2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2291

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2291
2/4/2021 AM

A BILL for an Act to create and enact a new section to chapter 21-10, a new section to chapter 54-44, and a new section to chapter 54-60 of the North Dakota Century Code, relating to social investments made by the state investment board and the boycott of energy or commodities companies; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; and to provide for reports to legislative management.

Chairman Kreun called the hearing to order at 10:23 AM

Senators Schaible, Bell, Patten, Piepkorn, Kreun and J. Roers all present

Discussion Topics:
- ESG criteria and impact on state
- Fund management and fiduciary responsibility
- First Amendment Concerns

Senator Bell, District 33, introduced the bill and testified in favor #5437, 5383 and 5384 (10:24 am)

Jason Bohrer, President and CEO, Lignite Energy Council, testified in favor (10:32am)

Bette Grande, Roughrider Policy Center, CEO, testified in favor #5409 (10:39am)

Brent Bennett, Life Powered Texas Public Policy Foundation, testified in favor #5226,5227, and 5228 (10:48am).

Ron Ness, North Dakota Petroleum Council, President, testified in favor #5313 (10:57am)

Pete Hanebutt, North Dakota Farm Bureau, testified in favor (10:59am)

Sherry Neas, Office of Management and Budget – State Procurement Office, Central Services Division Director, testified opposed #5335 (11:02am)

Dustin Gawrylow, North Dakota Watchdog Network, Managing Director, testified opposed #4684 and 4685 (11:10am)

James Leiman¸ ND Commerce, Director of Strategy, testified neutral #5385 (11:19am)

Additional written testimony:

Simon Geoff, Western Energy Association, testimony in favor #5438
Jonathan Fortner, VP of Government Affairs, Lignite Energy Council, testimony in favor #5390

Chairman Kreun called the hearing to a close at 11:40 am

Dave Owen, Committee Clerk

21.0717.02002
Title.

Prepared by the Legislative Council staff for Senator Bell
February 2, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2291

Page 1, line 5, remove "and"

Page 1, line 6, after "management" insert "; and to declare an emergency"

Page 1, line 11, remove "investment, divestment, or"

Page 1, replace lines 12 through 15 with "consideration of socially responsible criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return to the state."

Page 1, line 16, replace "The" with "Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the"

Page 1, line 16, remove "may not invest state funds for the purpose of social"

Page 1, line 17, replace "investment" with "can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, the state investment board may not invest state funds for the purpose of social investment"

Page 1, line 22, after "a." insert ""Boycott energy or commodities" means without any ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities or a company that does business with a company that refuses to deal with, terminates business activities with, or otherwise takes any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities.

b."

Page 2, line 1, replace "b." with "c."

Page 2, line 4, replace "c." with "d."

Page 2, line 7, replace "d." with "e."

Page 2, line 12, after "governance" insert "through activities that boycott energy or commodities"

Page 2, line 19, after the second "the" insert "transport, sale, utilization,"

Page 2, line 20, after "production" insert an underscored comma

Page 2, line 24, after the second "the" insert "transport, sale, utilization,"

Page 2, line 24, after "production" insert an underscored comma

Page 3, after line 6, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

21.0717.02002

Sixty-seventh Legislative Assembly of North Dakota

SENATE BILL NO. 2291

Introduced by

Senator Bell

A BILL for an Act to create and enact a new section to chapter 21-10, a new section to chapter 54-44, and a new section to chapter 54-60 of the North Dakota Century Code, relating to social investments made by the state investment board and the boycott of energy or commodities companies; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; ~~and~~ to provide for reports to legislative management; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

Social investment - Prohibition.

1. As used in this section, "social investment" means the ~~investment, divestment, or prohibition of investment of state funds for a purpose other than maximum risk-adjusted investment return, including an ideological, environmental, political, or religious purpose, or for the purpose of state, local, or regional economic development.~~consideration of socially responsible criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return to the state.
2. ~~The~~Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the state investment board ~~may not invest state funds for the purpose of social investment~~ can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, the state investment board may not invest state funds for the purpose of social investment.

SECTION 2. A new section to chapter 54-44 of the North Dakota Century Code is created and enacted as follows:

State participation - Environmental social governance.

1. As used in this section:
   a. "Boycott energy or commodities" means without any ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities or a company that does business with a company that refuses to deal with, terminates business activities with, or otherwise takes any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities.
   b. "Environmental" means criteria used to consider performance as a steward of the environment or the beneficial use of natural resources.
   ~~b.~~c. "Environmental social governance" means a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments.
   ~~c.~~d. "Governance" means criteria that deals with leadership, audits, internal controls, and shareholder rights, or any other determinations or de facto makeup of a company or organization.
   ~~d.~~e. "Social" means criteria used to consider issues relating to the management of relationships with employees, suppliers, customers, and communities and other social interactions within society, including ideological, political, or religious purposes.
2. The office of management and budget shall encourage state agencies to avoid contracting with companies that support environmental social governance through activities that boycott energy or commodities.

SECTION 3. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Boycott of energy or commodities - Report to legislative management.

1. As used in this section, "boycott energy or commodities" means without any ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities or a company that does business with a company that refuses to deal with, terminates business activities with, or otherwise takes any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company invests in or assists in the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or agriculture commodities.
2. Before August first of each even-numbered year, the department of commerce shall provide a report to the legislative management of all the companies in the state which boycott energy or commodities, including a list of all investments of state funds in companies with direct or indirect holdings in companies that boycott energy or commodities under chapter 21-10.

SECTION 4. DEPARTMENT OF COMMERCE STUDY OF DIVESTMENT OF COMPANIES THAT BOYCOTT ENERGY OR COMMODITIES - REPORT TO LEGISLATIVE MANAGEMENT. During the 2021-22 interim, the department of commerce shall study the implications of a complete divestment of state funds from companies that boycott energy or commodities. The department of commerce shall report its findings and recommendations to the legislative management by June 1, 2022.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

SB 2291
Senator Jessica Bell
District 33

ESG stands for environmental and social governance. If you haven't heard about it, you will notice it in your daily reading now that it's been brought to your attention. It has infiltrated nearly every part of doing business. Environmental and social governance is a growing movement in the investment and banking world to divest from agriculture and energy companies, often ignoring the basic investment goal of maximizing returns. Companies will go so far as to turn down a creditworthy investment if it doesn't meet their ESG requirements, which limits financing and insurance opportunities for those companies who don't meet the required, and most often subjective, "standards". ESG is another tool in the toolbox to move toward the elimination of production agriculture and fossil fuels.

Stakeholder activism such as this fails to consider some important and undeniable facts. To begin with, we need fossil fuels and production agriculture to fuel and feed our world. Reliable electricity and a stable food supply have directly lifted millions of people out of poverty, immensely improving their quality of life, yet ESG driven decisions do not account for this. Most attacks on production agriculture and fossil fuels, meant to slow their progress and reduce access, are largely counterintuitive.

In North Dakota specifically, the largest investment fund managed by the state, the Legacy Fund, exists only because of oil and gas tax revenues. It defies logic to imagine the state investment board making Legacy Fund investments based only on ESG considerations, which often oppose the industry that funds half of our state budget. We need to remember the resources that have built our state economy, energy and production agriculture, and not let inefficient investment fads dictate our state's financial decisions. Any other policies directing investments to the Legacy Fund would not be affected by this legislation.

But we don't need to feel helpless! Even as we face an administration that has boldly and clearly stated the disdain they have for what we do as a producing state here in North Dakota. It's up to us to determine our own destiny and leverage our assets to prioritize what's important to us. Other states have taken similar actions, fully divesting from assets that don't reflect their priorities. (see article below) Places like the City of New York and states like Texas, Alaska (see article below), Wyoming, Indiana and others are evaluating the adoption of policies as it relates to ESG boycotts. This bill helps get us one step closer to developing our own policy here in North Dakota.

If the committee is looking at the bill as I speak to the different sections, I'd appreciate it if you'd work off of the amendments provided in my online testimony amendment 21.0717.02002. As this is a new concept, it's been difficult to find the proper language to include in the century code to reflect the practices we want to put in place. I've worked with affected state agencies and other interested parties to try and find the language that is most appropriate.

The first section of the bill places into law current practice of the State Investment Board as it relates to investment policies on ESG. The amendment excludes any other specific policy directives on investments in the Legacy Fund to ensure no complications. The policy disallows the consideration of ESG when making investments in our state's pension and other funds. This policy has proven very successful for both us and other states, specifically South Dakota, who has seen high performance with a policy that reflects our current practice and the language in this bill (see article below). High performance should always be a top consideration when making investment decisions for our state funds. But concepts like ESG beg other questions – should we be investing in companies that don't share our values? Should we do business with financial institutions that refuse to do business with the largest employers in our state? Should we sit back and watch those same financial institutions divest from fossil fuels and do nothing to protect ourselves? Should we focus investments in areas of business that fuel our economy? Or should we solely focus on top dollar? Then also – how do we attract those dollars to invest in our businesses? How do we demonstrate our production of energy and agriculture commodities are clean and sustainable? How can we better share our story and compliance regarding ESG?

These questions lead us to the reason you see the remaining sections of the bill. Section 2 encourages state agencies to avoid contracting with companies that support ESG through boycott of energy or agriculture. Notice this language is delayed and permissive, as more research needs to be completed before a comprehensive policy can be put into place. If there are changes requested by OMB, I'm happy to work with them on a way to alleviate any concerns they may have.

Sections 3 and 4 direct the Department of Commerce to develop a list of companies that do business in our state and boycott energy and agriculture, including a list of all investments of state funds in companies with direct or indirect holdings in companies that boycott energy or commodities. The Department of Commerce is also directed to evaluate the implications of completely divesting state funds from companies and financial institutions that boycott energy or agriculture. A more drastic, but likely necessary, approach to defend our legacy of production agriculture and energy products.

An emergency clause has been included because this is an immediate priority for the state, and Commerce is already beginning to evaluate some of these implications. Adopting this bill and these policies give some directive to our state regarding a movement that is already up and running and will only continue to negatively impact our livelihoods.

You'll hear from experts on this subject this morning, as well as others who will play a role in this policy's implementation as we move forward. Their thoughts and feedback have been incorporated into the amendments in front of you this morning. I look forward to working together to continue building momentum as a state as it relates to ESG, and taking control of our own future. Let's make our priorities – continued production and exports of our agriculture and energy products – clear to the world.

SD Article
https://www.valuewalk.com/esg-pension-investment-strategies-proxies/

AK Governor
https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/alaska-governor-wants-to-cut-ties-with-banks-not-financing-arctic-oil-industry-61757817

Three NYC Pension Funds to Divest $4 Billion From Fossil Fuels
2021-01-25 19:04:41.752 GMT

By Alex Wittenberg
(Bloomberg) -- Three of New York City's five public
employee pension funds are divesting $4 billion from securities
related to fossil-fuel companies.

Pensions for teachers, school administrators and civil servants voted to divest their holdings, according to a statement Monday from Mayor Bill de Blasio, Comptroller Scott Stringer and retirement board trustees. Police and fire department pension funds haven't voted to divest.

Investment managers and finance firms have come under increasing pressure to address climate change. In 2018, New York became the first major U.S. city to commit to divesting public pension funds from fossil fuel holdings.

"Our first-in-the-nation divestment is literally putting money where our mouth is when it comes to climate change," de Blasio said in the statement. "Divestment is a bold investment in our children and grandchildren, and our planet."

Last year, the New York State Common Retirement Fund pledged to reach net-zero greenhouse gas emissions across its investments by 2040, a decade before any other U.S. pension plan.

Other large pension investors have also taken action to reduce their carbon footprints, including the California Public Employees' Retirement System and Australia's Retail Employees Superannuation Trust, which have committed to transition their investments to net-zero emissions by 2050.

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Testimony ID#5409

Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

February 4, 2021

Chairman Kreun and Members of the Senate Energy and Natural Resources Committee,

My name is Bette Grande, I am the CEO of Roughrider Policy Center and I stand in support of SB 2291. I have provided the Committee with two articles I wrote recently, and a white paper written by Bud Brigham, many of you will recognize that name, Mr. Brigham was a pioneer in the Bakken.

These materials will explain what we are up against and I want to use this time to put this issue in perspective. I am old enough to remember the 1980's and I saw my father struggle when the oil field went bust. The 80's were hard in North Dakota, young people seeking opportunity moved away, myself included.

Many of you may recall the idea floated in the late 80's that North Dakota would become a "Buffalo Commons" and thinking back of that time it was hard to argue with Frank and Deborah Popper on that vision.

My family and I moved back to North Dakota in 1992 and things were improving. Gov. Schafer and the Republican Legislature were working to bring our economy back and build a future for North Dakota families.

But it was not until pioneers like Bud Brigham brought the Bakken to life that things really began to change in North Dakota. Population growth, economic opportunity, wealth and revenue growth put North Dakota on the national map. Energy security.

The new administration is not friendly to coal, oil, natural gas and other vital parts of our economy and supports many Green New Deal policies. And the ESG (Environmental and Social Governance) movement is just the latest tool to attack our traditional energy resources. ESG could just as well stand for "Eliminate Shale Gambit" and efforts by industry and government in our state to play along with the ESG game will only weaken our hand.

Why would North Dakota go along with a plan to send us back to the 1980's, to Buffalo Commons?

The issues and threats our energy industry faces are significant. We will be right back fighting with environmental groups and federal agencies over our ability, our rights, to develop our resources. The future of DAPL is in the hands of federal court in DC. Additional infrastructure

RedState

Forget Peak Oil, Peak Capital Will Cost Consumers Dearly

By **Bette Grande, Roughrider Policy Center for The Heartland Institute** | Jan 13, 2021 3:00 PM

(AP Photo/David Zalubowski, File)

The Energy Information Administration reported that the United States did not import any oil from Saudi Arabia in the last week of 2020. There are many reasons for this, and it is likely temporary, but the trend of lower oil imports is happening because of increased domestic oil production in states like New Mexico, North Dakota, and Texas. However, our hard-won national energy security may be short-lived.

It is no secret that it has been a difficult year for the shale oil industry. First, OPEC slashed the price of its oil in March 2020. That was quickly followed by COVID-19 lockdowns and the drop in demand for oil and gasoline. Those two factors have improved somewhat, but in 2021, the domestic energy industry may see a fracking ban on federal lands and a host of new environmental regulations that will deter energy production.

Even so, the biggest challenge facing domestic energy producers is the increasing lack of capital. Environmental and Social Governance (ESG) requirements and the related trend for big banks to deny capital to the traditional energy sector will choke off the capital needed for the continued dominance of the domestic energy sector.

ESG investing, pushed by the largest firms on Wall Street, is the latest effort to force companies to turn away from their core business and divert resources to address the evolving social and environmental concerns of activists.

American Thinker

January 28, 2021

First, they came for Alaska

By Bette Grande

The future of domestic energy production and resource development is happening now in Alaska. Two recent stories out of Alaska sound a warning to energy and mining states: you are next.

Last August, the U.S. Interior Department finalized its plan to open a small portion of the Arctic National Wildlife Refuge (ANWR) to oil and gas development — a move welcomed by Alaska governor Mike Dunleavy at the time, who said, "Alaskans, Americans, this is a great day."

It was a day full of opportunity, but five months later, reality hit. Leases for just 11 of the 22 tracts were sold on January 6, 2021, the majority to a state-owned development corporation. And not a single major oil company submitted a bid. Not one.

Why would private oil companies take a pass on tapping into ANWR's vast oil and gas reserves? In a word, capital, or lack thereof. Drilling in ANWR, despite the potential payoff, does not fit nicely into the Environmental and Social Governance (ESG) policies that oil companies are now required to implement. Today, access to private capital, bank loans, and insurance requires a strong ESG strategy. And without capital or insurance, development of resources is not possible.

The Pebble mine project in southwest Alaska has also been in the news lately. In November, the U.S. Army Corps of Engineers rejected a permit for the mine located on state-owned land. The

Buffalo Commons, 20 years later

LAUREN DONOVAN Bismarck Tribune
Aug 31, 2007

Frank and Deborah Popper remember when all hell broke loose out here in the Great Plains.

They - otherwise obscure East Coast university professors - remain amazed and pleased by reaction to a research paper they called "The Great Plains: From Dust to Dust," published 20 years ago.

In it, they proposed a Buffalo Commons for the sparsely populated regions of 10 states from western North Dakota clear to Texas.

They suggested that the vast grassy region was stuck in a cycle of decreasing population and emptying towns and farms, and the best use for it would be a vast preserve and wilderness for bison and wildlife. They proposed the federal government, like it did in the '30s to create the National Grasslands, could buy back the land it gave free for homesteading.

They say most of what they foresaw has come to pass, but differently.

The Great Plains continue to empty, except for in larger population centers. And, a Buffalo Commons is happening, only through a private conservation movement, not through government intervention.

The Poppers say they were far more right than wrong.

In their view, conservancy-style purchases of the Great Plains' prairie, plus the strength of the buffalo industry highlighted by Ted Turner's conglomeration of Montana ranches into a bison empire are signposts pointing the way.

Those indicators, plus groups like the Great Plains Restoration Council, the Inter-Tribal Bison Cooperative, the American Prairie Foundation and the Grasslands Foundation, all put flesh to the concept and make it material, they say.

"There's no question now that the Buffalo Commons will happen," Frank Popper said in a recent interview. "The interesting questions are how."

Richard Rathge, who directs the state's population data center, says he frankly thinks that's hogwash, or more accurately, buffalo-wash.

He said the Poppers based their proposal on the notion that places like North Dakota had no ability to create a different economy and that buffalo parks would be a sustainable use of the region.

"That didn't happen, nor will it happen," Rathge said, partly because buffalo ownership is mainly privatized in a cattle-style industry.

More importantly, though, he thinks the Poppers failed to recognize that a population resurgence was possible in western counties and towns they saw as spiraling toward extinction.

The latest data show that for the first time in more than two decades, 10 of 15 counties either west of or on the Missouri River in North Dakota show growth.

Those counties - including McKenzie, Dunn, Hettinger, Morton, Williams and Sioux - have seen an influx of people because of energy development and eco-tourism.

"The key is the diversification of the economy," he said.

Shaking things up

The Poppers' beliefs that the Buffalo Commons "will happen" are not the fighting words they were 20 years ago.

Then, the idea sounded faintly ridiculous.

On the other hand, with a deepening drought, Yellowstone National Park on fire, an oil recession and towns across the plains for generations birthing far fewer people than they buried, they touched a nerve that maybe it could really happen.

It was to that "other hand" that the Poppers were called on to defend their research in overheated meeting rooms up and down the Great Plains. Strong words were said and meant.

"We were the damned last straw," Frank Popper recalled.

In Montana, people wore jackets with the picture of a bison surrounded by the circle-slash stamp for "no." In Kansas, a meeting with the Poppers was cancelled because of a death threat against them. In North Dakota, a McKenzie County newspaper publisher angrily asked them, "What do you want us to do? Leave?"

For all the heat it generated, the Poppers' work created an equal amount of light.

Jim Gilmour remembers both the fire and the illumination.

Gilmour is a Fargo city planner, a city of fortune far outside the Buffalo Common fray.

Back in 1987 he was working for the Lewis and Clark Council for Regional Development that included 10 North Dakota counties. Most of the counties - Grant, Sioux, Sheridan, Hettinger - were on the Poppers' dire demographics "hit" list for having towns that were dying on their feet.

Looking back these 20 years, Gilmour said the Poppers did some good.

"People get accustomed to the gradual decline and don't realize what the situation is," Gilmour said. "Having that prediction caused people to realize they needed to create their own future."

In fact, Gilmour was among those to first read the Poppers' Buffalo Commons theory in the American Planning Association magazine. He invited them to speak at a 16-state Western Planning Conference in Bismarck, July 1988.

It was hot. It had barely rained for months. Crops were burning up. Water in the huge Missouri River dam basins was shrinking.

"Suddenly, I was not a joke or some kind of bizarre prophet, the intellectual clown act that I'd been (earlier)," Frank Popper said. "They were taking us very seriously indeed."

The media showed up, including the Chicago Tribune.

Until then, the Buffalo Commons theory had four hooved feet that were trampling humans in their most fragile places. With the attention of Chicago, the New York Times to follow, the "Today Show" and others, it grew wings. Within months the Poppers and Buffalo Commons were part of the regional lexicon.

Timing was everything

While the Poppers were battling up and down the plains, George Sinner was North Dakota's governor, winding down the first of his two terms in office.

His administration dug hard into North Dakota's economic development movement and fostered an eventual understanding that growth would come bootstraps up, not dispensation down from state government.

Sinner had his hands full. There was the drought, a prolonged struggle to keep the Great Plains Synfuels Plant up and running and communities like Belfield and Watford City reeling from the implosion of the oil boom.

Still, Sinner said he didn't believe in the Poppers' theory, even though he had a congenial half-hour meeting with Frank Popper during that planning conference.

"I still don't believe it," Sinner said.

Looking back now, he sees that some of what they predicted has come to pass.

What the Poppers failed to take into account was that the tide could turn, Sinner said.

There has been a rebirth in western North Dakota, with ethanol production, a new promising run in the oil fields and a number of coal projects under development. Good crops are cyclical, but the world demand for food will only ever increase, Sinner said.

Judging the future by what happens over a relatively small time span is short-sighted, he said. "I don't think anybody in my office was very alarmed," Sinner said.

Conversation long overdue

Rathge said the Poppers started an important conversation about depopulation in the plains. The numbers had always been there, but tying them to the empty wildness of a Buffalo Commons gave the discussion an unprecedented urgency, he said.

Even with modest growth in some western counties, the same trends that have always plagued the state still do. Six counties contribute to the slight but steady increase in the state's population over the past 50 years. All other counties have declined in population with only a recent improvement for some that could go away if the energy and oil boom do.

Rathge said he's optimistic, but people and communities still need to be innovative and diversify.

Deborah Popper says when she rereads the original paper she is struck by its sweeping, vivid language.

"It was much more powerful than I would write it now," she said.

What most sticks with the Poppers is the conversation - occasionally a shouting match - that occurred up and down the plains when people were confronted with such a dramatic view of how the future might unfold.

Deborah Popper said ultimately people used their work to define what they didn't want to have happen to their communities and the land they loved and lived.

"The Buffalo Commons became one piece of the way to articulate that," she said.

(Reach reporter Lauren Donovan at 888-303-5511 or **lauren@westriv.com**.)

Energy Discrimination

A THREAT TO CAPITALISM, PROSPERITY, & FLOURISHING

Bud Brigham for Life:Powered

The constitutional, moral, and ethical problem

It was 50 years ago that famed economist Milton Friedman published the Friedman doctrine of capital theory. Friedman argued that the main responsibility of business managers is to create profits for their shareholders — in other words, to cultivate and grow their business by running it well and providing an outstanding product or service — and that the shareholders can then decide for themselves what social initiatives they wish to take part in.

> *"...the rights of property, are the objects for the protection of which government was instituted."*
>
> -James Madison

Economic freedom — our right to spend, invest, and donate our hard-earned money as we choose — is one of our most cherished rights. Today, many investors are investing their own personal capital not just to generate a financial return, but also to reflect and project their environmental or societal concerns and beliefs. Freedom to do just that is obviously a very good thing, as is the freedom to not invest in enterprises that don't reflect our values.

But what if they are investing someone else's money? Maybe yours? This is where energy discrimination becomes a problem, especially for workers who assume (rightfully so) that their retirement funds are being managed with their best interests — not political whims — in mind.

That is the problem with these campaigns to bully businesses into divesting from fossil fuels. They go much farther than encouraging individuals to invest in environmental issues. The groups hostile to fossil fuels generally have no desire to own these companies, but exercising their right not to participate in ownership is not enough for them. These movements are working to change these companies, primarily from the outside, at the expense of the shareholders who rely on their manager's dedication to their fiduciary obligations. It's a co-opting of ownership and control, deeply penetrating and affecting the behavior of corporations and pension funds who are investing and risking other people's money. Is that right? Do you really own the property if special interests are able to exercise control and even seek to destroy it?

Our Founding Fathers set forth a clear vision for a nation thriving on the firm foundation of individual liberty, the right to private property, and the right to freedom of association. James Madison wrote, "The rights of persons, and the rights of property, are the objects, for the protection of which government was instituted." Or as stated by my favorite author Ayn Rand, "The right to life is the source of all rights — and the right to property is their only implementation. Without property rights, no other rights are possible."

Capitalism, uncorrupted, creates human flourishing

The genius of the United States of America is empirically and unquestionably evident in a vast array of fields, from technology and medicine to music and the arts. The rest of the world combined does not nearly match America's diverse contributions to the advancement of society and human flourishing. **American fossil energy companies have revolutionized energy markets by producing abundant and clean fuels, reducing energy costs to the benefit of the entire world (particularly the poor and middle class), and making the world safer and less vulnerable to supply disruptions.**

What differentiates America's impact on human civilization? Why, despite all the advancements of other countries and societies, is America still so exceptional?

It comes down to one attribute: economic freedom. American businesses have generated historic advancements over the last century because of their relentless pursuit of excellence, benefitting from lightly regulated and largely free markets.

Stated another way, capitalism has been fundamental to American exceptionalism. For American companies to grow and thrive over the long term, they must generate attractive outcomes for all their stakeholders. What the energy discrimination movement fails to recognize is that companies will not be successful if they treat their employees poorly, fail to be good stewards to their communities, or spoil the environment that they operate in. We are all on the same team. I have been blessed to have founded and built five successful companies thus far, including two that have successfully gone public. Our achievements were only possible because we rewarded all our stakeholders, and it was a direct consequence of our intense focus on providing an outstanding, profitable service that delivers value to our shareholders. These are virtuous relationships in a virtuous cycle — the beauty, the harmony, of true and uncorrupted capitalism.

When it comes to the environment, the United States is a world leader. We've slashed air pollution by 77% in the last 50 years — far outpacing almost every other developed nation — and are ranked number one in the world for access to clean water. These accomplishments can be credited almost exclusively to innovation in the private sector, especially pollution control technology, horizontal drilling, and fracking. American energy companies produce the cleanest energy of any country in the world, and partly as a result, the United States has the cleanest environment of any major country. Furthermore, our exports are displacing dirtier energy produced overseas that are polluting our shared air and water resources. **This environmental exceptionalism is a fundamental product of the American energy industry's pursuit of shareholder value** — not ESG investing.

Meanwhile, fossil fuels are helping to fight poverty around the world. While almost half the world's population lived in what economists call "extreme poverty" as recently as 1980, that number is now less than 10 percent. Affordable, reliable energy begets clean water, modern medicine, warmth and light, safe cooking fuels, and

Energy Discrimination = Higher Prices

About energy discrimination & politically motivated investing

Environmentalist activists are increasingly pressuring corporations to take action on political issues instead of prioritizing fiduciary responsibility. Banks are refusing to lend to fossil fuel companies and other vilified industries while environmental, social, and governance (ESG) investing is the behind-the-scenes underpinning of public shaming campaigns to divest from fossil fuels, cut carbon dioxide emissions, and subsidize expensive, unreliable renewable energy.

While social responsibility is important to many consumers and should be a priority for businesses, the energy discrimination movement wrongly bullies corporations into taking a political stance in order to appease a vocal minority of activists. Engaging the energy discrimination movement also grants corporations the false appearance of moral superiority, even though **divesting from fossil fuels would yield no environmental benefits but come with an extreme economic cost.**

Why energy discrimination hurts Americans

The ESG movement's goal is to deny financing and even insurance coverage to fossil fuel producers, led by banks and investment firms including JP Morgan, Bank of the West, and BlackRock. Several states are even considering requiring pensions to prioritize ESG over return on investment for retirees.

In the meantime, Americans still need reliable energy, 80% of which comes from fossil fuels despite decades of multibillion-dollar subsidies for wind and solar energy. Denying financing to our American energy producers kills good-paying jobs, increases cost of living, and reduces the capital available to invest in the energy technologies of the future — while giving a leg up to less responsible producers overseas with lax environmental and labor standards.

ESG Tactics

- Abuse of Shareholder Rights
- Public Shaming Campaigns
- Growing the Regulatory State

Life:Powered
WWW.LIFEPOWERED.ORG

Life:Powered is a national initiative of the Texas Public Policy Foundation. We educate policymakers and the public about the importance of our affordable, reliable energy resources to human flourishing.

February 4, 2021

Testimony of Brent Bennett, Ph.D.
Policy Director, Life:Powered
Texas Public Policy Foundation
Before the
North Dakota Senate
Energy and Natural Resources Committee

Chairman Kreun and Members of the Committee:

Thank you for the opportunity to testify today in support of SB 2291. I am the Policy Director of Life:Powered, a project of the Texas Public Policy Foundation to raise America's energy IQ. My career has spanned oil and gas, utility-scale batteries, financial research, and now energy policy, so the subject of this bill – namely the growing movement to pressure banks and investment firms to boycott and collude against oil, gas, and coal companies – is of great personal interest to me. More importantly, as I will explain later, we believe this bill could have significant import in Texas and many other energy producing states.

As an organization committed to limited government, we are not naturally inclined to seek policy responses for misguided corporate behavior. However, this energy discrimination movement has reached a point where it demands a response from our states. Not only does it negatively impact our vital energy businesses and threaten our energy independence, it strikes at the heart of many bedrock principles of capitalism that have made our country so prosperous.

First, I want to clarify that we do not entirely oppose the right of companies to pursue ESG investing goals. **Environmental, social, and governance (ESG) goals are appropriate when those goals benefit a company's shareholders.** Companies that want to maximize long-term returns to their shareholders must take care of the environment, their employees, and their communities. We encourage charitable activities from companies for this reason. The problem arises when, under the guise risk management and ESG principles, advocacy groups are attempting to bypass the checks and balances of our political process and forcing corporate boards to place narrow political agendas above their fiduciary responsibilities.

Unfortunately, the environmental aspect of the ESG movement has devolved into a myopic focus on climate change and carbon emissions. A prominent example is the Climate Action 100+ group. Its members, which include BlackRock and JP Morgan, are responsible for over $52 trillion dollars in assets. These members are asked to "engage" companies to reduce greenhouse gas emissions in a manner consistent with the Paris Agreement's goals and to comply with Michael Bloomberg's Task Force on Climate-Related Disclosures. This engagement is primarily done through proxy voting and shareholder actions, and, as is happening now with ExxonMobil, it can go as far as replacing board members.

By focusing solely on carbon emissions, these groups distort incentives and direct resources from other environmental, social, and financial concerns. More concerning, however, is the pressure to move beyond corporate engagement into boycotting and divestment. **We are now seeing major banks and investment firms colluding to deny financing and investment to energy companies.** These actions are hostile to free and competitive energy markets and harmful not just for energy businesses but also for energy consumers. The result will not be improvements in environmental quality but instead higher energy prices and greater dependence on foreign energy producers.

We recently spoke with the Governor of Alaska, whose state is having to invest its own money to develop new Arctic oil and gas reserves because the major banks and oil and gas companies will not invest there. North Dakota is already fighting legal and regulatory interventions on the Keystone and Dakota Access pipelines. What happens when the big banks decide to collectively deny financing to drilling and mining activity in the state? While legal strategies have been contemplated to fight the misuse of ESG, there is no clear legal mechanism to stop energy discrimination via investment schemes.

One solution is to turn the tables on the banks. If they will not do business with us, we will not do business with them. Right now, the large banks and investment firms are being rewarded instead of penalized for boycotting and divesting. However, if energy producing states refuse to invest with these firms, then they will face a real financial penalty for their actions. As of September 2020, the North Dakota Legacy Fund had more than $2 billion invested with firms in the Climate Action 100+ group. Money derived directly from North Dakota's energy businesses should not be invested with firms that are actively seeking to punish those businesses.

The real impact will come when all energy producing states work together. Several other states, including Texas, are considering similar legislation to refuse to invest in or contract with firms that engage in this energy discrimination. This bill only commits North Dakota to study the implications of such actions, but if you pass this bill first, it will set a strong example for other states to follow.

Just like when our states came together to fight the Clean Power Plan and other federal regulatory excesses – efforts which will likely be reprised given Biden's regulatory agenda – it is worth our time and effort to work together on this issue. The collective economic power of the energy producing states is the only way to slow the spread of what has become a clear and present threat to all sectors of the energy economy and the states that fuel and power our nation.

For more information on the threat energy discrimination poses to our country, our energy economy, and our way of life, please take time to read the attached documents.

Sincerely,

Brent Bennett, Ph.D.
Policy Director, Life:Powered
Texas Public Policy Foundation

Testimony ID#5227

Energy Discrimination = Higher Prices

About energy discrimination & politically motivated investing

Environmentalist activists are increasingly pressuring corporations to take action on political issues instead of prioritizing fiduciary responsibility. Banks are refusing to lend to fossil fuel companies and other vilified industries while environmental, social, and governance (ESG) investing is the behind-the-scenes underpinning of public shaming campaigns to divest from fossil fuels, cut carbon dioxide emissions, and subsidize expensive, unreliable renewable energy.

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In the meantime, Americans still need reliable energy, 80% of which comes from fossil fuels despite decades of multibillion-dollar subsidies for wind and solar energy. Denying financing to our American energy producers kills good-paying jobs, increases cost of living, and reduces the capital available to invest in the energy technologies of the future — while giving a leg up to less responsible producers overseas with lax environmental and labor standards.

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Divesting won't help people or the environment

The free market — rather than the social and political whims of the most vocal activists — is best suited to make the complex tradeoffs needed to continue growing our economy and leading the world in environmental quality. With its myopic fixation on cutting carbon dioxide emissions at any cost, the energy discrimination movement fails to consider the negative human and environmental impacts, especially the land and wildlife destruction, of so-called "renewable" energy.

Furthermore, eliminating *all* carbon dioxide emissions nationwide by 2030, as called for in the Green New Deal, would result in a less than two-tenths of a degree temperature change by 2100, according to data models used by the United Nations and the EPA. Energy consumers in most of the world, especially in poorer nations, have understandably shown no willingness to spend the hundreds of billions of dollars needed to cut emissions for such a minuscule benefit.

Every attempt to use more renewable energy, from Europe to California, has resulted in higher costs, affecting not just energy prices but every purchase we make. **Divestment initiatives will harm Americans — especially in distressed and vulnerable communities, who spend the largest share of their income on energy — by increasing prices for oil, gas, and electricity.** If businesses and consumers want to pursue more wind and solar energy, they should be free to do so on their own but not be forced to subsidize the renewable energy agenda.

So what's next?

Elected leaders can take the following actions to preserve America's energy dominance, maintain our global leadership in clean air and water, and fight poverty here and abroad:

- Pass legislation prohibiting companies that boycott, divest from, or sanction fossil fuels and other industries such as petrochemicals, mining, forestry, agriculture, etc. from doing business with the government. This will ensure taxpayer dollars are not sent to entities with an anti-American agenda.
- Pass legislation requiring government pension funds to prioritize fiduciary responsibility over ESG criteria to ensure workers' and retirees' money is managed responsibly.
- Pass legislation prohibiting insurance companies from discriminating against energy and other industries.
- Oppose any legislation requiring businesses to publish ESG materials, favoring ESG ratings for government contracts and investments, or otherwise supporting the misguided movement to divest from fossil fuels.

Testimony ID#5228

Energy Discrimination

A THREAT TO CAPITALISM, PROSPERITY, & FLOURISHING

Bud Brigham for Life:Powered

What is the greatest threat to capitalism today?

Is it strangulation by the regulatory state, government spending sprees, or excessive taxation? Some experts believe **an emerging "energy discrimination" movement may actually be the greatest threat to capitalism, property rights, and even human flourishing.**

WHAT IS ESG INVESTING?

Chances are you have never heard of stakeholder capitalism or environmental, social, and governance (ESG) investing. It is a new trend in finance, pushed by the United Nations and wealthy investment firms like BlackRock, that is already transforming our pensions, investment funds, and perhaps your own employer — without most of us ever knowing it.

At the heart of this energy discrimination movement is ESG investing, which prioritizes investing in corporations that advertise commitment to progressive political causes. Activists are pressuring corporations to adopt social and cultural agendas in order to appease a vocal minority and even go so far as to coerce divestment from industries considered politically unpopular — particularly fossil fuels, agriculture, forestry, mining, and petrochemicals. Having a single eye toward profit and shareholder returns is viewed as reprehensible.

Energy discrimination activists claim to be promoting the environment, equality, and transparency. Nearly everyone agrees with these goals. So what's the problem?

en·er·gy dis·crim·i·na·tion *(n)*
ˈe-nər-jē di-ˌskri-mə-ˈnā-shən

The practice of bullying corporations and investment firms into divesting from fossil fuels.

SUMMARY

- Investment and pension managers who invest based on political trends undermine their fiduciary duty and threaten our workers' and retirees' futures.
- The climate catastrophist view is based on questionable science and ignores vast improvements in health, life expectancy, economic freedom, individual liberty, and quality of life around the world thanks to access to energy.
- Fossil fuels have helped America become a world leader in many arenas, including environmental quality.
- Divesting from fossil fuels will not improve the environment or affect climate change. It will, however, increase the cost of energy (which harms the poor the most) and cede power to foreign competitors who don't share our commitment to the environment and fair labor practices.
- Our elected, business, and community leaders must oppose energy discrimination and allow free-market capitalism to continue driving human flourishing.

Life:Powered

The constitutional, moral, and ethical problem

It was 50 years ago that famed economist Milton Friedman published the Friedman doctrine of capital theory. Friedman argued that the main responsibility of business managers is to create profits for their shareholders — in other words, to cultivate and grow their business by running it well and providing an outstanding product or service — and that the shareholders can then decide for themselves what social initiatives they wish to take part in.

> *"...the rights of property, are the objects for the protection of which government was instituted."*
>
> -James Madison

Economic freedom — our right to spend, invest, and donate our hard-earned money as we choose — is one of our most cherished rights. Today, many investors are investing their own personal capital not just to generate a financial return, but also to reflect and project their environmental or societal concerns and beliefs. Freedom to do just that is obviously a very good thing, as is the freedom to not invest in enterprises that don't reflect our values.

But what if they are investing someone else's money? Maybe yours? This is where energy discrimination becomes a problem, especially for workers who assume (rightfully so) that their retirement funds are being managed with their best interests — not political whims — in mind.

That is the problem with these campaigns to bully businesses into divesting from fossil fuels. They go much farther than encouraging individuals to invest in environmental issues. The groups hostile to fossil fuels generally have no desire to own these companies, but exercising their right not to participate in ownership is not enough for them. These movements are working to change these companies, primarily from the outside, at the expense of the shareholders who rely on their manager's dedication to their fiduciary obligations. It's a co-opting of ownership and control, deeply penetrating and affecting the behavior of corporations and pension funds who are investing and risking other people's money. Is that right? Do you really own the property if special interests are able to exercise control and even seek to destroy it?

Our Founding Fathers set forth a clear vision for a nation thriving on the firm foundation of individual liberty, the right to private property, and the right to freedom of association. James Madison wrote, "The rights of persons, and the rights of property, are the objects, for the protection of which government was instituted." Or as stated by my favorite author Ayn Rand, "The right to life is the source of all rights — and the right to property is their only implementation. Without property rights, no other rights are possible."

"Any benefits from fossil fuel divestment are likely to be nonexistent."

-Prof. Daniel R. Fischel

The energy discrimination movement, having penetrated the board rooms and pension funds, seeks to undermine these fundamental principles. Even if elevating political agendas over return on investment is viewed as legal, it's certainly not moral or ethical. Investment managers have a fiduciary responsibility to act in their clients' best interests — and business leaders should as well.

A recent study debunks the widely touted idea that ESG investment outperforms traditional funds by examining university divestment campaigns. The costs, including compliance costs, limited diversification, and higher fees, are significant enough to impede the schools' investment goals. "Any benefits from fossil fuel divestment are likely to be nonexistent," writes Daniel R. Fischel. "There is no basis to believe that divestment can affect the stock prices or business decisions of targeted firms. Moreover, there is broad agreement among financial professionals and academics that simple investment rules like divestment from fossil fuel companies cannot generate superior returns. Finally, divestment seems unlikely to affect the public debate or provide an effective tool even for those who strongly feel the need to address climate change."

For those caught up in the movement, their intentions may be good. For example, most of us support clean air and water. However, as polling consistently shows, Americans don't agree on how best to achieve that goal. Similarly, not all Americans share the perspective of climate catastrophists, particularly in light of the fact that climate-related deaths are down 98% over the last century. There are also serious environmental consequences of renewable energy that activists have yet to address. Many of us recognize that, thanks to abundant and affordable energy and the associated human flourishing, this is the best time in human history to be alive. We can adapt and protect ourselves better than ever. So we do not all agree that fossil fuel divestment is a responsible move — and it would be irresponsible for investment managers to act on that assumption. Despite the lack of consensus on these matters, pressure from energy discrimination activists has become so intense that many American oil and gas companies are including in their filings statements about transitioning to "low-carbon energy sources." While business executives may feel they have no choice, this capitulation cements the public's misunderstanding of how ineffective renewable energy really is.

Fossil fuels are responsible for approximately 80% of worldwide energy utilization. The consequences of forcing American energy companies to surrender to their foreign competitors with lax environmental and labor standards — not to mention unstable and even hostile governments — would be disastrous. The world will still need oil, gas, and coal; American producers going under would only give foreign competitors license to pollute and drive up prices.

Public companies are owned by thousands of shareholders, and many have hundreds or even thousands of employees. Activists pushing this special interest are an extremely small but vocal segment seeking to co-opt these enterprises for their own social agendas, and it comes at the expense of the owners who don't necessarily agree with those agendas, often against their better financial interests. Tragically, at times it's also at the expense of their employees, since companies that don't optimize their returns are in danger of shrinking or even failing altogether. **Energy discrimination is therefore not just a violation of property rights, but also a threat to our energy supply, jobs, and economic opportunity.**

Capitalism, uncorrupted, creates human flourishing

The genius of the United States of America is empirically and unquestionably evident in a vast array of fields, from technology and medicine to music and the arts. The rest of the world combined does not nearly match America's diverse contributions to the advancement of society and human flourishing. **American fossil energy companies have revolutionized energy markets by producing abundant and clean fuels, reducing energy costs to the benefit of the entire world (particularly the poor and middle class), and making the world safer and less vulnerable to supply disruptions.**

What differentiates America's impact on human civilization? Why, despite all the advancements of other countries and societies, is America still so exceptional?

It comes down to one attribute: economic freedom. American businesses have generated historic advancements over the last century because of their relentless pursuit of excellence, benefitting from lightly regulated and largely free markets.

Stated another way, capitalism has been fundamental to American exceptionalism. For American companies to grow and thrive over the long term, they must generate attractive outcomes for all their stakeholders. What the energy discrimination movement fails to recognize is that companies will not be successful if they treat their employees poorly, fail to be good stewards to their communities, or spoil the environment that they operate in. We are all on the same team. I have been blessed to have founded and built five successful companies thus far, including two that have successfully gone public. Our achievements were only possible because we rewarded all our stakeholders, and it was a direct consequence of our intense focus on providing an outstanding, profitable service that delivers value to our shareholders. These are virtuous relationships in a virtuous cycle — the beauty, the harmony, of true and uncorrupted capitalism.

When it comes to the environment, the United States is a world leader. We've slashed air pollution by 77% in the last 50 years — far outpacing almost every other developed nation — and are ranked number one in the world for access to clean water. These accomplishments can be credited almost exclusively to innovation in the private sector, especially pollution control technology, horizontal drilling, and fracking. American energy companies produce the cleanest energy of any country in the world, and partly as a result, the United States has the cleanest environment of any major country. Furthermore, our exports are displacing dirtier energy produced overseas that are polluting our shared air and water resources. **This environmental exceptionalism is a fundamental product of the American energy industry's pursuit of shareholder value** — not ESG investing.

Meanwhile, fossil fuels are helping to fight poverty around the world. While almost half the world's population lived in what economists call "extreme poverty" as recently as 1980, that number is now less than 10 percent. Affordable, reliable energy begets clean water, modern medicine, warmth and light, safe cooking fuels, and

the basic necessities that make a healthy, comfortable, and self-actualized life possible. The prosperity we enjoy in the United States will be spread across the globe thanks to natural gas, oil, and clean coal.

The American success story is an irrefutable demonstration of the symbiotic and critical relationship between economic freedom, capitalism, and human flourishing. By focusing intensely on shareholder returns, American companies have created positive outcomes for their stakeholders, and the world is the beneficiary. The energy discrimination movement is like a cancerous threat to politicize the engine of our prosperity, poised to undo decades of progress. It is therefore a fundamental danger to human flourishing, which has lifted billions out of poverty and extended lifespans for the entire globe. For many involved, it is well intended. But for all of us, it is a grave danger and incalculable threat.

Bud Brigham
Chairman, Brigham Minerals, Brigham Exploration & Atlas Sand

Testimony ID#5313

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Senate Bill 2291

Testimony of Ron Ness

Senate Energy and Natural Resources Committee

February 4, 2021

Chairman Bell and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Senate Bill 2291.

This bill prohibits the State Investment Board (SIB) from investing state funds for the purpose of "social investment" and instructs the state to avoid contracting with companies that boycott energy or commodities. Meaning, the SIB must make investment decisions based on maximizing returns to the state, and the state must avoid supporting companies who boycott our energy and commodity industries. This might sound like common sense, but there is a growing trend throughout the country to make investment decisions based on social or environmental interests, rather than maximizing returns for the investors, or to boycott certain types of energy or commodities no matter the financial cost.

The Legacy Fund, currently valued at $7.89 billion and by far the largest fund managed by the SIB, is funded entirely by oil and gas production and extraction taxes. Oil and gas production in North Dakota is the only reason the Legacy Fund exists. I mentioned common sense earlier, here is another dose: the state should not be investing funds created by oil and gas production in funds that boycott oil and gas production. This legislation ensures that protection and we therefore urge a Do Pass recommendation on SB 2291.

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Testimony in Opposition of
Senate Bill No. 2291
Senate Energy and Natural Resources Committee
February 4, 2021

TESTIMONY OF
Sherry Neas, Central Services Division Director

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, I am Sherry Neas, Director of the Office of Management and Budget (OMB) Central Services Division. I am here to testify regarding Senate Bill No. 2291 related to social investments.

OMB is opposed to the bill as introduced. OMB appreciates the opportunity discuss our concerns with the bill's sponsor and collaborate on an amendment to the bill. OMB respectfully requests the opportunity to reevaluate its position on the bill after reviewing the amendment.

As introduced, Section 2 the bill would significantly complicate the procurement process. There are laws related to procurement processes that must be followed when OMB and state agencies are entering into contracts. OMB and state agencies enter into contracts with companies following an evaluation process that considers experience and qualifications, prices and quality of the offered goods and services.

This bill, as introduced, would require OMB to "encourage state agencies to avoid contracting with companies that support environmental social governance." (Page 2, lines 11-12)

"Environmental social governance" is defined as "a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments." (Page 2, lines 1-3)

The state purchases a wide variety of goods, services, public improvements and other types of purchases. The bill would be unenforceable due to the complexity and time required for OMB or other state agencies to evaluate whether a company supports "environmental social governance" and withholding award based upon that determination.

OMB appreciates the opportunity to work with the Sponsor and this committee regarding an amendment that addresses OMB's concerns. Mr. Chairman and committee members, this concludes my testimony. I would be happy to answer any questions.

Testimony ID#4684

FTfm **ESG investing**

Majority of ESG funds outperform wider market over 10 years

Study of sustainable funds counters claims that ESG investment comes at the expense of performance

Activists in Cornwall. Environmental emergencies have pushed people to invest according to their values © Gav Goulder/In Pictures/Getty

Siobhan Riding JUNE 13 2020

Close to six out of 10 sustainable funds delivered higher returns than equivalent conventional funds over the past decade, according to a study that undermines claims that investing based on environmental, social and governance principles hampers performance.

ESG funds have exploded in popularity in recent years as emergencies such as climate change have pushed individuals to invest according to their values. Despite this, debates have persisted over whether a link exists between investing responsibly and achieving outperformance.

But research from data provider Morningstar examining the long-term performance of a sample of 745 Europe-based sustainable funds shows that the majority of strategies have done better than non-ESG funds over one, three, five and 10 years.

The analysis carries weight as up until now there has been limited data on sustainable funds' long-term performance due to the relatively short track records of many strategies and huge variety in ESG approaches.

"The findings debunk the myth that there is a performance penalty associated with ESG investing," said Hortense Bioy, director of passive strategies and sustainability research at Morningstar.

“ESG factors are not just ‘nice to have’ but drivers of outperformance,” said Jan Erik Saugestad, chief executive of Storebrand Asset Management. “It is both right and smart to exclude certain business practices in violation with well recognised conventions or with inherent high risk and negative impact.”

Sustainable funds’ rates of success varied depending on the asset class. Of the seven asset classes examined by Morningstar, US large-cap blend equity funds that invest sustainably were the best performers, with more than 80 per cent of funds in this category beating their traditional peers over 10 years.

However, only three in 10 euro corporate bond funds achieved better returns than their non-ESG funds over the same period.

The study showed that sustainable funds also outpaced traditional funds during the market sell-off sparked by coronavirus in the first quarter, notching up average excess returns of up to 1.83 per cent.

ESG funds’ low exposure to oil and gas gave them an edge at a time when energy stocks suffered steep losses, said Ms Bioy. However, she noted that even excluding the unusual market conditions unleashed by the pandemic, the majority of sustainable funds in the study still beat traditional funds over the long term.

Morningstar found that sustainable funds have greater survivorship rates than non-ESG vehicles. On average, 77 per cent of ESG funds that were available 10 years ago still exist, compared with 46 per cent for traditional funds.

But Ms Bioy warned that as asset managers launched more funds to meet growing investor demand, survivorship rates were likely to go down. Up until now, ESG funds have been less vulnerable to the commercial pressures that lead managers to close funds, due to their niche status and loyal, institutional client base, but this will change as the strategies move into the mainstream.

Institutional Investor

PORTFOLIO

Christine Idzelis

Active Funds Dominate ESG — But Their Market Share Is Slipping

While the pandemic hasn't damped investor demand for ESG, asset flows to U.S. active managers fell in the first half of 2020, according to Broadridge.

September 30, 2020

Bing Guan/Bloomberg

Actively managed funds have dominated when it comes to investing based on environmental, social, and governance factors — but rising investor demand for ESG in the U.S. appears to favor passive investment strategies this year.

Global assets in ESG mutual funds and exchange-traded funds have more than doubled in the past five years to $1.3 trillion in June, according to a new report from Broadridge Financial Solutions. While Europe leads the world in ESG investing, the fastest growth is stemming from the U.S.

ESG funds in the U.S. are on pace to surpass $300 billion of assets by the end of next year, according to the report. While actively managed equity funds have historically led the investing strategy, low-cost passive funds are grabbing market share.

Active funds saw 52 percent of net ESG flows in the U.S. in 2019 — a share that dropped to 35 percent in the first half of 2020, according to the report. Still, the pandemic has not slowed investor demand for ESG, with active and passive funds together attracting a record volume of assets in the first quarter that was matched in the following three months.

"Much of the activity historically has been in Europe and cross-border funds," Jag Alexeyev, director of global distribution insights at Broadridge, said in a phone interview. "The U.S. is now growing rapidly."

BlackRock, UBS Group, Amundi, BNP Paribas, and Nordea are the top ESG fund managers based on net flows in the 18 months through June, according to Broadridge. BlackRock attracted by far the most assets over the period at $42 billion, with just 7 percent flowing into actively managed funds, the report shows.

Switzerland's UBS ranked second based on net asset flows of $15 billion over the same period, while French asset manager Amundi was the third most successful with $12 billion collected. Actively managed funds represented 46 percent of UBS's net flows and 61 percent of Amundi's.

"Despite the rising popularity of index funds, ESG represents one of the most attractive segments for active fund managers," Broadridge said in the report. Eighty-one percent of assets overseen by European ESG funds are actively managed, compared to 68 percent for the U.S.

[*II* Deep Dive: 'Seven Years of Being Just Tortured': Why This Longtime Active Management CEO Started an Index Firm]

ETFs and passive funds are creating more ways for investors to invest in ESG, Alexeyev said. To keep their edge, he said active managers may seek to combine shareholder engagement with companies with the integration of ESG factors — such as the risk of climate change — into their investment decisions.

The most popular ESG investment strategy involves "best-in-class," positive screening, representing 39 percent of assets globally, according to Broadridge. The investment approach weights allocations toward companies with stronger scores relating to environment, social, and governance criteria.

Exclusion strategies that keep certain types of companies out of investment portfolios, such as tobacco or weapons firms, are the next largest category with 25 percent of ESG assets, the report shows. Investing strategies focused on ESG integration and proactive company engagement are the third most popular based on 20 percent of total assets.

Exclusion strategies had been the most sought after by investors in 2015, capturing 36 percent of net ESG flows globally that year, according to Broadridge. By contrast, the strategy attracted just seven percent of net asset flows during the first half of 2020.

Over the past five years, the ESG industry has evolved away from the "values-based, simple exclusion approach embedded in the early version of socially responsible investing," said Alexeyev. Today's efforts are more focused on assessing "ESG risk factors" across a much broader range of companies, he said, noting that many passive funds follow "best-in-class approaches."

companies, he said, noting that many passive funds follow "best-in-class approaches."

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OUR NEW FUTURE

ESG index funds hit $250 billion as pandemic accelerates impact investing boom

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Pippa Stevens
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KEY POINTS

- Index funds investing in companies that rate highly on environmental, social and governance (ESG) factors have received a boost during Covid-19, with increased interest in

 sm.

- Sustainability funds were experiencing big growth before coronavirus: assets doubled over the past three years, according to a new Morningstar report.

- Impact investing index funds have topped $250 billion, and the U.S. market is now 20% of the total.

VIDEO 07:17

BlackRock CEO Larry Fink on climate change and ESG investing

Socially conscious investing continues to gain momentum as Covid-19 and the destruction left in its wake spark interest in stakeholder capitalism — the idea that a public company's focus shouldn't only be generating profits to reward shareholders without taking the bigger picture into account.

With investors increasingly favoring ESG stock selection — when a company's environmental, social and governance policies are considered alongside more traditional financial metrics — more impact investing funds are launching to keep pace with demand.

Both the number of sustainability-focused index funds, and their assets, have doubled over the past three years, according to a report from Morningstar released Wednesday. The financial research firm said that as of the end of the second quarter 2020, there were 534 index funds

ity, overseeing a combined $250 billion. In the U.S., which has lagged Europe in ESG investing, assets in sustainable index funds have quadrupled in the last three years and now represent 20% of the total.

“There’s a great realization today that ESG issues are investment issues,” Alex Bryan, Morningstar’s director of passive strategies research for North America, told CNBC. “They’re issues that can affect the bottom line, and that may not always be something that comes to bear immediately. But it’s something that I think more people are starting to understand is aligned with shareholder value maximization,” he said.

Actively managed ESG funds continue to attract the lion’s share of dollars and represent a much larger portion of the sustainable investing landscape. Combined inflows into both active and passive ESG-focused funds reached $71.1 billion during the second quarter, pushing global assets under management above the $1 trillion mark for the first time.

In the U.S., ‘a lot of runway for growth’

Sustainable index funds are growing in size, number and complexity, and Bryan said that despite the record inflows, there’s “still a lot of runway,” especially in the U.S., where these funds

than 1% of the overall market.

“They’re still just a drop in the bucket compared to the full landscape of all index funds,” he said.

For example, the Vanguard Total Stock Market Index Fund, a traditional U.S. stock market investment portfolio, is on pace to hit $1 trillion in assets itself this year.

Bryan pointed to the coming $30 trillion wealth transfer from baby boomers to their millennial

According to a recent survey conducted by Morgan Stanley's Institute for Sustainable Investing, nearly 95% of millennials are interested in sustainable investing, while 75% believe that their investment decisions could impact climate change policy.

Covid-19 has also acted as a turning points of sorts. Not only has the global pandemic underlined the importance of resilient business models, but it's shown that how companies treat all their stakeholders — including employees and customers — can impact the bottom line.

"The Covid-19 pandemic and movement for racial justice in the U.S. have kept attention on social issues, including workplace safety and diversity, and have likely added to interest in sustainable funds," Morningstar's report said.

Another reason sustainable funds are attracting record inflows is that they've dispelled the idea that there's a financial trade-off for investors who want to focus on ESG. During the second quarter, 56% of sustainable funds ranked in the top half of their Morningstar category. Year-to-date, that number jumps to 72%.

"The things that are happening this year have accelerated some of the longer-term trends, but we're still in early innings, at least in the U.S.," Bryan said.

"ESG" has become a buzzword on Wall Street — Morgan Stanley recently said it will be the defining acronym of the next decade — and the investing approach is not without its critics. Some argue that it's merely jargon and doesn't actually move the needle on the biggest issues facing the world.

There's also no uniform way to track a company's ESG metrics, especially in the U.S., where issues such as diversity and pay practices do not have to be publicly disclosed. Additionally, there are many approaches to ESG investing, which means that funds can have very different practices. Some might exclusively invest in clean energy or companies that have a woman on their board of directors, while others might essentially track the S&P 500 but adjust their component weightings based on a company's ESG score.

"There is currently no standard definition for sustainability, which increases investors' due diligence burden and the risk that a fund will not meet investors' expectations," Morningstar's report said. "It is imperative to research these funds before jumping into them."

We have a great ESG story to tell, but we're not yet telling it publicly. Help us "get started" with guidance around foundational metrics we can disclose and how we can begin to develop/share that message. Our immediate concern is our upcoming Proxy.

ACCESS CASE STUDY →

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GOVERN YOUR ESG EFFORTS

SHARE YOUR ESG STORY

HEAR FROM A CLIENT

"Nasdaq helped us build a foundational path to ESG disclosure, develop a messaging roadmap and we're now on our way to getting capital markets credit from key stakeholders."

Mid-Cap IRO, General Counsel, CFO

I've got a great ESG story...Now what?

Nasdaq is well positioned to guide execution phases of ESG programs.

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Our Latest Insights

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ESG ADVISORY PROGRAM

Nasdaq ESG Advisory Brochure

" What was once purely thought to be a nice to have, a thoughtful ESG program is now common companies, as companies are now routinely being evaluated on these non-financial metrics alor metrics. "

Mike Stiller, **Nasdaq ESG Advisory**

DOWNLOAD REPORT

1/4

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IR and ESG in Uncertain Times: How Far We Have Come and the Journey that Lies A... VIEW

ESG Advisory Brochure

MY QUOTES

Contact the Nasdaq ESG Advisory Team

FIRST NAME*

LAST NAME*

TITLE*

COMPANY*

EMAIL ADDRESS*

BUSINESS PHONE*

LOCATION*

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SUBMIT

Market Makers

Pensions&Investments

July 02, 2020 01:25 PM

Global ESG-data driven assets hit $40.5 trillion

SOPHIE BAKER

Getty Images

The value of global assets applying ESG data has almost doubled over four years, and more than tripled over eight years, to $40.5 trillion.

The value of global assets applying environmental, social and governance data to drive investment decisions has almost doubled over four years, and more than tripled over eight years, to $40.5 trillion in 2020.

Analysis of active and passive strategies by research firm Opimas showed that not all products that integrate ESG criteria into their investment strategies are labeled as "ESG" or "sustainable," with non-ESG products also using sustainability data as a source of insight on portfolio companies.

A report of the research said active strategies represent the majority of ESG-related assets under management, at 75% in the U.S. and 82% in Europe.

However, passive ESG strategies captured about 60% of new asset inflows in the U.S. in 2019.

The number of ESG-themed strategies has also skyrocketed over recent years. There were almost 400 ESG strategies launched in the Morningstar investment universe in 2019, compared with around 160 launches in 2016.

Strategy size was also analyzed by Opimas, finding that the overall average size of ESG funds is now around $250 million in AUM. By region, however, size varied, with an average $400 million U.S. strategy AUM, $270 million in Europe and $70 million in Asia.

Opimas also studied ESG indexes, which have fared better over the highly volatile **COVID-19-related period** than their reference indexes.

Between March 3 and April 16, the Dow Jones Sustainability index returned -8.4%, vs. a -12.4% performance by the S&P Global Broad Market index, the report said. The MSCI KLD 400 Social index returned -9.3% over the same period, vs. parent index MSCI USA Investible Market index performance of -11%.

The size of ESG teams at money managers has also grown across the top 30 money managers, by 229% compared with 2017. Figures were not available.

RELATED ARTICLES

ESG investing soars globally, Opimas report says

European ESG funds pull in record $132 billion for 2019

Public funds taking the lead in spectacular boom of ESG

Inline Play

Source URL:

<u>SB 2291 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network</u>

This bill is very interesting, and very protectionist.

The premise of divesting from companies and funds that pursue ESG (Ethical, Social, Governance) philosophies is an emotional argument. The problems is, that it is an anti-capitalist approach being proposed in this bill.

As the attached documents show, the investment capital markets are embracing what could be called the ESG Lifestyle.

The NASDAQ stock exchange itself has programs to help companies develop ESG policies.

The ESG Trend already amounts to $40 Trillion worldwide.

It would take an extreme amount of work for North Dakota's investment managers to actively try to avoid ESG holdings. And it would in fact cause North Dakota to have investments concentrated in companies and funds that are on the outside of where the market is going.

And according to readily available data (see attached) ESG funds out-perform the market.

Why would we want state policy to handicap the state's own investment objectives?

To be a capitalist, one has to look at where the money is going. Right now, it's going to ESG.

I urge a Do Not Pass.

Testimony ID#5385

Chairman Kruen and Esteemed Members of the Energy and Natural Resources Committee,

My name is James Leiman and I have the distinct honor of serving as the Director of Strategy for the North Dakota Department of Commerce. It has been a pleasure and honor to advance the state's "all of the above" energy production approach to the next level with industry partners every step of the way. I am here today to testify and educate the Committee on how ESG will impact the state's economy and how this investment approach may impact energy growth, most notably oil, gas, lignite, and agriculture with a nexus to energy for decades.

Regardless of what members of this committee and the public have read about Environmental, Social and Corporate Governance (ESG), I would like to unequivocally state on the record that ESG presents **the greatest challenge to the North Dakota's economy since the Great Depression**; this is not an exaggeration but a reality given our heavy reliance on energy and agricultural production. The good news is, with every crisis comes an opportunity.

In the face of this challenge, North Dakota can choose its destiny as we are innovative, agile and have motivated private sector partners supporting the rapid acceleration toward producing clean energy to meet private equity/ debt needs as well as consumer preferences. It is not that the energy industry hasn't worked hard to achieve this goal, it is simply that the world around us is moving much faster and it is time not only to catch up but to leapfrog global competitors. To accomplish this however, the state needs a cohesive and coherent approach that is prepared to meet today and tomorrow's challenges.

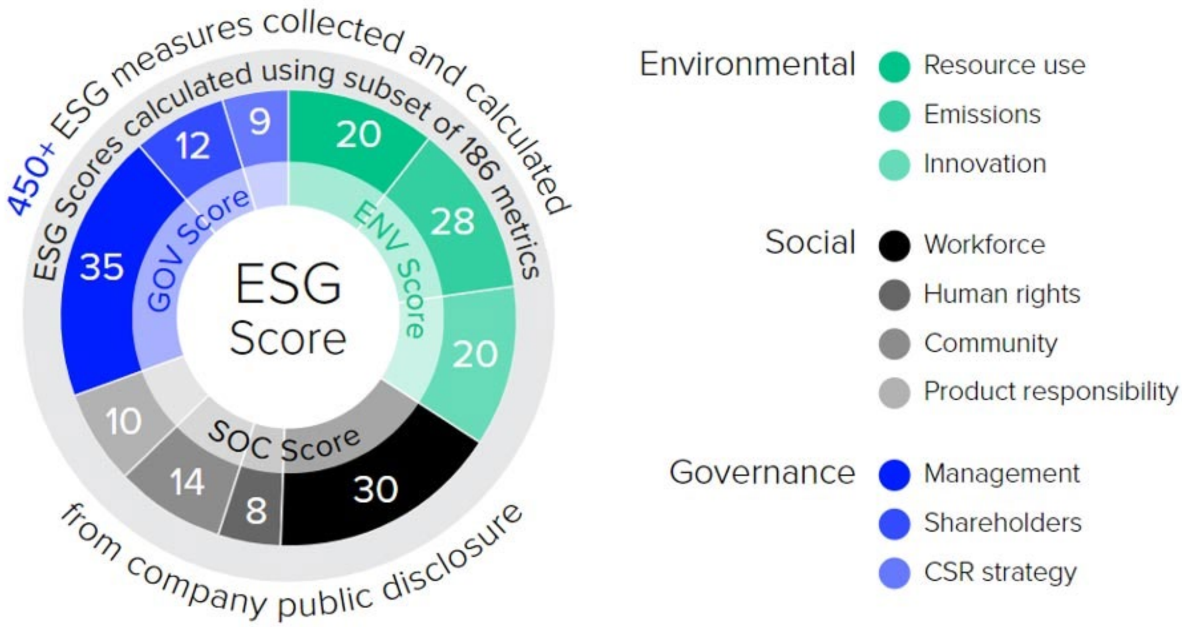
What is ESG

In January 2020, Larry Fink, CEO of the world's largest investment fund BlackRock, shocked the investment world in his annual letter to shareholders indicating that the $7 trillion under management would invest only in companies that put sustainability and climate at the center of its investment approach. Simultaneous to this, just about every Fortune 500 company and major private equity firm in the world adopted similar Environmental, Social and Governance (ESG) policies as part of their investment strategies; in fact, the ESG investment portfolio is worth about **$50 trillion**, more than the entire Standard and Poor's Index. This number is projected to increase as consumer preferences evolve. Private equity is also moving into new standards-based investment practices; energy producers, processors and companies along the value chain are subject to these new requirements. In January 2021, Blackrock and others began to divest from companies that did not meet these standards further exacerbating the issue. In addition, insurance companies began to apply pressure through increasing premiums to sky high rates during this period. The concept of ESG is very complex yet simple to understand:

1. Private equity scores a company based on its:
    a. Environmental stewardship

b. Social Responsibility
c. Governance Structure

2. It uses a score card like the measures below using approx. 450 factors and 186 metrics



3. If the score exceeds the minimum threshold, the firm can pursue debt or equity from Wall Street or other firms
4. If the score doesn't meet the standard, the firm does not have access to over $50T.

Energy markets were the first to be impacted by evolving ESG investment standards; and no pun intended but the lignite industry was truly the canary in the coal mine. With energy representing the largest industry in the state and agriculture a close second, it is critical to get ahead of these trends to ensure long-term financial stability for these industries. Across the value-chain, ESG standards, with an emphasis on an environmentally sustainable approach, must be met to capture private investment.

Size and Scope of situation/challenge

North Dakota's energy and agricultural sectors are responsible for about 35% of the economy. When retail activity, home sales and construction are deducted, oil and soil account for nearly **70%** of the state's economy. As such, we are highly dependent on these sectors for quality of life and economic vitality. This becomes especially acute in communities dependent on lignite, oil, gas, and agricultural commodities. Simultaneous to ESG, consumers are driving a parallel current that is impacting demand for North Dakotan products. A great example would be Minnesota's desire to reduce its purchase of North Dakotan produced energy; another would be global ag consumers purchasing products that they consider to be sustainably sourced. As such, there is a major squeeze coming from multiple directions which could impact the North Dakota's ability to grow. This squeeze does not include federal factors further aggravating the challenge for North Dakota as well as communities dependent on the success of these commodities.

How can ND Address the Challenge Head On?

At Commerce, we subscribe to the value proposition outlined by McKinsey. We can not only mitigate the issue in front of us but address the challenge and take the bull by the horns through an aggressive approach. This agency continues to be well suited to lead through facilitating discussion and synchronizing action. We can't be afraid as we have already been hit by the bus and we will become experts at managing our way through this crisis and creating the next generation economy.

The EmPower Commission, private industry and state agencies can facilitate growth through:

1. Using ESG policies to develop new customers and market share.
2. Gaining continued access to private capital through ESG programs.
3. Developing a value-driven network that enables long-term business development.

We could also manage risk via:

1. Reducing exposure to energy supply risks through addressing ESG issues, compliance and regulatory requirements.

2. Setting an example for the nation through the development of leadership skills and an industry culture that adapts to rapidly evolving political and economic trends.

Industry could improve return on investment through:

1. Improving human capital management by attracting and retaining ESG managers and motivated employees.

2. Building pricing power through the development of a solid reputation and brand loyalty.

3. Enhancing operational efficiency through the improvement of environmentally sustainable practices such as improving the use of energy, water, waste and raw materials.

To accomplish the goals above, industry as well as the state will have to make significant investments to get ahead of these trends. We can create value according to the McKinsey proposition below:

	Strong ESG proposition (examples)	**Weak ESG proposition** (examples)
Top-line growth	Attract B2B and B2C customers with more sustainable products Achieve better access to resources through stronger community and government relations	Lose customers through poor sustainability practices (eg, human rights, supply chain) or a perception of unsustainable/unsafe products Lose access to resources (including from operational shutdowns) as a result of poor community and labor relations
Cost reductions	Lower energy consumption Reduce water intake	Generate unnecessary waste and pay correspondingly higher waste-disposal costs Expend more in packaging costs
Regulatory and legal interventions	Achieve greater strategic freedom through deregulation Earn subsidies and government support	Suffer restrictions on advertising and point of sale Incur fines, penalties, and enforcement actions
Productivity uplift	Boost employee motivation Attract talent through greater social credibility	Deal with "social stigma," which restricts talent pool Lose talent as a result of weak purpose
Investment and asset optimization	Enhance investment returns by better allocating capital for the long term (eg, more sustainable plant and equipment) Avoid investments that may not pay off because of longer-term environmental issues	Suffer stranded assets as a result of premature write-downs Fall behind competitors that have invested to be less "energy hungry"

Getting Started Now

The Department of Commerce will invest $250,000 this biennium, from its Momentum Fund, in a contract that enables the state to fully understand the challenges associated with ESG as well as what short-term wins we could gain to accelerate our efforts to support both the energy and ag sectors. The likely deliverables will focus on:

1. Identifying areas for more ESG compliant investment to improve readiness for impactful and long-term private equity investments.

2. Finding opportunities for more innovative energy technology use to reduce waste, mitigate impact on the environment and encourage more sustainable energy production methods through the connection to federal programs, public private partnerships and innovation platforms/ entrepreneurs.

3. Creating more resilient energy supply chains.

4. Identifying alternate transport and logistics networks to mitigate exposure to freight movement disruptions and/ or export restrictions.

5. Finding and reducing chokepoints that inhibit rapid transitions from commercial or retail demand should energy consumption patterns become erratic thereby strengthening economic resilience for North Dakota.

6. Ensuring that we don’t punish companies that operate in ND that are already making ESG investments, such as large oil and gas companies. Industry has already begun to make these changes as evidenced by recent presentations by EmPower members. As such, we need to ensure that we don’t punish companies already making big investments in North Dakota.

I will reiterate that we must take this head on. Sun Tzu said “If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.” We know what we are made of and we know our enemy, let’s take this on!

Thank you, this concludes my testimony.

Testimony ID#5438

WESTERN DAKOTA ENERGY ASSOCIATION

February 4, 2021

Testimony of:
Geoff Simon, Lobbyist #144
in support of SB 2291
Senate Energy and Natural Resources Committee

Chairman Kreun and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our support for Senate Bill 2291 to begin to address growing concerns about the implications of the ESG (Environmental Social Governance) movement's impact on the oil, gas and coal operations that are so important to the state's economy.

The ESG movement makes no sense whatsoever when one considers the essential nature of fossil fuels. Coal continues to provide roughly 40 percent of the electricity generated in America, and although few people seem to appreciate it, the industry's baseload plants are literally keeping the lights on, ensuring grid reliability. Oil and natural gas are nothing short of essential to modern society. More than 90 percent of our transportation needs are provided with gasoline, diesel or jet fuel refined from crude oil, which is also used in the manufacture of roughly 6,000 consumer goods. Yet in spite of these facts, the "woke" crowd is driving public policy and financial investors to scorn the fossil fuels that are so important to our country's economic success.

SB 2291 sends a signal that North Dakota is prepared to push back. Turnabout is fair play. The legislation establishes a process whereby state government experts will examine the investment community to identify companies and firms that have divested their interests from fossil fuels, and in turn establish a process where we refrain from the purchase of products made by those companies and refuse to invest our considerable state funds in those operations.

North Dakota's investments are in the billions, and while still small compared to some of the Wall Street investment firms, we can send a strong signal that it's time for corporate America to re-examine its misguided policies.

WDEA wishes to thank Senator Bell for introducing this important legislation, and urges the committee to support the passage of SB 2291.

Thank you for the opportunity to submit testimony.

Western Dakota Energy Association
1661 Capitol Way, Bismarck ND 58501
www.ndenergy.org • 701-527-1832

Lignite Energy Council
LEADING THROUGH ADVOCACY AND INNOVATION

February 4, 2021

Chairman Kreun and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of Senate Bill 2291 due to the experiences that the lignite industry has had as it relates to the Environmental, Social and Corporate Governance (ESG) investment principles that are used by many large financial institutions as guidance in their decision-making process.

Each financial institution has a plan in place on how to govern their investment portfolios. Banks and insurance companies are increasingly applying these non-financial factors as part of their analysis process to identify what are not actual, but perceived risks in financial and insurance markets. As a result of a lack of understanding of the standards, practices and benefits the fossil fuel industry provides, there are currently trillions of dollars in investment capital that are now out of reach for important investments in oil, gas and coal.

ESG criteria are leading financial organizations to discriminate against the fossil fuel industry which could cost North Dakota thousands of jobs and hundreds of millions of dollars in capital investment. The use of ESG criteria has hurt the lignite industry by drastically increasing insurance premiums and other unnecessary costs by millions of dollars over the past few years.

The ESG threat to North Dakota's economy and state budget has been a significant discussion in the EmPower ND meetings over the past year. Over half of the state revenues are derived from fossil fuels, which fund schools, social services and most government programs across North Dakota.

We applaud Senator Bell's efforts to direct the State Investment Board and the Department of Commerce to study the investments, that have been made with taxpayer revenues, with entities that are using ESG's to discriminate against North Dakota's economic interests.

For these reasons, the Lignite Energy Council supports SB2291 and we respectfully ask that the committee provide this legislation with a favorable "Do-Pass" recommendation.

Thank you for your consideration,

Jason Bohrer

President and CEO

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

701.258.7117 www.lignite.com LEC@lignite.com

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2291
2/5/2021

A BILL for an Act to create and enact a new section to chapter 21-10, a new section to chapter 54-44, and a new section to chapter 54-60 of the North Dakota Century Code, relating to social investments made by the state investment board and the boycott of energy or commodities companies; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; and to provide for reports to legislative management.

Chairman Kreun, called the committee work to order 9:15am
Senators Bell, Kreun, Schaible, Patten, J. Roers, and Piepkorn were all present

Discussion Topics:

- Update of OMB's position on the bill and Senator Bell's work
- Potential unintended consequences of divestment and threats thereof

Senator Bell provided an update of her work with OMB (9:16am)

Chairman Kreun recommended that the committee hold the bill (9:25am)

Chairman Kreun called the committee work to a close at 9:26am

Dave Owen, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2291
2/12/2021

A BILL for an Act to create and enact a new section to chapter 21-10, a new section to chapter 54-44, and a new section to chapter 54-60 of the North Dakota Century Code, relating to social investments made by the state investment board and the boycott of energy or commodities companies; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; and to provide for reports to legislative management.

Chairman Kreun called the hearing to order at 9:46am
Senators Bell, J. Roers, Patten, Piepkorn, Schaible, and Kreun all Present

Discussion Topics:
- Amendments
- Review

Senator Bell, introduced an amendment #21.0717.02004 (9:48am)

Senator Patten, moved to adopt the amendment #21.0717.02004 (10:05am)

Senator Roers, seconded to adopt the amendment #21.0717.02004 (10:05am)

Adopt the Amendment	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Motion Passed 5-1-0

Senator Roers, moved DO PASS AS AMENDED (10:09am)

Senator Schaible, seconded DO PASS AS AMENDED (10:09am)

DO PASS AS AMENDED	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Motion Passed 5-1-0

Senator Patten will carry

Chairman Kreun called the committee to a close at 10:11 am
Dave Owen, Committee Clerk

21.0717.02004
Title.03000

Prepared by the Legislative Council staff for Senator Bell
February 11, 2021

2/12
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2291

Page 1, line 1, remove ", a new section to chapter"

Page 1, line 2, remove "54-44, and a new section to chapter 54-60"

Page 1, line 3, remove "and the boycott of energy or commodities"

Page 1, line 4, remove "companies"

Page 1, line 5, remove "and"

Page 1, line 6, after "management" insert "; and to declare an emergency"

Page 1, line 11, remove "<u>investment, divestment, or</u>"

Page 1, remove lines 12 through 14

Page 1, line 15, replace "<u>development</u>" with "<u>consideration of socially responsible criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return to the state</u>"

Page 1, line 16, replace "<u>The</u>" with "<u>Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the</u>"

Page 1, line 16, remove "<u>may not invest state funds for the purpose of social</u>"

Page 1, line 17, replace "<u>investment</u>" with "<u>can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, the state investment board may not invest state funds for the purpose of social investment</u>"

Page 1, remove lines 18 through 23

Page 2, remove lines 1 through 30

Page 3, line 3, remove the third "the"

Page 3, remove line 4

Page 3, line 5, replace "commodities." with "environmental social governance as it pertains to a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments as it pertains to government and private industry in the state. The study must include an evaluation of investment policy as it relates to environmental social governance and the level of involvement the state has with companies that use environmental social governance in their ranking when making business or investment decisions. The study must also include the potential implications for the state as it relates to the boycott of energy or production agriculture commodities by companies that intend to penalize, inflict economic harm on, or limit commercial relations. All aspects of boycotts, including the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or production agricultural commodities must be evaluated."

Page 3, after line 6, insert:

2/12 2 of 2

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2291: Energy and Natural Resources Committee (Sen. Kreun, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2291 was placed on the Sixth order on the calendar.

Page 1, line 1, remove ", a new section to chapter"

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Page 3, after line 6, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2291

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2291 9:00 AM
3/12/2021

Relating to social investments made by the state investment board; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; to provide for reports to legislative management; and to declare an emergency

9:00 AM

Chairman Porter opened the hearing. Present: Representatives Porter, Damschen, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, Ruby, Zubke, Guggisberg, Ista.

Discussion Topics:
- Environmental and Social Governance- ESG
- Fossil fuels
- Impacts on Government and private industry
- Petroleum and natural gas industry
- Carbon footprint- carbon risk exposure
- Political correctness
- Climate change
- Carbon tax
- EmPower

Testimony:
#8912 Sen Jessica Bell, District 33
#8715, #8716, #8717, #8718, #8927, #8928, #8935
Bette Grande, CEO, Roughrider Policy Center
Jason Bohrer, Lignite Energy Council, oral testimony
Pete Hanebutt, ND Farm Bureau, oral testimony
#8904 Ryan Warner, custodian, Synthesis.Earth
#8843 James Lieman, ND Department of Commerce

Additional written testimony:
#8900 Dustin Gawrylow, ND Watchdog Network

10:13 AM hearing closed.

Kathleen Davis, Committee Clerk

SB 2291
Senator Jessica Bell
District 33

ESG stands for environmental and social governance. If you haven't heard about it, you will notice it in your daily reading now that it's been brought to your attention. It has infiltrated nearly every part of doing business. Environmental and social governance is a growing movement in the investment and banking world to divest from agriculture and energy companies, often ignoring the basic investment goal of maximizing returns. Companies will go so far as to turn down a creditworthy investment if it doesn't meet their ESG requirements, which limits financing and insurance opportunities for those companies who don't meet the required, and most often subjective, "standards". ESG is another tool in the toolbox to move toward the elimination of production agriculture and fossil fuels.

Stakeholder activism such as this fails to consider some important and undeniable facts. To begin with, we need fossil fuels and production agriculture to fuel and feed our world. Reliable electricity and a stable food supply have directly lifted millions of people out of poverty, immensely improving their quality of life, yet ESG driven decisions do not account for this. Most attacks on production agriculture and fossil fuels, meant to slow their progress and reduce access, are largely counterintuitive.

In North Dakota specifically, the largest investment fund managed by the state, the Legacy Fund, exists only because of oil and gas tax revenues. It defies logic to imagine the state investment board making Legacy Fund investments based only on ESG considerations, which often oppose the industry that funds half of our state budget. We need to remember the resources that have built our state economy, energy and production agriculture, and not let inefficient investment fads dictate our state's financial decisions. Any other policies directing investments to the Legacy Fund would not be affected by this legislation.

But we don't need to feel helpless! Even as we face an administration that has boldly and clearly stated the disdain they have for what we do as a producing state here in North Dakota. It's up to us to determine our own destiny and leverage our assets to prioritize what's important to us. Other states have taken similar actions, fully divesting from assets that don't reflect their priorities. (see article below) Places like the City of New York and states like Texas, Alaska (see article below), Wyoming, Indiana and others are evaluating the adoption of policies as it relates to ESG boycotts. This bill helps get us one step closer to developing our own policy here in North Dakota.

The first section of the bill places into law current practice of the State Investment Board as it relates to investment policies on ESG. It excludes any other specific policy directives on investments in the Legacy Fund to ensure no complications. The policy disallows the consideration of ESG when making investments in our state's pension and other funds. This policy has proven very successful for both us and other states, specifically South Dakota, who has seen high performance with a policy that reflects our current practice and the language in this bill (see article below). High performance should always be a top consideration when making investment decisions for our state funds. But concepts like ESG beg other questions – should we be investing in companies that don't share our values? Should we do business with financial institutions that refuse to do business with the largest employers in our state? Should we sit back and watch those same financial institutions divest from fossil fuels and do nothing to protect ourselves? Should we focus investments in areas of business that fuel our economy? Or should we solely focus on top dollar? Then also – how do we attract those dollars to invest in our businesses?

How do we demonstrate our production of energy and agriculture commodities are clean and sustainable? How can we better share our story and compliance regarding ESG?

These questions lead us to the reason you see the study in Section 2 of the bill. The study will take a look at various impacts ESG has on government and private industry in ND. It must include an evaluation of investment policy as it relates to ESG and the level of involvement the state has with companies that use ESG when making business decisions or investments and implications to the state as it relates to the boycott of energy or production agriculture commodities. The study provides for a report to legislative management by June of 2022.

An emergency clause has been included because this is an immediate priority for the state, and Commerce is already beginning to evaluate some of these implications. Adopting this bill and these policies give some directive to our state regarding a movement that is already up and running and will only continue to negatively impact our livelihoods.

I look forward to working together to continue building momentum as a state as it relates to ESG, and taking control of our own future. Let's make our priorities – continued production and exports of our agriculture and energy products – clear to the world.

SD Article
https://www.valuewalk.com/esg-pension-investment-strategies-proxies/

AK Governor
https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/alaska-governor-wants-to-cut-ties-with-banks-not-financing-arctic-oil-industry-61757817

Three NYC Pension Funds to Divest $4 Billion From Fossil Fuels
2021-01-25 19:04:41.752 GMT

By Alex Wittenberg
(Bloomberg) -- Three of New York City's five public employee pension funds are divesting $4 billion from securities related to fossil-fuel companies.
Pensions for teachers, school administrators and civil servants voted to divest their holdings, according to a statement Monday from Mayor Bill de Blasio, Comptroller Scott Stringer and retirement board trustees. Police and fire department pension funds haven't voted to divest.
Investment managers and finance firms have come under increasing pressure to address climate change. In 2018, New York became the first major U.S. city to commit to divesting public pension funds from fossil fuel holdings.
"Our first-in-the-nation divestment is literally putting money where our mouth is when it comes to climate change," de Blasio said in the statement. "Divestment is a bold investment in our children and grandchildren, and our planet."
Last year, the New York State Common Retirement Fund

pledged to reach net-zero greenhouse gas emissions across its investments by 2040, a decade before any other U.S. pension plan.

Other large pension investors have also taken action to reduce their carbon footprints, including the California Public Employees' Retirement System and Australia's Retail Employees Superannuation Trust, which have committed to transition their investments to net-zero emissions by 2050.

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Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

RedState

Forget Peak Oil, Peak Capital Will Cost Consumers Dearly

Bette Grande-The Heartland Institute | Jan 13, 2021 3:00 PM ET

The Energy Information Administration reported that the United States did not import any oil from Saudi Arabia in the last week of 2020. There are many reasons for this, and it is likely temporary, but the trend of lower oil imports is happening because of increased domestic oil production in states like New Mexico, North Dakota, and Texas. However, our hard-won national energy security may be short-lived.

It is no secret that it has been a difficult year for the shale oil industry. First, OPEC slashed the price of its oil in March 2020. That was quickly followed by COVID-19 lockdowns and the drop in demand for oil and gasoline. Those two factors have improved somewhat, but in 2021, the domestic energy industry may see a fracking ban on federal lands and a host of new environmental regulations that will deter energy production.

Even so, the biggest challenge facing domestic energy producers is the increasing lack of capital. Environmental and Social Governance (ESG) requirements and the related trend for big banks to deny capital to the

the traditional energy sector will choke off the capital needed for the continued dominance of the domestic energy sector.

ESG investing, pushed by the largest firms on Wall Street, is the latest effort to force companies to turn away from their core business and divert resources to address the evolving social and environmental concerns of activists.

In North Dakota, the midstream sector needs to invest $20 billion in infrastructure to capture and process natural gas in the years ahead. Billions more are needed for drilling and completing wells and the expansion of the petrochemical sector. The ESG movement will either close access to that needed capital or force the industry to meet its requirements, which will increase costs to consumers.

The U.S. energy industry is just the latest to face ESG and similar social engineering efforts. The tobacco and firearms industries have already been targeted. And with the coming push of Green New Deal policies, other sectors will be targeted. Farming and ranching will be next. And for what? The possibility of an imperceptible impact on the environment.

That is why it is disheartening to watch businesses and policymakers so readily accept the premise of the ESG movement. Facing challenging budgets and the need for capital, oil and gas producers and state policymakers are scrambling to comply with ESG requirements, in order to secure needed funding. This is understandable, but short-sighted.

Implementing ESG policies will increase the price of oil and gas, with consumers footing the bill. ESG policies will also decrease high-paying jobs in the energy sector. And our domestic energy industry will be at a greater competitive disadvantage because Saudi Arabia, Russia, and others are not playing the ESG game.

And a game it is. Before policymakers' shuffle down the path of ESG compliance they should fully understand the goal of the ESG movement. The goal is not to reduce CO2, it is to increase the cost of fossil fuel energy to the point that renewable energy is competitive. It is a backdoor carbon tax. And after companies jump the initial ESG hurdle, they will face much higher hurdles in the future. Eventually, ESG will make it not economically feasible to drill for oil and gas in America. The winners? Saudi Arabia and Russia—they will be happy to sell oil to us.

Policymakers and businesses should look for every available option to avoid playing the ESG game, which leads to fewer good-paying jobs, more taxes, and higher energy prices—without tangible environmental benefit.

States and businesses have some leverage. When choosing money managers for the investment of public money, including state pensions, states should not work with investment firms that actively undermine the state's economy and its residents. In fact, there is some potential fiduciary liability for the state if public pensions are invested with any objective other than the exclusive financial benefit of plan participants.

States can also require fair access to capital from banks that seek to do business in the state. Banks should not be allowed to redline loans to the energy sector or any other legal business that happens to violate the bank's heightened social conscience.

State policymakers should not ignore the ESG movement, the threat it poses to capitalism, and the burdens it places on the economy and consumers.

Bette Grande (bette@roughriderpolicy.org) is the CEO of Roughrider Policy Center.

#8716

Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

March 12, 2021

Chairman Porter and Members of the House Energy and Natural Resources Committee,

My name is Bette Grande, I am the CEO of Roughrider Policy Center and I stand in support of SB 2291. I have provided the Committee with two articles I wrote recently, and a white paper written by Bud Brigham, many of you will recognize that name, Mr. Brigham was a pioneer in the Bakken.

These materials will explain what we are up against and I want to use this time to put this issue in perspective. I am old enough to remember the 1980's and I saw my father struggle when the oil field went bust. The 80's were hard in North Dakota, young people seeking opportunity moved away, myself included.

Many of you may recall the idea floated in the late 80's that North Dakota would become a "Buffalo Commons" and thinking back of that time it was hard to argue with Frank and Deborah Popper on that vision.

My family and I moved back to North Dakota in 1992 and things were improving. Gov. Schafer and the Republican Legislature were working to bring our economy back and build a future for North Dakota families.

But it was not until pioneers like Bud Brigham brought the Bakken to life that things really began to change in North Dakota. Population growth, economic opportunity, wealth and revenue growth put North Dakota on the national map. Energy security.

The new administration is not friendly to coal, oil, natural gas and other vital parts of our economy and supports many Green New Deal policies. And the ESG (Environmental and Social Governance) movement is just the latest tool to attack our traditional energy resources. ESG could just as well stand for "Eliminate Shale Gambit" and efforts by industry and government in our state to play along with the ESG game will only weaken our hand.

Why would North Dakota go along with a plan to send us back to the 1980's, to Buffalo Commons?

The issues and threats our energy industry faces are significant. We will be right back fighting with environmental groups and federal agencies over our ability, our rights, to develop our resources. The future of DAPL is in the hands of federal court in DC. Additional infrastructure for developing coal, oil and natural gas is needed. Access to capital will be critical for our economy and our state.

SB 2291 is a great start because the next two years are going to be a challenge. North Dakota must make it clear that we will not support or work with financial institutions that have the stated goal of putting us out of work.

And we are not alone. Policy makers in Texas, Alaska, Wyoming, Oklahoma, West Virginia and even New Mexico see the threat the ESG movement, especially now with the backing of the US Treasury Department.

As I point out in the article *First, They Came for Alaska,* Gov. Dunleavy is calling for energy states form an alliance in defense of our natural resources. He is right and North Dakota can play an important role.

Energy discrimination as Mr. Brigham calls it, is real and it is happening. If we play the game, if we kick the can down the road, we will only weaken our own hand. Capital from Wall Street is drying up as the ESG movement, stakeholder capitalism, or by any other name gathers steam. Much better to realize that now and take action while we have some resources available.

Windmill Commons sounds much worse than Buffalo Commons.

#8717

Energy Discrimination

A THREAT TO CAPITALISM, PROSPERITY, & FLOURISHING

Bud Brigham for Life:Powered

What is the greatest threat to capitalism today?

Is it strangulation by the regulatory state, government spending sprees, or excessive taxation? Some experts believe **an emerging "energy discrimination" movement may actually be the greatest threat to capitalism, property rights, and even human flourishing.**

WHAT IS ESG INVESTING?

Chances are you have never heard of stakeholder capitalism or environmental, social, and governance (ESG) investing. It is a new trend in finance, pushed by the United Nations and wealthy investment firms like BlackRock, that is already transforming our pensions, investment funds, and perhaps your own employer — without most of us ever knowing it.

At the heart of this energy discrimination movement is ESG investing, which prioritizes investing in corporations that advertise commitment to progressive political causes. Activists are pressuring corporations to adopt social and cultural agendas in order to appease a vocal minority and even go so far as to coerce divestment from industries considered politically unpopular — particularly fossil fuels, agriculture, forestry, mining, and petrochemicals. Having a single eye toward profit and shareholder returns is viewed as reprehensible.

Energy discrimination activists claim to be promoting the environment, equality, and transparency. Nearly everyone agrees with these goals. So what's the problem?

en·er·gy dis·crim·i·na·tion *(n)*
'e-nər-jē di-ˌskri-mə-ˈnā-shən

The practice of bullying corporations and investment firms into divesting from fossil fuels.

SUMMARY

- Investment and pension managers who invest based on political trends undermine their fiduciary duty and threaten our workers' and retirees' futures.
- The climate catastrophist view is based on questionable science and ignores vast improvements in health, life expectancy, economic freedom, individual liberty, and quality of life around the world thanks to access to energy.
- Fossil fuels have helped America become a world leader in many arenas, including environmental quality.
- Divesting from fossil fuels will not improve the environment or affect climate change. It will, however, increase the cost of energy (which harms the poor the most) and cede power to foreign competitors who don't share our commitment to the environment and fair labor practices.
- Our elected, business, and community leaders must oppose energy discrimination and allow free-market capitalism to continue driving human flourishing.

Life:Powered

The constitutional, moral, and ethical problem

It was 50 years ago that famed economist Milton Friedman published the Friedman doctrine of capital theory. Friedman argued that the main responsibility of business managers is to create profits for their shareholders — in other words, to cultivate and grow their business by running it well and providing an outstanding product or service — and that the shareholders can then decide for themselves what social initiatives they wish to take part in.

"...the rights of property, are the objects for the protection of which government was instituted."

-James Madison

Economic freedom — our right to spend, invest, and donate our hard-earned money as we choose — is one of our most cherished rights. Today, many investors are investing their own personal capital not just to generate a financial return, but also to reflect and project their environmental or societal concerns and beliefs. Freedom to do just that is obviously a very good thing, as is the freedom to not invest in enterprises that don't reflect our values.

But what if they are investing someone else's money? Maybe yours? This is where energy discrimination becomes a problem, especially for workers who assume (rightfully so) that their retirement funds are being managed with their best interests — not political whims — in mind.

That is the problem with these campaigns to bully businesses into divesting from fossil fuels. They go much farther than encouraging individuals to invest in environmental issues. The groups hostile to fossil fuels generally have no desire to own these companies, but exercising their right not to participate in ownership is not enough for them. These movements are working to change these companies, primarily from the outside, at the expense of the shareholders who rely on their manager's dedication to their fiduciary obligations. It's a co-opting of ownership and control, deeply penetrating and affecting the behavior of corporations and pension funds who are investing and risking other people's money. Is that right? Do you really own the property if special interests are able to exercise control and even seek to destroy it?

Our Founding Fathers set forth a clear vision for a nation thriving on the firm foundation of individual liberty, the right to private property, and the right to freedom of association. James Madison wrote, "The rights of persons, and the rights of property, are the objects, for the protection of which government was instituted." Or as stated by my favorite author Ayn Rand, "The right to life is the source of all rights — and the right to property is their only implementation. Without property rights, no other rights are possible."

> *"Any benefits from fossil fuel divestment are likely to be nonexistent."*
>
> -Prof. Daniel R. Fischel

The energy discrimination movement, having penetrated the board rooms and pension funds, seeks to undermine these fundamental principles. Even if elevating political agendas over return on investment is viewed as legal, it's certainly not moral or ethical. Investment managers have a fiduciary responsibility to act in their clients' best interests — and business leaders should as well.

A recent study debunks the widely touted idea that ESG investment outperforms traditional funds by examining university divestment

campaigns. The costs, including compliance costs, limited diversification, and higher fees, are significant enough to impede the schools' investment goals. "Any benefits from fossil fuel divestment are likely to be nonexistent," writes Daniel R. Fischel. "There is no basis to believe that divestment can affect the stock prices or business decisions of targeted firms. Moreover, there is broad agreement among financial professionals and academics that simple investment rules like divestment from fossil fuel companies cannot generate superior returns. Finally, divestment seems unlikely to affect the public debate or provide an effective tool even for those who strongly feel the need to address climate change."

For those caught up in the movement, their intentions may be good. For example, most of us support clean air and water. However, as polling consistently shows, Americans don't agree on how best to achieve that goal. Similarly, not all Americans share the perspective of climate catastrophists, particularly in light of the fact that climate-related deaths are down 98% over the last century. There are also serious environmental consequences of renewable energy that activists have yet to address. Many of us recognize that, thanks to abundant and affordable energy and the associated human flourishing, this is the best time in human history to be alive. We can adapt and protect ourselves better than ever. So we do not all agree that fossil fuel divestment is a responsible move — and it would be irresponsible for investment managers to act on that assumption. Despite the lack of consensus on these matters, pressure from energy discrimination activists has become so intense that many American oil and gas companies are including in their filings statements about transitioning to "low-carbon energy sources." While business executives may feel they have no choice, this capitulation cements the public's misunderstanding of how ineffective renewable energy really is.

Fossil fuels are responsible for approximately 80% of worldwide energy utilization. The consequences of forcing American energy companies to surrender to their foreign competitors with lax environmental and labor standards — not to mention unstable and even hostile governments — would be disastrous. The world will still need oil, gas, and coal; American producers going under would only give foreign competitors license to pollute and drive up prices.

Public companies are owned by thousands of shareholders, and many have hundreds or even thousands of employees. Activists pushing this special interest are an extremely small but vocal segment seeking to co-opt these enterprises for their own social agendas, and it comes at the expense of the owners who don't necessarily agree with those agendas, often against their better financial interests. Tragically, at times it's also at the expense of their employees, since companies that don't optimize their returns are in danger of shrinking or even failing altogether. **Energy discrimination is therefore not just a violation of property rights, but also a threat to our energy supply, jobs, and economic opportunity.**

Capitalism, uncorrupted, creates human flourishing

The genius of the United States of America is empirically and unquestionably evident in a vast array of fields, from technology and medicine to music and the arts. The rest of the world combined does not nearly match America's diverse contributions to the advancement of society and human flourishing. **American fossil energy companies have revolutionized energy markets by producing abundant and clean fuels, reducing energy costs to the benefit of the entire world (particularly the poor and middle class), and making the world safer and less vulnerable to supply disruptions.**

What differentiates America's impact on human civilization? Why, despite all the advancements of other countries and societies, is America still so exceptional?

It comes down to one attribute: economic freedom. American businesses have generated historic advancements over the last century because of their relentless pursuit of excellence, benefitting from lightly regulated and largely free markets.

Stated another way, capitalism has been fundamental to American exceptionalism. For American companies to grow and thrive over the long term, they must generate attractive outcomes for all their stakeholders. What the energy discrimination movement fails to recognize is that companies will not be successful if they treat their employees poorly, fail to be good stewards to their communities, or spoil the environment that they operate in. We are all on the same team. I have been blessed to have founded and built five successful companies thus far, including two that have successfully gone public. Our achievements were only possible because we rewarded all our stakeholders, and it was a direct consequence of our intense focus on providing an outstanding, profitable service that delivers value to our shareholders. These are virtuous relationships in a virtuous cycle — the beauty, the harmony, of true and uncorrupted capitalism.

When it comes to the environment, the United States is a world leader. We've slashed air pollution by 77% in the last 50 years — far outpacing almost every other developed nation — and are ranked number one in the world for access to clean water. These accomplishments can be credited almost exclusively to innovation in the private sector, especially pollution control technology, horizontal drilling, and fracking. American energy companies produce the cleanest energy of any country in the world, and partly as a result, the United States has the cleanest environment of any major country. Furthermore, our exports are displacing dirtier energy produced overseas that are polluting our shared air and water resources. **This environmental exceptionalism is a fundamental product of the American energy industry's pursuit of shareholder value** — not ESG investing.

Meanwhile, fossil fuels are helping to fight poverty around the world. While almost half the world's population lived in what economists call "extreme poverty" as recently as 1980, that number is now less than 10 percent. Affordable, reliable energy begets clean water, modern medicine, warmth and light, safe cooking fuels, and

the basic necessities that make a healthy, comfortable, and self-actualized life possible. The prosperity we enjoy in the United States will be spread across the globe thanks to natural gas, oil, and clean coal.

The American success story is an irrefutable demonstration of the symbiotic and critical relationship between economic freedom, capitalism, and human flourishing. By focusing intensely on share-holder returns, American companies have created positive outcomes for their stakeholders, and the world is the beneficiary. The energy discrimination movement is like a cancerous threat to politicize the engine of our prosperity, poised to undo decades of progress. It is therefore a fundamental danger to human flourishing, which has lifted billions out of poverty and extended lifespans for the entire globe. For many involved, it is well intended. But for all of us, it is a grave danger and incalculable threat.

Bud Brigham
Chairman, Brigham Minerals,
Brigham Exploration & Atlas Sand

Life:Powered

Life:Powered is a national initiative of the Texas Public Policy Foundation to raise America's energy IQ. We believe maximizing human flourishing should be the goal of America’s energy and environmental policies. Economic freedom and abundant, reliable, affordable energy are the only path to lasting prosperity and environmental quality.

Visit Life:Powered.org to learn more and sign up for Facts:Powered, a weekly jolt of news and commentary delivered to your inbox.

Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

American Thinker

January 28, 2021

First, they came for Alaska

By Bette Grande

The future of domestic energy production and resource development is happening now in Alaska. Two recent stories out of Alaska sound a warning to energy and mining states: you are next.

Last August, the U.S. Interior Department finalized its plan to open a small portion of the Arctic National Wildlife Refuge (ANWR) to oil and gas development — a move welcomed by Alaska governor Mike Dunleavy at the time, who said, "Alaskans, Americans, this is a great day."

It was a day full of opportunity, but five months later, reality hit. Leases for just 11 of the 22 tracts were sold on January 6, 2021, the majority to a state-owned development corporation. And not a single major oil company submitted a bid. Not one.

Why would private oil companies take a pass on tapping into ANWR's vast oil and gas reserves? In a word, capital, or lack thereof. Drilling in ANWR, despite the potential payoff, does not fit nicely into the Environmental and Social Governance (ESG) policies that oil companies are now required to implement. Today, access to private capital, bank loans, and insurance requires a strong ESG strategy. And without capital or insurance, development of resources is not possible.

The Pebble mine project in southwest Alaska has also been in the news lately. In November, the U.S. Army Corps of Engineers rejected a permit for the mine located on state-owned land. The state and the developer may appeal the decision, but then candidate Joe Biden said he would work to stop the Pebble project, making any appeal a waste of time.

The Pebble mine project has many vocal opponents, but the lesson here is that the federal government will continue to exert influence over resource development despite questions over its authority to do so. Gov. Dunleavy said, "The flawed decision by the Alaska District creates a dangerous precedent that will undoubtedly harm Alaska's future, and any potential project can fall victim to the same questionable standards," a view he shared and expanded recently in a panel discussion with the Texas Public Policy Foundation.

After labeling Alaska "the canary in the coal mine," Dunleavy called for energy-developing states to align in defense of their natural resources. It was a powerful call from someone in the fight. Governors and state legislators in states with strong energy and agriculture sectors should pursue an alliance to protect their state resources, their economies, and their residents.

The financial sector, environmental groups, and now the Biden administration form a threefold cord not quickly broken. Our domestic energy industry, farmers, ranchers, and consumers will foot the bill. The impacts from ESG will likely increase based on comments from President Biden's nominee for secretary of the Treasury, Janet Yellen, who said she "would create a hub within Treasury that would focus on financial system-related risk posed by climate change, and tax policy incentives to affect change." That's wind in the sails for the ESG movement.

State policymakers should take an "all of the above" approach in defending their sovereignty and their role in developing the natural resources, expanding economic opportunities, and protecting fundamental freedoms within their borders. I wrote about the threat that ESG poses to our domestic fossil fuel industry, and soon, farmers and ranchers. And that was before Treasury put its full weight behind the ESG movement. Policymakers and industry experts will need to be creative to ensure that needed capital is available, and they must stand together.

There will be no help from Washington. While some members of Congress discovered federalism earlier this month, lobbyists on K Street are working to bring things back to "regular order" in the swamp.

State policymakers understand that it is not in the best interest of their states to work with banks, investment firms, and insurance companies that are actively and deliberately undermining their economies and the financial opportunities, freedoms, and energy security of their citizens. Policies aimed at severing state-level relationships with ESG-focused companies in everything from state contracts to the investment of public pension plans are a start. States can consider restricting these companies from operating within their borders or take steps to ensure fair access to capital for every industry operating in the state.

Alaska is a playground for environmental activists and a poster child for the future in energy-producing states and everyone who values access to affordable and reliable energy. States, it is on you.

Bette Grande (bette@roughriderpolicy.org) is the CEO of Roughrider Policy Center.

#8927

Energy Discrimination = Higher Prices

About energy discrimination & politically motivated investing

Environmentalist activists are increasingly pressuring corporations to take action on political issues instead of prioritizing fiduciary responsibility. Banks are refusing to lend to fossil fuel companies and other vilified industries while environmental, social, and governance (ESG) investing is the behind-the-scenes underpinning of public shaming campaigns to divest from fossil fuels, cut carbon dioxide emissions, and subsidize expensive, unreliable renewable energy.

While social responsibility is important to many consumers and should be a priority for businesses, the energy discrimination movement wrongly bullies corporations into taking a political stance in order to appease a vocal minority of activists. Engaging the energy discrimination movement also grants corporations the false appearance of moral superiority, even though **divesting from fossil fuels would yield no environmental benefits but come with an extreme economic cost.**

Why energy discrimination hurts Americans

The ESG movement's goal is to deny financing and even insurance coverage to fossil fuel producers, led by banks and investment firms including JP Morgan, Bank of the West, and BlackRock. Several states are even considering requiring pensions to prioritize ESG over return on investment for retirees.

In the meantime, Americans still need reliable energy, 80% of which comes from fossil fuels despite decades of multibillion-dollar subsidies for wind and solar energy. Denying financing to our American energy producers kills good-paying jobs, increases cost of living, and reduces the capital available to invest in the energy technologies of the future — while giving a leg up to less responsible producers overseas with lax environmental and labor standards.

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WWW.LIFEPOWERED.ORG

Life:Powered is a national initiative of the Texas Public Policy Foundation. We educate policymakers and the public about the importance of our affordable, reliable energy resources to human flourishing.

Divesting won't help people or the environment

The free market — rather than the social and political whims of the most vocal activists — is best suited to make the complex tradeoffs needed to continue growing our economy and leading the world in environmental quality. With its myopic fixation on cutting carbon dioxide emissions at any cost, the energy discrimination movement fails to consider the negative human and environmental impacts, especially the land and wildlife destruction, of so-called "renewable" energy.

Furthermore, eliminating *all* carbon dioxide emissions nationwide by 2030, as called for in the Green New Deal, would result in a less than two-tenths of a degree temperature change by 2100, according to data models used by the United Nations and the EPA. Energy consumers in most of the world, especially in poorer nations, have understandably shown no willingness to spend the hundreds of billions of dollars needed to cut emissions for such a minuscule benefit.

Every attempt to use more renewable energy, from Europe to California, has resulted in higher costs, affecting not just energy prices but every purchase we make. **Divestment initiatives will harm Americans — especially in distressed and vulnerable communities, who spend the largest share of their income on energy — by increasing prices for oil, gas, and electricity.** If businesses and consumers want to pursue more wind and solar energy, they should be free to do so on their own but not be forced to subsidize the renewable energy agenda.

So what's next?

Elected leaders can take the following actions to preserve America's energy dominance, maintain our global leadership in clean air and water, and fight poverty here and abroad:

- Pass legislation prohibiting companies that boycott, divest from, or sanction fossil fuels and other industries such as petrochemicals, mining, forestry, agriculture, etc. from doing business with the government. This will ensure taxpayer dollars are not sent to entities with an anti-American agenda.
- Pass legislation requiring government pension funds to prioritize fiduciary responsibility over ESG criteria to ensure workers' and retirees' money is managed responsibly.
- Pass legislation prohibiting insurance companies from discriminating against energy and other industries.
- Oppose any legislation requiring businesses to publish ESG materials, favoring ESG ratings for government contracts and investments, or otherwise supporting the misguided movement to divest from fossil fuels.

Buffalo Commons, 20 years later

LAUREN DONOVAN Bismarck Tribune
Aug 31, 2007

Frank and Deborah Popper remember when all hell broke loose out here in the Great Plains.

They - otherwise obscure East Coast university professors - remain amazed and pleased by reaction to a research paper they called "The Great Plains: From Dust to Dust," published 20 years ago.

In it, they proposed a Buffalo Commons for the sparsely populated regions of 10 states from western North Dakota clear to Texas.

They suggested that the vast grassy region was stuck in a cycle of decreasing population and emptying towns and farms, and the best use for it would be a vast preserve and wilderness for bison and wildlife. They proposed the federal government, like it did in the '30s to create the National Grasslands, could buy back the land it gave free for homesteading.

They say most of what they foresaw has come to pass, but differently.

The Great Plains continue to empty, except for in larger population centers. And, a Buffalo Commons is happening, only through a private conservation movement, not through government intervention.

The Poppers say they were far more right than wrong.

In their view, conservancy-style purchases of the Great Plains' prairie, plus the strength of the buffalo industry highlighted by Ted Turner's conglomeration of Montana ranches into a bison empire are signposts pointing the way.

Those indicators, plus groups like the Great Plains Restoration Council, the Inter-Tribal Bison Cooperative, the American Prairie Foundation and the Grasslands Foundation, all put flesh to the concept and make it material, they say.

"There's no question now that the Buffalo Commons will happen," Frank Popper said in a recent interview. "The interesting questions are how."

Richard Rathge, who directs the state's population data center, says he frankly thinks that's hogwash, or more accurately, buffalo-wash.

He said the Poppers based their proposal on the notion that places like North Dakota had no ability to create a different economy and that buffalo parks would be a sustainable use of the region.

"That didn't happen, nor will it happen," Rathge said, partly because buffalo ownership is mainly privatized in a cattle-style industry.

More importantly, though, he thinks the Poppers failed to recognize that a population resurgence was possible in western counties and towns they saw as spiraling toward extinction.

The latest data show that for the first time in more than two decades, 10 of 15 counties either west of or on the Missouri River in North Dakota show growth.

Those counties - including McKenzie, Dunn, Hettinger, Morton, Williams and Sioux - have seen an influx of people because of energy development and eco-tourism.

"The key is the diversification of the economy," he said.

Shaking things up

The Poppers' beliefs that the Buffalo Commons "will happen" are not the fighting words they were 20 years ago.

Then, the idea sounded faintly ridiculous.

On the other hand, with a deepening drought, Yellowstone National Park on fire, an oil recession and towns across the plains for generations birthing far fewer people than they buried, they touched a nerve that maybe it could really happen.

It was to that "other hand" that the Poppers were called on to defend their research in overheated meeting rooms up and down the Great Plains. Strong words were said and meant.

"We were the damned last straw," Frank Popper recalled.

In Montana, people wore jackets with the picture of a bison surrounded by the circle-slash stamp for "no." In Kansas, a meeting with the Poppers was cancelled because of a death threat against them. In North Dakota, a McKenzie County newspaper publisher angrily asked them, "What do you want us to do? Leave?"

For all the heat it generated, the Poppers' work created an equal amount of light.

Jim Gilmour remembers both the fire and the illumination.

Gilmour is a Fargo city planner, a city of fortune far outside the Buffalo Common fray.

Back in 1987 he was working for the Lewis and Clark Council for Regional Development that included 10 North Dakota counties. Most of the counties - Grant, Sioux, Sheridan, Hettinger - were on the Poppers' dire demographics "hit" list for having towns that were dying on their feet.

Looking back these 20 years, Gilmour said the Poppers did some good.

"People get accustomed to the gradual decline and don't realize what the situation is," Gilmour said. "Having that prediction caused people to realize they needed to create their own future."

In fact, Gilmour was among those to first read the Poppers' Buffalo Commons theory in the American Planning Association magazine. He invited them to speak at a 16-state Western Planning Conference in Bismarck, July 1988.

It was hot. It had barely rained for months. Crops were burning up. Water in the huge Missouri River dam basins was shrinking.

"Suddenly, I was not a joke or some kind of bizarre prophet, the intellectual clown act that I'd been (earlier)," Frank Popper said. "They were taking us very seriously indeed."

The media showed up, including the Chicago Tribune.

Until then, the Buffalo Commons theory had four hooved feet that were trampling humans in their most fragile places. With the attention of Chicago, the New York Times to follow, the "Today Show" and others, it grew wings. Within months the Poppers and Buffalo Commons were part of the regional lexicon.

Timing was everything

While the Poppers were battling up and down the plains, George Sinner was North Dakota's governor, winding down the first of his two terms in office.

His administration dug hard into North Dakota's economic development movement and fostered an eventual understanding that growth would come bootstraps up, not dispensation down from state government.

Sinner had his hands full. There was the drought, a prolonged struggle to keep the Great Plains Synfuels Plant up and running and communities like Belfield and Watford City reeling from the implosion of the oil boom.

Still, Sinner said he didn't believe in the Poppers' theory, even though he had a congenial half-hour meeting with Frank Popper during that planning conference.

"I still don't believe it," Sinner said.

Looking back now, he sees that some of what they predicted has come to pass.

What the Poppers failed to take into account was that the tide could turn, Sinner said.

There has been a rebirth in western North Dakota, with ethanol production, a new promising run in the oil fields and a number of coal projects under development. Good crops are cyclical, but the world demand for food will only ever increase, Sinner said.

Judging the future by what happens over a relatively small time span is short-sighted, he said. "I don't think anybody in my office was very alarmed," Sinner said.

Conversation long overdue

Rathge said the Poppers started an important conversation about depopulation in the plains. The numbers had always been there, but tying them to the empty wildness of a Buffalo Commons gave the discussion an unprecedented urgency, he said.

Even with modest growth in some western counties, the same trends that have always plagued the state still do. Six counties contribute to the slight but steady increase in the state's population over the past 50 years. All other counties have declined in population with only a recent improvement for some that could go away if the energy and oil boom do.

Rathge said he's optimistic, but people and communities still need to be innovative and diversify.

Deborah Popper says when she rereads the original paper she is struck by its sweeping, vivid language.

"It was much more powerful than I would write it now," she said.

What most sticks with the Poppers is the conversation - occasionally a shouting match - that occurred up and down the plains when people were confronted with such a dramatic view of how the future might unfold.

Deborah Popper said ultimately people used their work to define what they didn't want to have happen to their communities and the land they loved and lived.

"The Buffalo Commons became one piece of the way to articulate that," she said.

(Reach reporter Lauren Donovan at 888-303-5511 or **lauren@westriv.com**.)

Colorado Oil & Gas Taunts The North Face At Mock Award Ceremony

Author: CBS4 Political Specialist Shaun Boyd
March 5, 2021 at 2:29 pm
DENVER (CBS4)–
The North Face is being celebrated by the very industry it snubbed. The Colorado-based company recently rejected an order for 400 jackets from a Texas oil and gas company because it reportedly didn't want to be associated with an industry that doesn't meet its brand standards.

Ironically, the jackets and almost every product The North Face produces and sells is made with nylon, polyester and polyurethane, all of which come from petroleum.
So, the Colorado Oil and Gas Association decided to have some fun with the situation. It bestowed its first-ever "Extraordinary Customer Award" on The North Face, saying it appreciates the company for its abundant use of oil and gas.
Dan Haley, who heads up the industry trade association, held a mock award ceremony that was more like a roast. The CEOs of oil and gas companies lampooned The North Face, pointing out that its parent company is even building a hangar at Centennial Airport for its private jet fleet.
Unauthorized access.
"To have such a large percent of what they make, probably three-quarters of the mass they ship, is actually our product. So, it's hard to top the all-in nature of The North Face as a consumer of our product," said Chris Wright, CEO of Liberty Oilfield Services.

COGA is using The North Face incident as a springboard for a new campaign called Fueling Our Lives. It's aimed at educating Coloradans about all the things that are made from petroleum – from electronics and sports equipment to medical devices, appliances, even dentures and soft contacts.
"I think too often we think of oil and natural gas as just as fuels — something to put in our cars or heat or cool our homes," said Haley. "And, as we've seen in recent weeks across the country that is hugely important part of what our industry – supplying affordable and efficient clean-burning natural gas to heat our homes and help power our grid – but we often forget just how many other things we have and enjoy in the 21st Century that are made possible because of oil and natural gas."
The North Face did not respond to CBS4's request for comment. In a statement to the Financial Times, the company said it investigates product requests to make sure they align closely with the goals surrounding sustainability and environmental protection.

https://denver.cbslocal.com/2021/03/05/colorado-oil-gas-the-north-face-award/amp/?__twitter_impression=true

#8904

SYNTHESIS.EARTH
March 12, 2021

RE: SB 2291

Chairman, and members of the committee, my name is Ryan Warner. I am custodian of Synthesis.Earth, a connective technology company headquartered in Bismarck.

SB 2291 seeks to give the State Investment Board the authority to make investment decisions that adversely select against funds and investment opportunities that follow Environmental Social Governance investment guidelines, provided such investments are likely to provide equivalent or better returns.

Some in this room believe ESG investment guidelines are “discriminatory” or “activist” in nature, and nothing but a thinly cloaked effort to ruin fossil fuel industries.

In actuality, environmental social governance is a continuation of the cold calculation of capitalism, which seeks ultimately to put a price tag on everything to create better predictive mechanisms and greater market efficiency.

As we all know, fossil fuels have traditionally been able to release their by-products into the air at no cost, and as such have long enjoyed a leg up on other industries that must pay to dispose of their waste products. Given the growing consensus on climate change, and the role that the release of atmospheric carbon dioxide plays in driving the rate of climate change beyond the ecosystem’s ability to adapt, investment managers now forecast that a carbon tax is on the horizon. A carbon tax will provide a market mechanism that somewhat recaptures the true cost of releasing carbon into the atmosphere, and in the process create economic incentives to slow the rate of climate change to more manageable and less catastrophic levels.

In essence, this is an uncertain time and industries with carbon risk exposure are in the crossfire. This is because the potential of putting a price on carbon in industries with large amounts of carbon risk exposure creates a very real chance that certain business models will no longer be viable in the future. In a financial world seeking certainty, the looming carbon tax creates a huge amount of uncertainty.

SB 2291 seeks to address some of these concerns, and attempts to give the investment managers working on the behalf of North Dakotans an opportunity to use their investment dollars in a way that promotes the economic welfare of the oil, gas, and coal industries that have traditionally powered the state’s economy.

However, finance capitalism is a global enterprise and follows the law of large numbers. As such, a small state like North Dakota has no real way to use its investment power alone to protect its local interests.

This dilemma has been in force since the beginning of our statehood. Environmental social governance investment guidelines are just the latest in a long line of economic imperatives foisted on us by the interests of rich outsiders.

So while SB 2291 has identified one of North Dakota's ongoing challenges, it has failed to provide any real solutions. No amount of study or calculation of ESG is going to change the fact that North Dakota is a small fish swimming in a big pond.

That said, North Dakota's history does provide a guide. About a hundred years ago, farmers were being squeezed by out-of-state banks, mills, and elevators. Operating in commodity markets manipulated by outside interests, and unable to access financing at fair rates, farmers banded together and created the Bank of North Dakota and the State Mill and Elevator. These state owned enterprises stabilized the commodity markets and allowed access to financing for thousands of small farmers and business people in North Dakota. In the hundred years that followed, these state owned enterprises have become symbols of how North Dakotans can stand up to outside forces while maintaining local control over their interests.

I visited the Capitol two years ago during Entrepreneur Day. Time and time again, speakers reminded us that day that North Dakota has a secret weapon that all entrepreneurs should be proud of - the Bank of North Dakota and its variety of startup loan programs for entrepreneurs and small business owners. Even 100 years later, this state owned enterprise is providing real opportunities for small time North Dakotans to make a big time impact in the world.

North Dakota is a true American leader in using state owned enterprises to take back local control. As such, I suggest we amend SB 2291 to direct the Commerce Department to study how state owned enterprises could help North Dakota protect its local interests within global finance capitalism. I have provided sample language in an addendum to my written testimony.

Thank you.

Sincerely,
Ryan Warner

ADDENDUM;

SECTION 4. DEPARTMENT OF COMMERCE STUDY OF STATE OWNED ENTERPRISES AS A WAY TO INSULATE NORTH DAKOTA FROM THE INFLUENCE OF GLOBAL FINANCE CAPITALISM - REPORT TO LEGISLATIVE MANAGEMENT. During the 2021-22 interim, the department of commerce shall study the potential of creating state owned enterprises to provide a mechanism to circulate and maintain the wealth created by the natural resources of North Dakota within the borders of the state of North Dakota. To determine which industries are best suited to state owned enterprise development, the department of commerce shall calculate the ratio of wealth created and exported away from North Dakota on an annual basis by all industries, and estimate the amount of economic activity and wealth that could have been retained had those industries been fully organized under a state owned enterprise. The department of commerce shall report its findings and recommendations to the legislative management by June 1, 2022.

Chairman Porter and Esteemed Members of the Energy and Natural Resources Committee,

My name is James Leiman and I have the distinct honor of serving as the Director of Strategy for the North Dakota Department of Commerce. It has been a pleasure and honor to advance the state's "all of the above" energy production approach to the next level with industry partners every step of the way. I am here today to testify and educate the Committee on how ESG will impact the state's economy and how this investment approach may impact energy growth, most notably oil, gas, lignite, and agriculture with a nexus to energy for decades.

Regardless of what members of this committee and the public have read about Environmental, Social and Corporate Governance (ESG), I would like to unequivocally state on the record that ESG presents **the greatest challenge to the North Dakota's economy since the Great Depression**; this is not an exaggeration but a reality given our heavy reliance on energy and agricultural production. The good news is, with every crisis comes an opportunity.

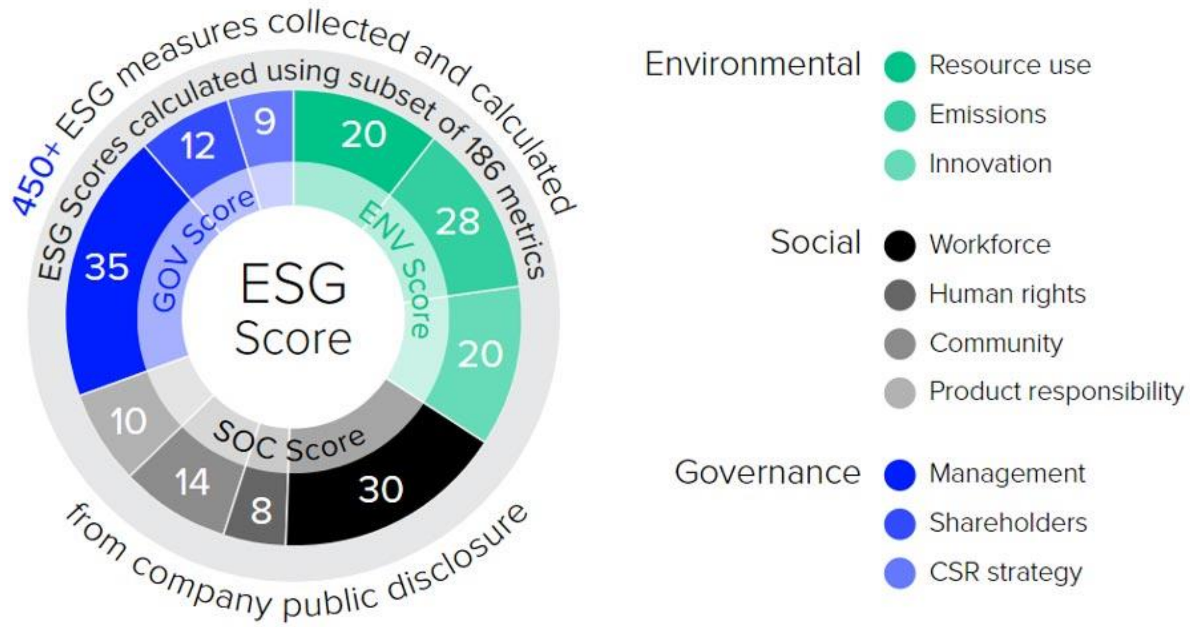
In the face of this challenge, North Dakota can choose its destiny as we are innovative, agile and have motivated private sector partners supporting the rapid acceleration toward producing clean energy to meet private equity/ debt needs as well as consumer preferences. It is not that the energy industry hasn't worked hard to achieve this goal, it is simply that the world around us is moving much faster and it is time not only to catch up but to leapfrog global competitors. To accomplish this however, the state needs a cohesive and coherent approach that is prepared to meet today and tomorrow's challenges.

What is ESG

In January 2020, Larry Fink, CEO of the world's largest investment fund BlackRock, shocked the investment world in his annual letter to shareholders indicating that the $7 trillion under management would invest only in companies that put sustainability and climate at the center of its investment approach. Simultaneous to this, just about every Fortune 500 company and major private equity firm in the world adopted similar Environmental, Social and Governance (ESG) policies as part of their investment strategies; in fact, the ESG investment portfolio is worth about **$50 trillion**, more than the entire Standard and Poor's Index. This number is projected to increase as consumer preferences evolve. Private equity is also moving into new standards-based investment practices; energy producers, processors and companies along the value chain are subject to these new requirements. In January 2021, Blackrock and others began to divest from companies that did not meet these standards further exacerbating the issue. In addition, insurance companies began to apply pressure through increasing premiums to sky high rates during this period. The concept of ESG is very complex yet simple to understand:

1. Private equity scores a company based on its:
    a. Environmental stewardship

b. Social Responsibility
c. Governance Structure
2. It uses a score card like the measures below using approx. 450 factors and 186 metrics



3. If the score exceeds the minimum threshold, the firm can pursue debt or equity from Wall Street or other firms
4. If the score doesn't meet the standard, the firm does not have access to over $50T.

Energy markets were the first to be impacted by evolving ESG investment standards; and no pun intended but the lignite industry was truly the canary in the coal mine. With energy representing the largest industry in the state and agriculture a close second, it is critical to get ahead of these trends to ensure long-term financial stability for these industries. Across the value-chain, ESG standards, with an emphasis on an environmentally sustainable approach, must be met to capture private investment.

Size and Scope of situation/challenge

North Dakota's energy and agricultural sectors are responsible for about 35% of the economy. When retail activity, home sales and construction are deducted, oil and soil account for nearly **70%** of the state's economy. As such, we are highly dependent on these sectors for quality of life and economic vitality. This becomes especially acute in communities dependent on lignite, oil, gas, and agricultural commodities. Simultaneous to ESG, consumers are driving a parallel current that is impacting demand for North Dakotan products. A great example would be Minnesota's desire to reduce its purchase of North Dakotan produced energy; another would be global ag consumers purchasing products that they consider to be sustainably sourced. As such, there is a major squeeze coming from multiple directions which could impact the North Dakota's ability to grow. This squeeze does not include federal factors further aggravating the challenge for North Dakota as well as communities dependent on the success of these commodities.

How can ND Address the Challenge Head On?

At Commerce, we subscribe to the value proposition outlined by McKinsey. We can not only mitigate the issue in front of us but address the challenge and take the bull by the horns through an aggressive approach. This agency continues to be well suited to lead through facilitating discussion and synchronizing action. We can't be afraid as we have already been hit by the bus and we will become experts at managing our way through this crisis and creating the next generation economy.

The EmPower Commission, private industry and state agencies can facilitate growth through:

1. Using ESG policies to develop new customers and market share.
2. Gaining continued access to private capital through ESG programs.
3. Developing a value-driven network that enables long-term business development.

We could also manage risk via:

1. Reducing exposure to energy supply risks through addressing ESG issues, compliance and regulatory requirements.

2. Setting an example for the nation through the development of leadership skills and an industry culture that adapts to rapidly evolving political and economic trends.

Industry could improve return on investment through:

1. Improving human capital management by attracting and retaining ESG managers and motivated employees.

2. Building pricing power through the development of a solid reputation and brand loyalty.

3. Enhancing operational efficiency through the improvement of environmentally sustainable practices such as improving the use of energy, water, waste and raw materials.

To accomplish the goals above, industry as well as the state will have to make significant investments to get ahead of these trends. We can create value according to the McKinsey proposition below:

	Strong ESG proposition (examples)	**Weak ESG proposition** (examples)
Top-line growth	Attract B2B and B2C customers with more sustainable products Achieve better access to resources through stronger community and government relations	Lose customers through poor sustainability practices (eg, human rights, supply chain) or a perception of unsustainable/unsafe products Lose access to resources (including from operational shutdowns) as a result of poor community and labor relations
Cost reductions	Lower energy consumption Reduce water intake	Generate unnecessary waste and pay correspondingly higher waste-disposal costs Expend more in packaging costs
Regulatory and legal interventions	Achieve greater strategic freedom through deregulation Earn subsidies and government support	Suffer restrictions on advertising and point of sale Incur fines, penalties, and enforcement actions
Productivity uplift	Boost employee motivation Attract talent through greater social credibility	Deal with "social stigma," which restricts talent pool Lose talent as a result of weak purpose
Investment and asset optimization	Enhance investment returns by better allocating capital for the long term (eg, more sustainable plant and equipment) Avoid investments that may not pay off because of longer-term environmental issues	Suffer stranded assets as a result of premature write-downs Fall behind competitors that have invested to be less "energy hungry"

Getting Started Now

The Department of Commerce will invest $250,000 this biennium, from its Momentum Fund, in a contract that enables the state to fully understand the challenges associated with ESG as well as what short-term wins we could gain to accelerate our efforts to support both the energy and ag sectors. The likely deliverables will focus on:

1. Identifying areas for more ESG compliant investment to improve readiness for impactful and long-term private equity investments.

2. Finding opportunities for more innovative energy technology use to reduce waste, mitigate impact on the environment and encourage more sustainable energy production methods through the connection to federal programs, public private partnerships and innovation platforms/ entrepreneurs.

3. Creating more resilient energy supply chains.

4. Identifying alternate transport and logistics networks to mitigate exposure to freight movement disruptions and/ or export restrictions.

5. Finding and reducing chokepoints that inhibit rapid transitions from commercial or retail demand should energy consumption patterns become erratic thereby strengthening economic resilience for North Dakota.

6. Ensuring that we don’t punish companies that operate in ND that are already making ESG investments, such as large oil and gas companies. Industry has already begun to make these changes as evidenced by recent presentations by EmPower members. As such, we need to ensure that we don’t punish companies already making big investments in North Dakota.

I will reiterate that we must take this head on. Sun Tzu said “If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.” We know what we are made of and we know our enemy, let’s take this on!

Thank you, this concludes my testimony.

SB 2291 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network

As a study, this bill is far less problematic than its original form. With that said, it would be our hope that the study would also include a review of the potential negative effects if the protectionist policies desired by the supporters actually happened. North Dakota's economy does not operate in a vacuum, and as a portion of the global economy, we are not a market mover. So our policy makers need to avoid creating policies that do more harm than good.

Regarding the Original Bill As Introduced In The Senate:

This bill is very interesting, and very protectionist.

The premise of divesting from companies and funds that pursue ESG (Enviromental, Social, Governance) philosophies is an emotional argument. The problems is, that it is an anti-capitalist approach being proposed in this bill.

As the attached documents show, the investment capital markets are embracing what could be called the ESG Lifestyle.

The NASDAQ stock exchange itself has programs to help companies develop ESG policies.

The ESG Trend already amounts to $40 Trillion worldwide.

It would take an extreme amount of work for North Dakota's investment managers to actively try to avoid ESG holdings. And it would in fact cause North Dakota to have investments concentrated in companies and funds that are on the outside of where the market is going.

And according to readily available data (see attached) ESG funds out-perform the market.

Why would we want state policy to handicap the state's own investment objectives?

To be a capitalist, one has to look at where the money is going. Right now, it's going to ESG.

I urge a Do Not Pass.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2291 10:58 AM
3/12/2021

Relating to social investments made by the state investment board; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; to provide for reports to legislative management; and to declare an emergency

10:58 AM

Chairman Porter opened the hearing. Present: Representatives Porter, Damschen, D Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, M Ruby, Zubke, Guggisberg, Ista.

Discussion Topics:

- Motion for Do Pass

Rep Bosch moved a Do Pass, seconded by Rep D Anderson.

Representatives	Vote
Representative Todd Porter	Y
Representative Chuck Damschen	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Bill Devlin	Y
Representative Ron Guggisberg	N
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative George Keiser	Y
Representative Mike Lefor	Y
Representative Andrew Marschall	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y
Representative Denton Zubke	Y

Motion carried. 12 – 2– 0 Rep Zubke is carrier.

11:00 AM hearing closed.

Kathleen Davis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2291, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2291 was placed on the Fourteenth order on the calendar.