

State ESG Update and Analysis for Asset Managers and Financial Institutions

Table of Contents

■ Part I: Thought Leadership

- [The New Battleground in the Fight over ESG’s Role in Public Pension Investments: The Courtroom](#)
- [Indiana Lawsuit Against Blackrock](#)
- [NYC Pension Plan Suit is Thrown Out, But GOP Anti-ESG Fiduciary Duty Theory Remains to be Tested](#)
- [Florida’s Enactment of H. 1645 Furthers its Anti-Climate Change Crusade, but does not Expand Retirement Investment Restrictions](#)
- [Oklahoma Court Blocks Boycott Statute and Calls Out Legislature’s Anti-ESG Agenda](#)
- [State Focus: Moving beyond ESG: Florida wades into restrictions in certain China-linked investments](#)
- [State Focus: Oklahoma’s boycott statute – A poster child for the interpretive and operational challenges of ESG laws](#)
- [Florida Stepping Up Enforcement of Restrictive Anti-ESG Law: More Legislation Coming](#)

■ Part II: ESG Laws in Effect or Set to Take Effect in the Near Future

Since 2021, Ropes & Gray has been actively tracking the various approaches states have taken on how or whether environmental, social and governance (ESG) factors should be applied to the investment decisions for public retirement systems. States have used legislative, administrative and enforcement mechanisms to address this area.

This white paper includes selected commentary on some of the state developments we have tracked this year and addresses what has happened in each of the states in 2024. In the first part of this paper, we include a roundup of thought leadership covering a variety of state ESG-related topics published in 2024. In the second part, we examine in more granular detail, recaps of what has transpired in each state, along with an assessment of the state’s policymaking regarding ESG and public pension investments.

As of November 19, 2024

Part I: Thought Leadership

The New Battleground in the Fight over ESG’s Role in Public Pension Investments: The Courtroom

Joshua A. Lichtenstein, Michael R. Littenberg, Amy D. Roy, Robert A. Skinner, Jason Claman, Jonathan M. Reinstein, Christine Rosenblatt

November 5, 2024

As we discussed in our white paper “[ESG and Public Pension Investing in 2023: A Year-to-Date Recap and Analysis](#)”, there was a surge in legislative activity in 2023 among red states curtailing the use of environmental, social and governance (ESG) factors by asset managers and pension officials with respect to the investment decisions of governmental plans.

This increase in anti-ESG legislation was driven in part by the U.S. Department of Labor’s (DOL) adoption of a regulation two years ago that expressly permits fiduciaries of ERISA-covered retirement plans to consider climate change and other ESG factors in investment selection, and in part, by the enactment of legislation in blue states to divest their retirement plans from certain industries like fossil fuel and firearms.

Compared to last year, 2024 has seen a significant drop-off in state ESG-related legislation, with half the number of bills proposed and a quarter of the number of bills enacted (See our [2024 mid-year review](#) for additional analysis of these trends). This decline might come as a surprise, given that the initiatives motivating last year’s wave of activity have not abated—but a closer look reveals that the battleground has arguably shifted from the statehouse to the courtroom as more of these laws have been challenged for their enforceability.

At the same time, the fate of the DOL’s ESG rule hangs in the balance in the Northern District of Texas, where attorneys general from 26 states have sued the DOL seeking to invalidate the regulation. The ultimate resolution of that case could play a big role in predicting the future of litigation in this space.

New York

The first attempt to challenge a state or local law addressing ESG policies in the public pension context came in May 2023, when participants in the New York City Retirement System sued three municipal pension funds, claiming the trustees’ decision to divest from fossil fuel investments violated their fiduciary duties. According to their lawsuit, which was sponsored by the Americans for Fair Treatment, a conservative anti-union organization, “[t]his unlawful

decision to elevate unrelated policy goals over the financial health of the plans is flatly inconsistent with the defendants' fiduciary responsibilities and jeopardizes the retirement security of plan participants and beneficiaries."

In July 2024, a New York state trial court granted the pension plans' motion to dismiss the suit, finding that in accordance with U.S. Supreme Court precedent in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020), the plaintiffs lack Article III standing to challenge the divestment decisions because the plans are "defined benefit" pension plans. As the decision explained, "the plaintiffs are entitled to a fixed benefit each month and will receive the same amount regardless of whether they win or lose this action...just like the plaintiffs in *Thole*, plaintiffs here have not, and will not, suffer any monetary losses based upon defendants' investment decisions." Since the case was decided on procedural standing grounds, the court was not required to address the underlying merits of the plaintiffs' claims, and the plaintiffs' anti-ESG fiduciary duty theory remained untested. Any substantive ruling on the merits of fossil fuel divestment could have wider impacts on asset managers.

Oklahoma

On the other end of the spectrum has been the fight over Oklahoma's controversial anti-boycott law, the Oklahoma Energy Discrimination Act of 2022. The statute prohibits the state's retirement plans from investing in companies that "boycott" fossil fuel producers. Under the law, the Oklahoma Treasurer is charged with compiling a list of companies he believes to be engaged in boycotting (as broadly defined in the legislation), while any financial institution doing business with the state must verify in writing that it does not and will not boycott energy companies. Unlike similar statutes adopted in other states, the Oklahoma law permits fiduciaries to continue to hold investments with declared boycotters if they determine it would be imprudent to divest, and this fiduciary override has already been exercised in certain circumstances.

In November 2023, a former state employee and beneficiary of the Oklahoma Public Employees Retirement System sought a temporary restraining order against the Oklahoma Treasurer regarding its restricted financial institutions list. Among other claims, the suit alleged that the Treasurer's actions violated the First Amendment of the U.S. Constitution as well as its state analog, noting how the Oklahoma Constitution "requires state managed pension systems to operate for the 'exclusive benefit' of their beneficiaries... and that "[t]he state's decision to use its retirees' retirement funds as political fodder in its quixotic quest to prove a point is patently unconstitutional and violates federal law." The lawsuit, which has been backed by a coalition that includes the Oklahoma Public Employees Association, represents the first such suit brought by a plan participant challenging a boycott law anywhere in the United States.

An Oklahoma County District Court judge issued a temporary

injunction in May 2024 blocking enforcement of the law after finding that the plaintiff was likely to succeed in his lawsuit. In her ruling, Judge Sheila Stinson said the Oklahoma Constitution requires retirement funds to be managed for the exclusive benefit of their beneficiaries, but the law appears aimed at countering certain political agendas and helping the oil and gas sector. Judge Stinson also said the law contains conflicting and unclear definitions for key terms. In July, Judge Stinson issued a permanent injunction against enforcement of the Oklahoma law. The state attorney general has appealed the ruling to the state appellate court.

The reasoning behind the judge's decision to grant the injunction could resonate in lawsuits targeting similar anti-boycott laws in other states (i.e., Texas, as discussed below), where similar fiduciary obligations apply to those responsible for overseeing public pension assets.

Texas

On August 29, 2024, the American Sustainable Business Council (ASBC), an organization that promotes sustainable investing and manufacturing, sued Texas state officials, seeking to block enforcement of another anti-boycott statute in favor of energy companies similar to the one at issue in Oklahoma. The law, SB 13, which took effect in 2021, requires the state comptroller's office to maintain a list of all financial companies that, in the comptroller's opinion, refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations with fossil fuel companies, without an ordinary business purpose for doing so. The law applies to investments by state pension funds as well as state government contracting.

The suit was filed in the Western District of Texas, and names Texas comptroller Glenn Hegar and Texas attorney general Ken Paxton as defendants. It seeks to have SB 13 declared unconstitutional and the officials permanently enjoined from enforcing it. The complaint argues that SB 13:

1. Violates First Amendment free speech rights because, on its face and as interpreted and applied by the comptroller, it discriminates against financial companies and would-be government contractors on the basis of the content and viewpoint of their speech (moreover, SB 13 unconstitutionally compels other speech by requiring companies to verify agreement with Texas's preferred position regarding fossil fuels as a condition of managing investments for or contracting with state entities);
2. Amounts to an unconstitutional infringement on First Amendment freedom of association rights because being a member of climate coalitions such as the Net Zero Asset Managers Initiative, Climate Action 100, or the Net Zero Banking Alliance potentially represents a form of "boycott[ing] energy companies," resulting in state entities being unable to invest or contract with ASBC members;
3. Is unconstitutionally vague and overbroad because it

does not adequately define “action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company” is in the fossil fuel industry or does business with a company in the fossil fuel industry; and

4. Violates Fourteenth Amendment due process rights because it encourages arbitrary enforcement and fails to give regulated entities fair notice of prohibited conduct.

The complaint also alleges that two members of ASBC had their “flagship investment funds” placed on a state “blacklist.”

While the arguments the plaintiffs present are different from those raised by the Oklahoma plan participant, this lawsuit comes on the heels of a [successful First Amendment challenge](#) by private businesses against Florida’s Stop WOKE Act, which did not cover state investments but more directly circumscribed the types of DEI trainings private businesses could conduct. ASBC’s theory of harm is similar to the one argued in the Stop WOKE Act suit, that private businesses should be permitted to take the position of their choosing on complex social and political issues, and that their inability to do so would be harmful to their legitimate business interests. In the Texas litigation, ASBC is arguing that the inability to invest in funds that consider climate risk is detrimental to their business interests.

Whether this theory will succeed in court is unclear. The injunction against the Stop WOKE Act was upheld on appeal by a unanimous panel of judges, including two appointed by President Trump. However, that challenge was based on direct viewpoint-based speech restrictions, while the anti-boycott provisions in SB 13 direct the Texas Comptroller’s office on how to grant contracts and invest state funds. Nonetheless, the plaintiff’s First Amendment arguments are strong, showing a clear preference by state law for financial companies that take a pro-oil and gas position.

DOL Rule

As mentioned above, overlaying the challenges to the different state ESG laws is the ongoing fight over the DOL’s ESG rule in the Northern District of Texas. In this case, a coalition of state attorneys general filed suit in 2023 against the DOL over its ESG rule, which allows, but does not require, ERISA plan fiduciaries to consider ESG factors as a tiebreaker (i.e., a “collateral factor”) in deciding between two otherwise equal investments. The DOL achieved a surprising win in September 2023 when the court granted its motion for summary judgment, finding that it was entitled to *Chevron* deference. The states appealed to the Fifth Circuit, but after the Supreme Court overturned the *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Fifth Circuit vacated the district court’s original decision and remanded the case for further consideration on the merits.

In their brief for the remanded case, the states maintain their Administrative Procedure Act arguments from the original case but add several arguments about the interpretation of ERISA, including:

- There can be no tiebreaker because when choosing between two investments, ERISA requires fiduciaries to purchase both investments for diversification;
- The common law duty of loyalty forbids mixed motives, even when the other motive is harmless, and the Supreme Court’s past interpretation of “sole and exclusive benefit” reaches the same conclusion;
- The ESG rule violates the major questions doctrine, as ERISA plans hold \$13 trillion in assets and this rule brings about radical change in how the plans are managed;
- ERISA has specific carveouts in its fiduciary duties (e.g. letting corporate officers serve as ERISA trustees), and the absence of a specific ESG carveout indicates that Congress did not intend to create one;
- The DOL’s past practice conflicts with Congress’s stated intent (through its disapproval resolution); and
- Congress considered, and declined to adopt, several proposals to permit fiduciaries to engage in socially oriented investing.

The DOL made the following arguments in response:

- The overturning of the *Chevron* doctrine doesn’t change the district court’s conclusions that the major questions doctrine doesn’t apply and the state plaintiffs probably do not have standing;
- So-called “*Skidmore*” deference still applies, allowing deference to agency interpretations based on their persuasiveness, and the district court should consider the DOL’s interpretation;
- The tiebreaker provision already has built-in guardrails under ERISA’s duties of loyalty and prudence; and
- In the event of a tie, it may not always be prudent to choose both investments—e.g., if there are additional transaction or monitoring costs involved.

Conclusion

Over the last few years, the ESG debate has brought about a growing divergence between the federal standards under ERISA and various state laws that address the duties and responsibilities of fiduciaries when it comes to plan investment decision-making. We are now beginning to see how courts analyze these laws and whether or not such laws can survive challenge.

Indiana Lawsuit Against BlackRock

Kelsey Barrett, Amy D. Roy, Robert A. Skinner

September 24, 2024

According to a [release](#) dated August 22, 2024, Indiana Secretary of State Diego Morales issued a Summary Cease and Desist Order (the “Order”) against BlackRock, Inc. (“BlackRock”) seeking to stop BlackRock’s alleged fraudulent actions related to its environmental, social and governance (“ESG”) funds and allocation focus. While the Order is styled as a cease and desist order, it is in effect a complaint initiating an administrative proceeding in the Indiana Securities Division (the “Securities Divisions”).

The Securities Division alleges that BlackRock has repeatedly made false and misleading statements to Indiana investors through its assertions relating to ESG products and offerings. The Securities Division takes issue with the BlackRock’s assertion to clients that they would experience better long-term financial outcomes by investing in ESG-backed funds.

The Securities Division has also called out BlackRock’s commitment to using its assets under management to incorporate ESG considerations despite the fact that it markets certain funds as non-ESG funds.

We do not anticipate that the Order will have any immediate effect on BlackRock’s operations or offerings, although BlackRock will have to add the Securities Divisions’ administrative proceeding to the growing list of ESG-related lawsuits against which BlackRock is currently defending.

BlackRock is understood to be defending itself against a similar [complaint](#) received from the Mississippi Securities Division in March 2024 alleging, in part, that BlackRock made untrue statements that certain of its funds do not incorporate ESG considerations while simultaneously overstating the extent to which its ESG aims bear on companies, financial positioning and performance.

BlackRock is similarly defending itself in a [civil enforcement lawsuit](#) initiated by the State of Tennessee (through its attorney general), alleging that BlackRock violated the Tennessee Consumer Protection Act with purportedly deceptive statements and omissions based on what Tennessee considers to be contradictions between public ESG-statements and BlackRock’s actual commitments and statutes.

Because it is relatively easy for state officials to mimic these filings by making the same loose allegations that ESG-related statements on managers’ websites and product disclosures are untruthful, we may see an uptick in these types of lawsuits. Some state officials may be motivated to secure settlements against large firms, often resulting in modest-dollar settlements and crowing press releases. Assuming BlackRock is unable to have the administrative proceeding dropped, a modest settlement seems to be the most likely downside for BlackRock here as well.

NYC Pension Plan Suit is Thrown Out, but GOP Anti-ESG Fiduciary Duty Theory Remains to be Tested

Amy D. Roy, Joshua A. Lichtenstein, Robert A. Skinner

July 10, 2024

For over two years, certain Republican officials at the state and federal levels have claimed that asset managers and pension officials breach their fiduciary duties by considering environmental, social and governance (ESG) factors in investing. This legal theory has been cited repeatedly in letters from legislators, state attorney general opinions, and investigative demands, but was teed up to be tested in court for the first time in a privately funded suit filed against three New York City pension plans.

Sponsored by a conservative anti-union organization, [Americans for Fair Treatment \(“AFFT”\)](#), the case filed in New York State court last year challenged the decision by the trustees of the NYC pension plans to divest from most of their fossil fuel holdings. Lead counsel for the plaintiffs is the Trump administration’s former Secretary of Labor, Eugene Scalia, who [expressed](#) opposition to ESG investing principles while in office and who headed the agency when it created a [rule](#) limiting the use of ESG in the management of private pensions governed by ERISA. The Trump-era rule was later replaced by a [new rule](#) from the Biden DOL.

The court’s decision

On July 3, the New York trial court granted the pension plans’ motion to dismiss the litigation. The court agreed with the city’s argument that the plan participant plaintiffs have no legal standing to challenge the divestment decision, because the plans are “defined benefit” pensions.

While the city’s pension obligations are funded in the first instance by the plans’ investment portfolios, the retirees’ benefits are ultimately backstopped by city taxpayers in the event the investments fall short. Therefore, the plaintiffs’ pension benefits will by definition not be affected by the fossil fuel divestment decision or the outcome of the litigation, so the plaintiffs could show no alleged injury as is required to have standing to assert claims.

The court’s reasoning is directly in line with a 2020 U.S. Supreme Court [ruling](#), which reached the same conclusion in rejecting breach of fiduciary duty claims asserted by defined benefit plan participants under ERISA (the fiduciary duties at issue were very similar to those applicable under New York law). The plaintiffs here were unable to convince the state court that a different result should apply under New York law.

What was left undecided

The defense victory is on solid legal footing and was no doubt welcomed by NYC pension officials. While an appeal is likely, it would seem an uphill struggle for plaintiffs to overturn this decision, especially in light of the helpful Supreme Court precedent in the analogous ERISA setting.

However, because the case was decided on procedural standing grounds, the court was not required to address the underlying merits of the plaintiffs' claims. This means that the Republican anti-ESG fiduciary duty theory still remains untested in court.

We do not anticipate that the fiduciary theory is going away. For example, future plaintiffs who are participants in 401(k) or other defined contribution plans can be expected to argue that the New York court's reasoning does not apply to them, and that they have standing grounds to challenge the use of ESG investing in their plans. These cases may have an easier time surviving similar challenges on standing since the Supreme Court precedent described above does not apply to defined contribution plans.

Even if the New York plaintiffs (or others in some future lawsuit) could establish legal standing, the fiduciary theory suffers from a basic flaw on the merits that should be revealed by eventual judicial review. The core allegation in AFFT's case comes straight from the anti-ESG playbook of Republican officials across the U.S.—that the city's decision to divest from fossil fuel companies was necessarily made in pursuit of a social and political agenda (addressing climate change) rather than to further the financial interests of plan participants.

The city's available response—mirroring the consistent refrain of the asset management industry—is that this is simply a false premise. As the plans made clear in public statements, the divestment decision was driven by consideration of financial risks posed to fossil fuel companies by climate change—risks acknowledged by the fossil fuel companies themselves—following lengthy analysis of the impact of these risks on portfolio returns. Pension plans considering divestment, like investors and asset managers incorporating climate risk more generally, still have this important defense available in the event of future litigation.

Recent developments in parallel settings suggest the core premise of the GOP fiduciary theory will be difficult to establish. For example, in litigation challenging the ESG rule approved by the Biden administration, a judge in the Northern District of Texas [held](#) that the rule—which allows consideration of ESG-related factors in selecting plan investment options in some circumstances—is not inconsistent with ERISA's requirement that fiduciaries act for the exclusive purpose of providing financial benefits to participants. The judge pointed to consistent DOL statements over many years that ESG considerations do relate to financial returns.

On the other hand, another judge in the Northern District of Texas has [refused to dismiss](#) claims against American Airlines for breach of fiduciary duty under ERISA, in a case based on the supposed harm caused by consideration of ESG factors in proxy voting decisions by asset managers.

Florida's Enactment of H. 1645 Furthers its Anti-Climate Change Crusade, but does not Expand Retirement Investment Restrictions

Joshua A. Lichtenstein, Jonathan M. Reinstein, Christine Rosenblatt

May 17, 2024

On May 15, 2024, Florida Gov. Ron DeSantis signed into law [H. 1645](#), furthering the Governor's ongoing campaign to oppose the role of climate change and ESG factors in state policymaking. According to the Governor's post on the social media platform, X (formerly known as Twitter), "We're restoring sanity in our approach to energy and rejecting the agenda of the radical green zealots."

Effective July 1, 2024, H. 1645 reformulates Florida's energy policy by stating that it is intended "to ensure an adequate, reliable, and cost-effective supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth." Notably, H. 1645 does not impose additional restrictions on how state pension assets are invested, but it does make major changes in state energy policy, including:

- Erasing the "Florida Climate-Friendly Preferred Products List" and state agencies' corresponding need to consult the List prior to purchasing products for state term contracts;
- Erasing state agencies' requirement to prioritize fuel-efficiency when purchasing vehicles;
- Erasing state agencies' requirement to book "Green Lodging" facilities; and
- Banning power-generating wind turbines offshore or near Florida's coastline.

The legislation also removes certain pro-environmental objectives from the state's energy policy such as: (i) mitigating the impacts of global climate change through the reduction of greenhouse gas emissions, (ii) instituting energy management programs aimed at promoting energy conservation and (iii) implementing alternative energy technologies. The law makes clear that Florida's political leaders are prioritizing the promotion of cost-effective development and use of a diverse supply of domestic energy resources in the state—without regard or consideration for energy conservation or the reduction of greenhouse gas emissions.

H. 1645 represents the latest in a series of actions limiting the role that considerations should play in state policymaking.

Oklahoma Court Blocks Boycott Statute and Calls Out Legislature's Anti-ESG Agenda

Amy D. Roy, Joshua A. Lichtenstein, Robert A. Skinner

May 13, 2024

In a May 7 ruling, an Oklahoma state court judge granted a temporary injunction blocking enforcement of the Oklahoma Energy Discrimination Act of 2022.

The statute prohibits the state's public retirement plans from investing in companies that "boycott" fossil fuel producers. Under the law, the state treasurer is charged with compiling a list of companies he believes to be engaged in boycotting (as broadly defined in the legislation), while any financial institution doing business with the state must verify in writing that it does not and will not boycott energy companies. The individual asserting the challenge is an Oklahoma taxpayer and beneficiary of a state public employee retirement plan.

The Oklahoma statute, like those in several other states, is based on a fundamentally false premise: that asset managers who incorporate climate-related risks into their investment process are somehow punishing energy companies in pursuit of a political or social agenda, rather than seeking to maximize investment returns for retirees.

The court's decision reflects the fact that just the opposite is true. In reality, the legislature is furthering its own political agenda at the expense of retiree benefits. Through this law, legislators want to paint themselves as defenders of the fossil fuel industry, but are improperly using public pension funds as their weapon.

The court was persuaded by the taxpayer's argument that, because the law's stated purpose is to counter the "political agenda" of asset managers and assist the oil and gas sector, the statute violates the state constitution's requirement that public pensions be managed for the sole purpose of benefitting retirees. Unlike some similar statutes, the Oklahoma law permits fiduciaries to continue to hold investments with declared boycotters if they determine it would be imprudent to divest, and this fiduciary override has already been exercised in certain circumstances.

The irony is that energy companies themselves recognize that climate-related risks are important considerations for their long term financial performance. This fact is discussed openly in the companies' financial disclosures. Asset managers simply recognize and incorporate these risks (and related investment opportunities) in managing pension funds and maximizing returns, as they have repeatedly explained to the Oklahoma treasurer and his counterparts in other

states. Although many elected officials prefer to ignore this basic financial reality, the court's decision should help highlight this truth.

As a formal matter, the May 7 court decision applies only to the Oklahoma statute, finding that it likely violates specific provisions of the Oklahoma constitution. That said, the principles animating the court's reasoning should resonate broadly, including in other states with similar statutes, all of which have similar fiduciary requirements for pension investments. Many of these statutes are vulnerable to the same critique—that using pension assets as a political tool for the supposed "protection" of particular industries runs afoul of state law mandates that pensions must be managed solely in the interest of retirees. These statutes (and similar bills under consideration) are tracked and described in our award-winning, interactive website, [Navigating State Regulation of ESG](#).

The Oklahoma decision—which the treasurer has stated he intends to appeal—is the latest in a series of court developments to recognize this basic premise that climate and other ESG considerations are fundamentally focused on financial returns.

State Focus: Moving beyond ESG; Florida wades into restrictions in certain China-linked investments

Joshua A. Lichtenstein, Jonathan M. Reinstein, Christine Rosenblatt, Alexa Voskerichian, Devon Smith

March 19, 2024

In November 2023, Ropes & Gray published a [white paper](#) that focuses on the current trends in ESG regulation with respect to the investment of state retirement plan assets. The white paper is intended to be a companion piece to our award-winning [Navigating State Regulation of ESG website](#).

While the website offers detailed summaries of ESG-related developments in all 50 states, the white paper is meant to provide both an overview of the pro- and anti-ESG dynamics playing out in the public pension arena and executive summaries of the overall investment climate in each state. This series of posts is intended to serve as an extension of that white paper, covering recent updates in various states.

Officials in many states have picked up right where they left off last year, introducing new bills and initiatives to:

- Further rein in the use of ESG considerations in investment decision-making by public pension boards and other governmental entities; or
- Promote the role of ESG factors in such decisions.

At the beginning of the year, the Florida legislature passed, and Governor Ron DeSantis approved, technical corrections to the state's restrictive anti-ESG law (HB 3), which requires managers that invest state funds to make investment decisions based solely on "pecuniary factors."

A pecuniary factor is defined as one that is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy, and it does not include the consideration of social, political, or ideological interests. The amendments came on the heels of Governor DeSantis's announcement in January that his administration would step up its enforcement of the law (See our alert [here](#) for further discussion).

Florida lawmakers have now widened their focus on investment restrictions to include public investments in companies linked to China. As highlighted in Pensions & Investments ("[Florida Legislature passes China divestment bill](#)," March 15, 2024), both chambers of the Florida legislature recently passed HB 7071 ("An Act Relating to Foreign Investments by the State Board of Administration"), which requires the State Board of Administration (SBA) to divest holdings by the Florida Retirement System (FRS) in any business that is publicly known to be at least 50.1% owned by the government of the People's Republic of China, the Chinese Communist Party, or the Chinese military.

The bill applies to the FRS Pension Plan and the FRS Investment Plan, which combined represent approximately \$190.8 billion of the \$225.4 billion in assets managed by the SBA as of October 31, 2023. The SBA also manages over 25 other investment portfolios that are not subject to these restrictions, with combined assets of approximately \$34.6 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and Florida PRIME.

HB 7071 requires the SBA to develop a divestment plan for all "direct holdings" in China-owned companies by September 1, 2024. The divestment plan must be developed and implemented consistent with the SBA's fiduciary standards, and the SBA must complete divestment no later than September 1, 2025, or at such later time if necessary for it to implement the divestment plan consistent with its fiduciary duties.

"Direct holdings" in a company refers to all securities of that company, which are held directly by the FRS or in an account or fund in which the FRS owns all shares or interests. The term does not include indirect holdings in actively managed investment funds, including a private equity fund, or holdings in exchange-traded funds.

Under Florida law, SBA fiduciaries charged with investment decisions must maintain a diversified portfolio and act as a prudent expert would under similar circumstances, considering all relevant substantive factors. As mentioned above, investment decisions must be based on pecuniary factors, and fiduciaries may not sacrifice investment return or

undertake additional risk to promote any nonpecuniary factor.

HB 7071 (and similar divestment statutes that Florida has previously enacted, as described below), provides that if divestment is warranted, the SBA is exempted from its typical fiduciary duty to only invest based on pecuniary factors. **But to be clear, there is no other statutory exception from having to comply with the pecuniary factors requirements under Florida law.**

Florida's history of suspicion regarding investments in certain foreign countries

Although HB 7071 may seem like a new front in the very recent push by states to restrict the investment of public funds based on political issues, this is not the first time that Florida has sought to divest state assets linked to a foreign country:

- In 1993, Florida enacted the "1993 Free Cuba Act," Fla. Stat. § 215.471-2, which requires the SBA to divest its holdings in obligations of any U.S.-domiciled institution or company doing business in or with Cuba in violation of the federal Cuban Democracy Act of 1992.
- In 2007, Florida enacted the "Protecting Florida's Investments Act," Fla. Stat. §215.473, which requires divestment from certain entities in Sudan and Iran.
- In 2011, new legislation further prohibiting state and local government agencies from entering into contracts with certain entities in Sudan and Iran (Fla. Stat. § 287.135) was enacted, and in 2012, an amendment was adopted that added Cuba and Syria as well.
- In 2018, Florida amended the 1993 Cuba law to require divestment from entities doing business in or with Venezuela in violation of federal law.

Several years ago, Florida's public officials began hinting that they were targeting China for divestment purposes. In May 2020, the state's Chief Financial Officer, Jimmy Patronis, sent letters to contractors that did business in or with Florida in an attempt to "identify state vendors who are owned or controlled by the Communist Party of China" ("[Communist Influence? Florida CFO Jimmy Patronis on Guard against Chinese Government](#)," June 16, 2020). The letters requested that recipients verify within 30 days whether they were domiciled in the United States and at least 50% owned by U.S. citizens and entities.

Then in December 2021, the SBA trustees ordered an investigation of the Florida Retirement System to determine the scope of its investment in Chinese companies ("[Governor Ron DeSantis Takes Action Against Communist China and Woke Corporations](#)," December 20, 2021). Subsequently, the SBA announced that although the investigation showed that the FRS's exposure to Chinese investments was less than 3%, the SBA would nevertheless pause new investments in China, as well as other emerging markets, in light of "increasing risks and uncertainty" ("[Florida SBA Halts Funding to Chinese Investments](#)," April 6, 2022).

Initial efforts at anti-China lawmaking

Governor DeSantis [signed a trio of bills](#) last year that reflected Florida's "commitment to crack down on Communist China." The most prominent was SB 264 ("The Conveyances to Foreign Entities Act"), which forbids foreign principals from China—including governments and officials, political parties and their members, foreign-organized business ventures, and certain other non-U.S. residents—from acquiring more than a de minimis indirect interest in agricultural land in Florida or any real property within ten miles of certain infrastructure facilities or five miles of a military installation (See our alert about SB 264 [here](#) as well as our summary of a recently proposed amendment to the law [here](#)).

SB 264 also forbids, as of July 1, 2025, any state governmental entity from entering a contract with an entity owned by the government of China if the contract would give the Chinese entity access to an individual's personally identifiable information.

As of February 1, 2024, the 11th U.S. Circuit Court of Appeals has enjoined the state from enforcing the law against a group of Chinese individuals, noting that the U.S. Supreme Court has questioned the constitutionality of such restrictions based on country of origin.

The two other bills that Governor DeSantis signed into law last year prohibit:

- Public employers from using certain software owned by foreign principals (SB 258); and
- State secondary education institutions from accepting any gift from a school based in a foreign country of concern (SB 846).

Are anti-China divestment bills a growing trend?

Florida is not alone in targeting China through divestment legislation. HB 7071 exemplifies the measures that state legislatures have considered in order to address their concerns about globalization and the growing influence of government-level actors such as China, which [Governor DeSantis has described](#) as "the United States' greatest geopolitical threat."

Several states have introduced bills targeting Chinese entities in 2024, including:

- [Missouri HB 1869](#), introduced January 3, 2024;
- [New Jersey SB 1365](#), introduced January 9, 2024;
- [Illinois SB 3494](#), introduced February 9, 2024;
- [Arizona SB 1340](#), introduced February 29, 2024; and
- [Kansas HB 2739](#), introduced March 4, 2024.

Separately, legislative activity at the federal level, such as the passage of the TikTok bill in the U.S. House of Representatives with broad support last week, demonstrates that these concerns are not localized and may be bipartisan in at least some cases.

As these types of divestment bills typically carve out exceptions for fiduciaries and for commingled funds or other indirect investment vehicles, it is unclear what the consequences are if a pension fund refuses to divest (or, by contrast, how a challenge on fiduciary grounds to a pension fund's divestment would play out in the courts).

Once HB 7071 takes effect, other states will be closely watching Florida to see how the legislation gets implemented.

State Focus: Oklahoma's boycott statute – A poster child for the interpretive and operational challenges of ESG laws

Joshua A. Lichtenstein, Jonathan M. Reinstein, Christine Rosenblatt, Reagan Haas, Alexa Voskerichian

February 28, 2024

Since the start of 2024, lawmakers in many states have picked up right where they left off last year, introducing new bills seeking to:

- Further rein in the use of ESG considerations in investment decision-making by public pension boards and other governmental entities; or
- Promote the role of ESG factors in such decisions.

Oklahoma has been particularly active in this space. As highlighted in a February 26, 2024 article in Pensions & Investments ("[Oklahoma advances bills to amend anti-ESG law](#)"), both chambers of the Oklahoma Legislature have recently advanced bills to amend its law requiring state pension systems to unwind investments with asset managers that have been deemed to boycott the oil and gas industry.

Creation of Oklahoma's restricted list

By way of background, the state enacted the "Energy Discrimination Elimination Act of 2022," Okla. Stat. tit. 74, § 12001 et seq. (the "Act"), which requires companies, including financial institutions, which do business with the state (such as banks managing state pension system funds) to affirm that they do not and will not boycott energy companies. Otherwise, the state will place the financial institution on a restricted list.

The treasurer's determination of which financial institutions are boycotters can be based on publicly available information as well as responses to the treasurer's request for written verification from a financial institution that it does not boycott energy companies. The Act prohibits investment by state entities in listed financial companies and requires divestment

within 360 days if the listed financial company does not cease its boycott within a specified period of time upon receiving notice of the state's intention to divest. Oklahoma is one of a handful of states with a restricted list of financial institutions, joining Kentucky, Texas and West Virginia.

The Act exempts a state governmental entity from having to comply if it determines that doing so would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets.

In May 2023, the Oklahoma Treasurer's office released its initial list of financial companies that have been found to be engaging in energy company boycotts, and it subsequently revised its list on August 15, 2023.

Differing opinions on the reach of Oklahoma's anti-boycott law

Also in August, the Oklahoma Public Employees Retirement System ("OPERS") board voted to exempt the pension fund from having to terminate contracts with listed financial institutions based on the board's determination that divestiture would be inconsistent with its fiduciary responsibility overseeing OPERS assets. Treasurer Russ was the lone dissenting vote in the OPERS board vote to invoke the fiduciary exemption.

On October 11, 2023, the state Senate convened a nearly three-hour hearing regarding the boycott statute, in which Treasurer Russ was asked about his office's list of restricted financial companies. During the hearing, Treasurer Russ repeatedly questioned the ability of the OPERS board to rely on the statute's fiduciary exemption, which some lawmakers continued to advocate for, and the Treasurer called for legislators to narrow the exception or retract it entirely.

Challenge in the courts

Adding to this conflict, on November 21, 2023, former state employee Don Keenan sought a temporary restraining order against Treasurer Russ regarding Oklahoma's list of restricted financial institutions. Among other claims, the lawsuit alleged that the treasurer's actions violate the First Amendment of the U.S. Constitution and that the Oklahoma law defies the state's constitution.

In particular, the complaint notes that the Oklahoma constitution "requires state managed pension systems to operate for the 'exclusive benefit' of their beneficiaries...and even though the 'exclusive benefit' rule is constitutionally mandated...the legislature attempted to absolve the Treasurer and pension systems of their constitutional fiduciary duties by literally saying that they were '*exempt from any conflicting statutory or common law obligations including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities*

portfolios." It concludes by saying "[t]he state's decision to use its retirees' retirement funds as political fodder in its quixotic quest to prove a point is patently unconstitutional and violates federal law."

Mr. Keenan's lawsuit, which is backed by a coalition that includes the Oklahoma Public Employees Association, is the first such suit brought by a plan participant challenging a boycott law anywhere in the United States.

Remedying the confusion?

Treasurer Russ has described the Act as being "clear enough to know the spirit and the intent of the law and the legislature to watch over Oklahomans and the economic engines that help drive our state," but admitted that it could benefit from clarification in the legislature. "I think I know what it means... [b]ut some are saying that they don't read it the same way I do and therefore they feel like they can just claim a general 'Well, based on my fiduciary responsibility, I'm not enforcing it.'"

Currently, there are two different bills—S.B. 1536 and H.B. 3541—making their way through the lawmaking process that would amend the Act by significantly curtailing the ability to rely on the fiduciary exemption and expanding the discretionary authority of the Treasurer and the Attorney General to implement and enforce the statute.

S.B. 1536 is narrower in scope, stipulating that in the event the Treasurer disagrees with a state governmental entity that is seeking to rely on an exemption from having to divest from a listed financial institution, the Treasurer must secure the opinion of the Oklahoma Attorney General as to whether the entity's determination is in compliance with state laws binding the entity.

H.B. 3541 proposes various changes, including, among other things:

- Broadening the categories of companies that are the subject of financial institution boycotts to include: timber, mining and agriculture businesses;
- Expanding the scope of financial institutions to include any company (public or private) that is engaged in financial services, or banking or that is an investment company; and
- Requiring state entities claiming exemptions to have to show that divestment would lead to what it defines as a "materially negative financial impact" and requiring the Treasurer's agreement that an exemption is warranted.

Moreover, H.B.3541 would eliminate an exemption allowing public pension funds from having to divest from indirect holdings in actively managed or passively managed investment funds or private equity funds. The bill would also prevent entities from delaying or ceasing the termination of contracts with blacklisted firms if they expect a loss in value or a benchmark deviation in performance.

Conclusion

Oklahoma's boycott statute is a prime example of the interpretive and operational challenges raised by the ESG laws that have been enacted across the United States. How can an agency charged with implementing a law be held accountable for the financial companies it determines should be placed on the restricted list? When should the law's fiduciary exemption be invoked?

The outcome of the legislature's current attempts to clarify the Act as well as the ongoing litigation may provide valuable lessons for other states as they try to address the endemic confusion and ambiguities of ESG laws.

Florida Stepping Up Enforcement of Restrictive Anti-ESG Law; More Legislation Coming

Joshua A. Lichtenstein, Michael R. Littenberg, Amy D. Roy, Robert A. Skinner, Reagan Haas, Jonathan M. Reinstein, Alexa Voskerichian

February 05, 2024

In a [video posted on X](#) on January 31, 2024, Governor Ron DeSantis announced that Florida will begin enforcing violations of its anti-ESG legislation (House Bill 3, "An Act Relating to Government and Corporate Activism" (HB 3)) that was adopted last year. He asserts there are financial institutions that have signed attestations that say "they are not doing ESG or social credit scores" when in fact "they are doing things outside of what they attested to that would violate Florida law." In his message, the Governor said that he has had discussions with members of the Florida Legislature about what actions can be taken against these institutions and that his administration will enforce the law, and he added that more legislation will be coming although he did not provide details. Following Governor DeSantis's statement, it is important for all investment advisers that currently manage or are seeking to manage Florida public mandates to review their compliance approaches to HB 3.

The Florida legislation, which took effect on July 1, 2023 (see our [prior Alert](#) for additional details), imposes unique and challenging rules and restrictions for asset managers. Under the law, any manager that invests Florida public funds must make investment decisions based solely on "pecuniary factors." A pecuniary factor is defined as one that is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy and that does not include the consideration of "social, political, or ideological interests." This definition may be understood to reflect skepticism about the ability for ESG factors to have a material financial impact on investments, although HB 3 does not define "social, political, or ideological interests." This is similar to the U.S. Department of Labor's ESG final rule for ERISA plans that the Trump administration

adopted in 2020 (see our [prior Alert](#)), which the agency later found to have a "chilling effect" on investment decisions that may include ESG factors even when they are relevant to a risk-return analysis.

In addition, HB 3 has a unique "stickering" provision, which requires investment managers to include a disclaimer in any external **written** communication with a company in which the investment manager has invested Florida public funds if the communication:

- 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.

The 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.*" This requirement applies to all contracts between a Florida governmental entity and an investment manager that have been executed, amended or renewed on or after July 1, 2023. The governmental entity has the unilateral right to terminate any contract with a manager if this disclaimer is not included.

Furthermore, investment managers are required to certify annually that they are complying with the fiduciary standards set forth in Florida's investment policy. Managers will be subject to sanction if they fail to timely file the required certification or submit a certification that is materially false. Failure to timely file the required certification could also be grounds for termination of any contract between the state retirement board and the investment advisor or manager. The Florida Attorney General may bring a civil or administrative action and recover reasonable attorneys' fees and costs (if the action is successful).

Given its novelty and the current lack of interpretive guidance from the state, the stickering requirement has presented certain challenges to managers of Florida public assets. Managers should exercise appropriate care in determining when and how the disclaimer applies in order to make sure it is actually warranted under the circumstances. In situations where stickering applies, managers should make sure the disclaimer is clearly visible and not just part of the fine print. Taking these steps can help a manager demonstrate that it is making a good-faith effort to comply with the Florida law.

Note, this white paper does not address state climate disclosure requirements. Information on those requirements can be found on Ropes & Gray's Insights [webpage](#).

Part II: ESG Laws in Effect or Set to Take Effect in the Near Future

In Part II of this paper, we provide high-level summaries of the legislation and pronouncements that each state has recently adopted or considered regarding the role of ESG factors in public pension investing. As for the bills that have been adopted, we have identified the following items and have assessed the ESG topic(s) that each encompasses:

ESG Topics (Key)

- Promote ESG Factors in Investment and/or Proxy Voting Decisions
- Promote Divestment from Certain Industries
- Affirmatively Not Restricting ESG
- Restrict Use of ESG Factors; Focus on Pecuniary Characteristics
- Target Entities That Boycott Certain Industries
- Prohibit Discrimination on Basis of Social Credit or ESG Scores

State	Bill #	Topic(s)	Effective
Alabama	SB261	■ ■	10/1/2023
Arkansas	HB1845	■	8/1/2023
	HB1307	■ ■ ■	8/1/2023
	HB1253	■	8/1/2023
	SB62	■	4/11/2023
Colorado	SB23-016	■	8/8/2023
Florida	HB3	■ ■ ■	7/1/2023
	HB989	■	7/1/2024
Georgia	HB1018	■	7/1/2024
	HB481	■	7/1/2024
Idaho	SB1291	■	7/1/2024
	HB190	■	3/31/2023
	HB191	■	3/23/2023
	SB1405	■	7/1/2022
Illinois	HB2782	■	1/1/2024
	SB2152	■	8/4/2023
	PA101-473	■	1/1/2020
Indiana	HB1008	■ ■	7/1/2023
Kansas	HB2100	■ ■	7/1/2023

State	Bill #	Topic(s)	Effective
Kentucky	HB236	■	3/24/2023
	SB205	■	4/8/2022
Louisiana	SB234	■	8/1/2024
	HR267	■	5/31/2024
	HCR78	■	5/29/2024
	HCR110	■	6/7/2023
	HCR59	■	6/4/2023
	HCR70	■ ■	5/30/2023
	HR246	■	6/6/2022
	HR203	■	6/6/2022
Maine	HP65 / LD 99	■	6/16/2021
Maryland	HB1212	■	7/1/2024
	HB740	■	6/1/2022
Montana	HJ11	■	4/14/2023
	HB228	■	4/19/2023
	HB356	■	4/21/2023
New Hampshire	HB457	■	8/29/2023
	HB1469	■	6/17/2022
North Carolina	HB750	■	6/27/2023
North Dakota	HB1429	■	8/1/2023
	HCR3013	■	3/24/2023
	SB2291	■	3/24/2021
Oklahoma	HB2034	■	11/1/2022
Oregon	HB4083	■	1/1/2025
South Carolina	HB3690	■	2/5/2024
Tennessee	SB955	■	7/1/2023
	SB2649	■	7/1/2022
Texas	SB13	■	9/1/2021
	SB19	■	9/1/2021
Utah	HB449	■	7/1/2023
	HB281	■	5/3/2023
	SB97	■	5/3/2023
	SB96	■	5/3/2023
West Virginia	SRC9	■	3/14/2023
	HB2862	■	6/8/2023
Wyoming	SB262	■	6/10/2022
	HB0236	■	7/1/2021

State ESG Update and Analysis for Asset Managers and Financial Institutions

In this part of the paper, we provide an analysis of the regulatory climate addressing ESG investing by public pension plans in each state. We have formed our views on each state’s current posture based on the following considerations:

- **Enacted or pending legislation in this area**
- **Any enforcement activities undertaken by the state attorney general**
- **Public statements made and initiatives spearheaded by state elected officials**
- **Multi-state coalition activities**

Additionally, our views have been shaped by the party affiliations of each state’s governor, attorney general, treasurer/comptroller and legislature (which party has control in each house), since this information can provide further context for understanding the ESG dynamics in each state.


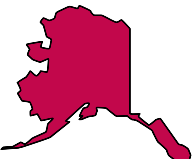
We also provide a general assessment of a state’s ESG activity this year, based on the following rubric:

- **Very Active** – Multiple ESG bills were introduced in 2024 and one or more pieces of legislation was signed into law; there were multiple examples of state officials announcing or implementing new ESG policies or initiating enforcement actions.
- **Active** – There were several ESG bills introduced in 2024, and possibly one or more bills was signed into law; there was one or more instances of state officials announcing or implementing new ESG policies or initiating enforcement actions.
- **Maintain Status Quo** – There were few (if any) ESG bills introduced in 2024, and even if they were, none got signed into law. There were few (if any) public statements made or initiatives spearheaded by state officials regarding ESG issues.

Please note that the summaries of the actions described below are intended to be high-level and for use by someone who is seeking to engage with a state about these issues. Furthermore, the summaries are not intended to reflect comprehensive descriptions of the instruments described herein. Given the ever-evolving nature of this area, be sure to visit our website at [Navigating State Regulation of ESG Investments](#) for a current listing of ESG-related legislation and regulation. If you have any questions, please reach out to any of the authors of this white paper as well as your usual R&G contacts.

Alabama.....	13	Connecticut.....	16
Alaska.....	13	Delaware.....	16
Arizona.....	14	Florida.....	16
Arkansas.....	14	Georgia.....	17
California.....	15	Hawaii.....	17
Colorado.....	15	Idaho.....	18
		Illinois.....	19
		Indiana.....	19
		Iowa.....	20
		Kansas.....	21
		Kentucky.....	22
		Louisiana.....	23
		Maine.....	24
		Maryland.....	24
		Massachusetts.....	25
		Michigan.....	25
		Minnesota.....	26
		Mississippi.....	26
		Missouri.....	27
		Montana.....	30
		Nebraska.....	30
		Nevada.....	30
		New Hampshire.....	31
		New Jersey.....	32
		New Mexico.....	32
		New York.....	33
		North Carolina.....	34
		North Dakota.....	34
		Ohio.....	35
		Oklahoma.....	35
		Oregon.....	37
		Pennsylvania.....	38
		Rhode Island.....	38
		South Carolina.....	39
		South Dakota.....	40
		Tennessee.....	40
		Texas.....	41
		Utah.....	42
		Vermont.....	42
		Virginia.....	43
		Washington.....	44
		West Virginia.....	45
		Wisconsin.....	46
		Wyoming.....	47

State ESG Update and Analysis for Asset Managers and Financial Institutions



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Alabama 	Governor Legislature (Senate, House) Attorney General Treasurer	Maintain Status Quo	<ul style="list-style-type: none"> Alabama legislators introduced two bills in 2024: SB151, which would have limited the ability of the Board of Control of the Teachers’ Retirement Systems of Alabama and the Board of Control of the Retirement Systems of Alabama to consider non-pecuniary factors; and HB61, which would have prevented local governments and public authorities from considering ESG criteria when awarding certain public contracts. Both bills failed to pass. In 2023, one anti-ESG bill (SB261) was enacted, which prohibits governmental entities from entering into contracts with companies that boycott businesses that allegedly engage in boycotts of certain industries such as fossil fuels or firearms, or because those entities do not meet certain environmental or corporate governance standards. The legislation is based on the Heritage Foundation’s Eliminate Economic Boycotts Act. SB261 applies to contracts entered into on or after October 1, 2023. On May 10, 2023, the attorney general was one of two state attorneys general to testify against the use of ESG factors at the U.S. House Oversight Committee’s first hearing on ESG practices, and he called ESG a “clear and present danger.” He reiterated the anti-ESG views he expressed at the hearing in a May 23, 2023, <i>Wall Street Journal</i> op-ed where he wrote: “For all the bluster from House Democrats, our fight against anti-competitive ESG agreements is a fight for free markets and the consumers we have a duty to protect.”
Alaska 	Governor Legislature (Senate, House (split)) Attorney General Commissioner of the Department of Revenue	Maintain Status Quo	<ul style="list-style-type: none"> During the 2024 session, the legislature introduced one ESG-related bill, HB303, which would have required the Alaska State Pension Investment Board, with respect to a defined benefit retirement plan, to act and vote all shares solely in the pecuniary interest of members and not to further nonpecuniary environmental, social, political, ideological or other benefits or goals. Ultimately, this bill failed to pass. Besides legislation, the Alaska Attorney General joined the March 2024 petition to review the SEC’s carbon emissions reporting requirements. Further, in late May, the State Commissioner of Revenue who is a trustee of the Alaska Retirement Management Board (the fiduciary board responsible for overseeing the assets of the state’s retirement systems) and the Alaska Permanent Fund Corp., published an op-ed in the <i>Wall Street Journal</i> decrying two “activist shareholders” of Exxon Mobil that submitted emissions-reductions proposals and others that voted to remove the board and CEO after the corporation responded to the proposals with lawsuits.

¹ Below are the categories we used to assess each state’s overall posture in the ESG and public pension investment debate:


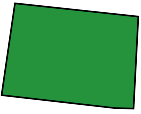
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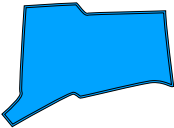
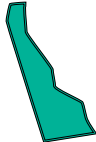

² Red text indicates Republican affiliation and blue text indicates Democratic. This information was obtained from the National Conference of State Legislatures (<https://www.ncsl.org/about-state-legislatures/state-partisan-composition>), Ballotpedia ([https://ballotpedia.org/Governor_\(state_executive_office\)](https://ballotpedia.org/Governor_(state_executive_office)), [https://ballotpedia.org/Attorney_General_\(state_executive_office\)](https://ballotpedia.org/Attorney_General_(state_executive_office))) and [https://ballotpedia.org/Treasurer_\(state_executive_office\)](https://ballotpedia.org/Treasurer_(state_executive_office))) and state government websites. For certain state treasurers or comptrollers, the office is represented in black text, which indicates the office is nonpartisan.



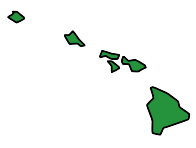
State ESG Update and Analysis for Asset Managers and Financial Institutions

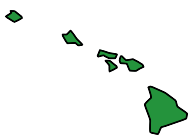

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Arizona</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature introduced two anti-ESG bills--HB2457/SB1013 (which would have required any fiduciary to a state or municipal plan to consider only pecuniary factors when evaluating investments or discharging their duties) and SB1014 (which would have prohibited financial institutions doing business in Arizona from discriminating against any person based on ESG criteria). Ultimately, both bills failed to pass. ■ In 2023, the Republican-controlled legislature introduced multiple bills seeking to restrict ESG investing, including: SB1096 (would have targeted entities that boycott the firearms industry), SB1138 (would have prohibited discrimination on the basis of social credit or ESG scores), SB1139 (would have restricted fiduciaries of the state retirement plan from using ESG factors and required them to focus on the pecuniary characteristics of investments), SB1500 (would have required state fiduciaries to focus on pecuniary characteristics when evaluating an investment or discharging duties with respect to a plan), SB1611 (would have restricted the use of ESG factors in state contracts), and SB1612 (would have targeted entities that boycott fossil fuels). However, the Governor (a Democrat who was elected in 2022) vetoed the three bills that passed in the legislature—SB1096, SB1500 and SB1611.
<p>Arkansas</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ During its 2023 session, the state legislature enacted a series of anti-ESG bills, including: HB1307, HB1845, and HB1253. HB1307 is a sweeping bill that prohibits ESG considerations in investments, targets companies and financial institutions that boycott or discriminate based on ESG factors, and creates an ESG Oversight Committee, which, as HB1845 dictates, will replace the Treasurer in determining whether a financial service provider violates the state's ESG rules. HB1253 specifically applies to the state's pension system, and it requires a fiduciary to discharge its duties with respect to any state pension plan solely in the pecuniary interest of the participants and beneficiaries. All three bills took effect on August 1, 2023.


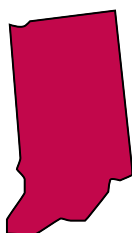
State ESG Update and Analysis for Asset Managers and Financial Institutions


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>California</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ In 2023, the legislature introduced two bills that sought to divest state funds from certain industries, such as fossil fuels and firearms. SB637 would have prohibited a state agency from entering into a contract with, depositing state funds with, or receiving a loan from a financial institution that invests in or makes loans to a company that manufactures firearms or ammunition. SB252, which was directly applicable to the state pension fund system, would have prohibited investment in the 200 largest publicly traded fossil fuel companies as determined by the carbon content of the companies' reserves. Ultimately, both bills failed to pass, and in the case of SB252, that was attributed in part to the CalPERS Board of Administration voting to formally oppose the legislation, explaining how "CalPERS does not believe that mandatory fossil fuel divestment is an effective solution to the reduction of greenhouse gas emissions."
<p>Colorado</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ There were at least three ESG-related bills introduced in 2023: one pro-ESG and two anti-ESG measures. On May 11, 2023, the governor signed SB23-016, which requires, among other things, that, on or after January 1, 2025, the public employees' retirement association (PERA) board shall include as part of its annual investment stewardship report—a description of PERA's process for identifying climate change-related risks and assessments of the financial impact that climate change-related risks have on PERA's operations; the current or anticipated future risks that climate change poses to PERA's investment portfolio; the impact that climate change has on PERA's investment strategies, and any strategy changes that PERA has implemented in response to such impact; and any actions that PERA is taking to manage the risks that climate change poses to its operations. ■ The two anti-ESG bills failed to advance out of committee. HB23-1092 would have restricted the PERA board and treasurer from using ESG factors and would have required an exclusive focus on pecuniary characteristics, and it also would have targeted entities that boycott certain industries like fossil fuel. SB23-026 would have prohibited discrimination on the basis of social credit or ESG scores.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Connecticut</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ In 2023, Several pro-ESG bills were introduced, however, none were enacted. HB6348 would have authorized the treasurer to divest state funds from any company that extracts, transports, trades, or otherwise contributes to the production of coal, oil, and gas. In order to increase climate accountability, SB42 would have required the Treasurer to issue an annual report that scores companies and details any failure of companies in which state pension funds are invested to comply with Connecticut’s climate sustainability goals.
<p>Delaware</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ Although the legislature has not taken action on ESG issues in the public pension plan context during the current or previous sessions, the attorney general and treasurer were active in blue state coalition efforts to promote the use of ESG in 2023. ■ Last year, the treasurer took a position against affirmatively restricting ESG, describing efforts by officials in Texas and other states as “directly threatening broader goals of managing risk in the economy” and emphasizing the role of the House Democrats’ sustainable investing caucus in providing “factual information” about sustainable investment.
<p>Florida</p> 	<p>Governor Legislature (Senate, House) Attorney General Chief Financial Officer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ HB3, which was signed into law in 2023, limits the consideration of ESG factors in the investment decisions of state retirement systems. HB3 is one of the most restrictive and comprehensive anti-ESG laws adopted in the United States, imposing significant compliance obligations that are distinct from those required by ERISA and other state laws. For additional details, please see our alert here. ■ On May 2, 2024, the governor signed HB989 into law, which expands on what HB3 provides with respect to financial institutions’ unsafe and unsound practices. As amended by HB989, the state banking law now states that it is an unsafe and unsound practice for a financial institution to suspend or terminate, in addition to deny or cancel, its services to a person on the basis of (i) the person’s political opinions, speech, or affiliations; (ii) except as otherwise provided, the person’s religious beliefs, religious exercise, or religious affiliations; (iii) 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 (iv) the use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to, certain ESG factors.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Florida (continued) 			<ul style="list-style-type: none"> ■ The statute allows a customer or member of financial institution who suspects that a financial institution has engaged in an unsafe or unsound practice to file, within 30 calendar days, a complaint with the Florida Office of Financial Regulation. Engaging in an unsafe or unsound practice or failing to timely submit the required compliance attestation is a violation of Florida's Financial Institutions Codes and subjects the violator to the applicable sanctions and penalties. Such acts also constitute a violation of the Florida Deceptive and Unfair Trade Practices Act. A financial institution that engages in an unsafe or unsound practice or fails to timely submit the attestation is also subject to the applicable sanctions and penalties provided in FDUTPA.
Georgia 	Governor Legislature (Senate, House) Attorney General Treasurer	Active	<ul style="list-style-type: none"> ■ In 2024, Georgia enacted two ESG-related bills. First, HB481, which amends the Georgia Public Retirement Systems Investment Authority Law, requires fiduciaries to invest retirement assets solely in the financial interest of participants and their beneficiaries. The law also requires a fiduciary to vote and execute all voting proxies exclusively in the best economic interests or rights of the retirement system. HB1018 prohibits any financial institution from requiring the usage of a firearms code in a way that distinguishes a firearms retailer that is physically located in Georgia from general merchandise retailers or sporting goods retailers, unless such required usage of a firearms code is based on a good faith conclusion that such action is required by applicable law or regulation. ■ In 2022, the Board of Trustees for the Employees' Retirement System of Georgia adopted a general statement that said trustees are obligated to select all investment services prudently, based solely on the pecuniary interests of the ultimate beneficiaries of the plan. The trustees may not subordinate the interests of the participants and beneficiaries to other objectives and may not sacrifice investment return or increase risk to promote any non-pecuniary interests. Pecuniary interests do not include the furtherance of social, political, or ideological interests.
Hawaii 	Governor Legislature (Senate, House) Attorney General Director of Finance	Maintain Status Quo	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Hawaii (continued) 			<ul style="list-style-type: none"> Over the last few years, Democrats have introduced several pro-ESG bills, although none passed. Some of these bills have sought to promote investment in opportunities in industries that would sustain Hawaii’s natural environment or produce economic opportunities for residents, including HB1506/SB1227 (sought to encourage the Employees’ Retirement System to invest in those opportunities), HB1505/SB1226 (sought to encourage the Hawaii Employer-Union Health Benefits Trust Fund to invest in the above opportunities), and SB423 (sought to promote divestment from the fossil fuel industry). Overall, Hawaii is in a small universe of states pushing affirmatively for sustainable investing through pro-ESG legislation, as opposed to simply promoting ESG neutrality, but none of these bills have passed to date.
Idaho 	Governor Legislature (Senate, House) Attorney General Treasurer	Active	<ul style="list-style-type: none"> In 2024, Idaho enacted S1291, an anti-ESG bill that targets companies contracting with public entities in the state. S1291 prohibits public entities from entering into contracts with companies for goods or services unless the contract contains a written certification from the company that it is not currently engaged in, and will not for the duration of the contract engage in, a boycott of any individual or company because the individual or company (a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) engages in or supports the manufacture, distribution, sale, or use of firearms. S1291 applies only to contracts between a public entity and a company that has 10 or more full-time employees and a value of \$100,000 or more to be paid at least in part from public funds. Also, during the 2024 session, the Republican-controlled legislature introduced H0669 and a house joint memorial (HJM7) seeking to prohibit discrimination on the basis of social credit or ESG scores. H0669 would have prohibited financial institutions from discriminating in the provision of financial services, including, utilizing a social credit score to directly or indirectly decline to provide full and equal enjoyment in the provision of financial services to a person, and HJM7 expressed concern over UN and World Economic Forum proposals supporting the imposition of ESG requirements on businesses and the concept of social credit. Ultimately, H0669 did not pass.



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Illinois</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ Several ESG-related bills were introduced during the 2024 session which build on the state’s landmark 2019 legislation (PA101-473: Illinois Sustainable Investing Act) directing state and local government entities that manage public funds to consider materially relevant sustainability factors in their investment decisions, though none were passed. HB5268 would direct the University of Illinois Board of Trustees to refrain from investing assets of any endowment fund in fossil fuel companies or their subsidiaries. Similarly, SB3717 would prohibit state pension funds from investing assets in fossil fuel companies. Neither bill passed before the session was adjourned. ■ HB5201, an anti-ESG bill, was also introduced in the legislature in 2024 but it did not pass. HB5201 would have amended the Public Funds Investment Act and the Illinois Pension Code to make conforming changes, including removal of sustainability factors from investment policies.
<p>Indiana</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 legislative session, SB28 was introduced, which would have prohibited a financial services provider from discriminating in providing financial services to a consumer by using a social credit score as a basis for directly or indirectly (1) declining to provide to the consumer full and equal access to one or more financial services; or (2) providing the consumer with one or more financial services on less favorable terms and conditions than would otherwise apply to the consumer if a social credit score were not used. Ultimately, this bill failed to pass. ■ Pursuant to legislation enacted in 2023 (HB1008), the Indiana Treasurer released a report on June 21, 2024 entitled, “The Treasurer’s Report On An ESG Commitment” placing BlackRock on a watchlist because it engaged in an ESG commitment and alleged that BlackRock’s SEC disclosures indicated that it prioritizes ESG engagement over its fiduciary duty to clients.

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Iowa</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ Two anti-ESG bills were introduced in the legislature during the 2024 session. HSB667 would have required fiduciaries to vote all shares in the “best economic interest” of plan participants and beneficiaries (the legislation defined “best economic interest” to mean “investment pursuant to the objective of maximizing risk-adjusted investment returns of the participants and beneficiaries of a plan over a time horizon consistent with the risk management profile of the plan”), not considering any ESG factors. HF2291/SF2032 would have prohibited the state, any political subdivision, or any publicly funded organization from enforcing a presidential executive order that restricts a person’s rights or which the Iowa attorney general has determined to be unconstitutional and which is related to certain enumerated subjects, including (i) a pandemic or other health emergency; (ii) the regulation of natural resources, including coal and oil; (iii) the regulation of the agriculture industry; (iv) the use of land; (v) the regulation of the financial sector as it relates to ESG standards; or (vi) the regulation of the constitutional right to bear arms. Both bills failed to pass. ■ In August 2024, the attorney general co-led with the Florida attorney general, a 20-state coalition in submitting a letter addressed to Treasury Secretary Yellen, demanding it stop its attempt to block state laws pertaining to discriminatory debanking. According to the letter, debanking discriminates against Americans for their religious and political beliefs and denies them access to basic resources such as bank accounts or debit cards. “No consumer or business should be denied services based on political beliefs or religious views or because of some arbitrary social credit score derived from ideological agendas.” In April, the Iowa attorney general also pushed back against discriminatory debanking by calling on Bank of America to stop denying financial services to those it disagrees with, including religious organizations, gun manufacturers, and fossil fuel producers. ■ In 2023, the governor promoted anti-ESG policies as part of her “visions for Iowa,” including, that investment firms that manage the state’s money must not boycott fossil fuel energy or firearms companies, or generally invest funds to further ESG, political, or ideological interests over maximized returns.

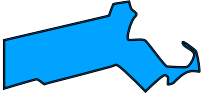

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Kansas</p> 	<p>Governor</p> <p>Legislature (Senate, House)</p> <p>Attorney General</p> <p>Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ Only one ESG bill was introduced during the 2024 legislative session: HB2722, which would have prohibited financial institutions from using the firearms code to engage in discriminatory conduct by distinguishing a firearms retailer physically located in Kansas from general merchandise retailers or sporting good retailers in Kansas. The bill failed to pass. ■ In April 2023, the legislature enacted the anti-ESG bill, HB2100, which is entitled the Kansas Public Investments and Contracts Protection Act. Even though the governor (a Democrat) refused to veto this legislation—it became law without the governor’s signature—the Republican-controlled legislature narrowed the scope of the bill because of political opposition during the legislative process. As enacted, HB2100 amends the law governing the Kansas Public Employees Retirement Fund and investment standards to (i) prohibit state agencies and other political subdivisions from giving preferential treatment to or discriminating against companies based on ESG criteria in the procurement of contracts; (ii) require fiduciaries of the Kansas Public Employees Retirement System (KPERs) to act solely in the financial interest of participants and beneficiaries of the system when it comes to investment decisions and proxy voting; (iii) restrict state agencies from adopting ESG criteria or requiring any person or business to operate in accordance with such criteria; and (iv) provide for enforcement by the attorney general; and (v) indemnify KPERs with respect to actions taken to comply with it. ■ Other anti-ESG bills that were introduced during the 2023 session failed to pass, such as HCR5014 (would have authorized concerned parties to study ESG standards and called for bills that would restrict the use of ESG standards); HB2436/SB291 (same as the new HB2100); HB2404/SB224 (would have targeted entities that engage in ideological boycotts, would have restricted the use of ESG factors in contracting and proxy voting, would have required a focus solely on pecuniary characteristics, and would have prohibited discrimination on the basis of social credit or ESG scores).


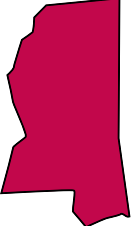
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Kentucky 	Governor Legislature (Senate, House) Attorney General Treasurer	Maintain Status Quo	<ul style="list-style-type: none"> ■ During its 2024 session, the Kentucky legislature introduced two anti-ESG bills. HB742 would have required fiduciaries of state-administered retirement systems to discharge their duties with respect to the retirement system solely in the interest of the members and beneficiaries, which would be determined using only pecuniary factors and not include any purpose to further a nonpecuniary interest. HB474, would have required broker-dealers, agents and investment advisers to disclose to customers, any incorporation of socially responsible criteria or other nonfinancial objective in an investment decision or recommendation. Both bills failed to pass. ■ On March 24, 2023, the governor signed anti-ESG bill HB236 into law, which amends existing laws governing state-administered retirement systems by now requiring fiduciaries to consider the sole interest of the members and beneficiaries of the retirement systems (using only pecuniary factors) and to prohibit the consideration of nonpecuniary interests, including environmental, social, political, and ideological interests. HB236 also includes similar requirements for proxy voting policies. ■ On January 3, 2023, the treasurer released its initial list of 11 financial companies that could be subject to divestment by state governmental entities unless these institutions cease to engage in alleged boycotts of the energy sector (pursuant to SB205, which was signed into law on April 8, 2022 and directs the treasurer to annually publish this list). Kentucky is one of four states to have published a restricted financial company list, joining Oklahoma, Texas, and West Virginia. In response, the trustees of the Kentucky County Employees’ Retirement System (CERS) sent a letter to the Treasurer stating that the SB205 mandate to divest from listed financial companies is “inconsistent with its fiduciary responsibilities with respect to the investment of CERS assets.”

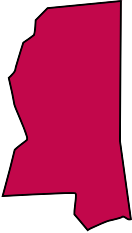

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Louisiana</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Very Active</p>	<ul style="list-style-type: none"> ■ The Louisiana legislature has been very active in 2024, adopting multiple bills and resolutions that articulate its stance on ESG issues. For example, SB234 was signed into law in March and took effect on August 1, 2024. The law prohibits Louisiana public entities from entering into contracts worth at least \$100,000 and paid primarily from public funds unless the service provider verifies in writing that it does not discriminate against firearms entities or trade associations and will not do so during the contract term. In addition, the legislature adopted HR267 in May 2024, which requests that the state retirement systems submit reports at least 60 days before the 2025 and 2026 regular sessions that (i) indicate voting recommendations for the prior year from the retirement system’s proxy advisors and (ii) specify all votes where the retirement system voted consistent with its proxy advisors and contrary to the vote recommendation of a public company’s board of directors on shareholder proposals included in the company’s annual proxy statement. Also in May 2024, the legislature adopted HCR78, which requests the Board of Regents and each public postsecondary education management board to submit to certain legislative committees, a written report that defends the use of ESG criteria in a fiduciary context and provides detailed information on the nature of ESG reporting. Besides these measures, there were also several anti-ESG bills that were introduced this session that did not pass, including, SB5, which would have required fiduciaries, boards and investment managers discharging their duties with respect to public retirement systems to consider only financial factors and excludes actions/factors furthering ESG goals or restricting the activities of, or investments in, firearms and ammunitions companies. ■ During its 2023 session, the legislature enacted HCR110, which requested the state retirement system boards of trustees to uphold their fiduciary duty when making financial decisions and to not allow ESG policies to influence their investment decisions. Also in 2023, the legislature enacted HCR70, a resolution to request the Treasurer and the state retirement systems to report on (i) investment advisors and companies that they use and that discriminate against the fossil fuel industry through ESG policies; (ii) the use of nonpecuniary factors in investment decisions; and (iii) the asset allocation of all of their investments.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Maine</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ Maine was one of the first U.S. states to adopt legislation addressing ESG and public retirement plan investments with its enactment of HP65/LD99 on June 16, 2021 (the law requires the Maine Public Employees Retirement System (MainePERS) to completely divest from fossil fuel companies by January 2026), but there has been minimal activity on the legislative front since then. In March 2024, MainePERS CEO Rebecca Wyke emphasized at a meeting with state lawmakers that while progress toward divesting from fossil companies has been made, the complete elimination of such investments would conflict with the fiduciary duties the MainePERS officials have to plan participants and beneficiaries. Other MainePERS officials said a fossil fuel-free portfolio would be more expensive, and the best long-term strategy is to “broadly diversify the portfolio, without excluding certain sectors.” ■ In 2023, Republican state lawmakers introduced HB1562, which would have generally prohibited the fiduciaries of MainePERS from making investment decisions based on certain nonpecuniary factors, such as ESG, ideological or political factors. They also introduced LD742, which would have required the MainePERS Board of Trustees to divest any stocks or securities of any company that trades in lobsters and that has publicly stated it will not trade in lobsters caught in Maine waters, whether by not purchasing, not selling or otherwise not trading in such Maine lobsters, or caught by any person licensed by the Department of Marine Resources to fish for, take or catch lobsters. Both bills failed to pass.
<p>Maryland</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ During the 2024 session, lawmakers passed HB1212, which requires the State Retirement Agency (SRA) to employ a Director of Diversity, Equity, and Inclusion to perform specified functions related to enhancing access by and involvement of underrepresented groups. The bill also codifies the governance program of SRA’s Investment Division to monitor, evaluate, and quantify the risks and effects of ESG factors on the State Retirement and Pension System’s investments. The individual appointed by the chief investment officer (CIO) to implement the governance program will be responsible for, among other things, working across asset classes to integrate consideration of material ESG factors into investment due diligence and recommendations, and providing recommendations to the CIO based on research and analysis of material ESG factors, including diversity, equity, and inclusion. The bill took effect July 1, 2024.

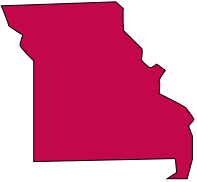
State ESG Update and Analysis for Asset Managers and Financial Institutions

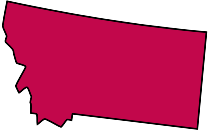

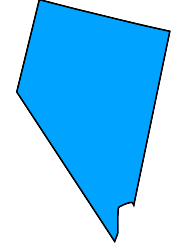
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Massachusetts</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ Lawmakers introduced multiple pro-ESG bills during the 2023 session, which covered a range of topics such as the divestment of public pension fund assets from manufacturers of firearms (H2591 and H2503) and nuclear weapons (H2480). Another ESG-related bill that was introduced during the previous session was SB1644, which seeks to expand the fiduciary duty standard by explicitly stating how it encompasses management of the state’s public pensions as a public good through financial performance and the protection of future social and environmental benefits. There were hearings on these different proposals in June 2023, and the bills remain pending in committee.
<p>Michigan</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. While HB4381 (discussed below) remains in committee, with no movement in over a year, it remains to be seen whether this bill will progress. ■ In 2023, HB4381, an anti-ESG bill, was introduced, which would require investment fiduciaries to fulfill their duties solely with regard to the pecuniary interests of participants and beneficiaries. In the fall of 2022, a Republican lawmaker introduced SB1192, which sought to require fiduciaries of the public employee retirement system to consider only pecuniary factors when evaluating an investment, explicitly prohibiting consideration of factors that “further nonfinancial social, political, or ideological objectives.” That bill died in committee.

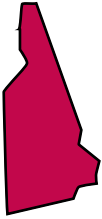
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Minnesota</p> 	<p>Governor Legislature (Senate, House) Attorney General Commissioner of Management and Budget</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ In the 2024 session, the legislature introduced HF4790, which would have required the State Board of Investment to consider sustainability factors when making investment decisions, address climate-change risks in its annual and investment reports, identify low-carbon investment opportunities, and mitigate climate change risk in investing fund assets. The introduction of this lone bill represented a pivot from the prior session, when multiple anti-ESG bills were introduced, although none advanced out of committee. For example, HF3322 (the “State Retirement Plan Protection Act”), introduced on May 16, 2023, would have required the State Board of Investment to not subordinate the financial interests of plan participants and benefit recipients to other objectives, including sacrificing investment return or undertaking additional risk to promote a nonpecuniary factor or objective. In addition, when exercising shareholder rights with respect to the assets of a pension fund (i.e., proxy voting), the State Board of Investment would have been required to consider only pecuniary factors and to not subordinate the financial interests of plan participants and benefit recipients to other nonpecuniary factors or objectives. Earlier in 2023, SF940 (“The Stop ESG and Social Credit Score Discrimination Act”) was introduced, which would have required the State Board of Investment to divest from listed companies that boycott mining, energy production, production agriculture, or commercial lumber production by July 1, 2028. There have also been bills aimed at prohibiting boycotts of certain industries such as mining, energy production, production agriculture, and commercial lumber production (HF1902) or Minnesota-based energy or natural resources companies (SF1225/HB707).
<p>Mississippi</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ The Mississippi legislature introduced at least two anti-ESG bills during the 2024 legislative session. SB2899 would have prohibited the Board of Trustees of the Public Employees' Retirement System of Mississippi from making investment decisions with the primary purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation. HB1170 would have directed the state to only invest state trust fund moneys in a manner that prioritizes the safety of investments and the highest return on investment for beneficiaries, without consideration of nonpecuniary or political factors. Both bills failed to pass.


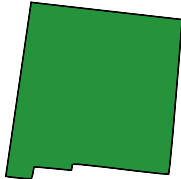
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Mississippi (continued) 			<ul style="list-style-type: none"> ■ During the 2023 legislative session, several bills were introduced that sought to restrict the use of ESG considerations in investment decisions for the public retirement system; however, all died in committee. For instance, HB1099, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, would have required the governing board of the Public Employees’ Retirement System (PERS) to take into account only financial factors when discharging its fiduciary duties. It also would have required that all shares held by or on behalf of PERS, its participants, and their beneficiaries would have to be voted solely in the financial interest of participants in the system and their beneficiaries. HB818 similarly would have required the PERS board to make investment decisions with the sole purpose of maximizing the safety of and return on its investments, and not to make an investment decision with the primary purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation. Finally, SB2383 sought to prohibit a state agency from entering into a contract with a company unless the company provides a written verification that it does not have a practice or policy of discriminating against a firearm entity or trade association and will not discriminate against such entities during the contract term.
Missouri 	Governor Legislature (Senate, House) Attorney General Treasurer	Very Active	<ul style="list-style-type: none"> ■ In 2024, Missouri lawmakers continued to regularly introduce anti-ESG bills during the most recent legislative session, but none of the approximately 13 bills passed. The Missouri Senate also introduced a resolution to express the concern of the General Assembly regarding the policies of international organizations such as the World Health Organization, the United Nations, and the World Economic Forum (and the imposition of ESG requirements on businesses) that could undermine the core values of Missouri residents and increase regulatory costs.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Missouri (continued) 			<ul style="list-style-type: none"> ■ The bills introduced in 2024 covered a range of anti-ESG topics. SB1518 (which was identical to legislation proposed in 2023) would have prohibited preferential treatment based on ESG factors. HB2799 would have required written consent and prior disclosure for any investment advisor that sought to incorporate social goals into their recommendations. SB1397/HB2778 would have prohibited Missouri public entities from entering into contracts greater than \$100,000 with any companies that were unable to verify in writing that they did not discriminate against firearms entities. SB1350, SB898 and HB1700 would have prohibited the public retirement system from taking into account any non-financial factors. SB1113 would have prohibited public employee retirement systems from considering ESG factors in investment decision-making. SB815 would have required that the written investment policies of the state and political subdivisions include provisions requiring investments be based purely on pecuniary factors. SB827 (which was identical to legislation introduced in the prior legislative session) would have prohibited the state treasurer from investing state funds in any entity that prioritized social objectives. HB1699 would have prohibited state contracts with companies that engage in economic boycotts based on ESG criteria (other than for an ordinary business purpose). SB1142 would have required the state treasurer to create a “Restricted Financial Institutions List” of financial institutions engaged in a boycott of companies that fail to commit to certain environmental standards to be used by the state treasurer for the purpose of determining which financial institutions to enter into banking contracts with. HB1620 would have allowed the state attorney general to review and declare unconstitutional executive orders related to certain enumerated subjects, including the regulation of the financial sector as it relates to ESG standards.




State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Missouri (continued) 			<ul style="list-style-type: none"> ■ During its 2023 session, the Missouri legislature was also one of the most active statehouses in the U.S. with respect to ESG issues, proposing multiple bills aimed at restricting the use of ESG considerations in investment decisions and prohibiting discrimination against either certain industries (such as firearms) or businesses (based on ESG scores), however, nearly all of them failed to advance. The only exception was HR12, a House resolution that urged the governor and other state officials to “ensure that the federal government, domestic or international organizations, or other entities coercing environmental or other ESG policies do not impose costs and consequences on the citizens of Missouri, do not deprive citizens of their constitutional freedoms and the guarantees of due process of law and equal treatment under the law, and do not infringe on the sovereignty of Missouri”). The legislature considered other anti-ESG bills, including SB436, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, and which provided that the board of trustees of the public employee retirement system, as well as any appointed investment fiduciary, shall take into account only financial factors when discharging fiduciary duties. Such factors do not include those with the purpose to further social, political, or ideological interests. Additionally, with all shares held by or on behalf of a public employee retirement system, the participants, and their beneficiaries had to be voted solely in the financial interest of participants in the system and their beneficiaries. SB200 provided that when a public entity enters into a contract with a company, the company must have a written verification that it does not have a practice or policy that discriminates against a firearm entity or firearm trade association and that it will not discriminate as such during the contract term. SB50 and SB316 both sought to ensure that bidders are not given preferential treatment or discriminated against based on ESG scores when agencies procure contracts from service providers.


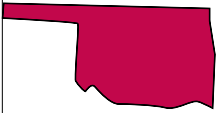
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Montana</p> 	<p>Governor Legislature (Senate, House) Attorney General Director of the Department of Revenue</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ There was no regular legislative session in 2024. ■ In 2023, the Montana legislature enacted two bills targeting the use of ESG in public retirement plan investing, both of which were signed into law in April 2023. HB228 provides that the evaluation of investments by the state retirement system board must take into account only pecuniary factors. ESG or other similarly oriented considerations will only be considered pecuniary factors if they “present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories.” Separately, HB356 prohibits state public entities from entering into a contract (worth at least \$100,000) with a company unless such company verifies in writing that it does not discriminate against firearms entities or trade associations. The legislature also passed HJ11 in April 2023, a joint resolution urging Montana’s congressional members to oppose federal agency rulemaking concerning ESG policies and directives.
<p>Nebraska</p> 	<p>Governor Legislature (Senate) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ In January 2024, the legislature carried over LB743 (“Investment Neutrality in Public Funds Act”), which previously failed to pass in the 2023 session, based on the Heritage Foundation’s State Pension Fiduciary Duty Act. This bill would require (i) fiduciaries of public funds to take into account only financial factors when discharging their duties with respect to the investment of public funds, and (ii) that all shares held by or on behalf of public funds be voted solely in the financial interest of beneficiaries. At the adjournment of the 2024 legislature, LB743 was indefinitely postponed.
<p>Nevada</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ There was no regular legislative session in 2024. ■ Last year, Republican lawmakers introduced SB228, which ultimately died in committee. SB228 sought to prohibit (i) the board overseeing the Nevada Public Employees’ Retirement System from investing its assets for any purpose other than funding and administering the system, including any social, political or ideological purpose and (ii) governmental entities from contracting with companies that engage in certain fossil fuel and firearms-related economic boycotts. ■ In June 2022, the treasurer announced that his office intended to divest public funds from businesses that sell or manufacture assault-style weapons. Based on press reports at the time that the treasurer made his announcement, the divestment plan would be a multi-step process whereby the treasurer’s office would determine whether divesting (or selling the asset prior to maturity) will cause financial harm to the state, and if so, the state would not immediately divest (or that it would hold until maturity).

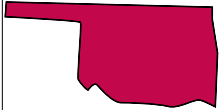
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>New Hampshire</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ New Hampshire introduced two anti-ESG bills during the 2024 session, both of which failed to pass. HB1267 was the more extreme of the two, as it would have made it a felony punishable by at least one year (and as many as 20 years) in prison for investing state or taxpayer funds knowingly in a manner that violates one’s fiduciary duty concerning ESG criteria. In terms of those duties, HB1267 stipulated that the New Hampshire retirement system board should adhere to their fiduciary obligations and not invest with any firm that will invest state retirement system funds in funds that consider ESG criteria, since the board’s goal should be to obtain the highest return on investment for New Hampshire’s taxpayers and retirees. SB520 similarly would have required state and local public retirement system fiduciaries to make investment decisions (and exercise their proxy voting power) based solely on pecuniary factors and not consider ESG factors— although it did not include the punitive consequences for violations like HB1267. Even though Republicans control state government in New Hampshire, these bills demonstrate the ongoing divisiveness of ESG, and that there are outer limits (like imposing prison time) to how far legislators are willing to go in pursuit of anti-ESG policies. ■ In 2023, HB457 was signed into law, which provides that public funds shall be governed by the fiduciary duty to maximize benefits for the state or the beneficiaries of the state’s trust funds managed by the Treasurer, and it requires the Treasurer and the retirement system to report quarterly on the motivations of funds, especially those that have environmental, social, political, or ideological interests. ■ Also in 2023, the governor issued Executive Order (EO) 2023-3, which says that state agencies shall ensure that no funds or state-controlled investments are invested with firms that invest in accounts solely based on ESG criteria. Additionally, EO 2023-3 strongly encourages the trustees of the New Hampshire Retirement System to adhere to their fiduciary obligation and not invest with any firm that will invest state pension funds in funds that follow ESG criteria.

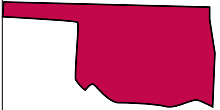
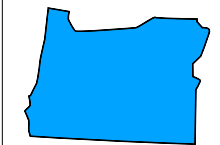
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>New Jersey</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ The New Jersey legislature has introduced four new bills during its current session, which adjourns in March 2026. S3163/A856 would establish a Department of Diversity Equity and Inclusion as a core department in the executive branch, which would consult and assist with efforts by the Director of the Division of Investment in the Department of Treasury to attempt to use underrepresented financial businesses to provide brokerage and investment management services, as well as consult and assist with incorporating DEI factors in investment decision-making by the State and its political subdivisions. S418 would prohibit the investment of any New Jersey public employee retirement funds in any entity that avoids any Superfund obligations to the state under CERCLA. The final two are S1115 and S198, which are carryovers of A1752/S1407 and A1733/S416 respectively (as noted below). ■ During the prior session, several pro-ESG bills were introduced that sought to prohibit investment by state pension and annuity funds in, and require divestment from, companies involved in (i) production or maintenance of nuclear weapons (A4232/S2701), (ii) the manufacture, import, or sale of assault firearms for civilian use (A1752/S1407), and (iii) the 200 largest publicly traded fossil fuel companies as determined by the carbon content in their reserves (A1733/S416).
<p>New Mexico</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the two most recent sessions (2024 and 2023), the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ In 2021, the New Mexico State Investment Council, as part of its oversight of the New Mexico State Investment Office (SIO), adopted an ESG policy to establish guidelines for incorporation of ESG considerations into the process applied by the SIO, the SIO staff, and the council in connection with the management of the investments in the New Mexico Permanent Funds. The policy provides that in managing assets of the Funds, the SIO will consider and integrate ESG considerations that can present material business risks or opportunities. Furthermore, the SIO may take actions subject to the fiduciary duties required, such as recommending policies and strategies to the council, consulting with external investment consultants and overseeing the retention of third-party proxy voting and scoring systems.

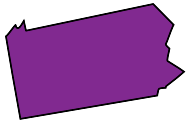

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>New York</p> 	<p>Governor Legislature (Senate, House) Attorney General Comptroller</p>	<p>Very Active</p>	<ul style="list-style-type: none"> ■ During its 2024 session, the legislature introduced SB9758, which would require agencies to consider climate-related factors when procuring bank services, though the bill has not yet passed. The legislature has also introduced multiple ESG-related bills over the last few years that promote divestment from oil, gas, and coal companies, none of which have passed to date. For instance, SB1953 would require trustees of the State University of New York as well as the City University of New York to divest from, and refrain from investing in, stocks, debt or other securities of certain publicly traded fossil fuel companies, and SB899 would require the New York State Teachers’ Retirement System to divest the system’s holdings of companies included on an exclusion list of coal producers and oil and gas producers. On the contrary, Republican lawmakers have introduced AB4090/SB6472, an anti-ESG bill, which would prohibit the state comptroller from using ESG criteria as a screening method for selecting companies and funds for state pension funds to invest in. ■ While the legislature has been unable to pass any ESG-related bills, New York City’s comptroller has been a vocal advocate of pro-ESG policymaking. In April 2023, together with trustees of the New York City Employees’ Retirement System and the Teachers Retirement System, the comptroller announced implementation plans to reach their goal of net zero emissions in their investment portfolios by 2040. To do so, four strategies were identified: (1) disclose emissions and set interim targets; (2) engage portfolio companies and asset managers to be net zero-aligned; (3) invest in climate change solutions; and (4) divest to reduce risk. However, in response, four participants sued the pension funds on May 11, 2023 (<i>Wayne Wong et al. v. New York City Employees’ Retirement System et al.</i>, case number 652297/2023, in the Supreme Court of the State of New York, County of New York), seeking to enjoin the fossil fuel divestment, claiming that it would violate fiduciary duties. According to the complaint, the pension funds had violated New York state common law and insurance regulations, which both require “actuarially funded public retirement systems” to follow “stringent duties of loyalty and care,” and the “[d]efendants breached those duties by subordinating the retirement security of plan participants to the trustees’ pursuit of a ‘green’ climate agenda.” The case was dismissed in July 2024 on procedural standing grounds. In October 2024, the comptroller announced support for a policy that would cease future investments by New York City public pension funds in midstream and downstream infrastructure (e.g., pipelines and distribution terminals) in the pension funds’ private equity and infrastructure portfolios.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>New York (continued)</p> 			<ul style="list-style-type: none"> ■ In 2020, the New York State Pension Fund set a 2040 net zero carbon emission target, which called for the Fund to transition its portfolio to net zero greenhouse gas emissions by 2040 by reviewing energy-sector investments, assessing transition readiness and climate-related investment risk and divesting from companies that fail to meet minimum standards. The State Pension Fund also adopted a new diligence policy of evaluating relevant workforce management policies and practices that it planned to share with private equity fund managers.
<p>North Carolina</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ In June 2023, the Republican-controlled legislature overrode a veto by the governor (who is a Democrat) to enact HB750, which establishes certain standards for state agencies and state pension plan fiduciaries with respect to evaluating investments and proxy voting. These standards provide that only pecuniary factors can be considered, which means factors must have a material effect on the financial risk or return of an investment based on appropriate investment horizons consistent with the purpose of the fund. Environmental or social considerations can be pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. Moreover, the weight given to those factors shall solely reflect a prudent assessment of their impact on risk and return. Other similar pecuniary factor-type bills were introduced in 2023, including SB679 and SB737, and HB784, which would prohibit financial institutions from discriminating based on political affiliation or value-based or impact-based criteria, including ESG credit factors. None of these bills made it out of committee before the end of the legislative session.
<p>North Dakota</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ There was no regular legislative session in 2024. ■ In 2023, HB1429 was signed into law, which amended an anti-ESG statute that passed in 2021 (SB2291). HB1429 restricts the State Investment Board from investing state funds for the purpose of social investment (including consideration of ESG factors) unless the State Investment Board can demonstrate a social investment would provide an equivalent or superior return compared to a similar investment. ■ In 2023, the North Dakota legislature also adopted a joint resolution, HCR 3013, earlier this year urging the U.S. federal government to withdraw and revise regulations and other administrative actions that negatively impact the ability to use North Dakota's lignite coal reserves for affordable and reliable domestic power.

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Ohio</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ So far in 2024, no new in-scope ESG legislation has been introduced this session. Republican senators introduced SB6 in January 2023, which passed in the state Senate but the bill remains pending in the House. SB6 prohibits members of the public employees’ retirement board from adopting ESG policies or making investment decisions based on ESG factors. House Republicans also introduced HB4, which requires the treasurer to identify companies and financial institutions that engage in economic boycotts. Furthermore, the treasurer is required to create a publicly available list of these companies and financial institutions, and government entities must consult the list before contracting with any of these entities. Moreover, the bill prohibits a governmental entity from acquiring direct or indirect holdings in, or entering into a contract with, a company or financial institution that is included on the treasurer’s list. It also requires companies and financial institutions that contract with a governmental entity to affirm in that contract that the company or financial institution does not, and will not, engage in an economic boycott. The bill is currently pending in committee.
<p>Oklahoma</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ Although the Oklahoma legislature considered several pieces of anti-ESG legislation during its 2024 session, none of these bills advanced. For example, there were multiple amendments to the state’s controversial Energy Discrimination Elimination Act of 2022 (HB2034) (see below for a description) that were introduced this session that would have (i) broadened the categories of targeted companies that are the subject of financial institution boycotts to include timber, mining and agriculture entities; (ii) expanded the scope of financial institutions to include any company (public or private) that is engaged in financial services, or banking or that is an investment company; (iii) required state entities claiming exemptions from compliance to have to show that divestment would lead to what the legislation described as a “materially negative financial impact” and required the treasurer’s agreement that an exemption is warranted; (iv) eliminated an exemption that allows public pension funds to not be required to divest from indirect holdings in actively managed or passively managed investment funds or private equity funds; and (v) removed the ability to delay or cease termination of contracts with blacklisted firms if there would be an expected loss in value or a benchmark deviation in performance. However, none of these proposed amendments passed.



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Oklahoma (continued)</p> 			<ul style="list-style-type: none"> <li data-bbox="867 296 1492 869">■ In 2022, Oklahoma enacted HB2034 (the Energy Discrimination Elimination Act of 2022), which prohibits the state’s public retirement plans from investing in companies that “boycott” fossil fuel producers. Under the law, the Oklahoma treasurer is charged with compiling a list of companies the treasurer believes to be engaged in boycotting (as broadly defined in the legislation), while any financial institution doing business with the state must verify in writing that it does not and will not boycott energy companies. Pursuant to HB2034, the treasurer’s office released its initial list of restricted financial companies in May 2023, and those listed institutions were subject to divestment by the state retirement systems unless they ceased to engage in alleged boycotts of the energy sector. Oklahoma is one of four states to have created one of these restricted financial company lists, joining Kentucky, Texas and West Virginia. Oklahoma’s ban list differs from that of other states in that it includes non-public issuers. <li data-bbox="867 890 1492 1759">■ Over the last two years, the Energy Discrimination Elimination Act of 2022 has generated significant backlash from state lawmakers and it also has been challenged in court. In October 2023, lawmakers questioned the treasurer over the list of financial companies that his office prohibited from doing business with state governmental entities for allegedly boycotting oil and gas companies. During the hearing, the treasurer questioned the ability of the Oklahoma Public Employees Retirement System Board to rely on the statute’s fiduciary exemption, which other state lawmakers advocated for, and he called for legislators to narrow the exception or to retract it entirely. In November 2023, a former state employee sought a temporary restraining order against the treasurer, alleging that the statute violated the First Amendment of the U.S. Constitution as well as the Oklahoma constitution. On May 7, 2024, a state judge issued a temporary injunction blocking enforcement of the law after finding the employee was likely to succeed. According to the judge, the Oklahoma constitution requires retirement funds to be managed for the exclusive benefit of their beneficiaries, but this law appears aimed at countering certain political agendas and to help the oil and gas sector. The judge also said the law contains conflicting and unclear definitions for key terms. On July 19, 2024, the judge issued a permanent injunction against enforcement of the statute. After the decision came out, the Oklahoma attorney general said his office will appeal the decision.



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Oklahoma (continued)</p> 			<ul style="list-style-type: none"> Separately, over the last couple of years, lawmakers have proposed multiple bills seeking to require that a fiduciary’s evaluation of an investment take into account only pecuniary factors and prohibit it from promoting ESG or other non-pecuniary benefits or goals (for instance, SB1004, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, as well as HB2547 and HB1617). Additionally, bills like HB1947, which was based on the Heritage Foundation’s Eliminate Economic Boycotts Act sought to prohibit governmental entities from entering into a contract with a company unless the contract contains a written verification that the company does not engage in economic boycotts of businesses from the fossil fuel, timber, mining, agriculture or firearms industries, and it will not engage in economic boycotts during the term of the contract. Similarly, HB2218 also sought to prohibit governmental entities from entering into a contract with a company unless the company affirms in the contract that they will not discriminate against a firearm entity or firearm trade association. HB1947 more expansively would include restrictions on contracts with companies involved in economic boycotts of businesses that do not meet ESG standards or certain corporate board metrics or that do not facilitate access to abortion, sex or gender change, or transgender surgery. However, none of these bills advanced out of committee.
<p>Oregon</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> During the 2024 session, HB4083 was signed into law, and it will take effect on January 1, 2025. The legislation directs the Oregon Investment Council and the state treasurer to make reasonable efforts to ensure that money is not invested in thermal coal companies. If the state treasurer determines that assets of the Oregon Public Employees Retirement Funds are invested in a publicly traded company that is a thermal coal company, the state treasurer shall give notice to the company that it will withdraw from the investment for as long as the company is a thermal coal company. The legislation also authorizes the state treasurer to consult with managers of public employee pension funds in California and New York regarding thermal coal companies from which those funds have divested. In 2023, two pro-ESG bills were introduced although neither passed. HB3478 sought to require the Oregon Investment Council and treasurer to divest state funds from carbon-intensive investments, and HB2601 sought to require the treasurer to make a climate risk disclosure when marketing securities issued by the state or financing certain agreements. Additionally, Republican lawmakers introduced an anti-ESG bill that failed to pass (HB3219), which would have required fiduciaries of public pension plans to take into account only pecuniary factors when evaluating and making investment decisions.


State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Pennsylvania</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ The ESG front has remained relatively quiet in Pennsylvania, which is likely a reflection of the split political dynamics in the state. The most recent development was the introduction of HB334 (the Fair Access to Financial Services Act) in March 2023, which remains pending in committee. The bill provides that regulated financial institutions must make their services available to all individuals in the geographic markets they cover on a nondiscriminatory basis, and they may not deny a person a financial service except to the extent justified by the documented failure to meet quantitative, impartial risk-based financial standards established in advance by the financial institution. Additionally, the bill requires financial institutions to disclose to individuals seeking financial services if they were denied services on the basis of standards or guidelines pertaining to nonfinancial, nontraditional and/or subjective measures, including ESG criteria. ■ In 2022, HB2799 was introduced, which sought to prohibit financial institutions from using social credit or ESG scores when transacting with Pennsylvania agencies. Backed by 17 Republican lawmakers, the bill did not survive an initial referral to the House Commerce Committee. In contrast, SB748, a pro-ESG bill, which was introduced in June 2021, sought to promote divestment from certain assault weapons manufacturers. Sponsored by 13 Democratic senators, the bill failed to advance out of the Senate Finance Committee.
<p>Rhode Island</p> 	<p>Governor Legislature (Senate, House) Attorney General General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ To date, Rhode Island lawmakers and state officials have generally avoided weighing in on the ESG debate. No in-scope bills were introduced during the 2024 session, and the legislature introduced only two bills (HB6312 and HB5811) during the 2023 session, both of which pertained to the State Investment Commission (the 10-member volunteer body that is chaired by the Rhode Island treasurer and is responsible for overseeing the investments of the Employees’ Retirement System of Rhode Island as well as non-pension related investments such as the General Fund) divesting from military weapon manufacturers, although neither passed before the session ended. ■ In January 2020, the then treasurer announced that the State Investment Commission had voted to approve his proposal to pull pension fund investments in companies that manufacture assault-style weapons for civilian use or operate private for-profit prisons.

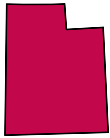

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>South Carolina</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ HB3690 (The ESG Pension Protection Act), which had been introduced in 2023, was signed into law at the beginning of the year, and it took effect in February 2024. The legislation requires the Retirement System Investment Commission (RSIC) to consider only pecuniary factors when making investment decisions for the South Carolina Retirement System. The law also changed the requirements regarding the closing documentation of an investment by specifying that it must include the certification of the RSIC’s CEO that the decision to make the investment is based on pecuniary factors and is not being made to promote, further, or achieve any nonpecuniary goal, objective, or outcome. ■ Also in 2024, lawmakers introduced a couple of other anti-ESG bills, HB5169 and SB1014, but neither passed. HB5169 sought to prohibit financial institutions from discriminating in the provision of financial services to an agriculture producer based in whole or in part upon an ESG factor, and SB1014 sought to require investment advisers to disclose whether the adviser incorporates a social objective or a nonfinancial objective into his or her recommendations. Even though these bills did not pass, they further demonstrated the strong anti-ESG sentiment among state elected officials. ■ In 2023, the South Carolina legislature introduced bills that covered the full range of anti-ESG approaches, including prohibitions on state governmental entities from entering into contracts, unless the company does not engage in economic boycotts of fossil fuel or firearms companies (HB3564 and HB3393), requirements that fiduciaries of state retirement funds make investment decisions solely on the basis of pecuniary factors (HB3565, HB3583, HB3690), authorization for the state legislature to review a presidential executive order not affirmed by Congress, including the regulation of ESG factors in the financial sector (HB3056), limiting the ability of financial institutions and advisers to freely incorporate ESG factors in their decision-making in providing financial services and advice (HB5169 and SB1014), and SB634 (expressing that public funds should not be dedicated to economic development projects that benefit a corporation that is actively engaged in promoting ESG objectives). Ultimately, none of these bills passed.


State ESG Update and Analysis for Asset Managers and Financial Institutions



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>South Dakota</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature introduced HB1247, a “fair credit” bill, which sought to regulate financial institutions by preventing them from denying any person a financial service except to the extent justified by the person’s documented failure to meet quantitative, impartial risk-based financial standards established in advance by the financial institution. Furthermore, the legislation declared it an unsafe and unsound practice for financial institutions to deny or cancel their services to a person, or otherwise discriminate against a person, for their failure to meet ESG standards as long as such person is in compliance with applicable state or federal law. The bill did not pass. ■ In 2023, the House Republicans introduced HCR6008, a resolution that sought to affirm and defend a multitude of principles, including how government should not compete with private enterprise and that the implementation of ESG standards should be opposed.
<p>Tennessee</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ In December 2023, the Tennessee attorney general filed a civil suit against BlackRock in state court, alleging that the money manager breached state consumer protection laws by failing to disclose the extent of its ESG investing activities. The lawsuit claims to be a response to BlackRock’s public statements and assertions regarding the influence of ESG on its various business lines. The complaint focuses on BlackRock’s use of corporate engagement and the voting of its shares to achieve various climate-related policy goals as well as BlackRock’s decision to join the Net Zero Asset Managers’ (NZAM) initiative and Climate Action 100+ (CA100+), as evidence of it making specific promises aimed at fighting climate change and achieving specific emissions reduction targets. ■ In light of the BlackRock litigation, during the 2024 legislative session, Tennessee lawmakers introduced HB2887/SB2842 in order to provide guidance to governmental entities and public institutions of higher education on investment decisions and endowment expenditures using institutional funding for nonprofit and charitable organizations. Among other things, the legislation said that in managing and investing in an institutional fund, institutions are prohibited from selecting a service provider that (i) has a purpose or ambition for its customers, investment portfolio, or a portfolio company, or (ii) has joined or participates in an initiative or organization that has a purpose or ambition of pursuing various enumerated ESG objectives. Given the emphasis that the attorney general’s complaint placed on participation in climate coalitions like NZAM and CA100+, it is unsurprising that HB2887/SB2842 would specifically prohibit institutional investors from selecting a service provider that focuses on directly or indirectly advancing environmental goals or making investment decisions to advance the purposes of an international agreement related to environmental goals. Nonetheless, this legislation failed to advance out of committee before the 2024 session adjourned.

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Tennessee (continued)</p> 			<ul style="list-style-type: none"> ■ Previously, in May 2023, the legislature enacted SB955, which says that with respect to the investment of treasury funds, the treasurer’s office shall invest, reinvest, manage, and select investment options for program assets for financial reasons for the exclusive benefit of the beneficiaries of the programs while maximizing long-term shareholder value. Similarly, all voting rights with respect to securities held by the Treasury must be exercised for financial reasons, impartially and solely in the interests of the beneficiaries. As defined in the statutory scheme, “financial” does not include ESG interests that may not be material to the financial analysis of the investment. SB955 took effect on July 1, 2023. This legislation is in addition to SB2649, which was signed into law in 2022, and it prohibits the treasurer from entering into contracts with state depositories if the state depositories have policies that prohibit financing to companies in the fossil fuel industry. House Republicans also introduced HB0728, which would have prohibited financial institutions from discriminating on the basis of ESG-related criteria. This bill failed to pass before the end of the legislative session.
<p>Texas</p> 	<p>Governor Legislature (Senate, House) Attorney General Comptroller of Public Accounts</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ Although the Texas legislature did not convene in 2024, it has historically been one of the most active states in terms of effectuating anti-ESG policies, having enacted multiple statutes as well as joining (and in a few cases, co-leading) various red state coalitions in this area. ■ In March 2024, the Texas Permanent School Fund Corporation (Texas PSF)—the entity responsible for overseeing the investment assets of Texas public schools—announced that it had terminated its investment management contracts with BlackRock, citing the trend of Texas’s systematic divestment of BlackRock. The impacted contracts represented \$8.5 billion in assets. The following month, the Texas PSF announced that it had implemented an “ESG skeptical” proxy voting matrix, offered through Institutional Shareholder Services (ISS) in response to “widespread criticism” that ISS voting policies supported too many ESG-linked shareholder resolutions. The PSF proxy voting matrix took effect immediately. According to the State Board of Education chairman and chairman of the Texas PSF’s Strategic Planning and Policy Committee, “ESG efforts have targeted Texas’ oil and gas economy, the very industry that generates the revenues that make the PSF an essential resource for Texas public schools...[w]e are making sure our votes are not cast in a way that is incompatible with our fiduciary duty to Texas.”



State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
Texas (continued) 			<ul style="list-style-type: none"> <li data-bbox="867 296 1485 667">■ In 2023, the legislature introduced anti-ESG bills covering a range of topics such as prohibiting financial institutions from discriminating against firearms, ammunition, oil and gas companies (i.e., HB5245, HB5252); prohibiting insurance companies from discriminating based on ESG criteria (SB2149), and requiring the governing body of the public retirement system or an investment agent to take into account only financial factors when discharging its fiduciary duties and prohibiting the use of the system's assets to take any action with the purpose of furthering social, political, or ideological interests (SB1446). None of these bills passed before the end of the session. <li data-bbox="867 684 1485 1409">■ The comptroller continues to actively enforce the state's energy company anti-boycott law that took effect in 2021, which requires the comptroller's office to maintain a list of all financial companies that, in the comptroller's opinion, refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations with fossil fuel companies, without an ordinary business purpose for doing so. The law applies to investments by state pension funds as well as state government contracts but does not apply to indirect holdings in actively or passively managed investment funds or private equity funds (but it does require covered state entities to request managers to remove listed companies from the funds or create similar funds without holdings in these companies). The latest iteration of the comptroller's restricted list was released in August 2024, and five financial institutions had been added for the first time. However, in light of the lawsuit that was filed at the end of the summer by a pro-ESG coalition (American Sustainable Business Council), which challenges SB13 on constitutional grounds, the law may face a similar fate as Oklahoma's Energy Discrimination Elimination Act of 2022.

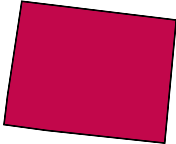
State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Utah</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ While anti-ESG sentiment is strong in Utah, in contrast to prior years, the legislature did not pass or introduce any new ESG bills for consideration in 2024. However, in January of this year, the treasurer applauded the New York Stock Exchange’s withdrawal of a proposed rule change to create a new tradeable asset class called a “Natural Asset Company” on the NYSE that would have been based on sustainable enterprises, which hold the rights to certain ecosystem services. According to the treasurer, “The proposed creation of Natural Asset Companies is one of the greatest threats to rural communities in the history of our country... [whereby] private interests, including, foreign-owned sovereign wealth funds, could use their capital to purchase or manage farmland, national and state parks, and other mineral-rich areas and stop essential economic activities like farming, grazing, and energy extraction. Recreating on Utah’s incredible natural lands could also face serious curtailment.” ■ In March 2023, the governor signed multiple anti-ESG bills into law including SB96 (requiring a person who manages or invests funds on behalf of a governmental entity to consider only financial factors, which does not include factors intended to further a social, political, or ideological interest), HB449 (prohibiting companies from conspiring together to boycott businesses that do not meet or commit to ESG criteria), and SB97 (prohibiting public entities from entering into contracts with companies that engage in boycott actions based on ESG standards, including boycotts of the fossil fuel and firearms industries).
<p>Vermont</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ During the 2024 session, the legislature did not introduce any bills related to ESG investment considerations by governmental plans or the ability to consider ESG criteria in selecting contractors and vendors. ■ In the last few years, at least three fossil fuel divestment bills have been introduced; however, none have passed so far. H197 would have required the Vermont State Employees’ Retirement System, the State Teachers’ Retirement System, and the Municipal Employees’ Retirement System to divest from fossil fuel companies or affiliates on or before December 1, 2030 and would have prohibited any future investment in such companies. An amended version of S42, another pension divestment bill related to a carbon footprint review of the state retirement systems, passed in the state Senate in March 2023 but did not pass in the House. In March 2022, a similar fossil fuel divestment bill had been proposed, but that bill died in committee (S251).

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Virginia</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Active</p>	<ul style="list-style-type: none"> ■ At the beginning of 2024, lawmakers introduced the anti-ESG bill, HB388, which said that except as otherwise provided in a state investment policy and unless the Board of Trustees of the Virginia Retirement System (VRS) could demonstrate that a “social investment” would provide a superior rate of return compared to a similar investment that is not a social investment, neither the Board nor any external fiduciary could invest or make recommendations regarding state funds for the purpose of social investment on or after July 1, 2024. “Social investment” refers to an investment that is based on DEI in the investment, commitment, voting of shares, or engagement with portfolio companies with public funds for a purpose of obtaining an effect other than a maximized return for the VRS. The bill failed to advance out of committee, which might have been influenced by HB388’s fiscal impact statement, which noted: “VRS is concerned that this bill as drafted will impair its ability to fulfill its fiduciary responsibility to its members, retirees, and beneficiaries by constraining its ability to invest in the most beneficial investments due to the requirement to carve out any companies that may be considered ‘social investments’ that VRS cannot necessarily demonstrate would definitively provide a superior return.” A similar bill (HB2335) was introduced during the 2023 legislative session, but it also failed to advance out of committee. ■ In August 2024, at the request of a Republican state lawmaker, the attorney general issued an opinion (AG Opinion) on the permissibility of basing VRS investment decisions on ESG criteria. The AG Opinion confirms that Virginia law imposes fiduciary duties on the VRS Board of Trustees that preclude it from basing investment decisions on ESG policies rather than financial considerations. According to the AG Opinion, “Virginia law makes clear that the VRS is to be administered only on behalf of its members or beneficiaries. Other Virginians and society at large are not the intended beneficiaries of the VRS...[t]he sole purpose of the retirement system is to foster financial security for public employees upon their departure from public service...because the purpose of the VRS is thus limited, other public policy concerns and initiatives necessarily are beyond the scope of the VRS Board’s authority and role as trustee. Accordingly, a general public benefit, no matter how salutary, is insufficient to warrant investment by the VRS Board.”

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>Washington</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> In January 2024, lawmakers introduced two pro-ESG bills—one new and one reintroduced from the year before. However, both failed to pass. HB1283 (which had first been proposed in 2023) would have required the Washington state investment board (WSIB) to publicly report every three years on its analysis of climate-related financial risk, social responsibility, and the establishment and use of proxy voting and corporate governance policies within its private and public market portfolios. Additionally, it would have required the WSIB to provide at least three investment options for individuals participating in self-directed investment funds that are consistent with ESG policies and, to the extent possible, reflecting a range of policy preferences and investment objectives. HB2405 would have required the WSIB to integrate sustainability factors into investment decision-making and analysis, portfolio construction, due diligence and investment ownership. It also would have directed the WSIB to maintain proxy voting guidelines that recognize climate change as a business and systematic risk and to use ownership authority to mitigate these risks. It also would have provided that the WSIB should support shareholder resolutions that call for entities to reduce activities that contribute to climate change, and when it does not support such resolutions, it would have had to provide public, written comments as to why the agency chose not to support them.
<p>West Virginia</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Very Active</p>	<ul style="list-style-type: none"> During its 2024 session, the West Virginia legislature introduced at least seven anti-ESG bills, but all ultimately failed to pass. Those bills largely focused on either restricting the use of ESG factors (HB5616 and SB214) or targeting entities that boycott certain industries, primarily the firearms industry (HB5010 and SB275, SB186/SB350, and HB4578). In 2023, HB2862 was signed into law, which established a duty that all shareholder votes by or on behalf of the West Virginia Investment Management Board and the Board of Treasury Investments are cast exclusively according to pecuniary factors. Moreover, it provided that ESG factors are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool’s objectives and funding policy. Besides HB2862, at least six other anti-ESG bills were introduced during the 2023 legislative session, which were mainly focused on prohibiting discrimination against firearm entities, including creating a ban list of financial institutions that boycott firearms companies. All of these bills failed to pass.

State ESG Update and Analysis for Asset Managers and Financial Institutions

State ¹	2024 Political Affiliations ²	R&G Assessment of ESG Activity Level	R&G Takeaways
<p>West Virginia (continued)</p> 			<ul style="list-style-type: none"> ■ In 2022, the legislature enacted SB262, which authorized the treasurer to prepare and maintain a list of financial institutions engaged in a “boycott of energy companies.” Inclusion on the list would mean the bank or financial institution has been deemed ineligible to enter into, or remain in, banking contracts with the state of West Virginia. West Virginia is one of four states to have published a restricted financial company list, joining Kentucky, Oklahoma, and Texas. In 2024, the treasurer added four more banks to the state’s Restricted Financial Institution List.
<p>Wisconsin</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Statue Quo</p>	<ul style="list-style-type: none"> ■ Perhaps as a result of its divided political dynamics, Wisconsin’s elected officials have generally remained quiet in the ESG and public investments debate. However, the state legislature broke its silence in November 2023 when it introduced SB686, which would have prohibited public agencies from considering ESG criteria or other political or ideological factors in awarding financial assistance to any person. The bill, which did not pass, would not have applied to the state investment board or any assets under its management. ■ Though the state’s sole bill was anti-ESG, actions taken by Wisconsin public officials have reflected different priorities over time. For example, the former treasurer (who was a Democrat) joined the September 2022 open letter from 13 Democrat treasurers and the New York City comptroller entitled “For the Long Term” in response to red states blacklisting asset managers and adopting other legislation aimed at curbing consideration of ESG factors in investing.

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<p>Wyoming</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Maintain Status Quo</p>	<ul style="list-style-type: none"> ■ On February 27, 2024, the governor line-item vetoed amendments to the Wyoming securities laws that required investment advisers, broker-dealers and securities agents to disclose to their customers or clients whether they are incorporating a social objective, i.e., whether they are considering social criteria, in the investment or commitment of customer or client funds, and to obtain the customer’s consent. Following the governor’s line-item veto, the amended law limits the definition of a social objective and requires written disclosure for some ESG-related investments, but it does not require customer or client consent. ■ On August 3, 2023, the State Loan and Investment Board unanimously adopted a new investment policy that condemns the use of ESG investment criteria. As revised, those managing the state’s roughly \$26 billion worth of investments are reminded that they must seek “the highest total return on a risk adjusted basis.” If the Treasurer’s Office learns that an investment partner is “acting in a non-pecuniary manner,” and if they’re hurting the state’s returns or general revenue, the office will reach out and take some form of action. That could be as minor as asking a firm to modify its policies or as severe as leaving them for a competitor. ■ The legislature did not introduce any further ESG bills during the 2024 legislative session. Wyoming previously enacted a pro-firearms bill, HB0236, in April 2021, which prohibits financial institutions from discriminating against firearms entities.

About Ropes & Gray's Practice

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