

1 ENGROSSED HOUSE
2 BILL NO. 3541

By: Lepak and McDugle of the
House

3 and

4 Jett of the Senate
5
6

7 An Act relating to state government; amending
8 Sections 2, 3, 4 and 5, O.S.L. 2022 (74 O.S. Supp.
9 2023, Sections 12002, 12003, 12004 and 12005), which
10 relate to the Energy Discrimination Elimination Act
11 of 2022; modifying definitions; modifying procedures
12 with respect to funds managed by state governmental
13 entities; providing for authority of Treasurer to
14 make certain determinations; requiring notice
15 procedures; requiring termination of contracts under
16 certain conditions; prescribing conditions pursuant
17 to which contract termination required; prescribing
18 procedures for divestment; providing certain
19 exceptions; prescribing reporting requirements with
20 respect to timing of divestment; authorizing
21 cessation of divestment process; prescribing
22 procedures for state government entities with respect
23 to cessation of divestment actions; prescribing
24 standards for evaluation of certain financial
companies; modifying reporting requirements;
providing for reports to be submitted to certain
public officials; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 231, O.S.L.
2022 (74 O.S. Supp. 2023, Section 12002), is amended to read as
follows:

1 Section 12002. A. As used in the Energy Discrimination
2 Elimination Act of 2022:

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

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

13 b. does business with a company described by subparagraph
14 a of this paragraph;

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

21 3. "Treasurer" means the State Treasurer ~~or their designee;~~

22 4. ~~"Direct holdings" means, with respect to a financial~~
23 ~~company, all securities of that financial company held directly by a~~
24 ~~state governmental entity in an account or fund in which a state~~

1 ~~governmental entity owns all shares or interests~~ "Divestment from
2 certain funds" or "divest from certain funds" means removing all
3 public money from any investments in funds that are held, managed,
4 or advised by a listed financial company;

5 5. "Financial company" means a ~~publicly traded~~ company that is
6 engaged in financial services, or banking, or that is an investment
7 company;

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

16 ~~7.~~ 6. "Listed financial company" means a company that is a
17 financial company and is listed by the Treasurer; and

18 ~~8.~~ 7. "State governmental entity" means ~~all~~ any state
19 retirement systems system;

20 8. "Materially negative financial impact" means a materially
21 negative financial impact on the state governmental entity,
22 including with respect to investment risk or returns. For goods or
23 services related to investments, any increased fees or costs less
24 than five-hundredths of one percent (0.05%) per year of the net

1 asset value of the applicable state retirement system shall not
2 constitute a materially negative financial impact. A state
3 governmental entity's administrative costs shall not be included in
4 any estimation of costs;

5 9. "Ordinary business purpose" means a purpose directly related
6 to financial return or financial risk mitigation. It does not
7 include any purpose to further environmental, social, political, or
8 ideological interests. A company may reasonably be determined to
9 have taken an action with a purpose to further environmental,
10 social, political, or ideological interests based upon evidence
11 indicating such a purpose, including, but not limited to:

- 12 a. prospectuses, statements, explanations, reports,
13 communications with portfolio companies, shareholder
14 votes by the company, or commitments, or
15 b. participation in, affiliation with, or status as a
16 signatory to, any coalition, initiative, joint
17 statement of principles, or agreement, to act or to
18 endeavor to act in furtherance of environmental,
19 social, political, or ideological interests; and

20 10. "Public money" means all proceeds, assets, and income in
21 the custody or under the management, administration, or control of
22 the State of Oklahoma or any state board, agency, commission, or
23 instrumentality, or of a person acting on behalf of the state or any
24 state board, agency, commission, or instrumentality, including, but

1 not limited to, money held in trust or invested for a person other
2 than the state and money held or invested by tax-qualified pension
3 plans established pursuant to Section 401 et seq. of Title 26 of the
4 federal Internal Revenue Code.

5 B. With respect to actions taken in compliance with the Energy
6 Discrimination Elimination Act of 2022, including all good-faith
7 determinations regarding financial companies as required by this
8 act, a state governmental entity and the Treasurer are exempt from
9 any conflicting statutory or common law obligations including any
10 obligations with respect to making investments, ~~divesting~~ divestment
11 from any investment, certain funds, terminating any contracts with
12 financial companies, preparing or maintaining any list of financial
13 companies, or choosing asset managers, investment funds, or
14 investments for the state governmental entity's securities
15 portfolios.

16 C. In a cause of action based on an action, inaction, decision,
17 divestment, investment, financial company communication, report, or
18 other determination made or taken in connection with the Energy
19 Discrimination Elimination Act of 2022, the state shall indemnify
20 and hold harmless for actual damages, court costs, and attorney fees
21 adjudged against, and defend:

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

24 2. A contractor of a state governmental entity;

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

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

8 5. A state governmental entity.

9 D. 1. A person, including a member, retiree, or beneficiary of
10 a retirement system to which the Energy Discrimination Elimination
11 Act of 2022 applies, an association, a research firm, a financial
12 company, or any other person shall not sue or pursue a private cause
13 of action against the state, a state governmental entity, a current
14 or former employee, a member of the governing body, or any other
15 officer of a state governmental entity, or a contractor of a state
16 governmental entity, for any claim or cause of action, including
17 breach of fiduciary duty, or for violation of any constitutional,
18 statutory, or regulatory requirement in connection with any action,
19 inaction, decision, divestment, investment, financial company
20 communication, report, or other determination made or taken in
21 connection with this act.

22 2. A person who files suit against the state, a state
23 governmental entity, an employee, a member of the governing body, or
24 any other officer of a state governmental entity, or a contractor of

1 a state governmental entity, is liable for paying the costs and
2 attorney fees of a person sued in violation of this section.

3 3. A state governmental entity shall not be subject to any
4 requirement of this act if the state governmental entity determines,
5 and the Treasurer agrees, that clear and convincing evidence shows
6 that such requirement would be lead to a materially negative
7 financial impact inconsistent with its fiduciary responsibility with
8 respect to the investment of entity assets or other duties imposed
9 by law relating to the investment of entity assets.

10 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
11 2022 (74 O.S. Supp. 2023, Section 12003), is amended to read as
12 follows:

13 Section 12003. A. 1. The Treasurer shall prepare and maintain
14 and provide to each state governmental entity a list of financial
15 companies that boycott ~~energy~~ targeted companies. In maintaining
16 the list, the Treasurer may:

17 a. review and rely, as appropriate in the Treasurer's
18 judgment, on publicly available information regarding
19 financial companies including information provided by
20 the state, nonprofit organizations, research firms,
21 international organizations, and governmental
22 entities, and

23 b. request written verification from a financial company
24 that it does not boycott ~~energy~~ targeted companies and

1 rely, as appropriate in the Treasurer's judgment and
2 without conducting further investigation, research, or
3 inquiry, on a financial company's written response to
4 the request.

5 2. A financial company that fails to provide to the Treasurer a
6 written verification under subparagraph b of paragraph 1 of this
7 subsection before the sixty-first day after receiving the request
8 from the Treasurer ~~is~~ may be, as appropriate in the Treasurer's
9 judgment, presumed to be boycotting ~~energy~~ targeted companies.

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

14 4. Not later than the thirtieth day after the date the list of
15 financial companies that boycott ~~energy~~ targeted companies is first
16 provided or updated, the Treasurer shall file the list with the
17 presiding officer of each house of the Legislature and the Attorney
18 General and post the list on a publicly available Internet website.

19 5. The Treasurer may retain third-party consultants to assist
20 in the implementation of the provisions of this act.

21 B. Not later than the thirtieth day after the date a state
22 governmental entity receives the list provided under paragraph 1 of
23 subsection A of this section, the state governmental entity shall
24 notify the Treasurer of any contract the state governmental entity

1 has with any of the listed financial companies in which the state
2 governmental entity owns direct holdings or indirect holdings, and
3 of any funds in which the state governmental entity is invested that
4 are held, managed, or advised by a listed financial company.

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

- 8 a. informing the financial company of its status as a
9 listed financial company,
- 10 b. warning the financial company that it may become
11 subject to contractual termination and divestment from
12 certain funds by state governmental entities after the
13 expiration of the period described by paragraph 2 of
14 this subsection, and
- 15 c. offering the financial company the opportunity to
16 clarify its activities related to companies described
17 by paragraph 1 of subsection A of ~~this section~~ Section
18 12002 of this title.

19 2. Not later than the ninetieth day after the date the
20 financial company receives notice under paragraph 1 of this
21 subsection, the financial company shall cease boycotting ~~energy~~
22 targeted companies to avoid qualifying for contractual termination
23 and divestment from certain funds by state governmental entities.

24

1 3. If, during the time provided by paragraph 2 of this
2 subsection, the financial company ceases boycotting energy targeted
3 companies, and notifies the Treasurer in writing of the cessation,
4 the Treasurer shall, as appropriate in the Treasurer's judgment,
5 remove the financial company from the list maintained under
6 paragraph 1 of subsection A of this section, and this subsection
7 will no longer apply to the financial company unless it resumes
8 boycotting energy targeted companies. The Treasurer also shall
9 notify any state governmental entities who provided notice pursuant
10 to subsection B of this section of the financial company's removal
11 from the list.

12 4. If, after the time provided by paragraph 2 of this
13 subsection expires, ~~the financial company continues to boycott~~
14 ~~energy companies,~~ the state governmental entity has not received
15 confirmation from the Treasurer that the financial company has been
16 removed from the list, the state governmental entity shall sell,
17 ~~redeem, divest, or withdraw all publicly traded securities of the~~
18 ~~financial company, except securities described by subsection E of~~
19 ~~this section,~~ terminate any contract with the listed financial
20 company and divest from certain funds according to the schedule
21 provided under subsection D of this section.

22 D. 1. A state governmental entity required to ~~sell, redeem,~~
23 ~~divest, or withdraw all publicly traded securities of a listed~~
24 ~~financial company~~ terminate any contract with a listed financial

1 company or divest from certain funds shall comply with the following
2 schedule:

3 a. at least fifty percent (50%) of ~~those assets~~
4 divestment from certain funds shall ~~be removed from~~
5 ~~the state governmental entity's assets under~~
6 ~~management~~ occur not later than the one-hundred-
7 eightieth day after the date the financial company
8 receives notice pursuant to paragraph 1 of subsection
9 C of this section unless the state governmental entity
10 determines, based on a good-faith exercise of its
11 fiduciary discretion and subject to subparagraph b of
12 this subsection, that a later date is more prudent,
13 and

14 b. one hundred percent (100%) of ~~those assets shall be~~
15 ~~removed from the state governmental entity's assets~~
16 ~~under management~~ divestment from certain funds shall
17 occur, and any contract with a listed financial
18 company shall be terminated not later than the three-
19 hundred-sixtieth day after the date the financial
20 company receives notice pursuant to paragraph 1 of
21 subsection C of this section.

22 2. If a financial company that ceased boycotting ~~energy~~
23 targeted companies after receiving notice pursuant to paragraph 1 of
24 subsection C of this section resumes its boycott, the state

1 governmental entity shall notify the Treasurer and shall send a
2 written notice to the financial company informing it that the state
3 governmental entity will ~~sell, redeem, divest, or withdraw all~~
4 ~~publicly traded securities of the financial company~~ terminate any
5 contract with the listed financial company and divest from certain
6 funds according to the schedule in paragraph 1 of subsection D of
7 this section.

8 3. ~~Except as provided by paragraph 1 of subsection D of this~~
9 ~~section, a~~ A state governmental entity may delay the schedule for
10 contractual termination and divestment from certain funds under ~~that~~
11 this subsection only to the extent that the state governmental
12 entity determines, in the state governmental entity's good-faith
13 judgment, and consistent with the entity's fiduciary duty, that the
14 contractual termination or divestment from listed financial
15 ~~companies will likely result in a loss in value or a benchmark~~
16 ~~deviation described by paragraph 1 of subsection F of this section~~
17 certain funds would result in the selection of a replacement
18 financial company that would have a materially negative financial
19 impact.

20 4. If a state governmental entity delays the schedule for
21 contractual termination or divestment from certain funds, the state
22 governmental entity shall submit a report to the Treasurer, ~~the~~
23 ~~presiding officer of each house of the Legislature, and the Attorney~~
24 ~~General~~ stating the reasons and justification for the delay in

1 contractual termination or divestment from certain funds by the
2 state governmental entity from listed financial companies. The
3 report shall include documentation supporting its determination that
4 ~~the divestment would result in a loss in value or a benchmark~~
5 ~~deviation described by paragraph 1 of subsection F of this section~~
6 ~~including objective numerical estimates~~ contractual termination or
7 divestment from certain funds would result in the selection of a
8 replacement financial company that would have a materially negative
9 financial impact. The state governmental entity shall update the
10 report every six (6) months until the divestment from certain funds
11 has been completed, and provide the report every six (6) months to
12 the Treasurer. The Treasurer shall evaluate any reports provided
13 under this paragraph within a reasonable time and provide a copy of
14 the report and the Treasurer's evaluation to the presiding officer
15 of each house of the Legislature and the Attorney General.

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

1 ~~risk and anticipated return, the state governmental entity may~~
2 ~~replace all applicable investments with investments in the similar~~
3 ~~fund in a time frame consistent with prudent fiduciary standards but~~
4 ~~not later than the four hundred fiftieth day after the date the fund~~
5 ~~is created.~~

6 ~~F.~~ 1. A state governmental entity may cease terminating any
7 contracts with and divesting from certain funds of one or more
8 listed financial companies only if clear and convincing evidence
9 shows that:

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

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

20 the requirements of subsection D of this section would require the
21 selection of a company that would have a materially negative
22 financial impact, provided that the state governmental entity
23 complies with the following requirements:
24

- 1 a. documents its determination, along with evidence
2 supporting its determination, including a description
3 of the services of at least three alternative
4 companies consulted that includes a comparison of
5 those alternatives and a description of whether those
6 alternatives boycott targeted companies,
7 b. includes such documentation and evidence in its
8 minutes or other publicly available medium,
9 c. publicly posts a permanent notice seeking a company
10 that would not boycott targeted companies, and
11 d. limits the contract duration to no more than a year
12 and re-evaluates its determination at least annually
13 pursuant to requirements a through c of this
14 paragraph.

15 2. A state governmental entity may cease terminating any
16 contracts with a listed financial company and divesting from certain
17 funds held, managed, or advised by a listed financial company as
18 provided by this section only to the extent necessary to ~~ensure that~~
19 ~~the state governmental entity does not suffer a loss in value or~~
20 ~~deviate from its benchmark as described by paragraph 1 of this~~
21 ~~subsection~~ avoid the selection of a company that would have a
22 materially negative impact.

23 3. Before a state governmental entity may cease terminating any
24 contracts with a listed financial company and divesting from certain

1 funds of a listed financial company under this section, the state
2 governmental entity shall provide a written report to the Treasurer,
3 ~~the presiding officer of each house of the Legislature, and the~~
4 ~~Attorney General~~ setting forth the reason and justification,
5 supported by clear and convincing evidence, for deciding to cease
6 divestment from certain funds or to remain invested in a listed
7 financial company. The Treasurer shall evaluate the report within a
8 reasonable time and provide a copy of the report and the Treasurer's
9 evaluation to the presiding officer of each house of the Legislature
10 and the Attorney General. The state governmental entity shall
11 update the report required by this subsection semiannually, as
12 applicable.

13 4. ~~This section does not apply to reinvestment in a financial~~
14 ~~company that is no longer a listed financial company~~ If a financial
15 company was once a listed financial company but is no longer a
16 listed financial company, it shall not be considered a listed
17 financial company for the purposes of this section.

18 ~~G. Except as provided in subsection F of this section, a state~~
19 ~~governmental entity shall not acquire securities of a listed~~
20 ~~financial company.~~

21 SECTION 3. AMENDATORY Section 4, Chapter 231, O.S.L.
22 2022 (74 O.S. Supp. 2023, Section 12004), is amended to read as
23 follows:
24

1 Section 12004. A. Not later than January 1 of each year, each
2 state governmental entity shall file a publicly available report
3 with the Treasurer, ~~the presiding officer of each house of the~~
4 ~~Legislature, and the Attorney General~~ that:

5 1. Identifies ~~securities sold, redeemed, divested, or withdrawn~~
6 any contracts terminated and any divestment from certain funds made
7 in compliance with subsection D of Section ~~3~~ 12003 of this ~~act~~
8 title; and

9 2. Identifies prohibited contracts or investments under
10 subsection ~~F~~ E of Section ~~3~~ 12003 of this ~~act~~; and

11 ~~3. Summarizes any changes made under subsection E of Section 3~~
12 ~~of this act title.~~

13 The Treasurer shall evaluate any reports provided under this
14 section within a reasonable time and provide a copy of the report
15 and the Treasurer's evaluation to the presiding officer of each
16 house of the Legislature and the Attorney General.

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

19 SECTION 4. AMENDATORY Section 5, Chapter 231, O.S.L.
20 2022 (74 O.S. Supp. 2023, Section 12005), is amended to read as
21 follows:

22 Section 12005. A. As used in this section only of the Energy
23 Discrimination Elimination Act of 2022, "governmental entity" means
24 a state agency ~~or political subdivision of this state.~~

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

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

5 b. will pay a company One Hundred Thousand Dollars
6 (\$100,000.00) or more over the term of the contract
7 that is to be paid wholly or partly from public funds
8 of the governmental entity; provided, however, the
9 provisions of this paragraph shall apply separately to
10 all companies in a multiple party contract.

11 2. Except as provided by paragraph 4 of this subsection, a
12 governmental entity shall not enter into, renew or amend a contract
13 with a company for goods or services unless the contract contains a
14 written verification from the company that it:

15 a. does not boycott ~~energy~~ targeted companies, and

16 b. will not boycott ~~energy~~ targeted companies during the
17 term of the contract, including any extensions of the
18 contract.

19 3. Except as provided by paragraph 4 of this subsection, a
20 governmental entity shall not enter into, renew, amend, or remain a
21 party to a contract for goods or services with a listed financial
22 company under Section ~~3~~ 12003 of this ~~act~~ title.

23 4. Paragraphs 2 and 3 of this subsection shall not apply to:
24

- 1 a. a governmental entity that determines the requirements
2 of paragraphs 2 or 3 of this subsection are
3 inconsistent with the governmental entity's
4 constitutional or statutory duties related to the
5 issuance, incurrence, or management of debt
6 obligations or the deposit, custody, management,
7 borrowing, or investment of funds, and
- 8 b. a contract for which a governmental ~~body~~ entity
9 determines that clear and convincing evidence shows
10 under those paragraphs the supplies or services to be
11 provided are not otherwise reasonably available from a
12 company that is not a listed financial company under
13 Section ~~3~~ 12003 of this ~~act~~ title.

14 Any governmental entity making such a determination under
15 subparagraph a or b of this paragraph must comply with the
16 requirements for state governmental entities under paragraph 1 of
17 subsection E of Section 12003 of this title.

18 SECTION 5. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

1 Passed the House of Representatives the 13th day of March, 2024.

2
3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the _____ day of _____, 2024.

6
7
8 _____
9 Presiding Officer of the Senate