

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 Appropriations Subcommittee on General Government

BILL: SB 1428

INTRODUCER: Senator Simmons

SUBJECT: State Investments

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Loe</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1428 encourages the State Board of Administration (SBA) to take actions in support of the MacBride Principles in Northern Ireland. The MacBride Principles define the objectives for companies operating in Northern Ireland to provide fair employment opportunities to individuals from underrepresented religious groups in the workforce.

Specifically, the bill encourages the State Board of Administration (SBA) to determine which publicly traded companies that the Florida Retirement System Trust Fund has invested in operate in Northern Ireland. For those companies identified, the SBA is encouraged to:

- Notify the company that the SBA supports the MacBride Principles;
- Inquire regarding actions taken by the company in support of the MacBride Principles;
- Encourage a company that has not adopted the MacBride Principles to make all lawful efforts to implement similar fair employment practices; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority.

The bill provides that the SBA is not liable for, and a cause of action does not arise from, any action or inaction by the SBA in the administration of these provisions.

The SBA estimates that the costs for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

State Board of Administration

The State Board of Administration (SBA) is created in Article IV, section 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 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 January 26, 2016.¹

All SBA Funds - Estimated Market Values As of January 26, 2016 Market Close	
Fund Name	Estimated Current Value
Florida Retirement System Pension Plan	\$136,093,884,390
Florida PRIME	\$8,904,562,611
Florida Retirement System Investment Plan	\$7,917,531,799
Lawton Chiles Endowment Fund	\$568,432,757
Other SBA Mandates	\$16,884,963,473
Total	\$170,369,375,029

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 section 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 the percent of the total fund that may be invested in each investment type.

Previous Restrictions on Investments in Northern Ireland

In the 2015 Legislative Session, section 121.153, F.S., relating to restrictions on investments in institutions doing business in or with Northern Ireland, was repealed.³ Section 121.153, F.S., was enacted by the Florida Legislature in 1988, and had required the SBA to determine the existence of nine types of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof.

These affirmative actions, known as the MacBride Principles,⁴ included:

¹ State Board of Administration "Daily Estimate Report" as of January 26, 2016, issued January 27, 2016.

² Sections 215.44 and 215.47, F.S.

³ Chapter 2015-75, Laws of Fla.

⁴ 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).

- 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.

III. Effect of Proposed Changes:

Section 1 defines the term “MacBride Principles” as the objectives for companies operating in Northern Ireland to:

- Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.
- Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.
- Ban provocative religious or political emblems from the workplace.
- Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups.
- Provide that layoff, recall, and termination procedures should not in practice favor particular religious groups.
- Abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin.
- Develop 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.
- Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.
- Appoint senior management staff members to oversee affirmative action efforts and to set up timetables to carry out affirmative action principles.

The term “operating” is defined as actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.

The term “publicly traded company” is defined as any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

The term “state board” is defined as the State Board of Administration.

The bill encourages the SBA to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland and is further encouraged to:

- Notify the publicly traded company that the state board supports the MacBride Principles;
- Inquire regarding the actions that the publicly traded company has taken in support of or furtherance of the MacBride Principles;
- Encourage a publicly traded company that has not adopted the MacBride Principles to make all lawful efforts to implement the fair employment practices embodied in the MacBride Principles; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority. For these purposes, the state board may not be a fiduciary under this section in exercising its proxy voting authority.

Also, the bill allows the SBA to utilize various sources of public information, including information provided by nonprofit organizations, research firms, international organizations, and government entities, to make the determinations.

Additionally, the bill provides that the SBA may not be held liable for, and no cause of action may arise from, any action or inaction by the SBA in administering these provisions.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and 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:

Indeterminate.

C. Government Sector Impact:

The SBA estimates that the cost for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund. Research services will need to be procured to determine which SBA investments in publicly traded companies have operations in or with Northern Ireland. The SBA will be required to dedicate staff time to complete the encouraged actions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4702 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.