

## **Alert** | Financial Regulatory & Compliance



**March 2023**

### **Florida Considers Legislation That Could Impact Environmental, Social, and Corporate Governance (ESG) Initiatives of Financial Institutions**

On Feb. 20, 2023, Florida Rep. Bob Rommel (R-Naples) introduced comprehensive legislation in the Florida House of Representatives, **Florida House Bill 3** (HB 3 or the Bill), in an effort to address government and corporate activism by amending Florida statute provisions relating to: (i) deposits and investments of state money; (ii) state retirement plans and systems; (iii) state trust fund assets and public funds; (iv) state bonds; (v) state government contracts; (vi) financial institutions; (vii) consumer finance companies; (viii) money services businesses; and (ix) unfair and deceptive trade practices.

On Feb. 28, 2023, HB 3 was referred to the House Commerce Committee and State Affairs Committee, and was approved March 8, 2023, by the House Commerce Committee after the adoption of several amendments.

On Feb. 13, 2023, before HB 3 was filed, Florida Gov. Ron DeSantis (R) **announced** his support for the Bill, noting that the “comprehensive legislation [would] protect Floridians from the woke environmental, social, and corporate governance (ESG) movement that continues to proliferate throughout the financial sector.”

Over the past several years, ESG investing has gained significant momentum both in the United States and globally, being fueled by both client demand and external social and political pressures. ESG stands for “environmental, social, and governance,” which is a set of metrics used to determine whether companies are socially and environmentally conscious.

Lately, ESG has come under criticism from both sides of the political aisle and is set up to be a point of contention as we approach a general election. In the United States, several states have supported a pro-ESG stance by introducing bills or proposing guidance that encourage or require the consideration of ESG factors, particularly when it comes to the investment of state pension funds (e.g., New York, Illinois, New Jersey, Vermont, and Hawaii). Other states have introduced or passed legislation intended to prohibit state agencies and local governments responsible for investing public money from considering ESG criteria and other non-financial factors (e.g., Texas, Louisiana)

### **Florida HB 3 and Its Impact on Financial Institutions**

HB 3, as amended, would primarily affect: (i) deposits and investments of state money; (ii) state retirement plans and systems; (iii) state trust fund assets and public funds; (iv) state bonds; (v) state government contracts; (vi) state-authorized and state-chartered financial institutions; (vii) consumer finance companies; and (viii) money services businesses.

This GT Alert highlights the potential implications HB 3 could have on financial institutions including Florida state-chartered banks, foreign banks, consumer finance companies and money services businesses operating in Florida.

### **Creation of New Unsafe and Unsound Practice Standards**

As currently proposed, the text of HB 3 would amend Chapters 516 (Florida Consumer Finance Act), 560 (Money Services Business) and 655 (Financial Institutions), to require:

- A. Financial institutions including, any state-chartered bank, trust company, credit union, international bank agency, international branch, international representative office and international administrative office of a foreign bank;
- B. any money services business licensed under Part II or Part III of Chapter 560 of the Florida statutes; and
- C. any consumer finance company licensed pursuant to Chapter 516 (collectively, “Florida Financial Institutions”);

to make determinations about the provision or denial of services based on an analysis of risk factors unique to each individual current or prospective customer.

HB 3 would create new “unsafe and unsound practice” standards for these Florida Financial Institutions, to prohibit them from denying or canceling services to a person, or otherwise discriminating against a person, on the basis of:

- A. the person’s political opinions, speech, or affiliations;
- B. the person’s religious beliefs, religious exercise, or religious affiliations;

- B. any factor if it is not a quantitative, impartial, and risk-based standard, including any factor related to the person's business sector;
- C. any rating, scoring, analysis, tabulation, or action that *considers a social credit score based on factors, including (without limitation) a person's*:
  - 1. political opinions, speech, or affiliations;
  - 2. religious beliefs, religious exercise, or religious affiliations;
  - 3. lawful ownership of a firearm;
  - 4. engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
  - 5. engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
  - 6. support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking;
  - 7. engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for, any person described herein;
  - 8. failure to meet or commit to meet, or expected failure to meet, any of the following (as long as such person is in compliance with applicable state or federal law):
    - a. environmental standards, including emissions standards, benchmarks, requirements, or disclosures;
    - b. social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;
    - c. corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1117 1992; or
    - d. policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

### **Annual Attestation Requirement**

The current version of the Bill further provides that, *beginning July 1, 2023, and by July 1 of each year thereafter*, Florida Financial Institutions must attest to their compliance with the new “unsafe and unsound practice” standards of the Bill, under penalty of perjury, on a form to be prescribed by the Florida Financial Services Commission.

## Violation of Financial Institutions Codes

Failure to comply with (i) the new “unsafe and unsound practice” standards of the Bill; or (ii) the attestation requirement, as discussed above, would constitute a violation of the applicable financial institutions code, subjecting the relevant Florida Financial Institution to sanctions and penalties provided under Chapters 516 (Florida Consumer Finance Act), 560 (Money Services Business) and 655 (Financial Institutions), as applicable.

## Bill Developments and Expectations

On March 3, 2023, as part of Florida’s legislative process, Sen. Erin Grall filed Senate Bill SB 302, which is substantially similar to HB 3. SB 302 has been referred to the Senate Banking and Insurance Committee, as well as the Fiscal Policy Committee.

Both BH 3 and SB 302 are policy priorities of Gov. DeSantis, CFO Jimmy Patronis, and Speaker of the House Paul Renner. With a Republican supermajority in both chambers of the Florida legislature, it is likely these bills will pass in some form.

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