TexasMonthly

DAN PATRICK DECLARES WAR ON "GREEN" WALL STREET INVESTORS

By R.G. Ratcliffe
TexasMonthly
March 17, 2021

The Wall Street "greed is good" philosophy of the fictional Gordon Gekko has not completely disappeared from America's financial capital, but in recent years, investing has gained a bit of a social conscience (or perhaps just a bit more foresight). Major investment firms such as BlackRock and JPMorgan Chase have vowed, under pressure from customers and activists, to gradually direct their portfolios away from fossil fuel companies. In the financial world, this is known as Environment, Social, and Corporate Governance—or ESG—investing. But among some influential Texans, it's now called "boycotting" the oil and gas industry.

Lieutenant Governor Dan Patrick has made a priority of enacting an ungreen new deal to fight back, bringing to the Senate legislation that would prohibit state pension and education funds from investing with firms that transition away from financing fossil fuel companies. If the Legislature passes Patrick's plan—Senate Bill 13, sponsored by Brian Birdwell, a Republican from Granbury—the state agencies that oversee finances for the public education system and the retirement trusts of state and local workers could be forced to fire private investment bankers who manage those state funds.

I asked the retirement systems how much state money was invested in or managed by six companies that have pledged to use their financial clout to address climate change. The total exceeded $16 billion in state assets.

"Any Wall Street firm that says, 'we are turning our back on the oil and gas industry in Texas and we will not loan them money (and) we will not invest'—Texas is not going to give them any of our money to hold or invest," Patrick said announcing his bill in February at a forum hosted by the Texas Business Leadership Council in Austin.

Standing up to the tree huggers of New York in favor of the oil and gas industry is good politics in most of Texas. But the theory of Patrick's bill is that Texas can use its weight and the threat of pulling its assets from financial firms to stop the tides of ESG investing. And that theory doesn't comport well with the facts. Even if Texas yanked all of its money away from these investment companies, it likely won't get a firm such as BlackRock to suddenly re-embrace oil and gas. The financial giant's assets in the state of Texas amount to .001 percent of its global holdings of $8.68 trillion. Yes, that's trillion with a "t."

The bill also contains a loophole that, if used, would render it toothless. If any of the boards overseeing the state investment funds believes firing the socially conscious investment managers would harm their rate of return, then they don't have to do it. They must only write a letter to the legislative leadership explaining how following the law would violate their fiduciary duty to obtain the highest rate of return on investments that fund, among other things, the pensions of retired teachers and other employees of state and local governments. In typical Patrick fashion, the bill provides red meat for climate-change deniers and oil-industry campaign contributors, while in reality forcing no change in the status quo.

The bill comes amid a tough time for the Texas energy industry. During the COVID-driven recession of 2020, oil prices were down sharply. Americans weren't driving or flying as much. The Permian Basin rig count dropped from 418 to 212. Globally, investing in oil and gas production was at its lowest level since 2004. And many Wall Street firms announced plans to reduce their investments in fossil fuels even further. Larry Fink, the CEO of BlackRock, sent shockwaves through the energy industry in Texas when he announced in a January open letter that "climate risk is investment risk," and promised to pull out of coal investments and gradually screen out new investments in fossil fuels. ESG investing looked like it could become as big a threat to the industry as Congresswoman Alexandria Ocasio-Cortez's proposed Green New Deal. It threatened the capital that energy companies need to explore and drill.

Wayne Christian, one of the three members of the Texas Railroad Commission, which regulates oil and gas in the state, opened fire on ESG investing, saying it would lead to "record bankruptcies in the U.S. energy sector." Energy lawyer C. Boyden Gray, a former general counsel to President George H.W. Bush, declared in a Wall Street Journal article that investment banks and environmentalists might be violating anti-trust laws. Gray wrote that BlackRock, Citibank, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and Wells Fargo had moved "in parallel" to "cut off liquidity and capital to America's energy sector."

In December, the governing boards of the Employees Retirement System of Texas and the Teacher Retirement System of Texas, which oversee trusts totaling $203 billion, each received presentations on how such ESG investing might affect their portfolios. Adviser Benjamin Schuman told the ERS board that at least 40 percent of U.S. asset managers had opted for socially directed investing, and that he anticipated such investing to double in 2020.

Patrick's bill, if passed, will require the state comptroller to come up with a list each year of companies that are boycotting oil and gas and provide it to the ERS, the TRS, the state Permanent School Fund (whose assets are used to help finance public education), the Texas Municipal Retirement System, the Texas County and District

Retirement System, and the Texas Emergency Services Retirement system. Currently, here's how the $16 billion in investments that Patrick's bill would affect are distributed:

- Permanent School Fund: $7 billion managed by BlackRock.
- TRS: $5.5 billion combined managed by Goldman Sachs, JPMorgan Chase, Morgan Stanley and BlackRock.
- The Municipal retirement system: $3.5 billion, mostly with BlackRock
- ERS: $859 million combined with JPMorgan Chase, Morgan Stanley, CitiGroup, Goldman Sachs, BlackRock, and Wells Fargo.
- Texas County and District retirement: $24.6 million
- Emergency services: $5 million

While Patrick's plan appears to put oil and gas interests ahead of those of the state's pensioners and school children, he notably leaves out the investments of the University of Texas/Texas A&M Investment Management Company. Two of the investment banks that have most prominently divested from some fossil fuels—BlackRock and JPMorgan Chase—are slated to oversee $1 billion each in Texas higher education finances by next year. If someone wanted to add UTIMCO to the bill as an amendment, then more than $18 billion in state finances would be in play. Neither Patrick nor Birdwell responded to questions about why it was omitted.

Patrick is not the first state leader to play politics with the state's investment funds. In 1997, then-senator and future lieutenant governor Bill Ratliff slipped language in the state's budget requiring divestment from companies that produce rap music that he said promoted violence against women, police, and children. In 1999, religious conservatives pushed a bill to prompt the State Board of Education to sell $46 million in Walt Disney Company stock because of its subsidiary Miramax's movies "Chasing Amy" and "Pulp Fiction." More recently, in 2017, the Legislature ordered divestment from any company boycotting Israel, a shot at Airbnb's short-lived decision against listings on the West Bank. After a First Amendment lawsuit, the bill was rewritten in 2019 and ended up forcing the divestment of just one company, in Norway.

The Disney debate, in particular, is instructive. That fight was about millions of dollars, not tens of billions. Nonetheless, education board member Geraldine Miller of Dallas, who ultimately supported the sale, recalls agonizing over the vote: "I'm concerned could this be a domino effect on our investments, and what impact that could have on the return of our investments for the children?"