

ESG AND PUBLIC PENSION INVESTING IN 2023: A YEAR-TO-DATE RECAP AND ANALYSIS



AS OF NOVEMBER 3, 2023

Since 2021, Ropes & Gray has been actively tracking the various approaches states have taken on how or whether environmental, social and governance (ESG) factors should be applied to the investment decisions for public retirement systems. States have used legislative, administrative and enforcement mechanisms to address this area, which has been complemented by Congressional Republicans' various attempts to shine a spotlight on ESG in recent months. Judging by the significant uptick in activity this year at both the state and federal levels, the fight over ESG in public investments is far from over and may even be just beginning.

This white paper seeks to provide context for understanding what has happened in the states in 2023 along with considerations that asset managers should be mindful of when engaging with public retirement plans. In the first part of this paper, we provide an overview of current trends in state ESG legislation and regulation along with background for how we got to this point. In the second part, we provide a recap of what has transpired in each state along with an assessment of the state's policymaking regarding ESG and public pension investments.

Part I: Overview of How We Got Here and Current State ESG Trends

Early State ESG Actions

As a result of the ongoing debate over what role ESG considerations should play in investment decision-making, there has been a growing substantive divergence between how public pensions and private sector retirement plans subject to ERISA are regulated. While those who manage the assets of

governmental plans are subject to the fiduciary and other legal requirements of applicable state law, most states' standards have historically mirrored the fiduciary responsibilities and requirements under ERISA, often using the same terminology and principles, such as the duties of prudence and loyalty. Moreover, for many years, in the absence of guidance at the state level, investment professionals have construed the rules that govern public plans by applying the same interpretations that the U.S. Department of Labor (DOL) had issued under ERISA.

We now find ourselves in a new world where many state governments have started articulating their own standards of what it means to be a fiduciary overseeing public pension money, especially when it comes to ESG matters. Initially, this effort to flesh out state pension fiduciary duties in terms of ESG considerations came from a few blue states in the late 2010s.

For example:

- ❖ **Connecticut** – In January 2015, a bill was introduced in the Connecticut General Assembly (HB 5733) that directed the Treasurer to encourage fossil fuel companies in which state funds were invested to take actions to reduce environmental harm and preserve the sustainability of such companies and to divest (or to decide not to further invest state funds or enter into any future investment in any fossil fuel company) if the Treasurer had determined that such action was necessary and warranted. Additionally, in December 2019, after numerous attempts to engage with civilian firearms manufacturers around reforms that could be made in the wake of the Sandy Hook school massacre, the Connecticut Treasurer at that time announced his decision to divest from these companies as part of a first-of-its-kind comprehensive policy framework known as the “Responsible Gun Policy”, which was designed to mitigate the risks associated with gun violence.
- ❖ **Illinois** – Also in 2019, spearheaded by the Illinois Treasurer, the legislature passed the landmark law, “The Sustainable Investing Act” (PA 101-473), which provides that all state and local government entities

that hold and manage public funds should integrate materially relevant sustainability factors into their policies, processes and investment decision-making. According to the Treasurer, sustainability factors can have a material impact on business performance and long-term shareholder value, and investors have an interest in integrating these factors into investment decision-making processes.

- ❖ **Maine** – In June 2021, Maine became the first state in the U.S. to enact legislation that requires the board overseeing the state public retirement system to divest the plan’s holdings of the 200 largest publicly traded fossil fuel companies in the world, which must be complete by January 1, 2026.

In the last two years, we have seen a shift—the number of actions from the red states addressing ESG in the public pension context has significantly increased. The recent surge can be attributed in part to both blue state activity and the backlash the Biden administration generated from its May 2021 directive to the DOL to identify steps the agency could take to protect the life savings and pensions of U.S. workers and their families from the threats of climate-related financial risk. President Biden’s executive order culminated in the 2022 so-called “ESG rule”, which revisited fiduciary standards under ERISA regarding investment selection as well as exercises of shareholder rights, and the role that ESG factors can play in those processes. The DOL’s 2022 ESG rule clarifies that climate change and other ESG factors may be relevant to the risk and return analysis of a potential investment, and when they are relevant, they may be weighted and factored into investment decisions alongside other relevant factors as deemed appropriate by fiduciaries. The DOL’s 2022 ESG rule does not require or suggest that plan fiduciaries must or should consider ESG factors when investing plan assets.

The Red States’ Backlash

The core of the DOL’s 2022 ESG rule—the neutrality of approach to ESG factors and the need to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries to objectives unrelated to the provision of benefits under the plan—are in line with established DOL principles. However, elected officials in many red states have described this rule as a mandate that ESG factors must be part of a plan fiduciary’s investment process. Consequently, politicians in these red states have aggressively pursued through legislation and administrative fiat (i) prohibitions on the ability to consider ESG factors to the extent they are found to be “non-pecuniary” (as described below) as well as (ii) restrictions

on the ability to invest with financial institutions that allegedly boycott certain industries such as fossil fuel and firearms.

Anti-ESG Laws Imposing Limits on Investment Considerations and Fiduciary Discretion

With anti-ESG initiatives, lawmakers seek to impose new requirements and conditions on the ability to act as a fiduciary to state pension plans by requiring them to commit to making investment decisions based solely on material financial factors, which are commonly referred to as “pecuniary factors” (as derived from the now-superseded Trump administration’s investment duties regulation that was adopted in 2020). The phrase, “pecuniary factors” is a loaded one since it has been broadly understood (dating back to when the terminology first appeared in the Trump administration’s notice of proposed rulemaking) to engender extreme skepticism that ESG characteristics can ever qualify as pecuniary or material financial factors. Moreover, in many of the bills that have been introduced over the last year, there is often an express presumption that “pecuniary factors” do not include the consideration of the furtherance of social, political, or ideological interests.

Florida’s HB-3, which took effect on July 1, is a leading example of this kind of anti-ESG legislation, but many other states have taken this approach as well, as shown in the table that follows in the next sub-section. To a manager seeking to do business with a state that has either enacted or is considering such restrictions, there is concern that if the manager uses ESG factors in any way in its investment process, it will be prohibited from managing the state’s retirement assets, regardless of whether the manager is seeking to promote an ESG goal or other related impact goal or focus. This concern stems from the interpretive uncertainties these laws raise such as (i) what does it mean for something to be a pecuniary factor, (ii) when can a financial factor or characteristic be considered material, and (iii) when does one cross the line from using ESG factors as part of an integration strategy to using them for other purposes (such as a fund that has an impact strategy or social mandate)?

These challenges reflect the fact that anti-ESG laws are highly subjective, and their interpretations can vary among different state officials, which may shift over time in light of the changing political climate in states. For example, despite forceful messaging from state political leaders that managers who consider ESG are practicing “woke capitalism” that goes against the best interests of plan participants and beneficiaries, state pension plan fiduciaries may construe these new requirements narrowly in order to avoid having to remove their investment managers on the basis of ESG. Furthermore, the concern that a

manager has crossed the line from using ESG factors as part of an integration strategy to using them for other purposes is exacerbated by the fact that neither the states nor the DOL has defined the different types of ESG investment strategies that exist (in contrast to the three-part framework that was included in the SEC's 2022 proposed rule on enhanced disclosures by certain investment advisers about ESG investment practices as well as the analogous spectrum of funds with ESG features that appears in the EU's Sustainable Finance Disclosure Regulation (SFDR)). Given the lack of precise categories and definitions, it can be difficult for managers to know what exactly these laws were intended to prohibit.

As far as we are aware, only North Dakota has adopted legislation (SB2291)—which was one of the first anti-ESG laws in the U.S. to address investment aims and objectives with respect to handling state funds (retirement assets or otherwise) when it was enacted in 2021—specifically aimed at prohibiting the state investment board from investing funds for the purpose of “social investment” unless the board can demonstrate that the investment will perform at least as well as a similar non-social investment. Based on the current version of the statute as last amended earlier this year, the law provides that “social investment” refers to the “consideration of socially responsible criteria and environmental, social, and governance impact criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return at a prudent level of risk to the state.” In other words, the North Dakota statute is focused on preventing the state investment board from selecting impact funds that are specifically pursuing ESG or collateral social goals to the detriment of returns, as opposed to funds that use ESG as part of good faith financial risk analysis.

Despite the increased prevalence of these anti-ESG bills (and enacted laws) in 2023, we have not observed major changes with respect to either the investments the state plans are making or the managers the plan investment boards are selecting. Instead, we have started seeing a re-allocation of risk. In states where these laws are now on the books, plan investment boards are required to ensure that they are investing based on pecuniary factors; however, the boards are turning to their managers and asking them to certify that the managers are not using state assets for advancing social or other types of collateral benefits. By taking that tactic, state plan investment boards are shifting the risk of noncompliance (at least in part) to their managers.

Anti-Boycott Laws and Restricted Lists

Many red states opposed to ESG investing have also created restricted lists, which target financial institutions that allegedly boycott industries like fossil fuel and firearms. Several states such as Kentucky, Oklahoma, Texas, and West Virginia have enacted these anti-boycott laws in the last two years, which authorize the state comptroller or treasurer to maintain a list of restricted financial institutions that will be barred from contracting with or doing business with the state (including, being selected to manage state pension assets).

The implementing statutes establish a process for adding a financial institution to a restricted list, which typically involves the comptroller or treasurer's office looking at public statements by senior executives of a targeted financial institution, checking the signatories of the various climate coalitions like Climate Action 100, the Net Zero Banking Alliance and the Net Zero Asset Managers Initiative, reviewing index data compiled by third-party vendors such as MSCI's ESG Ratings service, and sending out questionnaires to financial institutions soliciting information on their investment processes and strategies. Once all of the information is compiled, the comptroller or treasurer's office will generate a list, which gets periodically updated.

While it is not always clear how a financial institution ends up on one of these restricted lists (in total, 30 institutions appear on one or more of the four state lists that have been made publicly available), once an institution is added, there is a sense of clarity as to what the consequences are—namely, the institution will be barred from transacting with the state unless it ceases to engage in the alleged boycotting activity. Additionally, since the process for getting removed from the list is typically laid out in the statute or other guidance from the state, an institution that ends up on one or more of these lists can devise a plan for responding to this designation. Nonetheless, the fear of being added to these lists can have dramatic and real consequences in terms of financial institutions changing their investment practices and/or withdrawing from global climate coalitions to avoid the outcome of getting placed on a restricted list.

When the initial lists were being compiled last year, it was suspected that they would be quite extensive based on the fact that the Texas State Comptroller sent out its questionnaire to over 130 asset managers. However, these lists have ended up being considerably shorter. Furthermore, these lists have been more nuanced and fine-tuned than initially anticipated, with states delineating between restricted institutions and restricted funds. For example, in Texas, where the Comptroller has published three iterations of its list (Oklahoma's Treasurer also came out with a revised list in August 2023), there are currently

11 banks and financial institutions included, but over 350 impact or dual-mandate funds included—many of which are managed by institutions that *have not been included* on the restricted list.

Fiduciaries of the public plans have also pushed back on the use of these restricted lists, as evidenced by the ongoing dispute between the Oklahoma Treasurer’s office and the board of trustees overseeing the Oklahoma Public Employees Retirement System (OPERS). Back in August, the OPERS board voted in favor of a move that would exempt the pension fund from having to terminate contracts with blacklisted firms based on an exemption for plans that determine that such requirement would be inconsistent with fiduciary responsibility with respect to the investment of entity assets. Since then, members of the OPERS board and the Treasurer’s office have gone back and forth, disagreeing over the applicability of this exemption. Furthermore, the Treasurer (who has the lone dissenting vote in the OPERS vote to invoke the exemption) has been lobbying members of the legislature to clarify or walk back the fiduciary exemption.

Laws In Effect or Expected to Take Effect in 2023

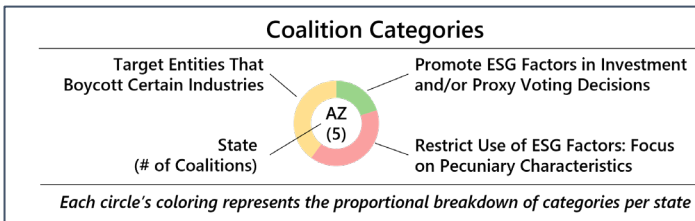
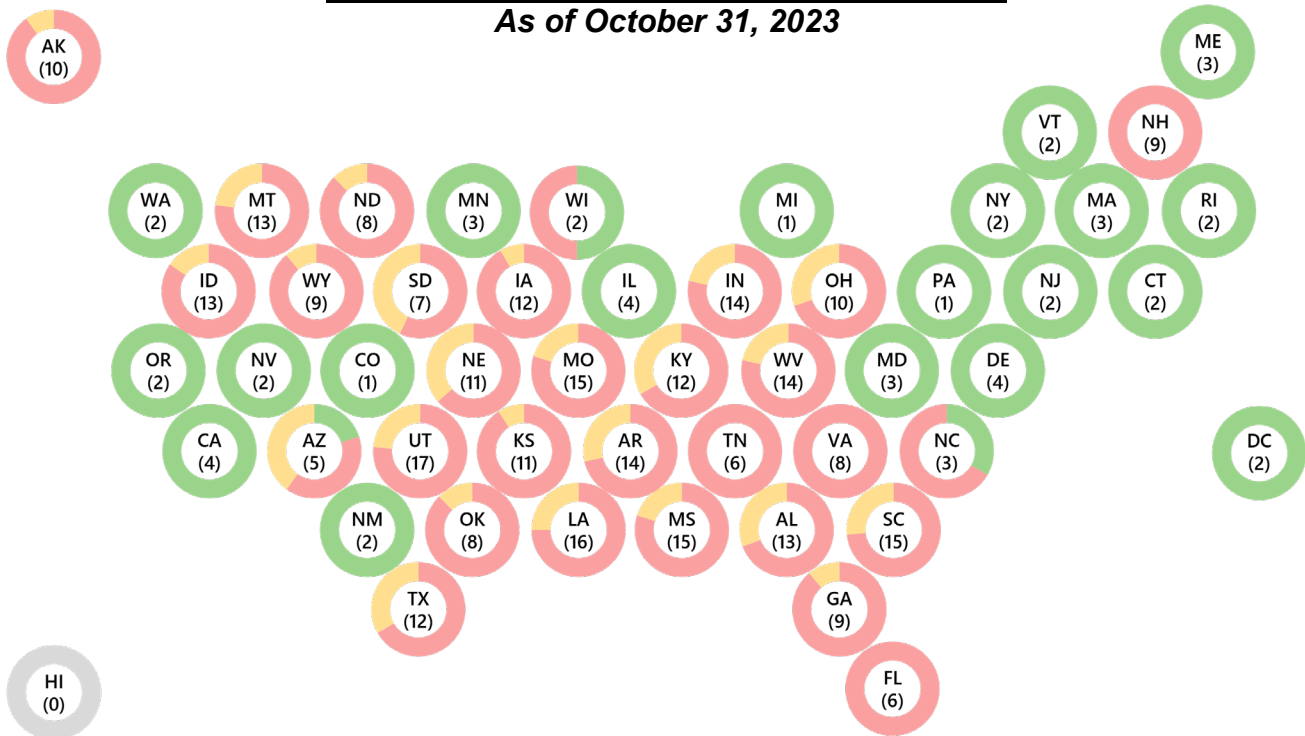
In Part II of this paper, we provide high-level summaries of the legislation and pronouncements that each state has recently adopted or considered regarding the role of ESG factors in public pension investing. As for the bills that have been adopted, we have identified the following items and have assessed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

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

State	Bill #	Topic(s)	Effective
Alabama	SB261		10/1/2023
Arkansas	HB1845		8/1/2023
	HB1307		8/1/2023
	HB1253		8/1/2023
Colorado	SB23-016		8/8/2023
Florida	HB-3		7/1/2023
Idaho	HB190		3/31/2023
	HB191		3/23/2023

State	Bill #	Topic(s)	Effective
	SB1405		7/1/2022
Illinois	HB2782		1/1/2024
	SB2152		8/4/2023
	PA101-473		1/1/2020
Indiana	HB1008		7/1/2023
Kansas	HB2100		7/1/2023
Kentucky	HB236		3/24/2023
Louisiana	HCR110		6/7/2023
	HCR70		5/30/2023
	HCR59		6/4/2023
	HR246		6/6/2023
	HR203		6/6/2023
Maine	HP65 / LD 99		6/16/2021
Maryland	HB740		6/1/2022
Montana	HJ11		4/14/2023
	HB228		4/19/2023
	HB356		4/21/2023
New Hampshire	HB457		8/29/2023
	HB1469		6/17/2022
North Carolina	HB750		6/27/2023
North Dakota	HB1429		8/1/2023
	HCR3013		3/24/2023
	SB2291		3/24/2021
Oklahoma	HB2034		11/1/2022
Tennessee	SB955		7/1/2023
	SB2649		7/1/2022
Texas	SB13		9/1/2021
	SB19		9/1/2021
Utah	HB281		5/3/2023
	SB97		5/3/2023
	SCR9		3/14/2023
	SB96		5/3/2023
	HB449		7/1/2023
West Virginia	HB2862		6/8/2023
	SB262		6/10/2022
Wyoming	HB0236		7/1/2021

Map of Coalition Activities Among the States As of October 31, 2023



Multi-State Coalitions

Besides legislation and regulation, elected officials in many states have engaged in collective action to demonstrate their support for or against the use of ESG factors in public pension investments. Coalitions enable state officials to articulate their ESG positions in a more efficient manner and amplify their voice. One of the most prominent examples of coalition activity this year has been the litigation initiated by the State Attorneys General of Utah and Texas, along with 24 of their counterparts against the DOL seeking to vacate the 2022 ESG rule on the basis that the rule undermines key protections for retirement plan participants, oversteps the DOL's authority under ERISA and is arbitrary and capricious in violation of the Administrative Procedure Act. On September 22, 2023, Judge Matthew J. Kacsmaryk of the Northern District of Texas granted the DOL's motion for summary judgment, in an opinion that was largely deferential to the agency pursuant to the Supreme Court's

longstanding Chevron doctrine. The opinion noted how the 2022 ESG rule "changed little in substance from the [Trump administration's 2020 rule] and other rulemakings," and it affirmed the rule's neutrality regarding ESG, citing an amicus brief for the proposition that the "[2022 ESG rule] provides that where a fiduciary reasonably determines that an investment strategy will maximize risk-adjusted returns, a fiduciary may pursue the strategy, whether pro-ESG, anti-ESG, or entirely unrelated to ESG." However, this story is not over yet—on October 26, 2023, the states filed a notice of appeal with the Fifth Circuit, so it is possible the states' lawsuit could be revived.

Considerations for Asset Managers

For asset managers who may already be subject to ERISA's requirements when it comes to investing money on behalf of public retirement plans, the labyrinth of state laws and guidance in this area adds a new layer of complexity. When reviewing their investment policies and marketing materials for funds and managed accounts they oversee, now they must take these requirements into consideration, to the extent they already accept or plan to accept state retirement plan money.

While these state laws may seem contradictory, we believe it is generally still possible for managers to thread the needle and

continue to retain both red and blue state mandates by keeping in mind the following considerations:

- ❖ ***Be measured and careful in communications*** – It is critically important for managers to be very measured and careful when speaking with state officials. All communications—whether written or oral—must be accurate, precise and consistent with statements being made to other investors. For instance, if a manager takes into account ESG considerations as part of an integration strategy, it is important that the manager not overstate that detail and make it the focus of its communications with the plan fiduciaries or other state officials. At the same time however, the manager should not understate the role ESG factors play in its investment process. Caution, care and moderation are the order of the day to best ensure that the manager can continue to work with a diverse array of investors.
- ❖ ***Be thoughtful when responding to state inquiries*** – Even if they seem innocuous, communications between managers and state officials could be used as the basis for a determination or allegation that a manager is not acting consistently with its fiduciary duties. Communications also could be viewed as a basis for inclusion on that or another state’s restricted list. It is important to remember that when dealing with state governments, open public records laws (similar to FOIA in the federal context) are always at play. Managers can never assume that anything being communicated to state officials or employees (whether it is oral or written) will remain confidential. Put another way, managers need to align their private and public messaging and ensure that whatever is said to one state would be okay for the entire LP base to hear as well.
- ❖ ***Know what your contracts require*** – As discussed at the beginning of this white paper, state laws regulating the fiduciaries of the public retirement systems have historically tracked ERISA and the DOL’s interpretations thereunder. As a result, a fund’s investment documentation with a state pension plan would often refer to ERISA and just say that the state plan would be treated as an ERISA partner in order to ensure that it would be getting the highest level of fiduciary protection under U.S. law. However, in light of the divergence in state and federal retirement laws recently due to the ESG issue, managers need to make sure that they understand what contractual promises mean and that they can actually comply, and are

complying, with the various state laws. For some states where these anti-ESG laws have been adopted, contractually agreeing to treat the public retirement plan as an ERISA investor could run afoul of state law.

Part II: State-Specific Analysis and Key Takeaways

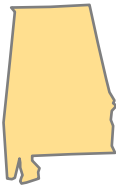
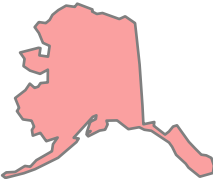

In this part of the paper, we provide an analysis of the regulatory climate addressing ESG investing by public pension plans in each state. We have formed our views on each state’s current posture based on the following considerations:

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

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

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


Alabama	8	Indiana	13
Alaska	8	Iowa	14
Arizona	8	Kansas	14
Arkansas	9	Kentucky	15
California	10	Louisiana	16
Colorado	10	Maine	16
Connecticut	11	Maryland	17
Delaware	11	Massachusetts	17
Florida	11	Michigan	17
Georgia	12	Minnesota	18
Hawaii	12	Mississippi	18
Idaho	12	Missouri	19
Illinois	13	Montana	19
		Nebraska	20
		Nevada	20
		New Hampshire	21
		New Jersey	21
		New Mexico	21
		New York	22
		North Carolina	23
		North Dakota	23
		Ohio	23
		Oklahoma	24
		Oregon	25
		Pennsylvania	25
		Rhode Island	25
		South Carolina	26
		South Dakota	26
		Tennessee	26
		Texas	27
		Utah	28
		Vermont	28
		Virginia	29
		Washington	29
		West Virginia	29
		Wisconsin	30
		Wyoming	30



STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Alabama</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> On May 31, 2023, SB261 was enacted, which prohibits governmental entities from entering into contracts with companies that boycott businesses that allegedly engage in boycotts of certain industries such as fossil fuels or firearms, or because those entities do not meet certain environmental or corporate governance standards. The legislation is based on the Heritage Foundation's Eliminate Economic Boycotts Act. SB261 applies to contracts entered into on or after October 1, 2023. Overall, while Alabama has not introduced as much anti-ESG legislation as other red states have in 2023, its leaders have joined various coalitions promoting anti-ESG policies and initiatives. Additionally, on May 10, 2023, the Attorney General was one of two state attorneys general to testify against the use of ESG factors at the U.S. House Oversight Committee's first hearing on ESG practices, and he called ESG a "clear and present danger." He reiterated the anti-ESG views he expressed at the hearing in a May 23, 2023 Wall Street Journal op-ed where he wrote: "For all the bluster from House Democrats, our fight against anticompetitive ESG agreements is a fight for free markets and the consumers we have a duty to protect."
<p>Alaska</p> 	<p>Governor Legislature (Senate, House) Attorney General Commissioner of the Department of Revenue</p>	<ul style="list-style-type: none"> While Alaska has joined various red state anti-ESG initiatives, its legislature has been relatively quiet on ESG matters during the current session. Most recently, HB174 was introduced on April 24, 2023, which would have prohibited fiduciaries of a state fund, the Alaska Retirement Management Board, and the Alaska Permanent Fund Corporation Board from taking any action involving investment for the purpose of furthering a social, political, or ideological interest. The bill failed to advance out of committee. In 2022, the legislature introduced but did not pass HB394, which would have targeted companies that boycott Alaska-related industries (i.e., companies from the natural resource sectors).
<p>Arizona</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> During the 2023 legislative session, the Republican-controlled legislature introduced multiple bills seeking to restrict ESG investing, including: SB1096 (would have targeted entities that boycott the firearms industry), SB1138 (would have prohibited discrimination on the basis of social credit or ESG scores), SB1139 (would have restricted fiduciaries of the state retirement plan from using ESG factors and required them to focus on the pecuniary characteristics of investments), SB1500 (would have required state fiduciaries to focus on pecuniary characteristics when evaluating an investment or discharging duties with respect to a plan), SB1611 (would have restricted the use of ESG factors in state contracts), and SB1612 (would have targeted entities that boycott fossil fuels). However, the



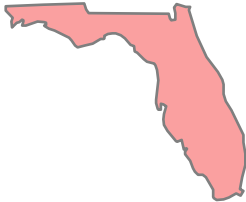
¹ Below are the categories we used to assess each state's overall posture in the ESG and public pension investment debate:




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


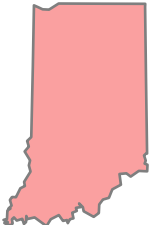
² This information was obtained from the National Conference of State Legislatures (<https://www.ncsl.org/about-state-legislatures/state-partisan-composition>), Ballotpedia ([https://ballotpedia.org/Governor_\(state_executive_office\)](https://ballotpedia.org/Governor_(state_executive_office)), [https://ballotpedia.org/Attorney_General_\(state_executive_office\)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



STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>Governor (a Democrat who was elected in 2022) vetoed the three bills that passed in the legislature—SB1096, SB1500 and SB1611.</p> <ul style="list-style-type: none"> In light of the shift in political power over the last couple of years, Arizona has participated in both blue state and red state coalitions during this time. For example, in April 2023, the current Attorney General helped organize a letter on behalf of 21 state attorneys general to members of Congress to endorse the U.S. Department of Labor’s 2022 ESG rule, whereas her predecessor co-sponsored a letter on behalf of 19 states that was sent to the CEO of a major asset manager on August 4, 2022, asserting how the asset manager affirmatively uses state pension fund assets to promote ESG goals and its “climate agenda”, which violates the manager’s fiduciary duties. Prior to the 2022 election, the then-Republican Governor and Attorney General took other anti-ESG actions, such as initiating certain anti-ESG investigations of asset managers (the current Attorney General has ceased these investigations). Finally, in 2022, the Republican Treasurer (who remains in office) divested more than \$543 million from the money market funds of a major asset manager and reduced the state’s direct exposure to that manager by 97% that year, as a result of a review by the Treasurer’s Investment Risk Management Committee (IRMC), which found that the manager was allegedly pushing a social and political agenda with its investment strategies that moved the firm away from its fiduciary duty in general as an asset manager. Furthermore, on August 30, 2022, the Treasurer revised its investment policy for the management of state assets, which says explicitly how only pecuniary factors will be considered when evaluating investments or discharging its duties. That policy remains in effect.
<p>Arkansas</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> During its 2023 session, the state legislature enacted a series of anti-ESG bills, including: HB1307, HB1845, and HB1253. HB1307 is a sweeping bill that prohibits ESG considerations in investments, targets companies and financial institutions that boycott or discriminate based on ESG factors, and creates an ESG Oversight Committee, which, as HB1845 dictates, will replace the Treasurer in determining whether a financial service provider violates the state’s ESG rules. HB1253 specifically applies to the state’s pension system, and it requires a fiduciary to discharge its duties with respect to any state pension plan solely in the pecuniary interest of the participants and beneficiaries. All three bills took effect on August 1, 2023. On March 17, 2022, the Treasurer announced the retirement plan’s divestment from a major asset manager based on the belief that the manager was “handpicking companies that aligned with their ESG beliefs,” which “most Arkansans are opposed to.” Finally, the Attorney General has been active in most of the red state coalitions that have sought to promote anti-ESG policies and initiatives.

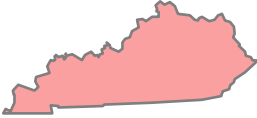
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>California</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The legislature has introduced multiple bills this year that seek to divest state funds from certain industries, such as fossil fuels and firearms. SB637 would prohibit a state agency from entering into a contract with, depositing state funds with, or receiving a loan from a financial institution that invests in or makes loans to a company that manufactures firearms or ammunition. SB252, which applies directly to the state pension fund system, would prohibit investment in the 200 largest publicly traded fossil fuel companies as determined by the carbon content of the companies' reserves. The CalPERS Board of Administration voted to formally oppose SB252 in March 2023, concluding that mandatory fossil fuel divestment is not an effective solution to the reduction of greenhouse gas emissions and could jeopardize the fund's investment returns. According to press reports from July 2023, SB252 would not be given a floor vote this session, but its sponsor is committed to bringing the bill up again next year (although the sponsor introduced a similar bill in 2022, which also failed to pass). While California has yet to pass any pro-ESG legislation regarding retirement plan investments, both the Attorney General and Treasurer have been active in blue state coalition efforts to promote the use of ESG. CalSTRS has separately adopted its own low-carbon strategy for its credit portfolio.
<p>Colorado</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> There were at least three ESG-related bills introduced in the legislature in 2023: one pro-ESG and two anti-ESG measures. On May 11, 2023, the Governor signed SB23-016, which requires, among other things, that, on or after January 1, 2025, the public employees' retirement association (PERA) board shall include as part of its annual investment stewardship report—a description of PERA's process for identifying climate change-related risks and assessments of the financial impact that climate change-related risks have on PERA's operations; the current or anticipated future risks that climate change poses to PERA's investment portfolio; the impact that climate change has on PERA's investment strategies, and any strategy changes that PERA has implemented in response to such impact; and any actions that PERA is taking to manage the risks that climate change poses to its operations. The two anti-ESG bills failed to advance out of committee. HB23-1092 would have restricted the PERA board and Treasurer from using ESG factors and would have required an exclusive focus on pecuniary characteristics, and it also would have targeted entities that boycott certain industries like fossil fuel. SB23-026 would have prohibited discrimination on the basis of social credit or ESG scores.



STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Connecticut</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Several pro-ESG bills were introduced during the 2023 legislative session; however, none were enacted. HB6348 would have authorized the Treasurer to divest state funds from any company that extracts, transports, trades, or otherwise contributes to the production of coal, oil, and gas. In order to increase climate accountability, SB42 would have required the Treasurer to issue an annual report that scores companies and details any failure of companies in which state pension funds are invested to comply with Connecticut’s climate sustainability goals. The Treasurer’s office has taken a more nuanced stance on ESG issues in recent years. In 2019, the then-Treasurer adopted a policy to prohibit investment in civilian firearms manufacturers by the state retirement plans and trust funds. The current Treasurer, although a Democrat, opposed HB6397, which, in an early version, would have required the Treasurer by October 1, 2023 to divest all public funds from the stocks and securities of companies that derive more than 10% of their revenues from the sale of fossil fuels. In opposition to the bill, he testified: “I am committed to utilizing every tool to reach our shared goals but rushing this decision runs counter to my role as sole fiduciary of the State’s pension and trust funds.”
<p>Delaware</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Although the legislature has not taken action on ESG issues in the public pension plan context during the current session, the Attorney General and Treasurer have been active in blue state coalition efforts to promote the use of ESG. In early 2023, the Treasurer took a position against affirmatively restricting ESG, describing efforts by officials in Texas and other states as “directly threatening broader goals of managing risk in the economy” and emphasizing the role of the House Democrats’ sustainable investing caucus in providing “factual information” about sustainable investment.
<p>Florida</p> 	<p>Governor Legislature (Senate, House) Attorney General Chief Financial Officer</p>	<ul style="list-style-type: none"> After months of public officials calling for stronger anti-ESG policies, Florida approved HB-3 on May 2, 2023, which limits the consideration of ESG factors in the investment decisions of state retirement systems. HB-3 is one of the most restrictive and comprehensive anti-ESG laws adopted to date, imposing significant new compliance obligations that are distinct from those required by ERISA and other state laws. For additional details, please see our alert here. On December 1, 2022, the Treasurer announced that Florida would divest \$2 billion of state funds from a major asset manager due to the manager’s stance on ESG issues. Additionally, the Governor and the Trustees of the State Board of Administration (SBA)—the entity that manages the assets of the Florida Retirement System Trust Fund and administers the Florida Retirement System Investment Plan—passed a resolution to revise the SBA’s investment policy statement to require any evaluation of an SBA investment decision to be based only on “pecuniary factors.” HB-3 later codified this policy into law. Florida has also been an active participant in the various red state anti-ESG coalitions, including leading a 19-state coalition in a joint governors’ policy statement that commits to “protecting taxpayers from ESG influences across state systems.”




STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Georgia</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> While Georgia's Attorney General and Governor have joined various red state anti-ESG coalitions over the last year, the legislature has been less active in this area. Only one bill was introduced during the current session but it failed to advance out of committee: HB481, which sought to amend the Georgia Public Retirement Systems Investment Authority Law to require fiduciaries to invest retirement assets solely in the financial interest of participants and their beneficiaries. Additionally, the Senate version (SB266) would have required a fiduciary to vote and execute all voting proxies exclusively in the best economic interests or rights of the retirement system. In September 2022, the Board of Trustees of the Employees' Retirement System of Georgia adopted an investment policy that requires it to make investment decisions solely on the basis of pecuniary interests and to neither sacrifice investment return nor increase risk to promote any non-pecuniary interests. The policy explicitly states that the furtherance of social, political, or ideological interests is not a pecuniary interest.
<p>Hawaii</p> 	<p>Governor Legislature (Senate, House) Attorney General Director of Finance</p>	<ul style="list-style-type: none"> In the last two legislative sessions, Democrats have introduced several pro-ESG bills, none of which have passed to date. Some of these bills have sought to promote investment in opportunities in industries that would sustain Hawaii's natural environment or produce economic opportunities for residents, including HB1506/SB1227 (sought to encourage the Employees' Retirement System to invest in those opportunities), HB1505/SB1226 (sought to encourage the Hawaii Employer-Union Health Benefits Trust Fund to invest in the above opportunities), and SB423 (sought to promote divestment from the fossil fuel industry). In 2021, the Democrats introduced several bills that would have required the Employees' Retirement System Board to re-evaluate and divest from coal, oil, natural gas, oil or natural gas services, and pipeline companies. Overall, Hawaii is in a small universe of states pushing affirmatively for sustainable investing through pro-ESG legislation, as opposed to simply promoting ESG neutrality, but none of these bills have passed to date.
<p>Idaho</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> This year, the Idaho legislature enacted at least two anti-ESG bills, both targeting financial institutions contracting with the state government. HB191 requires that no contract be accepted or denied by a public entity based on ESG standards, which refer to standards that would screen or score contractors based on subjective ethical or sustainability criteria unrelated to the specifications of a contract or the qualifications of the contractor. HB190 requires a financial institution designated as a state depository and holding any deposit of the state funds to certify that it will not boycott any individual or company in the fossil fuel, timber, minerals, hydroelectric power, nuclear energy, agriculture, or firearm industries. On March 28, 2022, Idaho enacted S1405, which prohibits public entities engaged in investment activities from considering ESG characteristics in a manner that could override the prudent investor rule. To the extent a fiduciary offers ESG-preferred investment alternatives, such investments shall not be required and sufficient alternatives must also be offered. Besides legislation, the state's executive branch officials have been regular participants in the various red state anti-ESG coalitions, joining nearly all initiatives over the last year.


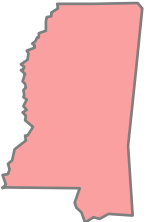
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Illinois</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Several ESG-related bills have been introduced during the current session, which build on the state’s landmark 2019 legislation (PA101-473: Illinois Sustainable Investing Act) directing state and local government entities that manage public funds to consider materially relevant sustainability factors in their investment decisions. On July 28, 2023, the Governor signed HB2782, which amends the Illinois Sustainable Investing Act to provide that, effective January 1, 2024, every investment manager selected by a public agency, pension fund, or retirement system shall comply with new annual disclosure requirements that include providing a description of the process through which the manager prudently integrates sustainability factors into its investment decision-making, investment analysis, portfolio construction, due diligence, and investment ownership in order to maximize anticipated financial returns, identify and minimize projected risk, and execute its fiduciary duties more effectively. Separately, the Governor signed SB2152 on August 4, 2023 (and effective the same day), which authorizes the Treasurer to manage the State Employees Retirement System’s proxy voting activity and execute required ballots on behalf of the Retirement System. SB2152 also requires, on or before September 1, 2023 and annually thereafter, the Retirement System’s investment board to publish guidelines for voting proxy ballots and a report on its website that discusses how it considers sustainability factors (as defined in the Illinois Sustainable Investing Act) as part of its proxy voting strategy. The Attorney General has been an active participant in blue state coalition efforts via letters to members of Congress and the U.S. Securities and Exchange Commission, which advocate for the importance of ESG characteristics in investment decision-making. The Treasurer also testified in favor of considering ESG factors as part of a sound and prudent investment process during the U.S. House Oversight Committee’s ESG hearing on May 10, 2023.
<p>Indiana</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> During the 2023 legislative session, one anti-ESG bill was signed into law. HB1008 prohibits the Indiana Public Retirement System (INPRS) and its board from making an ESG commitment with respect to system assets, including in the selection of investments or investment managers, the management or oversight of investments, proxy voting, or shareholder engagement. Moreover, HB1008 requires the INPRS board to replace a service provider that has made an ESG commitment with a comparable one in terms of financial performance, so as not to violate the board’s fiduciary duty to the system’s participants and beneficiaries. An “ESG commitment” refers to an action taken or a factor considered by a service provider with the nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose. The legislature narrowed the scope of the bill during the legislative process in part because of a fiscal analysis estimating that the proposed bill could reduce INPRS’ returns by \$6.7 billion over 10 years. The legislature also proposed a second anti-ESG bill (SB292) in 2023, which would have prohibited the INPRS board from making an investment decision with the purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation for a nonpecuniary purpose. That bill died in committee. In 2022, the Attorney General issued an advisory opinion (2022-3) that stated that Indiana law prohibits the INPRS board (as well as agents delegated by the INPRS board) from utilizing ESG considerations in their investment decisions as well as with respect to proxy voting on the basis that doing so would violate the fiduciary duties the INPRS board owes to beneficiaries. The Attorney General and Treasurer have also been active in


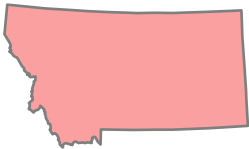
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>red state anti-ESG coalitions, including taking the lead in Federal Energy Regulation Committee petitions to prevent the agency from granting reauthorizations to two major asset managers to acquire or transact in the voting securities of public electric and utility companies.</p>
<p>Iowa</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Multiple anti-ESG bills have been introduced in the legislature this year, but none have advanced at this time. SSB1094/507 (and HF2/653, which was withdrawn) would restrict state funds (i.e., the Iowa Public Employees’ Retirement System) from generally entering into contracts with certain companies engaged in “nonpecuniary social investment” or boycotts of certain companies. “Nonpecuniary social investment” refers to the investment or commitment of public funds to further ESG or ideological interests without a reasonable business purpose. HF27 would prohibit the state from implementing an executive order issued by the U.S. President that relates to the regulation of the financial sector as it relates to ESG standards or the regulation of the constitutional right to bear arms. The Governor has also promoted anti-ESG policies as part of her “visions for Iowa,” including that investment firms that manage the state’s money must not boycott fossil fuel energy or firearms companies, or generally invest funds to further environmental, social, governance, political, or ideological interests over maximized returns. Finally, the state’s executive branch officials have regularly signed on to most of the red state anti-ESG coalitions over the last year.
<p>Kansas</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> In April 2023, the legislature enacted the anti-ESG bill HB2100, which is entitled the Kansas Public Investments and Contracts Protection Act. Even though the Governor (a Democrat) refused to veto this legislation—it became law without the Governor’s signature—the Republican-controlled legislature narrowed the scope of the bill because of political opposition during the legislative process. As enacted, HB2100 amends the law governing the Kansas Public Employees Retirement Fund and investment standards to (i) prohibit state agencies and other political subdivisions from giving preferential treatment to or discriminating against companies based on ESG criteria in the procurement of contracts; (ii) require fiduciaries of the Kansas Public Employees Retirement System (KPERS) to act solely in the financial interest of participants and beneficiaries of the system when it comes to investment decisions and proxy voting; (iii) restrict state agencies from adopting ESG criteria or requiring any person or business to operate in accordance with such criteria; and (iv) provide for enforcement by the Attorney General; and (v) indemnify KPERS with respect to actions taken to comply with it. Other anti-ESG bills that have been introduced during the current session have failed to pass such as: HCR5014 (would have authorized concerned parties to study ESG standards and called for bills that would restrict the use of ESG standards); HB2436/SB291 (same as the new HB2100); HB2404/SB224 (would have targeted entities that engage in ideological boycotts, would have restricted the use of ESG factors in contracting and proxy voting, would have required a focus solely on pecuniary characteristics, and would have prohibited discrimination on the basis of social credit or ESG scores). Prior to the 2022 election, the Treasurer was a Democrat who took a neutral position on ESG issues, writing an opinion piece in a local newspaper that said, while state pension investment professionals “should be held accountable” for their investment choices and processes, he would

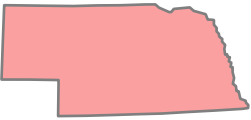
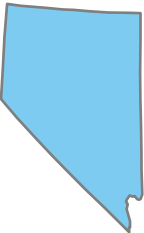
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>“fight to preserve their freedom to use the best tools” to make investment decisions. Since then, however, the current Republican Treasurer (along with the Attorney General), has supported multiple red state anti-ESG coalition initiatives and has stated that he is working closely with the Attorney General to draft legislation that would limit ESG investments by state retirement plans.</p>
<p>Kentucky</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> On March 24, 2023, the Governor signed anti-ESG bill HB236 into law, which amends existing laws governing state-administered retirement systems by now requiring fiduciaries to consider the sole interest of the members and beneficiaries of the retirement systems (using only pecuniary factors) and to prohibit the consideration of nonpecuniary interests, including environmental, social, political, and ideological interests. HB236 also includes similar requirements for proxy voting policies. The Kentucky legislature introduced other anti-ESG bills during the last session, but all died: HB533 (would have targeted entities that engage in politically sensitive boycotts), SB166 (would have restricted state-administered retirement systems from using ESG factors in contracting and proxy voting and focused on pecuniary characteristics), and HB254 (would have targeted entities that boycott the firearms industry). On January 3, 2023, the Treasurer released its initial list of 11 financial companies that could be subject to divestment by state governmental entities unless these institutions cease to engage in alleged boycotts of the energy sector (pursuant to SB205, which was signed into law on April 8, 2022 and directs the Treasurer to annually publish this list). Kentucky is one of four states to have published a restricted financial company list, joining Oklahoma, Texas, and West Virginia. In response, the Trustees of the Kentucky County Employees’ Retirement System (CERS) sent a letter to the Treasurer stating that the SB205 mandate to divest from listed financial companies is “inconsistent with its fiduciary responsibilities with respect to the investment of CERS assets.” The Attorney General and Treasurer have signed on to multiple red state anti-ESG coalitions. Additionally, in 2022, both officials sent a letter to the executive directors of the Kentucky Teachers’ Retirement System (KRS) and the Kentucky Public Pension Authority (which is composed of trustees from CERS and KRS), requesting information about their efforts to ensure ESG factors are not being implemented in their investment decisions, consistent with Kentucky law. CERS and KRS responded by referencing their investment policy statements, which said how they consider ESG factors in certain circumstances, and that consideration of ESG factors “must always be done with an eye toward the unwavering fiduciary duty owed to every member of [CERS].” Additionally, the CERS CEO noted that the board amended its policy in 2021 by saying “the CERS Trustees recognize the importance of responsible investing...and acknowledge that integrating ESG policy principles...will enhance investment results.”



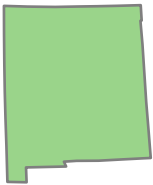
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Louisiana</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> ▪ The legislature has used resolutions to articulate its stance on ESG. For example, it enacted HCR110 in June 2023, which requests the state retirement system boards of trustees to uphold their fiduciary duty when making financial decisions and to not allow ESG policies to influence their investment decisions. One month earlier, the legislature enacted HCR70, a resolution to request the Treasurer and the state retirement systems to report on (i) investment advisors and companies that they use and that discriminate against the fossil fuel industry through ESG policies; (ii) the use of nonpecuniary factors in investment decisions; and (iii) the asset allocation of all of their investments. In 2022, the legislature adopted additional resolutions (i.e., HR246 and HR203) calling for the creation of taskforces to study the use of ESG criteria in investment selection, with the goal of trying to show whether such strategies are in line with prudent and responsible oversight of such assets. ▪ In an effort to protect its sizeable fossil fuel industry, the Treasurer announced on October 5, 2022 that the state would divest over \$790 million from a major asset manager because of public statements the manager's CEO made regarding the role of ESG in its investment framework. ▪ Finally, the Attorney General and Treasurer have joined nearly all red state anti-ESG coalitions and have co-led three such initiatives: (i) the February 2023 petition requesting that the Fifth Circuit set aside the SEC's final rule requiring funds to give more details about their votes on ESG proposals, (ii) the March 2023 letter to asset managers on behalf of the state attorneys general, warning about the use of ESG factors in proxy voting decision-making, and (iii) the May 2023 letter on behalf of the state attorneys general to members of the Net Zero Insurance Alliance, expressing concerns over the legality of insurance companies and clients focusing on climate issues.
<p>Maine</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> ▪ Maine was one of the first U.S. states to adopt legislation addressing ESG and public retirement plan investment with its enactment of HP65/LD99 on June 16, 2021, but there has been minimal activity on the legislative front since then. HP65/LD99 prohibits investment by the Treasury in the 200 largest publicly traded fossil fuel companies, as determined by the carbon in their reserves. It requires the Treasurer to fully divest Treasury assets in such stocks, securities, or other obligations by January 1, 2026, in accordance with sound investment criteria and fiduciary obligations. On April 11, 2023, Republican opponents introduced HB1562, which generally prohibits fiduciaries of the Maine Public Employees' Retirement System from making investment decisions based on certain nonpecuniary factors such as ESG, ideological, or political factors. However, the bill failed to pass due to a unanimous vote not to let the bill proceed under the state's legislative procedures.

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Maryland</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The legislature was relatively quiet in 2023 with respect to ESG and public retirement plan issues. On April 9, 2022, it enacted HB740/SB566, which requires the Board of Trustees of the Maryland State Retirement and Pension System to address climate risk management in its investment policy manual and to report annually on the level of climate risk across its investment portfolio. As stated in its current investment policy manual (last updated in February 2023), “[i]n managing the assets of the System, consideration of all value drivers and material risks and mitigation strategies should be given to enhance returns and optimize performance. The integration of material ESG factors into this assessment can provide an additional layer of decision-useful information and can be beneficial to investment analysis and decision making when considering potential opportunities and/or risks to the portfolio. Where ESG factors are material to the risk-return analysis of an investment or an investment course of action, such factors are appropriately classified as material risks and assessed in conjunction with other relevant economic factors.”
<p>Massachusetts</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Lawmakers have introduced multiple pro-ESG bills during the current session, which cover a range of topics such as the divestment of public pension fund assets from manufacturers of firearms (H2591 and H2503) and nuclear weapons (H2480). Another ESG-related bill that has been introduced during the current session is SB1644, which seeks to expand the fiduciary duty standard by explicitly stating how it encompasses management of the state’s public pensions as a public good through financial performance and the protection of future social and environmental benefits. There were hearings on these different proposals in June 2023, and the bills remain pending in committee. On February 28, 2022, the Massachusetts Pension Reserves Investment Management (PRIM) board (the agency that oversees the state pension fund) voted unanimously in favor of new proxy voting guidelines proposed by the Treasurer, which are designed to allow the pension fund to vote against any director at a company that is not aligned with the Paris Climate Agreement and Climate Action 100+. The action comes as part of the Treasurer and the PRIM board’s mutual commitment to implement a comprehensive ESG framework with the goals of limiting global warming and/or establishing a plan to achieve “net zero” emissions by 2050.
<p>Michigan</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> So far this session, at least one anti-ESG bill (HB4381) has been introduced, which would require investment fiduciaries to fulfill their duties solely with regard to the pecuniary interests of participants and beneficiaries. This bill is currently pending in committee. In the fall of 2022, a Republican lawmaker introduced SB1192, which sought to require fiduciaries of the public employee retirement system to consider only pecuniary factors when evaluating an investment, explicitly prohibiting consideration of factors that “further nonfinancial social, political, or ideological objectives.” That bill died in committee. The Attorney General has joined one multi-state effort to date—the 21-state coalition led by the Democratic attorneys general of Arizona and California, which sent a letter on March 1, 2023 to members of Congress to express support of the DOL’s 2022 ESG rule and to oppose Congress’s joint resolution to rescind the regulation.


STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Minnesota</p> 	<p>Governor Legislature (Senate, House) Attorney General Commissioner of Management and Budget</p>	<ul style="list-style-type: none"> Multiple anti-ESG bills have been introduced during the current session, although none have advanced out of committee at this time. Most recently, HF3322 (the “State Retirement Plan Protection Act”) was introduced on May 16, 2023, which would require the State Board of Investment to not subordinate the financial interests of plan participants and benefit recipients to other objectives, including sacrificing investment return or undertaking additional risk to promote a nonpecuniary factor or objective. In addition, when exercising shareholder rights with respect to the assets of a pension fund (i.e., proxy voting), the State Board of Investment would be required to consider only pecuniary factors and to not subordinate the financial interests of plan participants and benefit recipients to other nonpecuniary factors or objectives. Earlier in 2023, SF940 (“The Stop ESG and Social Credit Score Discrimination Act”) was introduced, which would require the State Board of Investment to divest from listed companies that boycott mining, energy production, production agriculture, or commercial lumber production by July 1, 2028. There have also been bills aimed at prohibiting boycotts of certain industries such as mining, energy production, production agriculture, and commercial lumber production (HF1902) or Minnesota-based energy or natural resources companies (SF1225/HB707). Even though Republican lawmakers have been active over the last year in introducing anti-ESG bills, the Democratic Attorney General has joined at least three blue state pro-ESG coalition efforts this year.
<p>Mississippi</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> During the 2023 legislative session, several bills were introduced that sought to restrict the use of ESG considerations in investment decisions for the public retirement system; however, all died in committee. For instance, HB1099, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, would have required the governing board of the Public Employees’ Retirement System (PERS) to take into account only financial factors when discharging its fiduciary duties. It also would have required that all shares held by or on behalf of PERS, its participants, and their beneficiaries would have to be voted solely in the financial interest of participants in the system and their beneficiaries. HB818 similarly would have required the PERS board to make investment decisions with the sole purpose of maximizing the safety of and return on its investments, and not to make an investment decision with the primary purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation. Finally, SB2383 sought to prohibit a state agency from entering into a contract with a company unless the company provides a written verification that it does not have a practice or policy of discriminating against a firearm entity or trade association and will not discriminate against such entities during the contract term. On November 14, 2022, the Treasurer issued a letter to the PERS board, urging the officers to reject ESG policies and encourage the board to fully divest state pension funds from a major asset manager that had acknowledged the role of ESG in investment decision-making. The Treasurer and the Attorney General have also both been active in red state coalitions seeking to promote anti-ESG policies and initiatives.




STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Missouri</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> During its 2023 session, the Missouri legislature was one of the most active statehouses in the U.S. with respect to ESG issues, proposing multiple bills aimed at restricting the use of ESG considerations in investment decisions and prohibiting discrimination against either certain industries (such as firearms) or businesses (based on ESG scores), however, nearly all of them failed to advance. The only exception was HR12, a House resolution that urged the Governor and other state officials to “ensure that the federal government, domestic or international organizations, or other entities coercing environmental or other ESG policies do not impose costs and consequences on the citizens of Missouri, do not deprive citizens of their constitutional freedoms and the guarantees of due process of law and equal treatment under the law, and do not infringe on the sovereignty of Missouri”). The legislature considered other anti-ESG bills, including SB436, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, and which provided that the board of trustees of the public employee retirement system, as well as any appointed investment fiduciary, shall take into account only financial factors when discharging fiduciary duties. Such factors do not include those with the purpose to further social, political, or ideological interests. Additionally, all shares held by or on behalf of a public employee retirement system, the participants, and their beneficiaries had to be voted solely in the financial interest of participants in the system and their beneficiaries. SB200 provided that when a public entity enters into a contract with a company, the company must have a written verification that it does not have a practice or policy that discriminates against a firearm entity or firearm trade association and that it will not discriminate as such during the contract term. SB50 and SB316 both sought to ensure that bidders are not given preferential treatment or discriminated against based on ESG scores when agencies procure contracts from service providers. Nearly identical legislation was also proposed in 2022; however, it did not pass (SB1171). On October 18, 2022, the Treasurer divested over \$500 million in state pension funds that had been overseen by a large asset manager on the basis that the manager was allegedly pushing a social and political agenda with its investment strategies that was inconsistent with the fiduciary duties it owed to Missourians for whom it was investing on their behalf. Finally, over the last couple of years, the Treasurer and Attorney General have joined nearly all red state anti-ESG coalitions to date.
<p>Montana</p> 	<p>Governor Legislature (Senate, House) Attorney General Director of the Department of Revenue</p>	<ul style="list-style-type: none"> During the 2023 session, the Montana legislature enacted two bills targeting the use of ESG in public retirement plan investing, both of which were signed into law in April 2023. HB228 provides that the evaluation of investments by the state retirement system board must take into account only pecuniary factors. ESG or other similarly oriented considerations will only be considered pecuniary factors if they “present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories.” Separately, HB356 prohibits state public entities from entering into a contract (worth at least \$100,000) with a company unless such company verifies in writing that it does not discriminate against firearms entities or trade associations. The legislature also passed HJ11 in April 2023, a joint resolution urging Montana’s Congressional members to oppose federal agency rulemaking concerning ESG policies and directives. The Attorney General and Treasurer have also joined most of the red state anti-ESG coalition efforts, including co-sponsoring a March 2023 letter on behalf of 21 Republican attorneys general that was sent to asset managers

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>warning them about the use of ESG factors in proxy voting decision-making. The letter contended that the asset managers made commitments that “cast doubt on their adherence to fiduciary requirements, representations to consumers about their services, and compliance with antitrust laws.” The Attorney General also led a 15-state coalition in July 2023 demanding answers from mutual fund directors linked to an asset manager regarding potential conflicts of interests related to the manager’s alleged public commitments to using client assets to advance ESG goals.</p>
<p>Nebraska</p> 	<p>Governor Legislature (Senate) Attorney General Treasurer</p>	<ul style="list-style-type: none"> In January 2023, the legislature proposed LB743 (“Investment Neutrality in Public Funds Act”) based on the Heritage Foundation’s State Pension Fiduciary Duty Act. This bill would require (i) fiduciaries of public funds to take into account only financial factors when discharging their duties with respect to the investment of public funds, and (ii) that all shares held by or on behalf of public funds be voted solely in the financial interest of beneficiaries. While LB743 did not pass when the legislature adjourned in May 2023, it will carryover to the 2024 session. At the end of 2022, the Attorney General published an anti-ESG report, which flagged what he deemed to be the key flaws of the ESG movement, including the lack of consistent metrics and ratings, how ESG factors are often in conflict, and how ESG fails to deliver increased financial returns to investors. The Governor, Attorney General and Treasurer have also joined at least 10 red state anti-ESG coalition initiatives, including co-sponsoring a letter on behalf of 19 Republican attorneys general that was sent to the CEO of a leading asset manager in August 2022, asserting how the manager affirmatively uses public pension fund assets to promote ESG goals and their “climate agenda” in violation of its fiduciary duties.
<p>Nevada</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> In June 2022, the Treasurer announced that his office intended to divest public funds from businesses that sell or manufacture assault-style weapons. Based on press reports at the time that the Treasurer made his announcement, the divestment plan would be a multi-step process whereby the Treasurer’s office would determine whether divesting (or selling the asset prior to maturity) will cause financial harm to the state, and if so, the state would not immediately divest (or that it would hold until maturity). The Attorney General signed a letter in April 2023 on behalf of 21 Democratic attorney generals to members of Congress to endorse the DOL’s 2022 ESG rule, but Nevada has not otherwise been active in the multi-state coalitions. In terms of legislation, Republican state senators introduced SB228 during the 2023 session, which ultimately died in committee. SB228 sought to prohibit (i) the board overseeing the Nevada Public Employees’ Retirement System from investing its assets for any purpose other than funding and administering the system, including any social, political or ideological purpose and (ii) governmental entities from contracting with companies that engage in certain fossil fuel and firearms-related economic boycotts.

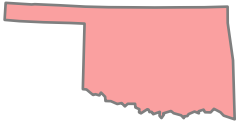
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>New Hampshire</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The Governor signed HB457 into law in June 2023 (effective August 29, 2023), which takes a relatively nuanced anti-ESG approach, providing that public funds shall be governed by the fiduciary duty to maximize benefits for the state or the beneficiaries of the state's trust funds managed by the Treasurer, and it requires the Treasurer and the retirement system to report quarterly on the motivations of funds, especially those that have environmental, social, political, or ideological interests. Previously, in June 2022, the Governor signed HB1469, which established a committee dedicated to studying the need for anti-discrimination legislation in the New Hampshire financial services industry based on legally protected activities, such as expression of political viewpoints and possession or sales of firearms that could cause a financial institution to decline to engage in business with an individual. On a related note, earlier in 2023, the Governor issued Executive Order (EO) 2023-3, which says that state agencies shall ensure that no funds or state-controlled investments are invested with firms that invest in accounts solely based on ESG criteria. Additionally, EO 2023-3 strongly encourages the trustees of the New Hampshire Retirement System to adhere to their fiduciary obligation and not invest with any firm that will invest state pension funds in funds that follow ESG criteria.
<p>New Jersey</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Several pro-ESG bills were introduced early in the current session that seek to prohibit investment by state pension and annuity funds in, and require divestment from, companies involved in (i) production or maintenance of nuclear weapons (A4232/S2701), (ii) the manufacture, import, or sale of assault firearms for civilian use (A1752/S1407), and (iii) the 200 largest publicly traded fossil fuel companies as determined by the carbon content in their reserves (A1733/S416). All three bills remain in committee. Additionally, A1865 (which also remains in committee) provides that the Division of Investment, in conjunction with the State Investment Council, would have to develop a plan to assess and identify the ESG risk and exposure characteristics of its managed investment portfolios. The plan would have to include a minimum of three subscription options for an ESG ratings resource that can provide the division with access to ESG information and data to assess the managed investment portfolios.
<p>New Mexico</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The legislature did not have any ESG and plan-related legislation during its 2023 session. In August 2021, the State Investment Council adopted an ESG investment policy, which allows the New Mexico State Investment Office (SIO) and the State Investment Council to consider and integrate ESG considerations that present material business risks or opportunities. This policy explicitly recognizes that ESG considerations will be integrated into all asset classes through investment manager due diligence conducted by the SIO and the Council's consultants. In addition, an analysis of a manager's overall ESG approach and the manager's written ESG policies can be conducted based on specified guidelines set forth in the policy.







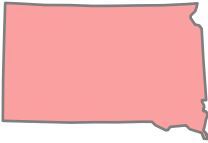

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p data-bbox="191 443 302 468">New York</p> 	<p data-bbox="407 443 621 596">Governor Legislature (Senate, House) Attorney General Comptroller</p>	<ul data-bbox="678 443 1523 1486" style="list-style-type: none"><li data-bbox="678 443 1523 575">▪ In 2020, the New York State Pension Fund set a 2040 net zero carbon emission target, which called for the Fund to transition its portfolio to net zero greenhouse gas emissions by 2040 by reviewing energy-sector investments, assessing transition readiness and climate-related investment risk, and divesting from companies that fail to meet minimum standards.<li data-bbox="678 596 1523 947">▪ The legislature has introduced multiple ESG-related bills over the last few years that promote divestment from oil, gas, and coal companies, none of which have passed to date. For instance, SB1953 would require trustees of the State University of New York as well as the City University of New York to refrain from investing in and subsequently divesting from stocks, debt or other securities of certain publicly traded fossil fuel companies, and SB899 would require the New York State Teachers' Retirement System to divest the system's holdings of companies included on an exclusion list of coal producers and oil and gas producers—all of which failed to pass in the 2023 legislative session. A Republican senator introduced anti-ESG SB6472, which would have prohibited the trustees from using ESG criteria as a screening method for selecting companies and funds for state pension funds to invest in. This bill similarly failed to pass.<li data-bbox="678 968 1523 1486">▪ While the state legislature has been unable to pass any ESG-related bills, New York City's Comptroller has been a vocal advocate of pro-ESG policymaking. In April 2023, together with trustees of the New York City Employees' Retirement System and the Teachers Retirement System, the Comptroller announced implementation plans to reach their goal of net zero emissions in their investment portfolios by 2040. To do so, four strategies were identified: (1) disclose emissions and set interim targets; (2) engage portfolio companies and asset managers to be net zero-aligned; (3) invest in climate change solutions; and (4) divest to reduce risk. However, in response, four participants sued the pension funds on May 11, 2023 (Wayne Wong et al. v. New York City Employees' Retirement System et al., case number 652297/2023, in the Supreme Court of the State of New York, County of New York), seeking to enjoin the fossil fuel divestment, claiming that it violates fiduciary duties. According to the complaint, the pension funds violated New York state common law and insurance regulations, which both require "actuarially funded public retirement systems" to follow "stringent duties of loyalty and care," and the "[d]efendants breached those duties by subordinating the retirement security of plan participants to the trustees' pursuit of a 'green' climate agenda.


STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>North Carolina</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> In June 2023, the Republican-controlled legislature overrode a veto by the Governor (who is a Democrat) to enact HB750, which establishes certain standards for state agencies and state pension plan fiduciaries with respect to evaluating investments and proxy voting. These standards provide that only pecuniary factors can be considered, which means factors must have a material effect on the financial risk or return of an investment based on appropriate investment horizons consistent with the purpose of the fund. Environmental or social considerations can be pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. Moreover, the weight given to those factors shall solely reflect a prudent assessment of their impact on risk and return. Other similar pecuniary factor-type bills were introduced this session, including SB679 and SB737, as well as other anti-ESG legislation such as HB784, which would prohibit financial institutions from discriminating based on political affiliation or value-based or impact-based criteria, including ESG credit factors. None of these bills made it out of committee before the end of the legislative session.
<p>North Dakota</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> North Dakota enacted HB1429 in April 2023, which amends an anti-ESG statute that passed two years prior (SB2291). HB1429 restricts the State Investment Board from investing state funds for the purpose of social investment (including consideration of ESG factors) unless the State Investment Board can demonstrate a social investment would provide an equivalent or superior return compared to a similar investment. The North Dakota legislature also adopted a joint resolution, HCR 3013, earlier this year urging the U.S. federal government to withdraw and revise regulations and other administrative actions that negatively impact the ability to use North Dakota's lignite coal reserves for affordable and reliable domestic power.
<p>Ohio</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Ohio Republican senators introduced SB6 in January 2023, which passed in the state Senate but is currently pending in the House. SB6 would prohibit members of the public employees' retirement board from adopting ESG policies or making investment decisions based on ESG factors. House Republicans introduced an early draft of HB4, noting that it intends to enact legislation regarding financial institutions and other businesses that conduct economic boycotts or discriminate based on certain factors. No additional drafts of HB4 have been released, and the bill is currently pending in committee. Although legislative efforts to restrict the consideration of ESG in investment decisions have been limited, the Attorney General and Treasurer have joined multiple red state anti-ESG initiatives.

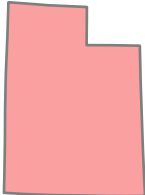



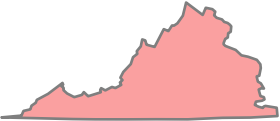


STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Oklahoma</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none">▪ In 2022, Oklahoma enacted HB2034, an anti-fossil fuel boycott bill. Pursuant to HB2034, the Treasurer's office released its initial list of restricted financial companies in May 2023. As required by HB2034, these institutions will be subject to divestment by the Oklahoma state retirement systems unless they cease to engage in alleged boycotts of the energy sector. Oklahoma is one of four states to have created one of these restricted financial company lists, joining Kentucky, Texas and West Virginia. Oklahoma's ban list differs from that of other states in that it includes non-public issuers. As described above, there is an ongoing dispute between the Oklahoma Treasurer's Office and the board of trustees overseeing the Oklahoma Public Employees Retirement System (OPERS), which have gone back and forth on whether OPERS is exempt from having to terminate contacts with blacklisted firms.▪ Separately, the legislature had a busy 2023 session in terms of anti-ESG activity, proposing multiple bills seeking to require that a fiduciary's evaluation of an investment take into account only pecuniary factors and prohibit it from promoting ESG or other non-pecuniary benefits or goals (for instance, SB1004, which was based on the Heritage Foundation's State Pension Fiduciary Duty Act, as well as HB2547 and HB1617). Additionally, bills like HB1947, which was based on the Heritage Foundation's Eliminate Economic Boycotts Act sought to prohibit governmental entities from entering into a contract with a company unless the contract contains a written verification that the company does not engage in economic boycotts of businesses from the fossil fuel, timber, mining, agriculture or firearms industries, and it will not engage in economic boycotts during the term of the contract. Similarly, HB2218 also sought to prohibit governmental entities from entering into a contract with a company unless the company affirms in the contract that they will not discriminate against a firearm entity or firearm trade association. HB1947 more expansively would include restrictions on contracts with companies involved in economic boycotts of businesses that do not meet ESG standards or certain corporate board metrics or that do not facilitate access to abortion, sex or gender change, or transgender surgery. None of these bills have advanced out of committee.▪ The Governor, Attorney General and Treasurer have participated in multiple red state anti-ESG coalitions over the last couple years. However, the new Republican Attorney General who assumed office in 2023 has been noticeably less active in red state anti-ESG coalitions as compared to his predecessor.


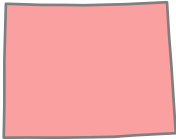
STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Oregon</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<p>Oregon’s officials have long taken a strong pro-ESG position going back to the Oregon Investment Council’s September 2020 adoption of a policy recognizing that integrating ESG factors into investment decisions may improve the economic outcome of investments and aid in risk assessment. Despite the state’s pro-ESG positions, neither of the two ESG-related bills introduced during the 2023 legislative session advanced out of committee. These bills sought to require (i) the Oregon Investment Council and Treasurer to divest state funds from carbon-intensive investments and (ii) the Treasurer to make a climate risk disclosure when marketing securities issued by the state or financing certain agreements. Oregon Republican House members also introduced an anti-ESG bill that failed to pass, which would have required fiduciaries of public pension plans to take into account only pecuniary factors when evaluating and making investment decisions.</p> <ul style="list-style-type: none"> While Oregon has yet to pass relevant ESG legislation, the Treasurer released a statement in November 2022 on decarbonization, emphasizing the importance of achieving net zero emissions by 2050 and outlining a plan to do so, including a review of carbon intensive investments. Finally, the Treasurer along with the Attorney General have joined two blue state pro-ESG coalitions, including, a letter on behalf of 21 Democratic attorneys general that was sent to federal lawmakers in response to the Congressional Republican-led effort to overturn the DOL’s 2022 ESG rule, and the September 2022 open letter from 13 Democratic Treasurers and the New York City Comptroller entitled “For the Long Term” in response to red states blacklisting asset managers and adopting other legislation aimed at curbing consideration of ESG factors in investing.
<p>Pennsylvania</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The ESG front has been relatively quiet in Pennsylvania, which is likely a reflection of the split political dynamics in the state. Last year, HB2799, an anti-ESG bill was introduced, which attempted to prohibit financial institutions from using social credit or ESG scores when transacting with Pennsylvania agencies. Backed by 17 Republican lawmakers, the bill did not survive an initial referral to the House Commerce Committee. In contrast, SB748, a pro-ESG bill which was introduced in June 2021, sought to promote divestment from certain assault weapons manufacturers. Sponsored by 13 Democratic Senators, the bill failed to advance out of the Senate Finance Committee. At this time, there is not currently pending ESG-related legislation. Relatedly, Pennsylvania’s executive officials have not been active participants in multi-state coalition activities, with the Attorney General signing on to just one blue-state campaign in April 2023—the letter that was sent on behalf of 21 Democratic attorneys general to members of Congress to express support for the DOL’s 2022 ESG rule and to oppose Congress’s joint resolution to rescind the rule.
<p>Rhode Island</p> 	<p>Governor Legislature (Senate, House) Attorney General General Treasurer</p>	<ul style="list-style-type: none"> Rhode Island has been relatively quiet on ESG. The legislature introduced three bills during the 2023 legislative session related to the state investment commission and the pension fund divesting from military weapon manufacturers, but none of these bills passed before the session ended. The Attorney General and the Treasurer have each joined a blue state coalition—the Democratic AG letter to lawmakers to promote ESG factors

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>in investment and/or proxy voting decisions and the Democratic state treasurers' letter promoting ESG factors in investment and/or proxy voting decisions.</p>
<p>South Carolina</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> ▪ The South Carolina legislature introduced multiple ESG-related proposals during the 2023 legislative session; however, none of these bills passed before the session adjourned. When considered in light of the active participation of the state's Attorney General and Treasurer in the various red state coalitions, there is clearly a strong anti-ESG sentiment in the state. The proposed legislation covered the full range of anti-ESG approaches, including: prohibitions on state governmental entities from entering into contracts, unless the company does not engage in economic boycotts of fossil fuel or firearms companies (HB3564 and HB3393), requirements that fiduciaries of state retirement funds make investment decisions solely on the basis of pecuniary factors (HB3565, HB3583, HB3690), authorization for the state legislature to review a presidential executive order not affirmed by Congress, including the regulation of ESG factors in the financial sector (HB3056), and SB634 (expressing that public funds should not be dedicated to economic development projects that benefit a corporation that is actively engaged in promoting ESG objectives). ▪ In October 2022, the Treasurer announced his office would divest from a major asset manager because of its public statements on ESG and sustainable investing. According to the Treasurer, "ESG had the potential to seriously undermine [South Carolina's] economic model from one that values fiduciary responsibility and sound financial judgment to one that pushes the left-wing political agenda of 'stakeholder capitalism'."
<p>South Dakota</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> ▪ South Dakota's political leaders have been active participants in the various red state anti-ESG coalition initiatives, but the Republican-controlled legislature has been unable to enact similar legislation. During the 2023 session, the legislature introduced HB1207, a "social credit" bill, which sought to prohibit financial institutions from denying any person a financial service except to the extent justified by the person's documented failure to meet quantitative, impartial risk-based financial standards established in advance by the financial institution. The House Republicans also introduced a concurrent resolution that sought to affirm and defend a multitude of principles, including how government should not compete with private enterprise and that the implementation of ESG standards should be opposed. Neither bill passed.
<p>Tennessee</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> ▪ In May 2023, the legislature enacted SB955, which says that with respect to the investment of Treasury funds, the Treasurer's office shall invest, reinvest, manage, and select investment options for program assets for financial reasons for the exclusive benefit of the beneficiaries of the programs while maximizing long-term shareholder value. Similarly, all voting rights with respect to securities held by the Treasury must be exercised for financial reasons, impartially and solely in the interests of the beneficiaries. As defined in the statutory scheme, "financial" does not include ESG interests that may not be material to the financial analysis of the investment. SB955 took effect on July 1, 2023. This legislation is in addition to SB2649, which was signed into law in 2022, and it prohibits the Treasurer from entering into contracts with state depositories if the state depositories have policies that prohibit financing to companies in the fossil fuel industry. House Republicans also introduced HB0728, which would have prohibited financial institutions from discriminating on the basis of

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		ESG-related criteria. This bill failed to pass before the end of the legislative session.
<p data-bbox="207 443 277 468">Texas</p> 	<p data-bbox="407 443 630 632">Governor Legislature (Senate, House) Attorney General Comptroller of Public Accounts</p>	<ul style="list-style-type: none"> <li data-bbox="675 443 1528 716">▪ Texas has been one of the most active states in terms of effectuating anti-ESG policies, having enacted multiple statutes as well as joining (and in a few cases, co-leading) various red state coalitions in this area. One of the first anti-ESG bills adopted anywhere in the U.S. was SB13, which became effective in September 2021. SB13 prohibits Texas public entities, including state pension plans, from entering into contracts with financial companies that boycott energy companies. SB19, which also took effect in September 2021, prohibits state governmental entities from entering into contracts with companies that boycott firearm entities or firearm trade associations, or may do so in the future. <li data-bbox="675 730 1528 1003">▪ Pursuant to SB13, the Comptroller’s office has published (and periodically updates) a list of financial institutions that the state considers to be “boycotters” of the fossil fuel industry based on questionnaires the Treasurer’s office sent out as well as public statements by these financial institutions, among other sources, and as a result, these entities are no longer allowed to do business with Texas public funds. The Comptroller also issued and revised FAQs on its process for determining which institutions end up on this list. The restricted list and FAQs were last revised in October 2023. Texas is one of four states to have published a restricted financial company list, joining Kentucky, Oklahoma, and West Virginia. <li data-bbox="675 1018 1528 1291">▪ During the most recent legislative session, the legislature introduced anti-ESG bills covering a range of topics such as: prohibiting financial institutions from discriminating against firearms, ammunition, oil and gas companies (i.e., HB5245, HB5252); prohibiting insurance companies from discriminating based on ESG criteria (SB2149), and requiring the governing body of the public retirement system or an investment agent to take into account only financial factors when discharging its fiduciary duties and prohibiting the use the system’s assets to take any action with the purpose of furthering social, political, or ideological interests (SB1446). None of these bills passed before the end of the session. <li data-bbox="675 1306 1528 1579">▪ In addition to introducing anti-ESG bills, a GOP-led Senate committee on state affairs called the hearing on December 15, 2022 amid growing concern in the party that financial firms are pushing a “woke” ideology with investing rules tied to ESG issues. They summoned officials from major asset managers and a proxy voting service to defend their practices before a committee made up of seven Republicans and two Democrats. Leading up to the hearing, Republicans had subpoenaed an additional asset manager to interrogate their position on climate, but the asset manager was not present at the hearing after earlier in the week saying it had withdrawn from the Net Zero Asset Managers initiative. <li data-bbox="675 1593 1528 1866">▪ Additionally, the Attorney General has joined nearly all red state anti-ESG coalitions and has led/co-led several of these initiatives, including (i) the 26-state lawsuit filed in January 2023 against the DOL seeking to vacate its 2022 ESG rule, (ii) the petition for review filed in February 2023, requesting the Fifth Circuit Court of Appeals to set aside the SEC final rule requiring funds to provide more details about their votes on ESG proposals, and (iii) the June 2022 letter to the SEC’s secretary on behalf of 12 Republican attorneys general to oppose the SEC’s proposed rulemaking titled “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” claiming that the SEC is acting outside the scope of its authority

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<p>and expertise in capital markets and instead is attempting to be an environmental regulator.</p>
<p>Utah</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Anti-ESG sentiment is particularly strong in Utah where the legislature has enacted multiple bills this year and the Attorney General has been one of the leading voices in the debate over the role of ESG in public investments. In March 2023, the Governor signed multiple anti-ESG bills into law including: SB96 (requiring a person who manages or invests funds on behalf of a governmental entity to consider only financial factors, which does not include factors intended to further a social, political, or ideological interest), HB449 (prohibiting companies from conspiring together to boycott businesses that do not meet or commit to ESG criteria), and SB97 (prohibiting public entities from entering into contracts with companies that engage in boycott actions based on ESG standards, including boycotts of the fossil fuel and firearms industries). The Attorney General testified at the U.S. House Oversight Committee's ESG hearing on May 10, 2023, calling ESG "an undemocratic tax on our economy and productivity." He has also led or co-led almost all of the red state anti-ESG coalitions over the last couple of years, including, most notably, (i) the 26-state lawsuit filed in January 2023 against the DOL seeking to vacate its 2022 ESG rule, (ii) the February 2023 letter to Congressional leaders on behalf of 27 Republican AG's urging Congress to exercise its authority under the Congressional Review Act to disapprove of the DOL 2022 ESG rule and (iii) the March 2023 letter to asset managers warning them that making commitments to change portfolio company behavior to align with the ESG goal of net zero by 2050 "casts doubt on their adherence to fiduciary requirements, representations to consumers about their services, and compliance with antitrust laws." In May 2023, the Treasurer also sent a letter to the senior executives of a major proxy advisor expressing concern over proxy-voting advice related to ESG and "public money" and how advisory firms may consider factors other than shareholder value or not disclose data on actual vote recommendations. That same month, the Treasurer sent a letter to the chairman/CEO of a major asset manager on behalf of 18 red state treasurers and financial officers, to express concern over ESG considerations and how they impact taxpayers' long-term economic interests, with the implication that considering ESG prevents asset managers from focusing on investors' interests.
<p>Vermont</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> The legislature introduced at least three fossil fuel divestment bills during the 2023 session. Neither of these bills were enacted before the end of the session. H197 would have required the Vermont State Employees' Retirement System, the State Teachers' Retirement System, and the Municipal Employees' Retirement System to divest from fossil fuel companies or affiliates. An amended version of S42, another pension divestment bill related to a carbon footprint review of the state retirement systems, passed in the state Senate in March 2023 but ultimately did not pass in the House. Back in March 2022, a similar fossil fuel divestment bill had been proposed, but that bill died in committee (S251).

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
<p>Virginia</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Given the divided nature of the state legislature, no ESG-related legislation was enacted in 2023, and it seems unlikely that any ESG-related legislation will pass in the near term. House Republicans introduced an anti-ESG bill, HB2335, which sought to prohibit the Board of Trustees of the Virginia Retirement System from engaging in ESG investing unless such “social investment” would provide a superior rate of return compared to a traditional pecuniary investment with a similar time horizon and risk. This bill died in committee. In contrast, Senate Democrats proposed SB213 in January 2022, which sought to prohibit investment in the 200 largest publicly traded fossil fuel companies on behalf of the Board of Virginia Retirement System and local retirement systems. This bill failed to pass, as the legislature ended a two-year period of Democratic control in both houses. Despite not being able to pass ESG-related legislation, Virginia’s executive officials have participated in several red state anti-ESG coalitions this year.
<p>Washington</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Washington has been relatively quiet on the ESG front, introducing only one bill in January 2023 that failed to pass before the legislative session ended. HB1283 would have required the state investment board to publicly report every three years on its analysis of climate-related financial risk, social responsibility, and the establishment and use of proxy voting and corporate governance policies within its private and public market portfolios. The Attorney General and Treasurer have joined two blue state coalitions, including the letter sent to Congressional members in March 2023 on behalf of 21 attorneys general to endorse the DOL’s 2022 ESG rule and oppose the joint resolution introduced by Sen. Braun and Rep. Barr to try and rescind the DOL regulation.
<p>West Virginia</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> West Virginia has been one of the more active states in terms of taking measures to promote an anti-ESG agenda. In March 2023, HB2862 was signed into law, which took effect in June. The legislation establishes a duty that all shareholder votes by or on behalf of the West Virginia Investment Management Board and the Board of Treasury Investments are cast exclusively according to pecuniary factors. Moreover, it provides that ESG factors are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool’s objectives and funding policy. Besides HB2862, at least six other anti-ESG bills were introduced during the most recent legislative session, which were mainly focused on prohibiting discrimination against firearm entities, including creating a ban list of financial institutions that boycott firearms companies. All of these bills failed to pass. Last year, the legislature enacted SB262, which authorized the Treasurer to prepare and maintain a list of financial institutions engaged in a “boycott of energy companies.” Inclusion on the list would mean the bank or financial institution has been deemed ineligible to enter into, or remain in, banking contracts with the state of West Virginia. West Virginia is one of four states to have published a restricted financial company list, joining Kentucky, Oklahoma, and Texas.

STATE ¹	2023 POLITICAL AFFILIATIONS ²	R&G TAKEAWAYS
		<ul style="list-style-type: none"> In addition to a flurry of legislative activity, the Attorney General and Treasurer have joined nearly all red state anti-ESG coalitions and have led two of these initiatives including (i) the February 2023 petition to request that the Fifth Circuit set aside the SEC’s final rule that requires funds to give more details about their votes on ESG proposals and (ii) the November 2021 letter on behalf of 15 Republican state treasurers and financial officers, asserting how these officials will work to ensure that financial institutions that do not boycott the fossil fuel industry are selected for contracts with their states (this effort, which has been referred to as the “Fossil Fuel Banking Letter” was perhaps the earliest example of coalition activity on the part of the states).
<p>Wisconsin</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> Perhaps as a result of its divided political dynamics, Wisconsin’s elected officials have generally remained quiet in the ESG and public investments debate. As far as we are aware, there has not been any proposed legislation in this area, and the only public position a state official has taken is by the former Treasurer (who was a Democrat) joined the September 2022 open letter from 13 Democrat Treasurers and the New York City Comptroller entitled “For the Long Term” in response to red states blacklisting asset managers and adopting other legislation aimed at curbing consideration of ESG factors in investing.
<p>Wyoming</p> 	<p>Governor Legislature (Senate, House) Attorney General Treasurer</p>	<ul style="list-style-type: none"> On August 3, 2023, the State Loan and Investment Board unanimously adopted a new investment policy that condemns the use of ESG investment criteria. As revised, those managing the state’s roughly \$26 billion worth of investments are reminded that they must seek “the highest total return on a risk adjusted basis.” If the Treasurer’s Office learns that an investment partner is “acting in a non-pecuniary manner,” and if they’re hurting the state’s returns or general revenue, the office will reach out and take some form of action. That could be as minor as asking a firm to modify its policies or as severe as leaving them for a competitor. There were multiple anti-ESG bills introduced at the beginning of the 2023 legislative session; however, none of these proposals advanced. SF0172, which was based on the Heritage Foundation’s State Pension Fiduciary Duty Act, sought to require an investment fiduciary to consider only financial factors when discharging fiduciary duties, SF0159 would have required parties to state contracts to certify that they do not engage in boycotts or discrimination against fossil fuel production, agriculture, timber production and firearms companies, and HB0210 would have authorized the Treasurer to prepare and maintain a list of financial institutions engaged in discrimination against energy companies. Wyoming previously enacted a pro-firearms bill, HB0236, in April 2021, which prohibits financial institutions from discriminating against firearms entities. The Governor, Attorney General and Treasurer have also been active in the red state anti-ESG coalitions, joining at least eight of these initiatives over the last couple of years.

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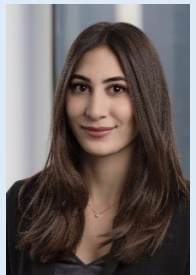
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