Myths vs. Facts: Wyoming's Bill to Combat ESG (HB 80)

Many advocates commonly describe ESG as criteria for making strategic investment decisions to aid environmental or social causes one cares about. In reality, ESG policies risk failing Americans on a multitude of fronts.[1]

HB 80 would protect Wyoming's investments and economic interests from the threat of the ESG movement by:

- **Clarifying the fiduciary duty** of those managing Wyoming's pension funds is to consider only financial factors, and that commitments to promote ESG goals are evidence of a motive to promote non-financial purposes.
- **Benefiting Wyoming retirees** by shifting assets to asset managers focused on financial purposes, and specifying that the fiduciary duty laws outlined in the bill apply **to all entities responsible for managing state funds.**
- Ensuring Wyoming's **proxy votes align with Wyomingites values** by requiring that the shares of Wyoming's state pension investments be voted only in the financial interest of the plan participants.

Opponents are spreading misinformation[2] about the impact that this legislation could have on Wyoming. Here are the facts:

Myth 1: "Wyoming's pension fund could lose nearly $1.2 billion over the next three years if House Bill 80 goes into effect…."

Reality: This is an estimate from the Wyoming Retirement System, and is based on the theory that if the bill passes, there will be a "smaller universe of investment managers willing to partner with Wyoming to provide investment opportunities."[3] This estimate ignores that HB 80 expressly states that most of its provisions do not apply if "no economically practicable alternative is available." Section 1(f). Therefore, if WRS actually determined that a requirement would have this effect, the exception would kick in.

The bill requires investment and management decisions to be made based solely on financial returns, and that focus makes it more likely the fund will see *increased* returns, because decisions are not being made based in whole or in part on non-financial criteria such as ESG.

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[1] https://esghurts.com/what-is-esg
[2] https://cowboystatedaily.com/2025/01/17/anti-esg-bill-hits-wall-of-opposition-debate-will-continue-monday/
[3] https://wyoleg.gov/2025/Fiscal/HB0080.pdf

Many other states have passed similar bills without producing these alleged losses. For example, in 2023 alone similar bills were passed by Kansas (KS HB 2100), Arkansas (AR HB 1253), Kentucky (KY HB 236), Indiana (IN HB 1008), and West Virginia (WV HB 2862). None of those states have reported a negative financial impact, much less of the size WRS is estimating.

Myth 2: The bill "could severely limit the state's investment options," because "many investment firms will simply walk away from Wyoming's business as a result of their attorneys' legal interpretations."

Reality: Again, if a requirement "severely limit[s] ... investment options" in a way that the state does not have "economically practicable alternatives," the bill's exception would kick in. Section 1(f). In addition, as noted above, other states have passed similar bills years ago. These states have not reported these difficulties. The bill does not limit "investment options," it limits investing based on motives other than financial maximization. The state could still invest in any company, provided that the investment is based solely on maximizing financial returns.

Myth 3: Implementation will be "costly and time-consuming" and will force fiduciaries to "hire a mail clicking firm and someone to monitor every podcast, every conversation, every newspaper article, every one of the major [company]'s officers."

Reality: The bill's definition of fiduciary commitment includes various statements as evidence of an asset manager's motive in managing state funds. Section 1(a)(ii) never requires fiduciaries to analyze all of those statements. The fact that any of that information is *allowable* evidence does not mean that all of it must be collected and analyzed. Instead, state fiduciaries can "reasonably" determine that an outside investor has acted with a purpose to further non-financial goals based on such evidence. Section 1(a)(iii). Under the bill, state asset managers would be required to abide by their financial duties and ensure that outside investors agree in writing to abide by the same financial duties. Nothing in the bill requires state fiduciaries to undertake "costly and time-consuming" efforts to monitor every statement an outside investor makes.

Myth 4: More than half of the treasurer's staff "are likely to walk out the door if the bill passes, because they will see it as a material change to their contract" and the treasurer's office will "be left with nobody to invest, no markets to invest in."

Reality: If more than half of the treasurer's staff will leave based on a bill that says state investments must be based solely on financial maximization, then perhaps the treasurer needs new staff members. The treasurer can of course hire new staff, and can use outside fiduciaries that agree to focus on financial maximization. A financial-maximization focus leaves plenty of

"markets to invest in," as financial maximization may involve investments in many different markets, based on returns.

Myth 5: The bill would "delve[] so deeply into specifics that it will be very hard to manage" and would result in "micromanaging the investment portfolios to the detriment of the state."

Reality: The bill does not require "micromanaging the investment portfolios" of the state. It simply requires state asset managers to act solely in the interest of maximizing those funds. If anything, it moves away from micromanagement, as it prohibits entrusting state funds to managers that have repeatedly sought, through engagement and shareholder votes, to micromanage portfolio companies in order to pursue ESG goals rather than financial returns. The bill would not "delve so deeply into specifics." It would prescribe a simple set of rules about exercising financial duties solely to maximize returns, and require hired asset managers to abide by that same set of rules. Notably, since 2017, Wyoming law already required local government entities contracting with "another person to aid in the investment of public funds" to act "as a fiduciary with respect to the investment of public funds by acting solely in the interest of the public," WY ST § 9-4-831(m), and that provision apparently has not been "very hard to manage."

Myth 6: The bill could be "triggered by a company's internal policies between its employees, such as health care services."

Reality: The bill addresses "fiduciary commitments," which are defined to be a "fiduciary's purpose in managing the investment of state funds." Section 1(a)(ii) would not apply to a company's health care coverage for employees. Presumably, this argument is referring to a clause referring to "providing or increasing access to abortion, sex or gender changes, [or] transgender surgery." Section 1(a)(iii)(D). But that clause is merely one of several discussing evidence that may show a "fiduciary commitment to further, through portfolio company engagement, board or shareholder votes or other actions as a fiduciary or a trustee." Section 1(a)(iii). The health care coverage that a company provides its own employees would not demonstrate evidence of a "fiduciary commitment," nor is such coverage an "action as a fiduciary or a trustee."

Myth 7: Subsections related to making investments for the purpose of increasing access to abortion and transgender surgery, or for the purpose of limiting the sale of firearms and ammunition, are contrary to the bill's purpose and are not "keep[ing] energy policy energy policy."

Reality: The bill is not about "energy policy," it's about financial policy and fiducial responsibility. State asset managers should be focused solely on financial maximization. They should not be making investments for the purpose of promoting social goals.

Myth 8: The bill has a problem because "many energy companies, even coal, have ESG statements."

Reality: The argument that the bill would stop the state from investing in energy companies, because they have ESG statements, is incorrect. The bill requires the state to invest *solely* with the motive to maximize returns. Therefore, the state and its asset managers should invest in whichever companies are most likely to maximize returns, regardless of whether those companies are energy companies or have ESG statements.

ESG statements could be considered as part of a financial-maximization analysis. For example, if fiduciaries are choosing between an energy company that has promised to cut its emissions by slashing production and an energy company that has not promised to do so, the investors could take into account that the latter company is likely to return higher profits (all else being equal). As the Petroleum Association of Wyoming has stated, 2030 greenhouse gas reduction targets produced "unrealistic expectations that the industry couldn't meet."

If the argument is that the bill is unnecessary because energy companies support ESG just like asset managers, that argument is disingenuous. The same speaker acknowledged that "Wall Street, in more recent times, has been requiring ESG statements from every company that wants access to its capital." The bill is necessary precisely because finance has been used by Wall Street and asset managers to force ESG goals rather than promote financial returns.

Myth 9: The bill wouldn't let Wyoming "use its oil and gas invested money to invest in a company that's doing [carbon capture, etc.]."

Reality: This is incorrect. The bill requires the state to invest *solely* with the motive to maximize returns. Therefore, the state should invest in whichever companies are most likely to maximize returns, regardless of whether those companies are energy companies or are performing carbon capture or the like. If two energy companies are otherwise equally good investment opportunities, but one is also making money off of carbon capture and the other is not, the bill would require fiduciaries to invest in the company doing carbon capture, because that investment is more likely to maximize financial returns. In addition, the commitments at issue under the bill are "*fiduciary* commitments." The key question is what commitments have been made by state asset managers, not what commitments happen to have been made by underlying companies.

Myth 10: The bill would move towards being a "stakeholder fiduciary" instead of a "true fiduciary," because it would require taking into consideration state interests.[4]

Reality: The bill is pursuing true fiducial responsibility. It calls for financial maximization, regardless of whether that supports oil and gas companies or other state interests. It prohibits using state funds in order to pursue non-financial goals, such as forcing oil and gas companies to cut their emissions. Under the bill, if asset managers are choosing between a Wyoming oil and gas company, and a California solar panel company that the fiduciaries believe will produce better financial returns, the asset managers should choose the solar panel company.

Myth 11: The bill is unnecessary because "Existing language in state statutes and the constitution already spells out that the state's financial investors must be strictly for the financial benefit of members."

Reality: It is true that Wyoming generally requires state asset managers handling taxpayer dollars for retirement systems to act "solely in the interest" of participants and beneficiaries. WY ST § 9-3-439. In addition, as noted above, local governments must require outside asset managers to act solely in the interest of the public. WY ST § 9-4-831(m). But as demonstrated by the opposition to the bill, those provisions do not contain the word "*financial*" and do not contain details about what types of interests are financial and what types are not.

Without this safeguard, state asset managers and contracted fiduciaries can claim that any goal they pursue is in the indirect "interest" of participants, such as by claiming that reducing emissions fights climate change, or that forcing companies to adopt ESG goals will help lead to the "net-zero transition." A federal court recently ruled that American Airlines violated their fiduciary duty of loyalty when they failed to take action to address BlackRock's use of pension plan funds to promote non-financial interests.[5]

The Wyoming Retirement System currently uses asset managers that do not act "solely in the interest" of their clients. For example, the Wyoming Retirement System has funds managed by State Street Global Advisors.[6] In 2023, State Street voted for pro-ESG proposals almost a quarter of the time,[7] such as a vote pushing PACCAR (a trucking company) to ensure that its lobbying activities were in line with the Paris Agreement,[8] even though the Paris Agreement obviously demands reduced commercial trucking.

[4] https://www.youtube.com/watch?v=Yr6p5lhxJic
[5] *Spence v. American Airlines*, No. 4:23-cv-552, Slip Op. at 3 (N.D. Tex. Jan. 10, 2025).
[6] https://retirement.wyo.gov/wp-content/uploads/2024/08/WRS-ACFR_2023.pdf
[7] https://shareaction.org/reports/voting-matters-2023
[8] https://d18rn0p25nwr6d.cloudfront.net/CIK-0000075362/973a91bc-7108-4398-aadb-93a123a86b03.pdf