

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1572

By: Bergstrom

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5  
6 AS INTRODUCED

7 An Act relating to state government; creating the  
8 Energy Discrimination Elimination Act of 2022;  
9 defining terms; exempting certain entities from  
10 provisions of act due to statutory obligations;  
11 providing indemnification for certain entities;  
12 prohibiting certain persons and entities from  
13 entering into a lawsuit with state or state  
14 affiliate; providing any person entering a lawsuit  
15 against state or state affiliate pursuant to this act  
16 be subject to certain costs and fees; requiring  
17 comptroller maintain list of certain financial  
18 companies; establishing provisions for comptroller  
19 action pursuant to act; requiring written  
20 verification be submitted by certain financial  
21 companies; requiring written notice be provided to  
22 certain financial companies; providing that certain  
23 financial companies cease certain boycotts by certain  
24 date; requiring sale, redemption, divestment, or  
25 withdrawal of certain securities; establishing  
26 schedule for sale, redemption, divestment, or  
27 withdrawal of certain securities; establishing  
28 limitations on divestment and divestment schedule;  
29 requiring report to certain public officials upon  
30 delay of divestment schedule; requiring report to  
31 certain public officials upon decision to cease  
32 divestment from certain financial company;  
33 prohibiting acquisition of securities from certain  
34 financial companies; providing for publishing of  
35 report by state governmental entities to certain  
36 public officials; requiring state governmental  
37 entities to receive written verification from certain  
38 companies before entrance into certain contracts;  
39 providing for codification; and providing an  
40 effective date.

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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:

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;

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

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

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

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

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

22          7. "Listed financial company" means a financial company listed  
23 by the comptroller; and

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

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

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

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

21 2. A contractor of a state governmental entity;

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

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

6 5. A state governmental entity.

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

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

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

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

8                   a. review and rely, as appropriate in the comptroller's  
9 judgment, on publicly available information regarding  
10 financial companies including information provided by  
11 the state, nonprofit organizations, research firms,  
12 international organizations, and governmental  
13 entities, and

14                   b. request written verification from a financial company  
15 that it does not boycott energy companies and rely, as  
16 appropriate in the comptroller's judgment and without  
17 conducting further investigation, research, or  
18 inquiry, on a financial company's written response to  
19 the request.

20           2. A financial company that fails to provide to the comptroller  
21 a written verification under subparagraph b of paragraph 1 of this  
22 subsection before the sixty-first day after receiving the request  
23 from the comptroller is presumed to be boycotting energy companies.  
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1           3. The comptroller shall update the list annually or more often  
2 as the comptroller considers necessary, but not more often than  
3 quarterly, based on information from, among other sources, those  
4 listed in subparagraph a of paragraph 1 of this subsection.

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

10           B. Not later than the thirtieth day after the date a state  
11 governmental entity receives the list provided under paragraph 1 of  
12 subsection A of this section, the state governmental entity shall  
13 notify the comptroller of the listed financial companies in which  
14 the state governmental entity owns direct holdings or indirect  
15 holdings.

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

19               a. informing the financial company of its status as a  
20               listed financial company,

21               b. warning the financial company that it may become  
22               subject to divestment by state governmental entities  
23               after the expiration of the period described by  
24               paragraph 2 of this subsection, and

1 c. offering the financial company the opportunity to  
2 clarify its activities related to companies described  
3 by paragraph 1 of subsection A of this section.

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

9 3. If, during the time provided by paragraph 2 of this  
10 subsection, the financial company ceases boycotting energy  
11 companies, the comptroller shall remove the financial company from  
12 the list maintained under paragraph 1 of subsection A of this  
13 section, and this subsection will no longer apply to the financial  
14 company unless it resumes boycotting energy companies.

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 shall sell, redeem,  
18 divest, or withdraw all publicly traded securities of the financial  
19 company, except securities described by subsection E of this  
20 section, according to the schedule provided under subsection D of  
21 this section.

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



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

11 b. One hundred percent (100%) of those assets shall be  
12 removed from the state governmental entity's assets  
13 under management not later than the three-hundred-  
14 sixtieth day after the date the financial company  
15 receives notice pursuant to paragraph 1 of subsection  
16 C of this section.

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

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

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

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  
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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 divesting from one  
10 or more listed financial companies only if clear and convincing  
11 evidence shows that:

- 12 a. the state governmental entity has suffered or will  
13 suffer a loss in the hypothetical value of all assets  
14 under management by the state governmental entity as a  
15 result of having to divest from listed financial  
16 companies under 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 may cease divesting from a  
23 listed financial company as provided by this section only to the  
24 extent necessary to ensure that the state governmental entity does  
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1 not suffer a loss in value or deviate from its benchmark as  
2 described by paragraph 1 of this subsection.

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

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

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

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

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

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

3 2. Identifies all prohibited investments under subsection G of  
4 Section 3 of this act; and

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

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

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

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

15 B. 1. Except for paragraph 3 of this subsection, this section  
16 applies only to a contract that:

17 a. is between a governmental entity and a company with

18 ten (10) or more full-time employees, and

19 b. has a value of One Hundred Thousand Dollars

20 (\$100,000.00) or more that is to be paid wholly or

21 partly from public funds of the governmental entity.

22 2. Except as provided by paragraph 3 of this subsection, a  
23 governmental entity shall not enter into a contract with a company  
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1 for goods or services unless the contract contains a written  
2 verification from the company that it:

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

6 3. Paragraph 2 of this subsection shall not apply to a  
7 governmental entity that determines the requirements of paragraph 2  
8 of this subsection are inconsistent with the governmental entity's  
9 constitutional or statutory duties related to the issuance,  
10 incurrence, or management of debt obligations or the deposit,  
11 custody, management, borrowing, or investment of funds.

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

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

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

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