

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 SENATE BILL 714

By: Rader

4
5
6 AS INTRODUCED

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

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

19 SECTION 1. AMENDATORY Section 2, Chapter 231, O.S.L.
20 2022 (74 O.S. Supp. 2024, Section 12002), is amended to read as
21 follows:

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

1 1. "Attorney General" means the Attorney General or his or her
2 designee;

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

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

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

15 ~~2.~~ 3. "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

1 state governmental entity in an account or fund in which a state
2 governmental entity owns all shares or interests;

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

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

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

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

20 a. prospectuses, reports, communications with portfolio
21 companies, or shareholder votes, or

22 b. participation in, affiliation with, or status as a
23 signatory to, any coalition, initiative, joint
24 statement of principles, or agreement, to act or to

1 endeavor to act predominantly in furtherance of
2 environmental, social, political, or ideological
3 interests; and

4 9. "State governmental entity" means all state retirement
5 systems.

6 B. With respect to actions taken in compliance with the Energy
7 Discrimination Elimination Act of 2022, including all good-faith
8 determinations regarding financial companies as required by this
9 act, a state governmental entity and the ~~Treasurer~~ Attorney General
10 are exempt from any conflicting statutory or common law obligations
11 including any obligations with respect to making investments,
12 divesting from any investment, preparing or maintaining any list of
13 financial companies, or choosing asset managers, investment funds,
14 or 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 that such requirement would be inconsistent with its fiduciary
6 responsibility with respect to the investment of entity assets or
7 other duties imposed by law relating to the investment of entity
8 assets. A state governmental entity that takes the exemption under
9 this subsection shall electronically submit a report to the
10 President Pro Tempore of the Senate, the Speaker of the House of
11 Representatives, and the Attorney General.

12 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
13 2022 (74 O.S. Supp. 2024, Section 12003), is amended to read as
14 follows:

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

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

- 1 b. verify that the financial companies on the list are
2 publicly traded,
- 3 c. request written verification from a financial company
4 that it does not boycott energy companies and rely, as
5 appropriate in the ~~Treasurer's~~ Attorney General's
6 judgment and without conducting further investigation,
7 research, or inquiry, on a financial company's written
8 response to the request, and
- 9 d. develop and publish criteria for the definition of a
10 boycott energy company and publish the criteria for
11 removing a company from the list.

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

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

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

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

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

13 ~~5.~~ 7. The ~~Treasurer~~ Attorney General may retain third-party
14 consultants to assist in the implementation of the provisions of
15 this act.

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

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

- a. informing the financial company of its status as a listed financial company,
- b. warning the financial company that it may become subject to divestment by state governmental entities after the expiration of the period described by paragraph 2 of this subsection, and
- c. offering the financial company the opportunity to clarify its activities related to companies described by paragraph 1 of subsection A of this section.

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

3. If, during the time provided by paragraph 2 of this subsection, the financial company ceases boycotting energy companies, and notifies the Attorney General in writing of the cessation, ~~the Treasurer shall~~ Attorney General may remove the financial company from the list maintained under paragraph 1 of subsection A of this section, and this subsection will no longer apply to the financial company unless it resumes boycotting energy companies. The Attorney General shall notify state governmental entities of the financial company's removal 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 shall sell, redeem,
4 divest, or withdraw all publicly traded securities of the financial
5 company, except securities described by subsection E of this
6 section, according to the schedule provided under subsection D of
7 this section.

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

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

21 b. one hundred percent (100%) of those assets shall be
22 removed from the state governmental entity's assets
23 under management not later than the three-hundred-
24 sixtieth day after the date the financial company
25

1 receives notice pursuant to paragraph 1 of subsection
2 C of this section.

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

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

20 ~~4.~~ 3. If a state governmental entity delays the schedule for
21 divestment, the state governmental entity shall submit a report to
22 the ~~Treasurer~~, Attorney General and the presiding officer of each
23 house of the Legislature, ~~and the Attorney General~~ stating the
24 reasons and justification for the delay in divestment by the state

1 governmental entity from listed financial companies. The report
2 shall include documentation supporting its determination that the
3 divestment would result in a loss in value, including transaction
4 costs, or a benchmark deviation described by paragraph 1 of
5 subsection F of this section including objective numerical
6 estimates. The state governmental entity shall update the report
7 every six (6) months to include an update on its delayed divestment
8 as part of the annual report required by Section 12004 of this
9 title.

10 E. ~~A state governmental entity is not required to divest from~~
11 ~~any indirect holdings in actively or passively managed investment~~
12 ~~funds or private equity funds.~~ The state governmental entity shall
13 submit letters to the managers of each investment fund containing
14 listed financial companies requesting that they remove those
15 financial companies from the fund or create a similar actively or
16 passively managed fund with indirect holdings devoid of listed
17 financial companies. If a manager creates a similar fund with
18 substantially the same management fees and same level of investment
19 risk and anticipated return, the state governmental 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 entity may cease divesting from one
2 or more listed financial companies only if clear and convincing
3 evidence shows that:

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

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

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

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

1 justification, ~~supported by clear and convincing evidence,~~ for
2 deciding to cease divestment or to remain invested in a listed
3 financial company. The state governmental entity shall include an
4 update to the report required by this subsection semiannually, as
5 applicable determination made under this subsection as part of the
6 annual report required by Section 12004 of this title.

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

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

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

18 I. The Attorney General shall promulgate rules to implement the
19 provisions of this section, including defining the process and
20 criteria for creating the list required in paragraph 1 of subsection
21 A of this section.

22 SECTION 3. AMENDATORY Section 4, Chapter 231, O.S.L.
23 2022 (74 O.S. Supp. 2024, Section 12004), is amended to read as
24 follows:

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,~~ Attorney General and the presiding officer of
4 each house of the Legislature, ~~and the Attorney General~~ that:

5 1. Identifies securities sold, redeemed, divested, or withdrawn
6 in compliance with subsection D of Section 3 of this act;

7 2. Identifies prohibited investments under subsection F of
8 Section 3 of this act; and

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

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

13 SECTION 4. AMENDATORY Section 5, Chapter 231, O.S.L.
14 2022 (74 O.S. Supp. 2024, Section 12005), is amended to read as
15 follows:

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

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

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

23 b. will pay a company One Hundred Thousand Dollars
24 (\$100,000.00) or more over the term of the contract

1 that is to be paid wholly or partly from public funds
2 of the governmental entity; provided, however, the
3 provisions of this paragraph shall apply separately to
4 all companies in a multiple party contract.

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

- 9 a. does not boycott energy companies, and
10 b. will not boycott energy companies during the term of
11 the contract.

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

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

- 17 a. a governmental entity that determines the requirements
18 of paragraphs 2 or 3 of this subsection are
19 inconsistent with the governmental entity's
20 constitutional or statutory duties ~~related to the~~
21 ~~issuance, incurrence, or management of debt~~
22 ~~obligations or the deposit, custody, management,~~
23 ~~borrowing, or investment of funds~~ or its fiduciary
24 responsibility, and

1 b. a contract for which a governmental ~~body~~ entity
2 determines the supplies or services to be provided are
3 not otherwise reasonably available from a company that
4 does not boycott energy companies or from a financial
5 company that is not a listed financial company under
6 Section 3 of this act, as applicable.

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

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

13 SECTION 5. REPEALER Section 6, Chapter 231, O.S.L. 2022
14 (74 O.S. Supp. 2024, Section 12006), is hereby repealed.

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

16 SECTION 7. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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