BCW INSIGHTS

A STATE-BY-STATE SNAPSHOT OF THE ESG POLICY LANDSCAPE

Assessing the ESG "field of dreams" three months from the home stretch in Iowa

Last fall, BCW and Direct Impact (DI) completed a State-by-State Snapshot of the ESG Policy Landscape following the 2022 midterm elections. Focusing on 22 influential and political "battleground" states, we provided insights and cautious predictions on the direction of environmental, social and governance (ESG) policies over the 2023-2024 legislative session cycle across deep red places like Florida, deep blue places like California and "purple" states like Pennsylvania.

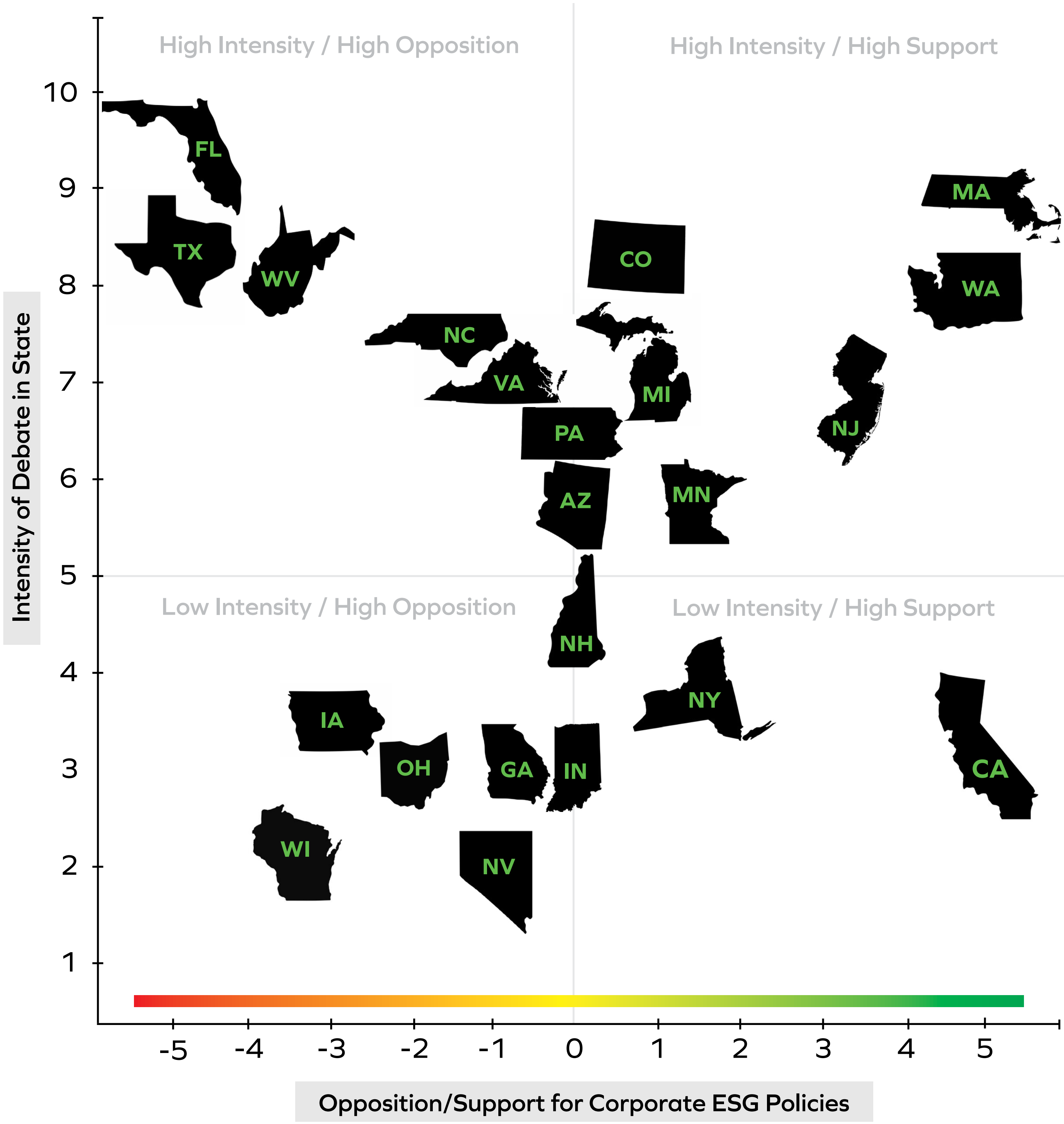
We can confidently say our predictions held firm across the top 10 "trendsetting" states we chose to spotlight last November. At the same time, there were a few surprises we discovered that are worth mentioning – notably Michigan. Despite historic Democratic control over both legislative chambers and the governor's mansion in Lansing, policymakers did not move as quickly and aggressively toward advancing ESG policies as one might have expected when the spring session convened.

However, in kicking off the fall legislative session in Lansing, Governor Gretchen Whitmer delivered a speech in which she called on legislators to advance policies that will require Michigan's utility providers to produce 100 percent of their energy from clean and renewable sources such as wind and solar as well as nuclear. "We can achieve 100 percent clean energy while balancing reliability and affordability," Whitmer said during her remarks.

Surprises weren't exclusive to Michigan. In a novel ruling out of Montana, a judge found that the state legislature has a constitutional mandate to consider the impact of emissions when issuing permits for fossil fuel development. Though open to appeal, the ruling was the result of a small advocacy group leveraging ESG laws to secure judicial intervention with major long-term consequences for the state's energy sector – demonstrating how easily ESG issues can be weaponized in service of broader policy agendas.

Heading into 2024, the polarizing ESG landscape has only escalated over the last six months – to the point that BlackRock CEO Larry Fink won't even reference the three-lettered term as it has been "weaponized by left and right."

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) LANDSCAPE BY STATE



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TOP TEN TREND-SETTING TAKEAWAYS

FL

SUNSHINE STATE LEADERS REJECT "WOKE CAPITALISM"

With a Republican supermajority in both chambers, culture issues were front and center for Florida's legislature, which worked in concert with Gov. Ron DeSantis ahead of his formal announcement as a candidate for the Republican nomination in the 2024 presidential primary. Such measures included restricting gender-affirming care for minors and adults; limiting drag performances; addressing pronouns and sex education; banning diversity, equity, and inclusion (DEI) programming on public university campuses; and requiring gender-defined bathrooms. The legislature also barred public investments from supporting ESG-related funds, a move that Gov. DeSantis said was "…against big banks and corporate activists who've colluded to inject woke ideology into the global marketplace…"

On the 2024 campaign trail, Gov. DeSantis uses his platform to continue advancing anti-ESG messaging and workshop which policies can be attacked through the anti-ESG lens. Already this cycle, DeSantis has blocked roughly $350 million in Inflation Reduction Act incentives for the state and challenged Democratic governors over so-called "woke" policies. Though this is turning off some business-minded conservatives and donors, his ever-evolving stump is likely to influence the Florida legislature in 2024, which we expect will continue as a laboratory of anti-ESG policy.

TOP TEN TREND-SETTING TAKEAWAYS

TX

DON’T MESS WITH TEXAS

Texas’s legislative session followed similarly to Florida’s — Gov. Greg Abbott signed legislation restricting gender-affirming care and barring trans athletes in college sports, curtailing drag performances, banning DEI programming on college campuses and further limiting public investments in ESG funds. Labelling ESG investments as a threat to the state’s massive energy industry, Gov. Abbott also accused President Joe Biden of “ESG fanaticism.”

The House passed HB 5, the Texas Jobs and Securities Act, to replace the former tax-discount program known as “Chapter 313.” The new bill would incentivize companies to do business in Texas but limits renewable projects from accessing the incentives. The legislature also sought to stymie renewable energy in the form of SB 2627 — The Powering Texas Forward Act. The bill, a reaction to the state’s widespread grid failure during winter storms in 2021, provides financial incentives to create and connect new gas-powered energy production facilities, with no provisions in the bill to advance alternative forms of energy production.

TOP TEN TREND-SETTING TAKEAWAYS

WV

WEST VIRGINIA'S COUNTRY ROAD AWAY FROM ESG

West Virginia has doubled down on anti-ESG legislation in 2023. As we signaled last fall, the state continues to enact policies in support of its longstanding fossil fuel production and associated industries. This includes legislation introduced by State Delegate Dean Jeffries with the support of State Treasurer Riley Moore that bars shareholders from investing in companies that refuse to support the fossil fuel industry. House Bill 2862, which passed in May, defines ESG as a "non-pecuniary" factor that cannot be considered in shareholder votes cast by the state Investment Management Board or fund managers.

Moore also told WTFR news in July, "I was the first elected official in the country, in the United States, to divest from BlackRock because of their ESG stance. We've now seen almost 10 other states follow our lead here in West Virginia in pushing back against ESG." He went on to promote the work he has done in supporting colleagues in other states such as Arizona, Arkansas, Florida, Kentucky, Louisiana, Missouri, Oklahoma, South Carolina and Utah in deterring pro-ESG policies.

Though Democratic U.S. Senator Joe Manchin remains vague about his plans to run for re-election in 2024, Sen. Manchin is clear on his opposition to ESG policies. In March, Sen. Manchin joined a group of 49 Republican senators in opposition to the Biden Administration-backed rule that allows retirement managers to consider environmental, social and governance standards.

TOP TEN TREND-SETTING TAKEAWAYS

CA

CALIFORNIA FIRMLY COMMITTED TO ESG

One of the more favorable political landscapes for ESG legislation, California introduced the Climate Accountability Package in January 2023, a suite of three bills intended to improve transparency and urge corporations to address the climate crisis. Two of the three – the California Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261) – passed in September and will be signed by Governor Gavin Newson in the coming weeks. The first aims to broaden the state's ESG state disclosure requirements, targeting high-earning companies. Once enacted, an estimated 5,500 companies would be mandated to disclose direct emissions, indirect emissions, and full value chain emissions in accordance with the Greenhouse Gas Protocol. The second bill will require large corporations to prepare and submit an annual climate-related financial risk report, publicly disclosing risks and measures they're taking to mitigate those risks. The final bill in the package, the Fossil Fuel Divestment Act (SB 252), failed to move through an Assembly committee after a contentious public fight but is likely to return during the next legislative session. The bill centers on divestment from fossil fuel in public investment funds, the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS).

TOP TEN TREND-SETTING TAKEAWAYS

MA

MASSACHUSETTS – A TRUE BLUE SAFE HAVEN FOR ESG

Nearing the close of the 2023-2024 session, legislators across both chambers have introduced dozens of pro-ESG bills that are under committee consideration. Among these are measures to increase workforce diversity, equity, and inclusion in organizations seeking public funds; expand public investments in ESG funds; grow investments in wind energy; and legislation that would create public climate resiliency funding for historically marginalized communities.

Of note, a star-studded group of more than 70 policy leaders across the Commonwealth have established the Health Equity Compact, an organization dedicated to advancing health equity in Massachusetts. This includes health equity related to workforce development, access to care or use of innovative means to encourage greater engagement in healthcare within disadvantaged communities. The group has received significant media coverage, particularly related to its push for greater equity across state government, including in the executive offices.

Despite the enthusiasm and momentum for ESG proposals in Massachusetts combined with Democrat supermajorities, the Commonwealth is consistently rated as having one of the least effective legislatures in the nation. More than 10,000 bills are typically introduced during the two-year session cycle — approximately four percent of which are enacted into law.

TOP TEN TREND-SETTING TAKEAWAYS

The intensity of support for ESG and climate change initiatives remains strong in Washington. With Governor Inslee's announcement that he is not running for reelection in 2024, political pressure to enact new policies has eased. However, the state is still moving toward its goal to cap carbon emissions under the Climate Commitment Act, which took effect in January 2023. The initiative aims to reduce greenhouse gas emissions by 95% in 2050 and targets the state's biggest polluters. Also in January, lawmakers made a move toward ESG investing and introduced House Bill 1283, which requires ESG reporting in public market portfolios. But, as the 2024 gubernational race approaches, lawmakers in Olympia have shifted their focus to other pressing legislative issues such as gun safety and abortion access.

WA

WITH 2024 ON THE HORIZON, WASHINGTON SHIFTS FOCUS TO NON-ESG PRIORITIES

TOP TEN TREND-SETTING TAKEAWAYS

CO

COLORADO'S BALANCING ACT

This May, the Colorado legislature passed a series of climate-friendly laws, including the Greenhouse Gas Emissions Reduction Measures Act (SB 23-016) among other bills. The bill reaffirms the state's commitment to sustained emissions reductions, making Colorado the first state to put in place climate targets at regular intervals every five years. Looking ahead to the upcoming election year, we do expect to see some anti-ESG measures on the ballot, given the state's ballot initiative process is relatively accessible to interest groups.

Following its 2022 launch, Governor Jared Polis, chair of the Western Governors Association, released recommendations from the "Heat Beneath Our Feet" initiative. We'll be keeping an eye out for legislative or regulatory movement across the Western states considering adoption of these recommendations.

TOP TEN TREND-SETTING TAKEAWAYS

VA

REASSESSING VIRGINIA'S ESG PRIORITIES LEADING UP TO NOVEMBER 2023

During the first half of 2023, as we predicted last fall, ESG policies have garnered some attention given the split control of the legislature amid Republican Governor Glenn Youngkin's ambitious first term in office and with all General Assembly seats up for re-election this November. In March, Governor Youngkin joined Florida Governor Ron DeSantis's (R) 'Anti-ESG Alliance,' a policy commitment by 20 Republican governors to stop ESG expansion in their respective states, using any resources necessary. Reinforcing Governor Youngkin's anti-ESG position, Virginia Attorney General Jason Miyares joined 24 Republican-led states in a high-profile lawsuit to prevent the U.S. Department of Labor's ESG rule — Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights — from taking effect. Attorney General Miyares also spearheaded a letter signed by 20 state attorneys general warning 50 of the nation's largest asset managers not to engage in ESG investments. According to the letter, asset managers must "choose between their legal duties to focus on financial return, and the policy goals of ESG activists."

Recently, Governor Youngkin signed the Virginia State Budget into law for the 2022 – 2024 biennium. The enacted budget includes $4 million dedicated to launching the Virginia Power Innovation Fund "to make Virginia the landing ground for future energy technologies and supply chains." Gov. Youngkin has previously advocated for policies that support an "all of the above" approach to innovative energy technologies, including those involving nuclear and hydrogen.

TOP TEN TREND-SETTING TAKEAWAYS

PA

SPLIT CONTROL OF THE KEYSTONE STATE

After several tumultuous weeks that saw control of the Pennsylvania House of Representatives flip between the two parties, Democrats assumed control in January with a razor-thin majority. Earlier this year, Governor Josh Shapiro (D) included the assumption that Pennsylvania will participate in the Regional Greenhouse Gas Initiative (RGGI) in his proposed budget. The state joined the initiative in 2022 through an executive order issued by then-Governor Tom Wolf despite fierce opposition by Republicans, fossil fuel interests and trade unions. The order was ultimately challenged by the Commonwealth Court. Arguments were heard by the Pennsylvania Supreme Court in May and as of this writing, we are awaiting a decision. In March, Republican members also introduced House Bill 334, which would prevent ESG scores from being primary sources used in consumer transactions. The measure remains under committee consideration.

TOP TEN TREND-SETTING TAKEAWAYS

IN

NO RACE TO THE ESG FINISH LINE IN INDIANA

In contrast to the more vocal Republican-controlled states like Florida and Texas, Indiana has been content to quietly and strategically cultivate an unfavorable environment for ESG policies. As we said back in November, there's "no race to the ESG finish line" as lawmakers in Indianapolis only advanced one measure — House Bill 1008 — in the first six months of the legislative cycle. Signed into law in May by Governor Eric Holcombe (R), the legislation prevents leaders of the state's pension funds (for teachers and government workers) from investing any of the approximately $45 billion with firms that incorporate ESG principles into their investment decisions. The Indiana Public Retirement System (INPRS) is also required to divest all its holdings associated with the People's Republic of China.