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Texas and Oklahoma Anti-ESG Laws Defended Amid Attacks.

The wagons are circling around anti-environmental, social, and governance laws enacted in Texas and Oklahoma amid a flurry of studies on their financial impact and congressional scrutiny.

The two states were early enactors of laws that led to the blacklisting of more than 20 financial firms, including municipal bond underwriters, for "boycotting" or "discriminating" against the fossil fuel or firearm industries. The laws call for divestment of public pension and other assets and prohibit governmental contracts worth $100,000 or more with banned firms.

The passage of a wide-variety of anti-ESG bills slowed dramatically this year with Pleiades Strategy, a research and advisory firm, reporting just six becoming law, compared to 23 in 2023. Louisiana in June enacted a law aimed at punishing banks and others unfriendly to the gun industry.

Studies pointing to adverse financial and economic impacts from the Texas and Oklahoma laws are piling up, attracting attention from Democratic members of the U.S. House Judiciary Committee who requested information on their financial effects.

"A growing body of evidence demonstrates that these policies threaten public employees' retirement savings and leave taxpayers on the hook for higher fees and increased borrowing costs," Reps. Jerrold Nadler, D-N.Y., and J. Luis Correa, D-Calif., said in a May 20 letter to Texas officials.

They cited a study by researchers at The Wharton School and Chicago Federal Reserve that was the first to examine the fallout from diminished underwriter competition under two Texas laws. It found bond issuers in the Lone Star State will incur $300 million to $500 million in additional interest on $31.8 billion of debt sold during the first eight months after the laws took effect Sept. 1, 2021.

A more recent study conducted for the Texas Association of Business Chambers of Commerce Foundation that showed a spike in average underwriting spreads per $1,000 of bonds issued by Texas local governments since the laws' effective date was also cited in the inquiry.

Texas Comptroller Glenn Hegar called the studies "erroneous and fundamentally flawed" in his June 7 response to the federal lawmakers, which also highlighted the more than $9 billion in oil and natural gas production tax revenue that flowed into the state's coffers in fiscal 2023.

"Because there is a myriad of factors that affect these (issuance and borrowing) costs, including the size, type, credit quality, liquidity and structure of each municipal bond transaction, not to mention general economic conditions such as a significantly higher interest rate environment, it is impossible to accurately conclude that any transitory adjustments or disruptions on the municipal bond market in Texas are solely or even partially attributable to the change in statute," he wrote.

Justin Marlowe, director of the Center for Municipal Finance at the University of Chicago's Harris School of Public Policy, said while it's good to see some evidence on actual financial impacts making its way into the debate over anti-ESG state laws, more and better data is required.

"We need more updated data to not necessarily prove the point, I think the Wharton study and

others do a pretty good job of showing that there was an impact," he said. "The question is whether the negative financial impacts for borrowers in the state have sustained ? whether that's been an ongoing phenomenon or whether it was just a more immediate response to the passage of that law in Texas and Oklahoma and elsewhere."

The Texas-based American Energy Institute pointed to faulty findings in the March Texas Association of Business study conducted by Austin-based economic analysis and public policy consulting firm TXP, Inc., using Texas Bond Review Board data for 2023 and 2022 that was restated by the board in May.

"When corrected data from the Texas Bond Review Board was applied, it showed that the costs of bond issuance in 2022 and 2023 remained consistent with historical averages, debunking the report's claims," an institute opinion piece stated.

The Texas Association of Business said a note was added to the study to clarify the analysis was based on the bond review board's original annual report.

"This does not change the fact that a tightening of the competitive bond market in Texas limits local governments' access to financing for taxpayer-approved bonds, which ultimately results in more debt shouldered by taxpayers and Texas businesses, as multiple other economic analyses have similarly shown," it said in a statement.

Bond issuers in Texas have said the laws' reach has extended beyond underwriting to other governmental services provided by banks such as letters of credit.

The American Energy Institute also pushed back against a study that found a 2022 Oklahoma law banning state and local government contracts with investment banks that "boycott" the fossil fuel industry boosted municipalities' borrowing costs by 59 basis points on average.

The study, conducted by the University of Central Oklahoma's Economics Department and released by the Oklahoma Rural Association in April, has methodological flaws that included cherry-picked data and comparisons, according to the institute.

"It's clear that the Energy Discrimination Elimination Act of 2022 is crucial for safeguarding Oklahoma's economic interests and ensuring sound fiduciary practices," Institute CEO Jason Isaac said in a statement. "Our research debunks the flawed claims against the (act), highlighting its role in protecting vital energy sectors and promoting financial stability for the state."

Using the average yield to worst real-time measure of market borrowing rates for the S&P Municipal Bond Oklahoma Index since 2022, Paul Tice, a senior fellow at think tank National Center for Energy Analytics, reported that average yield measurement for issuers in the state tightened by 14 basis points since Oct. 31, 2022.

"Almost all of the yield volatility over the past 19 months has been driven by movements in underlying interest rates as seen by the lockstep trading between Oklahoma and its municipal peers and the U.S. Treasury Bond Index," he wrote in a June 13 piece posted on the RealClear Energy website.

There are additional studies, including one released in April by Texas-based economic analysis firm Perryman Group, which said the state's banning of municipal bond underwriters or restricting public pension funds' investment options could lead to "notable" economic harm.

A 2023 study by Econsult Solutions Inc. looked at the impact if bills, similar to the Texas laws, were

enacted in six other states, including Oklahoma, finding that state would have incurred an estimated $49 million in additional interest costs for bonds issued over a 12-month period.

Oklahoma Treasurer Todd Russ, who has blacklisted seven companies, including Barclays, Bank of America (BAC), JP Morgan, and Wells Fargo (WFC), defended the importance of the oil and gas industry to the state and pointed to a commercial banking sector trend toward “de-banking companies that do not align with certain ESG criteria.”

“This practice can have severe consequences for Oklahoma industries, limiting their access to capital and financial services,” he said in a June 28 statement. “By resisting policies that lead to de-banking, Oklahoma can safeguard its key industries from financial exclusion and ensure that businesses have the necessary resources to thrive.”

Enforcement of the Energy Discrimination Elimination Act was permanently halted last month by an Oklahoma County District Court judge, who found it violated the state constitution. The Oklahoma Supreme Court is expected to issue a procedural ruling soon related to the state attorney general’s appeal of the injunction.

The pro-ESG movement is fighting back.

Unlocking America’s Future, a nonprofit advocacy group that works to counter attacks against ESG, launched a Texas campaign in May that includes a six-figure digital ad campaign “to set the record straight about the economic costs of Texas’ extreme positions on a range of issues including responsible investing.”

As part of its 2024-25 platform and resolutions, the National Association of Counties noted “special interest groups are actively collaborating on a nationwide campaign to restrict and eliminate local authority regarding pensions, municipal bonds, and government funds by passing legislation and resolutions at both the national and state levels that oppose local control and free-market principles.”

The group adopted a policy in July urging “Congress and the administration to support policies that provide for local governments’ ability to invest and borrow as they self-determine, which must include continued access to free capital and credit markets.”

By Karen Pierog

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