

1 **SENATE FLOOR VERSION**

February 22, 2024

2 **AS AMENDED**

3 SENATE BILL NO. 1536

By: Rader of the Senate

4 and

5 Boles of the House

6
7
8 **[Energy Discrimination Elimination Act of 2022 -**
9 **exemptions, requirements, and contracts - Attorney**
10 **General opinion - effective date]**

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 2, Chapter 231, O.S.L.
14 2022 (74 O.S. Supp. 2023, Section 12002), is amended to read as
15 follows:

16 Section 12002. A. As used in the Energy Discrimination
17 Elimination Act of 2022:

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

23 a. engages in the exploration, production, utilization,
24 transportation, sale, or manufacturing of fossil-fuel-

1 based energy and does not commit or pledge to meet
2 environmental standards beyond applicable federal and
3 state law, or

4 b. does business with a company described by subparagraph
5 a of this paragraph;

6 2. "Company" means a for-profit sole proprietorship,
7 organization, association, corporation, partnership, joint venture,
8 limited partnership, limited liability partnership, or limited
9 liability company, including a wholly owned subsidiary, majority-
10 owned subsidiary, parent company, or affiliate of those entities or
11 business associations, that exists to make a profit;

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

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

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

19 6. "Indirect holdings" means, with respect to a financial
20 company, all securities of that financial company held in an account
21 or fund, such as a mutual fund, managed by one or more persons not
22 employed by a state governmental entity, in which the state
23 governmental entity owns shares or interests together with other
24 investors not subject to the provisions of ~~this act~~ the Energy

1 Discrimination Elimination Act of 2022. The term does not include
2 money invested under a plan described by Section 401(k) or 457 of
3 the Internal Revenue Code of 1986;

4 7. "Listed financial company" means a financial company listed
5 by the Treasurer; and

6 8. "State governmental entity" means all state retirement
7 systems.

8 B. 1. With respect to actions taken in compliance with the
9 Energy Discrimination Elimination Act of 2022, including all good-
10 faith determinations regarding financial companies as required by
11 ~~this act~~ the Energy Discrimination Elimination Act of 2022, a state
12 governmental entity and the Treasurer are exempt from any
13 conflicting statutory or common law obligations including any
14 obligations with respect to making investments, divesting from any
15 investment, preparing or maintaining any list of financial
16 companies, or choosing asset managers, investment funds, or
17 investments for the state governmental entity's securities
18 portfolios.

19 2. In the event that the Treasurer disagrees with the
20 determination made by a state governmental entity under this
21 subsection, the Treasurer shall seek an Attorney General opinion
22 ruling whether the determination is in compliance with state laws
23 binding the state governmental entity.

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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 of 2022, the state shall indemnify
5 and hold harmless for actual damages, court costs, and attorney fees
6 adjudged 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 of 2022 applies, an association, a research firm, a financial
21 company, or any other person shall not sue or pursue a private cause
22 of action against the state, a state governmental entity, a current
23 or 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~~ the Energy Discrimination Elimination Act
7 of 2022.

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

13 3. A state governmental entity shall not be subject to any
14 requirement of ~~this act~~ the Energy Discrimination Elimination Act of
15 2022 if the state governmental entity determines that such
16 requirement would be inconsistent with its fiduciary responsibility
17 with respect to the investment of entity assets or other duties
18 imposed by law relating to the investment of entity assets.

19 4. In the event that the Treasurer disagrees with the
20 determination made by a state governmental entity under this
21 subsection, the Treasurer shall seek an Attorney General opinion
22 ruling whether the determination is in compliance with state laws
23 binding the state governmental entity.

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

4 Section 12003. A. 1. The Treasurer shall prepare and maintain
5 and provide to each state governmental entity a list of financial
6 companies that boycott energy companies. In maintaining the list,
7 the Treasurer may:

8 a. review and rely, as appropriate in the Treasurer's
9 judgment, on publicly available information regarding
10 financial companies including information provided by
11 the state, nonprofit organizations, research firms,
12 international organizations, and governmental
13 entities, and

14 b. request written verification from a financial company
15 that it does not boycott energy companies and rely, as
16 appropriate in the Treasurer's judgment and without
17 conducting further investigation, research, or
18 inquiry, on a financial company's written response to
19 the request.

20 2. A financial company that fails to provide to the Treasurer a
21 written verification under subparagraph b of paragraph 1 of this
22 subsection before the sixty-first day after receiving the request
23 from the Treasurer is presumed to be boycotting energy companies.
24

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

5 4. Not later than the thirtieth day after the date the list of
6 financial companies that boycott energy companies is first provided
7 or updated, the Treasurer shall file the list with the presiding
8 officer of each house of the Legislature and the Attorney General
9 and post the list on a publicly available Internet website.

10 5. The Treasurer may retain third-party consultants to assist
11 in the implementation of the provisions of ~~this act~~ the Energy
12 Discrimination Elimination Act of 2022.

13 B. Not later than the thirtieth day after the date a state
14 governmental entity receives the list provided under paragraph 1 of
15 subsection A of this section, the state governmental entity shall
16 notify the Treasurer of the listed financial companies in which the
17 state governmental entity owns direct holdings or indirect holdings.

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

21 a. informing the financial company of its status as a
22 listed financial company,

23 b. warning the financial company that it may become
24 subject to divestment by state governmental entities

1 after the expiration of the period described by
2 paragraph 2 of this subsection, and

3 c. offering the financial company the opportunity to
4 clarify its activities related to companies described
5 by paragraph 1 of subsection A of this section.

6 2. Not later than the ninetieth day after the date the
7 financial company receives notice under paragraph 1 of this
8 subsection, the financial company shall cease boycotting energy
9 companies to avoid qualifying for divestment by state governmental
10 entities.

11 3. If, during the time provided by paragraph 2 of this
12 subsection, the financial company ceases boycotting energy
13 companies, the Treasurer shall remove the financial company from the
14 list maintained under paragraph 1 of subsection A of this section,
15 and this subsection will no longer apply to the financial company
16 unless it resumes boycotting energy companies.

17 4. If, after the time provided by paragraph 2 of this
18 subsection expires, the financial company continues to boycott
19 energy companies, the state governmental entity shall sell, redeem,
20 divest, or withdraw all publicly traded securities of the financial
21 company, except securities described by subsection E of this
22 section, according to the schedule provided under subsection D of
23 this section.

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

4 a. at least fifty percent (50%) of those assets shall be
5 removed from the state governmental entity's assets
6 under management 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 not later than the three-hundred-
17 sixtieth day after the date the financial company
18 receives notice pursuant to paragraph 1 of subsection
19 C of this section.

20 2. If a financial company that ceased boycotting energy
21 companies after receiving notice pursuant to paragraph 1 of
22 subsection C of this section resumes its boycott, the state
23 governmental entity shall send a written notice to the financial
24 company informing it that the state governmental entity will sell,

1 redeem, divest, or withdraw all publicly traded securities of the
2 financial company according to the schedule in paragraph 1 of
3 ~~subsection D of this section~~ subsection.

4 3. Except as provided by paragraph 1 of ~~subsection D of this~~
5 ~~section~~ subsection, a state governmental entity may delay the
6 schedule for divestment under that subsection only to the extent
7 that the state governmental entity determines, in the state
8 governmental entity's good-faith judgment, and consistent with the
9 entity's fiduciary duty, that divestment from listed financial
10 companies will likely result in a loss in value or a benchmark
11 deviation described by paragraph 1 of subsection F of this section.

12 4. If a state governmental entity delays the schedule for
13 divestment, the state governmental entity shall submit ~~a~~ an
14 electronic report to the Treasurer, the presiding officer of each
15 house of the Legislature, and the Attorney General stating the
16 reasons and justification for the delay in divestment by the state
17 governmental entity from listed financial companies. The report
18 shall include documentation supporting its determination that the
19 divestment would result in a loss in value or a benchmark deviation
20 described by paragraph 1 of subsection F of this section including
21 objective numerical estimates. The state governmental entity shall
22 update the report every six (6) months.

23 E. A state governmental entity is not required to divest from
24 any indirect holdings in actively or passively managed investment

1 funds or private equity funds. The state governmental entity shall
2 submit letters to the managers of each investment fund containing
3 listed financial companies requesting that they remove those
4 financial companies from the fund or create a similar actively or
5 passively managed fund with indirect holdings devoid of listed
6 financial companies. If a manager creates a similar fund with
7 substantially the same management fees and same level of investment
8 risk and anticipated return, the state governmental entity may
9 replace all applicable investments with investments in the similar
10 fund in a time frame consistent with prudent fiduciary standards but
11 not later than the four-hundred-fiftieth day after the date the fund
12 is created.

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

16 a. the state governmental entity has suffered or will
17 suffer a loss in the value of assets under management
18 by the state governmental entity as a result of having
19 to divest from listed financial companies under this
20 subsection, or

21 b. an individual portfolio that uses a benchmark-aware
22 strategy would be subject to an aggregate expected
23 deviation from its benchmark as a result of having to
24

1 divest from listed financial companies under this
2 subsection.

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

8 3. Before a state governmental entity may cease divesting from
9 a listed financial company under this section, the state
10 governmental entity shall provide a written report to the Treasurer,
11 the presiding officer of each house of the Legislature, and the
12 Attorney General setting forth the reason and justification,
13 supported by clear and convincing evidence, for deciding to cease
14 divestment or to remain invested in a listed financial company. The
15 state governmental entity shall update the report required by this
16 subsection semiannually, as applicable.

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

19 G. In the event that the Treasurer disagrees with the
20 determination made by a state governmental entity under subsections
21 E and F of this section, the Treasurer shall seek an Attorney
22 General opinion ruling whether the determination is in compliance
23 with state laws binding the state governmental entity.

1 H. Except as provided in subsection F of this section, a state
2 governmental entity shall not acquire securities of a listed
3 financial company.

4 SECTION 3. AMENDATORY Section 5, Chapter 231, O.S.L.
5 2022 (74 O.S. Supp. 2023, Section 12005), is amended to read as
6 follows:

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

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

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

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

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

24 a. does not boycott energy companies, and

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~~ 12003 of
6 this ~~act~~ title.

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~~ 12003
19 of this ~~act~~ title.

20 C. In the event that the Treasurer disagrees with the
21 determination made by a state governmental entity under subsection B
22 of this section, the Treasurer shall seek an Attorney General
23 opinion ruling whether the determination is in compliance with state
24 laws binding the state governmental entity.

1 SECTION 4. This act shall become effective November 1, 2024.

2 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
3 February 22, 2024 - DO PASS AS AMENDED
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