ROPES & GRAY

ESG Practice

STATE REGULATION OF ESG INVESTMENT DECISION-MAKING BY PUBLIC RETIREMENT PLANS: AN UPDATED SURVEY

AS OF AUGUST 2022

Last year, Ropes & Gray published **an alert** that described the different approaches states were considering (or had implemented in several cases) regarding the regulation of ESG investments by state retirement systems.

In this alert, we describe the state initiatives adopted to date, as well as other initiatives, including those implemented by the American Legislative Exchange Council, State Financial Officers Foundation and the U.S. Department of Labor.

INTRODUCTION

The growing divide in the ESG regulatory landscape in different states became clear with the passage of legislation in Maine and Texas in 2021, which adopted contradictory ESG policies for state pension fund investments. Maine enacted legislation prohibiting investment by the Maine Public Employees Retirement System in the 200 largest publicly traded fossil fuel companies, as determined by the carbon in their reserves. Additionally, the law requires the retirement system to divest from these restricted companies by January 1, 2026. Similar legislation has been proposed in California, Hawaii, Massachusetts and New Jersey, among others, in recent months.

Conversely, the approach Texas took last June (which several other states have considered since) is to prohibit the state from entering into banking contracts with financial companies that boycott firearms or energy companies. In the past few months, state officials in Texas and West Virginia began warning companies that their boycotting activities endanger the companies' ability to do business with those states. Some government entities have started preemptively excluding targeted financial institutions from bond deals to avoid having to switch underwriters once the states finalize their list of restricted institutions.

This divide deepened over the past year as more than a dozen states introduced new initiatives either to divest state pension funds from gun and ammunition, oil and gas and/or coal companies or, conversely, to require state pension fund divestment from companies that boycott fossil fuel companies. At least one state, Indiana, has considered measures both to divest from fossil fuel companies and to divest from fossil fuel boycotters. Most recently, Florida Governor Ron DeSantis proposed legislation for the 2023 legislative session that would prohibit State Board of Administration (SBA) fund managers from considering ESG factors when investing the state's money and that would require SBA fund managers to only consider maximizing the return on investment on behalf of Florida's retirees. While many state pension divestment bills expressly exclude managed investment funds and private equity funds, some do not. Some initiatives further require that the pension fund board request that investment fund managers create similar funds without the targeted holdings.

Beyond legislation on divestment and state contracts, states are deploying task forces, investigations and report committees to encourage or discourage ESG investing, while some pension funds are adopting their own investment and proxy voting policies that incorporate ESG. The Teacher Retirement System of Texas, for example, announced that it will now consider material ESG factors in its investment decisions—only two weeks after the Texas fossil fuel boycott divestment bill took effect.

Very recently, certain states (including Missouri) have begun utilizing existing antitrust laws and restrictions on investments in companies that are part of the Boycott, Divestment and Sanctions movement (BDS) against Israel to launch investigations under existing laws. Additionally, the state attorneys general of Arizona, Nebraska, Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Ohio, Oklahoma, South Carolina, Texas, Utah and West Virginia have sent a letter to a major asset manager regarding its use of ESG factors in managing state investments (including retirement assets). These actions show that states may act in the ESG space even without passing new laws.

Meanwhile, at the federal level, investment managers are already awaiting final guidance from the U.S. Department of Labor regarding their fiduciary duties with respect to incorporating ESG factors in their investment decisions for ERISA plan clients. Final rules are projected to be issued by December 2022. The labyrinth of state laws and guidance in this area adds another layer of complexity that managers must work through as part of reviewing and updating their investment policies and marketing materials for any funds and managed accounts they oversee, which already accept or plan to accept money from these pension systems.

These conflicting state laws and approaches may also pose challenges to managers as they work to discharge their own fiduciary duties to state retirement plans, especially when restrictions may prohibit a manager from considering investment factors it would otherwise view as significant for purposes of prudently investing state pension assets.

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STATE INITIATIVES

NOTE: *This alert is only a summary of the instruments described herein. It is not a complete description of those instruments.*

COLOR KEY:

Actions Promoting Integration of ESG Considerations in Investment Decisions
Actions Restricting Use of ESG Considerations in Investment Decisions
Actions Promoting Divestment from Fossil Fuel and/or Firearms/Ammunition Companies
Actions Targeting Entities that Boycott Fossil Fuel and/or Firearms/Ammunition Companies

STATE	INITIATIVE	STATUS	SUMMARY
Alaska	Governor to Introduce Legislation to Protect Alaska's Economy	▪ Announced (12/14/20)	▪ Announced the governor's intent to introduce legislation requiring state entities to end relationships with financial institutions that refuse to finance oil and gas exploration and development in the Arctic.
Arizona	Arizona AG Announces Action to Stop Coercive Investment Practices	▪ Announced (11/17/21)	▪ Announced an investigation by the Arizona Attorney General's office regarding the ESG investment practices and Climate Action 100+ membership of major firms.
California	SB1173: Public Retirement Systems / Fossil Fuels: Divestment	▪ Introduced (2/17/22) ▪ Referred to committee (3/2/22) ▪ Passed in chamber (5/25/22) ▪ Introduced in cross chamber (5/26/22) ▪ Referred to cross committee (6/2/22)	▪ Applies to the Boards of the Public Employees' Retirement System and the State Teachers' Retirement System. ▪ Prohibits investment in the 200 largest publicly traded fossil fuel companies as determined by the carbon content of the companies' reserves. Requires divestment by July 1, 2030 from restricted companies.
Connecticut	State Treasurer's Responsible Gun Policy	▪ Announced (12/3/19) ▪ **Approved and in effect (2/19/20)**	▪ Applies to the Connecticut Retirement Plans and Trust Funds. ▪ Prohibits investment in civilian firearms manufacturers. ▪ Requests banks and financial institutions that wish to work with the Office of the Treasurer to disclose their policies on guns. ▪ Requires the Office of the Treasurer to consider a financial institution's firearms policy when contracting for financial services.

STATE	INITIATIVE	STATUS	SUMMARY
Florida	Governor Ron DeSantis Announces "Initiative to Protect Floridians from ESG Financial Fraud"	▪ Announced (7/27/22)	▪ Governor DeSantis's proposed legislation for the 2023 Legislative Session is aimed at "protecting Floridians from woke capital," as it will (i) prohibit large banks, credit card companies and money transmitters from discriminating against customers for their religious, political, or social beliefs; (ii) prohibit SBA fund managers from considering ESG factors when investing the state's money; and (iii) require SBA fund managers to only consider maximizing the return on investment on behalf of Florida's retirees. ▪ In particular, the proposed legislation will amend Florida's Deceptive and Unfair Trade Practices statute to prohibit what Governor DeSantis argues are discriminatory practices by large financial institutions based on "ESG social credit score metrics." Violations will be considered deceptive, and unfair trade practices will be punished according to the law. ▪ Also, at the next SBA meeting, Governor DeSantis will propose an update to the fiduciary duties of the SBA investment fund managers and investment advisors to clearly define the factors fiduciaries are to consider in investment decisions, which will not include ESG factors.
Hawaii	HB557 HD1 / SB488: Employees' Retirement System; Investments; Divestment; Renewable Energy Sources	▪ Introduced (1/25/21) ▪ Referred to committee (2/12/21) ▪ Carryover to next term (12/10/21) **Died in committee**	▪ Applies to the Board of the Employees' Retirement System (ERS) of Hawaii. ▪ Requires the ERS to reevaluate its investments in coal, oil, natural gas, oil or natural gas services, and pipeline companies and, over the next five years, divest of holdings in any companies that have a majority of their holdings invested in fossil fuels, rather than clean renewable energy sources. Effective: July 1, 2050. ▪ **Related Note:** The investment policy statement (IPS) of the ERS currently applies the principles of Responsible Investing in investment practices and decisions where possible and encourages money managers to apply Responsible Investing to their investment portfolios. The IPS says the realm of Responsible Investing includes consideration of ESG factors, where ESG describes the three main areas of concern that are the central factors in measuring sustainability and ethical impact of an investment in a company or business.

STATE	INITIATIVE	STATUS	SUMMARY
Idaho	S1405: Disfavored State Investments	▪ Introduced (3/14/22) ▪ Signed into law (3/28/22) ▪ **In effect (7/1/22)**	▪ Prohibits public entities engaged in investment activities from considering ESG characteristics in a manner that could override the prudent investor rule. ▪ Allows public entities serving as fiduciaries to offer ESG-preferred investments only if the investments are optional and if sufficient alternatives are offered.
Illinois	PA 101-473: Illinois Sustainable Investing Act	▪ Introduced (2/13/19) ▪ Signed into law (8/23/19) ▪ **In effect (1/1/20)**	▪ Directs state and local government entities that manage public funds to consider materially relevant sustainability factors, including corporate governance and leadership, environmental, social capital, human capital, and business model and innovation factors. ▪ **Related Note:** Effective February 24, 2021, the 2021 Proxy Voting Policy Statement allows the Treasurer's Office to vote against directors at companies where the board has failed in its oversight responsibilities (i.e., significant corporate misbehavior, repeated financial restatements or inadequate responses to systemic risks, including climate change, that may have a material impact on performance). It may also vote against directors at companies that have failed to set science-based emissions targets aligned to the goal of limiting global warming or failed to disclose material climate risk exposures and how the company manages and mitigates risks.

STATE	INITIATIVE	STATUS	SUMMARY
Indiana	SB170: Pension Investments in Fossil Fuel Companies	▪ Introduced (1/6/22) ▪ Referred to committee (1/6/22) **Died in committee**	▪ Requires the board of trustees of the Indiana Public Retirement System (INPRS) to establish a plan to divest of any publicly traded company that has been identified as among the 200 largest reserve-owning fossil fuel companies based on the amount of carbon emissions in the company's oil, gas and coal reserves and to complete divestment in restricted companies by December 31, 2029. ▪ Requires INPRS to submit a report to a pension management oversight and budget committee on or before November 1 of each year through 2029.
	HB1224: Government Investments and Contracts	▪ Introduced (1/6/22) ▪ Referred to committee (1/10/22) **Died in committee**	**INVESTMENT / DIVESTMENT** ▪ Applies to the INPRS. ▪ Requires the Board for Depositories to maintain a list of financial companies that boycott energy companies. ▪ Requires divestment within 360 days if a listed financial company does not cease its boycott within 90 days of receiving the notice of the intention to divest. ▪ **Does not apply** to indirect holdings in actively or passively managed investment funds or private equity funds, but does require entities to request that the fund managers remove listed companies from the funds or create similar funds without holdings in these companies. **CONTRACTS** ▪ Prohibits governmental entities from entering a contract worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not boycott energy companies and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.

STATE	INITIATIVE	STATUS	SUMMARY
Kentucky	AG Opinion 22-05: ESG Investment Practices of Public Pension Funds	▪ Announced (5/26/22)	▪ Announced ESG investment practices are inconsistent with Kentucky law governing fiduciary duties owed by investment management firms to public pension plans.
	SB205: State Dealings with Companies that Engage in Energy Company Boycott	▪ Introduced (2/22/22) ▪ **Signed into law and in effect (4/8/22)**	**INVESTMENT / DIVESTMENT** ▪ Applies to state entities that make investments, deposits or transactions exceeding $1 million annually. ▪ Requires the Treasurer to maintain a list of financial companies that boycott fossil fuel companies. ▪ Requires divestment within one year from listed companies that do not cease restricted activities within 90 days of receiving notice of the state governmental entity's intention to divest. ▪ **Does not apply** to indirect holdings in actively or passively managed investment funds or private equity funds, but requires the state governmental entity to request that the fund managers remove listed companies from funds or create similar funds without the listed companies. **CONTRACTS** ▪ Prohibits governmental entities from entering a contract for goods and services worth at least $100,000 and paid at least partly with public funds unless the company verifies in writing that it does not boycott energy companies and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.

STATE	INITIATIVE	STATUS	SUMMARY
Louisiana	HB25: Prohibition on Investing in Certain Companies	▪ Introduced (1/26/22) ▪ Referred to committee (3/14/22) **Died in committee**	▪ Applies to Louisiana state retirement systems. ▪ Prohibits investment in companies that boycott energy companies.
	HR137: Resolution to Invest in Companies that Practice DEI	▪ Introduced (5/16/22) ▪ Referred to committee (5/16/22) **Died in committee**	▪ Requests that state and statewide retirement systems invest in companies and work with minority fund managers that practice diversity, equity and inclusion.
	HR203: Resolution to Create ESG Task Force	▪ Introduced (5/26/22) ▪ Adopted (6/6/22)	▪ Creates the Environmental, Social and Governance Task Force to study the use of ESG factors in lending and investment.
	HR246: Resolution to Create ESG Study Group	▪ Introduced (6/3/22) ▪ Adopted (6/6/22)	▪ Creates the Environmental, Social and Governance Criteria Study Group to make recommendations regarding regulation of the use of ESG factors in lending and investment.
	Bond Commission Protects Second Amendment Rights	Ongoing	▪ In 2018, the State Bond Commission rejected Citigroup and Bank of America as underwriters because of their firearms policies. ▪ In 2020, the Commission excluded Citigroup from its list of favored banks owing to the company's gun control policies. ▪ In 2021, the Commission replaced JPMorgan Chase on a refinancing contract owing to the company's refusal to do business with companies that manufacture military-style weapons for civilians.

STATE	INITIATIVE	STATUS	SUMMARY
Maine	HP65 / LD 99: Limitation on Investment in Fossil Fuel Companies; Divestment	▪ Introduced (1/11/21) ▪ **Signed into law and in effect (6/16/21)**	▪ Applies to the Maine Public Employees Retirement System. ▪ Prohibits investment in the 200 largest publicly traded fossil fuel companies as determined by the carbon in their reserves. Requires divestment by January 1, 2026 from restricted companies.
Maryland	HB740 / SB566: State Retirement and Pension System—Investment Climate Risk—Fiduciary Duties	▪ Introduced (2/1/22) ▪ Enacted (4/9/22) ▪ **In effect (6/1/22)**	▪ Applies to the Maryland State Retirement and Pension System. ▪ Requires the Board to address climate risk management in the investment policy manual and to report annually on the level of climate risk across its investment portfolio. ▪ Allows the Chief Investment Officer to invest or divest based on the information in the report.
Massachusetts	H4170: Public Pension Fund Divestment from Climate Risk Investments	▪ Introduced (9/30/21) ▪ In committee (9/30/21)	▪ Applies to the Massachusetts Pension Reserves Investment Trust (PRIT). ▪ Prohibits investment in "climate risk investments," defined as fossil fuel investments and investments in other industries that contribute to climate change and pose a risk to the performance of the public fund. Requires divestment by January 1, 2025 from restricted companies. ▪ **Does not apply** to indirect holdings in actively managed investment funds, but requires the Board to request that the fund managers remove restricted companies from the funds or create similar funds without holdings in these companies.
	PRIM Board Approves Plan	▪ Announced (2/18/22)	▪ Applies to the Pension Reserves Investment Management (PRIM) Board. ▪ Creates an ESG committee comprising industry experts to help leverage the PRIM fund to promote ESG labor, diversity and environmental goals while maintaining and increasing returns. ▪ **Related Note:** Effective March 1, 2022, the PRIM Board's Custom Proxy Voting Guidelines require the Board to vote against any director at a company that is not aligned with the Paris Climate Agreement and Climate Action 100+.

STATE	INITIATIVE	STATUS	SUMMARY
Massachusetts (cont.)	H43: Requiring Public Pension Fund Divestment from Ammunition and Firearms	▪ Introduced (4/13/21) ▪ Referred to committee (4/13/21)	▪ Applies to PRIT. ▪ Prohibits investment in any ammunition, firearm or firearm accessory manufacturing or retailing companies. Requires divestment within 12 months from restricted companies. ▪ **Does not apply** to indirect holdings in actively managed investment funds, but requires the Board to request that the fund managers remove restricted companies from the funds or create similar funds without holdings in these companies.
	S722: Authorizing Independent Retirement Boards to Divest from Fossil Fuel Companies	▪ Introduced (3/29/21) ▪ Referred to committee (3/29/21) ▪ Referred to cross committee (2/14/22)	▪ Allows some state public pension systems to divest from fossil fuel companies and invest in index funds that may not include fossil fuel companies. ▪ **Does not apply** to the State Employees Retirement System, the State Teachers' Retirement System or the State-Boston Retirement System.
Minnesota	SF3384 / HF4028: Report Mandate on Impact of Climate Change on State's Fossil Fuel Investments	▪ Introduced (2/24/22) ▪ Referred to committee (2/24/22) **Died in committee**	▪ Requires the Minnesota State Board of Investment to prepare a report addressing the financial risks of staying invested in fossil fuel companies and identifying alternative investments.
	SF4441 / HF4574: Stop ESG and Social Credit Score Discrimination Act	▪ Introduced (4/4/22) ▪ Referred to committee (4/4/22) **Died in committee**	**INVESTMENT / DIVESTMENT** ▪ Applies to the Combined Funds, which holds the assets of the Minnesota State Retirement System, the Public Employees Retirement Association and the Teachers Retirement Association. ▪ Prohibits investment in companies that boycott mining, energy production, production agriculture or commercial lumber production. Requires divestment by July 1, 2027 from restricted companies. **CONTRACTS** ▪ Prohibits the state and all state agencies from entering a contract for goods or services with a restricted company as of July 1, 2022.

STATE	INITIATIVE	STATUS	SUMMARY
Minnesota (cont.)	HF4904: Energy Discrimination Elimination Act	▪ Introduced (5/23/22) ▪ Referred to committee (5/23/22) **Died in committee**	**INVESTMENT / DIVESTMENT** ▪ Applies to state pensions to which the law is designed to apply as determined by the Commissioner of Commerce. ▪ Requires the Commissioner to maintain a list of financial companies that boycott fossil fuel companies. ▪ Prohibits investment in listed companies. Requires divestment from listed companies that do not cease their boycotts within 90 days of receiving notice of the state entity's intention to divest. ▪ **Does not apply** to indirect holdings in actively or passively managed investment funds or private equity funds, but requires the state entity to request that the fund managers remove listed companies from the funds or create similar funds without holdings in these companies. **CONTRACTS** ▪ Prohibits Minnesota state governmental entities from entering a contract for goods or services worth at least $50,000 and paid at least partly from public funds unless the company verifies in writing that it does not boycott fossil fuel companies and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.
Missouri	SB1048: Creates Provisions Relating to Contracts Between Public Entities and Companies Who Discriminate Against Firearms Manufacturers	▪ Introduced (1/12/22) ▪ Referred to committee (3/1/22) **Died in committee**	▪ Prohibits Missouri public entities from entering a contract for the purchase of goods or services worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not discriminate against firearm entities or trade associations and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.
Nevada	Nevada to End Investment in Assault-Style Weapon Manufacturers	▪ Announced (6/3/22)	▪ Announced that the state will divest from businesses that sell or manufacture assault-style weapons.

STATE	INITIATIVE	STATUS	SUMMARY
New Jersey	A1733 / S416: Prohibiting Investment of State Pension Funds in 200 Largest Publicly Traded Fossil Fuel Companies	▪ Introduced (1/11/22) ▪ Referred to committee (1/11/22)	▪ Applies to pension and annuity funds managed by the Director of Investment, including the New Jersey Public Employees' Retirement System and the Teachers' Pension & Annuity Fund. ▪ Prohibits investment in the 200 largest publicly traded fossil fuel companies as determined by the carbon content in their reserves. Requires divestment from coal companies within 24 months and from all other fossil fuel companies by January 1, 2022.
	A1752 / S1407: Prohibiting Investment of State Pension Funds in Companies Manufacturing Assault Firearms for Civilian Use	▪ Introduced (1/11/22) ▪ Referred to committee (1/11/22)	▪ Applies to pension and annuity funds managed by the Director of Investment, including the New Jersey Public Employees' Retirement System and the Teachers' Pension & Annuity Fund. ▪ Prohibits investment in companies that manufacture, import or sell assault firearms for civilian use. Requires divestment within three years from restricted companies.
New York	New York State Pension Fund Sets 2040 Net Zero Carbon Emissions Target	▪ Announced (12/9/20)	▪ Applies to the New York State Common Retirement Fund (Fund). ▪ Calls for 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.
	NYSTRS Freezes Investments in Top 20 Oil, Gas and Coal Companies	▪ Announced (12/28/21)	▪ Applies to the New York State Teachers' Retirement System (NYSTRS). ▪ Announces divestment from direct holdings in coal producers and a freeze on further investment in NYSTRS's 10 largest holdings in thermal coal companies, 10 largest holdings in oil and gas companies, and all oil sands companies.
	S4783A / A6331: Teachers' Fossil Fuel Divestment Act	▪ Introduced (2/12/21) ▪ Referred to committee (1/5/22)	▪ Applies to NYSTRS. ▪ Prohibits investment in coal producers and oil and gas producers. Requires divestment from coal producers within one year and from oil and gas producers within two years. ▪ Requires divestment within five years from private equity and private debt investments in restricted companies.

STATE	INITIATIVE	STATUS	SUMMARY
North Dakota	SB2291: Social Investment—Prohibition	▪ Introduced (1/25/21) ▪ Signed into law (3/23/21) ▪ **In effect (3/4/21)**	▪ Applies to the State Investment Board. ▪ Prohibits "social investment" (defined as an investment made for a purpose other than maximizing returns to the state), unless the Board can demonstrate that the investment will perform at least as well as a similar non-social investment. ▪ Directs the Department of Commerce to report by June 1, 2022 on ESG-related investment policy, the state's involvement with companies that consider ESG rankings in their business decisions, and the potential implications of companies' boycott of energy or production agriculture commodities. All aspects of boycotts, including the transport, sale, utilization, production or manufacturing of natural gas, oil, coal, petrochemicals or production agricultural commodities must be evaluated.
Oklahoma	HB2034: Energy Discrimination Elimination Act of 2022	▪ Introduced (3/10/21) ▪ Signed into law (5/9/22) ▪ **In effect (11/1/22)**	**INVESTMENT / DIVESTMENT** ▪ Applies to all Oklahoma state retirement systems. ▪ Requires the Treasurer to maintain a list of financial companies that boycott energy companies. ▪ Prohibits investment in listed companies. Requires divestment within 360 days from listed companies that do not cease their boycott within 90 days of receiving notice of the state entity's intention to divest. ▪ **Does not apply** to indirect holdings in actively or passively managed investment funds or private equity funds, but requires the state entity to request that the fund managers remove listed companies from the funds or create similar funds without holdings in these companies. **CONTRACTS** ▪ Prohibits state governmental entities from entering a contract for goods or services worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not boycott energy companies and will not do so during the contract term. Only applies to companies with at least 10 full-time employees. ▪ Prohibits state governmental entities from entering a contract for goods or services with a listed company unless no alternatives are available.

STATE	INITIATIVE	STATUS	SUMMARY
Oklahoma (cont.)	HB3144: Prohibiting Governmental Entities from Contracting with the Companies Unless the Contract Contains Certain Written Verification	▪ Introduced (2/7/22) ▪ Referred to committee (2/8/22) ▪ Passed in chamber (3/23/22) ▪ Amended and passed in cross chamber (4/27/22) ▪ Referred to conference committee (5/4/22) ▪ Conference committee version passed in chamber (5/17/22) ▪ Conference committee version introduced in cross chamber (5/17/22) **Died in committee**	▪ Prohibits Oklahoma state governmental entities from entering a contract for goods or services worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not discriminate against firearm entities or firearm trade associations and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.
Oregon	Oregon Investment Council Formally Integrates ESG	▪ Announced (9/14/20)	▪ Recognizes that integrating ESG factors into investment decisions may improve the economic outcome of investments and aid in risk assessment.
Pennsylvania	SB748: Amendment to Protecting Pennsylvania's Investments Act	▪ Introduced (7/7/21) ▪ Referred to committee (7/7/21)	▪ Applies to the Pennsylvania State Employees' Retirement System and the Public School Employees' Retirement System. ▪ Prohibits investment in assault weapons manufacturers. Requires divestment within 26 months from restricted companies that do not cease their weapons manufacturing activities within 180 days of receiving notice of the state entity's intention to divest. ▪ **Does not apply** to indirect holdings or holdings in alternative investments.
Rhode Island	Rhode Island to Divest from Private Prisons, Gun Makers	▪ Announced (1/22/20)	▪ Applies to the Employees' Retirement System of Rhode Island. ▪ Announces that the State Investment Commission will divest from companies that manufacture assault-style weapons for civilian use or operate private for-profit prisons.

STATE	INITIATIVE	STATUS	SUMMARY
Texas	Teacher Retirement System Adopts Formal ESG Policy	▪ Adopted (9/16/21) ▪ **In effect (10/1/21)**	▪ Applies to the Teacher Retirement System of Texas. ▪ Directs the Investment Division to consider ESG factors that are material to long-term returns and levels of risk (Investment Policy Statement §1.5).
	SB13: Relating to State Contracts with and Investments in Certain Companies that Boycott Energy Companies	▪ Introduced (3/11/21) ▪ Signed into law (6/14/21) ▪ **In effect (9/1/21)**	**INVESTMENT / DIVESTMENT** ▪ Applies to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, the Texas County and District Retirement System, the Texas Emergency Services Retirement System and the permanent school fund. ▪ Requires the Comptroller to maintain a list of financial companies that boycott energy companies. ▪ Prohibits investment in listed companies. Requires divestment within 360 days from listed companies that do not cease their boycott within 90 days of receiving notice of the state entity's intention to divest. ▪ **Does not apply** to indirect holdings in actively or passively managed investment funds or private equity funds, but requires the state entity to request that the fund managers remove listed companies from the funds or create similar funds without holdings in these companies. **CONTRACTS** ▪ Prohibits state governmental entities from entering a contract for goods or services worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not boycott energy companies and will not do so during the contract term. Only applies to companies with at least 10 full-time employees. **UPDATE** ▪ In April 2022, Comptroller Hegar requested information from over 150 companies about their fossil fuel policies, several of which had already filed letters with the Texas Attorney General stating that they did not boycott energy companies. Owing to these companies' uncertain status, some have been dropped from recent bond deals.

STATE	INITIATIVE	STATUS	SUMMARY
Texas (cont.)	SB19: Relating to Prohibited Contracts with Companies that Discriminate Against the Firearm or Ammunition Industries	▪ Introduced (3/3/21) ▪ Signed into law (6/14/21) ▪ **In effect (9/1/21)**	▪ Prohibits state governmental entities from entering a contract for the purchase of goods or services worth at least $100,000 and paid at least partly from public funds unless the company verifies in writing that it does not boycott firearm entities or firearm trade associations and will not do so during the contract term. Only applies to companies with at least 10 full-time employees.
Utah	Treasurer's Statement on ESG	▪ Updated (5/16/22)	▪ States that Treasurer Oaks "is committed to pushing back against ESG."
Vermont	S251: Divestment of State Pension Funds from Fossil Fuel Companies	▪ Introduced (1/13/22) ▪ Referred to committee (3/15/22)	▪ Applies to the Vermont Pension Investment Commission, the Vermont State Teachers' Retirement System, the Vermont State Employees' Retirement System and the Vermont Municipal Employees' Retirement System. ▪ Prohibits investment in the 200 publicly traded fossil fuel companies whose fossil fuel reserves have the largest potential carbon emissions. Requires divestment by January 1, 2025 from restricted companies.
Virginia	SB213 / HB645: Virginia Retirement System and Local Retirement Systems; Fossil Fuel Divestment; Report	▪ Introduced (1/10/22) ▪ Referred to committee (1/10/22) **Died in committee**	▪ Applies to the Board of the Virginia Retirement System and to local retirement systems. ▪ Prohibits investment in the 200 publicly traded fossil fuel companies with the largest fossil fuel reserves and the 30 largest public companies with coal-fired power plants. Requires divestment by January 1, 2027 from restricted companies.

STATE	INITIATIVE	STATUS	SUMMARY
West Virginia	HB3084: Providing Commercial Discrimination of Producers of Coal, Gas, Oil, Carbon-Based Energy, and Other Products in the State of West Virginia	▪ Introduced (1/12/22) ▪ Referred to committee (1/12/22) **Died in committee**	▪ Applies to the Board of Trustees of the West Virginia Public Employees Retirement System. ▪ Requires the Treasurer to maintain a list of businesses that boycott fossil fuel, forestry and agricultural companies. ▪ Prohibits investment in listed businesses. Requires divestment within 15 months from listed businesses that do not cease their boycott within 90 days of receiving notice of the Board's intention to divest. ▪ **Does not apply** directly to private equity funds, but requires the Board to make reasonable efforts during due diligence to determine whether a private equity partnership invests in a restricted business.
	SB555: Relating to Financial Institutions Engaged in Boycotts of Firearms Companies	▪ Introduced (2/2/22) ▪ Referred to committee (2/2/22)	▪ Allows the Treasurer to maintain a list of financial institutions that boycott firearms companies. ▪ Allows the Treasurer to disqualify bids from listed institutions, to refuse to enter state banking contracts with them and to require an institution to verify in writing that it will not boycott firearms companies during the contract term. ▪ **Does not apply** to the West Virginia Investment Management Board.
	SB262: Relating Generally to Financial Institutions Engaged in Boycotts of Energy Companies	▪ Introduced (1/13/22) ▪ Passed (3/12/22) ▪ **In effect (6/10/22)**	▪ Allows the Treasurer to maintain a list of financial institutions that boycott energy companies. ▪ Allows the Treasurer to disqualify bids from listed institutions, to refuse to enter state banking contracts with them and to require an institution to verify in writing that it will not boycott energy companies during the contract term. ▪ **Does not apply** to the West Virginia Investment Management Board. ▪ **Update**: On July 28, 2022, West Virginia State Treasurer Moore announced the publication of West Virginia's first Restricted Financial Institution List, which listed BlackRock, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo as engaged in boycotts of fossil fuel companies and therefore no longer eligible to enter into state banking contracts with his Office.

OTHER RELATED INITIATIVES

	INITIATIVE	STATUS	SUMMARY
American Legislative Exchange Council (ALEC) Model Policies	Energy Discrimination Elimination Act	▪ First draft introduced (7/29/21) ▪ Second draft introduced (12/3/21)	▪ No final version published. ▪ Contains essentially the same provisions as Texas SB13 and Oklahoma HB2034, which were introduced about four months earlier. Slightly differing versions have been introduced in 2022 in Minnesota (HF4904, died in committee), Indiana (HB1224, died in committee) and Kentucky (SB205, passed 4/8/22).
	State Government Employee Retirement Protection Act	▪ Final version published (3/18/22) ▪ Draft amendments introduced (4/6/22)	▪ Directs government pension plan fiduciaries to consider only pecuniary factors in their investment decisions and to weigh ESG factors solely according to their impact on economic risk and return. ▪ Prohibits voting shares to promote non-pecuniary or non-financial goals.
State Financial Officers Foundation	Fossil Fuel Banking Letter	▪ Published (11/22/21)	▪ States that financial officers from 15 states will work to ensure that financial institutions that do not boycott the fossil fuel industry are selected for contracts with their states. ▪ State Financial Officers Foundation currently comprises financial officers from 22 states.
U.S. Department of Labor	Proposed Rule: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights	▪ Published (10/13/21) ▪ Comment period closed (12/31/21) ▪ Final rule (expected 12/22)	▪ Clarifies that the economic effects of ESG factors may have a material impact on the projected return of an investment and are thus within the scope of a fiduciary's evaluation. ▪ Applies the same standard to qualified default investment alternatives (QDIAs) as to other investments–i.e., a focus on material risk-return factors. ▪ Allows fiduciaries to consider non-economic benefits in a tiebreaker between competing investments, even if they are economically distinguishable. ▪ Eliminates the special standards for shareholder rights and proxy voting and instead applies the general duties of prudence and loyalty.

ABOUT ROPES & GRAY'S PRACTICE

Ropes & Gray has a leading ESG, CSR, and business and human rights compliance practice. We offer clients a comprehensive approach to these subject areas through a global team with members in the United States, Europe and Asia. In addition, senior members of the practice have advised on these matters for more than 30 years, enabling us to provide a long-term perspective that few firms can match.

For further information on our practice, click here.

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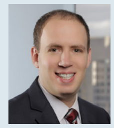

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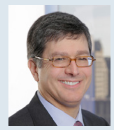

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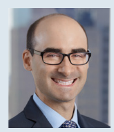

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