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Sustainable Investment Forum

US SIF's Guide to Anti-Investor Activities in the States

In 2021, Texas introduced Senate Bill 13, the first piece of state legislation designed to stop state-related entities from using sustainable investment strategies or considering environmental, social, and corporate governance (ESG) factors in investment decisions. The bill prohibited the state from doing business with any financial institution that was deemed to be boycotting energy companies. In a chillingly anti-free-market quote, Texas Representative Phil King said about SB 13, "if you boycott Texas energy, then Texas will boycott you."[1]

Since then, the number and scope of anti-ESG proposals introduced in state legislatures across the country has ballooned and state attorneys general, treasurers and other financial officers and governors have joined a growing campaign against the use of ESG factors in business, investment strategy and insurance. The number of anti-ESG legislative proposals grew from 3 proposed bills in 3 states in 2021 to 33 proposed anti-ESG bills in 18 different states in 2022. As of May 31, 2023, when most state legislative sessions ended for the year, there were 156 anti-ESG bills and 9 resolutions proposed in 37 different state legislatures (see Figure 1).[2] This rapid rise in the number of proposals has mirrored the growth in the prominence of ESG investment strategies as a political issue.

Growth in State-Level Anti-ESG Proposals		
Year	**# of Proposals**	**# of States**
2021	3	3
2022	33	18
2023	165	37

This report will focus on the state-level effort to slow sustainable investing and the use of ESG criteria as well as the work of some states that have bucked the trend and passed measures to protect and prioritize the use of ESG criteria in their state-controlled finances. The most significant win at the state level this year was a set of bills passed in California that require large companies doing business in the state to disclose their greenhouse-gas emissions and certain climate risks. For a detailed overview of the requirements in the California bills, check out **US SIF's summary**.

[1] https://news.law.fordham.edu/jcfl/2022/11/11/the-rise-of-state-anti-esg-legislation/

[2] Data on the number and type of bills opposing the use of environmental, social and governance data and sustainable investing strategies is from our ally, Pleiades Strategies, and also released in their "2023 Statehouse Report."

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2023 State Legislative Statistics

As of May 31st, 2023, 156 bills and 9 resolutions pushing against the use of ESG criteria in the investment processes were proposed across 37 states in the US (see Figure 2). Out of those 165 pieces of proposed legislation, at least 109 bills died, and 12 active bills were left in committee. Nineteen bills passed through the state legislature and were signed into law (12.2% of all proposed), including four bills in both Arkansas and Utah and two in Idaho (see Figure 3). There were also six anti-ESG resolutions passed in four states, one each in Montana, Missouri and Utah and three in Louisiana.

In general, the 165 pieces of the proposed legislation can be divided into five different types of bills: pension bills, contract bills, disclosure bills, ESG score/social credit score bans and bills to review or defy federal ESG rules.

Pension bills: There were 58 different pension bills proposed in 2023. These bills aim to ban state financial officers, pension boards, or other state asset managers from investing state-managed pension dollars into companies using factors that they deem to be political. Out of these bills, 33 are based on the *State Government Employee Retirement Protection Act*, which was created by the American Legislative Exchange Council (ALEC) and 21 are based on the *State Pension Fiduciary Duty Act*, which was created by The Heritage Foundation. This total includes double-counting for hybrid bills as some bills borrow certain language or provisions from both while others are cut-and-paste copies.

The ALEC model legislation, the *State Government Employee Retirement Protection Act*, uses the "pecuniary factors" language from a Trump-Era Department of Labor rule. This model bill instructs public worker pension plan fiduciaries to focus solely on "pecuniary factors" in the management of workers' pensions. It prohibits investment in companies that use "non-pecuniary" factors- defined as ESG considerations- in decision-making and prohibits voting proxies to promote non-financial, "non-pecuniary" goals. It also defines "materiality" as not including ESG factors or the risk of climate change, stating specifically that "materiality" does not include "any portion of a risk or return that primarily relates to events that [involve events in the] distant future or are systemic, general, or not investment-specific in nature."

The Heritage Foundations' model legislation, the *State Pension Fiduciary Duty Act*, is more specific in what pension fund fiduciaries are not allowed to consider in their investment decisions. It states that "eliminating, reducing, offsetting, or disclosing greenhouse gas emissions" are inappropriate goals for fiduciaries. "Assessing corporate board, or employment, composition, compensation, or disclosure criteria that incorporates characteristics protected in this state under state civil rights statute" are also deemed inappropriate. More clearly than in the ALEC model legislation, the aim of Heritage's model bill is to support the fossil fuel industry.

Contract bills: There were 42 different contract bills proposed in 2023. Thirty-two of those proposals were named the *Eliminate Economic Boycott Act*. Eight of the contract bills proposed are based on the ALEC model *Energy Discrimination Elimination Act*. Sixteen are based on the Foundation for Government Accountability's (FGA) *Protecting Free Enterprise and Investment Act.*

ALEC's model bill, the *Energy Discrimination Elimination Act*, was released as a draft by the Council but has yet to be published as a final model bill. Still, eight pieces of legislation have been proposed in state legislatures based on ALEC's draft bill. The bill stops state financial officers from entering into a contract with companies that boycott fossil fuels.

The *Eliminate Economic Boycott Act* model legislation was created jointly by ALEC and The Heritage Foundation, although each has slightly different language in their published versions. This model legislation is broader in scope than ALEC's *Energy Discrimination Elimination Act*, extending past the fossil fuel industry and providing state financial officers greater leeway to choose targeted firms and industries. States often use this as the foundation for their "ESG boycott" bills.

The FGA's *Protecting Free Enterprise and Investment Act* model legislation aims to "protect" all state contracts, investments and private business transactions in the state from political influence detrimental to the financial health of the states. It also aims to "protect" free enterprise. It allows the state treasurer to create a list of financial institutions and companies that boycott energy companies and refuse to enter into a banking contract with any bank that boycotts specific industries or violates anti-trust laws. This is a very broad set of model legislation.

Disclosure Bills: There were 25 "disclosure" bills proposed in 2023. Twenty-four of these bills are based on the *Fair Access to Financial Service Act* model, which was first proposed in New Hampshire in 2022. These bills focus on financial contracts between financial institutions and individuals, organizations and companies. They require financial institutions that use "nonfinancial, nontraditional, and subjective measures such as environmental, social, and governance criteria, or political and ideological factors" to disclose those factors and the criteria they use when determining access or denial of the financial service to a person, organization or company. The other disclosure bill is unique and requires the disclosure of a public list of firms that use ESG in the state.

ESG Score and Social Credit Score Bans: There were 26 proposed bans on the use of ESG Scores, or so-called "social credit scores," in 2023. Nine of these proposed bans are aimed at stopping the use of these scoring mechanisms in the private sector and 12 are attempting to ban their use by government entities. Many of these bills overlap and aim to ban the use of these scores in both the private sector and in government entities.

Review or Defy Federal ESG Rules: There were 10 bills proposed in 2023 with the aim of reviewing the federal rules surrounding the use of ESG criteria in the investment process or pushing the state government to defy the federal rules altogether.

Public Costs of Anti-ESG Bills

Economic analyses of anti-ESG legislation have found that proposals will cost retirees, workers, public retirement systems and local municipalities millions, or even billions of dollars.

The proposed bills that ban or regulate state retirement systems from investing in certain companies or industries have been shown to cost pension funds millions in returns. There is significant evidence that companies that ignore risks like environmental impacts or worker health and safety do so at a great cost. Below is a list of states in which proposed bills have been found to cost retirement systems millions of dollars a year.

State	Proposed Bill	Cost	Link
Indiana	HB 1008 (before amendments)	$6.7 billion over 10 years to the Indiana Public Retirement System	Bill Text; Cost
Texas	SB 1446	$6 billion over 10 years to the Texas County District Retirement System	Bill Text; Cost
Kansas	SB 224; HB 2402; SB 291	$3.6 billion over 10 years to the Kansas Public Employees Retirement System	Bill Text (224); Bill Text (2402); Bill Text (291); Cost
Arkansas	HB 1307	$30 - $40 million per year to the Arkansas Public Employees Retirement System	Bill Text; Cost
		$20.1 - $140.6 million over 15 years to the Arkansas State Highway Employee Retirement System	Cost
		$7 million per year to the Arkansas Teachers Retirement System	Cost
		$1 million per year to the Arkansas Local Police & Fire Retirement System	Cost

Anti-ESG bills also force reduced competition in the municipal bond market as they reduce the number of groups that a municipality can do business with. Therefore, cities and towns face excessive fees and interest when raising the capital that they need to function. In 2021, Texas was the first state to pass a set of legislation that restricted competition in the municipal bond market. Texas' SB 13 and SB 19 are expected to cost the state an additional $300 - $500 million in interest costs on municipal bonds in the first 8 months. Since the bill's passage, Normangee Independent School District, TX dropped UBS as their bond underwriter and hired a new group with higher interest rates, and Anna, TX dropped Citibank as bond underwriter at a cost of $277,344 over 25 years. Other states have since followed suit, proposing legislation based on Texas' bond market restrictions. These states, likewise, were found to incur millions of dollars of extra cost if they implemented similar laws as Texas:

State	Additional Costs
Florida	$97 to $361 million
Louisiana	$51 to $141 million
Oklahoma	$49 million
Missouri	$32 to $68 million
Kentucky	$26 to $70 million
West Virginia	$9 to $29 million

Finally, states could incur extra costs from creating new positions and running new programs that are often laid out in the proposed anti-ESG legislation. These can range from tens of thousands of dollars per year to millions depending on how large the programs are.

Outside of action by a state's legislative body, state treasurers and financial officers have used their power to divest state-run pensions and other funds from specific asset managers. These include:

- Arizona, Florida, Missouri, South Carolina, and Louisiana divested from BlackRock due to its ESG positioning.
- Texas, West Virginia, Kentucky and Oklahoma instituted a blacklist of firms that are not allowed to do business with the state-run funds. Here is an infographic of those blacklists.

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States Promoting the Use of ESG

While many states have had laws proposed that have aimed to restrict the use of ESG factors in state-run funds, some states have gone in the opposite direction in recent years, proposing legislation and passing laws to promote the integration of ESG factors by state fiduciaries. These states include the following, which are proposed unless otherwise indicated:

State	Proposed Legislation	Summary
Hawaii	HB 1506 / SB 1127: Relating to the Employees' Retirement System of the State of Hawaii	Encourages the employee's retirement system to invest in opportunities that will support the state's natural environment and create economic opportunities for residents.
	HB 1505 / SB 1226: Relating to the Hawaii Employer-Union Health Benefits Trust Fund	Requires the public investment fund to develop, publish and annually report on its socially responsible investment policies.
Washington	HB 1283: Requiring ESG Investment Options for Self-Directed Investment Funds	Requires the state investment board to report every three years on its climate-related financial risk, social responsibility and its establishment and use of proxy voting policies as well as provide at least three options for individuals in self-directed investment funds that are consistent with ESG policies.
New Mexico	New Mexico Permanent Funds Environmental, Social, and Governance Policy (**ENACTED**)	States that the State Investment Office can and will integrate ESG considerations that present material business risks and opportunities into its investment strategy.
Illinois	PA 101-473: Illinois Sustainable Investing Act (**ENACTED**)	Directs state and local government entities to consider materially relevant sustainability factors.
	HB 2782: Sustainability Disclosures	Requires investment managers that work with the state to provide a yearly description of the process by which they prudently integrate sustainability factors into their investment decision-making.
	SB 2429: Sustainability Disclosures	Requires investment managers acting as a fiduciary to disclose annually how they prudently integrate sustainability factors into their investment practices.

	SB 2152: Pen CD-Investment Proxy Voting	Requires its Board to report annually on how it is considering sustainability factors as defined in the Illinois Sustainable Investing Act and disclose how each investment manager integrates sustainability factors into the investment manager's decision-making.
Louisiana	HR 137: Resolution to Invest in Companies that Practice DEI	Requests that state and local retirement systems invest in companies and work with minority fund managers that practice diversity, equity, and inclusion (DEI).
Maryland	HB 740 / SB 566: State Retirement and Pension System – Investment Climate Risk – Fiduciary Duties **(ENACTED)**	Requires the board of the Maryland State Retirement and Pension System to address and report annually on the level of climate risk across its investment portfolio.
Colorado	SB 23-016: Greenhouse Gas Emission Reduction Measures	Requires the state's public employees' retirement association board to adopt proxy voting procedures to ensure the board's decisions align with the statewide greenhouse gas emission reduction goals.
California	SB 253/ SB 261: Climate Accountability Package (**ENACTED)**	Require companies that "do business in California" and meet certain thresholds to disclose their greenhouse gas emissions and other climate-related financial risks. See US SIF Summary.

Looking Forward

We expect to continue to see both anti-ESG and pro-ESG efforts in state legislatures when the 2024 legislative sessions open early next year. While it is hard to determine in what direction state legislatures will move next in their anti-ESG push, we expect proposals to continue to blacklist firms that consider ESG factors in their investment decisions. Some states may turn their attention to the use of ESG factors by insurance companies. The focus on the insurance industry by state legislatures may be responsible for multiple insurance agencies leaving the UN-backed Net-Zero Climate Alliance. Broad-reaching anti-ESG policies passed in Florida and proposed in Texas and Mississippi may serve as a model for other states in the future. For a more detailed, state-by-state and proposal-by-proposal look at the state-level ESG efforts, we recommend visiting The Ropes & Gray "Navigating State Regulation of State Investments" Tracker.

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Attorneys General and ESG Investing:

Date	Summary	Link
December 14, 2023	A group of 18 attorneys general sent a letter to Congress defending fund managers' use of ESG factors as consistent with prudent investment decision-making to maximize returns.	Letter
November 29, 2023	A group of 23 attorneys general sent a letter to leading proxy advisors, ISS and Glass Lewis, urging the companies "follow the law and quit recommending woke investment strategies that jeopardize millions of Americans' retirement security."	Letter
October 26, 2023	The group of attorneys general that filed suit against the DOL's ESG rule appealed the court's ruling which allowed the rule to stand.	Link
September 13, 2023	A group of 22 attorneys general sent letters to financial service companies questioning whether their involvement in the Net Zero Financial Services Providers Alliance violates antitrust regulations and consumer protection laws.	Letter
July 13, 2023	A group of 13 conservative attorneys general sent a letter to major corporations following the Supreme Court's recent decision on affirmative action in college admissions. The letter warned that "racial quotas and race-based preference in employment and contracting practices" may be illegal.	Letter
May 17, 2023	A group of 23 attorneys general filed suit against the Department of Labor's ESG rule, arguing that it will hurt Americans' retirement savings.	Link
May 10, 2023	A group of 16 attorneys general filed a motion at the Federal Energy Regulatory Commission (FERC) to keep BlackRock from buying more than a $10 million voting stake in any utility company if it imposes its ESG priorities.	Link
April 25, 2023	The Louisiana Attorney General Jeff Landry launched an investigation into the Climate Action 100+ coalition on whether its initiatives have violated fiduciary duties by focusing on ESG investment factors.	Link
March 30, 2023	A group of 21 attorneys general sent a letter to 53 of the nation's largest asset managers, threatening divestment if they continued to incorporate "ESG policies" into their investment strategies.	Letter
January 26, 2023	A 25-state coalition filed a lawsuit against the Department of Labor over its rule allowing ESG factors to be considered in private sector retirement plans.	Letter

January 17, 2023	A group of 21 attorneys general sent a letter to ISS and Glass Lewis challenging whether their net-zero emissions and boardroom diversity policies violate contractual and fiduciary duties as well as state anti-discrimination laws.	Link
January 3, 2023	The West Virginia Attorney General Patrick Morrisey threatened to sue the SEC if it requires companies to report on greenhouse gas emissions and other ESG matters.	Link
November 29, 2022	A group of 13 attorneys general filed a motion at the FERC to stop Vanguard from buying stock in public utilities due to concerns over its ESG investing policies.	Link
November 21, 2022	A group of Democratic attorneys general argued that while the use of ESG criteria may not always lead to better returns, not allowing any consideration of those criteria is ignoring factors despite their financial materiality in most cases.	Letter
October 19, 2022	A group of 19 attorneys general launched an investigation into six large US banks (Bank of America, Citigroup, Goldman Sachs, JP Morgan Chase, Morgan Stanley and Wells Fargo) to examine their involvement in the UN's Net-Zero Banking Alliance and its ESG policies.	Link
August 3, 2022	Missouri Attorney General Eric Schmitt led a group of 18 state attorneys general that launched an investigation into Morningstar and Sustainalytics over the firm's evaluation of ESG issues and whether the company violated a consumer-protection law.	Link

Other State-Level ESG Attacks

- A group of 21 state treasurers and financial officers sent a letter to BlackRock questioning its ESG policies and whether its efforts are in the best long-term economic interest of its shareholder. A second group of fifteen state financial officers sent a letter to BlackRock's Board of Directors questioning the Directors' potential conflict of interests and their connections with China.
- The Oklahoma State Treasurer sent a letter to over 100 financial institutions asking them to respond to a set of 19 questions on their ESG policies so that the state of Oklahoma can determine whether or not the company is violating Oklahoma law and boycotting the fossil fuel industry.
- The North Carolina State Treasurer sent a letter to BlackRock requesting that Larry Fink steps down as CEO of the company, due to his efforts to force the world's companies to comply with ESG policies.

- Florida Governor and Republican Presidential Candidate Ron DeSantis created an alliance of 18 states that have agreed to work together to push back against President Biden's ESG agenda that is "destabilizing the American economy and the global financial system."

For any questions, please reach out to Rachel Curley, Director of Policy and Programs, at rcurley@ussif.org.

About US SIF

US SIF: Sustainable Investment Forum is the leading voice advancing sustainable investing across all asset classes. Its mission is to rapidly shift investment practices toward sustainability-aligned goals with the aim of achieving long-term investment goals and preserving our planet and society. US SIF members include investment management and advisory firms, mutual fund companies, asset owners, data and research firms, financial planners and advisors, broker-dealers, banks, credit unions, community development financial institutions and non-profit associations. JOIN US!

US SIF is supported in its work by the US SIF Foundation, a 501(C)(3) organization that undertakes educational and research activities to advance the mission of US SIF, including offering trainings for advisors and other financial professionals on the Fundamentals of Sustainable and Impact Investment.

Appendix:

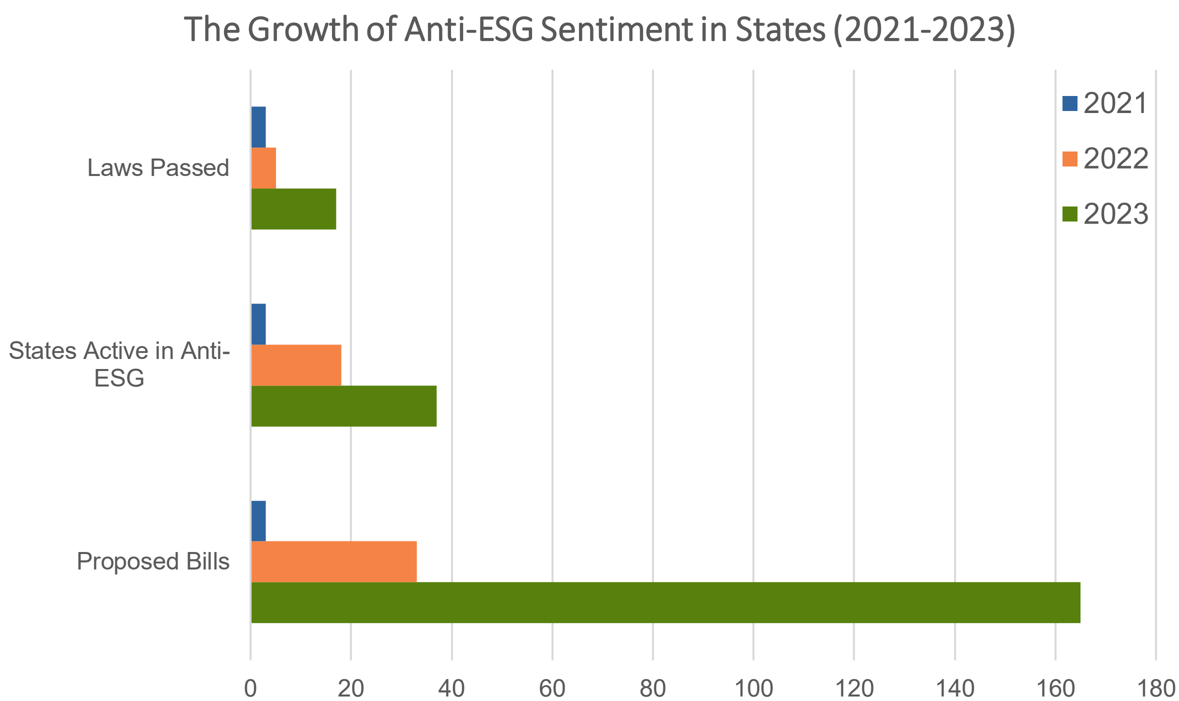

Figure 1: Anti-ESG sentiment has grown in size and reach since 2021.

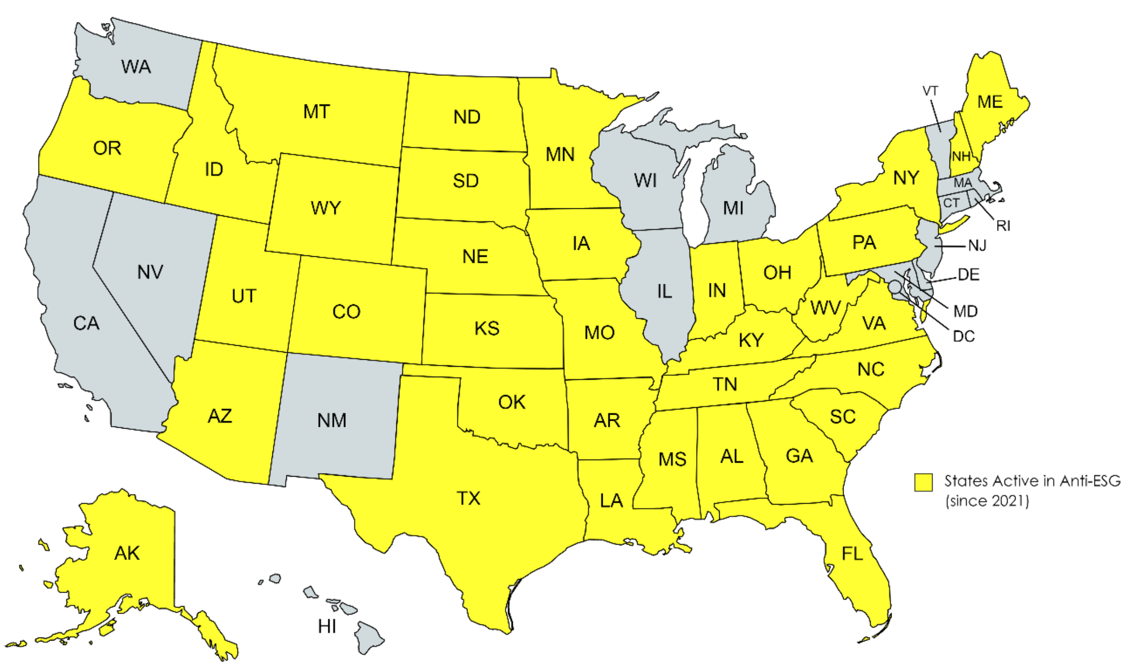

Figure 2: States active in proposing anti-ESG attacks since 2021.

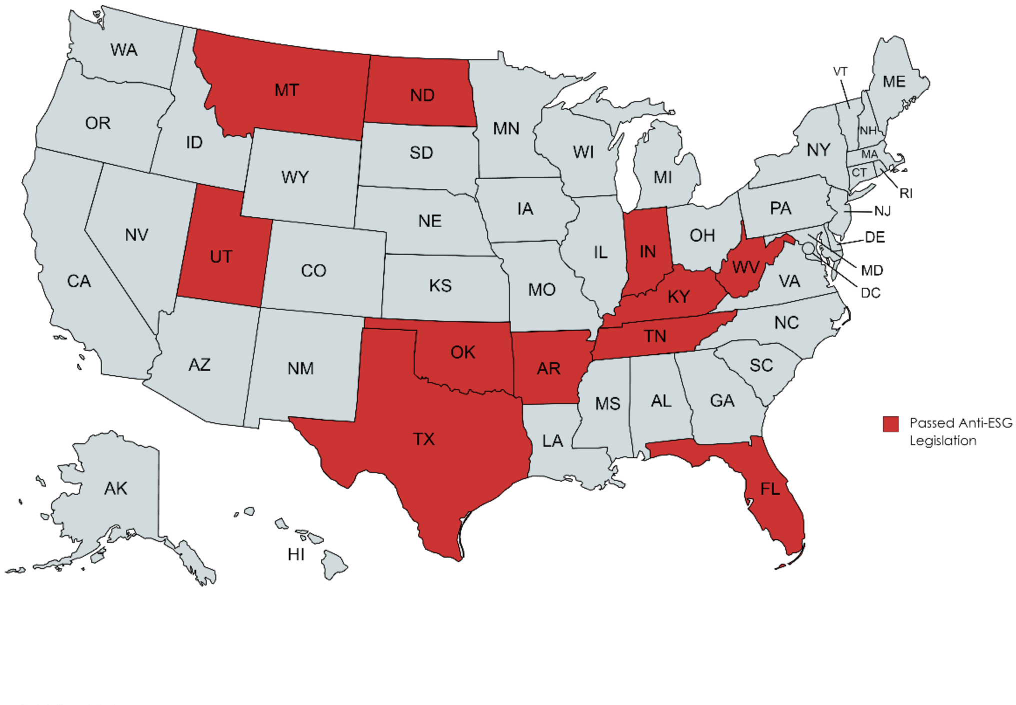

Figure 3: States that have enacted anti-ESG legislation since 2021