

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 913

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Trumbull

117 Y's 0 N's

COMPANION SB 7024
BILLS:

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 913 passed the House on April 22, 2015, as SB 7024.

Current law requires the State Board of Administration (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. 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. Since 2011, there have been no shareowner proposals submitted covering Northern Ireland.

The SBA administers the Local Government Surplus Trust Fund (Trust Fund), currently known as "Florida Prime." It is open to all units of local government for the purpose of investing surplus funds of the local government. In November 2007, the Trust Fund experienced an unanticipated liquidity crisis when participants withdrew an unprecedented \$14 billion in funds in a single month. 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" (Fund B), to hold these distressed securities. As of September 2014, Fund B participants have received 100 percent of their original principal. Since returning the principal balance, additional returns and legal settlements have produced a residual balance within Fund B of approximately \$43 million.

The bill repeals the current limitation on the authority of the SBA to invest the funds of the Florida Retirement System Trust Fund in institutions doing business in or with Northern Ireland.

The bill also directs the SBA to distribute any residual balance in Fund B to the Trust Fund participants based on each participant's proportional share of the November 2007 interest earnings that were withheld from distribution and transferred to Fund B.

The bill does not have a fiscal impact on state government, and has a net neutral fiscal impact on local entities that participated in or are participating in the Trust Fund.

The bill was approved by the Governor on May 21, 2015, ch. 2015-75, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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 responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments 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.

The table below shows the primary funds the SBA invests and the balances of those funds as of March 3, 2015.¹

All SBA Funds - Estimated Market Values	
As of March 3, 2015, Market Close	
Fund Name	Estimated Current Value
Florida Retirement System Pension Plan	\$149,167,486,744
Florida PRIME	\$7,667,800,063
Fund B Surplus Funds Trust Fund	\$43,223,777
Florida Retirement System Investment Plan	\$8,893,520,502
Lawton Chiles Endowment Fund	\$632,207,394
Other SBA Mandates	\$16,352,489,404
Total	\$182,756,727,884

Investments

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, taking into account all relevant substantive factors. A nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.²

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and the total percentage that may be invested in each type. Some "legal list" guidelines specific to the pension plan provide:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.
- No more than 25 percent of assets should be invested in notes issued by FHA-insured or VA-guaranteed first mortgages on real property, or foreign government general obligations.
- No more than 20 percent of assets should be invested in alternative investments.

Restrictions on Investments in Northern Ireland

¹ State Board of Administration "Daily Estimate Report" as of March 3, 2015, provided March 4, 2015 (on file with the Government Operations Subcommittee).

² Section 215.444, F.S.

Section 121.153, F.S., was enacted by the 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 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;
- 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.

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).³ 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.⁴

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.⁵

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

The Local Government Surplus Trust Fund (Trust Fund), currently known as "Florida Prime," was created by the Legislature in 1977.⁶ The Trust Fund is open to all units of local government for the purpose of investing surplus funds of the local government. The SBA administers the Trust Fund.⁷ The

³ SBA analysis of HB 913, dated February 12, 2015 (on file with the Government Operations Subcommittee).

⁴ *Id.*

⁵ *Id.*

⁶ Section 218.405, F.S.

⁷ Section 218.405(1), F.S.

primary investment objectives are safety, liquidity, and competitive returns with minimization of risks.⁸ The Trust Fund currently serves over 800 participants across the state, and the Trust Fund has assets of \$7.66 billion as of March 3, 2015.

In November 2007, the Trust Fund experienced an unanticipated liquidity crisis when participants withdrew an unprecedented \$14 billion in funds in a single month.⁹ The withdrawals were triggered by fears of exposure to so-called “subprime commercial paper.” 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” (Fund B), to hold these distressed securities. Fund B also was seeded with additional funding from the reserve account that existed in the Trust Fund and approximately \$95 million in November 2007 interest payments, which would have been distributed to all local government investment pool participants at month-end.¹⁰

In 2008, the Legislature passed a law to address the repayment of principal to Trust Fund participants¹¹ and statutorily created the Fund B Surplus Funds Trust Fund.¹² Fund B’s goal was to maximize the present value of original principal balances. As of September 2014, Fund B participants have received 100 percent of their original principal. Since returning the principal balance, additional returns and legal settlements have produced a residual balance within Fund B of approximately \$43 million.¹³

The Participant Local Government Advisory Council 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 Trust Fund members in November 2007, on a pro-rata share of the interest withheld in November 2007.¹⁴

Effect of Proposed Changes

The bill repeals s. 121.153, F.S., relating to investments in institutions doing business in or with Northern Ireland. Thus, the bill deletes the current limitation on the authority of the SBA to invest the funds of the FRS Trust Fund in institutions doing business in or with Northern Ireland.

The bill also directs the SBA to distribute any residual balance in Fund B, after the original principal balance has been repaid to the Trust Fund participants. The distribution must be based on each participant’s proportional share of the November 2007 interest earnings that were withheld from distribution and transferred to Fund B.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁸ Section 218.405(2), F.S.

⁹ *Supra* at FN 3.

¹⁰ *Id.*

¹¹ Section 218.422, F.S.

¹² Section 218.417, F.S.

¹³ *Supra* at FN 3.

¹⁴ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill directs the SBA to distribute the remaining balance of Fund B funds to local governments, which were participants of the Trust Fund in November 2007, and who did not receive an interest distribution during that month, on a pro-rata basis in lieu of the balance remaining in the Trust Fund. As of February 25, 2015, Fund B had a balance of approximately \$43.2 million. The fiscal impact on local entities that participated in or are participating in the Trust Fund is neutral overall. Some individual entities may receive more funds and some less under the provisions of the bill.