

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 2034

By: McBride, O'Donnell and West
(Kevin) of the House

4 and

5 Taylor of the Senate

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7
8 An Act relating to state contracts; declaring the oil
and gas industry a vital economic partner;
9 prohibiting state contracts without certain written
certification; prohibiting adoption of procurement,
10 investment or other policy that requires a person to
boycott the oil and gas industry; authorizing
11 approval of contracts and waiving of applications;
defining terms; providing for codification; and
12 providing an effective date.

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15 AUTHOR: Remove as principal Senate author Taylor and substitute as
principal Senate author Allen and add the following Senate
16 coauthors: David and Bullard

17 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
18 entire bill and insert

19 "An Act relating to state government; creating the
Energy Discrimination Elimination Act of 2022;
20 defining terms; exempting certain entities from
provisions of act due to statutory obligations;
21 providing indemnification for certain entities;
prohibiting certain persons and entities from
22 entering into a lawsuit with state or state
affiliate; providing any person entering a lawsuit
23 against state or state affiliate pursuant to this act
be subject to certain costs and fees; requiring State
24 Treasurer maintain list of certain financial

1 companies; establishing provisions for Treasurer
2 action pursuant to act; requiring written
3 verification be submitted by certain financial
4 companies; requiring written notice be provided to
5 certain financial companies; providing that certain
6 financial companies cease certain boycotts by certain
7 date; requiring sale, redemption, divestment, or
8 withdrawal of certain securities; establishing
9 schedule for sale, redemption, divestment, or
10 withdrawal of certain securities; establishing
11 limitations on divestment and divestment schedule;
12 requiring report to certain public officials upon
13 delay of divestment schedule; requiring report to
14 certain public officials upon decision to cease
15 divestment from certain financial company;
16 prohibiting acquisition of securities from certain
17 financial companies; providing for publishing of
18 report by state governmental entities to certain
19 public officials; requiring state governmental
20 entities to receive written verification from certain
21 companies before entrance into certain contracts;
22 providing for codification; and providing an
23 effective date.

24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 12001 of Title 74, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Energy
Discrimination Elimination Act of 2022".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 12002 of Title 74, unless there
is created a duplication in numbering, reads as follows:

A. As used in the Energy Discrimination Elimination Act of
2022:

1 1. "Boycott energy company" means, without an ordinary business
2 purpose, refusing to deal with, terminating business activities
3 with, or otherwise taking any action that is intended to penalize,
4 inflict economic harm on, or limit commercial relations with a
5 company because the company:

6 a. engages in the exploration, production, utilization,
7 transportation, sale, or manufacturing of fossil fuel-
8 based energy and does not commit or pledge to meet
9 environmental standards beyond applicable federal and
10 state law, or

11 b. does business with a company described by subparagraph
12 a of this paragraph;

13 2. "Company" means a for-profit sole proprietorship,
14 organization, association, corporation, partnership, joint venture,
15 limited partnership, limited liability partnership, or limited
16 liability company including a wholly owned subsidiary, majority-
17 owned subsidiary, parent company, or affiliate of those entities or
18 business associations, that exists to make a profit;

19 3. "Treasurer" means the State Treasurer or their designee;

20 4. "Direct holdings" means, with respect to a financial
21 company, all securities of that financial company held directly by a
22 state governmental entity in an account or fund in which a state
23 governmental entity owns all shares or interests;

24

1 5. "Financial company" means a publicly traded financial
2 services, banking, or investment company;

3 6. "Indirect holdings" means, with respect to a financial
4 company, all securities of that financial company held in an account
5 or fund, such as a mutual fund, managed by one or more persons not
6 employed by a state governmental entity, in which the state
7 governmental entity owns shares or interests together with other
8 investors not subject to the provisions of this chapter. The term
9 does not include money invested under a plan described by Section
10 401(k) or 457 of the Internal Revenue Code of 1986;

11 7. "Listed financial company" means a financial company listed
12 by the Treasurer; and

13 8. "State governmental entity" means all state retirement
14 systems.

15 B. With respect to actions taken in compliance with the Energy
16 Discrimination Elimination Act including all good faith
17 determinations regarding financial companies as required by this
18 act, a state governmental entity and the Treasurer are exempt from
19 any conflicting statutory or common law obligations including any
20 obligations with respect to making investments, divesting from any
21 investment, preparing or maintaining any list of financial
22 companies, or choosing asset managers, investment funds, or
23 investments for the state governmental entity's securities
24 portfolios.

1 C. In a cause of action based on an action, inaction, decision,
2 divestment, investment, financial company communication, report, or
3 other determination made or taken in connection with the Energy
4 Discrimination Elimination Act, the state shall indemnify and hold
5 harmless for actual damages, court costs, and attorney fees adjudged
6 against, and defend:

7 1. An employee, a member of the governing body, or any other
8 officer of a state governmental entity;

9 2. A contractor of a state governmental entity;

10 3. A former employee, a former member of the governing body, or
11 any other former officer of a state governmental entity who was an
12 employee, member of the governing body, or other officer when the
13 act or omission on which the damages are based occurred;

14 4. A former contractor of a state governmental entity who was a
15 contractor when the act or omission on which the damages are based
16 occurred; and

17 5. A state governmental entity.

18 D. 1. A person including a member, retiree, or beneficiary of
19 a retirement system to which the Energy Discrimination Elimination
20 Act applies, an association, a research firm, a financial company,
21 or any other person shall not sue or pursue a private cause of
22 action against the state, a state governmental entity, a current or
23 former employee, a member of the governing body, or any other
24 officer of a state governmental entity, or a contractor of a state

1 governmental entity, for any claim or cause of action including
2 breach of fiduciary duty, or for violation of any constitutional,
3 statutory, or regulatory requirement in connection with any action,
4 inaction, decision, divestment, investment, financial company
5 communication, report, or other determination made or taken in
6 connection with this act.

7 2. A person who files suit against the state, a state
8 governmental entity, an employee, a member of the governing body, or
9 any other officer of a state governmental entity, or a contractor of
10 a state governmental entity, is liable for paying the costs and
11 attorney fees of a person sued in violation of this section.

12 3. A state governmental entity shall not be subject to any
13 requirement of this act if the state governmental entity determines
14 that such requirement would be inconsistent with its fiduciary
15 responsibility with respect to the investment of entity assets or
16 other duties imposed by law relating to the investment of entity
17 assets.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 12003 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 A. 1. The Treasurer shall prepare and maintain, and provide to
22 each state governmental entity, a list of financial companies that
23 boycott energy companies. In maintaining the list, the Treasurer
24 may:

1 a. review and rely, as appropriate in the Treasurer's
2 judgment, on publicly available information regarding
3 financial companies including information provided by
4 the state, nonprofit organizations, research firms,
5 international organizations, and governmental
6 entities, and

7 b. request written verification from a financial company
8 that it does not boycott energy companies and rely, as
9 appropriate in the Treasurer's judgment and without
10 conducting further investigation, research, or
11 inquiry, on a financial company's written response to
12 the request.

13 2. A financial company that fails to provide to the Treasurer a
14 written verification under subparagraph b of paragraph 1 of this
15 subsection before the sixty-first day after receiving the request
16 from the Treasurer is presumed to be boycotting energy companies.

17 3. The Treasurer shall update the list annually or more often
18 as the Treasurer considers necessary, but not more often than
19 quarterly, based on information from, among other sources, those
20 listed in subparagraph a of paragraph 1 of this subsection.

21 4. Not later than the thirtieth day after the date the list of
22 financial companies that boycott energy companies is first provided
23 or updated, the Treasurer shall file the list with the presiding
24

1 officer of each house of the Legislature and the Attorney General
2 and post the list on a publicly available Internet website.

3 5. The Treasurer may retain third party consultants to assist
4 in the implementation of the provisions of this act.

5 B. Not later than the thirtieth day after the date a state
6 governmental entity receives the list provided under paragraph 1 of
7 subsection A of this section, the state governmental entity shall
8 notify the Treasurer of the listed financial companies in which the
9 state governmental entity owns direct holdings or indirect holdings.

10 C. 1. For each listed financial company identified under
11 paragraph 1 of subsection A of this section, the state governmental
12 entity shall send a written notice:

13 a. informing the financial company of its status as a
14 listed financial company,

15 b. warning the financial company that it may become
16 subject to divestment by state governmental entities
17 after the expiration of the period described by
18 paragraph 2 of this subsection, and

19 c. offering the financial company the opportunity to
20 clarify its activities related to companies described
21 by paragraph 1 of subsection A of this section.

22 2. Not later than the ninetieth day after the date the
23 financial company receives notice under paragraph 1 of this
24 subsection, the financial company shall cease boycotting energy

1 companies to avoid qualifying for divestment by state governmental
2 entities.

3 3. If, during the time provided by paragraph 2 of this
4 subsection, the financial company ceases boycotting energy
5 companies, the Treasurer shall remove the financial company from the
6 list maintained under paragraph 1 of subsection A of this section,
7 and this subsection will no longer apply to the financial company
8 unless it resumes boycotting energy companies.

9 4. If, after the time provided by paragraph 2 of this
10 subsection expires, the financial company continues to boycott
11 energy companies, the state governmental entity shall sell, redeem,
12 divest, or withdraw all publicly traded securities of the financial
13 company, except securities described by subsection E of this
14 section, according to the schedule provided under subsection D of
15 this section.

16 D. 1. A state governmental entity required to sell, redeem,
17 divest, or withdraw all publicly traded securities of a listed
18 financial company shall comply with the following schedule:

19 a. at least fifty percent (50%) of those assets shall be
20 removed from the state governmental entity's assets
21 under management not later than the one-hundred-
22 eightieth day after the date the financial company
23 receives notice pursuant to paragraph 1 of subsection
24 C of this section unless the state governmental entity

1 determines, based on a good faith exercise of its
2 fiduciary discretion and subject to subparagraph b of
3 this subsection, that a later date is more prudent,
4 and

5 b. One hundred percent (100%) of those assets shall be
6 removed from the state governmental entity's assets
7 under management not later than the three-hundred-
8 sixtieth day after the date the financial company
9 receives notice pursuant to paragraph 1 of subsection
10 C of this section.

11 2. If a financial company that ceased boycotting energy
12 companies after receiving notice pursuant to paragraph 1 of
13 subsection C of this section resumes its boycott, the state
14 governmental entity shall send a written notice to the financial
15 company informing it that the state governmental entity will sell,
16 redeem, divest, or withdraw all publicly traded securities of the
17 financial company according to the schedule in paragraph 1 of
18 subsection D of this section.

19 3. Except as provided by paragraph 1 of subsection D of this
20 section, a state governmental entity may delay the schedule for
21 divestment under that subsection only to the extent that the state
22 governmental entity determines, in the state governmental entity's
23 good faith judgment, and consistent with the entity's fiduciary
24 duty, that divestment from listed financial companies will likely

1 result in a loss in value or a benchmark deviation described by
2 paragraph 1 of subsection F of this section.

3 4. If a state governmental entity delays the schedule for
4 divestment, the state governmental entity shall submit a report to
5 the Treasurer, the presiding officer of each house of the
6 Legislature and the Attorney General stating the reasons and
7 justification for the delay in divestment by the state governmental
8 entity from listed financial companies. The report shall include
9 documentation supporting its determination that the divestment would
10 result in a loss in value or a benchmark deviation described by
11 paragraph 1 of subsection F of this section including objective
12 numerical estimates. The state governmental entity shall update the
13 report every six (6) months.

14 E. A state governmental entity is not required to divest from
15 any indirect holdings in actively or passively managed investment
16 funds or private equity funds. The state governmental entity shall
17 submit letters to the managers of each investment fund containing
18 listed financial companies requesting that they remove those
19 financial companies from the fund or create a similar actively or
20 passively managed fund with indirect holdings devoid of listed
21 financial companies. If a manager creates a similar fund with
22 substantially the same management fees and same level of investment
23 risk and anticipated return, the state governmental entity may
24 replace all applicable investments with investments in the similar

1 fund in a time frame consistent with prudent fiduciary standards but
2 not later than the four hundred fiftieth day after the date the fund
3 is created.

4 F. 1. A state governmental entity may cease divesting from one
5 or more listed financial companies only if clear and convincing
6 evidence shows that:

7 a. the state governmental entity has suffered or will
8 suffer a loss in the value of assets under management
9 by the state governmental entity as a result of having
10 to divest from listed financial companies under this
11 subsection, or

12 b. an individual portfolio that uses a benchmark-aware
13 strategy would be subject to an aggregate expected
14 deviation from its benchmark as a result of having to
15 divest from listed financial companies under this
16 subsection.

17 2. A state governmental entity may cease divesting from a
18 listed financial company as provided by this section only to the
19 extent necessary to ensure that the state governmental entity does
20 not suffer a loss in value or deviate from its benchmark as
21 described by paragraph 1 of this subsection.

22 3. Before a state governmental entity may cease divesting from
23 a listed financial company under this section, the state
24 governmental entity shall provide a written report to the Treasurer,

1 the presiding officer of each house of the Legislature, and the
2 Attorney General setting forth the reason and justification,
3 supported by clear and convincing evidence, for deciding to cease
4 divestment or to remain invested in a listed financial company. The
5 state governmental entity shall update the report required by
6 subsection semiannually, as applicable.

7 4. This section does not apply to reinvestment in a financial
8 company that is no longer a listed financial company.

9 G. Except as provided in subsection F of this section, a state
10 governmental entity shall not acquire securities of a listed
11 financial company.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 12004 of Title 74, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Not later than January 1 of each year, each state
16 governmental entity shall file a publicly available report with the
17 Treasurer, the presiding officer of each house of the Legislature,
18 and the Attorney General that:

19 1. Identifies securities sold, redeemed, divested, or withdrawn
20 in compliance with subsection D of Section 3 of this act;

21 2. Identifies prohibited investments under subsection F of
22 Section 3 of this act; and

23 3. Summarizes any changes made under subsection E of Section 3
24 of this act.

1 B. The Attorney General may bring any action necessary to
2 enforce the Energy Discrimination Elimination Act of 2022.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 12005 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. As used in this section only of the Energy Discrimination
7 Elimination Act of 2022, "governmental entity" means a state agency
8 or political subdivision of this state.

9 B. 1. Except for paragraph 4 of this subsection, this section
10 applies only to a contract that:

11 a. is between a governmental entity and a company with
12 ten or more full-time employees, and

13 b. will pay a company One Hundred Thousand Dollars
14 (\$100,000.00) or more over the term of the contract
15 that is to be paid wholly or partly from public funds
16 of the governmental entity; provided, however, the
17 provisions of this paragraph shall apply separately to
18 all companies in a multiple party contract.

19 2. Except as provided by paragraph 4 of this subsection, a
20 governmental entity shall not enter into a contract with a company
21 for goods or services unless the contract contains a written
22 verification from the company that it:

23 a. does not boycott energy companies, and
24

1 b. will not boycott energy companies during the term of
2 the contract.

3 3. Except as provided by paragraph 4 of this subsection, a
4 governmental entity shall not enter into a contract for goods or
5 services with a listed financial company under Section 3 of this
6 act.

7 4. Paragraphs 2 and 3 of this subsection shall not apply to:

8 a. a governmental entity that determines the requirements
9 of paragraphs 2 or 3 of this subsection are
10 inconsistent with the governmental entity's
11 constitutional or statutory duties related to the
12 issuance, incurrence, or management of debt
13 obligations or the deposit, custody, management,
14 borrowing, or investment of funds, and

15 b. a contract for which a governmental body determines
16 the supplies or services to be provided are not
17 otherwise reasonably available from a company that is
18 not a listed financial company under Section 3 of this
19 act.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 12006 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

23 Section 5 of the Energy Discrimination Elimination Act of 2022
24 applies only to a contract entered into on or after the effective

1 ENGROSSED HOUSE
2 BILL NO. 2034

By: McBride, O'Donnell and West
(Kevin) of the House

3 and

4 Taylor of the Senate
5
6
7

8 An Act relating to state contracts; declaring the oil
9 and gas industry a vital economic partner;
10 prohibiting state contracts without certain written
11 certification; prohibiting adoption of procurement,
12 investment or other policy that requires a person to
boycott the oil and gas industry; authorizing
approval of contracts and waiving of applications;
defining terms; providing for codification; and
providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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SECTION 8. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 580 of Title 74, unless there is

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created a duplication in numbering, reads as follows:

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A. The State of Oklahoma hereby declares that the oil and gas

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industry is a vital part of the economy of the State of Oklahoma and

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that the state, and those companies that do business by and through

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the state, in the interest of the state's economic policy, should

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not boycott the oil and gas industry.

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1 B. Except as provided in subsection D of this section, the
2 state shall not enter into a contract with a company unless the
3 company submits a written certification that the company is not
4 currently engaged in a boycott, in any manner, of the oil and gas
5 industry that constitutes an integral part of business conducted or
6 sought to be conducted with the state.

7 C. The state shall not adopt a procurement, investment or other
8 policy that has the effect of inducing or requiring a person to
9 boycott the oil and gas industry, or to boycott a person doing
10 business with the oil and gas industry.

11 D. The Oklahoma Secretary of State shall approve contracts or
12 may waive application of this section on any contract with any state
13 agency if the Secretary determines that compliance is not
14 practicable.

15 E. As used in this section:

16 1. "Boycott" means engaging in a refusal to deal, terminating
17 business activities or performing other actions that are intended to
18 limit commercial relations with persons or entities doing business
19 with the oil and gas industry;

20 2. "Oil and gas industry" means any company that is engaged in
21 exploration, production, refining, servicing and transportation of
22 oil, natural gas or other petroleum products;

23 3. "Company" means an organization, association, corporation,
24 partnership, venture or other entity, its subsidiary or affiliate,

1 that exists for profit-making purposes or to otherwise secure
2 economic advantage;

3 4. "Contract" means a written agreement between the state and a
4 company to acquire or dispose of goods or services with an aggregate
5 price of more than One Hundred Thousand Dollars (\$100,000.00).

6 Contract does not mean a written agreement between the state and an
7 individual to acquire or dispose of goods or services, including
8 employment or consultant services; and

9 5. "State" means this state or an agency, board, commission or
10 department of this state.

11 SECTION 9. This act shall become effective November 1, 2021.

12 Passed the House of Representatives the 9th day of March, 2021.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2021.

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Presiding Officer of the Senate

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