

SENATE BILL No. 518

By Committee on Assessment and Taxation

2-16

1 AN ACT concerning state agencies; relating to contracts and investments;
2 enacting the Kansas reliable energy investment protection act; requiring
3 the board of trustees of the Kansas public employees retirement system
4 to divest from investments with entities that boycott energy companies;
5 establishing conditions and procedures for divestment; prohibiting state
6 contracts without written verification that a company is not boycotting
7 energy companies.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) The provisions of sections 1 through 14, and
11 amendments thereto, shall be known and may be cited as the Kansas
12 reliable energy investment protection act.

13 (b) As used in the Kansas reliable energy investment protection act:

14 (1) "Act" means the Kansas reliable energy investment protection act;

15 (2) "board" means the board of trustees of the Kansas public
16 employees retirement system;

17 (3) "boycott energy company" means, without an ordinary business
18 purpose, refusing to deal with, terminating business activities with or
19 otherwise taking any action that is intended to penalize, inflict economic
20 harm on or limit commercial relations with a company because the
21 company:

22 (A) Engages in the exploration, production, utilization, transportation,
23 sale or manufacturing of fossil fuel-based energy and does not commit or
24 pledge to meet environmental standards beyond applicable federal and
25 state law; or

26 (B) does business with a company described by paragraph (A);

27 (4) "company" means a for-profit sole proprietorship, organization,
28 association, corporation, partnership, joint venture, limited partnership,
29 limited liability partnership or limited liability company, including a
30 wholly owned subsidiary, majority-owned subsidiary, parent company or
31 affiliate of such entities or business associations, that exists to make a
32 profit;

33 (5) "direct holdings" means, with respect to a financial company, all
34 securities of that financial company held directly by the system in an
35 account or fund in which the system owns all shares or interests;

36 (6) "financial company" means a publicly traded financial services,

1 banking or investment company;

2 (7) "indirect holdings" means, with respect to a financial company, all
3 securities of that financial company held in an account or fund, such as a
4 mutual fund, managed by one or more persons not employed by the
5 system, in which the system owns shares or interests together with other
6 investors not subject to the provisions of this act. The term does not
7 include money invested under a plan described by sections 401(k) or 457
8 of the federal internal revenue code;

9 (8) "listed financial company" means a financial company listed by
10 the state treasurer under section 7, and amendments thereto; and

11 (9) "system" means the Kansas public employees retirement system.

12 Sec. 2. With respect to actions taken in compliance with this act,
13 including all good faith determinations regarding financial companies as
14 required by this act, the board and the state treasurer are exempt from any
15 conflicting statutory or common law obligations, including any obligations
16 with respect to making investments, divesting from any investment,
17 preparing or maintaining any list of financial companies or choosing asset
18 managers, investment funds or investments for the system's securities
19 portfolios.

20 Sec. 3. In a cause of action based on an action, inaction, decision,
21 divestment, investment, financial company communication, report or other
22 determination made or taken in connection with this act, without regard to
23 whether the person performed services for compensation, the state shall
24 indemnify and hold harmless for actual damages, court costs and attorney
25 fees adjudged against, and defend:

26 (a) An employee, a member of the board or any other officer of the
27 system;

28 (b) a contractor of the system;

29 (c) a former employee, a former member of the board or any other
30 former officer of the system who was an employee, member of the board
31 or other officer when the act or omission on which the damages are based
32 occurred;

33 (d) a former contractor of the system who was a contractor when the
34 act or omission on which the damages are based occurred; and

35 (e) the system.

36 Sec. 4. (a) A person, including a member, retiree or beneficiary of the
37 system, an association, a research firm, a financial company or any other
38 person may not sue or pursue a private cause of action against the state, the
39 system, a current or former employee, a member of the board or any other
40 officer of the system or a contractor of the system, for any claim or cause
41 of action, including breach of fiduciary duty, or for violation of any
42 constitutional, statutory or regulatory requirement in connection with any
43 action, inaction, decision, divestment, investment, financial company

1 communication, report or other determination made or taken in connection
2 with this act.

3 (b) A person who files suit against the state, the system, an employee,
4 a member of the board or any other officer of the system, or a contractor of
5 the system, is liable for paying the costs and attorney fees of a person sued
6 in violation of this section.

7 Sec. 5. The board is not subject to any requirement of this act if the
8 board determines that such requirement would be inconsistent with the
9 board's fiduciary responsibility with respect to the investment of system
10 assets or other duties imposed by law relating to the investment of system
11 assets, including, but not limited to, K.S.A. 74-4921, and amendments
12 thereto.

13 Sec. 6. The state treasurer and the board may rely on a financial
14 company's response to a notice or communication made under this act
15 without conducting any further investigation, research or inquiry.

16 Sec. 7. (a) The state treasurer shall prepare, maintain and provide to
17 the board a list of all financial companies that boycott energy companies.
18 In maintaining the list, the state treasurer may:

19 (1) Review and rely on publicly available information regarding
20 financial companies, as appropriate in the state treasurer's judgment,
21 including information provided by the state, nonprofit organizations,
22 research firms, international organizations and governmental entities; and

23 (2) request written verification from a financial company that such
24 company does not boycott energy companies and rely on a financial
25 company's written response to the request as appropriate in the state
26 treasurer's judgment and without conducting further investigation, research
27 or inquiry.

28 (b) A financial company that fails to provide to the state treasurer a
29 written verification under subsection (a)(2) before the 61st day after
30 receiving the request from the state treasurer is presumed to be boycotting
31 energy companies.

32 (c) The state treasurer shall update the list annually or more often as
33 the state treasurer considers necessary, but not more often than quarterly,
34 based on information from those listed in subsection (a), among other
35 sources.

36 (d) Not later than the 30th day after the date the list of financial
37 companies that boycott energy companies is first provided or updated, the
38 state treasurer shall file the list with the president of the senate, the speaker
39 of the house of representatives and the attorney general and post the list on
40 a publicly available website.

41 Sec. 8. Not later than the 30th day after the date the board receives the
42 list provided under section 7, and amendments thereto, the board shall
43 notify the state treasurer of the listed financial companies in which the

1 system owns direct holdings or indirect holdings.

2 Sec. 9. (a) For each listed financial company identified under section
3 8, and amendments thereto, the board shall send a written notice:

4 (1) Informing the financial company of its status as a listed financial
5 company;

6 (2) warning the financial company that it may become subject to
7 divestment by the board after the expiration of the period described by
8 subsection (b); and

9 (3) offering the financial company the opportunity to clarify its
10 activities related to companies described by section 1(b)(3), and
11 amendments thereto.

12 (b) Not later than the 90th day after the date the financial company
13 receives notice under subsection (a), the financial company must cease
14 boycotting energy companies in order to avoid qualifying for divestment
15 by the board.

16 (c) If, during the time provided by subsection (b), the financial
17 company ceases boycotting energy companies, the state treasurer shall
18 remove the financial company from the list maintained under section 7,
19 and amendments thereto. In which case, the provisions of this act shall no
20 longer apply to such financial company unless such financial company
21 resumes boycotting energy companies.

22 (d) If, after the time provided by subsection (b) expires, the financial
23 company continues to boycott energy companies, the board shall sell,
24 redeem, divest or withdraw all publicly traded securities of the financial
25 company, except securities described by section 11, and amendments
26 thereto, according to the schedule provided by section 10, and
27 amendments thereto.

28 Sec. 10. (a) When the board is required to sell, redeem, divest or
29 withdraw all publicly traded securities of a listed financial company, the
30 board shall comply with the following schedule:

31 (1) At least 50% of those assets shall be removed from the system's
32 assets under management not later than the 180th day after the date the
33 financial company receives notice under section 9, and amendments
34 thereto, or subsection (b) unless the board determines that a later date is
35 more prudent, based on a good faith exercise of the board's fiduciary
36 discretion and subject to paragraph (2); and

37 (2) 100% of such assets shall be removed from the system's assets
38 under management not later than the 360th day after the date the financial
39 company receives notice under section 9, and amendments thereto, or
40 subsection (b).

41 (b) If a financial company that ceased boycotting energy companies
42 after receiving notice under section 9, and amendments thereto, resumes
43 such financial company's boycott, the board shall send a written notice to

1 the financial company informing such financial company that the board
2 will sell, redeem, divest or withdraw all publicly traded securities of the
3 financial company according to the schedule in subsection (a).

4 (c) Except as provided by subsection (a), the board may delay the
5 schedule for divestment under such subsection only to the extent that the
6 board determines, in the board's good faith judgment and consistent with
7 the board's fiduciary duty, that divestment from listed financial companies
8 will likely result in a loss in value or a benchmark deviation described by
9 section 12(b), and amendments thereto. If the board delays the schedule
10 for divestment, the board shall submit a report to the president of the
11 senate, the speaker of the house of representatives and the attorney general
12 stating the reasons and justification for the board's delay in divestment
13 from listed financial companies. The report shall include documentation
14 supporting the board's determination that the divestment would result in a
15 loss in value or a benchmark deviation described by section 12(b), and
16 amendments thereto, including objective numerical estimates. The board
17 shall update the report every six months.

18 Sec. 11. The board is not required to divest from any indirect
19 holdings in actively or passively managed investment funds or private
20 equity funds. The board shall submit letters to the managers of each
21 investment fund containing listed financial companies requesting that they
22 remove such financial companies from the fund or create a similar actively
23 or passively managed fund with indirect holdings devoid of listed financial
24 companies. If a manager creates a similar fund with substantially the same
25 management fees and same level of investment risk and anticipated return,
26 the board may replace all applicable investments with investments in the
27 similar fund in a time frame consistent with prudent fiduciary standards
28 but not later than the 450th day after the date the fund is created.

29 Sec. 12. (a) Except as provided by this section, the system may not
30 acquire securities of a listed financial company.

31 (b) The board may cease divesting from one or more listed financial
32 companies only if clear and convincing evidence shows that:

33 (1) The system has suffered or will suffer a loss in the hypothetical
34 value of all assets under management by the system as a result of having to
35 divest from listed financial companies under this act; or

36 (2) an individual portfolio that uses a benchmark-aware strategy
37 would be subject to an aggregate expected deviation from its benchmark as
38 a result of having to divest from listed financial companies under this act.

39 (c) The board may cease divesting from a listed financial company as
40 provided by this section only to the extent necessary to ensure that the
41 system does not suffer a loss in value or deviate from its benchmark as
42 described by subsection (b).

43 (d) Before the board may cease divesting from a listed financial

1 company under this section, the board shall provide a written report to the
2 state treasurer, the president of the senate, the speaker of the house of
3 representatives and the attorney general stating the reason and
4 justification, supported by clear and convincing evidence, for deciding to
5 cease divestment or to remain invested in a listed financial company.

6 (e) The board shall update the report required by subsection (d)
7 semiannually, as applicable.

8 (f) This section does not apply to reinvestment in a financial company
9 that is no longer a listed financial company.

10 Sec. 13. Not later than the first day of the regular session of the
11 legislature, each year, the board shall file a publicly available report with
12 the president of the senate, the speaker of the house of representatives and
13 the attorney general that:

14 (a) Identifies all securities sold, redeemed, divested, or withdrawn in
15 compliance with section 10, and amendments thereto;

16 (b) identifies all prohibited investments under section 12, and
17 amendments thereto; and

18 (c) summarizes any changes made under section 11, and amendments
19 thereto.

20 Sec. 14. The attorney general may bring any action necessary to
21 enforce the provisions of this act.

22 Sec. 15. (a) For the purpose of this section:

23 (1) "Boycott energy company" means the same as in section 1, and
24 amendments thereto;

25 (2) "company" means the same as in section 1, and amendments
26 thereto, except that "company" does not include a sole proprietorship; and

27 (3) "state agency" means the same as in K.S.A. 75-3701, and
28 amendments thereto.

29 (b) This section applies only to a contract that:

30 (1) Is between a state agency and a company with 10 or more full-
31 time employees; and

32 (2) has a value of \$100,000 or more that is to be paid wholly or partly
33 from public funds of the state agency.

34 (c) Except as provided by subsection (d), a state agency shall not
35 enter into a contract with a company for goods or services unless the
36 contract contains a written verification from the company that the
37 company:

38 (1) Does not boycott energy companies; and

39 (2) will not boycott energy companies during the term of the contract.

40 (d) Subsection (c) shall not apply to a state agency that determines
41 that the requirements of subsection (c) are inconsistent with the state
42 agency's constitutional or statutory duties related to the issuance,
43 incurrence or management of debt obligations or the deposit, custody,

1 management, borrowing or investment of funds.

2 (e) This section applies only to a contract entered into on or after July
3 1, 2022. A contract entered into before such date is governed by the law in
4 effect on the date the contract was entered into, and the former law is
5 continued in effect for that purpose.

6 Sec. 16. This act shall take effect and be in force from and after its
7 publication in the statute book.