

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/HB 3 — Government and Corporate Activism

by State Affairs Committee; Commerce Committee; and Reps. Rommel, Sirois, and others
(CS/SB 302 by Banking and Insurance Committee and Senator Grall)

The bill (Chapter 2023-28, L.O.F). addresses the provision of products and services by financial institutions, the investment of certain state and local government funds, the issuance of environmental, social, and governance (ESG) bonds, and procurement of and contracting with vendors by certain state and local entities and educational institutions.

Prohibition against Engaging in Unsafe and Unsound Practices – Financial Institutions, Consumer Finance Lenders, and Money Services Businesses

The bill requires financial institutions such as banks and credit unions, consumer finance lenders, and money services businesses to make decisions about the provision or denial of services based on an analysis of risk factors unique to each customer, and prohibits them from engaging in any “unsafe and unsound practice.” The bill specifies that it is an “unsafe or unsound practice” to deny or cancel services to a person, or discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

- The person’s political opinions, speech, or affiliations.
- Except for such entities that claim a religious purpose in certain circumstances, the person’s religious beliefs, exercise, or affiliations.
- Any factor that is not a quantitative, impartial, and risk-based standard.
- The use of any rating, scoring, analysis, tabulation, or action that considers a “social credit score” based on factors, including, but not limited to:
 - The person’s political opinions, speech, or affiliations.
 - The person’s religious beliefs, religious exercise, or religious affiliations.
 - The person’s lawful ownership of a firearm.
 - The person’s engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.
 - The person’s engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.
 - The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.
 - The person’s engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described by the aforementioned factors.
 - The person’s 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:
 - Environmental standards including emissions standards, benchmarks, requirements, or disclosures.
 - Social governance standards, benchmarks, or requirements, including (but not limited to) environmental and social justice.

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- Corporate board or company employment composition standards, benchmarks, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992.
- Policies or procedures requiring or encouraging employee participation in social justice programming, including but not limited to diversity, equity, and inclusion training.

Financial institutions, consumer finance lenders, and money services businesses regulated by the Office of Financial Regulation (OFR) must annually attest that their practices comply with the applicable requirements and limitations created by the bill. Failure to timely file the attestation is deemed a knowing and willful violation of the law.

Financial institutions, consumer finance lenders, and money services businesses are subject to the following penalties and sanctions:

- Those the OFR may impose under chs. 655, 516, and 560, F.S., respectively.
- Enforcement actions identified in part II of chapter 501, F.S., the Florida Deceptive and Unfair Trade Practices Act, including civil actions brought by the Attorney General and criminal prosecution by a state attorney in the appropriate judicial circuit. Civil actions may include an injunction, an action seeking damages, or a civil penalty up to \$10,000 per violation.

The bill prohibits the OFR and the Financial Services Commission from waiving state laws in relation to unsafe and unsound business practices by state-licensed financial institutions, regardless of whether a federally chartered or regulated financial institution may engage in such unsafe and unsound practices.

Prohibition against Engaging in Unsafe and Unsound – Practice Qualified Public Depositories

The bill requires qualified public depositories (QPD) must comply with the requirements to provide services based on the risk factors unique to each customer and refrain from engaging in “unsound and unsafe practices.” Beginning July 1, 2023, banks and savings associations must certify compliance with this requirement when filing an application to be designated or re-designated as a qualified public depository QPD.

The bill provides that failure to file the required attestation is grounds for suspension or disqualification of a QPD. The bill also gives the Chief Financial Officer (CFO) authority to verify a QPD’s attestation and impose penalties if it fails to timely file the attestation. The CFO can impose an administrative penalty, issue a cease and desist order to require compliance with the law, and suspend or revoke a QPD’s qualification. The bill provides that if the CFO determines an affidavit is materially false, the CFO must report the finding to the Attorney General, who may bring a civil or administrative action against the QPD, and recover attorney fees and costs if the enforcement action is successful. The bill does not give the CFO “visitorial

powers” to inspect, examine, supervise, or regulate the affairs of federally-chartered banks or savings associations. Only the federal regulator has visitorial powers.

Government Investments to be Based Solely on Pecuniary Factors

The bill codifies and expands the program adopted by the State Board of Administration (SBA) in 2022 that requires, with limited exceptions, investments of certain state and local funds to be based solely on pecuniary factors. The term “pecuniary factor” is defined as a factor that is expected “to have a material effect on the risk or return of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.”

The expansion applies to all funds of state Treasury, all local government retirement plans, investments of local government surplus funds, and investment of funds raised by citizen support or direct-support organizations. The bill prohibits the person or entity responsible for making investment decisions from subordinating the interests of the beneficiaries to other objectives, and requires the weight given to any pecuniary factor to appropriately reflect a prudent assessment of its impact on risk or returns. Investment policies are required to be updated to incorporate these requirements. Investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan.

The bill requires state and local retirement systems to report compliance with the law on a biennial basis, beginning December 15, 2023. Local government retirement plans must report to the Department of Management Services (DMS); the SBA, on behalf of the Florida Retirement System, must report to the Governor, the Attorney General, the CFO, and the Legislature. Reports must describe governance policies and standards for the exercise of shareholder rights. DMS is directed to report incidents of noncompliance to the Attorney General, who may seek an injunction against any agency violating the reporting provisions and recover attorney fees and costs when an enforcement action is successful.

Investment managers who invest public funds on behalf of state and local government entities must include a specified disclaimer in certain external communications that discuss social, political, or ideological interests that such communication does not reflect the views or opinions of the people of the State of Florida. On or after July 1, 2023, contracts with investment managers may be unilaterally terminated for failure to provide such disclaimer.

The bill requires investment managers and investment advisors to annually certify compliance with the fiduciary standards set forth in the state’s investment policy. Failure to timely file the certification is grounds for terminating any contract with the investment advisor or manager. Submission of a materially false certification, would be subject to sanction if they fail to timely file the required certification or if they submit a certification that is materially false. If an investment manager or advisor who does not comply with the state’s fiduciary standards, the SBA must report such noncompliance to the Attorney General, who may bring a civil or

administrative action against such persons and recover attorney fees and costs when an enforcement action is successful.

Bond Financing – Prohibition against ESG Bonds

The bill provides that bond issuers are prohibited from issuing any ESG bond. An ESG bond is defined as any bond that has been designated or labeled as a bond that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives. It includes bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier.

The bill also prohibits paying for a third-party verifier that certifies or verifies that a bond may be designated or labeled as an ESG bond, renders opinions or produces a report on ESG compliance, among other ESG-related services. Issuers are also prohibited from contracting with a rating agency whose ESG scores for the issuer will have a direct, negative impact on the issuer's bond ratings.

The bill provides that notwithstanding the provisions prohibiting unsafe and unsound practices by financial institutions in s. 655.0323, F.S., a financial institution may purchase and underwrite bonds issued by a governmental entity.

The bill expressly applies to bonds issued and agreements made and contracts executed on or after July 1, 2023.

Procurement and Contracting with Vendors – No Preference Based on Vendor's Social, Political, or Ideological Interests

Beginning July 1, 2023, certain state and local government entities, and educational institutions, are prohibited from giving preference to a vendor based on the vendor's social, political, or ideological interests when procuring or contracting with them. Such entities may not request documentation relating to a vendor's social, political, or ideological interests, and any solicitation for purchases or leases must notify vendors of these provisions.

These provisions were approved by the Governor and take effect July 1, 2023.

Vote: Senate 28-12; House 80-31