

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 469

By: Paxton

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6 AS INTRODUCED

7 An Act relating to state government; creating the
8 Higher Education Energy Discrimination Elimination
9 Act of 2023; providing short title; amending Section
10 3, Chapter 231, O.S.L. 2022 (74 O.S. Supp. 2022,
11 Section 12003), which relates to requirements,
12 procedures, and limitations; requiring State
13 Treasurer to prepare certain list for higher
14 education entities; subjecting higher education
15 entities to requirements of the Energy Discrimination
16 Elimination Act of 2022; defining terms; exempting
17 certain entities from provisions of act due to
18 statutory obligations; providing indemnification for
19 certain entities; prohibiting certain persons and
20 entities from entering into a lawsuit with state or
21 state affiliate; providing any person entering a
22 lawsuit against state or state affiliate pursuant to
23 this act be subject to certain costs and fees;
24 requiring report to certain public officials upon
25 decision to cease divestment from certain financial
26 company; providing for publishing of report by state
27 governmental entities to certain public officials;
28 updating statutory language; providing for
29 codification; and providing an effective date.

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32 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 12011 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Higher
5 Education Energy Discrimination Elimination Act of 2023".

6 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
7 2022 (74 O.S. Supp. 2022, Section 12003), is amended to read as
8 follows:

9 Section 12003. A. 1. The State Treasurer shall prepare and
10 maintain and provide to each state governmental entity and higher
11 education entity pursuant to the provisions of the Higher Education
12 Energy Discrimination Elimination Act of 2023 a list of financial
13 companies that boycott energy companies. In maintaining the list,
14 the Treasurer may:

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

21 b. request written verification from a financial company
22 that it does not boycott energy companies and rely, as
23 appropriate in the Treasurer's judgment and without
24 conducting further investigation, research, or

1 inquiry, on a financial company's written response to
2 the request.

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

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

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

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

18 B. Not later than the thirtieth day after the date a state
19 governmental or higher education entity receives the list provided
20 under paragraph 1 of subsection A of this section, the state
21 governmental or higher education entity shall notify the Treasurer
22 of the listed financial companies in which the state governmental or
23 higher education entity owns direct holdings or indirect holdings.

1 C. 1. For each listed financial company identified under
2 paragraph 1 of subsection A of this section, the state governmental
3 or higher education entity shall send a written notice:

4 a. informing the financial company of its status as a
5 listed financial company,

6 b. warning the financial company that it may become
7 subject to divestment by state governmental or higher
8 education entities after the expiration of the period
9 described by paragraph 2 of this subsection, and

10 c. offering the financial company the opportunity to
11 clarify its activities related to companies described
12 by paragraph 1 of subsection A of this section.

13 2. Not later than the ninetieth day after the date the
14 financial company receives notice under paragraph 1 of this
15 subsection, the financial company shall cease boycotting energy
16 companies to avoid qualifying for divestment by state governmental
17 or higher education entities.

18 3. If, during the time provided by paragraph 2 of this
19 subsection, the financial company ceases boycotting energy
20 companies, the Treasurer shall remove the financial company from the
21 list maintained under paragraph 1 of subsection A of this section,
22 and this subsection will no longer apply to the financial company
23 unless it resumes boycotting energy companies.

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 or higher education entity
4 shall sell, redeem, divest, or withdraw all publicly traded
5 securities of the financial company, except securities described by
6 subsection E of this section, according to the schedule provided
7 under subsection D of this section.

8 D. 1. A state governmental or higher education entity required
9 to sell, redeem, divest, or withdraw all publicly traded securities
10 of a listed financial company shall comply with the following
11 schedule:

12 a. at least fifty percent (50%) of those assets shall be
13 removed from the state governmental or higher
14 education entity's assets under management not later
15 than the one-hundred-eightieth day after the date the
16 financial company receives notice pursuant to
17 paragraph 1 of subsection C of this section unless the
18 state governmental entity determines, based on a good-
19 faith exercise of its fiduciary discretion and subject
20 to subparagraph b of this subsection, that a later
21 date is more prudent, and

22 b. one hundred percent (100%) of those assets shall be
23 removed from the state governmental or higher
24 education entity's assets under management not later

1 than the three-hundred-sixtieth day after the date the
2 financial company receives notice pursuant to
3 paragraph 1 of subsection C of this section.

4 2. If a financial company that ceased boycotting energy
5 companies after receiving notice pursuant to paragraph 1 of
6 subsection C of this section resumes its boycott, the state
7 governmental or higher education entity shall send a written notice
8 to the financial company informing it that the state governmental or
9 higher education entity will sell, redeem, divest, or withdraw all
10 publicly traded securities of the financial company according to the
11 schedule in paragraph 1 of subsection D of this section.

12 3. Except as provided by paragraph 1 of subsection D of this
13 section, a state governmental or higher education entity may delay
14 the schedule for divestment under that subsection only to the extent
15 that the state governmental or higher education entity determines,
16 in the state governmental or higher education entity's good-faith
17 judgment, and consistent with the entity's fiduciary duty, that
18 divestment from listed financial companies will likely result in a
19 loss in value or a benchmark deviation described by paragraph 1 of
20 subsection F of this section.

21 4. If a state governmental or higher education entity delays
22 the schedule for divestment, the state governmental or higher
23 education entity shall submit a report to the Treasurer, the
24 presiding officer of each house of the Legislature, and the Attorney

1 General stating the reasons and justification for the delay in
2 divestment by the state governmental or higher education entity from
3 listed financial companies. The report shall include documentation
4 supporting its determination that the divestment would result in a
5 loss in value or a benchmark deviation described by paragraph 1 of
6 subsection F of this section including objective numerical
7 estimates. The state governmental or higher education entity shall
8 update the report every six (6) months.

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

1 F. 1. A state governmental or higher education entity may
2 cease divesting from one or more listed financial companies only if
3 clear and convincing evidence shows that:

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

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

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

20 3. Before a state governmental or higher education entity may
21 cease divesting from a listed financial company under this section,
22 the state governmental or higher education entity shall provide a
23 written report to the Treasurer, the presiding officer of each house
24 of the Legislature, and the Attorney General setting forth the

1 reason and justification, supported by clear and convincing
2 evidence, for deciding to cease divestment or to remain invested in
3 a listed financial company. The state governmental or higher
4 education entity shall update the report required by this subsection
5 semiannually, as applicable.

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

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

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 12012 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 A. As used in the Higher Education Energy Discrimination
15 Elimination Act of 2023:

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

- 21 a. engages in the exploration, production, utilization,
22 transportation, sale, or manufacturing of fossil-fuel-
23 based energy and does not commit or pledge to meet
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1 environmental standards beyond applicable federal and
2 state law, or

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

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

11 3. "Treasurer" means the State Treasurer or his or her
12 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. "Higher education entity" means the Oklahoma State Regents
20 for Higher Education and any educational institution under the
21 jurisdiction of the Oklahoma State Regents for Higher Education;

22 7. "Indirect holdings" means, with respect to a financial
23 company, all securities of that financial company held in an account
24 or fund, such as a mutual fund, managed by one or more persons not

1 employed by a state governmental entity, in which the state
2 governmental entity owns shares or interests together with other
3 investors not subject to the provisions of this act. The term does
4 not include money invested under a plan described by Section 401(k)
5 or 457 of the Internal Revenue Code of 1986; and

6 8. "Listed financial company" means a financial company listed
7 by the Treasurer.

8 B. With respect to actions taken in compliance with the Higher
9 Education Energy Discrimination Elimination Act of 2023, including
10 all good-faith determinations regarding financial companies as
11 required by this act, a higher education entity and the Treasurer
12 are exempt from any conflicting statutory or common law obligations
13 including any obligations with respect to making investments,
14 divesting from any investment, preparing or maintaining any list of
15 financial companies, or choosing asset managers, investment funds,
16 or investments for the higher education entity's securities
17 portfolios.

18 C. In a cause of action based on an action, inaction, decision,
19 divestment, investment, financial company communication, report, or
20 other determination made or taken in connection with the Higher
21 Education Energy Discrimination Elimination Act of 2023, the state
22 shall indemnify and hold harmless for actual damages, court costs,
23 and attorney fees adjudged against, and defend:
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1 1. An employee, a member of the governing body, or any other
2 officer of a higher education entity;

3 2. A contractor of a higher education entity;

4 3. A former employee, a former member of the governing body, or
5 any other former officer of a higher education entity who was an
6 employee, member of the governing body, or other officer when the
7 act or omission on which the damages are based occurred;

8 4. A former contractor of a higher education entity who was a
9 contractor when the act or omission on which the damages are based
10 occurred; and

11 5. A higher education entity.

12 D. 1. Any person to which the Higher Education Energy
13 Discrimination Elimination Act of 2023 applies, an association, a
14 research firm, a financial company, or any other person shall not
15 sue or pursue a private cause of action against the state, higher
16 education entity, a current or former employee, a member of the
17 governing body, or any other officer of a higher education entity,
18 or a contractor of a higher education entity, for any claim or cause
19 of action, including breach of fiduciary duty, or for violation of
20 any constitutional, statutory, or regulatory requirement in
21 connection with any action, inaction, decision, divestment,
22 investment, financial company communication, report, or other
23 determination made or taken in connection with this act.

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1 2. A person who files suit against the state, a higher
2 education entity, an employee, a member of the governing body, or
3 any other officer of a higher education entity, or a contractor of a
4 higher education entity, is liable for paying the costs and attorney
5 fees of a person sued in violation of this section.

6 3. A higher education entity shall not be subject to any
7 requirement of this act if the higher education entity determines
8 that such requirement would be inconsistent with its fiduciary
9 responsibility with respect to the investment of entity assets or
10 other duties imposed by law relating to the investment of entity
11 assets.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 12013 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 higher education
16 entity shall file a publicly available report with the Treasurer,
17 the presiding officer of each house of the Legislature, and the
18 Attorney General that:

19 1. Identifies securities sold, redeemed, divested, or withdrawn
20 in compliance with subsection D of Section 12003 of Title 74 of the
21 Oklahoma Statutes;

22 2. Identifies prohibited investments under subsection F of
23 Section 12003 of Title 74 of the Oklahoma Statutes; and
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3. Summarizes any changes made under subsection E of Section 12003 of Title 74 of the Oklahoma Statutes.

B. The Attorney General may bring any action necessary to enforce the Higher Education Energy Discrimination Elimination Act of 2023.

SECTION 5. This act shall become effective November 1, 2023.

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