

1 **SENATE FLOOR VERSION**

2 April 14, 2022

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2034

By: McBride, O'Donnell, and
West (Kevin) of the House

6 and

7 Allen, David, and Bullard
8 of the Senate

9 An Act relating to state government; creating the
10 Energy Discrimination Elimination Act of 2022;
11 defining terms; exempting certain entities from
12 provisions of act due to statutory obligations;
13 providing indemnification for certain entities;
14 prohibiting certain persons and entities from
15 entering into a lawsuit with state or state
16 affiliate; providing any person entering a lawsuit
17 against state or state affiliate pursuant to this act
18 be subject to certain costs and fees; requiring State
19 Treasurer maintain list of certain financial
20 companies; establishing provisions for Treasurer
21 action pursuant to act; requiring written
22 verification be submitted by certain financial
23 companies; requiring written notice be provided to
24 certain financial companies; providing that certain
financial companies cease certain boycotts by certain
date; requiring sale, redemption, divestment, or
withdrawal of certain securities; establishing
schedule for sale, redemption, divestment, or
withdrawal of certain securities; establishing
limitations on divestment and divestment schedule;
requiring report to certain public officials upon
delay of divestment schedule; requiring report to
certain public officials upon decision to cease
divestment from certain financial company;
prohibiting acquisition of securities from certain
financial companies; providing for publishing of
report by state governmental entities to certain
public officials; requiring state governmental
entities to receive written verification from certain

1 companies before entrance into certain contracts;
2 providing for codification; and providing an
3 effective date.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 12001 of Title 74, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as the "Energy
9 Discrimination Elimination Act of 2022".

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 12002 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. As used in the Energy Discrimination Elimination Act of
14 2022:

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

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

1 b. does business with a company described by subparagraph
2 a of this paragraph;

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

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

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

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

16 6. "Indirect holdings" means, with respect to a financial
17 company, all securities of that financial company held in an account
18 or fund, such as a mutual fund, managed by one or more persons not
19 employed by a state governmental entity, in which the state
20 governmental entity owns shares or interests together with other
21 investors not subject to the provisions of this chapter. The term
22 does not include money invested under a plan described by Section
23 401(k) or 457 of the Internal Revenue Code of 1986;

1 7. "Listed financial company" means a financial company listed
2 by the Treasurer; and

3 8. "State governmental entity" means all state retirement
4 systems.

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

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

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

23 2. A contractor of a state governmental entity;

24

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 applies, an association, a research firm, a financial company,
12 or any other person shall not sue or pursue a private cause of
13 action against the state, a state governmental entity, a current or
14 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.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 12003 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

12 A. 1. The Treasurer shall prepare and maintain, and provide to
13 each state governmental entity, a list of financial companies that
14 boycott energy companies. In maintaining the list, the Treasurer
15 may:

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

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

1 conducting further investigation, research, or
2 inquiry, on a financial company's written response to
3 the request.

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

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

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

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

19 B. Not later than the thirtieth day after the date a state
20 governmental entity receives the list provided under paragraph 1 of
21 subsection A of this section, the state governmental entity shall
22 notify the Treasurer of the listed financial companies in which the
23 state governmental 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 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 entities
8 after the expiration of the period described by
9 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 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.

24

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

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 subsection D of this
12 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 or a benchmark deviation described by
18 paragraph 1 of subsection F of this section.

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

1 documentation supporting its determination that the divestment would
2 result in a loss in value or a benchmark deviation described by
3 paragraph 1 of subsection F of this section including objective
4 numerical estimates. The state governmental entity shall update the
5 report every six (6) months.

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

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

23 a. the state governmental entity has suffered or will
24 suffer a loss in the value of assets under management

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

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

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

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

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 12004 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

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

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

13 2. Identifies prohibited investments under subsection F of
14 Section 3 of this act; and

15 3. Summarizes any changes made under subsection E of Section 3
16 of this act.

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

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 12005 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

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

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 of this
21 act.

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, and

6 b. a contract for which a governmental body determines
7 the supplies or services to be provided are not
8 otherwise reasonably available from a company that is
9 not a listed financial company under Section 3 of this
10 act.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 12006 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 Section 5 of the Energy Discrimination Elimination Act of 2022
15 applies only to a contract entered into on or after the effective
16 date of this act. A contract entered into before that date is
17 governed by the law in effect on the date the contract was entered
18 into, and the former law is continued in effect for that purpose.

19 SECTION 7. This act shall become effective November 1, 2022.

20 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
21 April 14, 2022 - DO PASS AS AMENDED
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