

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3720 _____
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: Terry ODonnell

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3720

By: O'Donnell

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to local government investments;
9 amending Section 2, Chapter 231, O.S.L. 2022 (74 O.S.
10 Supp. 2023, Section 12002), which relates to
11 definitions, exemptions, indemnification, and private
12 causes of action related to the Energy Discrimination
13 Elimination Act of 2022; providing definition;
14 extending applicability of section to local
15 governmental entities; establishing that local
16 governmental entities shall not be subject to certain
17 requirements after certain determinations; amending
18 Section 3, Chapter 231, O.S.L. 2022 (74 O.S. Supp.
19 2023, Section 12003), which relates to list of
20 financial companies prepared by Treasurer; directing
21 local governmental entities be provided list;
22 directing local governmental entities to make certain
23 notifications; directing local government entities to
24 sell, redeem, divest, or withdraw all publicly traded
securities of certain financial companies; requiring
compliance with schedule; permitting certain delays;
permitting certain indirect holdings; allowing local
governmental entities to cease divesting under
certain circumstances; amending Section 4, Chapter
231, O.S.L. 2022 (74 O.S. Supp. 2023, Section 12004),
which relates to annual publicly available report by
government entities; requiring local governmental
entities file certain report; modifying citations;
and providing an effective date.

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

1 SECTION 1. AMENDATORY Section 2, Chapter 231, O.S.L.
2 2022 (74 O.S. Supp. 2023, Section 12002), is amended to read as
3 follows:

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

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

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

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

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

24 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;

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

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

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

17 8. "Local governmental entity" means any political subdivision
18 in the state of Oklahoma including any county or municipal
19 government; and

20 9. "State governmental entity" means all state retirement
21 systems.

22 B. With respect to actions taken in compliance with the Energy
23 Discrimination Elimination Act of 2022, including all good-faith
24 determinations regarding financial companies as required by this

1 act, a state governmental entity, local governmental entity, and the
2 Treasurer are exempt from any conflicting statutory or common law
3 obligations including any obligations with respect to making
4 investments, divesting from any investment, preparing or maintaining
5 any list of financial companies, or choosing asset managers,
6 investment funds, or investments for the state governmental entity's
7 or local governmental entity's securities portfolios.

8 C. In a cause of action based on an action, inaction, decision,
9 divestment, investment, financial company communication, report, or
10 other determination made or taken in connection with the Energy
11 Discrimination Elimination Act of 2022, the state shall indemnify
12 and hold harmless for actual damages, court costs, and attorney fees
13 adjudged against, and defend:

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

16 2. A contractor of a state governmental entity or local
17 governmental entity;

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

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

4 5. A state governmental entity; and

5 6. A local governmental entity.

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

20 2. A person who files suit against the state, a state
21 governmental entity, a local governmental entity, an employee, a
22 member of the governing body, or any other officer of a state
23 governmental entity or a local governmental entity, or a contractor
24 of a state governmental entity or a local governmental entity, is

1 liable for paying the costs and attorney fees of a person sued in
2 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 4. A local governmental entity shall not be subject to any
10 requirement of this act if the local governmental entity determines
11 that such requirement would be inconsistent with its fiduciary
12 responsibility with respect to the investment of entity assets or
13 other duties imposed by law relating to the investment of entity
14 assets.

15 SECTION 2. AMENDATORY Section 3, Chapter 231, O.S.L.
16 2022 (74 O.S. Supp. 2023, Section 12003), is amended to read as
17 follows:

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

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

1 the state, nonprofit organizations, research firms,
2 international organizations, and governmental
3 entities, and

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

10 2. A financial company that fails to provide to the Treasurer a
11 written verification under subparagraph b of paragraph 1 of this
12 subsection before the sixty-first day after receiving the request
13 from the Treasurer is presumed to be boycotting energy 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 companies is first provided
20 or updated, the Treasurer shall file the list with the presiding
21 officer of each house of the Legislature and the Attorney General
22 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 or local governmental entity receives the list
3 provided under paragraph 1 of subsection A of this section, the
4 state governmental entity or local governmental entity shall notify
5 the Treasurer of the listed financial companies in which the state
6 governmental entity or local governmental entity owns direct
7 holdings or indirect holdings.

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

- 11 a. informing the financial company of its status as a
12 listed financial company,
- 13 b. warning the financial company that it may become
14 subject to divestment by state governmental entities
15 or local governmental entities after the expiration of
16 the period described by paragraph 2 of this
17 subsection, and
- 18 c. offering the financial company the opportunity to
19 clarify its activities related to companies described
20 by paragraph 1 of subsection A of this section.

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

3 3. If, during the time provided by paragraph 2 of this
4 subsection, the financial company ceases boycotting energy
5 companies, the Treasurer shall remove the financial company from the
6 list maintained under paragraph 1 of subsection A of this section,
7 and this subsection will no longer apply to the financial company
8 unless it resumes boycotting energy companies.

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

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

20 a. at least fifty percent (50%) of those assets shall be
21 removed from the state governmental entity's or local
22 governmental entity's assets under management not
23 later than the one-hundred-eightieth day after the
24 date the financial company receives notice pursuant to

1 paragraph 1 of subsection C of this section unless the
2 state governmental entity determines, based on a good-
3 faith exercise of its fiduciary discretion and subject
4 to subparagraph b of this subsection, that a later
5 date is more prudent, and

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

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

20 3. Except as provided by paragraph 1 of subsection D of this
21 section, a state governmental entity or local governmental entity
22 may delay the schedule for divestment under that subsection only to
23 the extent that the state governmental entity or local governmental
24 entity determines, in the state governmental entity's or local

1 governmental entity's good-faith judgment, and consistent with the
2 entity's fiduciary duty, that divestment from listed financial
3 companies will likely result in a loss in value or a benchmark
4 deviation described by paragraph 1 of subsection F of this section.

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

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

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

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

11 a. the state governmental entity or local governmental
12 entity has suffered or will suffer a loss in the value
13 of assets under management by the state governmental
14 entity or local governmental entity as a result of
15 having to divest from listed financial companies under
16 this subsection, or

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

22 2. A state governmental entity or local governmental entity may
23 cease divesting from a listed financial company as provided by this
24 section only to the extent necessary to ensure that the state

1 governmental entity or local governmental entity does not suffer a
2 loss in value or deviate from its benchmark as described by
3 paragraph 1 of this subsection.

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

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

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

19 SECTION 3. AMENDATORY Section 4, Chapter 231, O.S.L.
20 2022 (74 O.S. Supp. 2023, Section 12004), is amended to read as
21 follows:

22 Section 12004. A. Not later than January 1 of each year, each
23 state governmental entity or local governmental entity shall file a
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1 publicly available report with the Treasurer, the presiding officer
2 of each house of the Legislature, and the Attorney General that:

3 1. Identifies securities sold, redeemed, divested, or withdrawn
4 in compliance with subsection D of Section ~~3 of this act~~ 12003 of
5 Title 74;

6 2. Identifies prohibited investments under subsection F of
7 Section ~~3 of this act~~ 12003 of Title 74; and

8 3. Summarizes any changes made under subsection E of Section ~~3~~
9 ~~of this act~~ 12003 of Title 74.

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

12 SECTION 4. This act shall become effective November 1, 2024.

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