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Florida Enacts Anti-ESG Legislation - House Bill 3 Explained: Akin Gump

On May 2, 2023, Gov. Ron DeSantis (R-FL) signed into law House Bill 3 (HB3), legislation that, among other things, blocks the consideration of environmental, social and governance (ESG) factors in state and local investment decisions and procurement processes. As we have written about previously (e.g., here), the politicization of ESG is creating significant complexities for companies that do business in multiple jurisdictions, some of which require or permit the consideration of ESG factors, and others that have adopted anti-ESG legislation similar to HB3. That said, HB3, which is scheduled to take effect on July 1, 2023, is considered among the farthest reaching anti-ESG legislative enactments to date. The following alert describes HB3's requirements.

At a high-level, HB3 requires that investment decisions (and proxy voting decisions) for state pension assets be made taking into account only "pecuniary factors." For purposes of the legislation, "pecuniary factors" are defined as factors that are "expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy." Importantly, the term prohibits "the consideration of…any social, political or ideological interests" when state and local officials make investment and other covered decisions. Notably, in addition to applying to investment decisions relative to state pension assets, among other things, HB3 also places limits on investment decisions for local governments; prohibits the issuance of ESG bonds in Florida; and imposes limits on state procurement processes. More specifically:

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