Anti-ESG Legislation
Why it Matters & What States Can Do

July 10th at 2pm ET
Introduction

Kristen Soares

State Climate Policy Network Manager
State Climate Policy Network (SCPN)

- Network of 18,000+ policymakers, advocates, business leaders and experts pushing for effective and equitable climate policies in their states
- Host monthly national calls and webinars
- Share updates, research, and analysis on various climate policy topics
How can we help you?

We specialize in state climate policy design and analysis. Reach out to kristen@climate-xchange.org with your questions on:

- **Bill drafting**, analysis, and technical design
- **Gap analysis** of your state’s climate policy landscape
- **Example states** to follow for a given policy

Or, check out our **State Climate Policy Dashboard**, which tracks state-level climate policy and resources across all 50 states.
Speakers

Connor Gibson  
**Opposition Research Specialist**

Jordan Haedtler  
**Climate Financial Policy Consultant**

Jessica Church  
**Advocacy & Political Manager, Take on Wall Street Americans for Financial Reform**
Legislative Strategies in the States
Updated Facts (7/5)

165 distinct legislations / 37 states

➔ 84 dead bills / 23 states:

◆ No laws / 18 states

◆ 42 bills / 10 states carry over into 2024 - watch for IA, OK, SC

➔ 22 bills + 6 resolutions were approved / 14 states

➔ Active bill in OH passed the Senate
WEAPONIZING STATE CONTRACTS

Models:

● **Energy Discrimination Elimination Act (ALEC)**
  ○ No laws in 2023. 5 in previous years.

● **Eliminate Economic Boycotts Act (Heritage)**
  ○ 5 laws / 4 states.

● **Protecting Free Enterprise and Investments Act (FGA)**
  ○ 3 laws + 1 res. / 4 states.

*anti-BDS adaptations*
WAGERING RETIREE PENSIONS

Models:

- State Government Employee Retirement Protection Act (ALEC)
  - 7 laws / 6 states
- State Pension Fiduciary Duty Act (Heritage)
  - 4 laws / 4 states
Indiana pension system contracts with conservative anti-ESG firm
Strive co-founder Vivek Ramaswamy paid $4,000 an hour; now running for president

SOURCE: DOCUMENTED

– The Late Show with Stephen Colbert / Tooning Out the News (video)
DISCLOSURE + LIABILITY THREAT

Model:
- “Fair Access to Financial Services Act” … hmm…
  - 25 bills were considered in 18 states
  - No laws passed in any state.
- Bills appear to be based on New Hampshire’s 2022 HB 1469.
- Circulated by The Heartland Institute

The New York Times

Senate Bill Would Outlaw Bank Discrimination for the First Time
Democrats unveiled a proposal to close a loophole in the Civil Rights Act of 1964 after a New York Times report on obstacles faced by customers.
A Solution Is in Sight for the ESG Controversy

It’s fine for investors to support social objectives, but only with disclosure and affirmative consent.

By Vivek Ramaswamy
Jan. 16, 2023 2:28 pm ET
STOKING FEAR THROUGH ESG SCORES

23 BILLS WERE CONSIDERED IN 13 STATES THIS YEAR

5 LAWS PASSED IN 5 STATES

- Florida HB 3
- Texas SB 833
- North Carolina H 750
- Idaho H 191
- Utah HB 281

No known models.
No known models...yet.

Text was often copied verbatim across states.

10 BILLS & RESOLUTIONS WERE CONSIDERED IN 8 STATES

NO LAWS PASSED. THREE RESOLUTIONS WERE APPROVED:

Louisiana HCR 59  Missouri HR 12  Montana HJ 11
Legislation Opponents

Private Sector:
- State Bankers Associations
- State Chambers of Commerce
- Insurance lobbyists (ex: APCIA)

Government:
- Investment & financial officers
- Pension fund leadership

Labor:
- AFL-CIO, SEIU, AFT, NEA

Climate Advocates:
- Sierra Club
- Climate Cabinet
- Ceres

Libertarians & Free Marketeers:
- Cato Institute
- R Street Institute
- National Taxpayers Union
- AZ Republican Liberty Caucus
Legislation Proponents
2023
STATEHOUSE
REPORT:
Right-Wing Attacks on the Freedom to Invest
Responsibly Falter in Legislatures
Jordan Haedtler

Climate Financial Policy Consultant
CLIMATE FINANCE IN THE STATES
Climate change as a threat to the financial system

**Physical Risks:**
- Damages from floods
- Wildfires
- Drought

**Transition risks:**
- Lost value
- Utilities
- Energy

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**Wildfires: Burning Through State Budgets**

Increased spending on suppression threatens fiscal stability and impedes cost-saving mitigation efforts.
Under the Biden admin, federal climate financial regulation is taking shape

- Department of Labor: Climate risk
- SEC: Climate risk disclosure rule
- SEC: ESG standards
- Banking agencies (Federal Reserve, OCC, FDIC): Climate-related financial risk guidance
- Federal Insurance Office: Data collection for home property insurance

“Climate change is an emerging and increasing threat to America’s financial system that requires action”
- Treasury Secretary Janet Yellen
States are critical battlegrounds in the years ahead.
States are attacking the “freedom to invest”
Limited Progress Protecting Pensions from Climate Risk
Policy considerations when shaping climate risk legislation

- “Offense” vs. “Defense”
- “Voice” vs. “Exit”
- Proxy voting power
Strengthen state insurance regulation

- Climate risk disclosure
- Insurance “scenario analysis”
- Climate-based capital requirements
Speaker

Jessica Church

Advocacy & Political Manager, Take on Wall Street
Americans for Financial Reform
Anti-ESG at the Federal Level

Jessica Church
Advocacy and Political Manager
Take On Wall Street
Threats to regulatory agenda

- DOL ESG rule
- Climate-risk disclosures
- Human capital management disclosures
- Shareholder proposals rule
- Private markets rules

Tools: Congressional Review Act resolutions, bad bills, & lawsuits
Congress wants in on the action

ESG Part I: An Examination of Environmental, Social, and Governance Practices with Attorneys General

Subject: ESG Part I: An Examination of Environmental, Social, and Governance Practices with Attorneys General
Date: May 10, 2023
Time: 10:00 am
Place: 2154 Rayburn

Full Committee on Oversight and Accountability

ESG Part II: The Cascading Impacts of ESG Compliance

Subject: ESG Part II: The Cascading Impacts of ESG Compliance
Date: June 6, 2023
Time: 2:00 pm
Place: 2154 Rayburn

Economic Growth, Energy Policy, and Regulatory Affairs
Health Care and Financial Services
Rep. Andy Barr (R-Ky.) declares July “ESG month”

(AND NOT IN A GOOD WAY)

- July 12: House Financial Services Committee Full Hearing on ESG at 10am
- July 13: Capital Markets Subcommittee Hearing on ESG at 10am
- July 13: Oversight Subcommittee Hearing on ESG at 2pm
- July 14: Housing and Insurance Subcommittee Hearing on ESG at 9am
- July 18: Capital Markets Subcommittee Hearing on ESG at 10am
- July 18: Financial Institutions Subcommittee Hearing on ESG at 10am
- July 26: Markup on ESG Bills
The Ensuring Sound Guidance (ESG) Act: This act would jeopardize the ability of fiduciaries that manage workers’ money from taking all relevant risks and opportunities into account in their investment decisions. It would amend the Investment Advisers Act and ERISA to make the unworkable pecuniary v. non-pecuniary distinction from the Trump-era DOL rule some states are trying to replicate.

The Investor Democracy is Expected (INDEX) Act: This act would undermine workers’ shareholder voice by letting asset managers opt out of voting their clients’ shares. This lets asset managers off the hook on their duty to vote in their clients’ best interests.

The Putting Investors First Act: This act would stymie the ability of proxy advisory firms to give sound advice to investors, particularly when that advice is to vote against management’s recommendation.

The Mandatory Materiality Requirement Act: This act would stymie the SEC’s ability to fulfill its investor protection mission by making it harder for the agency to issue rules requiring disclosures that are important to investors.
The Protect Farmers from the SEC Act: This act would block the SEC’s ability to require information from public companies that is critical for investors to protect themselves from climate-related risks. (The SEC climate disclosure rule, as proposed, includes extensive protections to avoid burdens on small private businesses—including small farmers.)

Scope 3 Act: This Act would block the SEC from requiring Scope 3 emissions from any issuer. Scopes 3 emissions has nearly unanimous support from investors who told the SEC during the comment period that they need this information to assess transition risk of companies.

Stop TSP ESG Act: This act would undermine the shareholder voice of the federal workers whose money is being invested for retirement through the Thrift Savings Plan by prohibiting the asset managers contracted to manage that money from voting their clients’ shares.

No ESG at TSP Act: This act would prevent federal workers saving for retirement through the Thrift Savings Plan from investing in ESG funds.
What’s the good news?
Progressive Groups Are Mobilizing

- Americans for Financial Reform is hosting a **July 18th Hill Briefing** on “Protecting Workers' Retirement Security from Anti-ESG Attacks”
- Working with Congressional Progressive Caucus to distribute **messaging materials**
- Segmenting our messaging to target **key constituencies** who are not yet involved in this fight
- Using online communication tools to **inform and educate activists**
- Working with allies to build consensus on what an **affirmative policy agenda** can look like
Voters are on our side

- 63% of voters agree the government should not set limits on corporate ESG investments, including 70% of Republicans and 57% of Democrats.

- 76% of voters agree that companies should be held accountable to make a positive impact on communities in which they operate, including 69% of Republicans and 82% of Democrats.
Our Vision:
Worker Power
Climate Justice
Racial Equity
Q&A
Thank you for joining!

Reach out to kristen@climate-xchange.org with any additional questions!