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Florida HB-3: An Overview of ESG Factors Relating to Public Funds Investment and Financial Industry Impacts

On May 2, 2023, Florida Governor Ron DeSantis signed into law HB 3, also known as “An Act Relating to Government and Corporate Activism (the “Act”). The Act amends Florida Statute provisions relating to (i) deposits and investments of state money, (ii) state retirement systems and plans, (iii) state public funds, (iv) state bonds, (v) public deposits, (vi) government contracts, (vii) financial institutions, (viii) consumer finance companies, (viii) money services businesses, and (ix) deceptive and unfair trade practices.

Below is a summary of the provisions of the Act and its impact on the investment of public funds and the new legislative provisions affecting financial institutions in Florida.

Investment Decisions

The Act prohibits applicable parties from taking into consideration “non-pecuniary” factors, including environmental, social and governance (“ESG”) factors, when making investment decisions. Such investment decisions must be based solely on “pecuniary factors.” A “pecuniary factor” is defined in the Act as “a factor that... is 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. The term does not include the consideration of the furtherance of any social, political, or ideological interests.” This requirement applies to the investment of public funds made by (i) the Chief Financial Officer, or other party authorized to invest on his or her behalf, (ii) a citizen support organization or a direct support organization on behalf of an agency, (iii) the plan administrator, named fiduciary, board, or board of trustees of the retirement system or plans, and (iv) the State Board Administration of the System Trust Fund or other trust funds administered thereby.

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