2024

ANTI-ESG STATE LEGISLATION OUTLOOK

PLEIADES STRATEGY

EXECUTIVE SUMMARY

Since 2022, Pleiades Strategy has tracked state legislation and executive policies that weaponize state finances and financial markets against responsible investing.

The insights in this report have come out of this research, and we hope they are helpful to your understanding of the anti-ESG policy landscape. They build upon our deep analysis published in Summer 2023 highlighting the model bills, the network of organizations sponsoring these bills, the opposition these policies received, and the high costs the policies would exact–and in some cases already are exacting–on retirees, municipalities, and state residents.

In 2024, Pleiades will continue to track these bills and, for the first time, is publishing its bill tracker on its website in full as a tool for investors, policymakers, journalists and academics seeking to understand the evolving contours of the anti-ESG legislative campaign in the US states.

Check out the live bill tracker here for the latest ESG state legislation updates.

318 BILLS IN 38 STATES

37 LAWS IN 17 STATES

8 RESOLVED RESOLUTIONS IN 4 STATES

Updated as of January 29, 2024. Please refer to our tracker for updated statistics.

2024 ANTI-ESG STATE LEGISLATION OUTLOOK

With most US states in session, anti-ESG legislation is once again being docketed by Republican leadership in state legislatures across the country.

Between 2021-2024, Republican lawmakers in 38 states introduced 318 pieces of legislation attacking responsible finance. After three years of coordinated effort, 37 bills in 17 states are now law, most watered down from their original scope due to strong opposition from business, labor, financial officers, and environmental advocates.

Commonly referred to as the "anti-ESG" campaign, the coordinated dark money funded effort to advance these anti-ESG policies seeks to ban fiduciaries — particularly those responsible for public worker pensions and municipal funds — from taking 'environmental, social and governance' factors into account in their investment strategies.

In reality, these policies would limit or prevent state investment officers from considering material risk factors — like how a company treats its workers or whether it is prepared for climate-driven supply chain disruptions — into their investment strategies. In banning the consideration of these factors, anti-ESG policies twist the arm of companies to align with the bill sponsors' political preferences or work explicitly to force public investments into preferred sectors, such as fossil fuels and gun manufacturing.

The campaign has been and continues to be driven by a coalition of fossil fuel interest groups, firearms lobbyists, culture warriors and partisans. We expect continued diverse opposition from business, financiers, labor unions, and environmental advocates.

2024 LEGISLATIVE OUTLOOK: NEW MODEL BILLS AND UNIQUE POLICY APPROACHES

Most of the bills we have seen so far this year are simply last year's bills being reintroduced, although this will likely shift as we expect dozens more bills to be introduced in the coming months. In many instances, bills bluntly attempt to ban the use of ESG or DEI criteria by public or private financial stewards. Many bills limit choices that pension fund managers can make, ironically infringing their fiduciary duty. In others, bills attempt to weaponize government contracts and pensions to bully the financial sector to artificially favor risky industries like fossil fuels and firearms. These legislative typologies and related model bills are detailed on pages 12-33 of our June 2023 report.

We are starting to see new and novel approaches that refine or change tack from last year's bills. A South Carolina bill will attempt to ban subsidies for companies deemed to use ESG scores. The use of ESG criteria by private companies will be criminalized if an extreme bill passes in New Hampshire. Florida's heavily politicized Department of Transportation could be banned from incorporating climate risk and mitigation planning into infrastructure projects, in a state where climate-related weather disasters have a glaring impact on transportation infrastructure.

At least one new trend seems clear: a new model bill is being circulated, as we have seen similar or identical language surfacing in bills in six different states to date (Arizona, Iowa, Indiana, Missouri, Mississippi and Tennessee). This "Equality in Financial Services Act" model leverages the threat of widespread civil litigation, significant fines and damages, and harassment from state attorneys general to coerce companies into ignoring risk when offering financial services. These bills are intended to chill the private sector by imposing liability upon financial institutions the bills allege to be "discriminating" against a few select industries. They would also coerce financial companies into favoring companies engaged in a variety of negligent behavior, from refusing to engage in climate mitigation efforts, choosing to uphold institutional racism, or refusing to "facilitate" access to healthcare related to abortion or gender transition.

This new model appears to be an effort to adapt the "Fair Access to Financial Services" model bill, which failed in 100% of the states in which it was attempted (32 bills in 21 states, 2022-2023). While none of these bills passed, recent rules established by Secretaries of State in Wyoming and Missouri closely resemble the failed "Fair Access to Financial Services" bills. There is ongoing litigation against the Missouri rule by a financial industry trade association.

A final conflict worth noting is the intra-party feud among Republican politicians in Oklahoma tussling over the problematic 2022 Energy Discrimination Elimination Act, which forced the state's investments to prioritize fossil fuels.

- At least five new bills are attempting to revise the problematic law passed in 2022, which has resulted in significant disputes between the state's activist Treasurer, local governments, and the state's pension fund(s).
- Some of these bills would help exempt city and country governments from the restricted contract provisions. These exemptions would allow pension funds to avoid artificially reducing their returns due to forced favoritism of the fossil fuel industry, or allow local governments to avoid prohibitive cost increases to development project costs, as happened in Stillwater.

- Other bills would make the 2022 law more extreme by removing the escape clause and forcing local governments to comply with the law even if it costs them more money.
- Some of these bills would bring the attorney general in to settle disputes, further politicizing the issue, while others would remove the state AG from reviewing exemptions to the law.
- All of these conflicting bills are sponsored by Republicans, illustrating the intra-party feud that was apparent with this trend in previous years.

KEY INSIGHTS FROM 2023

2023 saw a tidal wave of anti-ESG legislation and proved a testing ground for several model policies targeting both pension management and state contracting authority, as well as proposals targeting disclosures, liability shifts, Federal rulemakings, and ESG scores. The vast majority of these proposals failed.

Taken as a whole, these proposals proved:

- **Costly to Retirees, Municipalities, and State Residents**
  Proposals in Indiana ($6.7 billion) and Kansas ($3.6 billion) threatened to force pension systems to act with billion dollar fallouts. Even after heavy amendments, laws passed in these states are expected to waste millions of dollars. Two laws in Texas cost the state upward of $500M in the first 8 months of implementation alone. Laws passed in Arkansas and Florida are expected to waste millions of dollars for residents and retirees.
- **Unwelcome by Power Players, Drawing Diverse Cross-sector Opposition**
  Opposition testimony in legislative hearings came from a diverse group of constituents who are not typically aligned on statehouse policies including labor, business, state and municipal financial officers, climate advocates, and even some Republicans.
- **Deeply Unpopular, Gaining Little Traction with the Base**
  Despite attempts to make “ESG” the three-letter boogeyman of the year, these policies failed to capture significant grassroots support and attention. In poll after poll, Americans — including Republicans — see the value in fostering corporate responsibility.

CONCLUSION

Despite these known high costs, the diverse opposition, and their unpopularity, anti-ESG policies are already being introduced and heard in statehouses across the country this legislative session. The attacks on finances are not slowing down.

This relentlessness demonstrates that these policies have become a core plank of the rightwing economic platform, and based solely on the number of proposals and rising vitriol, it can be easy to conclude the anti-ESG campaign is gathering momentum. However peering into the dissent and contention these bills provoke, the amendment pathways we have charted, and the costly difficulties in implementation seen to date, there is no clear and clean “winning” on this issue —only financial costs and increased risk exposure.

This year, Pleiades will be closely tracking legislative trends, executive actions, and the implementation of state policies across the US. In our analysis, we are seeking to provide a clear-eyed look at the political campaign driving these policies. We remain focused on the costs and consequences of these policies for retirees, municipal finance officers, and residents whose money is being placed at risk and wasted.

About Pleiades

Pleiades Strategy is a strategic research and advisory firm that works with clients and partners across sectors to understand and shape an equitable energy transition in order to strengthen our shared prosperity and build an economy that doesn’t leave anyone behind.