

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 3, 1998 Revised: _____

Subject: Securities Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/2 amendments</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Legislation enacted in 1996 authorized the Department of Banking and Finance to collect an additional assessment fee on an associated person (a person employed by a securities dealer or investment adviser other than clerical staff) licensed by the department. The legislation directed that money collected from this assessment be deposited in the Securities Guaranty Fund and used to pay claims filed with the department by people who suffered monetary losses as a result of actions by the GIC Government Securities, Inc. (GIC). According to the department, there were originally 1,400 investors, 200 of which are now deceased. The total amount of losses was approximately \$25 million, with 40 percent of that paid in bankruptcy proceedings. The department estimates that approximately \$6.2 - \$10.5 million in claims remain outstanding. On an annual basis, the department receives approximately \$1.7 million in additional revenues for the reimbursement of GIC investors; therefore, the estimated period of time required to pay all claims would be 4 - 6 years.

The bill amends chapter 517, F.S., to establish the Investment Fraud Restoration Financing Corporation as a nonprofit public benefit corporation. (This corporation is modeled on the Inland Protection Financing Corporation that was created in 1996 to finance the rehabilitation of petroleum contamination sites). This corporation would satisfy all valid GIC claims filed with the department. The corporation would be authorized to "borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness." This corporation would terminate on July 1, 2021, or upon fulfillment of all its duties, whichever occurs first. The filing deadline for GIC claims would be extended from December 31, 1997, to December 31, 1998.

Assessments are not increased by the bill; but, due to the increased costs associated with the financing corporation, the department would delay reducing the amount of the assessment fee

collected from associated persons and the additional allocation of revenues from assessments to the Fund only at such time when all valid GIC claims had been paid as required by current law, and also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

This bill has an estimated, negative fiscal impact on the Securities Guaranty Fund, for fiscal year 1998-1999, in the range of \$221,270 to \$367,796.

This bill substantially amends the following sections of the Florida Statutes: 517.12, 517.1203, and 517.131, and creates section 517.1204.

II. Present Situation:

Pursuant to chapter 517, F.S., the Department of Banking and Finance is responsible for the regulation and registration of broker dealers, associated persons, branch offices, and investment advisors and the registration of securities.

Section 517.12, F.S., sets forth the requirements for the registration of associated persons, dealers, investment advisors, and branch offices in Florida, prior to offering to sell securities in Florida. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment advisor is typically a person who engages in the business of advising others as to the advisability of investments in securities. Currently, the definition of investment adviser, as set forth in s. 517.021, F.S., exempts a licensed attorney or certified public accountant who renders or performs investment advice in connection with the regular practice of the respective profession. Therefore, these individuals need not obtain licensure as an investment adviser.

Section 517.131, F.S., establishes the Securities Guaranty Fund (Fund), provides for its funding, and provides for the disbursement of funds to individuals. The Fund was established to pay individuals who have received a judgment for monetary damages caused by the acts of a dealer, investment adviser, or associated person. The individual must have unsuccessfully attempted to collect the amount of judgment, that is, the individual who makes a claim against the Fund must still be owed money in connection with the judgment.

In 1996, s. 517.131(1), F.S. (ch. 96-38, L.O.F.) was amended to revise the amount of assessment fees which are deposited into the Fund to 20 percent for all dealers and investment advisers, and 10 percent of all assessment fees collected from associated persons. The maximum balance in the Fund at which the collection of the assessment fee would cease being deposited into the Fund was increased from \$250,000 to \$1,500,000. In addition, the department is authorized to allocate an additional 3.5 percent of all revenues received as assessments on associated persons to the Fund for payment of GIC claims.

Prior to the enactment of legislation in 1996, under the provisions of s. 517.141, F.S., the maximum an individual claimant was authorized to receive from the Fund was capped at \$10,000

and the aggregate amount all claimants were authorized to receive from the Fund was \$100,000 (if the amount claimed was greater than \$100,000, the amount per claimant would be prorated). For example, if the claimant received a judgment against an associated person for \$100,000, and was only able to collect \$50,000 from the associated person, this would leave a \$50,000 difference that the claimant could file for reimbursement from the Fund. However, the claimant would only be eligible to receive up to \$10,000, assuming the claimant qualified under the statutory provisions and the number of other claimants did not exceed nine.

The 1996 legislation, effective October 1, 1996, increased the assessment on associated persons from \$30 to \$40 in 1996 to fund payments, in excess of the \$100,000 reimbursement cap on the Fund, to GIC claimants (and to fund additional personnel for the department). The legislation also authorized an allocation of an additional 25 percent of all assessment fee revenues from associated persons' applications and renewal fees to the Fund, under s. 517.1203, F.S. This additional collection is to be used for the payment of claims against the Fund by GIC Government Securities, Inc., investors. After the GIC claims are satisfied, the 25 percent portion will be reallocated to the Anti-fraud Trust Fund.

In 1997, s. 517.12, F.S., was amended (ch. 97-224, L.O.F.) to provide for the reduction in the amount of the assessment fee charged an "associated person" after certain conditions have been met. Also, s. 517.1203, F.S., was amended to reduce the registration fee for associated persons from \$40 to \$30, after the Department of Banking and Finance determines sufficient funds have been generated to satisfy claims of GIC investors. Persons registered as "associated persons" will pay reduced assessments in the future after all GIC claims are satisfied.

The department estimates that approximately \$6.2 to \$10.5 million in claims remain outstanding. Also, the department estimates that the assessments and additional allocations of assessments are generating only \$1.7 million per year; therefore, the projected period of time to pay all claims would be 4 to 6 years.

III. Effect of Proposed Changes:

Section 1. Amends s. 517.12(10), F.S., to provide that the assessment fee of an associated person will be reduced from \$40 to \$30 only after the department determines by final order that sufficient funds have been allocated to the Fund to satisfy all valid claims and after all amounts payable under any service contract entered into by the department pursuant to s. 517.1204, F.S., and all other forms of debt have been paid or provision for such payments have been made.

Section 2. Amends s. 517.1203, F.S., to provide that the allocation of the additional 25 percent assessment to the Fund will continue until the department determines, by final order, that sufficient funds have been allocated to the Fund to satisfy all valid claims and all service contracts and debts have been paid or provision has been made for payment. The section also authorizes the department to use the revenues derived from the additional assessment to pay amounts payable under any service contract entered into by the department, pursuant to s. 517.1204, F.S., and

subject to annual appropriation by the Legislature. The deadline for GIC investors to file claims with the department is extended retroactively from December 31, 1997, to December 31, 1998.

The department and the Investment Fraud Restoration Financing Corporation are prohibited from making payments to assignees, secured parties, lien creditors, or other such entities.

Monies deposited into the Fund, pursuant to this section, are to be used solely for the purpose of paying amounts payable by the department for claimants and service contracts entered into by the department, subject to annual appropriation by the Legislature, before making or providing for any other disbursements from the fund.

The department is authorized to adopt rules necessary to implement this section.

Section 3. Creates s. 517.1204, F.S., to create the Investment Fraud Restoration Financing Corporation as a nonprofit public benefit corporation. The purpose of this corporation would be to pay all GIC claims approved, pursuant to s. 517.1203, F.S., as determined by the department.

The corporation would be governed by a board consisting of the assistant comptroller, the Secretary of the Department of Elderly Affairs, or designee, and the Executive Director of the Department of Veterans' Affairs, or designee. The executive director of the State Board of Administration would be the chief executive officer of the corporation.

The Investment Fraud Restoration Financing Corporation would be authorized to borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness necessary to pay all valid GIC claims filed with the department. The term of any debt or obligation could not exceed 15 years. The department is authorized to enter into service contracts with the corporation for this purpose, for a period not to exceed 15 years. The obligations of the department under a service contract would not constitute a general obligation of the state and would be paid solely from the amounts available in the Fund, subject to annual appropriation.

It is the intent that this corporation would be exempt from taxation and assessments of any nature upon its income and any property, assets, or revenues acquired or used in the furtherance of the purposes provided in this chapter.

The corporation would be authorized to validate any bonds issued pursuant to this section, as provided in chapter 75, F.S. The corporation would not be deemed a special district or a unit of local government. The provisions of chapters 120 and 215, F.S., apply; except the limitation on interest rates provided in s. 215.84, F.S., and other exceptions noted.

Upon dissolution of the corporation, title to all property owned by the corporation would revert back to the Fund.

The corporation is authorized to contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation.

Section 4. Amends s. 517.131, F.S., relating to the fund, to continue the additional 3.5 percent allocation of revenues from assessments until all valid GIC claims had been paid as required by current law, but also after any contract entered into by the department with the Investment Fraud Restoration Financing Corporation had been satisfied.

Section 5. Provides the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The additional assessment and allocation of assessment revenues, authorized under current law, would continue until all valid GIC claims had been paid and all service contracts and debts of the corporation had been paid or provision for payment has been made. Due to additional costs involved in establishing the financing corporation, the associated costs of financing, and the extended period of time for filing claims, the additional assessment is likely to continue for a longer period of time, as compared to current law.

B. Private Sector Impact:

By creating the corporation and providing funding up-front through various financing arrangements and extending the deadline for filing claims, the department anticipates reimbursing a greater number of GIC investors and providing the reimbursement in a more timely manner.

C. Government Sector Impact:

According to the department, the maximum amount of claims remaining is \$14.1 million (\$25.5 million losses less the approximate \$10.2 million recovered through bankruptcy and \$1.2 million from the Fund). The total number of claims received to date by the department is \$9.8 million.

As of March 23, 1998, the department will have paid claimants an additional \$3.6 million from funds allocated for GIC claims. Therefore, the maximum amount of possible claims remaining/outstanding will be \$10.5 million (\$14.1 - \$3.6). The department estimates that the minimum amount of possible claims to be paid will be \$6.2 million (\$9.8 - \$3.6 million).

Any remaining GIC investors would have until December 31, 1998, to file a claim for reimbursement with the department. If the deadline for filing claims is retroactively extended to December 31, 1998, the department estimates that additional claims in the amount of \$1.8 million will be filed on or before that date.

The corporation will incur initial start-up costs associated with creating the corporation, legal fees associated with issuing debt or securing a loan. The department provided the following estimated recurring costs:

	FY 1998-99 Cash Impact	FY 1999-00 Cash Impact
Interest Expense:		
HIGH (interest on a \$10.5 million loan at a rate of 5%, for 5 years + first year origination fee of 1% of loan amount or \$105,000.)	\$357,796.35	\$434,053.07
MIDDLE (interest on a \$8 million loan at a rate of 5%, for 5 years + first year origination fee of 1% of loan amount or 80,000.)	\$272,606.74	\$330,707.10
LOW (interest on a \$6.2 million loan at a rate of 5%, for 5 years + first year origination fee of 1% of loan amount or \$62,000.)	\$211,270.22	\$256,298.01
Administrative Costs	\$10,000	\$10,000

Section 215.18, F.S. permits an interest-free transfer of funds from one account to another in the State Treasury when there is a deficiency in a fund. The temporary transfer must be approved by the Administration Commission and have the concurrence of the Governor. Monies so transferred must be repaid by the end of the same fiscal year. Use of this statute would extend the assumed payout period from one to three years based upon the revenue

flow from the dealer fees but would avoid the payment of interest and fees, as noted above. This alternative would obviate the need for the creation of the corporation altogether since that entity would not have the need to issue bonds, a process which itself would take about one year to implement and which would be accompanied by underwriting and interest expenses several times in excess of that experienced on a commercial loan.

The most recent interest-free loan was executed by the Governor's Office of Office of Planning and Budgeting to provide more than \$50 million to alleviate significant cash flow problems in the State Employees Group Health Insurance Plan. The loan must be repaid by June 30, 1998.

On February 7, 1997 the Division of Bond Finance prepared a prototype cost estimate on the issuance of bonds for the payment of the claims contemplated under this bill. It assumed three different debt service requirements at maturities of five, ten, and twenty years along three different debt service coverage ratios in order to assure investment-grade obligations. The estimated costs of borrowing¹ spanned three ranges from \$ 756,787 - \$9,083,011; \$907,030 - \$10,905,750; and \$566,285 - \$6,811,320. Each range assumed a different amount of principal issuance and included insurance sufficient to generate a AAA rating.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the corporation will be exempt from all taxes and assessments; however, the Internal Revenue Service would be ultimately responsible for making such a determination for federal tax purposes.

VIII. Amendments:

#1 by Banking and Insurance:

Deletes rulemaking authority, relating to the corporation, for the department. (WITH TITLE AMENDMENT)

#2 by Banking and Insurance:

Authorizes the Auditor General to conduct a financial audit of the accounts and records of the corporation. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹Inclusive of interest and the costs of issuance.