POLITICO

States push costly GOP war on climate investing

Arianna Skibell

June 22, 2023

Republicans are gaining steam with their call to ban investment practices that consider issues like climate change, with 16 GOP-controlled state legislatures passing laws this year and more measures pending.

But carrying out these laws is not cheap. Implementing systems of enforcement coupled with required divestments can cost taxpayers and public pensions billions of dollars, write Adam Aton and Avery Ellfeldt. That has led some lawmakers to amend or rescind their proposals on so-called environmental, social and governance investing.

In Kansas, for example, lawmakers amended an anti-ESG law after the state budget office estimated it would cost Kansas' retirement system $3.6 billion over a decade.

"I hate to sound provocative," Tim Graham of the Kansas National Education Association said during a hearing on the bill. "But when it comes to our pensions, keep your culture wars out of them."

A related measure in Texas cost taxpayers an estimated $303 million to $532 million over an eight-month period. Indiana lawmakers amended a similar bill after a state office concluded it would cost public retirees $6.7 billion in losses over 10 years.

Model bills and bitter pills

States weighing anti-ESG laws are largely drawing on a suite of bills written and popularized by national conservative think tanks, according to a report by Pleiades Strategy, an environmental group.

But each state has a distinct approach, partly because lawmakers are nipping and tucking provisions as cost concerns grow. Experts say the resulting patchwork of laws is creating an increasingly difficult business environment.

"As a financial services firm … you are pretty unlikely to satisfy all 50 states," said Jennifer Schulp, who directs financial regulation studies at the Cato Institute, a libertarian think tank. "Over the long haul, I think [these laws are] a drag on the financial industry, as the costs of doing business are raised."

Plus, the state laws are sometimes in conflict with federal ones. The state laws say climate-related information is not material to financial performance and so should not be considered. But the Supreme Court has defined “materiality” as any information of interest to a “reasonable investor.”

And investors *are* interested — meaning adhering to a state law could mean violating federal law and vice versa, said David Webber, a Boston University law professor who focuses on ESG investing.

“That’s the liability trap,” he added.