Published on *The National Law Review* https://natlawreview.com

New Hampshire Legislators Propose Laws to Criminalize Investing Based on ESG Criteria

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Recently, a pair of bills were proposed in the New Hampshire state legislature that would make it a felony to knowingly invest state or taxpayer funds based upon ESG criteria in violation of fiduciary duty. Specifically, the bill in the New Hampshire House of Representatives compels the state retirement fund to “adhere to their fiduciary obligation and not invest with any firm that will invest state retirement funds in investment funds that consider environmental, social, and governance criteria.” Similarly, the bill in the New Hampshire Senate defines investment responsibility to “not include any action taken, or factor considered, by a fiduciary with any purpose whatsoever to further social, political, or ideological interests.” Neither bill has not yet been enacted into law, but each would follow a trend of actions by New Hampshire state government that seek to discourage the use of ESG factors in investing--such as New Hampshire's participation in the multistate lawsuit against the U.S. Department of Labor's ESG rule.

But, more broadly, this pair of bills are merely the latest entry in the continuing efforts by many right-wing legislators and executives to penalize companies from employing ESG criteria when making investments and increase the difficulty and costs of doing so. While these efforts have taken many forms--ranging from state laws penalizing companies that refuse to do business with the oil & gas sector, or actions by overseers of state pension funds to prohibit the usage of ESG criteria when investing--the key overarching thrust of such activity is to counter the increasing use of and reliance on ESG criteria in corporate decision-making. Should these New Hampshire bills be enacted into law and have a measurable impact, it should be expected that similar laws will quickly be promulgated in ideologically-aligned jurisdictions.

> New Hampshire state legislators are seeking to expand their attack on ESG investing with two new proposals, including a bill that would make it a felony to "knowingly" invest state or taxpayer funds using ESG criteria that violates what legislators define as fiduciary duty.
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> The two bills —one in the House of Representatives and the other in the State Senate —were introduced in early January.

https://www.pionline.com/esg/new-hampshire-bill-would-make-it-felony-knowingly-use-esg-criteria-in

National Law Review, Volume XIV, Number 25