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Anti-ESG Legislation

- ***A federal court ruling striking down a Texas "anti-ESG" law may have far-reaching effects.***
- ***The law was designed to prevent public pension managers and government contractors from boycotting fossil fuel companies.***
- ***The state's description of the oil and gas industry as the "economic lifeblood" of Texas is based on outdated and incorrect information.***
- ***Two expert studies found the statute increased the cost of municipal bond issuance by Texas by hundreds of millions of dollars.***

Court Ruling on Texas Anti-Esg Law May Save State From Self-Inflicted Economic Wound

A federal court ruling striking down a Texas "anti-ESG" law essentially designed to prevent public pension managers from divesting from fossil fuel assets may save the state from a self-inflicted economic wound.

Although the decision affects only the first of a wave of proposals aimed at promoting fossil fuel investments while suppressing support for renewable energy, it casts significant doubt on the legality of similar state efforts.[1] The implications may have far-reaching effects for investors, policymakers, and fiduciaries across the country.

The Texas attorney general and state comptroller plan to appeal the ruling. However, the law, which was designed to protect the oil and gas industry, is based on a flawed assumption. A policy designed to restrict investments and favor an obsolete economic development model is not likely to achieve the desired result.

If companies identify sustainable non-fossil fuel investments that present good financial opportunities, they should be able to take lawful business actions to pursue their interests without government interference.

This premise is consistent with the U.S. Constitution and longstanding practices of enterprise in America's economic system. Corporate boards and senior managers are expected to consider issues that may affect a company's bottom line. Awareness of the potential impacts of environmental, social, and governance (ESG) factors, including climate change, is part of responsible corporate governance.[2]

"Economic Lifeblood" of the State

The Texas governor and Legislature did not agree with this premise when they approved a 2021 bill designed to penalize companies that the Texas comptroller deemed to be "boycotting" fossil fuel energy companies.[3]

The legislation was immediately controversial. In one instance, the comptroller relied on the statute to blacklist BlackRock, an investment company managing more than $12.5 trillion in assets—even though the firm managed both sustainable and fossil fuel investments.[4]

The American Sustainable Business Council, a nonprofit with members who were blacklisted, brought a legal challenge to the measure in federal court in 2024. Texas argued that the statute was designed to ensure the state's tax dollars were not used to boycott "the economic lifeblood of the state while respecting private parties' rights to hold and espouse opinions as they may deem appropriate."[5]

But characterizing oil and gas as the "economic lifeblood" of Texas is based on outdated perceptions. Although the oil and gas industry accounted for about 28% of state tax revenues in 1981, a 2021 IEEFA report found the industry's contribution had hovered around 10% or less from 1999-2019.[6] Recent figures from the state comptroller show that oil and gas production tax receipts grew at a slower pace than all tax collections since 1972.[7] Employment in the oil and gas sector grew at barely one-fifth of the statewide average between 1990 and 2020.[8]

And the U.S. oil and gas industry's employment profile has shifted. Even though it is extracting more oil, it is doing so with fewer workers. The industry employs 20% fewer workers today than it did just a decade ago, despite production gains, a 2025 IEEFA report found.[9]

An analysis by the Federal Reserve Bank of Dallas identified a tipping point for the oil and gas industry.[10] Before 2014, both employment and wages were growing faster in oil and gas regions than in the rest of the United States. Since then, however, regions with a strong oil and gas presence have experienced slower employment and wage growth than other regions, an issue for the financial health of regional banks serving those areas.

Judge's Reasoning in Finding the Statute Unconstitutional

Two provisions in the Texas statute were scrutinized by the federal judge.

A divestment provision barred five state retirement funds and the state's permanent school fund from investing in financial companies that "boycott energy companies." Once a company is determined to have boycotted fossil-fuel based energy companies, the Texas state funds would be required not only to stop investing in the company but also to divest from all publicly traded securities of the company unless the fund can demonstrate to the Comptroller that divestment would "likely result in a loss in value or benchmark deviation."

A procurement provision held that if a company had 10 or more full-time employees and sought a government contract worth more than $100,000, the company would be required to promise that it would not boycott fossil-fuel-based energy companies during the life of the contract.

Judge Alan D. Albright, a 2018 Trump appointee to the U.S. district court, ruled in early February that the law was too broad and too vague. The law banned "taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with" fossil fuel companies—part of the law's broad definition of "boycott."[11] The result, Albright wrote, could include speaking about the risks posed by fossil fuels, advocating against reliance on them, or associating with like-minded organizations—constitutionally protected forms of speech.

The law "fails to provide persons of ordinary intelligence a reasonable opportunity to know what conduct is prohibited" and its application to protected speech is "substantial," the judge ruled.

Albright appeared particularly troubled that the Texas comptroller had blacklisted companies that asserted their actions were driven by one or more ordinary business purposes. The statute's language excluded ordinary business actions, but the comptroller had not given an explanation for his belief that the companies' statements were untrue.

The court also observed that the comptroller had said companies could be removed from the blacklist if they discontinued their membership with associations that advocate for sustainable investing. The comptroller had blacklisted BlackRock, for example, then removed it from the list in June 2025 because it stepped back from full participation in the Climate Action 100+ and left the Net Zero Asset Managers initiative.[12]

Local Costs of the Legislation

Government institutions often finance infrastructure and other long-term needs through borrowing from the capital markets. Texas had outstanding local government obligations of $369 billion and another $77 billion of debt as of August 2025.[13,14]

Five national banks exited the Texas municipal bond underwriting market, in part due to anti-boycotting legislation. A restriction in underwriters—especially national banks with large distribution networks that help place bonds—disrupted bond issuances and increased costs, especially for local municipalities that had relied on the banks to underwrite bond issues.

A 2023 Brookings Institution analysis estimated that Texas taxpayers are likely to pay between $300 million and $500 million in additional interest on municipal bond issuances from the first eight months of the law's implementation, due to the departure of the five banks.[15] The analysis also noted that borrowers were having to rely on expensive negotiated underwriting, rather than a cheaper bond auction process.

The economic harm did not end there. A 2024 Texas Association of Business Chambers of Commerce Foundation study found the costs of issuing municipal bonds in Texas soared an average of $270.4 million each year in 2022 and 2023.[16]

Propping up Fossil Fuels

The Texas anti-ESG law that was struck down is part of a larger effort that has emerged in recent years among governmental entities to artificially prop up the fossil fuel industry and protect it against competition from cleaner, more cost-effective energy sources.

A series of federal executive orders issued in April 2025, for example, claimed an "energy emergency" should block the closure of coal-fired power plants and encourage the restart of recently closed plants. An IEEFA analysis of 102 closed plants, however, found two dozen had already been demolished, 13 converted to gas, and one changed to oil.[17] In addition, the median age of the closed plants was 56 years, older than the typical 50-year lifespan of a coal-fired power plant.

Colorado officials have already appealed an order requiring them to continue operating the damaged and inoperable Craig Unit 1 coal-fired plant, claiming it constitutes an unconstitutional "taking" of private property. The state's energy director described the order as "Soviet-style central planning, driven by ideology rather than the realities of the electric grid, that will drive dirtier air and higher electric rates across our state."[18] Owners of the plant have said that repairing the northwestern Colorado unit could prevent them from generating power from a new 145-megawatt solar farm due to limited transmission capacity.

Such top-down policies by federal and state governments that fail to consider on-the-ground realities risk harming rather than helping local economies, as the Texas experience indicates.

By contrast, Oregon recently passed a law requiring its state investment council to integrate climate risk management into its activities. Among other provisions, the Oregon legislation calls on the state's pension fund to explore investment opportunities in low-carbon technologies and companies and to continue to incorporate climate-related financial impacts into its analyses.[19]

A law that deprives the state of access to the full array of available vendors for its financial business based on the purported need to prop up an industry that lags in job generation, as well as tax revenue contributions, is neither good economic development policy nor sound legal policy.

Note: The case discussed is *American Sustainable Business Council v. Hegar, et al., No. 1:24-cv-01010-ADA*, in the U.S. District Court, Western District of Texas, Austin Division. The Notice of Appeal is docketed in the Court of Appeals, Fifth Circuit, No 26-50111.

Endnotes

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About IEEFA

The Institute for Energy Economics and Financial Analysis (IEEFA) examines issues related to energy markets, trends, and policies. The Institute's mission is to accelerate the transition to a diverse, sustainable, and profitable energy economy. www.ieefa.org

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