

## FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1453 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_ Amendment submitted by: Mark Lepak \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

FLOOR SUBSTITUTE  
FOR ENGROSSED

SENATE BILL NO. 1453

By: Rosino of the Senate

and

Newton of the House

FLOOR SUBSTITUTE

An Act relating to state government; amending Sections 2, 3, 4 and 5, Chapter 231, O.S.L. 2022 (74 O.S. Supp. 2023, Sections 12002, 12003, 12004 and 12005), which relate to the Energy Discrimination Elimination Act of 2022; modifying definitions; modifying procedures with respect to funds managed by state governmental entities; providing for authority of Treasurer to make certain determinations; requiring notice procedures; requiring termination of contracts under certain conditions; prescribing conditions pursuant to which contract termination required; prescribing procedures for divestment; providing certain exceptions; prescribing reporting requirements with respect to timing of divestment; authorizing cessation of divestment process; prescribing procedures for state government entities with respect to cessation of divestment actions; prescribing standards for evaluation of certain financial companies; modifying reporting requirements; providing for reports to be submitted to certain public officials; 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. 2023, Section 12002), is amended to read as  
follows:

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

1. "Boycott ~~energy~~ targeted 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 timber,  
mining, agriculture, or 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;~~

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~~ "Divestment from  
5 certain funds" or "divest from certain funds" means removing all  
6 public money from any investments in funds that are held, managed,  
7 or advised by a listed financial company;

8       5. "Financial company" means a ~~publicly traded~~ company that is  
9 engaged in financial services, or banking, or that is an investment  
10 company;

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

19       ~~7.~~ 6. "Listed financial company" means a company that is a  
20 financial company and is listed by the Treasurer; and

21       ~~8.~~ 7. "State governmental entity" means all any state  
22 retirement systems system;

23       8. "Materially negative financial impact" means a materially  
24 negative financial impact on the state governmental entity,

1 including with respect to investment risk or returns. For goods or  
2 services related to investments, any increased fees or costs less  
3 than five-hundredths of one percent (0.05%) per year of the net  
4 asset value of the applicable state retirement system shall not  
5 constitute a materially negative financial impact. A state  
6 governmental entity's administrative costs shall not be included in  
7 any estimation of costs;

8 9. "Ordinary business purpose" means a purpose directly related  
9 to financial return or financial risk mitigation. It does not  
10 include any purpose to further environmental, social, political, or  
11 ideological interests. A company may reasonably be determined to  
12 have taken an action with a purpose to further environmental,  
13 social, political, or ideological interests based upon evidence  
14 indicating such a purpose, including, but not limited to:

- 15 a. prospectuses, statements, explanations, reports,  
16 communications with portfolio companies, shareholder  
17 votes by the company, or commitments, or  
18 b. participation in, affiliation with, or status as a  
19 signatory to, any coalition, initiative, joint  
20 statement of principles, or agreement, to act or to  
21 endeavor to act in furtherance of environmental,  
22 social, political, or ideological interests; and

23 10. "Public money" means all proceeds, assets, and income in  
24 the custody or under the management, administration, or control of

1 the State of Oklahoma or any state board, agency, commission, or  
2 instrumentality, or of a person acting on behalf of the state or any  
3 state board, agency, commission, or instrumentality, including, but  
4 not limited to, money held in trust or invested for a person other  
5 than the state and money held or invested by tax-qualified pension  
6 plans established pursuant to Section 401 et seq. of Title 26 of the  
7 federal Internal Revenue Code.

8       B. With respect to actions taken in compliance with the Energy  
9 Discrimination Elimination Act of 2022, including all good-faith  
10 determinations regarding financial companies as required by this  
11 act, a state governmental entity and the Treasurer are exempt from  
12 any conflicting statutory or common law obligations including any  
13 obligations with respect to making investments, ~~divesting~~ divestment  
14 from any investment, certain funds, terminating any contracts with  
15 financial companies, preparing or maintaining any list of financial  
16 companies, or choosing asset managers, investment funds, or  
17 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 and the Treasurer agrees, that clear and convincing evidence shows  
9 that such requirement would be lead to a materially negative  
10 financial impact inconsistent with its fiduciary responsibility with  
11 respect to the investment of entity assets or other duties imposed  
12 by law relating to the investment of entity assets.

13        SECTION 2.        AMENDATORY        Section 3, Chapter 231, O.S.L.  
14 2022 (74 O.S. Supp. 2023, Section 12003), is amended to read as  
15 follows:

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

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



1 international organizations, and governmental  
2 entities, and

3 b. request written verification from a financial company  
4 that it does not boycott ~~energy~~ targeted companies and  
5 rely, as appropriate in the Treasurer's judgment and  
6 without conducting further investigation, research, or  
7 inquiry, on a financial company's written response to  
8 the request.

9 2. A financial company that fails to provide to the Treasurer a  
10 written verification under subparagraph b of paragraph 1 of this  
11 subsection before the sixty-first day after receiving the request  
12 from the Treasurer ~~is~~ may be, as appropriate in the Treasurer's  
13 judgment, presumed to be boycotting ~~energy~~ targeted companies.

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

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

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

1 B. Not later than the thirtieth day after the date a state  
2 governmental entity receives the list provided under paragraph 1 of  
3 subsection A of this section, the state governmental entity shall  
4 notify the Treasurer of any contract the state governmental entity  
5 has with any of the listed financial companies ~~in which the state~~  
6 ~~governmental entity owns direct holdings or indirect holdings,~~ and  
7 of any funds in which the state governmental entity is invested that  
8 are held, managed, or advised by a listed financial company.

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

- 12 a. informing the financial company of its status as a  
13 listed financial company,
- 14 b. warning the financial company that it may become  
15 subject to contractual termination and divestment from  
16 certain funds by state governmental entities after the  
17 expiration of the period described by paragraph 2 of  
18 this subsection, and
- 19 c. offering the financial company the opportunity to  
20 clarify its activities related to companies described  
21 by paragraph 1 of subsection A of ~~this section~~ Section  
22 12002 of this title.

23 2. Not later than the ninetieth day after the date the  
24 financial company receives notice under paragraph 1 of this

1 subsection, the financial company shall cease boycotting ~~energy~~  
2 targeted companies to avoid qualifying for contractual termination  
3 and divestment from certain funds by state governmental entities.

4 3. If, during the time provided by paragraph 2 of this  
5 subsection, the financial company ceases boycotting ~~energy~~ targeted  
6 companies, and notifies the Treasurer in writing of the cessation,  
7 the Treasurer shall, as appropriate in the Treasurer's judgment,  
8 remove the financial company from the list maintained under  
9 paragraph 1 of subsection A of this section, and this subsection  
10 will no longer apply to the financial company unless it resumes  
11 boycotting ~~energy~~ targeted companies. The Treasurer also shall  
12 notify any state governmental entities who provided notice pursuant  
13 to subsection B of this section of the financial company's removal  
14 from the list.

15 4. If, after the time provided by paragraph 2 of this  
16 subsection expires, ~~the financial company continues to boycott~~  
17 ~~energy companies,~~ the state governmental entity has not received  
18 confirmation from the Treasurer that the financial company has been  
19 removed from the list, the state governmental entity shall sell,  
20 ~~redeem, divest, or withdraw all publicly traded securities of the~~  
21 ~~financial company, except securities described by subsection E of~~  
22 ~~this section,~~ terminate any contract with the listed financial  
23 company and divest from certain funds according to the schedule  
24 provided under subsection D of this section.

1 D. 1. A state governmental entity required to ~~sell, redeem,~~  
2 ~~divest, or withdraw all publicly traded securities of a listed~~  
3 ~~financial company~~ terminate any contract with a listed financial  
4 company or divest from certain funds shall comply with the following  
5 schedule:

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

17 b. one hundred percent (100%) of ~~those assets shall be~~  
18 ~~removed from the state governmental entity's assets~~  
19 ~~under management~~ divestment from certain funds shall  
20 occur, and any contract with a listed financial  
21 company shall be terminated not later than the three-  
22 hundred-sixtieth day after the date the financial  
23 company receives notice pursuant to paragraph 1 of  
24 subsection C of this section.

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

11        3. ~~Except as provided by paragraph 1 of subsection D of this~~  
12 ~~section, a~~ A state governmental entity may delay the schedule for  
13 contractual termination and divestment from certain funds under ~~that~~  
14 this subsection only to the extent that the state governmental  
15 entity determines, in the state governmental entity's good-faith  
16 judgment, and consistent with the entity's fiduciary duty, that the  
17 contractual termination or divestment from ~~listed financial~~  
18 ~~companies will likely result in a loss in value or a benchmark~~  
19 ~~deviation described by paragraph 1 of subsection F of this section~~  
20 certain funds would result in the selection of a replacement  
21 financial company that would have a materially negative financial  
22 impact.

23        4. If a state governmental entity delays the schedule for  
24 contractual termination or divestment from certain funds, the state

1 governmental entity shall submit a report to the Treasurer,~~the~~  
2 ~~presiding officer of each house of the Legislature, and the Attorney~~  
3 ~~General~~ stating the reasons and justification for the delay in  
4 contractual termination or divestment from certain funds by the  
5 state governmental entity from listed financial companies. The  
6 report shall include documentation supporting its determination that  
7 ~~the divestment would result in a loss in value or a benchmark~~  
8 ~~deviation described by paragraph 1 of subsection F of this section~~  
9 ~~including objective numerical estimates~~ contractual termination or  
10 divestment from certain funds would result in the selection of a  
11 replacement financial company that would have a materially negative  
12 financial impact. The state governmental entity shall update the  
13 report every six (6) months until the divestment from certain funds  
14 has been completed, and provide the report every six (6) months to  
15 the Treasurer. The Treasurer shall evaluate any reports provided  
16 under this paragraph within a reasonable time and provide a copy of  
17 the report and the Treasurer's evaluation to the presiding officer  
18 of each house of the Legislature and the Attorney General.

19 E. A state governmental entity is not required to divest from  
20 any indirect holdings in actively or passively managed investment  
21 funds or private equity funds. The state governmental entity shall  
22 submit letters to the managers of each investment fund containing  
23 listed financial companies requesting that they remove those  
24 financial companies from the fund or create a similar actively or

1 passively managed fund with indirect holdings devoid of listed  
2 financial companies. If a manager creates a similar fund with  
3 substantially the same management fees and same level of investment  
4 risk and anticipated return, the state governmental entity may  
5 replace all applicable investments with investments in the similar  
6 fund in a time frame consistent with prudent fiduciary standards but  
7 not later than the four-hundred-fiftieth day after the date the fund  
8 is created.

9 F. 1. A state governmental entity may cease terminating any  
10 contracts with and divesting from certain funds of one or more  
11 listed financial companies only if clear and convincing evidence  
12 shows that:

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

23 the requirements of subsection D of this section would require the  
24 selection of a company that would have a materially negative

1 financial impact, provided that the state governmental entity  
2 complies with the following requirements:

- 3       a. documents its determination, along with evidence  
4       supporting its determination, including a description  
5       of the services of at least three alternative  
6       companies consulted that includes a comparison of  
7       those alternatives and a description of whether those  
8       alternatives boycott targeted companies,
- 9       b. includes such documentation and evidence in its  
10      minutes or other publicly available medium,
- 11      c. publicly posts a permanent notice seeking a company  
12      that would not boycott targeted companies, and
- 13      d. limits the contract duration to no more than a year  
14      and re-evaluates its determination at least annually  
15      pursuant to requirements a through c of this  
16      paragraph.

17       2. A state governmental entity may cease terminating any  
18 contracts with a listed financial company and divesting from certain  
19 funds held, managed, or advised by a listed financial company as  
20 provided by this section only to the extent necessary to ~~ensure that~~  
21 ~~the state governmental entity does not suffer a loss in value or~~  
22 ~~deviate from its benchmark as described by paragraph 1 of this~~  
23 ~~subsection~~ avoid the selection of a company that would have a  
24 materially negative impact.



1        3. Before a state governmental entity may cease terminating any  
2 contracts with a listed financial company and divesting from certain  
3 funds of a listed financial company under this section, the state  
4 governmental entity shall provide a written report to the Treasurer,  
5 ~~the presiding officer of each house of the Legislature, and the~~  
6 ~~Attorney General~~ setting forth the reason and justification,  
7 supported by clear and convincing evidence, for deciding to cease  
8 divestment from certain funds or to remain invested in a listed  
9 financial company. The Treasurer shall evaluate the report within a  
10 reasonable time and provide a copy of the report and the Treasurer's  
11 evaluation to the presiding officer of each house of the Legislature  
12 and the Attorney General. The state governmental entity shall  
13 update the report required by this subsection semiannually, as  
14 applicable.

15        4. ~~This section does not apply to reinvestment in a financial~~  
16 ~~company that is no longer a listed financial company~~ If a financial  
17 company was once a listed financial company but is no longer a  
18 listed financial company, it shall not be considered a listed  
19 financial company for the purposes of this section.

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

1       SECTION 3.       AMENDATORY       Section 4, Chapter 231, O.S.L.  
2 2022 (74 O.S. Supp. 2023, Section 12004), is amended to read as  
3 follows:

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

8       1. Identifies ~~securities sold, redeemed, divested, or withdrawn~~  
9 any contracts terminated and any divestment from certain funds made  
10 in compliance with subsection D of Section ~~3~~ 12003 of this ~~act~~  
11 title; and

12       2. Identifies prohibited contracts or investments under  
13 subsection ~~F~~ E of Section ~~3~~ 12003 of this ~~act; and~~

14       ~~3. Summarizes any changes made under subsection E of Section 3~~  
15 ~~of this act~~ title.

16       The Treasurer shall evaluate any reports provided under this  
17 section within a reasonable time and provide a copy of the report  
18 and the Treasurer's evaluation to the presiding officer of each  
19 house of the Legislature and the Attorney General.

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

22       SECTION 4.       AMENDATORY       Section 5, Chapter 231, O.S.L.  
23 2022 (74 O.S. Supp. 2023, Section 12005), is amended to read as  
24 follows:

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

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

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

8 b. will pay a company One Hundred Thousand Dollars  
9 (\$100,000.00) or more over the term of the contract  
10 that is to be paid wholly or partly from public funds  
11 of the governmental entity; provided, however, the  
12 provisions of this paragraph shall apply separately to  
13 all companies in a multiple party contract.

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

18 a. does not boycott ~~energy~~ targeted companies, and

19 b. will not boycott ~~energy~~ targeted companies during the  
20 term of the contract, including any extensions of the  
21 contract.

22 3. Except as provided by paragraph 4 of this subsection, a  
23 governmental entity shall not enter into, renew, amend, or remain a  
24

1 party to a contract for goods or services with a listed financial  
2 company under Section ~~3~~ 12003 of this ~~act~~ title.

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

4 a. a governmental entity that determines the requirements  
5 of paragraphs 2 or 3 of this subsection are  
6 inconsistent with the governmental entity's  
7 constitutional or statutory duties related to the  
8 issuance, incurrence, or management of debt  
9 obligations or the deposit, custody, management,  
10 borrowing, or investment of funds, and

11 b. a contract for which a governmental ~~body~~ entity  
12 determines that clear and convincing evidence shows  
13 under those paragraphs the supplies or services to be  
14 provided are not otherwise reasonably available from a  
15 company that is not a listed financial company under  
16 Section ~~3~~ 12003 of this ~~act~~ title.

17 Any governmental entity making such a determination under  
18 subparagraph a or b of this paragraph must comply with the  
19 requirements for state governmental entities under paragraph 1 of  
20 subsection E of Section 12003 of this title.

21 SECTION 5. It being immediately necessary for the preservation  
22 of the public peace, health or safety, an emergency is hereby  
23  
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.

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4 59-2-11046 MAH 04/23/24

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