Commissioner Russell C. Weigel, III

THE INVEST LOCAL ACT
SB 180 / HB 253

Description of the Invest Local Act

This proposed bill represents the first set of major changes to Florida's securities laws in many years. This proposed bill:

1. Improves the capacity of Florida-based companies to raise money in Florida by providing for:
    - a safe harbor for demo day and pitch events from dealer registration requirements,
    - a workable Accredited Investor exemption,
    - a pre-offering exemption for testing the waters for potential investor interest,
    - a tier II dealer registration option for capital connectors,
    - the elimination of issuer-dealer registration requirements,
    - the adoption of certain entrepreneur-friendly SEC initiatives such as an increase in the cap of crowdfunding offerings and the elimination of the offering integration rule.
2. Clarifies and improves numerous provisions that are outdated or inconsistent with applicable federal securities statutes and provides for enhanced enforcement capabilities for the OFR.

(A) Incubator Safe Harbor and Small Company Capital Access

1. Creates new "Pre-Offering Communications" exemption applicable to all offerings (s. 517.065)

(1) **Limited "Demo Day" Solicitation**: Although the limited offering exemption prohibits "any form of general solicitation or general advertising in this state," the proposed bill allows for issuers to participate in "demo day" presentations in accordance with the provisions of recently adopted SEC Rule 148. The presentations can only be at meetings sponsored by certain limited organizations, such as universities, state or local instrumentalities, defined business incubators, or defined angel investor groups, must involve more than one issuer, issuer communications are strictly limited, and there can be no investment recommendations, advice, negotiations, or commitments. The ability to engage in this limited form of public disclosure is important for smaller companies and start-ups trying to attract potential investors. Likewise, the safe harbor protects the promotors of small company showcasing events – the business incubators and

accelerators -- from being required to register as dealers, provided the safe harbor restrictions are followed.

(2) **"Testing the Waters**" The proposed bill allows issuers to "test the waters" by engaging in pre-offering oral or written communications with prospective investors to determine whether there is any interest in a contemplated securities offering. The ability to determine in advance the likelihood of investor reaction to a contemplated offering can save a company from the considerable time and expense of an unsuccessful offering.

2. Updating of the Crowdfunding Exemption (s. 517.0611)

(1) **Expands companies eligible to use the crowdfunding exemption.** Businesses headquartered in Florida but incorporated or organized in another state can raise capital under this exemption if they conduct an offering in compliance with SEC Rule 147A.
(2) **Increases the amount a company can raise** under the exemption within a 12-month period from $1 million to $5 million. The SEC recently amended its crowdfunding exemption to allow for a $5 million maximum amount.

3. Amendments to the Limited Offering Exemption (s. 517.061)

(1) **Elimination of Integration Rule:** The provisions relating to the integration of the offering with other offerings have been eliminated. Instead, the proposed bill provides that the Commission will adopt by rule new provisions that are in substantial compliance with recently adopted SEC Rule 152. Rule 152 significantly reduces the threat to companies, especially smaller ones that have continuing and sporadic needs for capital, that multiple offerings will be integrated as one, with the result that otherwise distinct valid exempt offerings will be deemed in violation of the registration provisions.

(2) **Adoption of an Accredited Investor Exemption (s. 517.061(23)):** The proposed bill adopts the Accredited Investor exemption developed by the North American Securities Administrators Association (NASAA). It is limited to accredited investors residing in the state. Many companies raise capital through SEC Rule 506(b), the federal private offering exemption that preempts state law and prohibits any form of general advertising or solicitation. This can hinder a small company's capacity to find accredited investors. By allowing general solicitation and advertising, the state accredited investor exemption is similar to SEC Rule 506(c), which also allows for general advertising and solicitation, but the proposed state rule uses the less onerous reasonable-belief-of-accredited-status standard found in Rule 506(b). The Accredited Investor exemption may therefore prove very useful for local companies who need to engage in some general advertising or solicitation in order to attract potential investors.

Adoption of the Accredited Investor exemption also allows both Florida and out-of-state issuers that wish to take advantage of the SEC Rule 504 federal exemption to

offer securities to Florida residents under the Accredited Investor exemption without the need to register the offering in Florida.

4. Tier II Dealer Registration (Capital Connectors) (ss. 517.12(1), 517.1217(2)-(3))

Capital connectors are compensated by issuers for introducing or referring potential investors to issuers. Such activity requires registration as a dealer with the OFR. However, very few capital connectors register as dealers either because they do not realize that their limited activities require registration or because the regulatory burdens and costs associated with registration are too great. The proposed bill allows capital connectors to elect Tier II dealer registration which is appropriate for their limited activity and is a less costly and burdensome dealer registration than traditional, Tier I, dealer registration. While less costly and burdensome, Tier II dealer registration nevertheless requires that an applicant pass a background check and make disclosures to ensure investor protection.

(B) <u>Definition Amendments (s. 517.021) and Miscellaneous Additional Changes</u>

1. The proposed bill adds several new terms to the definitions section and clarifies existing definitions.

2. The proposed bill contains numerous other changes to Ch. 517 that are less substantial but also salutary. Among such changes are:

(1) Reduction from 15 to 6 in the number of clients a person can have without having to register as an investment adviser. This conforms to the National Securities Markets Improvement Act, which preempts state regulation in certain respects.
(2) Elimination of "issuer" from the definition of "dealer," an unusual and unnecessary registration requirement.
(3) Inclusion of references to limited liability companies and managers in various registration and disclosure provisions.
(4) Elimination of the exemption for limited partnerships from the requirement that registered offerings be priced higher than $5 per share.
(5) Adoption of NASAA's continuing education (CE) requirement for investment adviser representatives (IARs). IARs must complete six credits of regulatory and ethics content and six credits of compliance and practice content.
(6) Enforcement Provisions:

Control Person Liability (s. 517.191(4)) Authorizes the OFR to bring enforcement actions against control persons for violations by controlled persons unless the control person acted in good faith and did not directly or indirectly induce the acts that violated the statute.

Aiding and Abetting Liability (s. 517.191(4)) Authorizes the OFR to bring enforcement actions against any person who knowingly or recklessly provides substantial assistance to another person in violation of the statute.

Recovery of Attorney's Fees (s. 517.191(4)) Allows the OFR to recover costs and attorney fees related to the investigation or enforcement of the statute.