Florida Law to Restrict the Use of Certain ESG Factors by Asset Managers and Financial Institutions: Latham & Watkins

The legislation mirrors anti-"industry boycott" legislation introduced or passed in other US states and provides more explicit rubrics of prohibited factors.

On May 5, 2023, Florida Governor Ron DeSantis signed into law House Bill 3, a comprehensive antiESG bill that restricts consideration of environmental, social, and governance (ESG) factors in various contexts (HB 3). The law, scheduled to take effect on July 1, 2023, builds on the State Board of Administration's August 2022 resolution providing that its own investment decisions must be based only on pecuniary factors that do not include "the consideration of the furtherance of social, political, or ideological interests." HB 3 amends a variety of Florida statutes relating to: (i) retirement plans and investments of funds; (ii) financial institutions, including qualified public depositories; (iii) money services businesses; (iv) consumer finance companies; (v) trust fund assets and public funds; (vi) government contracts; (vii) government bonds; and (viii) deceptive and unfair trade practices.

HB 3 fulfills the promises of a 19-state alliance formed on March 16, 2023, by Governor DeSantis and the governors of Alabama, Alaska, Arkansas, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming to push back against what they believe to be President Biden's ESG agenda. Pursuant to the alliance's policy statement, the governors have agreed to lead their respective state-level efforts to:

- protect taxpayers from ESG influences across state systems, such as by blocking the use of ESG in all investment decisions at the state and local level, so that only "financial factors are considered to maximize the return on investment … [and] eliminating consideration of ESG factors by state and local governments when issuing bonds or prohibiting state fund managers from considering ESG factors when investing taxpayer money"; and
  protect citizens from ESG influences in the financial sector, including "banning the sector from considering so-called "Social
- Credit Scores" in banking and lending practices … [as well as] including stopping financial institutions from discriminating against customers for their religious, political, or social beliefs, such as owning a firearm, securing the border, or increasing [America's] energy independence."

Continue reading.

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