

ENROLLED

2023 Legislature

CS for CS for SB 110, 1st Engrossed

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1
2 An act relating to the State Board of Administration;
3 amending s. 121.091, F.S.; prohibiting the State Board
4 of Administration from paying benefits to a Florida
5 Retirement System investment plan member convicted of
6 specified felonies; requiring the state board to
7 return to a member contributions that were accumulated
8 up to the date of conviction; prohibiting the state
9 board from paying benefits until the resolution of the
10 proceedings of any potentially disqualifying offenses;
11 amending s. 121.4501, F.S.; authorizing the state
12 board to develop investment products to be offered in
13 the investment plan; revising the process for a
14 member's spouse to acknowledge that he or she is not
15 the primary beneficiary of the member's benefits;
16 authorizing a member to request a waiver of such
17 acknowledgement under certain circumstances; amending
18 s. 215.47, F.S.; revising the types of investments in
19 real property and related personal property which the
20 state board may invest in; authorizing the state board
21 and certain affiliated entities and ventures to issue
22 securities and borrow money through specified means;
23 authorizing the state board to use the proceeds of
24 loans or financing obligations as loans to or sources
25 of funding for certain entities or ventures; requiring
26 that the ownership of an entity holding title to real
27 property be vested in the name of the Florida
28 Retirement System Trust Fund; revising the funds in
29 which the state may invest no more than 80 percent of
30 its moneys available for investments; revising the
31 requirements of the proposed plan the state board must
32 present to the Investment Advisory Council to invest
33 in unauthorized investments; deleting authorization
34 for the council to obtain independent investment
35 counsel to provide expert advice on state board
36 investment activity; revising the threshold for the
37 amount that may be invested in alternative
38 investments; amending s. 215.4725, F.S.; revising the
39 definition of the terms "Boycott Israel" or "boycott
40 of Israel"; requiring the public fund to notify
41 companies it places on the Scrutinized Companies that
42 Boycott Israel List that they may be subject to
43 divestment; providing a timeframe for the public
44 fund's divestment from companies that boycott Israel,

45 and processes for the companies' reintroduction on the
46 Scrutinized Companies that Boycott Israel List in
47 certain circumstances; authorizing the public fund to
48 cease its divestment from or to reinvest in certain
49 scrutinized companies if the value of all assets under
50 management by the public fund becomes equal to or less
51 than a specified amount, pursuant to specified
52 procedures; revising applicability; reenacting ss.
53 112.661(5)(a), 420.503(3)(a), and 1002.36(4)(e), F.S.,
54 relating to authorized investments, the definition of
55 the term "authorized investments," and investments
56 made on behalf of the Florida School for the Deaf and
57 the Blind, respectively, to incorporate the amendments
58 made to s. 215.47, F.S., in references thereto;
59 providing an effective date.

60

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

62

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

65 121.091 Benefits payable under the system.—Benefits may not
66 be paid under this section unless the member has terminated
67 employment as provided in s. 121.021(39)(a) or begun
68 participation in the Deferred Retirement Option Program as
69 provided in subsection (13), and a proper application has been
70 filed in the manner prescribed by the department. The department
71 may cancel an application for retirement benefits when the
72 member or beneficiary fails to timely provide the information
73 and documents required by this chapter and the department's
74 rules. The department shall adopt rules establishing procedures
75 for application for retirement benefits and for the cancellation
76 of such application when the required information or documents
77 are not received.

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

88 (i) The division or the state board may not pay benefits to
89 any member convicted of a felony committed on or after October
90 1, 2008, defined in s. 800.04 against a victim younger than 16
91 years of age, or defined in chapter 794 against a victim younger
92 than 18 years of age, through the use or attempted use of power,
93 rights, privileges, duties, or position of the member's public
94 office or employment position. However, the division or the
95 state board shall return the member's accumulated contributions,
96 if any, that the member accumulated as of the date of
97 conviction.

98 (k) Benefits ~~may shall~~ not be paid by the division or the

99 state board pending final resolution of such charges against a
100 member or beneficiary if the resolution of such charges could
101 require the forfeiture of benefits as provided in paragraph (f),
102 paragraph (g), paragraph (h), paragraph (i), ~~or~~ paragraph (j).
103 or chapter 112.

104 Section 2. Paragraph (b) of subsection (20) of section
105 121.4501, Florida Statutes, is amended, and paragraph (h) is
106 added to subsection (8) of that section, to read:

107 121.4501 Florida Retirement System Investment Plan.—

108 (8) INVESTMENT PLAN ADMINISTRATION.—The investment plan
109 shall be administered by the state board and affected employers.
110 The state board may require oaths, by affidavit or otherwise,
111 and acknowledgments from persons in connection with the
112 administration of its statutory duties and responsibilities for
113 the investment plan. An oath, by affidavit or otherwise, may not
114 be required of a member at the time of enrollment.
115 Acknowledgment of an employee's election to participate in the
116 program shall be no greater than necessary to confirm the
117 employee's election. The state board shall adopt rules to carry
118 out its statutory duties with respect to administering the
119 investment plan, including establishing the roles and
120 responsibilities of affected state, local government, and
121 education-related employers, the state board, the department,
122 and third-party contractors. The department shall adopt rules
123 necessary to administer the investment plan in coordination with
124 the pension plan and the disability benefits available under the
125 investment plan.

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

129 (20) DESIGNATION OF BENEFICIARIES.—

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

144 Section 3. Paragraph (e) of subsection (2) and subsections
145 (3), (6), and (15) of section 215.47, Florida Statutes, are
146 amended to read:

147 215.47 Investments; authorized securities; loan of
148 securities.—Subject to the limitations and conditions of the
149 State Constitution or of the trust agreement relating to a trust
150 fund, moneys available for investments under ss. 215.44-215.53
151 may be invested as follows:

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

153 (e) Certain interests in real property and related personal
154 property which may be owned through affiliated limited liability
155 entities or joint ventures, which include, but are not limited
156 to, including mortgages and related instruments secured by on
157 commercial or industrial real property, and instruments
158 containing with provisions for equity or income participation or
159 with provisions for convertibility to equity ownership; and
160 interests in real property-related collective investment funds.
161 The State Board of Administration and its affiliated limited
162 liability entities or joint ventures may issue securities and
163 borrow money through loans or other financial obligations,
164 including bonds, equity securities, and other security
165 instruments, any of which may be unsecured or secured by
166 investments in real property or related cash flows, guaranteed
167 by the related fund, or governed by financial covenants. The
168 proceeds of such loans or financing obligations may be loaned to
169 or otherwise used as a source of funding for affiliated limited
170 liability entities or joint ventures. Associated expenditures
171 for acquisition and operation of assets purchased under this
172 provision or of investments in private equity or other private
173 investment partnerships or limited liability companies must
174 shall be included as a part of the cost of the investment.

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

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

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

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

189 (a) That the entity is either:

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

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

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

199
200 The board may shall not invest more than 10 percent of the
201 equity assets of any fund in the equity securities common stock,
202 preferred stock, and interest-bearing obligations having an
203 option to convert into common stock, of any one issuing entity
204 corporation; and the board may shall not invest more than 3
205 percent of the equity assets of any fund in such securities of
206 any one issuing entity corporation except to the extent a higher

207 percentage of the same issue is included in a nationally
208 recognized market index, based on market values, at least as
209 broad as the Standard and Poor's Composite Index of 500
210 Companies, or except upon a specific finding by the board that
211 such higher percentage is in the best interest of the fund.

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

237 (15) With no more, in the aggregate, than ~~30~~ 20 percent of
238 any fund in alternative investments through participation in an
239 alternative investment vehicle as those terms are defined in s.
240 215.4401(3)(a), or in securities or investments that are not
241 publicly traded and not otherwise authorized by this section.

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

244 215.4725 Prohibited investments by the State Board of
245 Administration; companies that boycott Israel.—

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

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

261 persons or entities doing business in Israel or in Israeli
262 controlled territories. The term includes trade practices that
263 are prohibited by federal regulations issued in compliance with
264 50 U.S.C. s. 4842 and does not include trade practices that are
265 preempted by federal law ~~The term does not include restrictive~~
266 ~~trade practices or boycotts fostered or imposed by foreign~~
267 ~~countries against Israel.~~

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

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

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

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

287 (f) "Scrutinized companies" means companies that boycott
288 Israel or engage in a boycott of Israel.

289 (2) IDENTIFICATION OF COMPANIES.—

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

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

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

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

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

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

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

315 (a) *Engagement.*—

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

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

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

334 (b) *Divestment.*—

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

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

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

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

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

367 2. Exchange-traded funds.

368 (4) REPORTING.—

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

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

- 381 1. A summary of correspondence with companies engaged by
382 the public fund under subsection (3) subparagraph (a)2-;
- 383 2. All investments sold, redeemed, divested, or withdrawn
384 in compliance with paragraph (3)(b);
- 385 3. All prohibited investments under paragraph (3)(c)(3)(b);
386 4.3- Any progress made under paragraph (3)(d)(3)(e); and
387 5.4- A list of all publicly traded securities held directly
388 by the public fund.

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

394 (6) INVESTMENT AND REINVESTMENT IN CERTAIN SCRUTINIZED
395 COMPANIES.—Notwithstanding any other provision of this section,
396 the public fund may invest in, cease divestment from, or
397 reinvest in certain scrutinized companies if clear and
398 convincing evidence shows that the value of all assets under
399 management by the public fund becomes equal to or less than
400 99.50 percent, or 50 basis points, of the hypothetical value of
401 all assets under management by the public fund, assuming no
402 investment prohibition or divestment for any company had
403 occurred under subsection (3) paragraph (3)(b). Cessation of the
404 investment prohibition or the divestment, or reinvestment or and
405 any new investment, in a scrutinized company is limited to the
406 minimum steps necessary to avoid the contingency described in
407 this subsection. For any cessation of the investment prohibition
408 or divestment, or reinvestment or and new investment authorized
409 by this subsection, the public fund shall provide a written
410 report to each member of the Board of Trustees of the State
411 Board of Administration, the President of the Senate, and the
412 Speaker of the House of Representatives in advance of the
413 cessation of investment prohibition or the divestment, or
414 reinvestment or new investment, updated semiannually thereafter
415 as applicable, setting forth the reasons and justification,
416 supported by clear and convincing evidence, for its decisions to
417 cease the investment prohibition or divestment, or to reinvest
418 in scrutinized companies.

419 Section 5. For the purpose of incorporating the amendments
420 made by this act to section 215.47, Florida Statutes, in a
421 reference thereto, paragraph (a) of subsection (5) of section
422 112.661, Florida Statutes, is reenacted to read:

423 112.661 Investment policies.—Investment of the assets of
424 any local retirement system or plan must be consistent with a
425 written investment policy adopted by the board. Such policies
426 shall be structured to maximize the financial return to the
427 retirement system or plan consistent with the risks incumbent in
428 each investment and shall be structured to establish and
429 maintain an appropriate diversification of the retirement system
430 or plan’s assets.

431 (5) AUTHORIZED INVESTMENTS.—

432 (a) The investment policy shall list investments authorized
433 by the board. Investments not listed in the investment policy
434 are prohibited. Unless otherwise authorized by law or ordinance,
435 the investment of the assets of any local retirement system or
436 plan covered by this part shall be subject to the limitations
437 and conditions set forth in s. 215.47(1)-(6), (8), (9), (11) and
438 (17).

439 Section 6. For the purpose of incorporating the amendments
440 made by this act to section 215.47, Florida Statutes, in a
441 reference thereto, paragraph (a) of subsection (3) of section
442 420.503, Florida Statutes, is reenacted to read:

443 420.503 Definitions.—As used in this part, the term:

444 (3) “Authorized investments” means any of the following
445 securities:

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

448 Section 7. For the purpose of incorporating the amendments
449 made by this act to section 215.47, Florida Statutes, in a
450 reference thereto, paragraph (e) of subsection (4) of section
451 1002.36, Florida Statutes, is reenacted to read:

452 1002.36 Florida School for the Deaf and the Blind.—

453 (4) BOARD OF TRUSTEES.—

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

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

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

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

463 4. Determine eligibility of students and procedure for
464 admission.

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

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

472 7. Enter into contracts.

473 8. Sue and be sued.

474 9. Secure public liability insurance.

475 10. Do and perform every other matter or thing requisite to
476 the proper management, maintenance, support, and control of the

477 school at the highest efficiency economically possible, the
478 board of trustees taking into consideration the purposes of the
479 establishment.

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

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

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

502 14. Invest such moneys in securities enumerated under s.
503 215.47(1), (2)(c), (3), (4), and (10), and in The Common Fund,
504 an Investment Management Fund exclusively for nonprofit
505 educational institutions.

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

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