

An Act

ENROLLED HOUSE
BILL NO. 2034

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

and

Allen, David, Bullard, and
Bergstrom of the Senate

An Act relating to state government; creating the Energy Discrimination Elimination Act of 2022; defining terms; exempting certain entities from provisions of act due to statutory obligations; providing indemnification for certain entities; prohibiting certain persons and entities from entering into a lawsuit with state or state affiliate; providing any person entering a lawsuit against state or state affiliate pursuant to this act be subject to certain costs and fees; requiring State Treasurer to maintain list of certain financial companies; establishing provisions for Treasurer action pursuant to act; requiring written verification be submitted by certain financial companies; requiring written notice be provided to 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 companies before entrance into certain contracts; providing for codification; and providing an effective date.

SUBJECT: State contracts

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

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

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

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

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

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

- a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or
- b. does business with a company described by subparagraph a of this paragraph;

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited

liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;

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

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

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

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

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

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

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

C. In a cause of action based on an action, inaction, decision, divestment, investment, financial company communication, report, or other determination made or taken in connection with the Energy Discrimination Elimination Act of 2022, the state shall indemnify

and hold harmless for actual damages, court costs, and attorney fees adjudged against, and defend:

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

2. A contractor of a state governmental entity;

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

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

5. A state governmental entity.

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

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

3. A state governmental entity shall not be subject to any requirement of this act if the state governmental entity determines that such requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets.

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

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

- a. review and rely, as appropriate in the Treasurer's judgment, on publicly available information regarding financial companies including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities, and
- b. request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the Treasurer's judgment and without conducting further investigation, research, or inquiry, on a financial company's written response to the request.

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

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

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

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

B. Not later than the thirtieth day after the date a state governmental entity receives the list provided under paragraph 1 of

subsection A of this section, the state governmental entity shall notify the Treasurer of the listed financial companies in which the state governmental entity owns direct holdings or indirect holdings.

C. 1. For each listed financial company identified under paragraph 1 of subsection A of this section, the state governmental 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, the Treasurer shall 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.

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

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

- a. at least fifty percent (50%) of those assets shall be removed from the state governmental entity's assets under management not later than the one-hundred-eightieth day after the date the financial company receives notice pursuant to paragraph 1 of subsection C of this section unless the state governmental entity determines, based on a good-faith exercise of its fiduciary discretion and subject to subparagraph b of this subsection, that a later date is more prudent, and
- b. one hundred percent (100%) of those assets shall be removed from the state governmental entity's assets under management not later than the three-hundred-sixtieth day after the date the financial company receives notice pursuant to paragraph 1 of subsection C of this section.

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

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

4. If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the Treasurer, the presiding officer of each house of the Legislature, and the Attorney General stating the reasons and justification for the delay in divestment by the state governmental entity from listed financial companies. The report shall include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by paragraph 1 of subsection F of this section including objective

numerical estimates. The state governmental entity shall update the report every six (6) months.

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

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

- a. the state governmental entity has suffered or will suffer a loss in the value of assets under management by the state governmental entity as a result of having to divest from listed financial companies under this subsection, or
- b. an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed financial companies under this subsection.

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

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

supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed financial company. The state governmental entity shall update the report required by this subsection semiannually, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. a governmental entity that determines the requirements of paragraphs 2 or 3 of this subsection are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds, and
- b. a contract for which a governmental body determines the supplies or services to be provided are not otherwise reasonably available from a company that is not a listed financial company under Section 3 of this act.

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

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

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

Passed the House of Representatives the 4th day of May, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____