

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 359 State Investments
SPONSOR(S): Nuñez, Diaz, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 70, SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N	Moore	Harrington
2) Ways & Means Committee	18 Y, 0 N	Aldridge	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer (CFO), and the Attorney General. The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan, which represent approximately \$168.8 billion, or 86.3 percent, of the \$195.7 billion in assets managed by the SBA as of October 26, 2017.

The CFO is the head of the Department of Financial Services and is the constitutional officer with fiduciary responsibility over the State Treasury. The CFO is required to fully invest or deposit all general revenue, trust funds, and funds of each state agency and the judicial branch in a manner that allows the state to realize maximum earnings and benefits. Such funds are managed by the Division of Treasury and are invested as the Treasury Investment Pool. As of September 2017, the Treasury Investment Pool contained \$23.4 billion in assets.

In recent years, the federal government has imposed various sanctions on the government of Venezuela. On August 24, 2017, President Trump signed Executive Order 13808 to prohibit United States persons and entities from engaging in certain financial transactions with the government of Venezuela.

The bill requires the SBA to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with any agency or instrumentality thereof, in violation of federal law. The bill also prohibits the SBA from investing in such stocks, securities, or other obligations.

The bill prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S. which, directly or through the U.S. foreign subsidiary, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

The bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or any company that is majority-owned or controlled by the government of Venezuela.

The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact state or local government revenues. The bill may have an insignificant negative impact on state government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer (CFO), and the Attorney General. The board members are commonly referred to as “Trustees.” The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,¹ which represent approximately \$168.8 billion, or 86.3 percent, of the \$195.7 billion in assets managed by the SBA as of October 26, 2017.² The SBA also manages more than 30 other investment portfolios with combined assets of \$26.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.³

The Trustees, at the August 16, 2017, Cabinet meeting, passed a resolution to add the following language to the SBA’s Investment Policy Statement for the FRS:

1. Prohibited Investments. Until such as time as the SBA determines it is otherwise prudent to do so, the SBA is prohibited from investing in:
 - a. any financial institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, which directly or through a United States or foreign subsidiary and in violation of federal law, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services in or with the government of Venezuela; and
 - b. any securities issued by the government of Venezuela or any company that is majority-owned by the government of Venezuela.
2. Proxy Voting. The SBA will not vote in favor of any proxy resolution advocating the support of the Maduro Regime in Venezuela.⁴

The SBA’s Investment Advisory Council formally recommended that the language be added to the FRS Investment Policy Statement at its meeting on September 25, 2017. The Trustees accepted the updated Investment Policy Statement at their October 17, 2017, meeting.

State Treasury

The CFO is the head of the Department of Financial Services (DFS) and is the constitutional officer with fiduciary responsibility over the State Treasury. Florida law requires all moneys collected by state agencies, boards, bureaus, commissions, institutions, and departments to be deposited in the State Treasury.⁵ The CFO is required to fully invest or deposit all general revenue, trust funds, and funds of each state agency and the judicial branch in a manner that allows the state to realize maximum

¹ Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.

² State Board of Administration, Agency Analysis of 2018 Senate Bill 538, p. 1 (Nov. 2, 2017). The provisions in Senate Bill 538 are substantively the same as the provisions in House Bill 359.

³ *Id.*

⁴ *Id.*

⁵ Section 17.58(1), F.S.

earnings and benefits.⁶ Such funds are managed by the Division of Treasury and are invested as the Treasury Investment Pool. As of September 2017, the Treasury Investment Pool contained \$23.4 billion in assets.⁷

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

State Divestment Laws

The state has practiced divestment several times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest of companies doing business with South Africa. From 1988 to 2015, the Legislature placed restrictions on investments in any institution or company doing business in or with Northern Ireland. From 1993 to the present, the Legislature required the SBA to divest of companies doing business in or with Cuba and prohibited state agencies from investing in companies engaging in certain business activities with Cuba. From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies. From 2007 to the present, the Legislature has directed the SBA to divest funds from companies that are actively seeking and providing certain business opportunities with Iran and Sudan.⁸

Federal Venezuela Sanctions

In recent years, the federal government has imposed various sanctions on the government of Venezuela. On August 24, 2017, President Trump signed Executive Order 13808 to prohibit U.S. persons and entities from engaging in transactions involving the following:

- New debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA), Venezuela's state-owned oil company;
- New debt with a maturity of greater than 30 days, or new equity, of the government of Venezuela, other than debt of PdVSA as defined above;
- Bonds issued by the government of Venezuela prior to August 25, 2017;
- Dividend payments or other distributions of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela; and
- The purchase, directly or indirectly, of securities from the government of Venezuela, other than security qualifying as new debt with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the government of Venezuela).⁹

The executive order defined the term "government of Venezuela" to mean the government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, and any person or entity owned or controlled by, or acting for or on behalf of, the government of Venezuela.¹⁰

Effect of Proposed Changes

The bill requires the SBA to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with any agency or instrumentality thereof,

⁶ Sections 17.61(1) and 17.57(1), F.S.

⁷ Division of Treasury, *Florida Treasury Investment Pool Holdings as of September 2017*,

<https://www.myfloridacfo.com/Division/Treasury/InvestmentPool/documents/FLTreasuryInvHoldingsSeptember2017.pdf> (last visited Nov. 9, 2017).

⁸ See s. 215.473, F.S.

⁹ Exec. Order No. 13808, 3 C.F.R. 41155 (2017).

¹⁰ *Id.* at 41156.

in violation of federal law. The bill also prohibits the SBA from investing in such stocks, securities, or other obligations. In addition, the bill provides that the SBA may not be a fiduciary with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded U.S. trade with Venezuela.

The bill also prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S. which, directly or through the U.S. foreign subsidiary, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

The bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or any company that is majority-owned or controlled by the government of Venezuela.

The bill authorizes the Governor to waive the bill’s requirements if the existing regime in Venezuela collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

According to the SBA and DFS, the agencies do not currently invest in any companies that are in violation of federal law as specified in the bill.¹¹

B. SECTION DIRECTORY:

Section 1. Amends s. 215.471, F.S., relating to divestiture by the SBA; reporting requirements.

Section 2. Amends s. 215.472, F.S., relating to prohibited investments.

Section 3. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact state government revenues.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on the SBA related to conducting research. These costs, however, will be absorbed by the SBA.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact local government revenues.

¹¹ Telephone conversation between House Oversight, Transparency & Administration Subcommittee and SBA staff (Nov. 6, 2017); Telephone conversation between House Oversight, Transparency & Administration Subcommittee and DFS staff (Nov. 9, 2017).

¹² State Board of Administration, Agency Analysis of 2018 Senate Bill 538, p. 3 (Nov. 2, 2017). The provisions in Senate Bill 538 are substantively the same as the provisions in House Bill 359.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,¹³ maintain a military,¹⁴ enter into treaties and other international agreements,¹⁵ regulate foreign commerce,¹⁶ and to hear cases involving foreign states and citizens.¹⁷ These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.¹⁸ When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid.¹⁹

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹³ Section 8, Art. I, U.S. Constitution.

¹⁴ *Id.*

¹⁵ Section 2, Art. II, U.S. Constitution.

¹⁶ Section 8, Art. I, U.S. Constitution.

¹⁷ Section 2, Art. III, U.S. Constitution.

¹⁸ *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the “Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.”).

¹⁹ *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass’n v. Garamendi*, 539 U.S. 396 (2003).