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Florida Lawmakers Pass Prohibition on Issuing ESG Municipal Bonds.

The Florida Legislature has passed a bill that bans the issuance of municipal bonds using environmental, social or governance standards. The bill now heads to Gov. Ron DeSantis for his signature.

House Bill 3 passed in the Senate by a 23 to 12 vote along party lines. It was approved last month by the House in an 80 to 31 vote.

The governor's mansion and both houses of the Legislature are dominated by Republicans and the legislation is a sure bet to be signed shortly by DeSantis who has blasted ESG criteria as a "radical ideological agenda."

When introducing the bill in February, House Speaker Paul Renner, R-Palm Coast, said, "Florida's investment decisions should be based solely on financial or pecuniary factors, not political virtue signaling through radical ESG investment strategies."

The final text of the bill passed by the Senate says an issuer would be a violation of state law if it issues ESG bonds and it prohibits them from doing so.

"Notwithstanding any other provision of law relating to the issuance of bonds, it is a violation of this section and it is prohibited for any issuer to issue ESG bonds," the bill states.

It also bans an issuer from paying for a third-party verifier to certify that a bond may be designated or labeled as an ESG bond or using a rating agency whose ESG scores will harm an issuer's credit standing.

The bill states issuers can't "pay for the services of a third-party verifier related to the designation or labeling of bonds as ESG bonds, including, but not limited to, certifying or verifying that bonds may be designated or labeled as ESG bonds, rendering a second-party opinion or producing a verifier's report as to the compliance of proposed ESG bonds with applicable ESG standards and metrics, complying with post-issuance reporting obligations, or other services that are only provided due to the designation or labeling of bonds as ESG bonds."

Bonds issued before July 1 this year are not affected.

Additionally, the bill forbids issuers from entering "into a contract with any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond ratings."

Florida's general obligation bonds are gilt-edged, holding triple-A ratings from Moody's Investors Service (MCO), S&P Global Ratings and Fitch Ratings.

Neal Pandozzi, a partner at Bowditch & Dewey, in a recent Bond Buyer podcast said he was concerned about what do these various restrictions would mean.

“Potentially you’ve got less information for investors to evaluate the credit risk of an issuer,” he said. “If we’re going to see pared back ESG-related disclosure that could lead to higher interest rates or the inclusion of more onerous covenants for issuers to mitigate any perceived risk due to less fully developed information about how an issuer is addressing ESG-related issues.”

He said some of the defined terms, standards and concepts were, in his view, broadly drafted, cryptic and sufficiently sweeping to create possible compliance questions.

The bill defines ESG bonds as “any bonds that have been designated or labeled as bonds 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.

“The term includes those bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier,” the bill states.

By Chip Barnett

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