

1 **SENATE FLOOR VERSION**

2 February 13, 2025

3 SENATE BILL NO. 714

By: Rader of the Senate

4 and

5 Moore of the House

6
7
8 An Act relating to state government; amending
9 Sections 2, 3, 4, and 5, Chapter 231, O.S.L. 2022 (74
10 O.S. Supp. 2024, Sections 12002, 12003, 12004, and
11 12005), which relate to the Energy Discrimination
12 Elimination Act of 2022; modifying and defining
13 terms; removing restrictions on certain legal
14 proceedings; transferring authority for enforcement
15 of act; modifying process for determination of listed
16 financial companies; requiring reporting; providing
17 exemptions for certain state governmental entities
18 due to fiduciary responsibilities; directing rule
19 promulgation; removing political subdivisions from
20 certain provisions of act; updating statutory
21 language; updating statutory language; repealing
22 Section 6, Chapter 231, O.S.L. 2022 (74 O.S. Supp.
23 2024, Section 12006), which relates to contracts
24 entered into with financial companies; providing an
effective date; 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. 2024, 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. "Attorney General" means the Attorney General or his or her
4 designee;

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

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

15 b. does business with a company described by subparagraph
16 a of this paragraph;

17 ~~2.~~ 3. "Company" means a for-profit sole proprietorship,
18 organization, association, corporation, partnership, joint venture,
19 limited partnership, limited liability partnership, or limited
20 liability company, including a wholly owned subsidiary, majority-
21 owned subsidiary, parent company, or affiliate of those entities or
22 business associations, that exists to make a profit;

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

24

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

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

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

15 7. "Listed financial company" means a financial company listed
16 by the ~~Treasurer~~ Attorney General; and

17 8. "Ordinary business purpose" means a purpose directly related
18 to financial return or financial risk mitigation. A company may
19 reasonably be determined to have boycotted an energy company without
20 an ordinary business purpose based on its public statements or
21 actions including, but not limited to:

22 a. prospectuses, reports, communications with portfolio
23 companies, or shareholder votes, or

24

1 b. participation in, affiliation with, or status as a
2 signatory to, any coalition, initiative, joint
3 statement of principles, or agreement, to act or to
4 endeavor to act predominantly in furtherance of
5 environmental, social, political, or ideological
6 interests; and

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

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

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

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

3 ~~2. A contractor of a state governmental entity;~~

4 ~~3. A former employee, a former member of the governing body, or~~
5 ~~any other former officer of a state governmental 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 state governmental entity who was a~~
9 ~~contractor when the act or omission on which the damages are based~~
10 ~~occurred; and~~

11 ~~5. A state governmental entity.~~

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

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

6 ~~3.~~ A state governmental entity shall not be subject to any
7 requirement of this act if the state governmental 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. A state governmental entity that takes the exemption under
12 this subsection shall electronically submit a report to the
13 President Pro Tempore of the Senate, the Speaker of the House of
14 Representatives, and the Attorney General.

15 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
16 2022 (74 O.S. Supp. 2024, Section 12003), is amended to read as
17 follows:

18 Section 12003. A. 1. The ~~Treasurer~~ Attorney General shall
19 prepare and maintain and provide to each state governmental entity a
20 list of financial companies that boycott energy companies. In
21 maintaining the list, the ~~Treasurer may~~ Attorney General shall:

- 22 a. review and rely, as appropriate in the ~~Treasurer's~~
23 Attorney General's judgment, on publicly available
24 information regarding financial companies including

1 information provided by the state, nonprofit
2 organizations, research firms, international
3 organizations, and governmental entities, ~~and~~

4 b. verify that the financial companies on the list are
5 publicly traded,

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

12 d. develop and publish criteria for the definition of a
13 boycott energy company and publish the criteria for
14 removing a company from the list.

15 2. A The Attorney General, after performing his or her due
16 diligence, may presume that a financial company that fails to
17 provide to the Treasurer a written verification under subparagraph b
18 of paragraph 1 of this subsection before the sixty-first day after
19 receiving the verification request from the Treasurer is presumed to
20 be is boycotting energy companies.

21 3. The Attorney General shall, as part of the list, provide
22 information to support the determination that a financial company is
23 boycotting energy companies.

1 4. The Attorney General shall notify in writing each financial
2 company that is included on the list, the evidence used to place
3 that company on the list, and the process for being removed from the
4 list.

5 5. The ~~Treasurer~~ Attorney General shall update the list
6 annually ~~or more often as the Treasurer considers necessary, but not~~
7 more often than quarterly, based on information from, among other
8 sources, those listed in subparagraph a of paragraph 1 of this
9 subsection by completing the verification process as outlined in
10 this subsection.

11 ~~4.~~ 6. Not later than the thirtieth day after the date the list
12 of financial companies that boycott energy companies is first
13 provided or updated, the ~~Treasurer~~ Attorney General shall file the
14 list with the presiding officer of each house of the Legislature ~~and~~
15 ~~the Attorney General~~ and post the list on a publicly available
16 Internet website.

17 ~~5.~~ 7. The ~~Treasurer~~ Attorney General may retain third-party
18 consultants to assist in the implementation of the provisions of
19 this act.

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

1 companies in which the state governmental entity owns direct
2 holdings or indirect holdings.

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

6 a. informing the financial company of its status as a
7 listed financial company,

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

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

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

20 3. If, during the time provided by paragraph 2 of this
21 subsection, the financial company ceases boycotting energy
22 companies, and notifies the Attorney General in writing of the
23 cessation, ~~the Treasurer shall~~ Attorney General may remove the
24 financial company from the list maintained under paragraph 1 of

1 subsection A of this section, and this subsection will no longer
2 apply to the financial company unless it resumes boycotting energy
3 companies. The Attorney General shall notify state governmental
4 entities of the financial company's removal from the list.

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

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

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

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

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

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

1 ~~4.~~ 3. If a state governmental entity delays the schedule for
2 divestment, the state governmental entity shall submit a report to
3 the ~~Treasurer,~~ Attorney General and the presiding officer of each
4 house of the Legislature, ~~and the Attorney General~~ stating the
5 reasons and justification for the delay in divestment by the state
6 governmental entity from listed financial companies. The report
7 shall include documentation supporting its determination that the
8 divestment would result in a loss in value, including transaction
9 costs, or a benchmark deviation described by paragraph 1 of
10 subsection F of this section including objective numerical
11 estimates. The state governmental entity shall update the report
12 every six (6) months to include an update on its delayed divestment
13 as part of the annual report required by Section 12004 of this
14 title.

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

1 replace all applicable investments with investments in the similar
2 fund in a time frame consistent with prudent fiduciary standards but
3 not later than the four-hundred-fiftieth day after the date the fund
4 is created.

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

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

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

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

24

1 3. Before a state governmental entity may cease divesting from
2 a listed financial company under this section, the state
3 governmental entity shall provide a written report to the ~~Treasurer,~~
4 Attorney General and the presiding officer of each house of the
5 Legislature, ~~and the Attorney General~~ setting forth the reason and
6 justification, ~~supported by clear and convincing evidence,~~ for
7 deciding to cease divestment or to remain invested in a listed
8 financial company. The state governmental entity shall include an
9 update to the report required by this subsection semiannually, as
10 applicable determination made under this subsection as part of the
11 annual report required by Section 12004 of this title.

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

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

17 H. A state governmental entity shall not be subject to any
18 requirement of the Energy Discrimination Elimination Act of 2022 if
19 the state governmental entity determines that such requirement would
20 be inconsistent with its fiduciary responsibility with respect to
21 the investment of entity assets or other duties imposed by law
22 relating to the investment of entity assets.

23 I. The Attorney General shall promulgate rules to implement the
24 provisions of this section, including defining the process and

1 criteria for creating the list required in paragraph 1 of subsection
2 A of this section.

3 SECTION 3. AMENDATORY Section 4, Chapter 231, O.S.L.
4 2022 (74 O.S. Supp. 2024, Section 12004), is amended to read as
5 follows:

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

- 10 1. Identifies securities sold, redeemed, divested, or withdrawn
11 in compliance with subsection D of Section 3 of this act;
- 12 2. Identifies prohibited investments under subsection F of
13 Section 3 of this act; and
- 14 3. Summarizes any changes made under subsection E of Section 3
15 of this act.

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

18 SECTION 4. AMENDATORY Section 5, Chapter 231, O.S.L.
19 2022 (74 O.S. Supp. 2024, Section 12005), is amended to read as
20 follows:

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

24

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 a contract with a company
13 for goods or services unless the contract contains a written
14 verification from the company that it:

15 a. does not boycott energy companies, and

16 b. will not boycott energy companies during the term of
17 the contract.

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

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

23 a. a governmental entity that determines the requirements
24 of paragraphs 2 or 3 of this subsection are

1 inconsistent with the governmental entity's
2 constitutional or statutory duties ~~related to the~~
3 ~~issuance, incurrence, or management of debt~~
4 ~~obligations or the deposit, custody, management,~~
5 ~~borrowing, or investment of funds~~ or its fiduciary
6 responsibility, and

7 b. a contract for which a governmental ~~body~~ entity
8 determines the supplies or services to be provided are
9 not otherwise reasonably available from a company that
10 does not boycott energy companies or from a financial
11 company that is not a listed financial company under
12 Section 3 of this act, as applicable.

13 C. 1. The provisions of this act shall not apply to any notes
14 or bonds issued by this state, any political subdivision, or any
15 governmental entity, used for public financing.

16 2. A financial company's involvement in bond or public
17 financing projects shall be determined by the political subdivision
18 or governmental entity's established processes for such financings.

19 SECTION 5. REPEALER Section 6, Chapter 231, O.S.L. 2022
20 (74 O.S. Supp. 2024, Section 12006), is hereby repealed.

21 SECTION 6. This act shall become effective July 1, 2025.

22 SECTION 7. It being immediately necessary for the preservation
23 of the public peace, health or safety, an emergency is hereby
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
4 February 13, 2025 - DO PASS
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24