

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 302

INTRODUCER: Banking and Insurance Committee and Senator Grall

SUBJECT: Government and Corporate Activism

DATE: April 12, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Moody</u>	<u>Yeatman</u>	<u>FP</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 302 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 vendor's by certain state and local entities and educational institutions.

**Financial Institutions**

The bill requires financial institutions, 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" or applying a "social credit score" when making determinations about the provision of services. Upon application or renewal, such entities to attest must attest to compliance with these provisions. They are subject to penalties and sanctions for violating any of these provisions.

**Government Investments**

The bill codifies and expands the program adopted by the State Board of Administration last year that requires, with limited exceptions, investments of certain state and local funds to be based solely on pecuniary factors and not on 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.

State and local retirement systems must report compliance with these requirements on a biennial basis, and provides the Attorney General with authority to seek an injunction against any violators.

Investment managers who invest public funds on behalf of state and local funds must include a specified disclaimer in certain external communications that discuss social, political, or ideological interests. On or after July 1, 2023, contracts with investment managers may be unilaterally terminated in certain circumstances. Investment managers are subject to sanctions if they fail to comply with the new provisions under the bill.

### **Bond Financing**

The bill prohibits specified state and local issuers from:

- Issuing ESG bonds;
- Expending public funds or use money derived from the issuance of bonds to pay a third-party verifier to certify or verify that bonds may be designated or labeled as ESG bonds;
- Entering into a contract with any rating agency whose ESG scores would have a direct, negative impact on the issuer's bond ratings.

The bill applies to any bonds issued or to any agreement entered into or any contract executed on or after July 1, 2023.

### **Procurement and Contracting with Vendors**

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.

The bill reenacts ss. 17.61 and 215.44, F.S.

See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

## **II. Present Situation:**

Environmental, social, and governance (ESG) are non-financial risks that are used by some institutions and investment managers when making investment decisions. Examples of environmental factors include greenhouse gases and air or water and ground pollution emissions. Social practices considered include product liabilities, supply chain labor, and health and safety

standards. Governance factors include shareholder rights, board diversity, executive compensation, and corporate board behavior such as anti-competitive practices and corruption.<sup>1</sup>

JP Morgan reports that over \$500 billion flowed into ESG-integrated funds in 2021.<sup>2</sup> According to Broadridge Financial Solutions, ESG assets are forecasted to exceed \$30 trillion by 2030.<sup>3</sup>

## **Financial Institutions**

### ***Dual Oversight of Depository Institutions***

An institution must have a federal or state charter to accept deposits. Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury or as state banks by a state regulator.<sup>4</sup>

The Florida Financial Institutions Codes apply to all state-authorized or state-chartered financial banks, trust companies, credit unions and related entities.<sup>5</sup> The Office of Financial Regulation (OFR) licenses and regulates 197 financial entities, including 69 state-chartered banks and 66 state-chartered credit unions.<sup>6</sup> There are also 33 federally-chartered banks and 63 federally chartered credit unions operating in Florida.<sup>7</sup>

Due to federal preemptions, a state's regulatory powers in relation to federally chartered institutions is limited. However, the state may exercise powers within their exceptions to exclusive federal visitorial authority. Such exceptions are those recognized by federal law and courts of law or created by the U.S. Congress.<sup>8</sup>

Once a financial institution obtains a charter, one of the regulator's primary task is to ensure solvency which is achieved by conducting financial exams of its licensed entities. Financial institutions also need approval from their regulator to make changes in their upper management, merge with another company, pay dividends to shareholders, engage in material transactions with subsidiaries and affiliates, or make significant changes to their business operations.<sup>9</sup>

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<sup>1</sup> Deloitte, *#1 What is ESG?*, available at: [#1 What is ESG? \(deloitte.com\)](#) (last visited Mar. 26, 2023).

<sup>2</sup> Wu, J., *Five Reasons Why the Future of ESG Investing is Long Term*, JP Morgan, Jan. 1, 2022, available at: [ESG Outlook 2022: The future of ESG investing | J.P. Morgan Asset Management | J.P. Morgan Asset Management \(jpmorgan.com\)](#) (last visited Mar. 26, 2023).

<sup>3</sup> Green, A., *The Future of ESG Investing*, Forbes, Feb. 16, 2022, available at: [The Future Of ESG Investing \(forbes.com\)](#) (last visited Mar. 26, 2023).

<sup>4</sup> Congressional Research Service, *Introduction to Financial Services: Banking*, p. 1, Jan. 5, 2023, available at: <https://crsreports.congress.gov/product/pdf/IF/IF10035> (last visited Mar. 26, 2023).

<sup>5</sup> Section 655.005(1)(k), F.S., states that the Financial Institutions Codes includes: Ch. 655, financial institutions generally; Ch. 657, credit unions; Ch. 658, banks and trust companies; Ch. 660, trust business; Ch. 662, family trust companies; Ch. 663, international banking; Ch. 665, relating to associations; and Ch. 667, savings banks.

<sup>6</sup> Office of Financial Regulation, *Fast Facts* (2021 ed.), available at: [FastFacts.pdf \(flofr.gov\)](#) (last visited Mar. 26, 2023).

<sup>7</sup> *Id.*

<sup>8</sup> 12 C.F.R. § 7.4000 (2011).

<sup>9</sup> For a detailed discussion of the regulatory framework, see, Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, March 10, 2020, available at:

<https://crsreports.congress.gov/product/pdf/R/R44918/7> (last visited Feb. 13, 2023). Also see ss. 655.037, 655.0385, 655.0386, 655.03855, and 655.412, F.S.

Banks chartered by OFR must become a members of the Federal Reserve or obtain insurance from the Federal Deposit Insurance Corporation.<sup>10</sup> Credit Unions chartered by OFR must insure their accounts by becoming a member of the National Credit Union Administration.<sup>11</sup> Thus, state-chartered banks and credit unions are subject to a dual-regulatory system.

OFR must examine the condition of each state-chartered financial institution at least every 18 months, and may conduct more frequent examinations as needed, based on risks associated with a licensee, such as prior examination results or significant operational changes.<sup>12</sup> When a state-chartered financial institution also has a federal regulator, OFR may accept an examination performed by the federal regulator or the regulators may conduct a joint examination.<sup>13</sup>

Financial institutions that become insolvent are liquidated by their primary regulator.<sup>14</sup>

### ***Authority of OFR***

OFR may impose administrative sanctions on financial institutions subject to the Florida Financial Institutions Codes that engage in an “unsafe or unsound practice.” This term is defined at s. 655.005(1)(y), F.S., which states:

“Unsafe or unsound practice” means any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.

Possible penalties include: issuance of a cease and desist order,<sup>15</sup> removal of an institution-affiliated party,<sup>16</sup> administrative fines,<sup>17</sup> and a court-ordered injunction to restrain conduct that violates a formal enforcement action.<sup>18</sup> When imposing a sanction or requiring a remedy, OFR must consider “the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.”<sup>19</sup>

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<sup>10</sup> Sections 658.22 and 658.38, F.S.

<sup>11</sup> Sections 657.005 and 657.008, F.S.

<sup>12</sup> Section 655.045(1), F.S.

<sup>13</sup> Section 655.045(1)(a), F.S.

<sup>14</sup> Sections 657.063, 657.064, 658.83, and 660.48, F.S.

<sup>15</sup> Section 655.033, F.S.

<sup>16</sup> Section 655.037, F.S.

<sup>17</sup> Section 655.041, F.S.

<sup>18</sup> Section 655.034, F.S.

<sup>19</sup> Section 655.031(1), F.S.

OFR may impose monetary fines if a licensee violates a provision of the financial institutions codes or associated rules, an order of the office, or a written agreement with the office.<sup>20</sup> In general, administrative fines may not exceed \$2,500 per day for each violation.<sup>21</sup> Larger fines are allowed in the following circumstances:

- Up to \$10,000 per day for each reckless violation that result in more than a minimal loss to a financial institution or pecuniary benefit to the person liable for the violation;<sup>22</sup>
- Up to the lesser of \$500,000 per day or 1 percent of the total assets in the case of a financial institution, or \$50,000 per day in any other case, for knowing violations that result in more than a minimal loss to a financial institution or pecuniary benefit to the person liable for the violation;<sup>23</sup> and
- Up to \$10,000 per day for any financial institution that refuses to permit an examination.<sup>24</sup>

Criminal violations – like embezzlement and fraud – may be prosecuted under the penal code.<sup>25</sup>

OFR has authority to monitor state-chartered banks, to ensure compliance with state and federal laws, and may enforce state consumer protection laws on federally chartered banks operating within their boundaries so long as the state law is not pre-empted by federal law.<sup>26</sup> Federal pre-emption permits federally chartered banks and savings associations to operate under a uniform set of rules when they operate across state lines.<sup>27</sup>

When a state chartered financial institution encounters a competitive disadvantage caused by state law in relation to the capacities and powers allowed to federally chartered institutions, OFR may issue an order or a rule waiving the state law causing the competitive imbalance.<sup>28</sup>

### ***Non-Depository Financial Institutions***

Consumer finance lenders and money services businesses are non-depository lenders that profit from fees charged on such loans or transactions. OFR has regulatory authority over consumer finance lenders that offer consumers finance products or services.<sup>29</sup> Consumer finance lenders are required to obtain a license from OFR that must be renewed every two years to conduct

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<sup>20</sup> Section 655.041, F.S.

<sup>21</sup> Section 655.041(2), F.S.

<sup>22</sup> Section 655.041(2)(a), F.S.

<sup>23</sup> Section 655.041(2)(b), F.S.

<sup>24</sup> Section 655.041(2)(c), F.S. Rule 69U-100.0451, F.A.C, discusses fees that may be assessed to cover the costs of examinations.

<sup>25</sup> Section 655.0322, F.S.

<sup>26</sup> 12 U.S.C. 25b.

<sup>27</sup> U.S. Department of the Treasury, Office of the Comptroller of the Currency, *OCC Chief Counsel's Interpretation: 12 U.S.S. §25b*, Dec. 18, 2020, available at: <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-176a.pdf> (last visited Mar. 26, 2023).

<sup>28</sup> Section 655.061, F.S.

<sup>29</sup> Section 516.01(2), F.S., defines “consumer finance loans” as a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of \$25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

business in Florida.<sup>30</sup> Each location of a consumer finance company must be licensed by OFR, even if the separate locations are part of the same business entity.<sup>31</sup>

Consumer finance lenders may make secured or unsecured loans of up to \$25,000 at interest rates between 18 and 30 percent per year.<sup>32</sup> OFR investigates consumer complaints to ensure that consumer finance lenders are licensed to purchase or hold retail installment contracts and comply with fair lending laws.<sup>33</sup> Administrative sanctions for consumer finance lenders may include suspension or revocation of a license, a written reprimand, or a fine of up to \$1,000 for each violation.<sup>34</sup> Certain violations, such as violating fair lending laws or operating without a license, may be prosecuted as a first-degree misdemeanor.<sup>35</sup>

OFR also has regulatory authority over money services businesses<sup>36</sup> that assist consumers in transacting instruments, transmitting money,<sup>37</sup> cashing checks,<sup>38</sup> and exchanging foreign currency.<sup>39</sup> Examples include check cashers like The Check Cashing Store,<sup>40</sup> money transmitters like PayPal,<sup>41</sup> and exchangers like Florida Currency Exchange.<sup>42</sup> Money services businesses also include “payday lenders” who offer short-term, high-interest loans that are due on the consumer’s next pay day. Two types of payday loans are allowed in Florida:

- The lender provides cash in exchange for the borrower’s check (up to \$500) and agrees to hold the check for 7 to 31 days before cashing the check. Fees may not exceed 10 percent of the payment to the borrower plus a \$5 verification fee.

<sup>30</sup> Section 516.02(1), F.S.

<sup>31</sup> Section 516.05, F.S.

<sup>32</sup> Section 516.02(2)(a), F.S.

<sup>33</sup> Sections 516.11, 516.15, 516.26, 516.31 and 516.35, F.S.

<sup>34</sup> Section 516.07(2), F.S. A first degree misdemeanor is punishable by up to one year in imprisonment or a \$1,000 fine as provide in s. 775.082, F.S., or s. 775.083, F.S.

<sup>35</sup> Section 516.19, F.S.

<sup>36</sup> Section 560.103(23), F.S., defines “money services businesses” as any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

<sup>37</sup> Section 560.105, F.S. Section 560.103(24), F.S., defines “money transmitter” as a corporation, limited liability corporation, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a payment instrument, or virtual currency for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.

<sup>38</sup> Section 560.103(6), F.S., defines “check casher” as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.103(29), F.S., defines “payment instrument” as a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency or monetary value, regardless of whether it is negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

<sup>39</sup> Section 560.103(18), F.S., defines “foreign currency exchanger” as a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.

<sup>40</sup> The Check Cashing Store, *Home*, available at: [The Check Cashing Store®: Check Cashing, Mobile Check Cashing, Loans, Personal and Small Business services, Money Orders, Pre Paid Debit Cards, and Western Union Money Transfers](#) (last visited Mar. 26, 2023).

<sup>41</sup> PayPal, *Home*, available at: [Digital Wallets, Money Management, and More | PayPal US](#) (last visited Mar. 26, 2023).

<sup>42</sup> Florida Currency Exchange, *Home*, available at: [Florida, Texas, Utah Currency Exchange | Foreign Currency Exchange \(flcurrencyexchange.com\)](#) (last visited Mar. 26, 2023).

- The lender provides cash in exchange for the borrower's check (up to \$1,000) and the borrower repays the loan in installments. The term of the loan is 60-90 days. The lender may charge a \$5 verification fee and 8 percent of the balance on a biweekly basis.<sup>43</sup>

Money services businesses must maintain accounts in permissible investments that equals at least the amount of all outstanding money transmissions and payment instruments sold by the licensee or an authorized vendor.<sup>44,45</sup> OFR also monitors the check cashing practices of money services businesses to verify corporate records, determine compliance with workers' compensation laws,<sup>46</sup> and to ensure compliance with fair debt collection laws.<sup>47</sup> Administrative sanctions for money services businesses may include issuance of a Cease and Desist Order, removal of an Institution-Affiliated Party, suspension or revocation of a license, an injunction, or a fine of at least \$1,000 but not more than \$10,000 for each violation.<sup>48</sup> Money laundering may be prosecuted under state or federal law.<sup>49</sup>

### *Qualified Public Depositories*

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act.<sup>50</sup>

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:

- Have authority to accept deposits because it has been chartered and regulated by the state or federal government;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;<sup>51</sup>
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.<sup>52</sup>

QPDs must secure public deposits with a pledge of eligible collateral, to protect the deposit against losses that could occur in the event of insolvency or default.<sup>53</sup> The amount collateral required is based on statutory guidelines and the QPD's overall financial condition.<sup>54</sup>

<sup>43</sup> Section 560.404, F.S.

<sup>44</sup> Section 560.103(3), F.S., defines "authorized vendor" as a person designated by a money services business licensed under part II of ch. 560, F.S., to act on behalf of the licensee at locations in Florida pursuant to a written contract with the licensee.

<sup>45</sup> Section 560.210, F.S.

<sup>46</sup> Section 560.310(5)(b), F.S.

<sup>47</sup> Section 560.309, F.S.

<sup>48</sup> Sections 560.114 and 560.113, F.S.

<sup>49</sup> Sections 560.111 and 560.123, F.S.

<sup>50</sup> Sections 280.01 and 280.03(1)(b), F.S. Certain public deposits, including those that are fully collateralized under other laws and moneys contributions to the state retirement system that are held in the System Trust Fund, are exempt pursuant to s. 280.03(3), F.S.

<sup>51</sup> 12 U.S.C. ss. 1811 et. seq.

<sup>52</sup> Section 280.02(26), F.S.

<sup>53</sup> Sections 280.04 and 280.041(6), F.S.

<sup>54</sup> Section 280.04, F.S., and Rule 69C-2.024, F.A.C.

Public deposits include, but are not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposits; they do not include moneys in deposit notes, securities, mutual funds, and similar investments.<sup>55</sup>

A bank or savings association must guaranty public depositors against losses caused by the default or insolvency of other QPDs.<sup>56</sup> Any shortfall that is not covered by the maximum federal deposit insurance of \$250,000, the CFO must demand payment under letters of credit or the sale of pledged or deposited collateral by the defaulting depository. The CFO may assess QPDs for the total loss if the demand for payment or sale cannot be accomplished within 7 days.<sup>57</sup>

As of May 20, 2022, Florida had 118 authorized QPDs.<sup>58</sup> These QPDs include 23 of the 28 federally chartered banks and trusts that operate in Florida.<sup>59</sup>

## Government Investments

### *State Board of Administration*

The State Board of Administration (SBA) was created by the Florida Constitution and serves as the state's independent investment management organization, with authority over 30 funds collectively valued at about \$228 billion as of June 30, 2022, including the state's pension and investment plans for public employees, which accounts for 79 percent of assets under management.<sup>60</sup> Other funds under management include the Florida Hurricane Catastrophe Fund, Department of the Lottery Fund, Florida Prepaid College and Florida College Investment Plan, FSU Research Foundation, Florida PRIME (surplus funds of local governments) and the Police and Firefighters' Premium Tax Trust Fund.<sup>61</sup> The Governor, Chief Financial Officer, and Attorney General serve as the SBA's Board of Trustees (Trustees), and delegate operational authority to an executive director and chief investment officer, who oversee about 200 employees.<sup>62</sup> A nine-member Investment Advisory Council provides guidance on investment policy and strategy.<sup>63</sup>

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<sup>55</sup> Section 280.02(23), F.S.

<sup>56</sup> Section 280.07, F.S.

<sup>57</sup> Section 280.08, F.S.

<sup>58</sup> Florida Department of Financial Services, Division of the Treasury, *List of Active QPDs*, May 20, 2022, available at: [List of Active QPDs.xlsx \(myfloridacfo.com\)](#) (last visited Mar. 26, 2023).

<sup>59</sup> U.S. Department of the Treasury, Office of the Comptroller of the Currency, *Financial Institution Lists*, available at: <https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html> (last visited Mar. 26, 2023).

<sup>60</sup> Art. IV, s. 4(e) Fla. Const. (1968); State Board of Administration, *Summary Overview of the State Board of Administration of Florida*, available at: [https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview\\_20211025.pdf?ver=2021-10-28-120954-217](https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217) (last visited Mar. 26, 2023); State Board of Administration, *Performance Report Month Ending June 30, 2022*, available at: <https://www.sbafla.com/fsb/Portals/FSB/Content/Trustees/2022/June%202022%20Monthly%20Trustee%20Report.pdf?ver=2022-08-24-133206-397> (last visited Mar. 26, 2023).

<sup>61</sup> A full list of SBA-managed investment funds is available at <https://www.sbafla.com/fsb/FundsWeManage.aspx> (last visited Mar. 26, 2023).

<sup>62</sup> Section 215.44, F.S.; *Summary Overview of the State Board of Administration of Florida*, supra footnote 60.

<sup>63</sup> Section 215.444(2), F.S.



In August 2022, the Trustees directed the SBA to invest funds in a manner that prioritizes the highest return on investment, without consideration of social, political, or ideological interests.<sup>64</sup> A resolution adopted by the Trustees directed the SBA to amend the Investment Policy Statement (IPS) for the Florida Retirement System Defined Benefit Plan to require that investment decisions be based solely on pecuniary factors.<sup>65</sup> By law, the IPS must clearly state its investment objectives, identify the types of securities the plan may invest in, and the evaluation criteria that will be used to measure fund performance.<sup>66</sup> Investment managers who invest public funds on behalf of the board certify compliance with the IPS annually.<sup>67</sup> The resolution further states that the Trustees, when exercising shareholder rights, including the voting of proxies, may not subordinate the interests of the participants and beneficiaries to other objectives and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary factors.<sup>68</sup>

In December 2021, the Trustees directed the SBA to reclaim proxy voting authority that had been given to large financial firms and provide additional guidance to employees who are responsible for proxy voting and investment decisions.<sup>69</sup> During fiscal year 2021, SBA staff cast votes at 10,174 companies in 76 countries, voting on ballot items including director elections, audit firm ratification, executive compensation plans, mergers and acquisitions, and a variety of other management and shareowner proposals.<sup>70</sup> Of all votes cast, 17.5 percent were “against” the recommendation of company management.<sup>71</sup>

### ***State General Revenue and Trust Funds***

The Chief Financial Officer (CFO) is responsible for the investment of state general revenue and trust funds.<sup>72</sup> Interest earnings are allocated to the general revenue fund, trust funds, and Special Purpose Investment accounts.<sup>73</sup> A five-member Treasury Investment Council provides guidance on investment policy and strategy.<sup>74</sup>

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<sup>64</sup> The State Board of Administration, *A Resolution Directing an Update to the Investment Policy Statement and Proxy Voting Policies for the Florida Retirement System Defined Benefit Plan, and Directing the Organization and Execution of an Internal Review*, Aug. 23, 2022, available at: [ESG-Resolution-Final.pdf \(flgov.com\)](#) last visited (Mar. 26, 2023).

<sup>65</sup> Office of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments*, Aug. 23, 2022, available at: <https://www.flgov.com/2022/08/23/governor-ron-desantis-eliminates-esg-considerations-from-state-pension-investments/> (last visited Mar. 26, 2023).

<sup>66</sup> Section 215.475, F.S.

<sup>67</sup> Section 215.4755(1), F.S.

<sup>68</sup> Office of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments*, supra footnote 64.

<sup>69</sup> Office of the Governor, *Governor Ron DeSantis Takes Action Against Communist China and Woke Corporations*, Dec. 20, 2021, available at: <https://www.flgov.com/2021/12/20/governor-ron-desantis-takes-action-against-communist-china-and-woke-corporations/> (last visited Mar. 26, 2023).

<sup>70</sup> State Board of Administration, *2022 Corporate Governance Summary Report*, available at: [2020-2021 AIR.pdf \(sbafla.com\)](#) (last visited Mar. 26, 2023).

<sup>71</sup> *Id.*

<sup>72</sup> Section 17.61, F.S. This includes funds of each state agency and of the judicial branch; and funds of all boards, associations, and entities created by the Florida Constitution or by law.

<sup>73</sup> Florida Department of Financial Services, Treasury Investment Pool, available at: <https://www.myfloridacfo.com/division/treasury/treasury-investment-pool> (last visited Mar. 26, 2023).

<sup>74</sup> *Id.*

### ***Local Government Retirement Plans***

The Department of Management Services (DMS) monitors and oversees 487 retirement plans of municipalities, special districts, and school boards, to ensure they are actuarially sound.<sup>75</sup> Local governments must adopt a written investment policy that is structured to maximize the financial return on investments and complies with the investment limitations that apply to funds managed by the SBA and to establish and maintain appropriate diversification of assets.<sup>76</sup> State law includes special requirements for police and firefighter retirement plans; investments for these trust funds are managed by the local board of trustees and are subject to similar investment policies applicable to state funds.<sup>77</sup>

### ***Local Government Surplus Funds***

There are several investment vehicles for surplus funds of local governments.<sup>78</sup>

The SBA manages Florida PRIME (the Local Government Surplus Funds Trust Fund), which invests surplus funds of 756 units of local government in accordance with the investment restrictions that apply to the investment of state funds.<sup>79</sup>

Two other investment pools were created by interlocal agreements.<sup>80</sup> The Florida Association of Counties and the Florida Court Clerks & Comptrollers created the Florida Local Government Investment Trust, which offers public entities the choice of two professionally managed investment funds.<sup>81</sup> The cities of Bradenton, Lauderhill, and Palatka created The Florida Municipal Investment Trust, which offers local governments the choice of a real estate portfolio, three equity portfolios, and six fixed income portfolios.<sup>82</sup>

Local government surplus funds must be invested consistent with the written investment plan adopted by a governing board or principal officer of the local government entity. In accordance with the written investment plan, local government entities may by resolution only invest surplus public funds in Florida PRIME, an intergovernmental investment pool, registered money market funds, interest bearing time deposits or savings accounts in qualified public depositories designated by the CFO, direct obligations of the U.S. Treasury, federal agencies and instrumentalities, rated or unrated bonds, notes, or instruments backed by Israel, or certain securities of investment companies or investment trusts.<sup>83</sup>

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<sup>75</sup> Florida Department of Management Services, *Florida Local Government Retirement Systems 2022 Annual Report*, available at: [2022 Local Report.pdf \(fl.gov\)](#) (last visited Mar. 26, 2023).

<sup>76</sup> Section 112.661, F.S.

<sup>77</sup> Sections 175.071 and 185.06, F.S.

<sup>78</sup> Section 218.403(11), F.S., states: “‘Unit of local government’ means any governmental entity within the state not part of state government and shall include, but not be limited to, the following and the officers thereof: any county, municipality, school district, special district, clerk of the circuit court, sheriff, property appraiser, tax collector, supervisor of elections, authority, board, public corporations, or any other political subdivision of the state.”

<sup>79</sup> Section 218.405(16)(a), F.S. *Also see*, State Board of Administration, *Florida PRIME Monthly Summary Report*, available at: [monthly summary report 01\\_31\\_23final.pdf \(sbafla.com\)](#) (last visited Mar. 26, 2023).

<sup>80</sup> *See* sections 163.01, F.S. and 218.415, F.S.

<sup>81</sup> Florida Local Government Investment Trust, *About*, available at: [About – Florida Local Government Investment Trust \(floridatrustononline.com\)](#) (last visited Mar. 26, 2023).

<sup>82</sup> Florida League of Cities, *Florida Municipal Investment Trust*, available at: [https://www.floridaleagueofcities.com/services/investments-\(fmivt\)](https://www.floridaleagueofcities.com/services/investments-(fmivt)) (last visited Mar. 26, 2023).

<sup>83</sup> Section 218.415(16), F.S.

### ***Citizen Support and Direct-support Organizations***

Citizen support organizations (CSO) (such as the Florida Department of Environmental Protection (DEP) holds agreements with 97 CSOs) and direct-support organizations (DSO) (such as the DSO for the Statewide Council on Human Trafficking) are created to raise funds to support causes that are in the public interest and often enter into a contract with a government entity to define the terms of the organizations' support to that government entity.<sup>84</sup> By August 1 of each year, such organizations must submit annual reports describing their activities to the appropriate government agency.<sup>85</sup> By August 15 each year, each CSO and DSO must report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability which must include a recommendation on whether to continue, terminate, or modify the agency's association with each organization.<sup>86</sup>

### **Bond Financing**

State and local government entities issue bonds to finance public projects. Investors are paid tax-exempt interest during the lifetime of the bond and are repaid the face value of the bond upon maturity.

The Division of Bond Finance (which is administratively housed within the SBA) issues general obligation bonds, revenue bonds, and appropriation-based bonds on behalf of local governments and state agencies. General obligation bonds are secured by the taxing power of the bond issuer. The investor relies on the full faith and credit of the issuer, and the issuer can impose a tax on the public to repay the bond. Revenue bonds are backed by revenues that come from a specific source or revenue stream, like a local stadium or highway tolls. Interest rates are higher because these bonds depend on the success of the specific venture that is financed. Appropriation-based bonds are secured by a commitment of the state to pay the debt service on the bonds via annual appropriations of the Legislature.<sup>87</sup> The Governor, the Chief Financial Officer, and the Attorney General serve as the governing board of the Division of Bond Finance.<sup>88</sup>

Local governments may also issue bonds through the Florida League of Cities, investment banks or other financial firms.<sup>89</sup> In such cases, the local government must provide notice of proposed bond sales and detailed information about bonds that have been issued to the Division of Bond Finance, which serves as a clearinghouse for government bonds issued in Florida.<sup>90</sup> The local government also must provide adequate notice to the public about the cost of bond financing and the terms under which bonds are issued.<sup>91</sup>

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<sup>84</sup> See ss. 258.015 and 16.618(1), F.S.; DeCerchio, A., *Citizen Support Organization 2022 Annual Report*, the DEP, Aug. 12, 2022, available at: [8.12.22 2022 DEP Annual CSO Report FINAL.pdf \(floridadep.gov\)](https://www.floridadep.gov/8.12.22%202022%20DEP%20Annual%20CSO%20Report%20FINAL.pdf) (last visited Mar. 26, 2023).

<sup>85</sup> Section 20.058(1), F.S.

<sup>86</sup> Section 20.058(3), F.S.

<sup>87</sup> Division of Bond Finance, *Bond Program Overview*, available at: <https://www.sbafla.com/bondfinance/Bond-Programs> (last visited Mar. 26, 2023).

<sup>88</sup> Section 215.62(1), F.S.

<sup>89</sup> See Florida League of Cities, Bond Issue Program, available at: <https://www.floridaleagueofcities.com/services/loans/bond-issue-program> (last visited Mar. 26, 2023).

<sup>90</sup> Sections 218.37 and 218.38, F.S.

<sup>91</sup> Sections 218.385, F.S.

The Division is issuing state revenue bonds totaling \$24.3 million for the Florida International University Parking Facility, and recently issued state revenue bonds in the amounts of approximately \$98.9 million, \$76 million, and \$174.6 million for the Department of Transportation (DOT) Seaport Investment Program, Florida Polytechnic University Dormitory, and DOT Turnpike, respectively.<sup>92</sup>

### **Procurement and Contracting with Vendors**

The DMS sources and adopts contracts for the purchase, lease, or acquisition of goods and services frequently used by multiple state agencies, such as office supplies, vehicles, computers, and furniture.<sup>93</sup> The DMS has authority to remove vendors from its vendor list for failure to fulfill its contractual duties and may reinstate a vendor when it is satisfied that no further defaults will occur.<sup>94</sup> Agencies must purchase goods and contractual services from the agreements and state term contracts established by the DMS.<sup>95</sup> A competitive solicitation process set out in s. 287.057, F.S., must be used for the procurement of commodities or contractual services over a certain amount. Unless an exception applies, the procurement of certain contractual services in excess of a specified amount must include certain information, such as specifying scope of work and allowing for unilateral cancellation by the agency in some instances.<sup>96</sup>

School districts, Florida College System institutions, and state universities must to comply with State Board of Education laws and rules relating to purchases and leases.<sup>97</sup> Such entities must review the DMS purchasing agreements and state term contracts to determine whether there is an economic advantage to use them for nonacademic purchases.<sup>98</sup> School districts and Florida College System Institutions must adopt rules, and state universities must adopt regulations, that must be complied with when making purchases.<sup>99</sup>

## **III. Effect of Proposed Changes:**

### **Financial Institutions**

**Section 25** adds the term “unsafe and unsound practice” to the section of the Florida Financial Institutions Codes that defines “unsafe or unsound practice” for banks, trust companies, and credit unions. **Sections 21 and 22** add the term “unsafe and unsound practice” to laws governing consumer finance loans and money services businesses. The definition in sections 21, 22, and 25 of the bill echoes the reference found to “unsafe or unsound practice” in section 14 of the bill relating to qualified public depositories, and states:

<sup>92</sup> Division of Bond Finance, *Bond Sales*, available at: [Bond Sales \(sbafla.com\)](http://BondSales.sbafla.com) (last visited Mar. 26, 2023).

<sup>93</sup> Section 287.042(1)(a), F.S.; The DMS, *State Contracts and Agreements*, available at: [State Contracts and Agreements / State Purchasing / Business Operations / Florida Department of Management Services - DMS \(myflorida.com\)](http://StateContractsandAgreements/StatePurchasing/BusinessOperations/FloridaDepartmentofManagementServices-DMS(myflorida.com)) (last visited Mar. 26, 2023).

<sup>94</sup> Section 287.042(1)(b), F.S.

<sup>95</sup> Section 287.056(1), F.S.

<sup>96</sup> Section 287.058(1), F.S.

<sup>97</sup> Section 1010.04(1)(a) and (c), F.S.

<sup>98</sup> Section 1010.04(1)(b), F.S.

<sup>99</sup> Section 1010.04(2), F.S.

It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person, on the basis of:

- The person's political opinions, speech, or affiliations;
- The person's religious beliefs, exercise, or affiliations;
- Any other factor that is not a quantitative, impartial, and risk-based standard; or
- A social credit score.<sup>100</sup>

The bill states that financial institutions operating in Florida (such as banks, trust companies, and credit unions), consumer finance lenders and money services businesses, must make determinations about the provision or denial of services “based on an analysis of risk factors unique to each individual customer or member.”

Upon application for a license or license renewal, financial institutions, consumer finance lenders, and money services businesses regulated by the OFR must provide an attestation stating that the financial institution’s practices comply with the applicable requirements and limitations created by the bill.

**Sections 21 to 23 and 25** provide that if a financial institution, consumer finance lender, or money services business licensed by OFR engages in an “unsafe or unsound practice” or fails to make the required attestation, the OFR may impose administrative penalties, including an order requiring corrective action, a financial penalty, and suspension or revocation of a license.

Sections 21, 22, and 25 provide that financial institutions, consumer finance lenders, and money services businesses licensed by OFR that engage in an “unsafe or unsound practice,” have also violated the Florida Deceptive and Unfair Trade Practices Act. This makes banks, trust companies, credit unions, consumer finance lenders, and money service businesses subject to the enforcement actions identified in part II of chapter 501, F.S., which include 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.

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<sup>100</sup> The bill provides that a “social credit score” includes, but is not limited to, using 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 in this paragraph; 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 or social justice;
- Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or
- Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

The bill prohibits the waiver of state laws under by OFR and the Financial Services Commission in relation to unsafe and unsound business practices by financial institutions.<sup>101</sup>

**Section 24** amends the definition of “unsafe or unsound practice” in the financial institutions code to include the definition of “unsafe and unsound practice” created in the bill.

### *Qualified Public Depositories*

**Section 14** amends the definition of a QPD to prohibit the CFO from qualifying a bank or savings association that engages in an “unsafe and unsound practice.”

It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person, on the basis of:

- The person's political opinions, speech, or affiliations;
- The person's religious beliefs, exercise, or affiliations;
- Any other factor that is not a quantitative, impartial, and risk-based standard; or
- A social credit score.<sup>102</sup>

**Section 15** provides that, 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 QPD. **Section 17** provides that failure to file the required attestation is grounds for suspension or disqualification of a QPD, and **Section 18** provides that failure to timely file the attestation is deemed a knowing and willful violation of the law.

**Sections 16, 18, and 19** of the bill gives the CFO authority to verify the attestation and impose penalties if a QPD 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.

**Section 16** provides that if the CFO determines that 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.<sup>103</sup>

The bill’s QPD-related provisions are not preempted by federal law because the QPD program is a creature of Florida law, in which the federally chartered institutions voluntarily participate. To participate in the program, they must accept the conditions of QPD eligibility.

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<sup>101</sup> The Financial Services Commission is the Governor, Attorney General, Commissioner of Agriculture, and Chief Financial Officer. The Commission is the agency head over OFR. Section 20.121(3), F.S.

<sup>102</sup> Supra, note 93.

<sup>103</sup> 12 U.S.C. 484 and 12 CFR § 7.400.

## Investments

**Sections 1 to 8 and 13** codifies and extends, except for prohibited investments in Cuba and Venezuela, the policy adopted by the SBA, requiring that all investment decisions relating to the state retirement system be based solely on pecuniary factors, to all funds managed by the SBA, all funds of the state Treasury, all local government retirement plans, investments of local government surplus funds, and investments of funds raised by CSOs and DSOs. Investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan. Investment managers who invest public funds on behalf of any of these entities may not sacrifice investment return or take additional investment risk to promote any non-pecuniary factor.

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.” Further, the “weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.”

**Section 9** amends the IPS to require that it comply with the new provision requiring investments be made based on pecuniary factors.

**Section 3 and 4** requires that written investment policies and investment decisions of local government retirement systems to be based solely on pecuniary factors.

**Section 3 to 7** require 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 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.

**Section 12** requires investment managers<sup>104</sup> who invest public funds<sup>105</sup> on behalf of a state or local government entity<sup>106</sup> to include a disclaimer in an external communication, if the communication is to a company in which the investment manager has invested public funds and discusses social, political, or ideological interests; subordinates the interests of the company’s shareholders to the interests of another entity; or advocates for an entity other than the

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<sup>104</sup> Section 12 of the bill defines “investment manager” as a private sector company that offers one or more investment products or services to a governmental entity and that has the discretionary investment authority for direct holdings.

<sup>105</sup> Section 12 of the bill defines “public funds” as all moneys under the jurisdiction of a governmental entity and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose, subject to investment.

<sup>106</sup> Section 12 of the bill defines “government entity” as a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, board, bureau, commission, authority, district, or agency thereof, or a public school, Florida College System institution, state university, or associated board.

company's shareholders. This applies to the investment of general revenue, surplus funds, trust funds, and retirement plans.

The required disclaimer must state: "The views and opinions expressed in this communication are those of the sender and do not necessarily reflect the views and opinions of the people of the state of Florida."

All contracts with investment managers executed, amended, or renewed on or after July 1, 2023, may be unilaterally terminated if certain communications of an investment manager include discussion of social, political, or ideological interests and omit the required disclaimer described above.

**Section 10** provides that investment managers, who are required to certify compliance with the fiduciary standards set forth in the state's investment policy annually, would be subject to sanction if they fail to timely file the required certification or if they submit a certification that is materially false. The Attorney General may bring a civil or administrative action against such persons and recover attorney fees and costs when an enforcement action is successful.

### **Bond Financing**

**Section 11** 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 reference to "generalized or global" has the effect that bond issuers may issue bonds for specific governmental environmental projects, but they are prohibited from being marketed as a generalized or global ESG bond.

The bill also prohibits paying for a third-party verifier<sup>107</sup> that certifies or verifies that a bond<sup>108</sup> 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<sup>109</sup> whose ESG scores for the issuer will have a direct, negative impact on the issuer's bond ratings.

The following bond issuers are affected by the bill:

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<sup>107</sup> Section 11 of the bill defines "third-party verifier" as any entity that contracts with an issuer to conduct an external review and independent assessment of proposed ESG bonds to ensure that such bonds may be designated or labeled as ESG bonds or will be used to finance a project that will comply with applicable ESG standards.

<sup>108</sup> The bill defines "bond" as any note, general obligation bond, revenue bond, special assessment bond, special obligation bond, private activity bond, certificate of participation, or other evidence of indebtedness or obligation, in either temporary or definitive form.

<sup>109</sup> Section 11 of the bill defines "rating agency" as any nationally recognized rating service or nationally recognized statistical rating organization.



- The Division of Bond Finance, acting on behalf of any entity;
- Any local government, educational entity, or entity of higher education,<sup>110</sup> or other political subdivision granted the power to issue bonds;
- Any public body corporate and politic authorized or created by general or special law and granted the power to issue bonds, including, but not limited to:
  - Water and sewer districts created under ch. 153, F.S.,
  - Health facilities authorities,<sup>111</sup>
  - Industrial development authorities created under ch. 159, F.S.,
  - Housing financing authorities,<sup>112</sup>
  - Research and development authorities,<sup>113</sup>
  - Legal or administrative entities created by interlocal agreement pursuant to s. 163.01(7), F.S.,
  - Community redevelopment agencies,<sup>114</sup>
  - Regional transportation authorities created under chapter 163, F.S.,
  - Community development districts,<sup>115</sup>
  - Educational facilities authorities,<sup>116</sup>
  - The Higher Educational Facilities Financing Authority created pursuant to s. 243.53, F.S.,
  - The Florida Development Finance Corporation created pursuant to s. 288.9604, F.S.,
  - Port district or port authorities,<sup>117</sup>
  - The South Florida Regional Transportation Authority created pursuant to s. 343.53, F.S.,
  - The Central Florida Regional Transportation Authority created pursuant to s. 343.63, F.S.,
  - The Tampa Bay Area Regional Transit Authority created pursuant to s. 343.92, F.S.,
  - The Greater Miami Expressway Agency created pursuant to s. 348.0304, F.S.,
  - The Tampa-Hillsborough County Expressway Authority created pursuant to s. 348.52, F.S.,
  - The Central Florida Expressway Authority created pursuant to s. 348.753, F.S.,
  - The Jacksonville Transportation Authority created pursuant to s. 349.03, F.S., and
  - The Florida Housing Finance Corporation created pursuant to s. 420.504, F.S.

The bill provides that notwithstanding 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**

**Sections 20 and 26** provide that state and local government entities, school districts, Florida College System institutions, and state universities are prohibited from considering social,

<sup>110</sup> As defined in s. 215.89(2)(c), (d), and (e), F.S.

<sup>111</sup> As defined in s. 154.205, F.S.

<sup>112</sup> As defined in s. 159.603(3), F.S.

<sup>113</sup> As defined in s. 159.702(1)(c), F.S.

<sup>114</sup> As defined in s. 163.340(1), F.S.

<sup>115</sup> As defined in s. 190.003, F.S.

<sup>116</sup> As defined in s. 243.52(1), F.S.

<sup>117</sup> As defined in s. 315.02(1) and (2), F.S.

political, or ideological beliefs in contracting and procuring commodities or contractual services. Section 20 explicitly notes that this includes all political subdivisions of the state. To do this, the bill creates a new section within ch. 287, F.S., which currently addresses contracting only at the state level.

An awarding body<sup>118</sup> and the specified educational institutions may not: 1) request documentation or consider a vendor's social, political, or ideological beliefs when determining if the vendor is a responsible vendor; or 2) give a preference to a vendor based on the vendor's social, political, or ideological beliefs.

Beginning July 1, 2023, all solicitations for commodities or contractual services must include notice of these requirements.

**Sections 27 and 28** reenact ss. 17.61 and 215.44, F.S., for purposes of amendments made to ss. 17.57 and 215.47, F.S., respectively.

**Section 29** provides the effective date is July 1, 2023.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires local governments to make investments, issue bonds, conduct procurements, and provide reports in compliance with the provisions of the bill, which may be at some expense; however, an exemption may apply. The expenditures required to comply with the bill are estimated to be insignificant.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

The provisions of the bill relating to contracts with investment managers and vendors are prospective. The bill refers to contracts that are solicited or awarded on or after July 1,

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<sup>118</sup> Section 20 of the bill defines "awarding body" as (a) for state contracts, an agency or the department, and (b) for local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

2023. The bill does not modify or render unenforceable any contract that exists prior to July 1, 2023.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may:

- Ensure that financial entities focus on pecuniary factors and safe and sound practices that will protect their businesses;
- Increase access to financial products and services that would otherwise be limited by ESG-related discrimination.
- Expand who can receive government procurement awards;
- Limit the ability of some financial firms to provide services to units of state and local government;
- Limit the ability of some banks to be certified as QPDs and accept deposits from units of state and local government; and
- Impose administrative costs on banks, trusts, and credit unions operating in Florida if they must revise investment policies and train staff to comply with the provisions set forth in the bill.

C. Government Sector Impact:

The bill may increase administrative costs of state agencies that must revise policies or practices relating to investments, bond financing, contracts, QPDs, and banking, and train staff accordingly. Enforcement costs of state agencies are recoverable through the imposition of administrative fines. Enforcement costs of the Attorney General may be recovered through awards of attorney fees and costs, so long as an enforcement action is successful.

The bill may increase administrative costs of local governments that must revise policies relating to investments, bond financing, and contracts, and train staff accordingly. Such costs could be absorbed within ongoing operating budgets.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 17.57, 20.058, 112.656, 112.661, 175.071, 185.06, 215.47, 215.475, 215.4755, 218.415, 280.02, 280.05, 280.051, 280.054, 280.055, 560.114, 655.005, and 1010.04.

This bill creates the following sections of the Florida Statutes: 112.662, 215.681, 215.855, 280.025, 287.05701, 516.037, 560.1115, and 655.0323.

This bill re-enacts the following sections of the Florida Statutes: 17.61 and 215.44.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance Committee on March 29, 2023:**

- Clarifies that the definition of “pecuniary factor” does not include considering the furtherance of social, political, or ideological interests, rather than consideration “or” furtherance of such factors;
- Provides that the provisions contained in s. 215.472, F.S., relating to prohibited investments by state agencies, will control if there is a conflict with the provisions in s. 17.57, F.S., to ensure that state investment prohibitions related to Cuba and Venezuela remain in place;
- Clarifies that the investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan;
- Amends the cross-reference in section 8 of the bill to s. 215.471, F.S., to refer to the provisions relating to the SBA’s prohibited investments in Cuba and Venezuela;
- Clarifies that bonds may be issued for specific governmental environmental projects, but are prohibited from being marketed as generalized or global environmental bonds;
- Clarifies that the prohibitions on third-party verifier services applies to ESG bond labels; and
- Specifies that financial institutions are subject to sanctions and penalties for failure to timely make the required attestation.

**B. Amendments:**

None.