (b) certain companies doing business in, or with sufficient ties to, Sudan or Iran,¹² and (c) certain companies that boycott Israel or engage in a boycott of Israel.¹³ These statutory exceptions allow the Board and the Trustees to make decisions regarding investments in these “scrutinized companies” without regard to the pecuniary factors and nonpecuniary interests involved.

Federal Sanctions on China

The United States has implemented multiple sanctions on the People's Republic Of China (PRC) based on its human rights abuse, illicit narcotics trafficking, cyber-attacks, and corruption; weapons proliferation; failure to comply with multilateral sanctions on North Korean and Iran; and policy regarding Hong Kong. The United States has also implemented sanctions against China to respond to the PRC's “exploitation of United States capital to resource and enable the development and modernizations of its military, intelligence, and other security apparatuses,

⁸ Section 215.47, F.S., sets some key guidelines such as:

- No more than 80 percent of assets may be invested in equity securities.
- No more than 75 percent of assets may be invested in internally managed equity securities.
- No more than 3 percent of equity assets may be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets may be invested in the equity securities of any one corporation.
- No more than 30 percent in alternative investments.
- No more than 80 percent of assets may be placed in corporate fixed income securities.
- No more than 25 percent of assets may be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 25 percent of assets may be invested in foreign corporate or commercial securities or obligations.

⁹ Section 215.47(6), F.S.

¹⁰ Edward Collins-Chase, CONGRESSIONAL RESEARCH SERVICE, U.S. Sanctions: Legislation in the 117th Congress, p. 6-7 (Dec. 20, 2022), <https://crsreports.congress.gov/product/pdf/R/R47344> (last visited Feb. 5, 2024).

¹¹ Section 215.471, F.S.

¹² Section 215.473, F.S.

¹³ Section 215.4725, F.S.

which continues to allow the PRC to directly threaten the United States....”¹⁴ This prohibits the purchase or sale of any publicly traded securities, or any derivative thereof, from any person determined by the Office of Foreign Assets Control to:

- Operate or have operated in the defense and related material sector or the surveillance technology sector of the economy of the PRC; or
- Own or control, directly or indirectly, person an individual or entity who operates or has operated in any prohibited sector.

III. Effect of Proposed Changes:

Section 1 amends s. 215.47, F.S., to allow the SBA to consider factors other than pecuniary factors when making decisions regarding investments in Chinese companies as defined in s. 215.4735.

Section 2 creates s. 215.4735, F.S., to prohibit the SBA from making new investments in Chinese companies (those companies in which the government of the People’s Republic of China, the Chinese Communist Party, or the Chinese military have majority-ownership). The SBA must identify any current holdings in Chinese companies and divest from such interests no later than September 1, 2025.

Actions taken pursuant to these new limitations must be incorporated into the investment policy statement for the Florida Retirement System Trust Fund.

Section 3 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ See, Executive Order 14032, *Addressing the Threat from Securities Investments That Finance Certain Companies of the People’s Republic of China*, (Jun. 3, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/executive-order-on-addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples-republic-of-china/> (last visited Feb. 5, 2024). See also, Continuation of the National Emergency With Respect to the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China, 88 Fed. Reg. 76987-76988 (Nov. 3, 2023), <https://www.federalregister.gov/documents/2023/11/07/2023-24776/continuation-of-the-national-emergency-with-respect-to-the-threat-from-securities-investments-that> (last visited Feb. 5, 2024).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State of Board of Administration may incur costs to identify those securities it currently holds that meet the criteria described in this legislation. The impact on the FRS System Trust Fund as a result of divestment from those identified securities is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.47 of the Florida Statutes. This bill creates section 215.4735 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.