

CHAPTER 2023-111

Committee Substitute for Committee Substitute for Senate Bill No. 110

An act relating to the State Board of Administration; amending s. 121.091, F.S.; prohibiting the State Board of Administration from paying benefits to a Florida Retirement System investment plan member convicted of specified felonies; requiring the state board to return to a member contributions that were accumulated up to the date of conviction; prohibiting the state board from paying benefits until the resolution of the proceedings of any potentially disqualifying offenses; amending s. 121.4501, F.S.; authorizing the state board to develop investment products to be offered in the investment plan; revising the process for a member's spouse to acknowledge that he or she is not the primary beneficiary of the member's benefits; authorizing a member to request a waiver of such acknowledgement under certain circumstances; amending s. 215.47, F.S.; revising the types of investments in real property and related personal property which the state board may invest in; authorizing the state board and certain affiliated entities and ventures to issue securities and borrow money through specified means; authorizing the state board to use the proceeds of loans or financing obligations as loans to or sources of funding for certain entities or ventures; requiring that the ownership of an entity holding title to real property be vested in the name of the Florida Retirement System Trust Fund; revising the funds in which the state may invest no more than 80 percent of its moneys available for investments; revising the requirements of the proposed plan the state board must present to the Investment Advisory Council to invest in unauthorized investments; deleting authorization for the council to obtain independent investment counsel to provide expert advice on state board investment activity; revising the threshold for the amount that may be invested in alternative investments; amending s. 215.4725, F.S.; revising the definition of the terms "Boycott Israel" or "boycott of Israel"; requiring the public fund to notify companies it places on the Scrutinized Companies that Boycott Israel List that they may be subject to divestment; providing a timeframe for the public fund's divestment from companies that boycott Israel, and processes for the companies' reintroduction on the Scrutinized Companies that Boycott Israel List in certain circumstances; authorizing the public fund to cease its divestment from or to reinvest in certain scrutinized companies if the value of all assets under management by the public fund becomes equal to or less than a specified amount, pursuant to specified procedures; revising applicability; reenacting ss. 112.661(5)(a), 420.503(3)(a), and 1002.36(4)(e), F.S., relating to authorized investments, the definition of the term "authorized investments," and investments made on behalf of the Florida School for the Deaf and the Blind, respectively, to incorporate the amendments made to s. 215.47, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (i) and (k) of subsection (5) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(5) TERMINATION BENEFITS.—A member whose employment is terminated prior to retirement retains membership rights to previously earned member-noncontributory service credit, and to member-contributory service credit, if the member leaves the member contributions on deposit in his or her retirement account. If a terminated member receives a refund of member contributions, such member may reinstate membership rights to the previously earned service credit represented by the refund by completing 1 year of creditable service and repaying the refunded member contributions, plus interest.

(i) The division or the state board may not pay benefits to any member convicted of a felony committed on or after October 1, 2008, defined in s. 800.04 against a victim younger than 16 years of age, or defined in chapter 794 against a victim younger than 18 years of age, through the use or attempted use of power, rights, privileges, duties, or position of the member's public office or employment position. However, the division or the state board shall return the member's accumulated contributions, if any, that the member accumulated as of the date of conviction.

(k) Benefits may shall not be paid by the division or the state board pending final resolution of such charges against a member or beneficiary if the resolution of such charges could require the forfeiture of benefits as provided in paragraph (f), paragraph (g), paragraph (h), paragraph (i), ~~or~~ paragraph (j), or chapter 112.

Section 2. Paragraph (b) of subsection (20) of section 121.4501, Florida Statutes, is amended, and paragraph (h) is added to subsection (8) of that section, to read:

121.4501 Florida Retirement System Investment Plan.—

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state

board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, may not be required of a member at the time of enrollment. Acknowledgment of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election. The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(h) The state board may, consistent with its fiduciary responsibilities, develop one or more investment products to be offered in the investment plan.

(20) DESIGNATION OF BENEFICIARIES.—

(b) If a member is married, but does not designate his or her spouse as designates a primary beneficiary, the spouse must be notified and acknowledge that he or she has not been so designated. Notwithstanding the foregoing, if the spouse cannot be located or fails to affirmatively acknowledge that he or she has not been so designated, the member may request that the acknowledgement requirement be waived by the state board by submitting an affidavit setting forth the particular facts and circumstances other than the member's spouse, the member's spouse must sign the beneficiary designation form to acknowledge the designation. This requirement does not apply to the designation of one or more contingent beneficiaries to receive benefits remaining upon the death of the primary beneficiary or beneficiaries.

Section 3. Paragraph (e) of subsection (2) and subsections (3), (6), and (15) of section 215.47, Florida Statutes, are amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(2) With no more than 25 percent of any fund in:

(e) Certain interests in real property and related personal property which may be owned through affiliated limited liability entities or joint ventures, which include, but are not limited to, including mortgages and related instruments secured by on-commercial or industrial real property, and instruments containing with provisions for equity or income participation or with provisions for convertibility to equity ownership; and interests in real property-related collective investment funds. The State Board of

Administration and its affiliated limited liability entities or joint ventures may issue securities and borrow money through loans or other financial obligations, including bonds, equity securities, and other security instruments, any of which may be unsecured or secured by investments in real property or related cash flows, guaranteed by the related fund, or governed by financial covenants. The proceeds of such loans or financing obligations may be loaned to or otherwise used as a source of funding for affiliated limited liability entities or joint ventures. Associated expenditures for acquisition and operation of assets purchased under this provision or of investments in private equity or other private investment partnerships or limited liability companies must shall be included as a part of the cost of the investment.

1. The title to real property, or ownership of the entity holding title to real property, acquired under this paragraph shall be vested in the name of the respective fund.

2. For purposes of taxation of property owned by any fund, the provisions of s. 196.199(2)(b) do not apply.

3. Real property acquired under ~~the provisions of this paragraph~~ may ~~shall~~ not be considered state lands or public lands and property as defined in chapter 253, and ~~the provisions of that chapter~~ does ~~do~~ not apply to such real property.

(3) With no more than 80 percent of any fund in equity securities or securities convertible into equity securities of any entity common stock, preferred stock, and interest-bearing obligations of a corporation having an option to convert into common stock, provided that all of the following apply:

(a) That the entity is either:

1. The corporation is Organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia; or

2. (b) ~~The corporation is~~ Listed on any one or more of the recognized national stock exchanges in the United States and conforms with the periodic reporting requirements under the Securities Exchange Act of 1934.

(b)(e) Not more than 75 percent of the fund may be in internally managed equity securities ~~common stock~~.

The board may ~~shall~~ not invest more than 10 percent of the equity assets of any fund in the equity securities ~~common stock, preferred stock, and interest-bearing obligations having an option to convert into common stock,~~ of any one issuing entity ~~corporation~~; and the board may ~~shall~~ not invest more than 3 percent of the equity assets of any fund in such securities of any one issuing entity ~~corporation~~ except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, at least as broad as the Standard and Poor's Composite Index

of 500 Companies, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.

(6) With no more than 5 percent of any fund to be invested as deemed appropriate by the board, notwithstanding investment limitations otherwise expressed in this section. ~~Before~~ Prior to the board ~~engages~~ engaging in any investment activity not otherwise authorized under ss. 215.44-215.53, excluding investments in publicly traded securities, options, financial futures, or similar instruments, the board shall present to the Investment Advisory Council a proposed plan for such investment. ~~Such Said~~ plan must ~~shall include, but not be limited to, a detailed analysis of the investment, the expected benefits and potential risks of such activity, and the;~~ methods for monitoring and measuring the performance of the investment; ~~a complete description of the type, nature, extent and purpose of the investment, including description of issuer, security in which investment is proposed to be made, voting rights or lack thereof and control to be acquired, restrictions upon voting, transfer, and other material rights of ownership, and the existence of any contracts, arrangements, understandings, or relationships with any person or entity (naming the same) with respect to the proposed investment; and assurances that sufficient investment expertise is available to the board to properly evaluate and manage such activity. The Investment Advisory Council may obtain independent investment counsel to provide expert advice with regard to such proposed investment activity by the board, and the board shall defray such costs.~~

(15) With no more, in the aggregate, than ~~30~~ 20 percent of any fund in alternative investments through participation in an alternative investment vehicle as those terms are defined in s. 215.4401(3)(a), or in securities or investments that are not publicly traded and not otherwise authorized by this section.

Section 4. Section 215.4725, Florida Statutes, is amended to read:

215.4725 Prohibited investments by the State Board of Administration; companies that boycott Israel.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Boycott Israel” or “boycott of Israel” means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term includes taking adverse action, including changes to published commercial financial ratings, risk ratings, and controversy ratings based on nonpecuniary factors, to inflict economic harm on Israel or persons or entities doing business in Israel or in Israeli-

controlled territories. The term includes trade practices that are prohibited by federal regulations issued in compliance with 50 U.S.C. s. 4842 and does not include trade practices that are preempted by federal law ~~The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.~~

(b) “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.

(c) “Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(d) “Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the public fund owns shares or interests, together with other investors not subject to this section or which are held in an index fund.

(e) “Public fund” means all funds, assets, trustee, and other designates under the State Board of Administration pursuant to part I of chapter 121.

(f) “Scrutinized companies” means companies that boycott Israel or engage in a boycott of Israel.

(2) IDENTIFICATION OF COMPANIES.—

(a) The public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. To the extent that the public fund finds it appropriate, reviewing and relying on publicly available information regarding companies that boycott Israel, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund for information regarding companies that boycott Israel; or

3. Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

(b) By the first meeting of the public fund following the identification of scrutinized companies in accordance with paragraph (a), the public fund shall compile and make available the “Scrutinized Companies that Boycott Israel List.”

(c) The public fund shall update and make publicly available quarterly the Scrutinized Companies that Boycott Israel List based on evolving information from, among other sources, those listed in paragraph (a).

(3) REQUIRED ACTIONS.—The public fund shall adhere to the following procedures for assembling companies on the Scrutinized Companies that Boycott Israel List.

(a) *Engagement.*—

1. The public fund shall immediately determine the companies on the Scrutinized Companies that Boycott Israel List in which the public fund owns direct or indirect holdings.

2. For each company newly identified under this paragraph, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to investment prohibition or divestment by the public fund. The notice must inform the company of the opportunity to clarify its activities regarding the boycott of Israel and encourage the company to cease the boycott of Israel within 90 days in order to avoid qualifying for investment prohibition or divestment.

3. If, within 90 days after the public fund's first engagement with a company pursuant to this paragraph, the company ceases a boycott of Israel, the company shall be removed from the Scrutinized Companies that Boycott Israel List, and the provisions of this section shall cease to apply to that company unless that company resumes a boycott of Israel.

(b) *Divestment.*—

1. If, after 90 days following the public fund's first engagement with a company pursuant to paragraph (a), the company continues to boycott Israel, the public fund must sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund within 12 months after the company's most recent appearance on the Scrutinized Companies that Boycott Israel List.

2. If a company that ceased a boycott of Israel following engagement pursuant to paragraph (a) resumes such activities, this paragraph immediately applies, and the public fund must send a written notice to the company. The company must also be immediately reintroduced onto the Scrutinized Companies that Boycott Israel List, as applicable.

~~(c)(b)~~ *Prohibition.*—The public fund is prohibited from acquiring ~~may not acquire~~ securities of companies on the Scrutinized Companies that Boycott Israel List, except as provided in paragraph (d) ~~(e)~~ and subsection (6).

~~(d)(e)~~ *Excluded securities.*—~~Notwithstanding the provisions of this section, paragraphs (b) and (c) do~~ paragraph (b) does not apply to:

1. Indirect holdings. However, the public fund shall submit letters to the managers of such investment funds containing companies that boycott Israel requesting that they consider removing such companies from the fund or create a similar fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, an alternative investment, as the term is defined in s. 215.4401, and securities that are not publicly traded are deemed to be indirect holdings.

2. Exchange-traded funds.

(4) REPORTING.—

(a) The public fund shall file a report with each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives which includes the Scrutinized Companies that Boycott Israel List within 30 days after the list is created. This report shall be made available to the public.

(b) At each quarterly meeting of the Board of Trustees thereafter, the public fund shall file a report, which shall be made available to the public and to each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives, which includes:

1. A summary of correspondence with companies engaged by the public fund under subsection (3) subparagraph (3)(a)2;

2. All investments sold, redeemed, divested, or withdrawn in compliance with paragraph (3)(b);

3. All prohibited investments under paragraph ~~(3)(c)(3)(b)~~;

~~4.3.~~ Any progress made under paragraph ~~(3)(d)(3)(e)~~; and

~~5.4.~~ A list of all publicly traded securities held directly by the public fund.

(5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public fund's actions taken in compliance with this section, including all good faith determinations regarding companies as required by this act, shall be adopted and incorporated into the public fund's investment policy statement as provided in s. 215.475.

(6) INVESTMENT AND REINVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—Notwithstanding any other provision of this section, the public fund may invest in, ~~cease divestment from, or reinvest in~~ certain scrutinized companies if clear and convincing evidence shows that the value of all assets under management by the public fund becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets

under management by the public fund, assuming no investment prohibition or divestment for any company had occurred under subsection (3) paragraph (3)(b). Cessation of the investment prohibition or the divestment, or reinvestment or ~~and~~ any new investment, in a scrutinized company is limited to the minimum steps necessary to avoid the contingency described in this subsection. For any cessation of the investment prohibition or divestment, or reinvestment or ~~and~~ new investment authorized by this subsection, the public fund shall provide a written report to each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives in advance of the cessation of investment prohibition or the divestment, or reinvestment or new investment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease the investment prohibition or divestment, or to reinvest in scrutinized companies.

Section 5. For the purpose of incorporating the amendments made by this act to section 215.47, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section 112.661, Florida Statutes, is reenacted to read:

112.661 Investment policies.—Investment of the assets of any local retirement system or plan must be consistent with a written investment policy adopted by the board. Such policies shall be structured to maximize the financial return to the retirement system or plan consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets.

(5) AUTHORIZED INVESTMENTS.—

(a) The investment policy shall list investments authorized by the board. Investments not listed in the investment policy are prohibited. Unless otherwise authorized by law or ordinance, the investment of the assets of any local retirement system or plan covered by this part shall be subject to the limitations and conditions set forth in s. 215.47(1)-(6), (8), (9), (11) and (17).

Section 6. For the purpose of incorporating the amendments made by this act to section 215.47, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 420.503, Florida Statutes, is reenacted to read:

420.503 Definitions.—As used in this part, the term:

(3) "Authorized investments" means any of the following securities:

(a) Investments permitted under s. 215.47(1) and (2), without regard to any limitation set forth therein.

Section 7. For the purpose of incorporating the amendments made by this act to section 215.47, Florida Statutes, in a reference thereto, paragraph (e) of subsection (4) of section 1002.36, Florida Statutes, is reenacted to read:

1002.36 Florida School for the Deaf and the Blind.—

(4) BOARD OF TRUSTEES.—

(e) The board of trustees is invested with full power and authority to:

1. Appoint a president, faculty, teachers, and other employees and remove the same as in its judgment may be best and fix their compensation.

2. Procure professional services, such as medical, mental health, architectural, and engineering.

3. Procure legal services without the prior written approval of the Attorney General.

4. Determine eligibility of students and procedure for admission.

5. Provide for the students of the school necessary bedding, clothing, food, and medical attendance and such other things as may be proper for the health and comfort of the students without cost to their parents, except that the board of trustees may set tuition and other fees for nonresidents.

6. Provide for the proper keeping of accounts and records and for budgeting of funds.

7. Enter into contracts.

8. Sue and be sued.

9. Secure public liability insurance.

10. Do and perform every other matter or thing requisite to the proper management, maintenance, support, and control of the school at the highest efficiency economically possible, the board of trustees taking into consideration the purposes of the establishment.

11. Receive gifts, donations, and bequests of money or property, real or personal, tangible or intangible, from any person, firm, corporation, or other legal entity. However, the board of trustees may not obligate the state to any expenditure or policy that is not specifically authorized by law. If the bill of sale, will, trust indenture, deed, or other legal conveyance specifies terms and conditions concerning the use of such money or property, the board of trustees shall observe such terms and conditions.

12. Deposit outside the State Treasury such moneys as are received as gifts, donations, or bequests and may disburse and expend such moneys, upon its own warrant, for the use and benefit of the Florida School for the Deaf and the Blind and its students, as the board of trustees deems to be in the best interest of the school and its students. Such money or property does not constitute and may not be considered a part of any legislative appropriation.

13. Sell or convey by bill of sale, deed, or other legal instrument any property, real or personal, received as a gift, donation, or bequest, upon such terms and conditions as the board of trustees deems to be in the best interest of the school and its students.

14. Invest such moneys in securities enumerated under s. 215.47(1), (2)(c), (3), (4), and (10), and in The Common Fund, an Investment Management Fund exclusively for nonprofit educational institutions.

15. After receiving approval from the Administration Commission, exercise the power of eminent domain in the manner provided in chapter 73 or chapter 74.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor May 24, 2023.

Filed in Office Secretary of State May 24, 2023.