Office of the State Treasurer

Material Factors in Public Finance and Investments

A review of laws in other jurisdictions and their impacts

A Report to the Legislature – Senate Bill 5187, Section 123(2), § Chapter 475 (2023)

Published: November 27, 2024

Correction to “Material Factors in Public Finance and Investments” (2024)

This report was resubmitted on March 4, 2025 to revise spelling in Part 4 and a citation. In Part 4, “Conclusion - Impact of ESG Legislation”, the penultimate sentence under “Indiana HB 1008” should have read, “The law was amended, and the projected fiscal impact was revised down to $5.5 million over the following decade.” The citation for “ESG Battlegrounds: How the States Shaping the Regulatory Landscape in the U.S.” (2024), should have credited Simpson Thacher & Bartlett LLP.

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Key Takeaways

In the 2023 Operating Budget, the Office of the State Treasurer (OST) was directed by the legislature to “study existing and proposed laws in other jurisdictions that limit consideration of material factors in public financing and investments. The study must consider any investment risk and economic risk to Washington associated with identified laws.”[1] Material factors are what an investment professional or fiduciary “reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan’s investment objectives and taking into account the funding policy of the plan.” [2] These material factors can include environmental, social, or governance (ESG) related risks in investment decisions.[3]

In response to the legislative directive, the OST reviewed laws enacted or proposed in other states and rules adopted at the national and international level that relate to limiting consideration of ESG factors in public finance and investment decisions, commonly referred to as “anti-ESG” laws. To gain a comprehensive understanding of the policy landscape, laws and rules that encourage the consideration of ESG factors were also reviewed. These rules and laws are commonly referred to as “pro-ESG” laws.

Since 2021, 20 states have adopted 43 anti-ESG laws and 8 states have adopted 17 pro-ESG laws. In terms of potential impacts from anti- and pro-ESG laws in other jurisdictions:

Anti-ESG laws: Many anti-ESG laws contain broad exemptions, resulting in uncertainty about how the laws are interpreted and implemented in their states-of-origin. However, researchers found that anti-ESG laws have local impacts in the states-of-origin by reducing projected public pension returns and increasing municipal borrowing costs, and chilling impacts on corporate transparency, stewardship, and accountability in financial markets from anti-ESG legislation. *No direct impact on Washington’s economic and investment risks were identified.*

Pro-ESG laws: It was determined that pro-ESG legislation enacted in other jurisdictions that require large companies headquartered within their state to disclose specified ESG risk factors may reduce material risk, *potentially benefiting Washington investors.*

Part 1: Introduction

In the 2023 Operating Budget, the Office of the State Treasurer (OST) was directed by the legislature to "study existing and proposed laws in other jurisdictions that limit consideration of material factors in public financing and investments. The study must consider any investment risk and economic risk to Washington associated with identified laws." [4] Material factors are what an investment professional or fiduciary "reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan." [5]

Many material factors, such as stock price volatility and credit ratings, can be encapsulated in traditional financial analyses. Other factors, such as the consideration of environmental, social, or governance-related risks can pose a material risk to investors. Consideration of environmental, social, and governance (ESG) risk factors can be integrated into investment decision making processes, alongside other relevant financial risk factors to inform the risk-return ratios and maximize returns at a prudent level of risk. [6]

In response to the legislative directive, the OST reviewed laws enacted or proposed in other states and rules adopted at the national and international level that relate to limiting consideration of ESG factors in public finance and investment decisions, commonly referred to as "anti-ESG" laws. To gain a comprehensive understanding of the policy landscape, laws and rules that encourage the consideration of ESG factors were also reviewed, commonly referred to as "pro-ESG" laws.

ESG integration

This report focuses on the integration of ESG factors into investment decisions. ESG integrated investment strategies were introduced in the 1960s. The integration of environmental, social, and governance (ESG) factors alongside corporate engagement complement traditional financial analysis and portfolio construction methods. This ESG integration approach records returns equal to or better than a non-ESG integrated investment approach.[7]

Part 2 of this report defines and explores the materiality of ESG factors. Part 3 provides an overview of the anti- and pro-ESG laws enacted across the county as well as legislative action at the federal and international level. Part 4 concludes the report by summarizing the local and broad impacts of these laws, as well as their potential impacts to Washington investors.

Part 2: Introduction to ESG Factors

The consideration of ESG factors is an increasingly accepted practice among financial professionals, both domestically and abroad.

- According to a 2023 Deloitte and Fletcher School at Tufts University study, more than 80% of American investors, and 75% of their European counterparts, reported considering ESG factors in their investment decision-making processes. Notably, five-years ago, only 27% of American investors reported considering ESG factors. The study found that investors are increasingly looking to minimize ESG-related financial risk and take advantage of related opportunities.[8]
- As of 2020, 85% of the nearly 3,000 chartered financial analysts surveyed globally consider either E, S, or G factors in their investment decisions, an increase from 73% in 2017.[9]
- Bloomberg Intelligence found that 89% of global investors who responded to a 2023 survey consider the incorporation of ESG factors into investment decision-making to be mainstream. Investors find ESG factors to "improve profit, competitiveness, and brand value," and lead to "better returns, resilient portfolios, and enhanced fundamental analysis."[10]
- In a 2023 U.S. House Committee hearing, Dr. Shivaram Rajgopal, Professor of Accounting and Auditing, at Columbia Business School, explained the benefits of incorporating ESG data into an investment analysis, **"If you were to just go by what an income statement or a balance sheet or the footnotes of a financial statement tell you, you would perhaps not have a full appreciation for all the risk factors related to the future sales, future costs, and future earnings of a company. So that's what ESG gives you."[11]**

The following section defines ESG factors and provides examples of how ESG risk factors can be material in public financing and investment decisions.

Environmental

Definition: Environmental factors relate to a company's environmental impact and its ability to mitigate climate-related financial risks.[12] Examples include how:

- A company responds to the impacts of climate change such as more frequent climate disasters, deforestation and biodiversity loss;
- A company may contribute to climate change, such as their greenhouse gas emissions and how they manage their waste, energy, and water consumption; and

- A portfolio is impacted from the climate transition such as *stranded assets*[13] and *asset retirement obligations*[14].

Materiality of environmental factors: Over the next quarter century, scientists project that economic damages from climate change could cost the global economy $38 trillion annually. Research finds that it is six times less expensive to mitigate global warming, than contend with climate change induced economic damages.[15]

While the costs and risks associated with climate change increase, investment opportunities in renewable energy and efforts to mitigate climate change are growing. Based on existing policies, the International Energy Agency forecasts a peak in global demand for coal, natural gas, and oil in this decade.[16] In July 2024, U.S. Treasury Secretary Janet Yellen said that $3 trillion in new capital is necessary each year to mitigate climate change. She deemed the global transition to a low-carbon economy to be "the single greatest opportunity of the 21st century." [17] Moreover, the International Energy Agency finds that renewables are set to account for 90% of global electricity expansion by 2027.[18]

Social

Definition: Social factors relate to how a company manages its relationships with its employees, contractors, suppliers, customers, and impacted communities.[19] Examples include workplace safety, labor rights, and diversity of management and workforce .

Materiality of social factors: Discrimination in the market can introduce risk and reduce stability. For instance, failing to address racial wealth inequality poses risks that reduce returns for long-term diversified investors. According to McKinsey & Company, the racial wealth gap between American white and Black families is projected to cost the national economy between $1 and $1.5 trillion in lost consumption and investment between 2019 and 2028. By closing the racial wealth gap, the U.S. gross domestic product could increase by 4-6% by 2028.[20] At the company level, racial discrimination can lead to legal, reputational, operational, and governance costs. It can also limit productivity and profitability. At the portfolio level, systemic racism threatens long-term returns across asset classes by generating industry and economy-wide negative externalities that curtail broad-based economic growth.[21] Employee turnover due to racial inequity in the workplace has cost U.S. companies up to $172 billion, in the five years leading up to 2021.[22]

Workplace injuries and labor disputes can also impact a company's bottom line. For instance, the recent strike at Boeing cost the company $6.1 billion in lost earnings.[23] According to the Occupational Safety and Health Administration, employers pay nearly $1 billion per week for workers' compensation costs alone.[24]

In some instances, unaddressed environmental risks can heighten social risks. For instance, environmental risks can disrupt supply chains, which can prevent companies from producing or distributing their products. For example, by 2026, CDP (formerly known as the Carbon Disclosure Project), the organization operating the global environmental disclosure system for thousands of companies, cities, states, and regions, estimates that companies will face up to $120 billion in costs from environmental risks in their supply chains.[25]

Governance

Definition: Governance factors relate to a company's leadership, executive compensation, audits, and shareholder rights. This can also include the review of corporate lobbying, anti-corruption policies, and board independence.[26]

Materiality of governance factors According to the Organization for Economic Cooperation and Development (OECD) good corporate governance practices protect investors by establishing procedures that foster the accountability of board members and executives to investors and shareholders. This, in turn, helps build trust in markets which support corporations' access to long-term financing and enables investors to share in the company's value creation on more fair and equitable terms.[27]

Moreover, good governance practices can correlate with better returns for investors. A study by Deutsche Bank found that companies with strong or improving corporate governance practices outperformed those with poor or worsening governance practices by 19% over a two-year period.[28] A team of academic researchers from Harvard University, Stanford University, and Yale University found that U.S. based companies with better governance practices have faster sales growth and were more profitable than their peers.[29]

Committments to address social risks can also lead to better corporate governance outcomes. In 2019, 181 chief executive officers of America's leading companies signed onto an updated Business Roundtable Statement on the Purpose of a Corporation that highlighted a commitment towards all stakeholders. Since 1978, each prior version of the document endorsed the principles of shareholder primacy, that corporations exist primarily to serve shareholders. With the 2019 update, the new Statement "outlines a modern standard for corporate responsibility" in which the signatory companies commit to deliver value and benefit to all stakeholders, including customers, employees, suppliers, communities, and shareholders.[30]

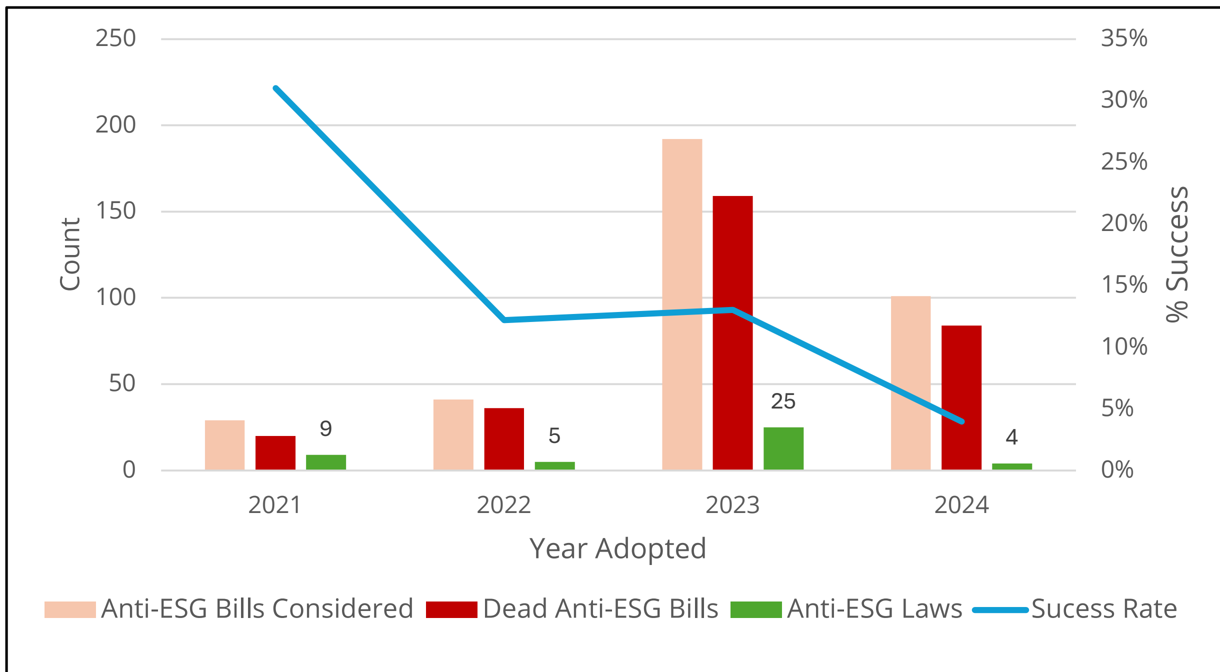
Part 3: ESG Laws in Other Jurisdictions

The following section reviews state-level laws and national and international regulations to either encourage or discourage consideration of ESG in public financing decisions.

State-level ESG Legislative Action

While versions of environmental, social, and governance risk factors may have been considered by investors in their decision-making processes for decades, only recently have state legislatures begun adopting legislation to encourage or discourage their consideration in public investing and financing decisions. In 2021, Texas was the first state to adopt anti-ESG laws.[31] Since 2021, 25 other states have passed either pro- or anti-ESG bills related to financial institutions and other large companies.[32]

Figure 1: Anti-ESG Bills Considered vs. Laws Adopted



Note: This figure does not include the 10 cumulative anti-ESG resolutions adopted between 2022-2024 in Louisiana (7), Missouri (1) Montana (1), and Utah (1). Source: Pleiades Strategy, 2024[33]

Since 2021, state officials have considered 373 anti-ESG bills. As of August 2024, 43 anti-ESG laws have gone into effect across 20 states. The volume of anti-ESG bills introduced increased between 2021 to 2023 and decreased in 2024. The percentage of introduced anti-ESG bills that were adopted into law has decreased from 31% in 2021 to 4% in 2024 (see Figure 1).

Anti-ESG Legislation

Of the 43 anti-ESG laws adopted, one law calls for the formation of a committee to study the need for ESG legislation in New Hampshire's financial services industry.[34] Four other laws oppose ESG-related federal rules.[35] We provide detail for the 39 anti-ESG laws that have greater potential for market impacts below.

Anti-ESG legislation primarily includes the following provisions (the percentage of laws with that provision represented in parentheses):

- **(47%) Anti-ESG investing** laws prohibit the consideration of "non-pecuniary" factors by public pension funds, state and local authorities, and their investment managers. These measures define the concept of "non-pecuniary" factors differently, but ultimately relate to factors other than those that seek to financially maximize investment returns. Some of these laws also limit how public investors may approach shareholder proxy resolutions (see laws denoted with a β in Table 3).
- **(40%) Contracting restriction** laws either (i) compel companies entering into contracts with state entities to attest, as a condition of doing business, that they do not and will not engage in boycotts during the life of the contract and (ii) prohibit public entities from disqualifying applicants from a public contract, based on ESG factors.
- **(21%) Anti-boycott** laws restrict the ability of public entities to do business with companies that are thought to "boycott" or "discriminate" against certain industries that are considered to have high ESG risk factors (e.g., fossil fuel or firearms); several laws direct a state agency to create a list of restricted financial institutions that are thought to engage in boycotts of such industries.
- **(16%) ESG score ban** laws prohibit public entities from considering ESG scores during business and contracting decisions.[36]

Anti-ESG Exemptions

Many anti-ESG laws contain broad exemption clauses that provide ways for public investors to avoid compliance if compliance would result in higher costs or lower returns. **As a result, none of the anti-ESG laws adopted to date entirely ban public investors from consideration of ESG factors.[37]**

For instance, some "anti-ESG investing" legislation permits public financial entities to consider ESG factors when valuating private market investments. To contextualize the impact of this type of exemption, private market assets under management totaled $13.1 trillion as of June 30, 2023.[38] Today, there are more than 8,000 private equity backed companies, almost double the number that are publicly traded on the stock market.[39]

Table 1: Examples of private equity exemptions in anti-ESG laws

State	Bill	Year Adopted	Private Equity Exemption Language
Indiana	HB 1008	2023	"**This chapter does not apply directly** to the defined contribution plans or an annuity savings account described in section 5(b) of this chapter or a **private market fund**"
Kentucky	SB 205	2022	"A state governmental entity **shall not be required to divest from** any indirect holdings in actively or passively managed investment funds or **private equity funds**."
Oklahoma	HB 2034	2021	"A state **governmental entity is not required to divest from** any indirect holdings in actively or passively managed investment funds or **private equity funds"**
Texas	SB 13	2021	"Investments Exempted From Divestment. A state **governmental entity is not required to divest from** any indirect holdings in actively or passively manage investment funds or **private equity funds**."
West Virginia	HB 2862	2023	"**Nothing in this section requires the board to divest from any private market funds** or from indirect holdings in actively or passively managed investment funds."

Source: LegiScan, accessed August 2024.

Additional examples of exemptions in anti-ESG laws are detailed in Table 3.

Pro-ESG Legislation

Between 2021 and 2024, 17 pro-ESG laws were adopted across 8 states. About 65% of the laws will go into effect in 2024 or in 2025. Thus, the impacts from most of these laws are yet to be seen. In contrast to anti-ESG laws, the vast majority of the pro-ESG laws do not have exemptions (see Table 4).

Pro-ESG legislation generally falls into one of the following categories (relevant provision represented in 17 pro-ESG laws represented in parentheses):

- **(53%) Consideration of ESG factors** laws generally require state entities to consider environmental, social, and governance factors in investing and contracting decisions.
- **(35%) ESG-related disclosure** laws require disclosure of climate-related metrics and risks, voluntary carbon offsets, and/or disclosures that report diversity metrics.

- **(29%) Investment restriction or divestment** laws prohibit state entities from making new investments in certain industries that are considered to have high ESG risk factors and require divestment from existing investments in such industries.[40]

Anti-ESG and Pro-ESG Legislation Review

The following tables are adapted from information provided in the November 2024 update to "ESG Battlegrounds: How the States Are Shaping the Regulatory landscape in the U.S." by Leah Malone and Emily Holland, ESG legal scholars and partners at Simpson, Thacher, & Bartlett LLP. The memo is an update to their 2023 memo of the same name, published in the Harvard Law School Forum on Corporate Governance.

- **Table 2:** Provides a high-level review of anti- and pro-ESG laws and categorizes them into the groups described above.
- The following tables provide descriptions of the laws and any applicable exemptions, by the category of law:
    - **Table 3:** Anti-ESG laws by state
    - **Table 4:** Pro-ESG laws by state

Table 2: State-level ESG laws [41]

Bill number, last 2 digits of effective year. Asterisks indicate a single bill that covers multiple topics.

State	Anti-ESG Laws				Pro-ESG Laws		
	Anti-ESG Investing	Anti-boycott	Contracting restrictions	ESG score ban	ESG factor consideration	Investment restriction/ divestment	ESG-related disclosures
Alabama			SB 261, '23				
Arkansas	HB 1253, '23 & HB 1307* '23	HB 1307* '23 & HB 1845, '23	SB 62, '23				
California							AB 3234, '25, SB 54, '24, SB 253, '24, SB 261, 24, AB 1305, '24
Colorado							SB 23-016, '23
Florida	HB 3*, '23		HB 3*, '23	HB 989, '24	HB 1331, '24	HB 7063, '24	
Georgia	HB 481, '24			HB 1018, '24			
Idaho	SB 1405*, '22	HB 190, '23	SB 1405*, '22, HB 191*, '23 & SB 1291, '24	HB 191*, '23			
Illinois					HB 2782, '24, SB 2152, '23, SB 653, '21		
Indiana	HB 1008*, '23		HB 1008*, '23				
Kansas	HB 2100*, '23		HB 2100*, '23				
Kentucky	HB 236, '23 & SB 205*, '22	SB 205*, '22	SB 205*, '22				
Louisiana			SB 234, '24				
Maine						HP 65/LD 99, '21	
Maryland					HB 740/SB 566, '22 & HB 1212, '24		
Montana	HB 228, '23		HB 356, '23				
New Hampshire	HB 457, '23				SB 49, '21		
North Carolina	HB 750*, '23		HB 750*, '23				
North Dakota	SB 2291, '21 & HB 1429*, '23			HB 1429*, '23			
Oklahoma	HB 2034*, '21	HB 2034*, '21	HB 2034*, '21				
Oregon						HB 4083, '25	
South Carolina	HB 3690, '24						
Tennessee	SB 955, '23		SB 2649, '22	HB 2100, '24			
Texas	SB 13*, '21	SB 13*, '21	SB 13*, '21 & SB 19, '21	SB 833, '23			
Utah	SB 96, '23	HB 449, '23	SB 97, '23	HB 281*, '23		HB 404, '24	
West Virginia	HB 2862, '23	SB 262, '22					
Wyoming		HB 0236, '21					

Table 3: Anti-ESG Laws: By State

Adapted from 2024 Simpson, Thacher & Bartlett report[42]

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
Anti-ESG Investing $^{\beta}$ Indicates legislation with language related to proxy voting				
1	Arkansas$^{\beta}$	HB 1253, 8/1/23	Prohibits public pension benefit plan fiduciaries from considering non-pecuniary factors in investment decisions. (Bill defines non-pecuniary as any action taken or factor considered by a fiduciary with any purpose to further environmental, social, political, or ideological goals.) Prohibits consideration of non-pecuniary factors when exercising shareholder and proxy votes on behalf of public pensions funds.	Permits fiduciaries to consider ESG factors if they are pecuniary. Shareholder and proxy voting limitations do not apply if there is no economically practicable alternative available.
2	Arkansas	HB 1307, 8/1/23	Prohibits public entities from investing cash funds with a restricted financial services provider; requires State Treasurer and public entities to divest state assets from all direct or indirect holdings with a restricted financial services provider.	Exempts an investment otherwise subject to divestment but locked into a maturity date such that an early divestment would result in a financial penalty and cause negative financial impact to the state.
3	Florida $^{\beta}$	HB 3, 7/1/23	Requires all state and local investment decisions to be made based on pecuniary factors only. Law defines "pecuniary" as factors that do not further any social, political, or ideological interests. Prohibits consideration of non-pecuniary factors when exercising shareholder and proxy votes on behalf of public pensions funds.	Does not apply under circumstances that would conflict with another law.
4	Georgia $^{\beta}$	HB 481, 7/1/24	Requires public retirement system assets to be invested solely in the interests of plan participants and their beneficiaries for the exclusive purpose of providing plan benefits. Prohibits the promotion of nonpecuniary interests, including the furtherance of social, political, or ideological interests. Requires all proxy votes to be solely and exclusively in the best economic interests or rights of the retirement system.	Permits consideration of ESG factors if they are in the best economic interests or rights of the system.
5	Idaho $^{\beta}$	SB 1405, 7/1/22	Prohibits public entities from considering ESG characteristics in investment decisions in a manner that could override the prudent investor rule. Introduces requirements with respect to proxy voting.	Does not apply when consideration of ESG factors does not override the prudent investor rule. Public entities serving as fiduciaries may offer ESG-investment options to participants if they are optional and sufficient alternatives are offered.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
6	Indiana β	HB 1008, 7/1/23	Prohibits state public retirement system board from making investment decisions to influence social or environmental policy, or attempting to influence the governance of any corporation for nonfinancial purposes, and prohibits system from making a commitment with the nonfinancial purpose to further social, political, or ideological interests with respect to system assets. Introduces requirements with respect to proxy voting.	Does not apply to a bank holding company or a subsidiary of a bank holding company, defined contribution plans, annuity savings plan, or a private market fund.
7	Kansas β	HB 2100, 7/1/23	Prohibits fiduciaries of state public employees' retirement system assets to consider ESG factors in making and supervising investments of the system. Introduces requirements with respect to proxy voting.	Alternative or real estate investments as defined in state law exempted. Exception regarding proxy voting advisor requirements where no economically practicable alternative is available.
8	Kentucky	SB 205, 4/8/22	Requires state governmental entities to divest from listed financial companies that do not cease engaging in boycotts against companies in the fossil fuel-based energy industry within established timeframes; applies to state governmental entities involved in state investment, deposits, or transactions above a specified threshold.	Allows a state governmental entity to cease divesting where reasonable evidence shows that it has suffered or will suffer a material financial loss. Does not apply where the state governmental entity determines the requirements are inconsistent with the entity's fiduciary responsibility. Does not apply for any indirect holdings in actively or passively managed investment funds or private equity funds.
9	Kentucky β	HB 236, 6/29/23	Requires state-administered retirement system fiduciaries to consider only "pecuniary factors" in investment decisions and prohibits the consideration of "nonpecuniary factors". (Bill defines "pecuniary factors" as those with a material financial risk or financial return of an investment and "nonpecuniary" as including ESG interest that do not have a direct and material fiscal risk or return of an investment). Introduces requirements with respect to proxy voting.	Permits consideration of an ESG factor if it has a direct and material connection to the financial risk or return of an investment.
10	Montana β	HB 228, 4/19/23	Requires state board of investments to consider only pecuniary factors in public investment decisions. Introduces requirements with respect to proxy voting.	Does not apply to circumstances in which ESG considerations are pecuniary in public investment decisions. Exception regarding proxy voting advisor requirements where no economically practicable alternative is available.
11	New Hampshire	HB 457, 8/29/23	Requires state retirement system independent investment committee and board of trustees to file quarterly reports regarding compliance with duty to make all investment decisions solely in the interest of the participants and beneficiaries of the state retirement system.	Report must include the existence of any investment funds that may have mixed, rather than sole, interest investment motivations.
12	North Carolina	HB 750, 6/27/23	Requires the State Treasurer and state pension plan fiduciaries to consider only pecuniary factors in the evaluation of investment decisions or exercise of rights in association with investments.	Does not apply to circumstances in which ESG considerations are pecuniary in public investment decisions or when it can be reasonably concluded that the requirements in this law are not in the best interest of the fund's beneficiaries.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
13	North Dakota β	HB 1429, 8/1/23	Prohibits investment of state funds for the purpose of social investment, which includes the consideration of ESG impact criteria for the purpose of obtaining an effect other than the maximization of return. Introduces requirements with respect to proxy voting.	Does not apply where state investment board can demonstrate that a social investment would provide an equivalent or superior rate of return as compared to a similar non-social investment with a similar time horizon and risk.
14	North Dakota	SB 2291, 3/24/21	Prohibits investment of state funds for purpose of social investment.	Does not apply where state investment board can demonstrate that a social investment would provide an equivalent or superior rate of return as compared to a similar non-social investment with a similar time horizon and risk does not apply if it would conflict with a state investment policy.
15	Oklahoma	HB 2034, 11/1/21 *Note: Enforcement suspended as of 5/7/24*	Prohibits state entities from entering contracts for investment without a written verification that the company does not or will not boycott the fossil fuel industry, during the term of the contract.	As of July 19, 2024, the law is permanently enjoined (subject to appeal) on the basis that its terms violate the state constitution and are impermissibly vague. Does not apply to contracts valued less than $100,000. Does not apply where determined the requirements are inconsistent with the entity's fiduciary responsibility. Does not apply for any indirect holdings in actively or passively managed investment funds or private equity funds.
16	South Carolina β	HB 3690, 2/5/24	Requires the state Retirement System Investment Commission to consider only pecuniary factors when investing and managing retirement system assets. Requires the commission to cast shareholder proxy votes in line with its fiduciary duties based on pecuniary factors, and any engagement with a company regarding the exercise of shareholder proxy votes to be based solely on pecuniary factors and for the sole purpose of maximizing shareholder value.	Does not apply to circumstances in which ESG considerations are pecuniary in public investment decisions. The commission may use a proxy firm or advisory service in exercising shareholder proxy rights provided the proxy advisor commits in writing to follow proxy guidelines that are consistent with a focus on pecuniary factors.
17	Tennessee β	SB 955, 5/17/23	Restricts State Treasurer to investment decisions based on financial factors. Introduces requirements with respect to proxy voting.	Does not apply when ESG factors may be material to the financial analysis of the investment.
18	Texas	SB 13, 9/1/21	Prohibits state entities from entering contracts for investments without a written verification that the company does not or will not boycott the fossil fuel industry, during the term of the contract.	Does not apply to contracts valued less than $100,000. Does not apply where the state governmental entity determines the requirements are (i) inconsistent with the entity's fiduciary responsibility or (ii) inconsistent with the governmental entity's constitutional or statutory duties related to managing its investment of funds. Does not apply for any indirect holdings in actively or passively managed investment funds or private equity funds.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
19	Utah β	SB 96, 5/3/23	Requires public entities to invest public funds with the sole purpose of maximizing risk-adjusted returns. Introduces requirements with respect to proxy voting.	Does not apply when ESG factors may be material to maximizing risk adjusted returns. Certain funds are exempt from proxy voting requirements.
20	West Virginia β	HB 2862, 6/8/23	Introduces requirements with respect to proxy voting.	Includes an exception where "reasonable efforts" have been made among other factors. Does not apply for any indirect holdings in actively or passively managed investment funds or private equity funds.
Contracting Restrictions				
1	Alabama	SB 261, 8/1/23	Prohibits state entities from entering a public contract for goods and services with companies that boycott fossil fuel-based energy, timber, mining, agriculture, and firearm industries or other actions that further social, political, or ideological interests. Prohibits any company in Alabama from being required to engage in (or being penalized for not being engaged in) economic boycotts or other actions that further social, political, or ideological interests.	Does not apply to contracts valued below $15k; with a company that has fewer than 10 full-time employees; or relating to the issuance, incurrence, or management of debt obligations or the deposit, management, or investment of funds. May be waived in situations where the governmental entity determines it would significantly increase cost or limit the quality of options or services available, or if a waiver would be in the best interest of the public.
2	Arkansas	SB 62, 8/1/23	Prohibits public entities from entering contracts for goods or services without a written verification that the company does not or will not boycott energy, fossil fuel, firearms, and ammunition industries, during the term of the contract.	Does not apply to contracts valued less than $75k or to companies that offer to provide goods or services for at least 20% less than the lowest certifying business.
3	Florida	HB 3, 7/1/23	Prohibits financial institutions from discriminating in the offering or denial of financial services based on non-quantitative or risk-based scores, including political or religious ideology or a "social credit score."	Does not restrict a financial institution that claims a religious purpose from making determinations based on the religious beliefs, religious exercise, or religious affiliation of a customer or member.
4	Idaho	SB 1405, 7/1/22	Prohibits public entities from considering ESG characteristics in investment decisions in a manner that could override the prudent investor rule. Introduces requirements with respect to proxy voting.	Does not apply when consideration of ESG factors does not override the prudent investor rule. Public entities serving as fiduciaries may offer ESG-investments options to participants if they are optional and sufficient alternatives are offered.
5	Idaho	HB 191, 7/1/23	Prohibits public entities from accepting or denying a contract based on subjective ethical or sustainability criteria unrelated to the specifications of a contract or qualifications of the contractor.	Does not apply to contracts with a value below $100,000.
6	Idaho	SB 1291, 7/1/24	Prohibits public entities from entering contracts for goods or services without written verification that the company does not or will not boycott energy, fossil fuel, minerals, timber, agriculture, firearms, or ammunition industries, during the term of the contract	Does not apply to contracts with a company with fewer than 10 employees or a contract valued less than $100,000. Does not apply if doing so would violate the state's constitutional, statutory, or fiduciary duties

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
7	Indiana	HB 1008, 7/1/23	Prohibits public pension board from contracting with a service provider that acts with the nonfinancial purpose to further social, political, or ideological interests.	Does not apply where it would violate the board's fiduciary duty or there is no comparable replacement service provider. Does not apply to a bank holding company or a subsidiary of a bank holding company, defined contribution plans, annuity savings plan, or a private market fund.
8	Kansas	HB 2100, 7/1/23	Prohibits state from making procurement decisions based on ESG factors.	Does not apply where otherwise specifically permitted or required by law
9	Kentucky	SB 205, 4/8/22	Prohibits public entities from entering contracts for goods or services without a written verification that the company does not or will not boycott the fossil fuel industry, during the term of the contract.	Does not apply to contracts valued less than $100,000. Does not apply if inconsistent with constitutional, statutory, or fiduciary duties relating to the issuance, incurrence, or management of debt obligations or the deposit, management, borrowing, or investment of funds.
10	Louisiana	SB 234, 8/1/24	Prohibits public entities from entering contracts for goods or services without written verification that the company does not or will not boycott the ammunition and firearm industries, during the term of the contract.	Does not apply where the public entity contracts with a sole-source provider or when the public entity does not receive bids from a company that is able to provide the required written verification. Does not apply if the company's refusal to engage in a business relationship with an entity or trade association in the firearms industry to comply with federal, state, or local law, policy, regulation, or directive or for a traditional or ordinary business reason specific to the customer and not based solely on an entity/association's status.
11	Montana	HB 356, 10/1/23	Prohibits public entities from entering contracts for goods or services without written verification that the company does not or will not boycott the firearm industry, during the term of the contract.	Does not apply to (i) investment service providers or (ii) where the governmental entity contracts with a sole-source producer or when the governmental entity does not receive bids from a company able to provide the written verification.
12	North Carolina	HB 750, 6/24/23	Prohibits the state and state agencies from considering ESG criteria or economically targeted investment requirements in the awarding of state contracts.	Except as otherwise allowed by law, when in the best interest of the fund's beneficiaries, or if the ESG factor presents economic risks or opportunities that a qualified investment professional would consider under generally accepted investment theories.
13	Oklahoma	HB 2034, 11/1/21 *Note: Enforcement suspended as of 5/7/24*	Prohibits state entities from entering contracts for goods or services without written verification that the company does not or will not boycott the fossil fuel industry, during the term of the contract.	As of July 19, 2024, the law is permanently enjoined (subject to appeal) on the basis that its terms violate the state constitution and are impermissibly vague. Does not apply to contracts valued less than $100,000. Does not apply where determined the requirements are inconsistent with the entity's fiduciary responsibility.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
14	Tennessee	SB 2649, 7/1/22	Prohibits the State Treasurer from entering contracts or amendments with any state depository that has a policy prohibiting financing to companies in the fossil fuel industry.	Does not apply where the governmental entity determines the state depository's services are necessary for it to perform its functions and/or services may not be obtained elsewhere.
15	Texas	SB 13, 9/1/21	Prohibits state entities from entering contracts for goods or services without written verification that the company does not or will not boycott the fossil fuel industry, during the term of the contract.	Does not apply to contracts valued less than $100,000. Does not apply where the state governmental entity determines the requirements are (i) inconsistent with the entity's fiduciary responsibility or (ii) inconsistent with the governmental entity's constitutional or statutory duties related to managing its investment of funds.
16	Texas	SB 19, 9/1/21	Prohibits state entities from entering contracts for goods or services without written verification that the company does not or will not boycott the firearm industry, during the term of the contract.	Does not apply to contracts valued less than $100,000. Does not apply where the public entity contracts with a sole-source provider or when the public entity does not receive bids from a company able to provide the required written verification.
17	Utah	SB 97, 5/3/23	Prohibits state entities from entering a public contract for goods and services with companies that boycott energy, fossil fuel, timber, mining, agriculture, or firearm industries or based on specified ESG standards.	Permits public entities to contract with restricted companies where there is no economically practicable alternative, or to comply with federal law.
Anti-Boycott				
1	Arkansas	HB 1307, 8/1/23	Creates ESG Oversight Committee. Requires State Treasurer to maintain a list of financial services providers (determined by the ESG Oversight Committee) that refuse to engage in trade of goods or services with a company in the energy or firearms industries or otherwise refuse to deal with companies based on environmental, social justice, or other governance-related factors. Prohibits public entities from investing cash funds with a listed financial services provider; requires State Treasurer and public entities to divest retirement holdings and state assets from all direct or indirect holdings with a listed financial services provider.	Exempts investments otherwise subject to divestment under this law but locked into a maturity date such that an early divestment would result in a financial penalty and cause negative financial impact to the state.
2	Arkansas	HB 1845, 8/1/23	Clarifies the information that the ESG Oversight Committee may consider and rely on when determining whether to list a financial services provider for divestment purposes.	Amendment to policy in HB 1307 (2023), exemptions in underlying law still apply.
3	Idaho	HB 190, 7/1/2023	Prohibits banks and credit unions designated as state depositories from boycotting companies/individuals engaged in fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, agriculture, or firearms industries; requires state depositories to file affidavits with the state treasurer, including an anti-boycott certification; noncompliance is subject to revocation of the QPD designation.	Certification requirement does not apply to state depository designation if it would be inconsistent with the constitutional or statutory duties of the state treasurer or would negatively impact the business needs of the state.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
4	Kentucky	SB 205, 4/8/22	Requires the State Treasurer to prepare and maintain a list of publicly traded financial companies that have engaged in boycotts against companies in the fossil fuel-based energy industry.	Allows a state governmental entity to cease divesting where reasonable evidence shows that it has suffered or will suffer a material financial loss. Does not apply where the state governmental entity determines the requirements are inconsistent with the entity's fiduciary responsibility. Not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds.
5	Oklahoma	HB 2034, 11/1/21 *Note: Enforcement suspended as of 5/7/24*	Requires state, statewide retirement systems, and the state treasurer to submit a report to the legislature that includes the names of (i) any investment management company, investment advisor, mutual fund, or other entity in contract with the state that uses ESG factors not directly related to risk adjusted returns, and (ii) any entity under contract known to boycott companies in the fossil fuel-based energy industry.	As of July 19, 2024, the law is permanently enjoined (subject to appeal) on the basis that its terms violate the state constitution and are impermissibly vague. Does not apply where the state governmental entity determines the requirements are inconsistent with the entity's fiduciary responsibility. Oklahoma Public Employee Retirement System, which holds over $10 billion in assets, voted to take the financial exemption to avoid divesting from a listed asset manager.
6	Texas	SB 13, 9/1/21	Requires (i) State Treasurer to prepare and maintain a list of publicly traded financial companies that have engaged in boycotts against companies in the fossil fuel-based energy industry and (ii) state governmental entities to divest from listed financial companies that do not cease engaging in boycotts against companies in the fossil fuel-based energy industry within established timeframes.	Allows a state governmental entity to cease divesting where clear and convincing evidence shows that it has suffered or will suffer a material financial loss. Does not apply where the state governmental entity determines the requirements are inconsistent with the entity's fiduciary responsibility. Not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds.
7	Utah	HB 449, 7/1/23	Prohibits companies from coordinating to eliminate viable options for companies in the firearms industry to obtain a product or service.	Does not prohibit a person from engaging in an activity that is regulated or supervised by the state or federal government.
8	West Virginia	SB 262, 6/10/22	Authorizes State Treasurer to prepare and maintain a list of financial companies that have engaged in boycotts of companies in the fossil fuel-based energy industry, to exclude listed companies from the selection process for state banking contracts, to refuse to enter into banking contracts with listed companies, and to require, as a term of banking contracts, an agreement by a financial institution not to engage in energy company boycotts for the duration of the contract.	Does not apply to the actions of the West Virginia Investment Management Board.
9	Wyoming	HB 0236, 7/1/21	Prohibits financial institutions from discriminating against companies or trade associations in the firearms industry.	Does not apply if the financial institution does not do business with a firearm entity because of a business or financial reason.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
ESG Score Ban				
1	Florida	HB 989, 7/1/24	Amends Section 655.0323, Florida Statutes, as established by HB 3, to provide a customer complaint process for customers to report financial institutions they suspect have engaged in an "unsafe and unsound practice", as defined in Section 655.0323/HB 3.	Amendment to HB 3(23), exemptions in underlying law apply.
2	Georgia	HB 1018, 4/22/24	Prohibits financial institutions from refusing to provide financial services to, refraining from continuing to provide existing financial services to, terminating existing financial services with, or otherwise discriminating in providing financial services to, a person or trade association solely because such person or trade association is engaged in the lawful commerce of firearms or ammunition products. Prohibits financial institutions from requiring the use of a firearms code that distinguishes firearms retailers physically located in the state from other retailers, except as required by law. Prohibits financial institutions from discriminating against firearms retailers by declining lawful payment card transactions based on the assignment/non assignment of a firearms code.	Does not apply where otherwise required by law or regulation.
3	Idaho	HB 191, 7/1/23	Prohibits public entities from accepting or denying a contract based on subjective ethical or sustainability criteria unrelated to the specifications of a contract or qualifications of the contractor.	Does not apply to contracts with a value below $100,000.
4	North Dakota	HB 1429, 8/1/23	Prohibits insurers from refusing to insure or charging a different rate based on ESG criteria, DEI policies, or political, and ideological factors. Requires state bank to study ESG trends, laws, and policies that impact businesses in the state, and to issue a report of its findings and recommendations.	Insurance prohibition does not apply in cases where the refusal or different rate is the result of the application of sound underwriting and actuarial principles.
5	Tennessee	HB 2100, 7/1/24	Prohibits financial institutions from canceling or denying services to a person based on, inter alia, the person's political or religious values or use of social credit scores, with the latter based on various factors, including but not limited to engagement in the firearms and ammunition, fossil-fuel based energy, timber, mining or agriculture industries or failure to meet specified ESG criteria. Requires financial institutions to provide statement of specific reasons for refusal of services within 30 days of receiving a person's request for such a statement if the request is made within 90 days of the financial institution's refusal, restriction, or termination of service to that person. Prohibits insurers from refusing to insure or charging a different rate based on	Does not apply where the financial institution claims a religious purpose for provision or denial of services based on the current or prospective customer's religious beliefs, exercise, or affiliation. Insurance prohibition does not apply where the refusal or different rate is the result of the application of sound underwriting and actuarial principles or where the insurer claims a religious purpose for the refusal or different rate based on the current or prospective customer's religious beliefs, exercise, or affiliation.

			the person's political, ideological, or religious values or affiliations.	
6	Texas	SB 833, 9/1/23	Prohibits state insurers from using an ESG model, score, factor, or standard to charge a rate different than the rate charged to another business or risk in the same class for a similar hazard.	An insurer does not violate the statute if its actions are based on an ordinary insurance business purpose, including the use of sound actuarial principles, or financial solvency considerations reasonably related to the type of risk.
7	Utah	HB 281, 5/2/23	Prohibits governmental entities from using social credit scores and requires state consumer protection division to establish and operate a system to receive consumer reports regarding a company's or financial institution's use or creation of a social credit score to discriminate against, advocate for, or cause adverse or preferential treatment of a person.	A social credit score is not defined as a score used by a financial institution to determine risk of loss, impairment, or default.

Table 4: Pro-ESG Laws: By State

Adapted from 2024 Simpson Thacher & Bartlett report[43]

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
Consideration of ESG factors				
1	Florida	HB 7063, 7/1/24	Prior to entering or renewing a contract with any governmental entity, requires nongovernmental entity to provide a signed affidavit attesting it does not use coercion for labor or services that would amount to human trafficking under state law.	
2	Illinois	HB 2782, 1/1/24	Requires public entity investment managers to disclose any process through which they integrate sustainability factors into investment decision-making, analysis, portfolio construction, diligence, and investment ownership to maximize risk-adjusted financial returns.	
3	Illinois	SB 2152, 9/1/23	Requires state pension board to publish its guidelines for voting proxy ballots and a detailed report on its website describing how the board is considering sustainability factors as defined in the state's sustainable investing act.	
4	Illinois	SB 653, 8/6/21	Requires State Treasurer to develop, publish, and implement an investment policy covering the management of all state funds under its control. In preparing the policy, State Treasurer must consider material, relevant, and decision-useful sustainability factors such as corporate governance and environmental and social capital factors.	
5	Maryland	HB 740/SB 566, 6/1/22	Requires state retirement and pension board to consider climate risks in its investment policy and associated with its portfolio across certain sectors and asset classes, to identify certain investment opportunities related to energy sectors, to develop a process to regularly assess certain impacts of climate risk, and to report annually on climate risk levels across the portfolio. The energy-related investment opportunities are those related to emerging technology in renewable energy and transitioning, reducing, and eliminating carbon-emitting technology. Requires fiduciaries to consider systemic risks posed by climate change, including monitoring net-zero aligned investments and climate solutions to ensure a long-term sustainable portfolio.	

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
6	Maryland	HB 1212, 7/1/24	Requires the Executive Director of the State Retirement Agency to employ a Director of Diversity, Equity, and Inclusion who will, among other responsibilities, develop, and implement a Governance Program, monitor and evaluate risks and effects of material ESG factors on investments, integrate consideration of material ESG factors into investment due diligence and recommendations, and assist in identifying and recommending investment opportunities.	
7	New Hampshire	SB 49, 7/1/21	Allows trustees to engage in investing strategies that align with interested persons' social, environmental, or governance objectives or other values or beliefs, regardless of investment performance.	
ESG-related Disclosures				
1	California	AB 3234, 1/1/25	Requires any California employer that has voluntarily subjected itself to a social compliance audit examining the use of child labor in the employer's operations or practices to post a clear and conspicuous link on the employer's website to a report detailing findings on the employer's compliance with child labor laws.	
2	California	SB 54, 1/1/24	Requires qualifying "venture capital companies" to annually survey and report specified information relating to the diversity of the founding and executive team members of business in which the company has invested. A qualifying "venture capital company" is one that it is licensed with, or otherwise does business in, California.	
3	California	SB 253, 1/1/24	Requires covered companies doing business in California to annually disclose Scope 1, 2, and 3 emissions calculated in accordance with the Greenhouse Gas Protocol standards and related guidance, phased in beginning in 2026. Covered companies are those reporting total annual revenues greater than $1 billion and that do business in California.	
4	California	SB 261, 1/1/24	Requires covered companies to biennially disclose climate-related financial risk reports created in accordance with the Task Force on Climate-Related Financial Disclosures. Covered companies are those reporting total annual revenues greater than $500 million and that do business in California.	
5	California	AB 1305, 1/1/24	Requires covered entities that market or sell voluntary carbon offsets, and/or make claims of carbon reduction/removal within the state to disclose specified information related to such offsets and claims	

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
6	Colorado	SB 23-016, 8/8/24	Requires public employees' retirement system to provide annual report on climate change risk assessments, anticipated impact on investment strategy, use of climate-related reporting, and actions taken to manage climate risk. Requires certain insurers to participate in a climate risk disclosure survey.	
Investment restrictions/Divestments				
1	Florida	HB 1331, 7/1/24	Prohibits state agencies from procuring commodities produced, in whole or in part, by forced labor. Requires state agencies to include statement informing companies of requirements under this law in connection with any bidding, negotiating, or contracting for the provision of commodities. Prior to entering or renewing a contract with the state, requires a member of the vendor's senior management to provide a written certification that, to the best of their knowledge, commodities to be procured by the state have not been produced, in whole or in part, by forced labor. A false certification can lead to a fine. Requires the Florida Department of Management Services to maintain and update quarterly a public list of vendors disqualified from state contracting for connection with forced labor.	
2	Maine	HP 65/LD 99, 10/18/21	Prohibits State Treasurer from investing in any prime commercial paper or corporate bonds issued by a fossil fuel company. Requires divestment of fossil fuel companies by state permanent funds held in trust by employees' retirement system to divest from the fossil fuel industry by 1/1/26, and specifically identifies the 200 largest public fossil fuel companies as determined by carbon in their reserves. Requires the public employees' retirement system board to annually report on its ESG investment policy, including a disclosure of environmental performance metrics of the board's investments.	Does not preclude de minimis exposure of funds.
3	Oregon	HB 4083, 1/1/25	Requires the Oregon Investment Council and the State Treasurer to ensure the Oregon Public Employees Retirement Fund assets are not invested in any thermal coal company or any fund containing a thermal coal company, pursuing divestment and reinvestment of assets without monetary loss to funds through investments in companies generating comparable returns to those subject to divestment.	The State Treasurer may retain an investment in a thermal coal company if the company demonstrates that it is transitioning to clean energy on a reasonable timeline, as defined by the Oregon Investment Council.

	State	Bill number & Effective date	Description as it relates to the category	Exemptions
4	Utah	HB 404, 5/1/24	Prohibits a public entity from procuring a forced labor product or entering a contract with another municipality that has forced labor production facilities within their borders. Requires a vendor submitting a bid or proposal to a public entity to certify that the product is not a forced labor product.	Does not apply if (i) the public entity determines there are no other reasonable options for the procurement or ii) if the product or contract for the product was obtained or entered into before May 1, 2024.

Federal Anti-ESG Legislative Action

Between 2021 and 2024, federal legislators introduced legislation to limit the consideration of ESG factors in public investment and financing decisions. During this period, over 80 bills covering a range of topics from preventing corporate climate disclosure requirements to restricting the independent analysis of proxy advisors, were considered in the U.S. House and Senate. [44]

One of these bills, which could have overturned a rule enabling retirement investment managers to consider ESG factors in their investment decisions, was vetoed by President Biden. "There is extensive evidence showing that environmental, social, and governance factors can have a material impact on markets, industries, and businesses. But [this] resolution would force retirement managers to ignore these relevant risk factors, disregarding the principles of free markets and jeopardizing the life savings of working families and retirees," Biden said in a statement in March 2023.[45]

In September 2024, the House passed a series of bills (see the Appendix) preventing the consideration of ESG risk factors in investment decision-making.[46]

International Pro-ESG Legislative Action

Other jurisdictions across the world are adopting laws and rules that expand the consideration of ESG factors. In recent years, more than 40 countries, representing over $55 trillion in GDP, have adopted rules that require corporate climate disclosure. For instance, in 2022, the European Union adopted the Corporate Sustainability Reporting Directive (CSRD). The policy mandates comprehensive greenhouse gas emission disclosure including the disclosure of how social and environmental factors impact the company's bottom line, or their financial materiality, and also how the company's activities impact people and the planet, or their impact materiality.[47] American companies with substantial operations in the European Union will likely have to release climate disclosures under the CSRD,[48] prompting large multinational U.S. corporations to disclose more than what is mandated by domestic legislation.

Part 4: Conclusion - Impact of ESG Legislation

Anti-ESG Legislation

Given the broad exemptions found in anti-ESG legislation, the impact the laws have in the state that adopted them (state of origin) depends on how they are interpreted and enforced in that jurisdiction, which can lead to uncertainty in the market. Joshua Lichtenstein, a partner with the law firm Ropes & Gray, told *S&P Global Market Intelligence* in an interview in August 2023 that "when we have unquantifiable risks like not knowing the way that a new rule is going to be interpreted, that makes it so much harder to actually carry out the business of investing capital."[49]

This section concludes this report by summarizing research that finds that anti-ESG laws that limit the consideration of material risks, directly impact the state of origin and indirectly impact the broader market. *No direct impact on Washington's economic and investment risks were identified.*

- **Local impacts** include projected reduced retiree pension returns and increased municipal borrowing costs, but minimal financial losses for large asset managers.
- **Broad impacts** include how the chilling effect and "green hushing" can result in introducing uncertainty into the market. This uncertainty can potentially reduce corporate accountability, by encouraging asset managers to vote against pro-ESG resolutions and exit their international climate industry alliances.
- **Washington** impacts include a review of potential impact pathways and find that no direct quantifiable impacts on Washington's economic and investment risks could be identified.

Local Impacts: State of Origin

Reduced Retiree Pension Returns

Anti-ESG legislation that restricts how public employee pension dollars are managed can cost retirees and public institutional investors millions or billions of dollars. Between 1993 and 2022, public pension fund investment returns account for 63% of revenue for public pensions, whereas employer contributions account for 26% and employee contributions account for 11%.[50] Therefore, legislation that alters investment management and associated returns can have significant effects on the outcomes for pension beneficiaries.

The following case studies explore the projected fiscal impact of enacted anti-ESG legislation on their state of origin and their public retirement systems:

Oklahoma HB 2034

The Oklahoma Energy Discrimination Elimination Act (EDEA) of 2022 requires the Oklahoma Public Employees Retirement System (OKPERS) to divest from six financial institutions that incorporate climate-related risk assessment into their investment process. The law is projected to reduce OKPERS' revenue by at least $9.7 million, by prohibiting OKPERS from working with asset managers who can offer investment services at a lower cost.[51] In August 2023, trustees of OKPERS voted to approve an exemption from the law that enabled the retirement system to continue working with BlackRock and State Street, two of the six financial institutions listed on the state's restricted company list. Together BlackRock and State Street manage 65% of the retirement system's assets, or nearly $6.8 billion.[52]

In July 2024, the EDEA was permanently blocked by an Oklahoma District Court judge.[53] The Oklahoma attorney general plans to appeal the ruling to the state supreme court.[54]

Indiana HB 1008

An Indiana law mandates that the state's public pension system divest from firms or funds that include ESG criteria in their investment risk assessment process. The bill was originally projected to reduce the system's returns by nearly $6.4 billion and defined contribution funds by $300 million over ten years. As a result, Indiana and public-sector employees could pay higher contributions to make up for the losses.[55] The law was amended, and the projected fiscal impact was revised down to $5.5 million over the following decade. Amendments to the bill also exempted private equity managers from the bill's key anti-ESG provisions (see Table 1 above).[56]

Kansas HB 2100

Under this new law, Kansas' Public Employee Retirement System (KPERS) is mandated to limit the consideration of ESG factors when entering into contracts (similar language already exists in state law) and comply with new proxy voting requirements including requiring KPERS' to oppose corporate policies that could increase corporate disclosures on labor and environmental issues, and addresses gender pay gaps.[57] The original legislation was projected to decrease state pension system returns by $3.6 billion over the following decade, with early divestment costs from private markets potentially costing KPERS $1.14 billion. [58]

Arkansas HB 1307

By implementing the law, which could limit which financial institutions public retirement funds could contract with**,** officials at the Arkansas Teacher Retirement System estimated that the fund could lose $7 million annually, whereas officials at the Arkansas Public Employees Retirement System estimated the fund could face

potential losses of $30 million to $40 million per year under HB1307. The Arkansas State Highway Employees Retirement System estimated that the losses could range from $20.1 million to $140.6 million over 15 years.[59]

Increased Municipal Bond Costs

Some states have passed laws that prohibit the state from working with select financial institutions and companies on public financing, based on the perception that they are boycotting industries that exhibit ESG factor-related risk, such as fossil fuels or the firearms industries. In many of the states with such policies, state executives were mandated to compile a list of such financial institutions. This resulted in either rhetorical impacts or increased borrowing costs due to state prohibitions from working with some of the largest municipal bond underwriters, thereby reducing competition in bond markets.[60]

Most municipal bonds help finance capital projects that often have some environmental, social, or governmental benefit such as schools, libraries, land preservation, streetlights, or sewer systems. By barring some of the largest Wall Street municipal bond underwriters, state and municipal governments have increased interest rates on state and municipal debt offerings.[61]

The following case studies exhibit how enacted anti-ESG laws may impact municipal financing costs for states of origin and bond markets in the greater financial system:

Texas

Texas was among the first states to prohibit the public use of select bond underwriters and investment funds in response to their corporate policies regarding fossil fuels and firearms. Soon after the laws went into effect, five of the largest bond underwriters exited the Texas bond market: JP Morgan Chase, Goldman Sachs, Citigroup, Bank of America, and Fidelity. According to a University of Pennsylvania Wharton School and Federal Reserve Bank of Chicago study, the five underwriters represented 35% of the debt in the market – creating a significant gap in the Texas market.[62] The researchers estimated that Texas cities could pay an additional $303-$532 million in interest on $32 billion in bonds eight months after the laws took effect.[63]

The nonprofit arm of the Texas Association of Business, whose members include fossil fuel companies such as ExxonMobil and Chevron, found that the state executives' implementation of the state's anti-ESG laws that targeted municipal bond underwriters could cost Texas:

- Nearly $669 million in lost economic activity
- Almost $181 million in decreased annual earnings

- Over $37 million in losses to state and local tax revenue
- Over 3,000 fewer full-time, permanent jobs[64]

Oklahoma

In Oklahoma, a study released in early 2024, found that municipalities banned from working with certain underwriters were forced to pay nearly $185 million in expenses and increased borrowing costs for municipalities by about 16%. “It is clear that [the law] has caused an unnecessary increase in municipal borrowing rates, increasing costs, harming taxpayers, and resulting in municipalities paying more for less or canceling projects altogether. These unintended consequences are causing significant harm to Oklahoma communities and our economy," study author Travis Roach said.[65]

Florida

Due to the boycott of some financial institutions, Florida now pays 43 basis points more in interest or yield ($4.3 million for every $1 billion in bonds sold) than California which has an inferior credit rating. The yield difference is near a 10-year record, according to data compiled by Bloomberg.[66]

In summation, states with laws that oppose investment practices that consider ESG factors can face lower investment returns which directly impact public sector workers and retirees. Additionally, the laws can impact the bond market, resulting in states facing millions of dollars of increased borrowing costs. Beyond the states that adopted these anti-ESG laws, and as discussed in the next section, the impact of these laws is more diffuse and can influence the broader market by instilling a chilling effect that dissuades efforts to integrate and mitigate a comprehensive set of financial risks and creates greater market uncertainty.

Washington Focus

Since its exit from the Texas bond market, Citigroup continued to face ramifications. In December 2023, Citigroup announced that it was winding down its municipal bond market business. Citigroup was the nation's second-largest underwriter of municipal bonds, accounting for approximately 10% of all new securities sold in 2021.[67] The reasons for this change are multi-faceted, with some factors that are specific to Citigroup, while others relate to changes in the broader industry. [68]

First, Texas is the largest source of new municipal bonds, accounting for 16% of the overall issuance in 2023. Second, Citigroup's stock had not increased significantly in the last decade and returns on equity were middling in the single digits whereas competitors were setting mid-teen targets.[69] Third, the overall municipal bond industry was facing diminished fees, a debt-sales slowdown as a result of the Federal Reserve's rate hikes, in addition to the impacts of anti-ESG legislation that prohibited public investors from hiring certain banks based on their perceived bias towards the firearm and fossil fuel industry. [70]

Washington State Treasurer Mike Pellicciotti told *Bloomberg* in a statement that Citigroup's departure from the municipal bond market was unfortunate. "We've particularly appreciated Citi's dependable participation in our competitive sales, where they have frequently provided the best bid." [71] According to Jason Richter, Washington's Deputy Treasurer for Debt Management, "Citigroup often was one of the five to seven bids we would receive. With Citi leaving the space, it will shrink our competitive pool." However, Richter added that other municipal bond underwriters may be filling the market void, "Jeffries has hired a number of former Citi bankers and has begun bidding on some of Washington's bids, which it hadn't done before."[72]

Although Texas' laws have an impact within Texas and among Wall Street underwriters, it is difficult to quantify the degree of impact in Washington given the industry is still reorganizing, and it is possible for other underwriters to step in to offset the absence of Citigroup.

Broad Impacts: Influence on Financial Markets

The exemption clauses in many anti-ESG laws opens the enforcement of state-level anti-ESG laws to interpretation, which introduces uncertainty about how to address ESG related risks into the market.[73] This market uncertainty – or chilling effect – can slow collective progress on climate action and weakens international voluntary climate alliances, while limiting corporate transparency and accountability.[74] The

following section discusses how the chilling effect manifests itself through "green-hushing" and the exit of financial institutions from international climate alliances and proxy voting.

Chilling Effect: "Green-Hushing"

One method by which corporations are adapting to the passage of anti-ESG legislation is by "green-hushing." According to a Switzerland-based climate consultancy, South Pole, 70% of large climate-conscious companies globally[75] are hiding their climate goals and progress to comply with new climate regulations while avoiding public scrutiny. This "green-hushing" does not mean that companies are giving up on their climate commitments, but rather the opposite. Of the 1,400 companies surveyed, 75% said that they were committing more money than before into efforts to cut carbon emissions. They just did not want to discuss it publicly due to fears of backlash.[76]

This silence can have real consequences on the overall market. South Pole researchers note that it can reduce competition that often drives companies to be more ambitious with their environmental targets. It can also limit the opportunities to share lessons and establish norms to help facilitate the collective reduction in carbon emissions.[77] "If you're hiding what you're doing, or not talking about it in a prominent way, it can hold back others," said George Favaloro, South Pole's head of climate solutions for North America.[78]

Chilling Effect: Exiting International Climate Alliances

In addition to silencing companies from sharing their climate commitments and progress publicly, "green-hushing" can also lead to financial institutions exiting international climate alliances. These exits can slow collective and individual progress on mitigating climate risk globally.

Glasgow Financial Alliance for Net-Zero

Before the 2021 United Nations Climate Change Conference (COP26) in Glasgow, many financial institutions were eager to announce their climate commitments. The Glasgow Financial Alliance for Net-Zero (GFANZ) was created to encourage the transition of the global economy to net-zero greenhouse gas emissions. At the time, 450 financial managers had joined GFANZ, representing $130 trillion in assets. Sector specific alliances such as Net Zero Asset Managers Initiative (NZAM), Net Zero Bankers Alliance (NZBA), and Net Zero Insurance Alliance (NZIA) were formed within the GFANZ umbrella. [79]

A year later, many financial firms backtracked from their GFANZ alliances. BlackRock and Vanguard confirmed that their net zero commitments did not preclude them

from investing in fossil fuels, even though new fossil fuel investment is incompatible with a Paris-aligned decarbonization pathway.[80] In October 2022, the asset manager Vanguard officially resigned from the Net Zero Asset Managers Initiative (NZAM),[81] citing a desire "to make clear that Vanguard speaks independently on matters of importance to our investors." Vanguard elaborated on their ongoing commitment to addressing climate risk, "We will continue to interact with companies held by Vanguard funds to understand how they address material risks, including climate risk, in the interests of long-term investors."[82] As of May 2024, Vanguard's peer, BlackRock, was still listed as a NZAM signatory.[83]

Amid concerns over the potential violation of antitrust laws, higher insurance costs and gas prices, nearly half of the United Nations-backed Net-Zero Insurance Alliance (NZIA), left the organization. Departures included the French insurers AXA, SCOR, German insurers Allianz, Munich Re, Hannover Re, Swiss Re, and Zurich Re.[84] Some insurers have decided to pursue individual sustainability commitments outside of the coalition. Notably, none of the organizations leaving NZIA changed their individual commitment to their ESG aspirations.[85] By April 2024, the NZIA had disbanded and rebranded under another United Nations led group.[86]

Two European bankers told *Reuters* in March 2024 that they wanted more ambitious demands of lenders in the new Net Zero Banking Alliance (NZBA) rules, but that U.S. banks' antitrust concerns from anti-ESG proponents made other members reluctant to advocate for them, thereby reducing the ambition of the banking industry to address climate risks.[87]

Climate Action 100+

Asset managers are also stepping back from Climate Action 100+ (CA100+). Founded in 2017, CA100+ is one of the world's largest investor engagement initiatives on climate change, including over 600 investors involved in urging large corporations to address climate issues by increasing the disclosure of emissions and to identify climate-related risks. [88]

In February 2024, financial giants JP Morgan, State Street, and Pimco pulled out of the CA100+. Leading up to these exits, BlackRock reduced its involvement in the coalition and Bank of America broke its commitment to stop financing coal mines, coal power plants, and Arctic drilling projects.[89] After the U.S. House Judiciary Committee demanded investors and asset managers preserve documents relating to collaborative engagements as well as planned actions as part of CA100+, ten more asset managers, including Goldman Sachs Asset Management, Mellon Investments, and Nuveen exited the alliance.[90]

In 2023, CA100+ said it would shift its focus toward urging corporations to reduce emissions as part of phase two of its overall strategy. According to Mindy Lubber, the chief executive of Ceres and a member of the steering committee of CA100+, phase two was not that different from the focus on improving disclosure and mitigating climate risk. "It's basically investors working with companies and saying, 'OK, you've disclosed the risk. We just want to know how you're going to address it.' Because that's what the investors want. How are you dealing with risk?" [91]

But financial firms worried that the CA100+'s next phase could expose them to allegations of running afoul of antitrust regulations. "In our judgment, making this new commitment across our assets under management would raise legal considerations, particularly in the U.S.," a BlackRock spokesman said in a statement.[92] BlackRock's subsidiary, BlackRock International continued to participate in CA100+ – an acknowledgement of the different regulatory environment in Europe. Additionally, BlackRock announced that it launched new features to allow clients to choose the degree to which they can urge corporations to reduce emissions. State Street and JP Morgan noted that they would develop their own framework for engaging on climate risks.[93] Between June 2023 and October 2024, 90 new signatories joined CA100+, double the number of signatories who left the coalition. Of the new signatories who joined the coalition, 58% are from Europe, and 11% are from North America. In total, over half of all CA100+ signatories are based in Europe (57%) and 23% are based in North America.[94]

The CA100+ and GFANZ exits can underscore the difficulty for financial firms to maintain their environmental commitments. Disclosure of emissions or climate-related financial risks is often the first step. Subsequently, mitigating risks that are associated with climate change are often where the rubber meets the road, and where large, well-resourced asset managers still struggle.

The exits can also reduce competition among asset managers that could have otherwise inspired companies to be more ambitious with their environmental targets. It can also limit the opportunities to share lessons to help facilitate the collective reduction in carbon emissions, and it may lead to increased uncertainty in the market. Public pension funds such as the California State Teachers' Retirement System (CalSTRS) and other investors recognize the value this collaboration can bring by stating in response to the CA100+ exits, "Working collaboratively with other investors through Climate Action 100+ is an effective and efficient way to address both the specific and systemic risks to our investments posed by climate change, which is why we remain fully committed to participating in this valuable initiative." [95] The exits from CA100+ may cause investors and asset managers to regress, rather than make progress towards more ambitious climate policies and commitments – thereby manifesting the "chilling effect".

Chilling Effect: Pro-ESG Shareholder Resolution Trends

Research has found links between anti-ESG legislation and how investors engage companies on their environmental, social, and governance commitments, through shareholder proxy resolutions.[96] Thirty percent of the state-level anti-ESG laws profiled earlier contain a provision limiting shareholder engagement on ESG issues and may, in part, explain the reduction in support for pro-ESG shareholder proxy resolutions by large institutional investors and asset managers.

What is proxy voting?

At annual general meetings of publicly traded companies, shareholders such as individuals, asset managers, or advocacy organizations can file resolutions for shareholder vote. Often these shareholder resolutions – or proxy resolutions – address concerns related to environmental, social, or governance issues that the shareholders believe the company is not adequately addressing. One share permits one vote on a shareholder resolution which means that shareholders with a large number of shares in a company generally have a greater impact on the outcome of proxy votes. If these resolutions were to receive more than 50% support from shareholders, they are considered to have passed. However, the company has no legal mandate to abide by these resolutions. If a company were to ignore the vote of shareholders, then it may face reputational risks from shareholders.[97]

Understanding how anti-ESG laws impact shareholder proxy voting can help shed light on whether and how investors and asset managers are holding corporations accountable for adequately addressing financially-material risks related to the environment.

The volume of pro-ESG and anti-ESG proxy resolutions has continued to increase annually since 2021,[98] but there has been a noticeable decline in support for pro-ESG shareholder resolutions between 2021 and 2023, which coincides with the period of time during which the largest number of new anti-ESG legislation was introduced in recent history.[99] Preliminary proxy voting results in 2024 suggest that support for pro-ESG resolutions is stabilizing at 23%, whereas support for anti-ESG resolutions continues to remain minimal and has declined to a new low of just 2% this year.[100] Thus, support for pro-ESG resolutions is, on average, 10 times more than for anti-ESG shareholder resolutions.

The decline in support between 2021 and 2023 for pro-ESG resolutions can be attributed to several factors:

- **Market uncertainty:** Although investors generally remain committed to considering ESG factors, anti-ESG shareholder resolutions have created uncertainty in the market.[101] Research findings from the audit and accounting firm EY (formerly known as Ernst and Young) argue that the ongoing uncertainty around the capital markets' regulatory framework on ESG can raise "the specter of more scrutiny and political pressure related to asset managers' stewardship on sustainability topics." [102] In turn, this scrutiny could explain the hesitation to lean on either side of the issue and may explain the decline and now standstill in support for pro-ESG resolutions.[103]
- **Perception of prescriptiveness:** Some asset managers and investors allege that pro-ESG shareholder resolutions have become more prescriptive over the years, which has led companies and proxy filers to negotiate. This has led to several resolutions to be withdrawn, leaving the remaining resolutions on the ballot to be viewed as more ambitious and garnering less support. However, other researchers and investors argue that the environmental and social resolutions proposed in 2023 are similar to those presented in years prior, challenging the narrative that the resolutions are more prescriptive.[104]
- **Increased corporate disclosures:** Companies are disclosing more about their environmental and social initiatives, and there is related progress and associated board oversight, which has led some investors to perceive some environmental and social proposals as redundant or unnecessary – leading to a reduction in pro-ESG shareholder support. Due to this corporate progress, more corporate disclosure are required. At the same time, in an enhanced and expanding corporate disclosure landscape, a third of shareholders surveyed by the audit and accounting firm EY, stated that, all other things being equal, they are more likely to vote against specific directors than to vote for a related pro-ESG shareholder resolution seeking additional company reporting.[105]

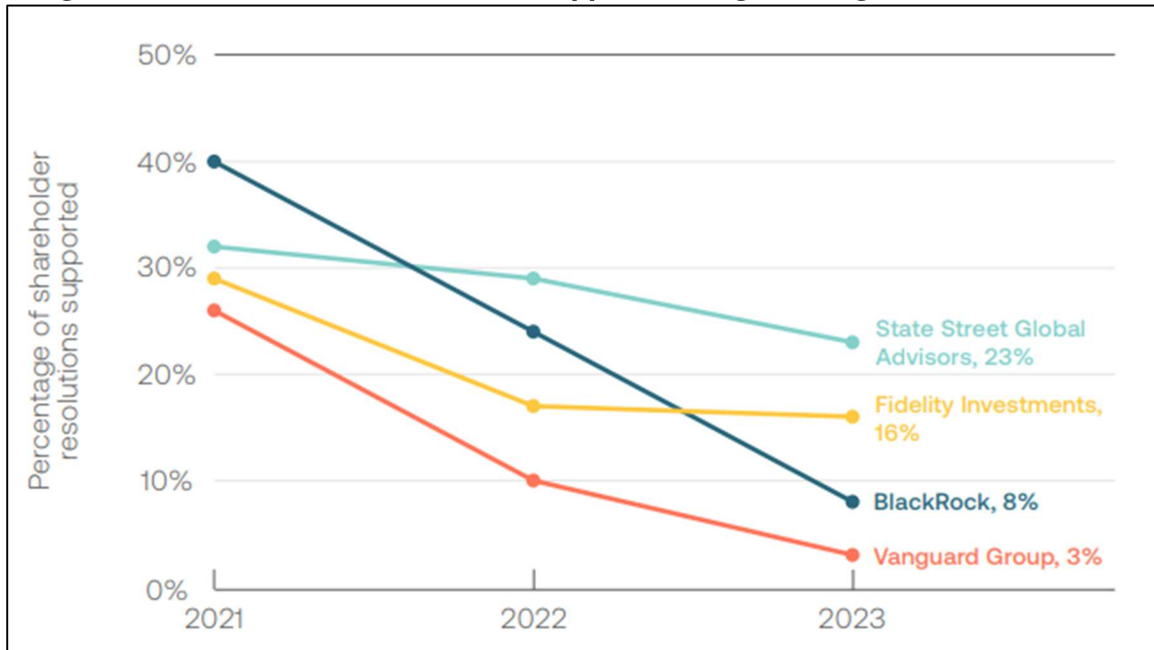
"The Big Four" and Pro-ESG Proxy Voting

Together, U.S.-based BlackRock, Vanguard, Fidelity, and State Street (the big four) are the four largest asset managers in the world and together manage trillions of dollars on behalf of public and private investors. In Washington, the State Investment Board, one of the state's largest public investors, has invested (as of June 30, 2024) almost $34 billion with BlackRock, $9 billion with State Street, and nearly $110 million with Vanguard.[106] The big four asset managers have an outsized influence on corporate behavior through their ownership of the world's largest companies and management of over $29 trillion in assets,[107] almost equivalent to $29.3 trillion, the GDP of the U.S. economy, in the 3rd quarter 2024.[108]

Perceptions of excessive prescriptiveness in pro-ESG resolutions and a saturation in corporate disclosures, alongside increased market uncertainty, can further

discourage or suppress asset manager support for pro-ESG resolutions. According to an analysis of 274 shareholder resolutions by ShareAction, BlackRock supported 8% of the environmental and social shareholder resolutions in 2023, whereas in 2021, it had supported 40% of similar resolutions. State Street and Fidelity reduced their support from about 30% to 23% and 16% respectively, over the same period. Vanguard supported the smallest proportion of ESG shareholder resolutions in 2023, supporting only 3% (see Figure 2).[109]

Figure 2: Decline in ESG shareholder support among "The Big Four" (2021-2023)



Source: ShareAction, Voting Matters*, 2024.*

One way to help assess the impact the big four asset managers have on the outcome of environmental and social shareholder resolutions is to review how many resolutions could have passed if the big four asset managers had supported them. In 2023, 8 environmental and social resolutions, from the sample were adopted. Had the big four asset managers voted in favor of environmental and social resolutions in which they held a substantial number of shares, nearly 61 additional environmental and social shareholder resolutions could have passed. These resolutions covered environmental and social topics at some of the world's largest companies including Amazon, Apple, Dow, Pfizer, and Lockheed Martin.[110] In another study, Morningstar's industry researchers found that BlackRock and Vanguard were found to have the largest downward effect on support for key environmental and social resolutions last year.[111]

Moreover, domestic proxy voting from the big four asset managers suppresses increasing support for pro-ESG resolutions from European asset managers. Despite

overall support for pro-ESG shareholder resolutions falling in 2023, 22 asset managers – all of them based in Europe – supported more than 90% of the resolutions in ShareAction's sample, compared to 12 asset managers in 2022 and 10 in 2021.[112] A study by Morningstar Direct found that 15 of the largest European asset managers supported key ESG resolutions above 90%, both in 2023 and over the previous three years.[113] Furthermore, the market's largest proxy advisors, ISS and Glass Lewis, who advise investors on how to vote their proxy ballots, recommended greater support on average (78% and 36%, respectively), of the environmental and social resolutions in ShareAction's sample, than the big four asset managers.[114] In short, both European asset managers and the market's largest proxy advisors supported more environmental and social resolutions, on average, than the big four domestic asset managers last year.

Impact on Asset Managers

BlackRock is the world's largest asset manager and due to some anti-ESG laws, is banned from partnering with several states.[115] Between 2022 and 2024, states have collectively withdrawn nearly $13.3 billion from BlackRock (see Table 5).[116]

Table 5: States with Anti-ESG legislation: Divestment Totals from BlackRock

State	Date	Amount ($M)
West Virginia	Jan. 2022	$22
Arkansas	Mar. 2022	$125
Utah	Sept. 2022	$100
Louisiana	Oct. 2022	$794
Missouri	Oct. 2022	$500
Florida	Dec. 2022	$2, 000
Arizona	Dec. 2022	$543
South Carolina	Dec. 2022	$200
Texas	Mar. 2023 & Mar. 2024	$9,000
Total		$13,284

Source: Americans For Tax Reform and The Financial Times[117]

This financial loss represents roughly one-tenth of 1 percent of BlackRock's $10 trillion in assets under management. Although some states prohibit contracts with financial institutions such as BlackRock, the bans do not apply to all state assets.[118] For instance, Florida removed $2 billion of the state treasury's funds from Blackrock in January 2023, and subsequently blocked asset managers from investing the $5.1 billion Deferred Compensation Plan in BlackRock's sustainable investment funds. But BlackRock still oversees nearly $13 billion in Florida's retirement funds. [119]

Despite the withdrawals, BlackRock has been expanding its footprint in ESG fund investing. According to a *Bloomberg* analysis of data provided by Morningstar, BlackRock has posted net inflows in its ESG funds every quarter for the past two years. BlackRock's ESG-related assets under management increased 53% from the beginning of 2022 to the end of 2023. Over the same period, the broader ESG market grew by only 8%. As of early 2024, BlackRock overseas approximately $320 billion in ESG funds.[120]

Although the anti-ESG induced withdrawals from BlackRock do not significantly reduce its managed assets, there appear to be meaningful changes in how the asset manager engages on corporate governance. Before the recent wave of anti-ESG laws, BlackRock's CEO, Larry Fink, was outspoken in promoting environmental sustainability as a hedge against global warming.[121] In his 2020 annual letter to CEOs, Fink wrote, "We will be increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practices and plans underlying them." [122] Three years later, BlackRock appears to have reversed course voting

against the majority of shareholder resolutions that call on companies to disclose and mitigate environmental and social risks.[123] The corporate governance approach adopted by BlackRock and other peer asset managers in last year's proxy voting season, stands in stark contrast to the approach from European asset managers and recommendations from the largest global proxy advisors.[124]

Pro-ESG Legislation

To gather a comprehensive assessment of the impact of anti-ESG laws, it is important to understand what mitigating impacts pro-ESG laws may also have. The following provides brief summaries of select state-level pro-ESG legislation and their potential impacts.

State Laws

California

In 2023, California passed two climate laws which require large companies generating total annual revenue of $500 million or more and have operations in the state ("eligible companies") to disclose comprehensive greenhouse gas emissions and climate-related financial risk.[125] For the first time in the U.S., large publicly traded and privately held corporations could be required to disclose their climate-related material risk factors and how climate change is impacting their bottom line.[126] As of early 2024, the laws face litigation challenges from business groups.[127]

Assuming California prevails in court, these laws could have a profound impact as they are estimated to affect 5,000 to 10,000 large companies, including many privately held companies not previously subject to publicly traded disclosure requirements.[128]

Eligible companies headquartered in Washington including those on 2024 Fortune 1000 list (Table 6)[129] could be required to report emissions from their supply chains, employees' commutes, and customer use of their products.[130] Such standardized climate risk disclosure could facilitate comparability of domestic data with data from other jurisdictions, particularly those in the global context, enabling regulators, investors, and the public, including those in Washington state, to better manage climate-related financial risks.

Table 6: 2024 Fortune 1000 Companies: Headquartered in Washington State with Operations in California

Fortune 1000 Ranking (2024)	Company	Industry	Revenue ($M)	Headquarters
2	Amazon	Internet Services & Retailing	$574,785	Seattle
11	Costco	General merchandisers	$242,290	Issaquah
13	Microsoft	Computer software	$211,915	Redmond
116	Starbucks	Food services	$35,975	Seattle
122	Paccar	Motor Vehicles & Parts	$35,125	Bellevue
168	Coupang	Internet Services & Retailing	$24,383	Seattle
286	Nordstrom	General merchandisers	$13,693	Seattle
315	Expedia Group	Internet Services & Retailing	$12,839	Seattle
386	Alaska Air Group	Airlines	$10,426	Seattle
411	Lululemon athletica	Specialty Retailers	$9,619	Sumner
420	Expeditors Intl. of Washington	Transportation & logistics	$9,300	Seattle
476	Weyerhaeuser	Forest and Paper Products	$7,674	Seattle
562	Fortive	Electronics, Electrical	$6,065	Everett
929	F5	Network and Other Communications	$2,813	Seattle
949	Columbia Banking System	Commercial Banks	$2,742	Tacoma

Illinois

In 2019, the Illinois Sustainable Investing Act was adopted. The law requires all state and local government entities that manage public funds to prudently integrate material sustainability factors into their investment policies and decisions.[131] The sustainability factors were defined to include data and indicators related to (1) corporate governance and leadership, (2) environmental, (3) social capital, (4) human capital, and (5) business model and innovation. The integration of these factors is not intended to exclude other material factors, but instead strengthen investment due diligence processes and decision-making.[132]

Since the law has passed, the Illinois State Treasurer's office has chronicled its corporate engagement actions related to ensuring ESG risks are disclosed and mitigated on the agency's website and in annual reports. These actions include direct engagement with corporate decision-makers; voting on shareholder

resolutions related to environmental, social, and governance risks; evaluating fund managers and portfolio companies based on ESG factors; as well as 3,000+ coalition-based corporate engagements on a range of financially material topics.[133]

This act does not have any direct impact on Washington state.

Maryland

In 2022, the Maryland legislature enacted a law (HB 740/SB 566) which requires the State Retirement and Pension System to assess the climate risk across certain asset classes within its portfolio, and to consider climate risks on the System's assets.[134]

This act does not have any direct impact on Washington state.

Together, California, Illinois, and Maryland pro-ESG laws clarify and expand the opportunities by which ESG factors can be prudently integrated into investment decisions and risk mitigation processes.[135] Aside from the potential impacts from California's laws outlined above, none of the other pro-ESG laws highlighted above or in Table 4 are likely to have any direct impacts on Washington.

Washington impacts

The OST reviewed all 43 anti-ESG laws from other states. Given that the broader market drivers and impacts from the chilling effect are more focused on environmental issues (e.g., green-hushing, exits from international alliances, etc.), the analysis on Washington's investment and economic risks also centered on climate-related impacts. None of the anti-ESG laws from other states impact Washington directly, and since many anti-ESG laws have exemption clauses which heighten the enforcement variability to depend on how the laws are interpreted in the state of origin, there are no direct and measurable impact pathways to affect Washington's economic or investment risks.

From the analysis above, nearly 90% of the anti-ESG laws aim to impact public investment and financing decisions. Thus, the OST asked the Washington State Investment Board (WSIB), one of the largest public investors in the state, currently managing $205 billion in assets,[136] if anti-ESG laws in other states have an impact on its investments. In a written response, the WSIB stated that anti-ESG legislation has "had no impact on the WSIB's investment policies or approach with regard to investment decision-making and due diligence, asset stewardship, and engagement, or climate risk disclosures." [137]

In response to questions related to the impact of anti-ESG laws on shareholder proxy voting, the WSIB stated that "although the WSIB assesses recommendations

from proxy advisors and coalitions such as Climate Action 100+, our proxy program is implemented in line with our Board-approved Global Proxy Voting Policy. For environmental shareholder proposals, assessments are often highly nuanced. Our asset stewardship team highlighted some of the factors we consider at a recent [September 2024] Board meeting. We typically will not support a resolution if a company has already substantially implemented the proposed ask. We also tend to vote against resolutions that are overly prescriptive or not aligned with our proxy policies or investment approach." [138]

The OST also had conversations with staff in the Department of Ecology, Department of Natural Resources, Office of Financial Management, and Office of the Insurance Commissioner regarding potential impacts from anti-ESG laws in other states. No measurable direct impacts were highlighted for further study from any of those agencies. The OST also reached out to staff at the Economic Revenue and Forecast Council and the Pollution Liability Insurance Agency, and staff indicated that the agency does not study the issue.

The Treasurer's Office

The Treasurer's Office oversees $42 billion of state government operating cash and local government investments. In compliance with state statute, these investments are primarily held in government, federal agency, supranational, and corporate bonds.

In 2021, Treasurer Pellicciotti's office conducted an environmental, social, and governance review of all state investments over which he has direct control – then representing about $36 billion – and concluded that the office does not invest in any coal, oil, and gas companies.

Part 5: Appendix

Table 7: Series of anti-ESG bills that passed in the U.S. House in Sept. 2024

Bill Name	Bill Summary	Primary Sponsor
Protecting Americans' Investments from Woke Policies Act	Requires fiduciaries of employer-sponsored retirement plans to make investment decisions based only on pecuniary factors.	Rep. Rick Allen (R-GA)
Roll Back ESG to Increase Retirement Earnings Act	Stipulates that ERISA plan fiduciaries cannot invest in "non-pecuniary" vehicles that sacrifice investment returns or take on additional risk.	Rep. Rick Allen (R-GA)
Retirement Proxy Protection Act	Stipulates that when an ERISA fiduciary decides to cast a proxy vote it must do so solely in the interest of plan participants.	Rep. Erin Houchin (R-IN)
No Discrimination in My Benefits Act	Declares that race, color, religion, sex, or national origin may not be taken into consideration when selecting a fiduciary, counsel, employee, or service provider of an ERISA plan.	Rep. Bob Good (R-VA)
Providing Complete Information to Retirement Investors Act	Implements a notice requirement on defined contribution plans explaining the difference between choosing from investments selected by ERISA fiduciaries and choosing from investments through a brokerage window.	Rep. Jim Banks (R-IN)
End Woke Higher Education Act	Requires an accrediting agency to confirm that its standards do not require, encourage, or coerce an institution of higher learning to (1) take a position, or commit to taking a position, on specific partisan, political, ideological, social, cultural, or political issue or belief; or (2) support or commit to supporting the disparate treatment of any individual or group on the basis of any protected class under federal civil rights law.	Rep. Burgess Owens (R-UT)
Prioritizing Economic Growth Over Woke Policies Act	Requires the Securities and Exchange Commission (SEC) to limit issuer disclosure requirements made in a rulemaking.	Rep. Bill Huizenga (R-MI)

Source: Pensions & Investments *and* Washington Examiner[139]

Part 6: Endnotes

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