

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 959 Divestiture by the State Board of Administration

**SPONSOR(S):** Government Operations Subcommittee; Bileca and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N, As CS	Meadows	Williamson
2) Judiciary Committee		Cary	Havlicak
3) State Affairs Committee			

### SUMMARY ANALYSIS

The State Board of Administration (SBA or "board") is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board derives its powers to oversee state funds from Art. XII, Sec. 9 of the Florida Constitution.

The bill prohibits the SBA from serving as a fiduciary with respect to voting on a proxy resolution that advocates for expanded United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy resolution that would expand United States trade with Cuba or Syria. The bill requires the SBA to report on its activities in its Annual Proxy Voting Report.

The bill does not appear to create a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### State Board of Administration

The State Board of Administration ("SBA" or "board") is established by Article IV, Sec. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to as "Trustees." The board derives its powers to oversee state funds from Art. XII, Sec. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately \$125.1 billion, or 85%, of the \$147.5 billion in assets managed by the SBA, as of November 30, 2011.<sup>1</sup> The SBA also manages 33 other investment portfolios, with combined assets of \$21.7 billion<sup>2</sup>, 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.

###### Divestiture from Cuba

Current law prohibits the SBA from investing in stocks, securities, or other obligations of any institution or company domiciled in the United States that does business of any kind with Cuba, in violation of federal law.<sup>3</sup> In addition, the SBA is prohibited from investing in any company domiciled outside of the United States if the President of the United States has applied sanctions against the country in which that company is domiciled.<sup>4</sup>

Florida law also provides that state agencies are prohibited from investing in any financial institution or company domiciled in the United States, which directly through the domestically domiciled company or a foreign subsidiary, issues a loan, extends credit, or makes purchases or trades goods with Cuba.<sup>5</sup> State agencies also are prohibited from investing in any foreign company if the President of the United States has applied sanctions to the country in which that company is domiciled.<sup>6</sup>

###### 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.<sup>7</sup>

The State of Florida has practiced divestment four times in modern history.<sup>8</sup> From 1986 to 1993, the Legislature directed the SBA to divest from companies doing business with South Africa.<sup>9</sup> Beginning October 1, 1988, the Legislature placed restrictions on investments in any institution or company doing

---

<sup>1</sup> See State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, issued December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

<sup>2</sup> *Id.*

<sup>3</sup> Section 215.471, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 215.472(1), F.S.

<sup>6</sup> Section 215.472(2), F.S.

<sup>7</sup> See generally Cody Ferguson, *Fallacies on Divestment, Pensions & Investments*, January 7, 2008 <http://www.pionline.com/article/20080107/PRINTSUB/241283606> (last visited February 9, 2012).

<sup>8</sup> Information provided to Government Operations Subcommittee staff on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.

<sup>9</sup> *Id.*

business in or with Northern Ireland.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

### **Effect of Proposed Changes**

The bill prohibits the SBA from serving as a fiduciary with respect to voting on a proxy resolution that advocates for expanded United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy that would expand United States trade with Cuba or Syria. The bill requires the SBA to report on its activities in its Annual Proxy Voting Report.

The bill provides for an effective date of July 1, 2012.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 215.471, F.S., relating to Divestiture by the State Board of Administration.

Section 2 provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill has the potential to negatively impact companies who seek to expand business in Cuba or Syria if the SBA votes against that expansion by proxy vote.

#### **D. FISCAL COMMENTS:**

None.

---

<sup>10</sup> Section 121.153, F.S.

<sup>11</sup> Information provided to Government Operations Subcommittee staff on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.

<sup>12</sup> Section 215.473, F.S.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to 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.

##### **2. Other:**

None.

#### **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**

On February 6, 2012, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment provides that the SBA will not be a fiduciary with respect to voting on a proxy resolution that would expand United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy that would expand United States trade with Cuba or Syria. The strike-all amendment requires the SBA to report on its activities in its Annual Proxy Voting Report.

The strike-all amendment removes the requirement that the SBA create a scrutinized companies list for businesses with prohibited business operations in Cuba or Syria. It also removes the requirement that the SBA divest of investments in companies who have business relationships with Cuba or Syria.

This analysis is drafted to the committee substitute as passed by the Governmental Operations Subcommittee.