

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 HOUSE BILL 3541

By: Lepak

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6 AS INTRODUCED

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:

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

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

6 a. engages in the exploration, production, utilization,
7 transportation, sale, or manufacturing of timber,
8 mining, agriculture, or fossil-fuel-based energy and
9 does not commit or pledge to meet environmental
10 standards beyond applicable federal and 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~~ "Divestment from
24 certain funds" or "divest from certain funds" means removing all
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1 public money from any investments in funds that are held, managed,
2 or advised by a listed financial company;

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

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

14 ~~7.~~ 6. "Listed financial company" means a company that is a
15 financial company and is listed by the Treasurer; and

16 ~~8.~~ 7. "State governmental entity" means ~~all~~ any state
17 retirement systems;

18 8. "Materially negative financial impact" means a materially
19 negative financial impact on the state governmental entity. For
20 goods or services related to investment, any increased cost less
21 than 0.05% per year of the net asset value of the applicable state
22 retirement system shall not constitute a "materially negative
23 financial impact. A state governmental entity's administrative
24 costs shall not be included in any estimation of costs; and
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1 9. "Ordinary business purpose" means a purpose directly related
2 to financial return or financial risk mitigation. It does not
3 include any purpose to further environmental, social, political, or
4 ideological interests. A company may reasonably be determined to
5 have taken an action with a purpose to further environmental,
6 social, political, or ideological interests based upon evidence
7 indicating such a purpose, including, but not limited to:

- 8 a. advertising, statements, explanations, reports,
9 communications with portfolio companies, shareholder
10 votes by the company, or commitments, or
11 b. participation in, affiliation with, or status as a
12 signatory to, any coalition, initiative, joint
13 statement of principles, or agreement, to act or to
14 endeavor to act in furtherance of environmental,
15 social, political, or ideological interests.

16 B. With respect to actions taken in compliance with the Energy
17 Discrimination Elimination Act of 2022, including all good-faith
18 determinations regarding financial companies as required by this
19 act, a state governmental entity and the Treasurer are exempt from
20 any conflicting statutory or common law obligations including any
21 obligations with respect to making investments, ~~divesting~~ divestment
22 from any investment, certain funds, terminating any contracts with
23 financial companies, preparing or maintaining any list of financial
24 companies, or choosing asset managers, investment funds, or
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1 investments for the state governmental entity's securities
2 portfolios.

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

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

11 2. A contractor of a state governmental entity;

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

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

19 5. A state governmental entity.

20 D. 1. A person, including a member, retiree, or beneficiary of
21 a retirement system to which the Energy Discrimination Elimination
22 Act of 2022 applies, an association, a research firm, a financial
23 company, or any other person shall not sue or pursue a private cause
24 of action against the state, a state governmental entity, a current
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1 or former employee, a member of the governing body, or any other
2 officer of a state governmental entity, or a contractor of a state
3 governmental entity, for any claim or cause of action, including
4 breach of fiduciary duty, or for violation of any constitutional,
5 statutory, or regulatory requirement in connection with any action,
6 inaction, decision, divestment, investment, financial company
7 communication, report, or other determination made or taken in
8 connection with this act.

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

14 3. A state governmental entity shall not be subject to any
15 requirement of this act if the state governmental entity determines,
16 and the Treasurer agrees, that clear and convincing evidence shows
17 that such requirement would be lead to a materially negative
18 financial impact inconsistent with its fiduciary responsibility with
19 respect to the investment of entity assets or other duties imposed
20 by law relating to the investment of entity assets.

21 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
22 2022 (74 O.S. Supp. 2023, Section 12003), is amended to read as
23 follows:
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1 Section 12003. A. 1. The Treasurer shall prepare and maintain
2 and provide to each state governmental entity a list of financial
3 companies that boycott ~~energy~~ targeted companies. In maintaining
4 the list, the Treasurer may:

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

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

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

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

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

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

10 B. Not later than the thirtieth day after the date a state
11 governmental entity receives the list provided under paragraph 1 of
12 subsection A of this section, the state governmental entity shall
13 notify the Treasurer of any contract the state governmental entity
14 has with any of the listed financial companies in which the state
15 governmental entity owns direct holdings or indirect holdings, or
16 any funds in which the state governmental entity is invested that
17 are held, managed, or advised by a listed financial company.

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 contractual termination and divestment from

1 certain funds by state governmental entities after the
2 expiration of the period described by paragraph 2 of
3 this subsection, and

4 c. offering the financial company the opportunity to
5 clarify its activities related to companies described
6 by paragraph 1 of subsection A of ~~this section~~ Section
7 12002 of this title.

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

13 3. If, during the time provided by paragraph 2 of this
14 subsection, the financial company ceases boycotting ~~energy~~ targeted
15 companies, and notifies the Treasurer in writing of the cessation,
16 the Treasurer shall, as appropriate in the Treasurer's judgment,
17 remove the financial company from the list maintained under
18 paragraph 1 of subsection A of this section, and this subsection
19 will no longer apply to the financial company unless it resumes
20 boycotting ~~energy~~ targeted companies. The Treasurer also shall
21 notify any state governmental entities who provided notice pursuant
22 to subsection B of this section of the financial company's removal
23 from the list.

1 4. If, after the time provided by paragraph 2 of this
2 subsection expires, ~~the financial company continues to boycott~~
3 ~~energy companies,~~ the state governmental entity has not received
4 confirmation from the Treasurer that the financial company has been
5 removed from the list, the state governmental entity shall sell,
6 ~~redeem, divest, or withdraw all publicly traded securities of the~~
7 ~~financial company, except securities described by subsection E of~~
8 ~~this section,~~ terminate any contract with the listed financial
9 company and divest from certain funds according to the schedule
10 provided under subsection D of this section.

11 D. 1. A state governmental entity required to ~~sell, redeem,~~
12 ~~divest, or withdraw all publicly traded securities of a listed~~
13 ~~financial company~~ terminate any contract with a listed financial
14 company or divest from certain funds shall comply with the following
15 schedule:

- 16 a. at least fifty percent (50%) of ~~those assets~~
17 divestment from certain funds shall ~~be removed from~~
18 ~~the state governmental entity's assets under~~
19 ~~management~~ occur not later than the one-hundred-
20 eightieth day after the date the financial company
21 receives notice pursuant to paragraph 1 of subsection
22 C of this section unless the state governmental entity
23 determines, based on a good-faith exercise of its
24 fiduciary discretion and subject to subparagraph b of

1 this subsection, that a later date is more prudent,
2 and

3 b. one hundred percent (100%) of ~~those assets shall be~~
4 ~~removed from the state governmental entity's assets~~
5 ~~under management~~ divestment from certain funds shall
6 occur, and any contract with a listed financial
7 company shall be terminated not later than the three-
8 hundred-sixtieth day after the date the financial
9 company receives notice pursuant to paragraph 1 of
10 subsection C of this section.

11 2. If a financial company that ceased boycotting ~~energy~~
12 targeted companies after receiving notice pursuant to paragraph 1 of
13 subsection C of this section resumes its boycott, the state
14 governmental entity shall notify the Treasurer and shall send a
15 written notice to the financial company informing it that the state
16 governmental entity will ~~sell, redeem, divest, or withdraw all~~
17 ~~publicly traded securities of the financial company~~ terminate any
18 contract with the listed financial company and divest from certain
19 funds according to the schedule in paragraph 1 of subsection D of
20 this section.

21 3. ~~Except as provided by paragraph 1 of subsection D of this~~
22 ~~section, a~~ A state governmental entity may delay the schedule for
23 contractual termination and divestment from certain funds under ~~that~~
24 this subsection only to the extent that the state governmental
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1 entity determines, in the state governmental entity's good-faith
2 judgment, and consistent with the entity's fiduciary duty, that the
3 contractual termination or divestment from listed financial
4 companies will likely result in a loss in value or a benchmark
5 deviation described by paragraph 1 of subsection F of this section
6 certain funds would result in the selection of a replacement
7 financial company that would have a materially negative financial
8 impact.

9 4. If a state governmental entity delays the schedule for
10 contractual termination or divestment from certain funds, the state
11 governmental entity shall submit a report to the Treasurer, ~~the~~
12 ~~presiding officer of each house of the Legislature, and the Attorney~~
13 ~~General~~ stating the reasons and justification for the delay in
14 contractual termination or divestment from certain funds by the
15 state governmental entity from listed financial companies. The
16 report shall include documentation supporting its determination that
17 ~~the divestment would result in a loss in value or a benchmark~~
18 ~~deviation described by paragraph 1 of subsection F of this section~~
19 ~~including objective numerical estimates~~ contractual termination or
20 divestment from certain funds would result in the selection of a
21 replacement financial company that would have a materially negative
22 financial impact. The state governmental entity shall update the
23 report every six (6) months until the divestment from certain funds
24 has been completed, and provide the report every six (6) months to

1 the Treasurer. The Treasurer shall evaluate any reports provided
2 under this paragraph within a reasonable time and provide a copy of
3 the report and the Treasurer's evaluation to the presiding officer
4 of each house of the Legislature and the Attorney General.

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

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

- 23 a. ~~the state governmental entity has suffered or will~~
24 ~~suffer a loss in the value of assets under management~~
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1 ~~by the state governmental entity as a result of having~~
2 ~~to divest from listed financial companies under this~~
3 ~~subsection, or~~

4 ~~b. an individual portfolio that uses a benchmark-aware~~
5 ~~strategy would be subject to an aggregate expected~~
6 ~~deviation from its benchmark as a result of having to~~
7 ~~divest from listed financial companies under this~~
8 ~~subsection~~

9 the requirements of subsection D of this section would require the
10 selection of a company that would have a materially negative
11 financial impact, provided that the state governmental entity
12 complies with the following requirements:

- 13 a. contracts with the company that has the fewest actions
14 constituting a boycott of targeted companies and would
15 not have a materially negative financial impact,
16 b. documents its determination, along with evidence
17 supporting its determination, including a description
18 of the services of at least three alternative
19 companies consulted that includes a comparison of
20 those alternatives and a description of whether those
21 alternatives boycott targeted companies,
22 c. includes such documentation and evidence in its
23 minutes or other publicly available medium,
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- 1 d. publicly posts a permanent notice seeking a company
2 that would not boycott targeted companies, and
3 e. limits the contract duration to no more than a year
4 and re-evaluates its determination at least annually
5 pursuant to requirements a through d of this
6 paragraph.

7 In determining which company has the fewest actions constituting
8 a boycott of targeted companies under subparagraph a of this
9 paragraph, a governmental entity shall negatively assess a company
10 based upon the quantity of funds being used in support of a boycott
11 of targeted companies, and document this assessment under
12 subparagraph b of this paragraph.

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

21 3. Before a state governmental entity may cease terminating any
22 contracts with a listed financial company and divesting from certain
23 funds of 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 from certain funds or to remain invested in a listed
5 financial company. The Treasurer shall evaluate the report within a
6 reasonable time and provide a copy of the report and the Treasurer's
7 evaluation to the presiding officer of each house of the Legislature
8 and the Attorney General. The state governmental entity shall
9 update the report required by this subsection semiannually, as
10 applicable.

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

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

19 SECTION 3. AMENDATORY Section 4, Chapter 231, O.S.L.
20 2022 (74 O.S. Supp. 2023, Section 12004), is amended to read as
21 follows:

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

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

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

9 ~~3. Summarizes any changes made under subsection E of Section 3~~
10 ~~of this act.~~

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

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

17 SECTION 4. AMENDATORY Section 5, Chapter 231, O.S.L.
18 2022 (74 O.S. Supp. 2023, Section 12005), is amended to read as
19 follows:

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

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

- 1 a. is between a governmental entity and a company with
2 ten or more full-time employees, and
3 b. will pay a company One Hundred Thousand Dollars
4 (\$100,000.00) or more over the term of the contract
5 that is to be paid wholly or partly from public funds
6 of the governmental entity; provided, however, the
7 provisions of this paragraph shall apply separately to
8 all companies in a multiple party contract.

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

- 13 a. does not boycott ~~energy~~ targeted companies, and
14 b. will not boycott ~~energy~~ targeted companies during the
15 term of the contract, including any extensions of the
16 contract.

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

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

- 22 a. a governmental entity that determines the requirements
23 of paragraphs 2 or 3 of this subsection are
24 inconsistent with the governmental entity's
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1 constitutional or statutory duties related to the
2 issuance, incurrence, or management of debt
3 obligations or the deposit, custody, management,
4 borrowing, or investment of funds, and

- 5 b. a contract for which a governmental ~~body~~ entity
6 determines that clear and convincing evidence shows
7 under those paragraphs the supplies or services to be
8 provided are not otherwise reasonably available from a
9 company that is not a listed financial company under
10 Section 3 12003 of this ~~act~~ title.

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

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

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