

Commerce Committee

Wednesday, March 8, 2023
11:00 AM – 12:30 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Wednesday, March 8, 2023
11:00 AM – 12:30 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 3 Government and Corporate Activism by Rommel
- CS/HB 179 Florida Kratom Consumer Protection Act by Regulatory Reform & Economic Development Subcommittee, Andrade
- CS/HB 327 Fire Sprinkler System Projects by Regulatory Reform & Economic Development Subcommittee, Bell

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HB 3

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Government and Corporate Activism
SPONSOR(S): Rommel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Lloyd	Hamon
2) State Affairs Committee			

SUMMARY ANALYSIS

The Governor, Attorney General, and Chief Financial Officer – as trustees of the State Board of Administration (SBA) – directed the SBA in August to invest funds of the Florida Retirement System Defined Benefit Plan in a manner that prioritizes the highest return on investment, without consideration of environmental, social, and corporate governance (ESG) factors that have been the subject of debate among investors in recent years.

This bill expands the directive to cover all funds invested by state and local governments, including general revenue, trusts dedicated to specific purposes, money held by retirement plans, and surplus funds. Investment decisions, including written policies and the exercise of shareholder rights, must be driven solely by pecuniary factors, and may not sacrifice investment return to promote non-pecuniary factors. The Attorney General is authorized to bring civil or administrative actions to enforce provisions of the bill.

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 social, political, or ideological interests."

Additionally, the bill prohibits both the state Division of Bond Finance and specified public bond issuers from issuing an ESG bond, paying for the services of another to verify or certify a public bond as an ESG bond, or contracting with rating agencies that use ESG scores in a manner that directly impacts the issuer's bond ratings.

For government contracting, the bill prohibits all units of state and local government from: 1) considering social, political, or ideological beliefs when evaluating prospective vendors, or 2) giving any preference to a vendor based on social, political, or ideological beliefs.

State and local governments may only deposit funds in banks and savings associations that have been designated as a Qualified Public Depository (QPD). The bill prohibits certification as a QPD if a bank has engaged in an "unsafe and unsound business practice" by denying or canceling services based on political beliefs or affiliations, religious beliefs or affiliations, business sector, or any other factor that is not a quantitative, impartial, risk-based standard, or applying social credit scores. QPDs will be required to certify compliance with this requirement.

Other financial institutions – banks, trust companies, credit unions, consumer finance lenders, and money services businesses – may be subject to administrative sanctions if they engage in an "unsafe and unsound business practice" by denying or canceling services based on political beliefs or affiliations, religious beliefs or affiliations, business sector, any other factor that is not a quantitative, impartial, risk-based standard, or applying social credit scores.

The bill imposes indeterminate costs on state and local governments and on financial institutions operating in Florida.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.[1] 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.[2] 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.[3] A 9-member Investment Advisory Council provides guidance on investment policy and strategy.[4]

In August 2022, the Trustees directed the SBA to invest funds in a manner that prioritizes the highest return on investment, without consideration of environmental, social, and corporate governance (often referred to as ESG) factors.[5] 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.[6] 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.[7] Investment managers who invest public funds on behalf of the board certify compliance with the IPS annually.[8] The resolution further states that the Trustees, when exercising shareholder rights, including the voting of proxies, "[m]ay 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."[9]

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.[10] 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

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[1] Art. IV, s. 4(e) Fla. Const. (1968); State Board of Administration, *Summary Overview of the State Board of Administration of Florida*, https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217 (last visited Feb. 13, 2023); State Board of Administration, *Performance Report Month Ending June 30, 2022*, https://www.sbafla.com/fsb/Portals/FSB/Content/Trustees/2022/June%202022%20Monthly%20Trustee%20Report.pdf?ver=2022-08-24-133206-397 (last visited Feb. 13, 2023).

[2] A full list of SBA-managed investment funds is available at https://www.sbafla.com/fsb/FundsWeManage.aspx (last visited (last visited Feb. 13, 2023).

[3] S. 215.44, F.S.; *Summary Overview of the State Board of Administration of Florida*, supra footnote 1.

[4] S. 215.444(2), F.S.

[5] Office of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments* (August 23, 2022) https://www.flgov.com/2022/08/23/governor-ron-desantis-eliminates-esg-considerations-from-state-pension-investments/ (last visited Feb. 13, 2023).

[6] *Id*.

[7] S. 215.475, F.S.

[8] S. 215.4755, F.S.

[9] Officer of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments*, supra footnote 5.

[10] Office of the Governor, *Governor Ron DeSantis Takes Action Against Communist China and Woke Corporations*, Dec. 20, 2021, https://www.flgov.com/2021/12/20/governor-ron-desantis-takes-action-against-communist-china-and-woke-corporations/ (last visited Feb. 13, 2023).

acquisitions, and a variety of other management and shareowner proposals.[11] Of all votes cast, 17.5 percent were "against" the recommendation of company management.[12]

State General Revenue and Trust Funds

The Chief Financial Officer (CFO) is responsible for the investment of state general revenue and trust funds.[13] Interest earnings are allocated to the general revenue fund, trust funds, and Special Purpose Investment accounts.[14] A 5-member Treasury Investment Council provides guidance on investment policy and strategy.[15]

Local Government Retirement Plans

The Department of Management Services monitors and oversees 485 retirement plans of municipalities, special districts, and school boards, to ensure that they are actuarially sound.[16] 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.[17] State law includes special requirements for police and firefighter retirement plans; investments for these trust funds are directly managed by the SBA and are subject to the investment policies applicable to the SBA.[18]

Local Government Surplus Funds

There are several investment vehicles for surplus funds of local governments.[19]

The SBA manages Florida PRIME (the Local Government Surplus Funds Trust), which invests surplus funds of 755 units of local government in accordance with the investment restrictions that apply to the investment of state funds.[20]

Two other investment pools were created by interlocal agreements.[21] 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.[22] The cities of Bradenton, Lauderhill, and Palatka created The Florida Municipal Investment Trust, which offers local governments the choice of six fixed income portfolios, three equity portfolios and a real estate portfolio.[23]

In general, investments of local government surplus funds are subject to the written investment plan adopted by a governing board or principal officer of the local government entity. If there is no written investment policy, the local government entity may only invest surplus public funds in Florida PRIME, registered money market

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[11] State Board of Administration, *2022 Corporate Governance Summary Report*, 2022 CG Annual Summary v4.pdf (sbafla.com) (last visited Feb. 13, 2023).
[12] *Id*.
[13] S. 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.
[14] Florida Department of Financial Services, Treasury Investment Pool, https://www.myfloridacfo.com/division/treasury/treasury-investment-pool (last visited Feb. 13, 2023).
[15] *Id*.
[16] Florida Department of Management Services, *Florida Local Government Retirement Systems 2022 Annual Report*, 2022_Local_Report.pdf (fl.gov) (last visited Feb. 13, 2023).
[17] S. 112.661, F.S.
[18] Ss. 175.341 and 185.23, F.S.
[19] S. 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."
[20] S. 218.405(16)(a), F.S. *Also see*, State Board of Administration, *Florida PRIME*, https://www.sbafla.com/prime/ (last visited Feb. 13, 2023).
[21] Ss. 163.01, F.S. and 218.415, F.S.
[22] Florida Local Government Investment Trust, *About*, https://www.floridatrustonline.com/funds-reports/ (last visited Feb. 13, 2023).
[23] Florida League of Cities, Florida Municipal Investment Trust, https://www.floridaleagueofcities.com/services/investments-(fmivt) (last visited Feb. 13, 2023).

funds, interest bearing time deposits or savings accounts in qualified public depositories designated by the CFO, or direct obligations of the US Treasury.[24]

Citizen Support and Direct-Support Organizations

Citizen support organizations (like Friends of Biscayne Bay or the North Florida Springs Alliance) and direct-support organizations (like the University Athletic Association associated with the University of Florida) 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. Such organizations must submit annual reports describing their activities to the appropriate government agency. Reports are forwarded to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by Aug. 15 each year.[25]

Effect of the Bill

The bill codifies and extends the policy adopted by the Trustees – 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 citizen support and direct-support organizations. 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 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."

The bill amends the IPS accordingly.

To address funds of the state Treasury managed by the CFO, the bill requires that investments and deposits in qualified public depositories (discussed below) be based solely on pecuniary factors, as defined above.

To address funds of local government retirement systems, the bill requires that written investment policies and investment decisions be based solely on pecuniary factors, as defined above.

State and local retirement systems must report compliance with the law on a biennial basis, beginning December 15, 2023. Local government retirement plans must report to the Department of Management Services (DMS); the SBA, on behalf of the Florida Retirement System, must report to 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.

The bill requires investment managers who invest public funds on behalf of a state or local government entity 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 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."

[24] S. 218.415(16), F.S.
[25] S. 20.058, F.S.

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.

Additionally, 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 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

Entities of state and local government 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 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.[26] The Governor, the Chief Financial Officer, and the Attorney General serve as the governing board of the Division of Bond Finance.[27]

Local governments may also issue bonds through the Florida League of Cities, investment banks or other financial firms.[28] 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.[29] 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.[30]

There is about $93.6 billion in outstanding state and local long-term debt:

- $17.1 billion - state[31]
- $76.5 billion - local[32]

Effect of the Bill

The bill prohibits bond issuers from issuing an ESG bond or paying for a third-party verifier that certifies or verifies that a bond[33] 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 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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[26] Division of Bond Finance, *Bond Program Overview,* https://www.sbafla.com/bondfinance/Bond-Programs (last visited Feb. 13, 2023).
[27] S. 215.62, F.S.
[28] *See, e.g.,* Florida League of Cities, Bond Issue Program, https://www.floridaleagueofcities.com/services/loans/bond-issue-program (last visited Feb. 13, 2023).
[29] Ss. 218.37 and 218.38, F.S.
[30] S. 218.385, F.S.
[31] State of Board of Administration, Division of Bond Finance, *State of Florida Debt Report 2022* (Dec. 2022). https://www.sbafla.com/bond/Portals/0/Content/DebtReport/DAR%202022%20Report%20FINAL.pdf?ver=2022-12-15-121017-743 (last visited Mar. 4, 2023).
[32] Local Government Financial Reporting, *Create Reports*, https://apps.fldfs.com/localgov/reports/adhoc.aspx (last visited Mar. 4, 2023).
[33] 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.

- The Division of Bond Finance, acting on behalf of any entity;
- Any local government, educational entity, or entity of higher education,[34] 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,[35]
  - Industrial development authorities created under ch. 159, F.S.,
  - Housing financing authorities,[36]
  - Research and development authorities,[37]
  - Legal or administrative entities created by interlocal agreement pursuant to s. 163.01(7), F.S.,
  - Community redevelopment agencies,[38]
  - Regional transportation authorities created under chapter 163, F.S.,
  - Community development districts,[39]
  - Educational facilities authorities,[40]
  - 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,[41]
  - 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.

An ESG bond is 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 an 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 bill expressly applies to bonds issued and agreements made and contracts executed on or after July 1, 2023.

Government Contracts

Ch. 287, F.S., sets forth the procurement and contracting procedures for most state agencies.[42]

In general, the law requires a competitive solicitation process when state agencies wish to procure commodities or contractual services that cost more than $35,000.[43] An agency may use an invitation to bid, issue a request for proposals from vendors who are able to provide the desired service(s), or issue an invitation to negotiate when one or more responsive vendors may be able to provide the desired service(s).[44] A

[34] As defined in s. 215.89(2)(c), (d), and (e), F.S.
[35] As defined in s. 154.205, F.S.
[36] As defined in s. 159.603(3), F.S.
[37] As defined in s. 159.702(1)(c), F.S.
[38] As defined in s. 163.340(1), F.S.
[39] As defined in s. 190.003, F.S.
[40] As defined in s. 243.52(1), F.S.
[41] As defined in s. 315.02(1) and (2), F.S.
[42] Chapters 255, 283, and 337 provide requirements for building construction, printing services, and road/bridge construction, respectively.
[43] S. 287.017, F.S.
[44] S. 287.057(1), F.S. Certain commodities (including but not limited to artistic services, lectures by individuals, legal services, healthcare) are exempt from the competitive solicitation process.

competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors.[45]

For contracts that cost more than $195,000, at least three people who have experience and knowledge in the program area and service requirements must independently evaluate proposals and replies.[46] If the value of the contract exceeds $1 million in any fiscal year, at least one of the persons conducting negotiations must be a certified contract negotiator.[47]

Contracts for commodities or services may be renewed for the term of the original contract or for up to three years, whichever is longer. Renewals must be in writing, are contingent upon satisfactory performance evaluations by the agency and the availability of funds, and may not include compensation for costs associated with the renewal.[48]

The Department of Management Services (DMS) oversees state purchasing activity and registers vendors that wish to provide goods or services to the state.[49] DMS also maintains lists of vendors who may not submit bids, proposals, or reply to agency requests for proposals. These include companies identified on the:

- Suspended vendor list – Vendors who are in default on a contract or have repeatedly failed to fulfill the terms of state contracts. Contracts cannot be awarded to such vendors until the vendor reimburses the agency for the costs of re-procurement and the agency is satisfied the further default will not occur.[50]
- Convicted vendor list – Vendors who have been disqualified due to conviction of a public entity crime, which includes fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation related to a contract for services to be provided to a public entity.[51]
- Discriminatory vendor list – Vendors who have been disqualified for violating any state or federal law prohibiting discrimination based on race, gender, national origin, disability, or religion.[52]

Effect of the Bill

The bill prohibits consideration of social, political, or ideological beliefs in state and local government contracting, and 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 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.

Financial Institutions

Dual Oversight of Depository Institutions

To accept deposits, an institution must have a federal or state charter. Banks are chartered and regulated as national banks under the authority of the Office of the Comptroller of the Currency within the U.S. Department of the Treasury or as state banks under the authority of a state regulator.[53]

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[45] S. 287.012(6), F.S.
[46] S. 287.057(17)(a)1., F.S.
[47] S. 287.057(17)(b)1., F.S.
[48] S. 287.057(14), F.S.
[49] Ss. 287.032 and 287.042, F.S. *Also see*, Department of Management Services, *Vendor Registration and Vendor Lists*, Vendor Registration and Vendor Lists / State Agency Resources / State Purchasing / Business Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Feb. 13, 2023).
[50] S. 287.1351, F.S.
[51] S. 287.133, F.S.
[52] S. 287.134, F.S.
[53] Congressional Research Service, *Introduction to Financial Services: Banking*, January 5, 2023, https://crsreports.congress.gov/product/pdf/IF/IF10035 (last visited Feb. 13, 2023).

The Florida Financial Institutions Codes[54] apply to all state-authorized or state-chartered financial banks, trust companies, credit unions and related entities.[55] The Office of Financial Regulation (OFR) licenses and regulates 197 financial entities, including 69 state-chartered banks and 66 state-chartered credit unions.[56] There are also 33 federally-chartered banks and 63 federally chartered credit unions operating in Florida.[57]

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.[58]

Once a financial institution obtains a charter, the regulator's primary task is to ensure solvency; the regulator does this 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.[59]

Banks chartered by OFR must become a member of the Federal Reserve or obtain insurance from the Federal Deposit Insurance Corporation.[60] Credit Unions chartered by OFR must insure their accounts by becoming a member of the National Credit Union Administration.[61] 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, like prior examination results or significant operational changes.[62] 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.[63]

Financial institutions that become insolvent are liquidated by their primary regulator.[64]

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:

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[54] Under s. 655.005(1)(k), F.S., the Financial Institutions Codes are:
1. Chapter 655, relating to financial institutions generally;
2. Chapter 657, relating to credit unions;
3. Chapter 658, relating to banks and trust companies;
4. Chapter 660, relating to trust business;
5. Chapter 662, relating to family trust companies;
6. Chapter 663, relating to international banking;
7. Chapter 665, relating to associations; and
8. Chapter 667, relating to savings banks.

[55] S. 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.

[56] Office of Financial Regulation, *Fast Facts* (2021 ed.), FastFacts.pdf (flofr.gov) (last visited Feb. 13, 2023).

[57] *Id*.

[58] 12 C.F.R. § 7.4000 (2011).

[59] 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, 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.

[60] Ss. 658.22 and 658.38, F.S.

[61] Ss. 657.005, 657.008, F.S.

[62] S. 655.045(1), F.S.

[63] S. 655.045(1)(a), F.S.

[64] Ss. 657.063, 657.064, 658.83, 660.48, F.S.

> "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,[65] removal of an Institution-Affiliated Party,[66] administrative fines,[67] and a court-ordered injunction to restrain conduct that violates a formal enforcement action.[68] 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."[69]

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.[70] In general, administrative fines may not exceed $2,500 per day for each violation.[71] Larger fines are allowed in the following circumstances:

- Up to $10,000 per day for each violation for reckless violations that result in more than a minimal loss to a financial institution or pecuniary benefit to the person liable for the violation;[72]
- 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;[73] and
- Up to $10,000 per day for any financial institution that refuses to permit an examination.[74]

Criminal violations – like embezzlement and fraud – may be prosecuted under the penal code.[75]

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.[76] Federal pre-emption permits federally chartered banks and savings associations to operate under a uniform set of rules when they operate across state lines.[77]

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.[78]

Non-Depository Financial Institutions

OFR also has regulatory authority over consumer finance lenders that help consumers finance products or services, and money services businesses that assist consumers in transacting instruments or transmitting money. Non-depository lenders profit from fees charged on such loans or transactions.

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[65] S. 655.033, F.S.
[66] S. 655.037, F.S.
[67] S. 655.041, F.S.
[68] S. 655.034, F.S.
[69] S. 655.031(1), F.S.
[70] S. 655.041, F.S.
[71] S. 655.041(2), F.S.
[72] S. 655.041(2)(a), F.S.
[73] S. 655.041(2)(b), F.S.
[74] S. 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.
[75] S. 655.0322, F.S.
[76] 12 U.S.C. 25b.
[77] 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, https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-176a.pdf (last visited Feb. 13, 2023).
[78] S. 655.061, F.S.

Consumer finance lenders may make secured or unsecured loans of up to $25,000 at interest rates between 18 and 30 percent per year.[79] Each location of a consumer finance company must be licensed by OFR, even if the separate locations are part of the same business entity.[80] 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.[81] 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.[82] Certain violations, such as violating fair lending laws or operating without a license, may be prosecuted as a first-degree misdemeanor.[83]

Money services businesses provide services such as cashing checks, transmitting money, and exchanging foreign currency. Examples include check cashers like Amscot, money transmitters like PayPal, and exchangers like Currency Exchange International. 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.
- 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.[84]

In addition to licensing and ongoing solvency monitoring, OFR requires that money service businesses maintain accounts – in permissible investments that can be liquidated to satisfy business obligations – that are at least equal to the amount of all outstanding money transmissions and payment instruments sold by the licensee or an authorized vendor.[85] OFR also monitors the check cashing practices of money services businesses to verify corporate records and determine compliance with workers' compensation laws,[86] and to ensure compliance with fair debt collection laws.[87] 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, or a fine of at least $1,000 but not more than $10,000 for each violation.[88] Money laundering may be prosecuted under state or federal law.[89]

Effect of the Bill

The bill adds the term "unsafe and unsound practice" to the section of the Florida Financial Institutions Codes that defines "unsafe or unsound practice (excerpted above) for banks, trust companies, and credit unions. The term "unsafe and unsound practice" is also added to laws governing consumer finance loans and money services businesses. The definition echoes references found to "unsafe or unsound practice" in sections of the bill relating to bond finance and qualified public depositories, and states:

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

[79] S. 516.02, F.S.
[80] S. 516.05, F.S.
[81] Ss. 516.11, 516.15, 516.26, 516.31 and 516.35, F.S.
[82] S. 516.07(2), F.S.
[83] S. 516.19, F.S.
[84] S. 560.404, F.S.
[85] S. 560.210, F.S.
[86] S. 560.310, F.S.
[87] S. 560.309, F.S.
[88] S. 560.114, F.S.
[89] Ss. 560.111 and 560.123, F.S

- A social credit score.[90]

The bill states that financial institutions operating in Florida – banks, trust companies, credit unions, consumer finance lenders and money service 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 regulated by Florida must provide an attestation stating that the financial institution's practices comply with the applicable requirements and limitations created by the bill.

If a financial institution licensed by OFR engages in an "unsafe or unsound practice," OFR may impose administrative penalties, including an order requiring corrective action, a financial penalty, and suspension or revocation of a license.

Additionally, the bill states that a financial institution licensed by OFR that engages in an "unsafe or unsound practice," has 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.

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.[91]

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.[92]

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;

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[90] 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.

[91] The Financial Services Commission is the Governor, Attorney General, Commissioner of Agriculture, and Chief Financial Officer. The Commission is the agency head over OFR. S. 20.121(3), F.S.

[92] S. 280.01, 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.

- 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.[93]

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.[94] The amount collateral required is based on statutory guidelines and the QPD's overall financial condition.[95]

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.[96]

To be qualified as a QPD, a bank or savings association must guaranty public depositors against losses caused by the default or insolvency of other QPDs.[97] Any shortfall that is not covered by the maximum federal deposit insurance of $250,000, the CFO's demand for payment under letters of credit or the sale of pledged collateral becomes the responsibility of solvent QPDs, who would be required to pay assessments imposed by the CFO.[98]

As of May 20, 2022, Florida had 118 authorized QPDs.[99] These QPDs include 23 of the 28 federally chartered banks and trusts that operate in Florida.[100]

Effect of the Bill

The bill 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" of denying or canceling its services based on political beliefs or affiliations, religious beliefs or affiliations, business sector, or any other factor that is not a quantitative, impartial, risk-based standard.

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.[101]

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. Failure to file the required attestation is grounds for suspension or disqualification of a QPD, and failure to timely file the attestation is deemed a knowing and willful violation of the law.

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.

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[93] S. 280.02(26), F.S.
[94] S. 280.041(6), F.S.
[95] S. 280.04, F.S., and Rule 69C-2.024, F.A.C.
[96] S. 280.02(23), F.S.
[97] S. 280.07, F.S.
[98] S. 280.08, F.S.
[99] Florida Department of Financial Services, Division of the Treasury, *List of Active QPDs*, May 20, 2022, List of Active QPDs.xlsx (myfloridacfo.com) (last visited Feb. 13, 2023).
[100] U.S. Department of the Treasury, Office of the Comptroller of the Currency, *Financial Institution Lists*, https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html (last visited Feb. 13, 2023).
[101] Supra, note 90.

Additionally, 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.[102] DFS reports that there are 37 federally chartered institutions active as a QPD, as of March 1, 2023.[103]

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.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.57, F.S., relating to deposits and investments of state money.
Section 2. Amends s. 20.058, F.S., relating to citizen support and direct-support organizations.
Section 3. Amends s. 112.656, F.S., relating to fiduciary duties; certain officials included as fiduciaries.
Section 4. Amends s. 112.661, F.S., relating to investment policies.
Section 5. Creates s. 112.662, F.S., relating to investments; exercising shareholder rights.
Section 6. Amends s. 175.071, F.S., relating to general powers and duties of board of trustees.
Section 7. Amends s. 185.06, F.S., relating to general powers and duties of board of trustees.
Section 8. Amends s. 215.47, relating to investments; authorized securities; loan of securities.
Section 9. Amends s. 215.475, F.S., relating to investment policy statement.
Section 10. Amends s. 215.4755, F.S., relating to certification and disclosure requirements for investment advisers and managers.
Section 11. Creates s. 215.681, F.S., relating to ESG bonds; prohibitions.
Section 12. Creates s. 215.855, F.S., relating to investment manager external communication.
Section 13. Amends s. 218.415, F.S., relating to Local government investment policies.
Section 14. Amends s. 280.02, F.S., relating to definitions
Section 15. Creates s. 280.025, relating to attestation required.
Section 16. Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.
Section 17. Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.
Section 18. Amends s. 280.054, F.S., relating to administrative penalty in lieu of suspension or disqualification.
Section 19. Amends s. 280.055, F.S., , relating to cease and desist order; corrective order; administrative penalty.
Section 20. Creates s. 287.05701, F.S., relating to prohibition against considering social, political, or ideological interests in government contracting.
Section 21. Creates s. 516.037, F.S., relating to unsafe and unsound practices.
Section 22. Creates s. 560.1115, F.S., relating to unsafe and unsound practices.
Section 23. Amends s. 655.005, F.S., relating to definitions.
Section 24. Creates s. 655.0323, F.S., relating to unsafe and unsound practices.
Section 25. Amends s. 1010.04, F.S., relating to purchasing.
Section 26. Re-enacts s. 17.61, F.S., relating to Chief Financial Officer; powers and duties in the investment of certain funds.
Section 27. Re-enacts s. 245.44, F.S., relating to Board of Administration; powers and duties in relation to investment of trust funds.
Section 28. Effective date July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[102] 12 U.S.C. 484 and 12 CFR § 7.400.
[103] Florida Department of Financial Services, Agency Analysis of HB 3, p. 2, (Mar. 2, 2023).

None.

2. Expenditures:

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may:

- 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,
- Ensure that financial entities focus on pecuniary factors and safe and sound practices that will protect their businesses,
- Expand who can receive government procurement awards,
- 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 fiduciary standards set forth in the bill, and
- Increase access to financial products and services that would otherwise be limited by ESG-related discrimination.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires local governments 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.

2. Other:

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

B. RULE-MAKING AUTHORITY:

DMS is provided authority to adopt rules implementing reporting requirements related to state and local retirement plans.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to government and corporate activism; amending s. 17.57, F.S.; providing a definition; requiring certain parties to make investment decisions based on specified factors; amending s. 20.058, F.S.; requiring a specified attestation, under penalty of perjury, from certain organizations; providing a definition; requiring certain organizations to make investment decisions based on specified factors; amending s. 112.656, F.S.; requiring investment decisions to comply with certain requirements; amending s. 112.661, F.S.; providing an exception to current investment and fiduciary standards; creating s. 112.662, F.S.; providing a definition; requiring certain assets to be invested based on specified factors; requiring shareholder rights to be exercised based on specified factors; requiring specified reports; providing requirements for such reports; requiring the Department of Management Services to report certain noncompliance to the Attorney General; authorizing certain proceedings to be brought by the Attorney General; authorizing attorney fees and costs; requiring the department to adopt rules; amending ss. 175.071 and 185.06, F.S.; specifying that certain boards of trustees are subject to certain changes made

by the act; amending s. 215.47, F.S.; providing a definition; requiring the State Board of Administration to make investment decisions based on specified factors; providing an exception to current investment and fiduciary standards; amending s. 215.475, F.S.; requiring the Florida Retirement System Defined Benefit Plan Investment Policy Statement to comply with certain requirements; amending s. 215.4755, F.S.; requiring certain parties to make investment decisions based on specified factors; providing applicability; providing that a certain failure is grounds for termination of a contract; providing that a certain false submission is deemed a specified violation; requiring certain noncompliance to be reported to the Attorney General; authorizing certain proceedings to be brought by the Attorney General; authorizing attorney fees and costs; creating s. 215.681, F.S.; providing definitions; prohibiting a bond issuer from taking certain actions; authorizing certain financial institutions to purchase and underwrite specified bonds; providing applicability; creating s. 215.855, F.S.; providing definitions; requiring contracts between certain entities to contain certain provisions and a specified disclaimer; authorizing such contracts to be terminated in

specified circumstances; providing applicability; amending s. 218.415, F.S.; providing a definition; requiring units of local government to make investment decisions based on specified factors; amending s. 280.02, F.S.; revising a definition; creating s. 280.025, F.S.; requiring a specified attestation, under penalty of perjury, from certain entities; amending s. 280.05, F.S.; requiring the Chief Financial Officer to verify specified attestations; requiring certain determinations to be reported to the Attorney General; authorizing certain proceedings to be brought by the Attorney General; authorizing attorney fees and costs; providing construction; authorizing the Chief Financial Officer to issue certain sanctions in specified circumstances; amending s. 280.051, F.S.; authorizing the Chief Financial Officer to issue certain sanctions in specified circumstances; amending s. 280.054, F.S.; providing that a certain failure is a specified violation; amending s. 280.055, F.S.; authorizing the Chief Financial Officer to issue certain sanctions in a specified circumstance; creating s. 287.05701, F.S.; providing a definition; prohibiting an awarding body from taking certain actions when making certain determinations; requiring a specified notification to

include a certain provision beginning on a specified date; creating s. 516.037, F.S.; requiring licensees to make certain determinations based on specified factors; providing construction; providing that certain actions are an unsafe and unsound practice; providing a definition; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a certain action is a specified violation; providing for enforcement; authorizing attorney fees and costs; creating s. 560.1115, F.S.; requiring licensees to make certain determinations based on specified factors; providing construction; providing that certain actions are an unsafe and unsound practice; providing a definition; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a certain action is a specified violation; providing for enforcement; authorizing attorney fees and costs; amending s. 655.005, F.S.; revising a definition; creating s. 655.0323, F.S.; requiring financial institutions to make certain determinations based on specified factors; providing construction; providing that certain actions are an unsafe and unsound practice; providing a definition;

requiring a specified attestation, under penalty of perjury, from financial institutions annually beginning on a specified date; providing that a certain action is a specified violation; providing for enforcement; authorizing attorney fees and costs; prohibiting certain entities from exercising specified authority; amending s. 1010.04, F.S.; prohibiting certain entities from taking certain actions beginning on a specified date; requiring certain solicitations to include a specified provision; reenacting s. 17.61(1), F.S., relating to powers and duties of the Chief Financial Officer in the investment of certain funds, to incorporate the amendment made to s. 17.57, F.S., in references thereto; reenacting s. 215.44(3), F.S., relating to the powers and duties of the Board of Administration in the investment of trust funds, to incorporate the amendment made to s. 215.47, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 17.57, Florida Statutes, is amended to read:

17.57 Deposits and investments of state money.—

(1)(a) As used in this subsection, the term "pecuniary

CODING: Words stricken are deletions; words underlined are additions.

factor" means a factor that the Chief Financial Officer, or other party authorized to invest on his or her behalf, prudently determines 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 or furtherance of any social, political, or ideological interests.

(b) The Chief Financial Officer, or other parties with the permission of the Chief Financial Officer, shall deposit the money of the state or any money in the State Treasury in such qualified public depositories of the state as will offer satisfactory collateral security for such deposits, pursuant to chapter 280. It is the duty of the Chief Financial Officer, consistent with the cash requirements of the state, to keep such money fully invested or deposited as provided herein in order that the state may realize maximum earnings and benefits.

(c) Notwithstanding any other law, when deciding whether to invest and when investing, the Chief Financial Officer, or other party authorized to invest on his or her behalf, must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk

or returns.

Section 2. Subsections (4) and (5) of section 20.058, Florida Statutes, are renumbered as subsections (5) and (6), respectively, paragraph (g) is added to subsection (1), and a new subsection (4) is added to that section, to read:

20.058 Citizen support and direct-support organizations.—

(1) By August 1 of each year, a citizen support organization or direct-support organization created or authorized pursuant to law or executive order and created, approved, or administered by an agency, shall submit the following information to the appropriate agency:

(g) An attestation, under penalty of perjury, stating that the organization has complied with subsection (4).

(4)(a) As used in this section, the term "pecuniary factor" means a factor that the citizen support organization or direct-support organization prudently determines 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 or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing funds on behalf of an agency, the citizen support organization or direct-support organization must make decisions based solely on pecuniary factors and may not

subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 3. Subsection (1) of section 112.656, Florida Statutes, is amended to read:

112.656 Fiduciary duties; certain officials included as fiduciaries.—

(1) A fiduciary shall discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Investment decisions must comply with s. 112.662.

Section 4. Subsection (4) of section 112.661, Florida Statutes, is amended to read:

112.661 Investment policies.—Investment of the assets of any local retirement system or plan must be consistent with a written investment policy adopted by the board. Such policies shall be structured to maximize the financial return to the retirement system or plan consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of the retirement system

or plan's assets.

(4) INVESTMENT AND FIDUCIARY STANDARDS.—The investment policy shall describe the level of prudence and ethical standards to be followed by the board in carrying out its investment activities with respect to funds described in this section. The board in performing its investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). Except as provided in s. 112.662, in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this section shall prevail.

Section 5. Section 112.662, Florida Statutes, is created to read:

112.662 Investments; exercising shareholder rights.—

(1) As used in this section, the term "pecuniary factor" means a factor that the plan administrator, named fiduciary, board, or board of trustees prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with the investment objectives and funding policy of the retirement system or plan. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(2) Notwithstanding any other law, when deciding whether to invest and when investing the assets of any retirement system

or plan, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(3) Notwithstanding any other law, when deciding whether to exercise shareholder rights or when exercising such rights on behalf of a retirement system or plan, including the voting of proxies, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor.

(4)(a) By December 15, 2023, and by December 15 of each odd-numbered year thereafter, each retirement system or plan shall file a comprehensive report detailing and reviewing the governance policies concerning decisionmaking in vote decisions and adherence to the fiduciary standards required of such retirement system or plan under this section, including the exercise of shareholder rights.

1. The State Board of Administration, on behalf of the Florida Retirement System, shall submit its report to the Governor, the Attorney General, the Chief Financial Officer, the

President of the Senate, and the Speaker of the House of Representatives.

2. All other retirement systems or plans shall submit their reports to the Department of Management Services.

(b) By January 15, 2024, and by January 15 of each even-numbered year thereafter, the Department of Management Services shall submit a summary report to the Governor, the Attorney General, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives that includes a summary of the reports submitted under paragraph (a) and identifies any relevant trends among such systems and plans.

(c) The Department of Management Services shall report incidents of noncompliance to the Attorney General, who may institute proceedings to enjoin any person found violating this section. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

(d) The Department of Management Services shall adopt rules to implement this subsection.

Section 6. Subsection (1) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary

standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund are entitled under this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the

United States, or the District of Columbia, if:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor may the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph applies to all boards of trustees and participants. However, if a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees desire to vary the investment procedures, the trustees of such plan must request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply

with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts must be consecutively numbered, be signed by the chair and secretary, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and the board's acts and proceedings.

Section 7. Subsection (1) of section 185.06, Florida

Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a

greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 8. Subsection (10) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(10)(a) As used in this subsection, the term "pecuniary factor" means a factor that the State Board of Administration prudently determines 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 or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing the assets of any fund, the State Board of Administration must make decisions based solely on pecuniary factors and may not subordinate the interests of the participants and beneficiaries of the fund to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor.

The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(c) Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C). Except as provided in paragraph (b), in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this paragraph ~~subsection~~ shall prevail.

Section 9. Subsection (1) of section 215.475, Florida Statutes, is amended to read:

215.475 Investment policy statement.—

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must comply with s. 215.47(10) and include, among other items, the

investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

Section 10. Paragraphs (b), (c), and (d) of subsection (1) of section 215.4755, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, subsection (3) is amended, and paragraph (b) is added to subsection (1) of that section, to read:

215.4755 Certification and disclosure requirements for investment advisers and managers.—

(1) An investment adviser or manager who has discretionary investment authority for direct holdings and who is retained as provided in s. 215.44(2)(b) shall agree pursuant to contract to annually certify in writing to the board that:

(b) All investment decisions made on behalf of the trust funds and the board are made based solely on pecuniary factors as defined in s. 215.47(10)(a) and do not subordinate the interests of the participants and beneficiaries of the funds to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor. This paragraph applies to any contract executed, amended, or renewed on or after July 1, 2023.

(3)(a) An investment adviser or manager certification required under subsection (1) shall be provided annually, no later than January 31, for the reporting period of the previous calendar year on a form prescribed by the board.

(b) Failure to timely file the certification required under subsection (1) shall be grounds for termination of any contract between the board and the investment advisor or manager.

(c) Submission of a materially false certification shall be deemed a willful refusal to comply with the fiduciary standards set forth in paragraph (1)(b).

(d) If an investment advisor or manager fails to comply with the fiduciary standards described in (1)(b) while providing services to the board, the board shall report such noncompliance to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

Section 11. Section 215.681, Florida Statutes, is created to read:

215.681 ESG bonds; prohibitions.—

(1) As used in this section, the term:

(a) "Bonds" means 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.

(b) "ESG" means environmental, social, and governance.

(c) "ESG bonds" means 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 an 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.

(d) "Issuer" means the division, acting on behalf of any entity; any local government, educational entity, or entity of higher education as defined in s. 215.89(2)(c), (d), and (e), respectively, 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, a water and sewer district created under chapter 153, a health facilities authority as defined in s. 154.205, an industrial development authority created under chapter 159, a housing financing authority as defined in s. 159.603(3), a research and

development authority as defined in s. 159.702(1)(c), a legal or administrative entity created by interlocal agreement pursuant to s. 163.01(7), a community redevelopment agency as defined in s. 163.340(1), a regional transportation authority created under chapter 163, a community development district as defined in s. 190.003, an educational facilities authority as defined in s. 243.52(1), the Higher Educational Facilities Financing Authority created pursuant to s. 243.53, the Florida Development Finance Corporation created pursuant to s. 288.9604, a port district or port authority as defined in s. 315.02(1) and (2), respectively, the South Florida Regional Transportation Authority created pursuant to s. 343.53, the Central Florida Regional Transportation Authority created pursuant to s. 343.63, the Tampa Bay Area Regional Transit Authority created pursuant to s. 343.92, the Greater Miami Expressway Agency created pursuant to s. 348.0304, the Tampa-Hillsborough County Expressway Authority created pursuant to s. 348.52, the Central Florida Expressway Authority created pursuant to s. 348.753, the Jacksonville Transportation Authority created pursuant to s. 349.03, and the Florida Housing Finance Corporation created pursuant to s. 420.504.

(e) "Rating agency" means any nationally recognized rating service or nationally recognized statistical rating organization.

(f) "Third-party verifier" means 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.

(2) 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:

(a) Issue ESG bonds.

(b) Expend public funds as defined in s. 215.85(3) or use moneys derived from the issuance of bonds to pay for the services of a third-party verifier, 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.

(c) Enter 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.

(3) Notwithstanding s. 655.0323, a financial institution as defined in s. 655.005(1) may purchase and underwrite bonds issued by a governmental entity.

(4) This section does not apply to any bonds issued before July 1, 2023, or to any agreement entered into or any contract executed before July 1, 2023.

Section 12. Section 215.855, Florida Statutes, is created to read:

215.855 Investment manager external communication.—

(1) As used in this section, the term:

(a) "Governmental entity" means 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 public school, Florida College System institution, state university, or associated board.

(b) "Investment manager" means 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.

(c) "Public funds" means 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.

(2) Any contract between a governmental entity and an investment manager must contain the following provisions:

(a) Any written communication made by the investment

manager to a company in which such manager invests public funds on behalf of a governmental entity must include the following disclaimer in a conspicuous location if such communication discusses social, political, or ideological interests; subordinates the interests of the company's shareholders to the interest of another entity; or advocates for the interest of an entity other than the company's shareholders:

The views and opinions expressed in this communication are those of the sender and do not reflect the views and opinions of the people of the State of Florida.

(b) The contract may be unilaterally terminated at the option of the governmental entity if the investment manager does not include the disclaimer required in paragraph (a).

(3) This section applies to contracts between a governmental entity and an investment manager executed, amended, or renewed on or after July 1, 2023.

Section 13. Subsection (24) is added to section 218.415, Florida Statutes, to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained

by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(24) INVESTMENT DECISIONS.—

(a) As used in this subsection, the term "pecuniary factor" means a factor that the governing body of the unit of local government, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government, prudently determines 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 or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing public funds pursuant to this

section, the unit of local government must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any non-pecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 14. Paragraphs (e) and (f) of subsection (26) of section 280.02, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, and new paragraphs (e) and (f) are added to that subsection to read:

280.02 Definitions.—As used in this chapter, the term:

(26) "Qualified public depository" means a bank, savings bank, or savings association that:

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each individual customer or member. This paragraph does not restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f)1. Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person, on the basis of:

a. The person's political opinions, speech, or

affiliations;

b. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations; or

c. Any factor if it is not a quantitative, impartial, and risk-based standard, including any factor related to the person's business sector.

2. As used in this paragraph, the term "unsafe and unsound practice" 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:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.

g. The person's engagement with, facilitation of,

employment by, support of, business relationship with, representation of, or advocacy for any person described in this subparagraph.

h. 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:

I. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

II. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

III. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

IV. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

Section 15. Section 280.025, Florida Statutes, is created to read:

280.025 Attestation required.—

(1) Beginning July 1, 2023, the following entities must attest, under penalty of perjury, on a form prescribed by the Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

(2) If an application or reapplication for designation as a qualified public depository is pending on July 1, 2023, the bank, savings bank, or savings association must file the attestation under subsection (1) before being designated or redesignated a qualified public depository.

Section 16. Paragraph (d) of subsection (13) and subsection (17) of section 280.05, Florida Statutes, are amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(13) Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(d)1. Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter, including, but not limited to, verifying the attestation required under s. 280.025.

2. If the Chief Financial Officer determines that the attestation required under s. 280.025 is materially false, he or she shall report such determination to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

3. In relation to federally chartered financial institutions, this paragraph may not be construed to create a power exceeding the visitorial powers of the Chief Financial Officer allowed under federal law.

(17) Suspend or disqualify or disqualify after suspension any qualified public depository that has violated any of the provisions of this chapter or of rules adopted hereunder or that no longer meets the definition of a qualified public depository under s. 280.02.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom.

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating any of the provisions of this chapter, is or has been violating any provisions of rules adopted hereunder, or no longer meets the definition of a qualified public depository under s. 280.02, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Chief Financial Officer may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative penalty, the Chief Financial Officer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

Section 17. Subsections (14) and (15) are added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may

be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(14) Failed to file the attestation required under s. 280.025.

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 18. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Failure to timely file the attestation required under s. 280.025 is deemed a knowing and willful violation.

Section 19. Paragraphs (e) and (f) of subsection (1) of section 280.055, Florida Statutes, are amended, and paragraph (g) is added to that subsection, to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; ~~or~~

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

Section 20. Section 287.05701, Florida Statutes, is created to read:

287.05701 Prohibition against considering social,

political, or ideological interests in government contracting.—

(1) As used in this section, the term "awarding body" means:

(a) For state contracts, an agency or the department.

(b) For local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

(2)(a) An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

(b) An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

(3) Beginning July 1, 2023, any solicitation for the procurement of commodities or contractual services by an awarding body must include a provision notifying vendors of the provisions of this section.

Section 21. Section 516.037, Florida Statutes, is created to read:

516.037 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each individual current or prospective customer. This subsection does not restrict a licensee that claims a religious

purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2)(a) 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:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations; or

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any factor related to the person's business sector.

(b) As used in this subsection, the term "unsafe and unsound practice" 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:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture,

distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including,

but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsection (2).

(4) A practice described in subsection (2) is a failure to comply with this chapter, constitutes a violation of this chapter, and is subject to the applicable sanctions and penalties provided for in this chapter.

(5) A practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations shall be enforced by the enforcing authority, as defined in s. 501.203(2), and shall subject the violator to any and all sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 22. Section 560.1115, Florida Statutes, is created to read:

560.1115 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each individual current or prospective customer. This subsection does not restrict a licensee that claims a religious

purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2)(a) 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:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations; or

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any factor related to the person's business sector.

(b) As used in this subsection, the term "unsafe and unsound practice" 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:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture,

distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including,

but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees, as applicable, must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsection (2).

(4) A practice described in subsection (2) is a failure to comply with this chapter, constitutes a violation of this chapter, and is subject to the applicable sanctions and penalties provided for in this chapter.

(5) A practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations shall be enforced by the enforcing authority, as defined in s. 501.203(2), and shall subject the violator to any and all sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 23. Paragraph (y) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(y) "Unsafe or unsound practice" or "unsafe and unsound practice" means:

1. 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; or

2. Any practice described in s. 655.0323.

Section 24. Section 655.0323, Florida Statutes, is created to read:

655.0323 Unsafe and unsound practices.—

(1) Financial institutions must make determinations about the provision or denial of services based on an analysis of risk factors unique to each individual current or prospective customer or member. This subsection does not restrict a financial institution that claims a religious purpose from making such determinations based on the current or prospective customer's or member's religious beliefs, religious exercise, or religious affiliations.

(2)(a) It is an unsafe and unsound practice for a financial institution to deny or cancel its services to a

person, or to otherwise discriminate against a person, on the basis of:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any factor related to the person's business sector.

(b) As used in this subsection, the term "unsafe and unsound practice" 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:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions subject to the financial institutions codes must attest, under penalty of perjury, on a

form prescribed by the commission whether the entity is acting in compliance with subsection (2).

(4) A practice described in subsection (2) is a failure to comply with this chapter, constitutes a violation of the financial institutions codes, and is subject to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) Notwithstanding s. 501.212, a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations shall be enforced by the enforcing authority, as defined in s. 501.203(2), and shall subject the violator to any and all sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

(6) The office and the commission may not exercise authority pursuant to s. 655.061 in relation to this section.

Section 25. Subsection (5) is added to section 1010.04, Florida Statutes, to read:

1010.04 Purchasing.—

(5) Beginning July 1, 2023, school districts, Florida College System institutions, and state universities may not:

(a) Request documentation of or consider a vendor's social, political, or ideological interests.

(b) Give preference to a vendor based on the vendor's

social, political, or ideological interests.

Any solicitation for purchases and leases must include a provision notifying vendors of the provisions of this subsection.

Section 26. For the purpose of incorporating the amendment made by this act to section 17.57, Florida Statutes, in references thereto, subsection (1) of section 17.61, Florida Statutes, is reenacted to read:

17.61 Chief Financial Officer; powers and duties in the investment of certain funds.—

(1) The Chief Financial Officer shall invest all general revenue funds and all the trust funds and all agency funds of each state agency, and of the judicial branch, as defined in s. 216.011, and may, upon request, invest funds of any board, association, or entity created by the State Constitution or by law, except for the funds required to be invested pursuant to ss. 215.44-215.53, by the procedure and in the authorized securities prescribed in s. 17.57; for this purpose, the Chief Financial Officer may open and maintain one or more demand and safekeeping accounts in any bank or savings association for the investment and reinvestment and the purchase, sale, and exchange of funds and securities in the accounts. Funds in such accounts used solely for investments and reinvestments shall be considered investment funds and not funds on deposit, and such

funds shall be exempt from the provisions of chapter 280. In addition, the securities or investments purchased or held under the provisions of this section and s. 17.57 may be loaned to securities dealers and banks and may be registered by the Chief Financial Officer in the name of a third-party nominee in order to facilitate such loans, provided the loan is collateralized by cash or United States government securities having a market value of at least 100 percent of the market value of the securities loaned. The Chief Financial Officer shall keep a separate account, designated by name and number, of each fund. Individual transactions and totals of all investments, or the share belonging to each fund, shall be recorded in the accounts.

Section 27. For the purpose of incorporating the amendment made by this act to section 215.47, Florida Statutes, in references thereto, subsection (3) of section 215.44, Florida Statutes, is reenacted to read:

215.44 Board of Administration; powers and duties in relation to investment of trust funds.—

(3) Notwithstanding any law to the contrary, all investments made by the State Board of Administration pursuant to ss. 215.44-215.53 shall be subject to the restrictions and limitations contained in s. 215.47, except that investments made by the State Board of Administration under a trust agreement pursuant to subsection (1) shall be subject only to the restrictions and limitations contained in the trust agreement.

Section 28. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

HB 3 by Rep. Rommel
Government and Corporate Activism

AMENDMENT SUMMARY
March 8, 2023

Amendment 1 by Rep. Rommel (line 439):

The amendment makes clarifying and conforming changes, without changing the substance of the bill. The amendment:

- Clarifies that the prohibitions on third-party verifier services applies to ESG bond labels.
- Clarifies the implementation of the prohibition of the use of any social credit score to deny or cancel financial services.
- Adds certain cross references and conforms terminology.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Rommel offered the following:

Amendment (with title amendment)

Remove lines 439-1139 and insert:

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 or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law except for ss. 215.472, 215.4725, and 215.473, when deciding whether to invest and when investing the assets of any fund, the State Board of Administration must make decisions based solely on pecuniary factors and may not subordinate the interests of the participants and beneficiaries of the fund to other objectives,

including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(c) Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C). Except as provided in paragraph (b), in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this paragraph ~~subsection shall~~ prevail.

Section 9. Subsection (1) of section 215.475, Florida Statutes, is amended to read:

215.475 Investment policy statement.—

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by

the executive director and approved by the board. The IPS must comply with s. 215.47(10) and include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

Section 10. Present paragraphs (b), (c), and (d) of subsection (1) of section 215.4755, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added to that subsection, and subsection (3) of that section is amended, to read:

215.4755 Certification and disclosure requirements for investment advisers and managers.—

(1) An investment adviser or manager who has discretionary investment authority for direct holdings and who is retained as provided in s. 215.44(2)(b) shall agree pursuant to contract to annually certify in writing to the board that:

(b) All investment decisions made on behalf of the trust funds and the board are made based solely on pecuniary factors as defined in s. 215.47(10)(a) and do not subordinate the interests of the participants and beneficiaries of the funds to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any

nonpecuniary factor. This paragraph applies to any contract executed, amended, or renewed on or after July 1, 2023.

(3)(a) An investment adviser or manager certification required under subsection (1) must ~~shall~~ be provided by each ~~annually, no later than~~ January 31~~,~~ for the reporting period of the previous calendar year on a form prescribed by the board.

(b) Failure to timely file the certification required under subsection (1) is grounds for termination of any contract between the board and the investment advisor or manager.

(c) Submission of a materially false certification is deemed a willful refusal to comply with the fiduciary standard described in paragraph (1)(b).

(d) If an investment advisor or manager fails to comply with the fiduciary standard described in paragraph (1)(b) while providing services to the board, the board must report such noncompliance to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

Section 11. Section 215.681, Florida Statutes, is created to read:

215.681 ESG bonds; prohibitions.—

(1) As used in this section, the term:

(a) "Bonds" means 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.

(b) "ESG" means environmental, social, and governance.

(c) "ESG bonds" means 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 an 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.

(d) "Issuer" means the division, acting on behalf of any entity; any local government, educational entity, or entity of higher education as defined in s. 215.89(2)(c), (d), and (e), respectively, 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, a water and sewer district created under chapter 153, a health facilities authority as defined in s. 154.205, an industrial development

authority created under chapter 159, a housing financing authority as defined in s. 159.603(3), a research and development authority as defined in s. 159.702(1)(c), a legal or administrative entity created by interlocal agreement pursuant to s. 163.01(7), a community redevelopment agency as defined in s. 163.340(1), a regional transportation authority created under chapter 163, a community development district as defined in s. 190.003, an educational facilities authority as defined in s. 243.52(1), the Higher Educational Facilities Financing Authority created under s. 243.53, the Florida Development Finance Corporation created under s. 288.9604, a port district or port authority as defined in s. 315.02(1) and (2), respectively, the South Florida Regional Transportation Authority created under s. 343.53, the Central Florida Regional Transportation Authority created under s. 343.63, the Tampa Bay Area Regional Transit Authority created under s. 343.92, the Greater Miami Expressway Agency created under s. 348.0304, the Tampa-Hillsborough County Expressway Authority created under s. 348.52, the Central Florida Expressway Authority created under s. 348.753, the Jacksonville Transportation Authority created under s. 349.03, and the Florida Housing Finance Corporation created under s. 420.504.

(e) "Rating agency" means any nationally recognized rating service or nationally recognized statistical rating organization.

(f) "Third-party verifier" means 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.

(2) 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:

(a) Issue ESG bonds.

(b) Expend public funds as defined in s. 215.85(3) or use moneys derived from the issuance of bonds to 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.

(c) Enter 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.

(3) Notwithstanding s. 655.0323, a financial institution as defined in s. 655.005(1) may purchase and underwrite bonds

issued by a governmental entity.

(4) This section does not apply to any bonds issued before July 1, 2023, or to any agreement entered into or any contract executed before July 1, 2023.

Section 12. Section 215.855, Florida Statutes, is created to read:

215.855 Investment manager external communication.—

(1) As used in this section, the term:

(a) "Governmental entity" means 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.

(b) "Investment manager" means 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.

(c) "Public funds" means 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.

(2) Any contract between a governmental entity and an investment manager must contain the following provisions:

(a) That any written communication made by the investment manager to a company in which such manager invests public funds on behalf of a governmental entity must include the following disclaimer in a conspicuous location if such communication discusses social, political, or ideological interests; subordinates the interests of the company's shareholders to the interest of another entity; or advocates for the interest of an entity other than the company's shareholders:

The views and opinions expressed in this communication are those of the sender and do not reflect the views and opinions of the people of the State of Florida.

(b) That the contract may be unilaterally terminated at the option of the governmental entity if the investment manager does not include the disclaimer required in paragraph (a).

(3) This section applies to contracts between a governmental entity and an investment manager executed, amended, or renewed on or after July 1, 2023.

Section 13. Subsection (24) is added to section 218.415, Florida Statutes, to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective

principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(24) INVESTMENT DECISIONS.—

(a) As used in this subsection, the term "pecuniary factor" means a factor that the governing body of the unit of local government, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government, prudently determines 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 or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether

to invest and when investing public funds pursuant to this section, the unit of local government must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 14. Present paragraphs (e) and (f) of subsection (26) of section 280.02, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, and new paragraphs (e) and (f) are added to that subsection, to read:

280.02 Definitions.—As used in this chapter, the term:

(26) "Qualified public depository" means a bank, savings bank, or savings association that:

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member. This paragraph does not restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f) Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such

services or in the terms or conditions of such services, on the basis of:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human

trafficking.

g. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this subparagraph.

h. 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:

(I) Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

(II) Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

(III) Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

(IV) Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

Section 15. Section 280.025, Florida Statutes, is created to read:

280.025 Attestation required.—

(1) Beginning July 1, 2023, the following entities must attest, under penalty of perjury, on a form prescribed by the

Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

(2) If an application or reapplication for designation as a qualified public depository is pending on July 1, 2023, the bank, savings bank, or savings association must file the attestation required under subsection (1) before being designated or redesignated a qualified public depository.

Section 16. Paragraph (d) of subsection (13) and subsection (17) of section 280.05, Florida Statutes, are amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(13) Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(d)1. Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter, including, but

not limited to, verifying the attestation required under s. 280.025.

2. If the Chief Financial Officer determines that the attestation required under s. 280.025 is materially false, he or she must report such determination to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

3. As related to federally chartered financial institutions, this paragraph may not be construed to create a power exceeding the visitorial powers of the Chief Financial Officer allowed under federal law.

(17) Suspend or disqualify or disqualify after suspension any qualified public depository that has violated ~~any of the provisions of~~ this chapter or ~~of~~ rules adopted hereunder or that no longer meets the definition of a qualified public depository under s. 280.02.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the

date of the final order of disqualification or the final disposition of any appeal taken therefrom.

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating ~~any of the provisions of~~ this chapter or ~~of~~ rules adopted hereunder or no longer meets the definition of a qualified public depository under s. 280.02, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Chief Financial Officer may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative penalty, the Chief Financial Officer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

Section 17. Subsections (14) and (15) are added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a

qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(14) Failed to file the attestation required under s. 280.025.

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 18. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Failure to timely file the attestation required under s. 280.025 is deemed a knowing and

willful violation.

Section 19. Paragraphs (e) and (f) of subsection (1) of section 280.055, Florida Statutes, are amended, and paragraph (g) is added to that subsection, to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; ~~or~~

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

Section 20. Section 287.05701, Florida Statutes, is created to read:

287.05701 Prohibition against considering social, political, or ideological interests in government contracting.—

(1) As used in this section, the term "awarding body" means:

(a) For state contracts, an agency or the department.

(b) For local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

(2)(a) An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

(b) An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

(3) Beginning July 1, 2023, any solicitation for the procurement of commodities or contractual services by an awarding body must include a provision notifying vendors of the provisions of this section.

Section 21. Section 516.037, Florida Statutes, is created to read:

516.037 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not

engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee that claims a religious purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2) 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 in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging

employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 22. Section 560.1115, Florida Statutes, is created to read:

560.1115 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee

that claims a religious purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2) 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 in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees, as applicable, must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 23. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is amended to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111 or s.

560.1115.

Section 24. Paragraph (y) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(y) "Unsafe or unsound practice" or "unsafe and unsound practice" means:

1. 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; or

2. Failure to comply with s. 655.0323(1), or engaging in a practice described in s. 655.0323(2).

Section 25. Section 655.0323, Florida Statutes, is created to read:

655.0323 Unsafe and unsound practices.—

(1) Financial institutions must make determinations about

the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer or member and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a financial institution that claims a religious purpose from making such determinations based on the current or prospective customer's or member's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a financial institution to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or

affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. 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.

8. 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:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition

standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions subject to the financial institutions codes must attest, under penalty of perjury, on a form prescribed by the commission whether the entity is acting in compliance with subsections (1) and (2).

(4) Engaging in a practice described in subsection (2) is a failure to comply with this chapter, constitutes a violation of the financial institutions codes, and is subject to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) Notwithstanding ss. 501.211 and 501.212, a failure to comply with subsection (1) or a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

717
718
719 ----------
720 **T I T L E A M E N D M E N T**
721 Remove lines 26-107 and insert:
722 by the act; amending s. 215.47, F.S.; defining the term
723 "pecuniary factor"; requiring the State Board of Administration
724 to make investment decisions based solely on pecuniary factors;
725 providing an exception to current investment and fiduciary
726 standards in the event of a conflict; amending s. 215.475, F.S.;
727 requiring the Florida Retirement System Defined Benefit Plan
728 Investment Policy Statement to comply with the requirement that
729 only pecuniary interests be considered in investment decisions;
730 amending s. 215.4755, F.S.; requiring certain investment
731 advisors or managers to certify in writing that investment
732 decisions are based solely on pecuniary factors; providing
733 applicability; providing that failure to file a required
734 certification is grounds for termination of certain contracts;
735 providing that a submission of a materially false certification
736 is deemed a willful refusal to comply with a certain fiduciary
737 standard; requiring that certain noncompliance be reported to
738 the Attorney General, who is authorized to bring certain civil
739 or administrative actions; providing that if the Attorney
740 General is successful in those proceedings, he or she is
741 entitled to reasonable attorney fees and costs; creating s.

215.681, F.S.; defining terms; prohibiting bond issuers from issuing environmental, social, and governance bonds and taking other related actions; authorizing certain financial institutions to purchase and underwrite specified bonds; providing applicability; creating s. 215.855, F.S.; defining terms; requiring that contracts between governmental entities and investment managers contain certain provisions and a specified disclaimer; providing applicability; amending s. 218.415, F.S.; defining the term "pecuniary factor"; requiring units of local government to make investment decisions based solely on pecuniary factors; amending s. 280.02, F.S.; revising the definition of the term "qualified public depository"; creating s. 280.025, F.S.; requiring a specified attestation, under penalty of perjury, from certain entities; amending s. 280.05, F.S.; requiring the Chief Financial Officer to verify such attestations; requiring the Chief Financial Officer to report materially false attestations to the Attorney General, who is authorized to bring certain civil and administrative actions; providing that if the Attorney General is successful in those proceedings, he or she is entitled to reasonable attorney fees and costs; providing construction; authorizing the Chief Financial Officer to suspend or disqualify a qualified public depository that no longer meets the definition of that term; amending s. 280.051, F.S.; adding grounds for suspension or disqualification of a qualified public depository; amending s.

280.054, F.S.; providing that failure to timely file a required attestation is deemed a knowing and willful violation; amending s. 280.055, F.S.; adding a circumstance under which the Chief Financial Officer may issue certain orders against a qualified public depository; creating s. 287.05701, F.S.; defining the term "awarding body"; prohibiting an awarding body from requesting certain documentation or giving preference to vendors based on their social, political, or ideological interests; requiring that solicitations for the procurement of commodities or contractual services by an awarding body contain a specified notification, beginning on a specified date; creating s. 516.037, F.S.; requiring licensees to make certain determinations based on an analysis of certain risk factors; prohibiting such licensees from engaging in unsafe and unsound practices; providing construction; providing that certain actions on the part of licensees are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to

reasonable attorney fees and costs; creating s. 560.1115, F.S.; requiring licensees to make determinations about the provision or denial of services based on an analysis of certain risk factors; prohibiting the licensees from engaging in unsafe and unsound practices; providing construction; providing that certain actions are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; amending s. 560.114, F.S.; revising the actions that constitute grounds for specified disciplinary action of a money services business, an authorized vendor, or an affiliated party; amending s. 655.005, F.S.; revising a definition; creating s. 655.0323, F.S.; requiring financial institutions to make determinations about the provision or denial of services based on an analysis of specified risk factors; prohibiting financial institutions from engaging in unsafe and unsound practices; providing construction; providing that certain actions are an unsafe and unsound practice; requiring a specified attestation, under

penalty of perjury, from financial institutions annually, beginning on a specified date; providing that engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; prohibiting certain entities from exercising specified authority; amending s. 1010.04, F.S.; prohibiting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 179 Florida Kratom Consumer Protection Act
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Kratom, *Mitragyna speciosa*, is a tropical tree native to Southeast Asia that contains psychoactive ingredients in its leaves, which may be crushed and then smoked, brewed with tea, or placed into gel capsules. Consumption of kratom leaves can produce stimulant and sedative effects, and addiction may lead to psychotic symptoms. Currently, kratom is not listed as a controlled substance under federal law or Florida law, and is generally regulated as a food. There are no specific state laws related to the regulation of kratom.

The bill places the regulation of kratom products within ch. 500, F.S., which is under the Department of Agriculture and Consumer Services (DACS).

The bill defines "kratom product" to mean a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract, synthetic alkaloid, or synthetically derived compound of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.

As a food product, kratom products are subject to regulation and inspection by DACS.

The bill provides that it is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, any kratom product to any person who is under 21 years of age.

If any retail food store, food establishment, or cottage food operation sells kratom products to someone under 21, they are subject to an administrative fine of not more than $100 for the first offense, not more than $500 for the second offense, and not more than $1,000 for the third or subsequent offense.

The bill provides an effective date of July 1, 2023.

The bill does not appear to have a fiscal impact on local governments and may have a negative fiscal impact on state government. *See* Fiscal Analysis and Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Kratom

Kratom, or *Mitragyna speciosa,* is a tropical tree native to Southeast Asia that contains the alkaloids mitragynine and 7-hydroxymytragynine in its leaves, which are two major psychoactive ingredients.[1] The leaves are crushed and then smoked, brewed with tea, or placed into gel capsules.[2]

Some people consumer kratom to treat muscle ache, fatigue, and other conditions.[3] Low doses of kratom are said to produce a stimulant effect, while higher doses may produce an opioid-like effect.[4] Research finds that kratom can be used as a substitute for opiate users to combat withdrawal symptoms,[5] though kratom addiction may lead to psychotic symptoms.[6]

The U.S. Food and Drug Administration (FDA) has found that:[7]

> Kratom is abused for its ability to produce opioid-like effects… Evidence suggests that kratom is abused individually and with other psychoactive substances. Kratom does not have an approved medical use in the United States and has not been studied as a treatment agent in the United States. Kratom has a history of being used as an opium substitute in Southeast Asia. In the United States, kratom is misused to self-treat chronic pain and opioid withdrawal symptoms. Consumption of kratom can lead to a number of health impacts, including, among others, respiratory depression, vomiting, nervousness, weight loss, and constipation. Kratom has been reported to have both narcotic and stimulant-like effects, and withdrawal symptoms may include hostility, aggression, excessive tearing, aching of muscles and bones, and jerky limb movements.

A Centers for Disease Control and Prevention study of approximately 27,000 overdoses that occurred between 2016 and 2017 found that kratom was implicated in less than one percent of deaths.[8] The exact incidence of kratom dependency is not known and there is no U.S. reporting system.[9] It is estimated that there are between 10-16 million kratom users in the U.S.[10] Users indicate self-treatment of anxiety, depression, pain, fatigue, and substance use disorder symptoms.[11]

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[1] Drug Enforcement Administration, *Kratom* (April 2020), available at https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf (last visited Feb. 15, 2023).
[2] *Id*.
[3] *Id*.
[4] *See* Dimy Fluyau and Neelambika Revedigar, *Biochemical Benefits, Diagnosis, and Clinical Risks Evaluation of Kratom,* Frontiers in Psychiatry Journal Volume 8 (April 24, 2017).
[5] *Id*.
[6] *Id*.
[7] 86 FR 39038.
[8] Emily O'Malley Olsen, PhD; Julie O'Donnell, PhD; Christine L. Mattson, PhD; Joshua G. Schier, MD; Nana Wilson, PhD; *Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected — 27 States, July 2016–December 2017*; CDC Morbidity and Mortality Weekly Report, Apr. 12, 2019; Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected — 27 States, July 2016–December 2017 | MMWR (cdc.gov) (last visited Feb. 15, 2023); Maia Szalavitz, *The FDA Shouldn't Support a Ban on Kratom*, Scientific American, Aug. 12, 2021, The FDA Shouldn't Support a Ban on Kratom - Scientific American (last visited Jan. 30, 2022).
[9] Charles Veltri and Oliver Grundmann, *Current Perspectives on the Impact of Kratom Use*. Substance Abuse and Rehabilitation Journal Volume 10 23-31 (July 1, 2019).
[10] Maia Szalavitz, *supra* note 8.
[11] Jeffrey Rogers, Kirsten Smith, Justin Strickland, and David Epstein, *Kratom Use in the US: Both a Regional Phenomenon and a White Middle-Class Phenomenon? Evidence From NSDUH 2019 and an Online Convenience Sample*, Frontiers on Pharmacology, https://www.frontiersin.org/articles/10.3389/fphar.2021.789075/full (last visited Feb. 19, 2023).

Kratom is a $1.3 billion industry in the U.S. with sales generally occurring online and in smoke shops.[12] Hundreds of businesses around Florida sell the product.[13]

Public opinions in the U.S. range on the topic of kratom bans, either citing concerns of addiction or praising perceived health benefits. Some point to kratom's uses for opioid addicts to cease use and aid in withdrawal symptoms.[14] Other reports indicate that the use of kratom may lead to addiction.[15]

State and Federal Prohibitions

Currently, kratom is not listed as a controlled substance under federal law or Florida law. In 2016, the U.S. Drug Enforcement Administration (DEA) submitted a notice of intent to place kratom into Schedule I of the Controlled Substances Act (CSA) based on abuse potential and risk to public health.[16] However, the DEA withdrew the notice a few months later based on public comments.[17] In a letter obtained by an industry group, U.S. Health and Human Services appeared to rescind their recommendation to the DEA to place kratom on Schedule I of the CSA in 2018, stating that such action should wait until it is supported by further research on kratom uses, abuse, and risks.[18] The DEA continues to label kratom as a drug of concern.[19]

The FDA has stated that there is substantial concern regarding the safety of kratom and the risk it may pose to public health, and indicated that there are currently no FDA-approved uses for kratom.[20] The FDA is actively evaluating all available scientific information on the safety and effects of kratom and continues to warn consumers not to use any kratom products, but has made no official findings.[21]

In 2015, the FDA issued an import alert[22] that labels kratom as an adulterating ingredient.[23] As a result, the FDA seized imports of kratom-containing dietary supplements and bulk dietary ingredients. In May of 2021, the FDA announced the seizure of around 37,500 tons of adulterated kratom in Fort Myers, Florida, worth an estimated $1.3 million.[24] On October 26, 2021, a consent decree of condemnation and destruction against the seized articles by the FDA was entered, which required the claimants to pay a penal bond and destroy all seized articles.[25]

Generally, the official federal legal and regulatory status of kratom or kratom included in food products is still being decided.

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[12] Brody Ford, *Opiate Alternative Kratom Spurs Investor Interest*, Bloomberg News, Dec. 20, 2021, https://www.bloomberg.com/news/newsletters/2021-12-20/kratom-attracts-investor-attention-after-regulatory-win (last visited Jan. 30, 2022).
[13] Kirby Wilson, *Florida Kratom for customers under 21 to be banned if this bill passes*, Tampa Bay Times, Jan. 18, 2022, Florida Kratom for customers under 21 to be banned if this bill passes (tampabay.com) (last visited Jan. 30, 2022).
[14] Jennifer Clopton, *Regulations Are On Hold as Kratom Debate Rages*, WebMD, Feb. 11, 2019, https://www.webmd.com/mental-health/addiction/news/20190211/regulations-are-on-hold-as-kratom-debate-rages (last visited Feb. 15, 2023).
[15] Mayo Clinic, *Kratom for opioid withdrawal: Does it work?*, https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/kratom-opioid-withdrawal/art-20402170 (last visited Feb. 15, 2023).
[16] 81 FR 59929.
[17] 81 FR 70652
[18] Josh Long, *HHS in 2018 rescinded recommendation to schedule kratom as a drug*, Jan. 28, 2021, https://www.naturalproductsinsider.com/regulatory/hhs-2018-rescinded-recommendation-schedule-kratom-drug (last visited Feb. 15, 2023).
[19] U.S. Drug Enforcement Administration, *Kratom*, https://www.dea.gov/factsheets/kratom (last visited Feb. 15, 2023).
[20] U.S. Food and Drug Administration, *FDA and Kratom*, https://www.fda.gov/news-events/public-health-focus/fda-and-kratom (last visited Feb. 15, 2023).
[21] *Id*.
[22] U.S. Food and Drug Administration, *Import Alert 54-15*, Import Alert 54-15 (fda.gov) (last visited Feb. 15, 2023).
[23] *Id*. The FDA labeled kratom as adulterating based on the absence of a history of use or other evidence of safety establishing that kratom will reasonably be expected to be safe as a dietary ingredient, kratom and kratom-containing dietary supplements and bulk dietary ingredients are adulterated because they contain a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.
[24] U.S. Food and Drug Administration, *FDA Announces Seizure of Adulterated Dietary Supplements Containing Kratom*, May 21, 2021, https://www.fda.gov/news-events/press-announcements/fda-announces-seizure-adulterated-dietary-supplements-containing-kratom (last visited Feb. 15, 2023).
[25] *Id*.

In 2014, Sarasota County banned kratom, labeling it as a designer drug.[26] With the exception of Sarasota County, in Florida, all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. Kratom is illegal in Alabama,[27] Arkansas,[28] Indiana,[29] Vermont,[30] and Wisconsin.[31] Other states such as Arizona,[32] Georgia,[33] and Utah[34] regulate kratom under their state's version of the Kratom Consumer Protection Act.

Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act (FDCA) is a federal law which establishes the legal framework within which the FDA operates.[35] The FDA develops regulations under the FDCA for the safety of foods, drugs, and cosmetics based on the laws set forth in the FDCA, including when a food is adulterated.[36] Instances where a food must be determined to be adulterated include when it:[37]

- Bears or contains any poisonous or deleterious substance which may render it injurious to health; such as consisting in whole or in part of any filthy, putrid, or decomposed substance;
- Is a dietary supplement or contains a dietary ingredient that presents a significant or unreasonable risk of illness or injury under use pursuant to the label;
- Is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.

When a food is determined to be adulterated, the FDA may take the following compliance measures:[38]

- Warning and untitled letters,
- Import alerts,
- Recalls,
- Debarment,
- Civil money penalties,
- Seizure of products,
- Injunctions, and
- Criminal prosecution.

Florida Department of Agriculture and Consumer Services, Division of Food Safety

The Department of Agriculture and Consumer Services (DACS) is the department in charge of regulating agriculture in Florida.[39] As such, DACS promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.[40]

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[26] *See* Sarasota, FL., Code of Ordinances, Sec. 62-351 (2014).
[27] *See* Alabama Public Health, *Controlled Substance List* (Jan. 20, 2021), available at https://www.alabamapublichealth.gov/blog/assets/controlledsubstanceslist.pdf (last visited Jan. 22, 2022).
[28] *See* Arkansas Department of Health, *List of Controlled Substances*, available at http://secureservercdn.net/166.62.109.105/e17.085.myftpupload.com/wp-content/uploads/2016/02/arkansas-controlled_substances_list.pdf (last visited Jan. 22, 2022).
[29] *See* IC 35-31.5-2-321.
[30] *See* Vt. Admin. Code 12-5-23:4.0.
[31] *See* W.S.A. 961.14.
[32] *See* AZ Rev Stat § 36-795.02.
[33] *See* GA Code § 16-13-121.
[34] *See* UT Code § 4-45-101.
[35] 21 U.S.C. 301.
[36] *See* 21 C.F.R. §§ 1-1299.
[37] 21 U.S.C. 342.
[38] CRS Report R43609, *Enforcement of the Food, Drug, and Cosmetic Act: Select Legal Issues*, February 9, 2018, https://www.everycrsreport.com/reports/R43609.html#fn96 (last visited Feb. 15, 2023).
[39] S. 20.14, F.S. DACS also regulates certain professions, unfair and deceptive business practices and provides consumer information.
[40] Florida Department of Agriculture and Consumer Services, *About Us*, h https://www.fdacs.gov/About-Us (last visited Feb. 15, 2023).

The Division of Food Safety (division), under DACS, is responsible for assuring a safe, wholesome, and properly represented food supply in Florida. This is accomplished through the permitting and inspection of food establishments, inspection of food products, and through specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from the farm gate through processing and distribution to the retail point of purchase.[41]

The division is charged with administration and enforcement of food, poultry, and egg laws, and also provides support in the enforcement of other food safety laws. In addition to regulatory surveillance and enforcement, the division evaluates consumer complaints related to food.[42]

"Food" includes:[43]

- Articles used for food or drink for human consumption;
- Chewing gum;
- Articles used for components of any such article;
- Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and
- Certain dietary supplements.

"Food establishment" means a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. A food permit is required of any person who operates a food establishment.[44]

"Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption.[45]

A food permit from the department is required of any person who operates a food establishment or retail food store, except:[46]

- Persons operating minor food outlets that sell food that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and no other food is sold by the minor food outlet.
- Persons subject to continuous, onsite federal or state inspection.
- Persons selling only legumes in the shell, either parched, roasted, or boiled.
- Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state.

The division or its duly authorized agent has free access at all reasonable hours to any food establishment to ensure food safety laws are followed. The inspectors:[47]

- secure a sample or a specimen of any food after paying or offering to pay for such sample,
- see that all sanitary rules are complied with,
- facilitate tracing of food products in the event of a food-borne illness outbreak or identification of an adulterated or misbranded food item, and
- enforce the special-occupancy provisions of the Florida Building Code which apply to food establishments.

[41] Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety (last visited Feb. 15, 2023).
[42] *Id*.
[43] S. 500.003(1)(n), F.S.
[44] S. 500.03(1)(r), F.S.
[45] S. 500.03(1)(bb), F.S.
[46] S. 500.12(1)(a), F.S.
[47] S, 500.147, F.S.

If a food establishment or retail store violates the FFSA, the division may impose an administrative fine not more than $5,000. The division may also revoke or suspend the permit of any such retail food store or food establishment if the retail food store or food establishment has:[48]

- Violated the FFSA.
- Violated or aided or abetted in the violation of any law of this state governing or applicable to retail food stores or food establishments or any lawful rules of DACS.
- Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby another person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.
- Committed fraud or dishonest dealing.

DACS may determine that a food establishment requires immediate closure when the food establishment fails to comply with the FFSA and presents an imminent threat to the public health, safety, and welfare. DACS may accept inspection results from other state and local building officials and other regulatory agencies as justification for such action.[49]

Many FDA regulations have been adopted as rules of the division.[50]

Florida Food Safety Act

The division is responsible for the administration and enforcement of the Florida Food Safety Act (FFSA).[51] The division regulates food products under the FFSA, which include articles used for food or drink for human consumption, as well as dietary supplements.[52]

The FFSA is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.[53]

Adulterated and Misbranded Foods in Florida

Under the FFSA, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated or misbranded.[54] These prohibitions are similar to federal law.[55]

The following are examples when food is deemed adulterated: [56]

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and

[48] S. 500.121(1), F.S.
[49] S. 500.121(7), F.S.
[50] R. 5K-4.002, F.A.C.
[51] See ch. 500, F.S.
[52] *See* ch. 500, F.S.
[53] S. 500.02, F.S.
[54] S. 500.04, F.S.
[55] 21 U.S.C. 331.
[56] S. 500.10, F.S.

- A dietary supplement or its ingredients that present a significant risk of illness or injury due to certain labeling and ingredient requirements.

Misbranded food includes food offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(r) pertaining to nutritional content claims and health claims. Labels for supplements may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases.[57]

DACS may inspect food that may be adulterated or misbranded;[58] seize food that is adulterated or misbranded;[59] suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;[60] and impose a fine for adulterated or misbranded food, not to exceed $5,000[61] per violation.[62]

Food that contains kratom currently falls within in the definition of "food"[63] in the FFSA, and is subject to all applicable permitting, labeling, sanitation, and other food safety requirements. There are no existing age limits related to the sale of these products.

Regulation of Similar Products

Hemp[64] is an agricultural commodity grown and used worldwide to produce a variety of industrial and commercial products, including human food and nutritional supplements.[65] After hemp was removed from Schedule I of the federal CSA, the state hemp program (program) within DACS to regulate the cultivation of hemp in Florida was created in 2019.[66]

Any person seeking to cultivate hemp must apply for a hemp cultivation license with DACS[67] and any establishment that manufactures, processes, packs, holds, prepares or sells hemp extract intended for human consumption is considered a hemp food establishment and must have a permit from the division to operate in Florida.[68]

Violations of the hemp laws and rules[69] may result in the imposition of stop-sale/stop-use orders, an administrative fine of up to $5,000 per violation, permit suspension, permit revocation, or any combination thereof.[70] Hemp extract intended for human consumption distributed or sold in violation of hemp laws and rules are considered adulterated or misbranded.

Hemp extract products must be distributed or sold in a container that has certain batch and identifying information[71]

Hemp extract products that are intended for inhalation may not be sold to a person who is under 21 years of age.[72] There is no liability shield for retailers based on misrepresentations by a manufacturer.

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[57] S. 500.11(1)(n), F.S.; 21 U.S.C. s. 343 (r)(6)(C.
[58] S. 500.147(1), F.S.
[59] S. 500.173, F.S.
[60] S. 500.12(4), F.S.
[61] S. 570.971(1)(b), F.S.
[62] S. 500.121, F.S.
[63] S. 500.03(1)(n), F.S.
[64] Hemp is defined as the plant Cannabis sativa L. and any part of that plant with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis. 7 U.S.C. s. 5940 (2014); 7 U.S.C. s. 1639o (2018); *see also* s. 581.217, F.S
[65] Congressional Research Service (CRS), *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018), available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Feb. 15, 2023).
[66] Ch. 2019-132, L.O.F.; codified as s. 581.217, F.S.
[67] S. 581.217(5), F.S.
[68] Department of Agriculture and Consumer Services, *Hemp Food Establishment Permit Checklist*, https://www.fdacs.gov/content/download/93802/file/hemp-food-establishment-permit-checklist.pdf (last visited Feb. 15, 2023).
[69] *Id.*; R. 5K-4.034, F.A.C.
[70] R. 5K-4.034(9)(d)-(e), F.A.C.
[71] S. 581.217(7)(a)2., F.S.
[72] S. 581.217(7)(c), F.S.

Effect of the Bill

The bill may be cited as the "Florida Kratom Consumer Protection Act."

The bill defines "kratom product" to mean a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract, synthetic alkaloid, or synthetically derived compound of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.

The bill provides that it is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any kratom product.

If any retail food store, food establishment, or cottage food operation sells kratom products to someone under 21, they are subject to an administrative fine of not more than $100 for the first offense, not more than $500 for the second offense, and not more than $1,000 for the third or subsequent offense.

The bill provides DACS with rulemaking authority.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 500.92, F.S.; providing age prohibitions for the sale of kratom products.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in administrative fines collected by DACS, but the amount is indeterminate.

2. Expenditures:

   Indeterminate. DACS will likely see an increase in regulatory actions and costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Unknown. Law enforcement may receive complaints about local businesses selling kratom to underage buyers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Food establishments will need to cover any associated costs of complying with new age verification requirements, however such cost should be insignificant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DACS with rulemaking authority to promulgate rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2023, the Regulatory Reform and Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Prohibits sales of kratom products to individuals under 21 years of age.
- Clarifies enforcement authority to the Department of Agriculture and Consumer Services and applicability to certain food establishments.
- Removes the creation of specific new regulations from the bill in favor of uniformity such that kratom will be subject to existing regulations related to food products.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform and Economic Development Subcommittee.

A bill to be entitled

An act relating to the Florida Kratom Consumer Protection Act; creating s. 500.92, F.S.; providing a short title; defining the term "kratom product"; prohibiting the sale, delivery, bartering, furnishing, or giving of any kratom product to a person under 21 years of age; providing civil penalties; requiring the Department of Agriculture and Consumer Services to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 500.92, Florida Statutes, is created to read:

500.92 Florida Kratom Consumer Protection Act.—

(1) This section may be cited as the "Florida Kratom Consumer Protection Act."

(2) As used in this section, the term "kratom product" means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract, synthetic alkaloid, or synthetically derived compound of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.

(3) It is unlawful to sell, deliver, barter, furnish, or

CODING: Words stricken are deletions; words underlined are additions.

give, directly or indirectly, any kratom product to a person who is under 21 years of age.

(4) Any retail food store, food establishment, or cottage food operation who violates subsection (3) is subject to an administrative fine of not more than $100 for a first offense, not more than $500 for a second offense, and not more than $1,000 for a third or subsequent offense.

(5) The department shall adopt rules to administer this section.

Section 2. This act shall take effect July 1, 2023.

CS/HB 327

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 327 Fire Sprinkler System Projects
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Bell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code). The Fire Code sets forth fire safety standards (including certain national codes) for buildings and structures. The State Fire Marshall adopts a new edition of the Fire Code every three years. All municipalities, counties, and special districts with fire safety responsibilities must enforce the Fire Code to operate uniformly among local governments and in conjunction with the Florida Building Code.

The State Fire Marshal licenses and regulates fire protection system contractors in the state. Currently, a Contractor I or II may design:

- New fire protection systems of 49 or fewer sprinklers;
- An alteration of existing fire sprinkler systems regardless of size if the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers; or
- An alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers.

The bill provides that a Contractor I or II may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, and the addition of 49 sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249.

Local building code enforcement agencies are responsible for permitting fire alarm system projects. An electrical or alarm system contractor cannot install or replace a fire alarm until they obtain a Uniform Fire Alarm Permit. Current law authorizes an expedited permitting process for certain fire alarm system projects that alter a total of 20 or fewer initiating devices. However, the expedited permitting process does not include projects that involve changes to fire sprinkler systems.

The bill creates an expedited permitting process for certain "fire sprinkler system projects," similar to the current process for fire alarm system projects, and prohibits local enforcement agencies from requiring a fire protection system contractor to submit plans to obtain a building permit for a fire sprinkler system project, as defined in the bill.

This expedited process would allow a fire protection system contractor to start work on such fire system projects without first obtaining a standard permit, and instead obtain an expedited permit electronically.

The bill also requires such contractors to maintain a copy of plans and specifications at the worksite, similar to the requirements for alarm system projects.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division) located within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety. DFS has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Prevention Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[2]

The State Fire Marshall adopts a new edition of the Fire Prevention Code every three years. When adopting a new edition of the Fire Prevention Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[3]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[4] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[5]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. In 1998, the Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized implementation of the Florida Building

[1] S. 633.104, F.S.

[2] S. 633.202(1) and (2), F.S.

[3] *Id*. The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 13, 2023).

[4] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.

[5] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 13, 2023).

Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[6] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[7]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[8]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[9] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[10]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[11] Every local government must enforce the Building Code and issue building permits.[12]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[13]

To obtain a building permit an applicant must complete an application for the proposed work on the form furnished by the government entity.[14] A local government that issues building permits must post each type of building permit application on its website.[15]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[16] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.[17]

Any construction work that requires a building permit also requires building plans and inspections by the building official to ensure the work complies with the Building Code.[18] Generally speaking, a permitted project that passes the required inspections is considered completed or closed.[19]

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[6] *Id*.
[7] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 13, 2023).
[8] *See* s. 553.72(1), F.S.
[9] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 13, 2023).
[10] Ss. 553.73, and 553.74, F.S.
[11] S. 553.72, F.S.
[12] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[13] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[14] S. 713.135(5) and (6), F.S.
[15] Ss. 125.56(4)(b) and 553.79(1), F.S.
[16] S. 468.603(2), F.S; S. 202, Seventh edition, Florida Building Code (Building).
[17] *Id*.
[18] Ss. 107, 110.1, and 110.3, Seventh edition, Florida Building Code (Building).
[19] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Feb. 13, 2023).

Uniform Fire Alarm Permit

Fire protection systems, including fire alarms, must be installed, repaired, operated, and maintained in accordance with the Fire Prevention Code and the Building Code.[20]

An electrical or alarm system contractor must file a uniform fire alarm permit application with a local government in order to obtain a fire alarm permit.[21]

The uniform fire alarm permit application must include the following information:[22]

- The name and address of the owner of the property;
- The name, address, and license number of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- A description of the work being performed; and
- The owner and contractor's signature.

An electrical or alarm system contractor cannot install or replace a fire alarm until they obtain a fire alarm permit. However, an electrical or alarm system contractor may make repairs on a fire alarm **without a fire alarm permit**, as long as they have applied for the permit.[23]

Time-Period to Review Building Permit Applications

Current law requires local governments to review the following building permit applications within a specific time-period of receiving the applications:[24]

- Accessory structure;
- **Alarm permit**;
- Nonresidential buildings less than 25,000 square feet;
- Electric;
- Irrigation permit;
- Landscaping;
- Mechanical;
- Plumbing;
- Residential units other than a single family unit;
- Multifamily residential not exceeding 50 units;
- Roofing;
- Signs;
- Site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- Lot grading and site alteration associated with a permit application.

When a local government receives an application for one of the above building permits, it must:[25]

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
    - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within **45 days** of the application being deemed complete if additional information is necessary to determine the sufficiency of the application;

[20] Ss. 202 and 901.2, Seventh edition, Florida Building Code (Building).
[21] S. 553.7921(1); Ch. 19-140, Laws of Fla.
[22] S. 553.7921(3), F.S.
[23] S. 553.7921(1) and (2), F.S.
[24] S. 553.792(2), F.S.
[25] S. 553.792(1)(a), F.S.

    - If additional information is needed the local government must specify what additional information is necessary.
    - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
    - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

If a local government fails to meet one of the deadlines, it must reduce the building permit fee by ten percent for each business day that it fails to meet the deadline. Each ten percent reduction is based on the original amount of the building permit fee, unless the parties agree to an extension of time.[26]

Over-the-Counter Permits

Generally, over-the-counter permits are building permits that need minimal or no plans reviewed by the local building official. However, an applicant must still fill out an application, and inspections are still required to close or complete the permit. Local government officials typically determine what types of permits qualify as over-the-counter permits for their jurisdictions. Over-the-counter permits can be issued in person or online depending on the jurisdiction.[27]

Typically, an application for a permit must include building plans. A local enforcing agency may not issue a permit until the building official or plans examiner has reviewed the building plans and determined that they comply with the Building Code, unless the project is not required to have plans reviewed by the local building official.[28]

Permits for the following projects are not required to have plans reviewed by the local building official:[29]

- Replacing existing equipment such as mechanical units, water heaters, etc.
- Reroofs.
- Minor electrical, plumbing and mechanical repairs.
- Annual maintenance permits.
- Prototype plans:
    - Except for local site adaptions, siding, foundations and/or modifications, and structures that require a waiver.
- Manufactured buildings except for foundations and modifications of buildings on site.

Fire Alarm System Projects

Current law provides an expedited permitting process for certain fire alarm system projects. The process removes the time required to review plans prior to starting work. The law prohibits a local enforcement agency from requiring a contractor to submit building plans or specifications in order to obtain a permit for a fire alarm system project, but local enforcement is still authorized to require a contractor to submit a completed application and a payment for such permit.[30]

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[26] S. 550.792(1)(b), F.S.
[27] City of Boca Raton, *Building Permits and Inspections*, https://www.myboca.us/157/Building-Permits-and-Inspections (last visited Feb. 13, 2023); Charlotte County, *Permits*, https://www.charlottecountyfl.gov/departments/community-development/building-construction/permits/ (last visited Feb. 13, 2023); Nassau County, *Over the Counter Building Permit Application*, https://www.nassaucountyfl.com/DocumentCenter/View/22517/Over-the-Counter-Building-Permit (last visited Feb. 13, 2023); City of Sarasota, *Building and Permitting Online Services*, https://ftgportal.sarasotafl.gov/Permits/Home.aspx?microapp=c (last visited on Feb. 13, 2023).
[28] S. 553.79(2), F.S.
[29] S. 107.3.5, Seventh edition, Florida Building Code (Building).
[30] S. 553.7932(2), F.S.

A "fire alarm system project" is defined as a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator[31] connected to an existing fire alarm control panel[32] in an existing commercial, residential, apartment, cooperative, or condominium building.[33]

A local enforcement agency must:

- Issue a permit for a fire alarm system project in person or electronically.[34]
- Require at least one inspection of a fire alarm system project to ensure the work complies with the applicable codes and standards. If a fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.[35]

The contractor must keep a copy of the plans and specifications at the worksite, and make them available to the inspector at each inspection.[36]

The expedited permitting process for fire alarm system projects does not include projects that involve fire sprinkler systems.

Fire Protection Systems

A "fire protection system" is a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. A fire protection system includes, but is not limited to:[37]

- Water sprinkler systems;
- Water spray systems;
- Foam-water sprinkler systems;
- Foam-water spray systems;
- Carbon dioxide systems;
- Foam extinguishing systems;
- Dry chemical systems; and
- Halon and other chemical systems used for fire protection use.

Fire protection systems also include any tanks and pumps connected to fire sprinkler systems, overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with fire sprinkler systems.[38]

Fire protection systems must be installed in accordance with the Fire Code and the Building Code. Current law requires local governments to enforce the Fire Code and the Building Code including the permitting, inspecting, and approval of the installation of a fire protection system.[39] Owners of fire

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[31] A "fire alarm communicator" is a device that automatically contacts first responders, if a fire is detected. Norris Inc., https://norrisinc.com/2016/08/12/alarm-system-communicators/ (last visited Feb. 13, 2023).
[32] A "fire alarm control unit" serves as the brain of the fire alarm system. It is a component of a fire alarm system that receives signals from initiating devices or other fire alarm control units, and processes these signals to determine part or all of the required fire alarm system output. National Fire Protection Association, *A Guide to Fire Alarm Basics*, https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NFPA-Today/Blog-Posts/2021/03/03/A-Guide-to-Fire-Alarm-Basics (last visited Feb. 13, 2023).
[33] S. 553.7932(1)(b), F.S.
[34] S. 553.7932(3), F.S.
[35] S. 553.7932(4), F.S.
[36] S. 553.7932(5), F.S.
[37] S. 633.102(11), F.S.
[38] *Id.*
[39] *See generally* ch. 553 and 633, F.S.; ss. 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.[40]

Fire Protection System Contractors

In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, other than a pre-engineered system, a person must be certified as a fire protection system contractor.[41]

Fire protection system contractors are regulated by ch. 633, F.S., which outlines the law pertaining to fire protection system contractors in the state. The State Fire Marshal is responsible for licensing and regulating fire system protection contractors in the state.[42]

Fire protection system contractors are divided into five categories. A contractor's ability to practice is limited to the category or categories that a contractor has obtained certification. The contractor categories are:[43]

- **Contractor I** - means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

- **Contractor II** - means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

- **Contractor III** - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

- **Contractor IV** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one- and two- family dwellings and mobile homes.
    - This does not include single-family dwellings in multi-dwelling buildings such as apartments, condominiums, assisted living facilities, or buildings connected to other dwellings.
    - A Contractor IV is limited to the scope of practice specified in the NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

- **Contractor V** - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.[44]

[40] S. 633.312, F.S.; S. 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[41] S. 633.336(1), F.S.
[42] Ss. 633.318 and 633.338, F.S.
[43] S. 633.102(3), F.S.
[44] S. 633.318(9), F.S.

A fire protection system contractor must have insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. A Contractor I, Contractor II, Contractor III, or Contractor V must have insurance of not less than $500,000, and a Contractor IV must have insurance of not less than $250,000.[45]

In order to obtain certification as a fire protection system contractor, a person must submit a written application to the Division, pay a fee of $300, be at least 18 years of age, be of good moral character, provide proof of insurance, and pass a written exam administered by the Division.[46]

In order to sit for an exam for certification as a contractor, a person must provide evidence of the following experience and/or education depending on the certification sought by the person:[47]

- For certification as a Contractor I, a person must have 4 years of experience in the full time employment with a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.

- For certification as a Contractor II, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.

- For certification as a Contractor III, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.

- For certification as a Contractor IV, a person must be licensed as a certified plumbing contractor and successfully complete a training program of not less than 40 contact hours about the applicable installation standard described in NFPA 13D.

- For certification as a Contractor V, a person must be licensed as a certified underground utility and excavation contractor or certified plumbing contractor, or provide 4 years of verifiable experience in the full time employment of a certified underground utility and excavation contractor or certified plumbing contractor, or a combination of equivalent education and experience.

Design of Fire Protection Systems

The scope of practice for certified contractors does not include designing a fire protection system. In order to design fire protection systems, a person must be licensed as a fire protection engineer[48] or architect with fire protection design experience. A fire protection engineer or architect with fire protection design may design any type of fire protection system and is not limited by type or size of the fire protection system.[49]

Architects in the state are regulated by ch. 481, part I, F.S., and by the Board of Architecture and Interior Design with the Department of Business and Professional Regulation (DBPR).

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE).[50]

Current law provides that a Contractor I or II may:[51]

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[45] S. 633.318(4), and (7), F.S.
[46] The Division has an exam for each type of fire protection system certification. ss. 633.318(1), (2), and (4), and 633.132(1)(a), F.S.
[47] S. 633.318(3), F.S.
[48] There is no fire protection engineer license provided in current law. However, in order to practice engineering in Florida including fire protection engineering, a person must be licensed as a professional engineer. *See* ch. 471, F.S.
[49] S. 633.102(3), F.S.
[50] S. 471.038(3), F.S.
[51] S. 633.102(3), F.S.

- Design fire protection systems of 49 or fewer sprinklers;
- Design the alteration of an existing fire sprinkler system regardless of size as long as the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers;

  "**or**"

- Design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system, as long as:
  - There is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code;[52]
  - There is no change in the water demand as defined in NFPA 13, "Standard 76 for the Installation of Sprinkler Systems;" and
  - The occupancy hazard classification as defined in NFPA 13 is not reduced or remains the same.[53]

During the 2021 regular Session, the law was amended to allow a Contractor I or II to provide for the third design option, which is to design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system. According to industry members, the wording of the law caused confusion with local enforcement agencies as to whether a contractor is authorized to work on design projects with 49 or 249 sprinklers.[54]

Effect of Proposed Changes

The bill creates an expedited permitting process for fire sprinkler system projects. Specifically, the bill:

- Authorizes local enforcement agencies to require a contractor, as a condition of obtaining a permit for a fire sprinkler system project, to submit a completed application and payment.
- Prohibits local enforcement agencies from requiring a contractor to submit plans or specifications as a condition of obtaining a permit for a fire sprinkler system project.
- Requires local enforcement agencies to issue a permit for a fire sprinkler system project in person or electronically.
- Requires local enforcement agencies to require at least one inspection of a fire sprinkler system project to ensure compliance with applicable codes and standards.
- Provides that if a fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

The bill requires fire protection system contractors to keep a copy of the plans and specifications at the fire sprinkler system project worksite and make such plans and specifications available to the inspector at each inspection for a:

- Fire sprinkler system project to alter an existing fire protection system; and
- Fire alarm system project.

[52] Every building must have an occupancy classification, which is the formal designation of the primary purpose of the building. Different classifications of occupancy represent varying levels of hazard and risk to building occupants. A change of occupancy is when a building changes its primary purpose or occupancy classification. ss. 202 and 302 of the Seventh Edition of the Building Code.
[53] The occupancy hazard classification is a rating system that is used to help determine the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has an automatic sprinkler system installed in accordance with applicable standards. NFPA, *Step 1 How Much Water is Needed?*, https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Feb. 13, 2023).
[54] Email from Edwards Briggs, Vice President of Government Relations & Community Affairs RSA Consulting Group, LLC, RE: HB 327 Fire Sprinkler System Projects (Feb. 03, 2023).

For a fire sprinkler system project to install or replace a component, the bill requires contractors to keep the following documents at the fire sprinkler system project worksite and make them available to the inspector at each inspection:

- A copy of the manufacturer's installation instructions; and
- Any pertinent testing instructions needed to certify or accept the component.

The bill defines a "fire sprinkler system project" to mean a fire protection system alteration of a total of 20 or fewer fire sprinklers, or the installation or replacement of a fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. A component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

The bill defines “component” to mean valves, backflow preventers, switches, fire sprinklers, escutcheons, hangers, pumps, pump motors and engines, compressors, hydrants, or any other item deemed acceptable by the local enforcing agency.

The bill includes a contractor that is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal in the definition of contractor.

The bill clarifies that a Contractor I or II is authorized to design new fire protection systems of up to 49 sprinklers; design the relocation, addition, or deletion of existing fire sprinkler systems of up to 49 sprinklers; “**and**” design the relocation or deletion of existing fire sprinkler systems of 249 or fewer sprinklers and the addition of up to 49 or fewer sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249.

B. SECTION DIRECTORY:

Section 1: amends s. 553.7932, F.S.; revising and providing definitions; providing requirements for a simplified permitting process for certain fire sprinkler system projects.

Section 2: amends s. 633.102, F.S.; revising the definition of the term "contractor" as it relates to fire sprinkler systems.

Section 3: provides for an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on consumers and contractors by allowing a fire protection system contractor to work on fire sprinkler projects immediately without having to go through the plans review process before repairing broken equipment or systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies the definition of "fire sprinkler system project," and the total number of sprinklers that Contractors I or II are authorized to design.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to fire sprinkler system projects; amending s. 553.7932, F.S.; revising and providing definitions; providing requirements for a simplified permitting process for certain fire sprinkler system projects; amending s. 633.102, F.S.; revising the definition of the term "contractor" as it relates to fire sprinkler systems; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 553.7932, Florida Statutes, is amended to read:

553.7932 Simplified permitting processes ~~process for fire alarm system projects~~.—

(1) As used in this section, the term:

(a) "Component" means valves, backflow preventers, switches, fire sprinklers, escutcheons, hangers, pumps, pump motors and engines, compressors, hydrants, or any other item deemed acceptable by the local enforcing agency.

(b) ~~(a)~~ "Contractor" means a person who:

1. Is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489; or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. Is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal.

(c) ~~(b)~~ "Fire alarm system project" means a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or condominium building.

(d) "Fire sprinkler system project" means a fire protection system alteration of a total of 20 or fewer fire sprinklers, or the installation or replacement of a fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. For purposes of this paragraph, a component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

(2)(a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project, to submit a completed application and payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project or fire

sprinkler system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project or fire sprinkler system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project or fire sprinkler system project to ensure compliance with applicable codes and standards. If a fire alarm system project or fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5)(a) For a fire alarm system project, a contractor must keep a copy of the plans and specifications at the ~~a~~ fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

(b) For a fire sprinkler system project to alter an existing fire protection system, a contractor must keep a copy of the plans and specifications at the fire sprinkler system project worksite and make such plans and specifications available to the inspector at each inspection.

(c) For a fire sprinkler system project to install or replace a component, a contractor must keep a copy of the manufacturer's installation instructions and any pertinent testing instructions needed to certify or accept the component at the fire sprinkler system project worksite and make such documents available to the inspector at each inspection.

Section 2. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

633.102 Definitions.—As used in this chapter, the term:

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is

limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

This subsection may not be construed to include engineers or architects within the defined terms and does not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system

layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or Contractor II may design new fire protection systems of 49 or fewer sprinklers; may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; and ~~or~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers and the addition of up to 49 sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design a new fire protection system or design the alteration of an existing fire protection system, the scope of which complies with NFPA 13D, "Standard for

the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 3. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

CS/HB 327 by Rep. Bell
Fire Sprinkler System Projects

AMENDMENT SUMMARY
March 8, 2023

Amendment 1 by Rep. Bell (line 37):

- Clarifies the definition of “fire sprinkler system project.”

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Commerce Committee

Representative Bell offered the following:

Amendment

Remove line 37 and insert:

sprinklers, or the installation or replacement of an equivalent fire