



Recent Developments in Public Pension Divestment Legislation (Energy Sector)

Vermont Senate Committee on
Government Operations

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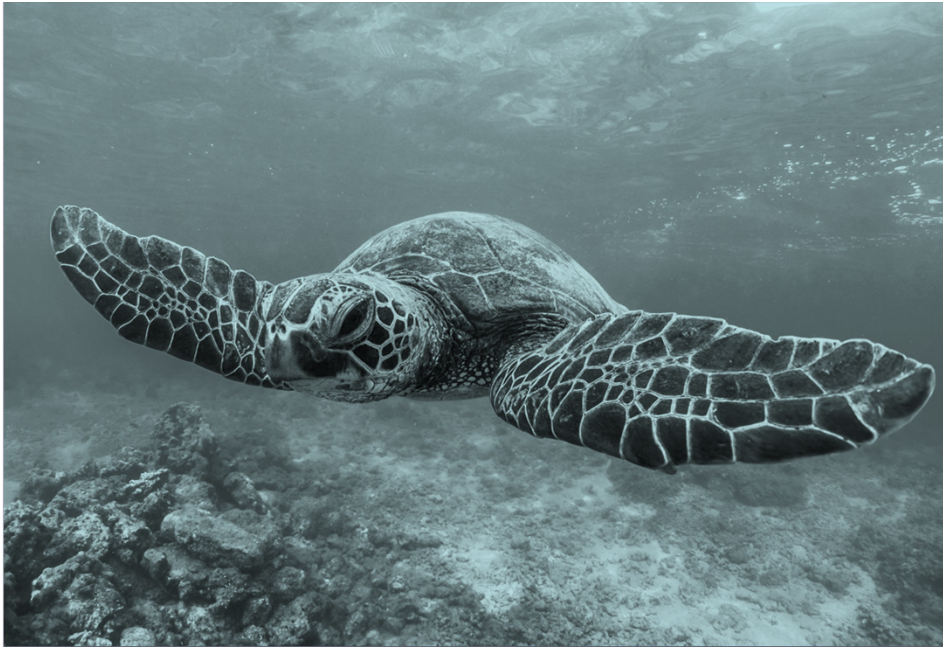
- Background/trends in ESG (history, geography, scale)
- State legislative landscape
 - Climate-focused initiatives, generally
 - Fossil fuels/thermal coal divestment
 - Anti-ESG activity
- Legal considerations
- Public policy considerations



Pension Legislative Trends: ESG Integration and Fossil Fuel Divestment

Session Overview





Background/Trends in ESG (History, Geography, Scale)



Why?

Shaping change?
Boosting returns?



What?

SRI, ESG, Economically
Targeted Investing,
Divestment, etc.



Where?

Where are ESG
strategies prevalent?
Meeting resistance?



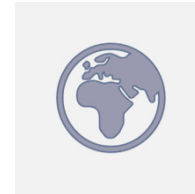
When?

Historical trends in
social investing



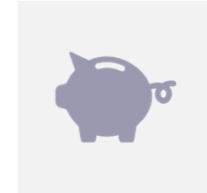
Why, Where and Who?

Growing Divide Re Integration
of ESG Factors in Investment
Decision Making



International Pension Funds

Canada and Europe



U.S. Assets under Pro Management

2022: \$7.6 Trillion



Prominent U.S. Pension Funds

CalPERS; CalSTRS;
Maryland SRPS



U.S. Pension Fund Aggregate

2020 Estimate: ESG
applied to \$3 Trillion



Selected Policy Considerations

- Potential for “stranded assets” and **regulatory risk**
- Identifying targets can be tricky as **energy companies transition** to more sustainable types of production
- Screening **costs**
- **Non-legislative initiatives**



Maine’s 2021 Fossil Fuel Divestiture Act

- Coal, petroleum, natural gas or derivatives used for fuel
- Focuses on the 200 publicly traded companies “with the largest fossil fuel reserves”; fossil fuel infrastructure.
- For both divesting and halting purchases, the law doesn't preclude “*de minimis* exposure”

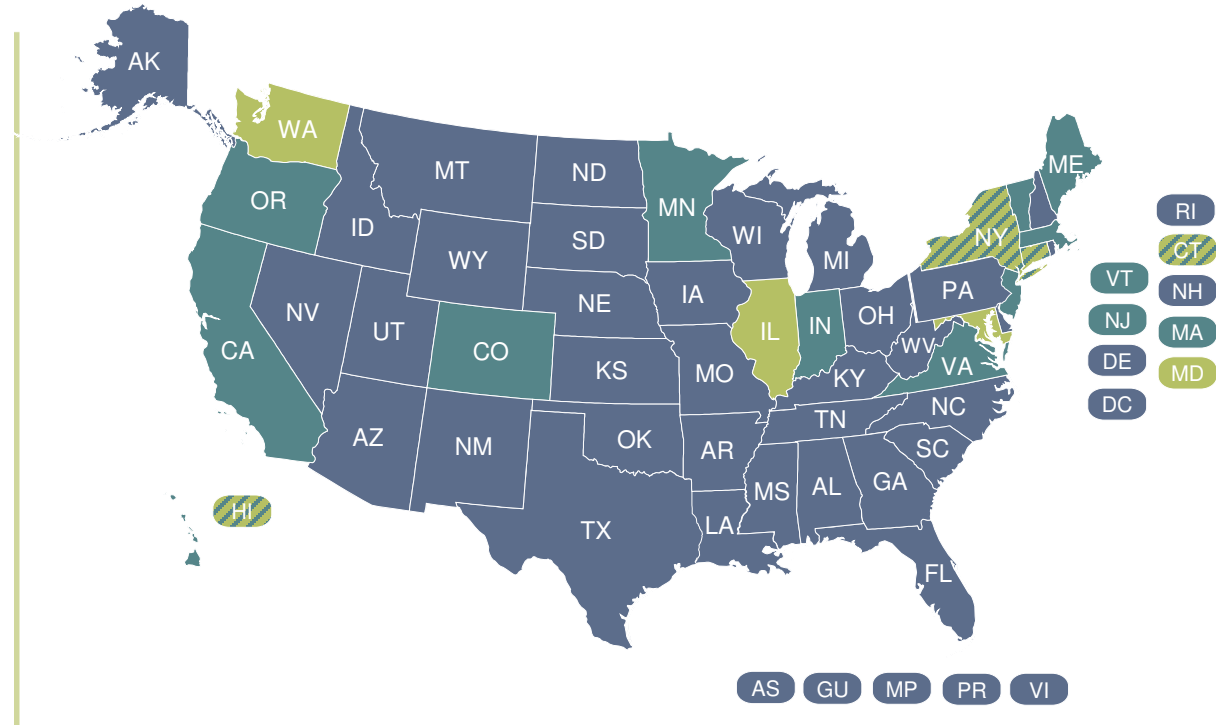
Climate Sustainability/ Fossil Fuel Divestment Legislation (Introduced and Enacted, 2019-2023)

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Environmentally Sustainable Investment

13

Fossil Fuel Divestment



California's Proposed 2023 Fossil Fuel Divestment Bill for Public Plans (CA SB 252)



200 largest publicly traded fossil fuel companies

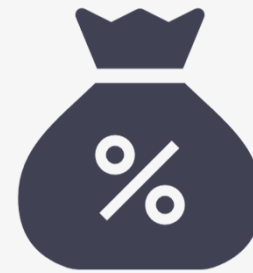


7-Year off ramp plus extension for acts of God, war, etc.



Consistent with the board's fiduciary responsibilities

Hold harmless clause



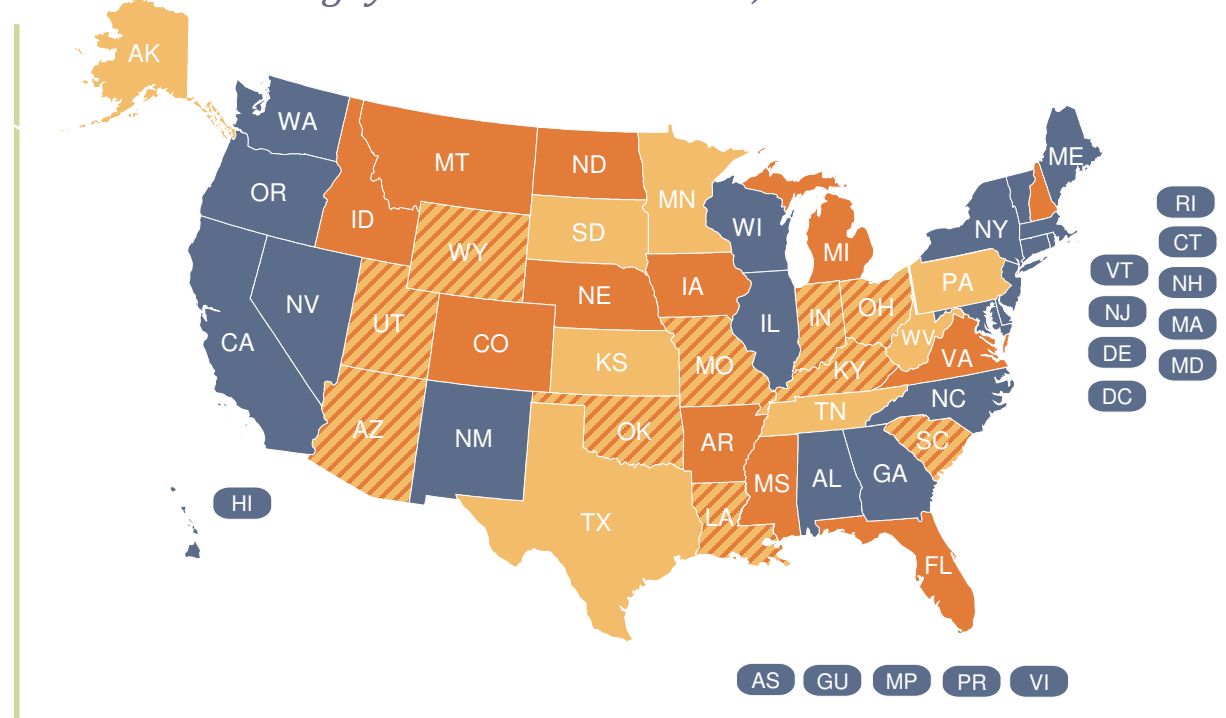
Includes mutual funds, ETFs; but de minimis exception (2%)



Annual reporting to legislature and governor

State Action to Limit ESG Integration or Penalize Sector Boycotts

Source: Ropes & Gray: *State Regulation of ESG Investment Decision Making by Public Retirement Plans*, Feb. 2023



DOL Guidance Whiplash

“Today’s rule clarifies that retirement plan fiduciaries can take into account the potential financial benefits of investing in companies committed to positive environmental, social and governance actions.”

Secretary of Labor Marty Walsh on Nov. 2022 DOL Rule, “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights”.



Note: State and Local Pension Plans **NOT** governed by ERISA



But *indirect* effect of DOL Guidance?



Public Policy Considerations: ESG as a Vehicle for Shaping Change



Clear, Consistent Standards?

Diverse, distinct ESG categories; Beneficiary views; Changing values



If I divest, will someone else buy?

Ultimate effect on share price?



Lost opportunity for shareholder activism?

Divestment may mean losing a seat at the table



Returns for beneficiaries?

Data on state mandates and annual returns



Screening Costs?

Monitoring constantly shifting mix of investments

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Thank You!

NCSL Employment, Labor and Retirement

