
[Florida Becomes Latest State to Propose Anti-ESG Legislation: Saul Ewing]

On July 27, 2022, Florida Governor Ron DeSantis announced legislative proposals and initiatives that would prevent State Board of Administration (SBA) fund managers from considering environmental social and governance (ESG) factors when investing the state's money. Instead, the proposed legislation would require SBA fund managers to only consider maximizing the return on investment for Florida's retirees. The proposed legislation would also amend Florida's Deceptive and Unfair Trade Practices statute to prohibit discriminatory practices by large financial institutions based on ESG social credit score metrics, with violations considered to be deceptive and unfair trade practices punishable by law. The announcement indicated that the legislation would be proposed in the 2023 Legislative Session.

What You Need to Know

- Florida's Governor announced proposed legislation that would prevent state fund managers from considering ESG factors when investing state money, and prohibit discriminatory practices by financial institutions based on ESG social credit score metrics.
- Florida joins a growing list of mostly conservative states that have proposed or enacted anti-ESG legislation aimed at the ESG policies of financial institutions.
- Anti-ESG legislation at the state level may impact municipal bond markets and increase borrowing costs if they require or otherwise induce certain financial institutions to withdraw from those markets.

Gov. DeSantis stated that the proposed legislation and initiatives will "protect[] Floridians from woke capital" in response to "the corporate elite us[ing] their economic power to impose policies on the country that they could not achieve at the ballot box." Specifically, the proposed legislation will:

- Prohibit financial institutions from discriminating against customers for their religious, political, or social beliefs;
- Prohibit SBA fund managers from considering ESG factors when investing the state's money; and
- Require SBA fund managers to only consider maximizing the return on investment on behalf of Florida's retirees.

Florida Joins Growing List of States Proposing Anti-ESG Legislation

Florida joins a list of states that have proposed or enacted anti-ESG legislation, but is one of the largest states to propose such legislation, with considerable assets that would be impacted. Indeed, more than a dozen states have proposed or enacted legislation aimed at financial institutions which utilize ESG policies that would appear to threaten their livelihoods or run contrary to prevailing political values in the state. Most of those states are conservative, such as Texas, Oklahoma and Kentucky, but "purple" states such as Ohio and Arizona have also enacted anti-ESG measures.

For example, in 2021, Texas passed a law that bans its municipalities from doing business with banks that have ESG policies against fossil fuels and firearms, as a means of protecting Texas' reliance on those industries. As a result, Texas cities can no longer use banks with such ESG policies as underwriters for municipal bonds (although there are exceptions).

Unintended Consequences of Anti-ESG Legislation

After Texas passed the law, five of the largest underwriters exited the municipal bond market: JPMorgan Chase, Goldman Sachs, Citigroup, Bank of America, and Fidelity. Those five institutions used to underwrite 35 percent of the debt in the market. The gap that they left in the market, the decreased competition as a result of their departure, and the loss of historic relationships between various municipalities with those institutions has increased borrowing costs. Indeed, a recent study conducted by Wharton analyzed data from the first eight months of the Texas law and estimated that Texas cities will pay an additional $303 million to $532 million in interest on $32 billion in bonds.

As states (especially conservative ones) continue to consider and propose anti-ESG legislation, financial institutions may be forced to decide whether to withdraw from those markets as well, or otherwise evaluate their level and manner of participation. Should that happen, there may be similar increases in borrowing costs as seen in Texas due to decreased competition in the market and loss of historic relationships with lending partners.

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