

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 Finance and Tax

BILL: SB 538

INTRODUCER: Senators Garcia and Rodriguez

SUBJECT: State and Local Governmental Relations with The Government of Venezuela

DATE: January 26, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------------|------------|--------------------|
| 1. | <u>Peacock</u> | <u>Caldwell</u> | <u>GO</u> | Favorable |
| 2. | <u>Babin</u> | <u>Diez-Arguelles</u> | <u>AFT</u> | Pre-meeting |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 538 requires the State Board of Administration 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 agencies or instrumentalities thereof, in violation of federal law.

The bill prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or any foreign subsidiary of a company domiciled in the U.S. which, directly or through a U.S. or foreign subsidiary, makes any loan, 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 authorizes the Governor to waive the bill's prohibitions if the government of 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.

The bill has no fiscal impact on state or local revenues.

The bill has an effective date of July 1, 2018.

II. Present Situation:

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 as chair, 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 State Constitution and ch. 215, F.S.

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:

- Prohibited Investments. Until such as time as the SBA determines it is otherwise prudent to do so, the SBA is prohibited from investing in:
 - 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
 - any securities issued by the government of Venezuela or any company that is majority-owned by the government of Venezuela.
- 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 Divestment Laws

Section 215.471, F.S., enacted in 1993, prohibits the SBA from investing 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 Cuba, or with agencies or instrumentalities thereof in violation of federal law.
- Any institution or company domiciled outside of the U.S. if the President of the U.S. has applied sanctions against the foreign country in which the institution or company is domiciled, pursuant to s. 4 of the Cuban Democracy Act of 1992.

Section 215.471, F.S., also prohibits the SBA from acting as a fiduciary with respect to voting on, or in favor of, any proxy resolution advocating expanded U.S. trade with Cuba or Syria.

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, SB 538 Agency Analysis (Oct. 27, 2017).

³ *Id.*

⁴ *Id.*

Section 215.472, F.S., enacted in 1993, prohibits each 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 a U.S. or foreign subsidiary makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with Cuba, the government of Cuba, or any company doing business in or with Cuba in violation of federal law.
- Any financial institution or company domiciled outside of the U.S. if the President of the U.S. has applied sanctions against the foreign country in which the institution or company is domiciled pursuant to s. 4 of the Cuban Democracy Act of 1992.

Section 215.473, F.S., enacted in 2007, requires the SBA to assemble and publish a list of scrutinized companies that have prohibited business operations in Sudan or Iran. Once placed on the list of scrutinized companies, the SBA is prohibited from acquiring those companies' securities and is required to divest such securities if the companies do not cease the prohibited activities or take certain compensating actions.

Section 215.4725, F.S., enacted in 2016, requires the SBA to identify and assemble a list of companies that boycott Israel. The SBA must provide written notice to the companies that may be placed on the list and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the list.

The state has practiced divestment several times in modern history.⁵ From 1986 to 1993, the Legislature directed the SBA to divest investments 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 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies.

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).⁶

⁵ See CS/CS/HB 959 House of Representatives Final Bill Analysis, Notes 14 through 17 (May 11, 2012).

⁶ Exec. Order No. 13808, 3 C.F.R. 41155 (2017).

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.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 215.471, F.S., to require 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 agencies or instrumentalities thereof, in violation of federal law.

For this section, the bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or companies majority-owned or controlled by the government of Venezuela.

Also, the bill authorizes the Governor to waive the divestiture requirements if the government of 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.

Additionally, the bill prohibits the SBA from being 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 the government of Venezuela.

Section 2 amends s. 215.472, F.S., to prohibit a state agency from investing in any financial institution or company domiciled in the U.S., or any foreign subsidiary of a company domiciled in the U.S. which, directly or through a U.S. or foreign subsidiary, makes any loan, 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.

For this section, the bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or companies majority-owned or controlled by the government of Venezuela.

The bill authorizes the Governor to waive the prohibitions on state agency actions if the government of 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.

Section 3 provides the bill takes effect July 1, 2018.

⁷ *Id.* at 41156.

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 shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The U.S. Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,⁸ maintain a military,⁹ enter into treaties and other international agreements,¹⁰ regulate foreign commerce,¹¹ and to hear cases involving foreign states and citizens.¹² These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.¹³ 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.¹⁴

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill may have an insignificant negative fiscal impact on the SBA related to conducting research. The SBA, however, will absorb these costs.¹⁵

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

⁹ *Id.*

¹⁰ Section 2, Art. II, U.S. Constitution.

¹¹ Section 8, Art. I, U.S. Constitution.

¹² Section 2, Art. III, U.S. Constitution.

¹³ *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.").

¹⁴ *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

¹⁵ See *supra* note 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.471 and 215.472.

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.