

Public Sector Challenges and Opportunities

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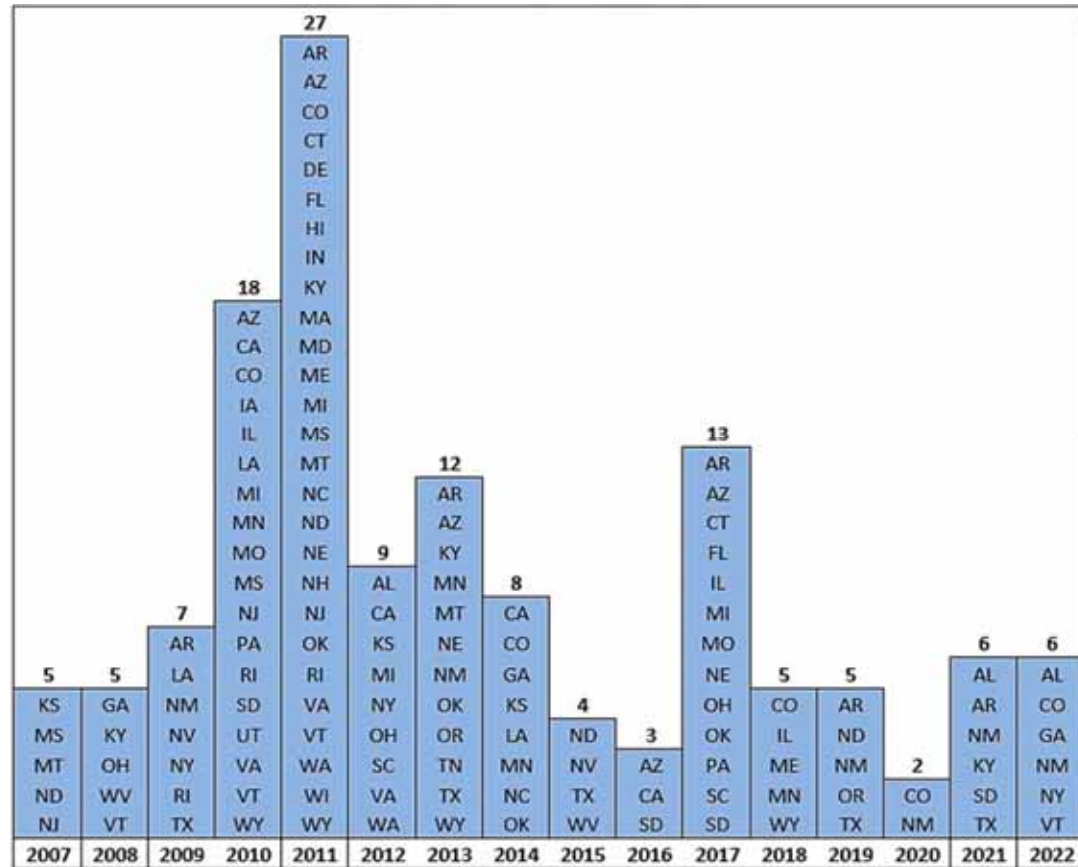
Federal Legislation and Regulations Affecting Public Plans

- Enacted last Congress
 - Stimulus/state and local aid/private pension relief
 - Infrastructure
 - Retirement security
 - China
- Forwarded/expected this Congress
 - China
 - ESG, Proxy-Voting
 - Social Security
 - Revenue raisers

American Rescue Plan Act

- Public pensions used as reason to block state/local aid and private pension relief
- Many attempts to impose restrictions. Ultimately, ARPA prohibits \$350B in state/local aid from being “deposited” into public plans
- Expect continued scrutiny of ARPA expenditures
- Proposals for federal intervention could resurface:
 - ERISA for public plans, loans/aid contingent on pension cuts or reforms, mandated discount rates, regulation of GASB

State Pension Reforms 2007-2022



Infrastructure Investment and Jobs Act (IIJA)

- **Did NOT include** many proposals relating to pension investment, such as encouraging “assets in-kind,” special bonds, loans to infrastructure bank, and fee caps on P3s
- **Language was included** to provide grants for P3 advisors and issue report on federal barriers to “asset recycling”

Notable Provisions Passed as Part of SECURE 2.0

- Increases the Required Minimum Distribution age from 72 to 73 in 2023 and to age 75 in 2033
- Increases the age 50 catch-up limit for the years in which the participant attains ages 60, 61, 62 and 63
 - Must use after-tax/Roth method for those with over \$145k in income from the employer sponsoring the plan
 - Must offer Roth for catch-up contributions for those making less than \$145k
- Eliminates the first day-of-the-month rule for 457(b) plan participants
- Allows matching contributions on qualified student loan payments
- Codifies flexibility for recovery of plan overpayments
- Expands penalty-free withdrawals (birth/adoption, terminal illness, domestic abuse)

Notable Public Safety-Specific Provisions in SECURE 2.0

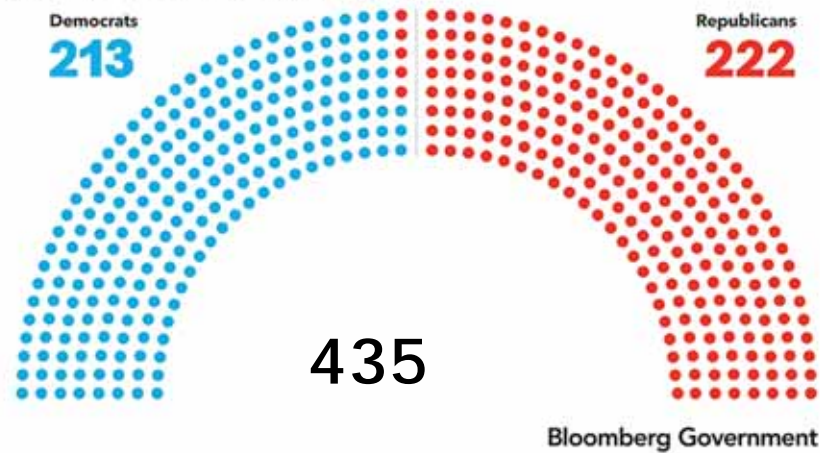
- Makes direct payment requirement (from pension plans to health care insurers) under the Healthcare Enhancement for Local Public Safety (HELPS) Act optional instead of mandatory for participants to receive \$3K tax exclusion for retiree healthcare
- Expands exclusion from 10% penalty for public safety who have at least 25 years of service under the plan, corrections/forensic security officers, private fire fighters
- New exclusion for certain disability related payments

Investments in Chinese Companies

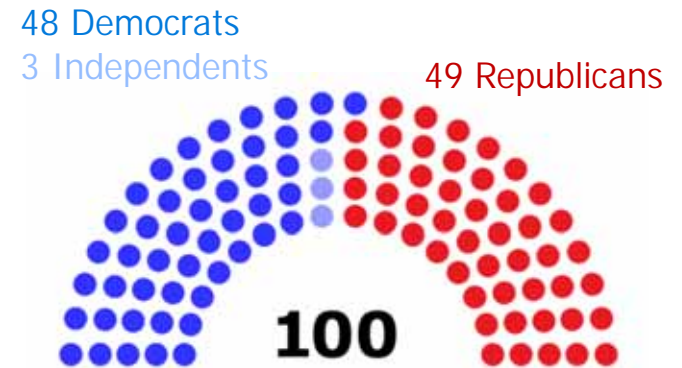
- Legislation passed to delist certain Chinese companies
- Executive orders and Office of Foreign Asset Control prohibitions on investments in certain Chinese companies
- Expected to continue, particularly on screening investments in China in certain industries and asset classes

118th Congress

House Balance of Power



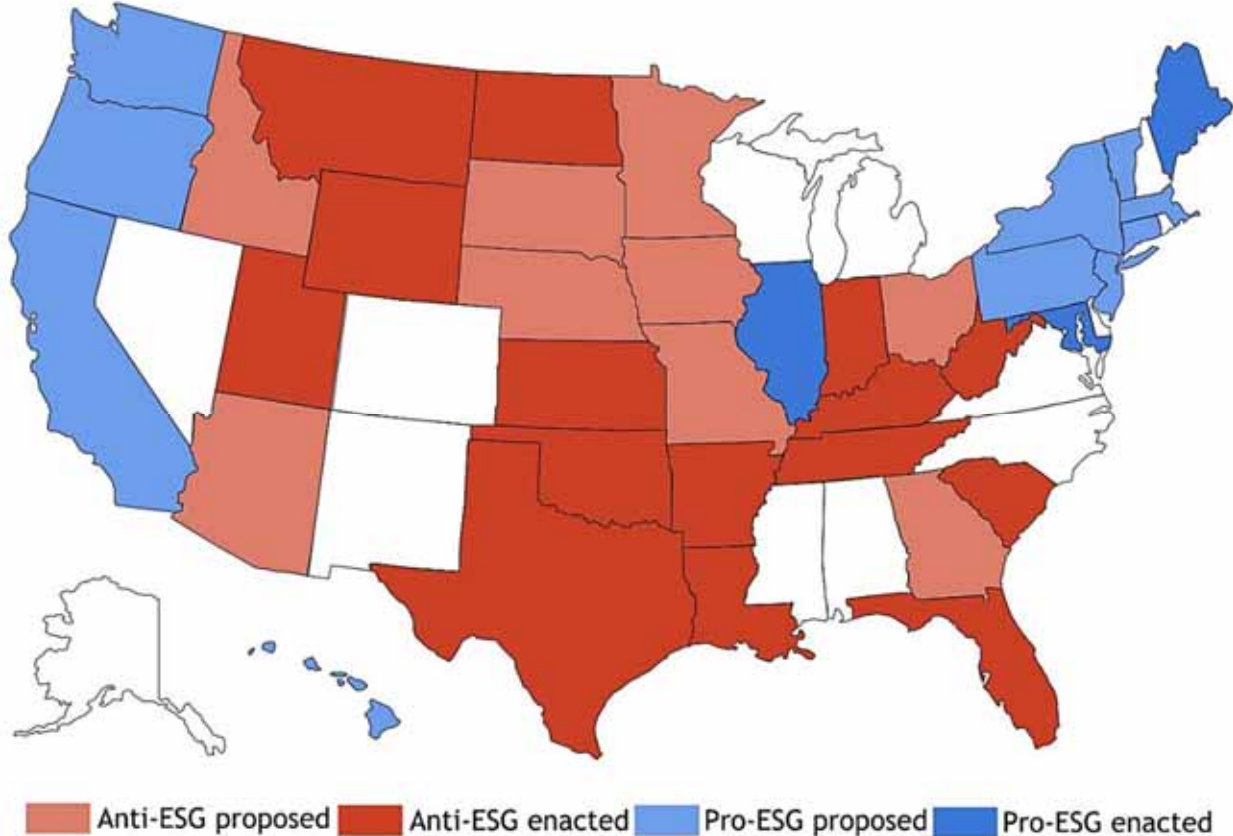
Senate Balance of Power



ESG/Proxy Voting

- Oversight hearings already underway in several House committees on issues surrounding fiduciary duties and antitrust concerns, as well as pushback on SEC/DOL regulations
- Legislation amending ERISA and Internal Revenue Code on fiduciary standards

Recent State ESG Initiatives



Model ESG Legislation

ALEC: American Legislative Exchange Council

- Defines fiduciary in part as someone who has evaluated investments based solely on pecuniary factors that have a material effect on return and risk; And that has not subordinated the interest of the participants and beneficiaries to unrelated objectives, or sacrificed return, or taken on additional investment risk to promote goals unrelated to the plan's pecuniary interests.

Heritage Foundation

- Specifies actions taken that violate the definition of fiduciary duty, including taking an action or considering a factor to further social, political, or ideological interests through engagement, board or shareholder votes, or otherwise, these issues: greenhouse gas emissions; corporate board, employment, composition, compensation or disclosure; environmental standards; *access to abortion, sex or gender change, or transgender surgery; firearms or ammunition.*

Model Legislation Proxy Voting Provisions

- Both forbid proxy voting authority to any entity that is not part of the state or the retirement system unless that entity “has a practice of, and in writing commits to, follow guidelines that match the [state’s/retirement system’s] obligation to act solely upon financial factors.”
- Both say that a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless such firm or service provider’s proxy voting guidelines are consistent with the fiduciary’s obligations to act based only on pecuniary factors.
- **ALEC:** “Authority to vote shares should be in the hands of a state official politically accountable to the people. As such, *all current proxy voting authority with respect to any and all shares is hereby revoked. All such voting authority shall reside with [state treasurer or appropriate board or committee].*”

Social Security Offsets and Coverage

- Numerous bills to replace or repeal Government Pension Offset and Windfall Elimination Provision for some or all public employees
- Significant activity last Congress, but changes did not materialize
- Cost implications (and heightened activity) has renewed interest mandatory coverage

Noteworthy Revenue Raisers Forwarded in the Past

- “Rothification”
- Removing “special rules” for governmental plans
 - Exemption from Unrelated Business Income Tax
 - 457 plan exclusion from 10% early distribution penalty
 - 403(b)/457 catch-up provisions
- Financial Transactions Tax (FTT)

Key Takeaways on Expectations This Congress

- Significant ESG/proxy voting activity—
Hearings, legislation and regulations
- Proposals to screen or limit U.S. investments
in China
- Increased oversight of stimulus money to
state/local governments/pensions
- Renewed interest in federal regulation of
public plans

Helpful Pension Information to Relay to Your Delegation

- Importance to their jurisdictions (# constituents covered, \$ distributed)
- Critical to delivering essential public services (recruitment, retention, ensuring return on investment in personnel)
- Strong fiduciary laws, government oversight, transparency and financing
- State/local governments have made changes to improve sustainability, NONE required federal intervention
- Offer to be a resource!

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Session Evaluation

An abstract graphic design featuring overlapping geometric shapes in red, blue, and grey. The shapes are layered, creating a sense of depth and movement. The word "Questions?" is written in a bold, black, sans-serif font across the center of the composition.

Questions?