

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 737

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO STATE GOVERNMENT AND STATE AFFAIRS; AMENDING CHAPTER 23, TI-
2 TLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2347, IDAHO
3 CODE, TO PROHIBIT CONTRACTS WITH COMPANIES THAT BOYCOTT MINING, ENERGY
4 PRODUCTION, PRODUCTION AGRICULTURE, OR COMMERCIAL LUMBER PRODUCTION
5 COMPANIES; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION
6 OF A NEW SECTION 59-1399A, IDAHO CODE, TO PROHIBIT INVESTMENT PRACTICES
7 THAT DISCRIMINATE AGAINST MINING, ENERGY PRODUCTION, PRODUCTION AGRI-
8 CULTURE, OR COMMERCIAL LUMBER PRODUCTION; AND DECLARING AN EMERGENCY
9 AND PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Chapter 23, Title 67, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
14 ignated as Section 67-2347, Idaho Code, and to read as follows:

15 67-2347. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN
16 MINING, ENERGY, PRODUCTION AGRICULTURE, OR COMMERCIAL TIMBER COMPANIES. (1)
17 As used in this section:

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

22 (i) Engages in mining as defined in section 63-3605H, Idaho Code;

23 (ii) Engages in the exploration, production, utilization, trans-
24 portation, sale, or manufacturing of fossil fuel-based energy and
25 does not commit or pledge to meet environmental standards beyond
26 applicable federal and state law or engages in hydroelectric en-
27 ergy production;

28 (iii) Engages in production agriculture;

29 (iv) Engages in commercial lumber production; or

30 (v) Does business with a company described by in this paragraph.

31 (b) "Company" means a for-profit entity, other than a sole propri-
32 etorship, and includes an organization, association, corporation,
33 partnership, joint venture, limited partnership, limited liability
34 partnership, or limited liability company, including a wholly owned
35 subsidiary, majority-owned subsidiary, parent company, or affiliate of
36 those entities or business associations, that exists to make a profit.

37 (c) "Governmental entity" means the state of Idaho or any branch,
38 agency, or division of the state of Idaho.

39 (2) This section applies only to a contract that:

40 (a) Is between a governmental entity and a company with ten (10) or more
41 full-time employees; and

1 (b) Has a value of one hundred thousand dollars (\$100,000) or more that
 2 is to be paid wholly or partly from public funds of the governmental en-
 3 tity.

4 (3) Except as provided in subsection (4) of this section, a governmen-
 5 tal entity may not enter into a contract with a company for goods or services
 6 unless the contract contains a written verification from the company that
 7 it:

8 (a) Does not boycott mining, energy, production agriculture, or com-
 9 mercial timber companies; and

10 (b) Will not boycott mining, energy, production agriculture, or com-
 11 mercial timber companies during the term of the contract.

12 (4) Subsection (3) of this section does not apply to a governmental en-
 13 tity that determines the requirements of subsection (3) of this section are
 14 inconsistent with the governmental entity's constitutional or statutory du-
 15 ties related to the issuance, incurrence, or management of debt obligations
 16 or the deposit, custody, management, borrowing, or investment of funds.

17 SECTION 2. That Chapter 13, Title 59, Idaho Code, be, and the same is
 18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 19 ignated as Section 59-1399A, Idaho Code, and to read as follows:

20 59-1399A. ELIMINATION OF PRODUCTION INDUSTRY DISCRIMINATION. (1) As
 21 used in this section:

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

26 (i) Engages in mining as defined in section 63-3605H, Idaho Code;

27 (ii) Engages in the exploration, production, utilization, trans-
 28 portation, sale, or manufacturing of fossil fuel-based energy and
 29 does not commit or pledge to meet environmental standards beyond
 30 applicable federal and state law or engages in hydroelectric en-
 31 ergy production;

32 (iii) Engages in production agriculture;

33 (iv) Engages in commercial lumber production; or

34 (v) Does business with a company described in this paragraph.

35 (b) "Company" means a for-profit entity, other than a sole propri-
 36 etorship, and includes an organization, association, corporation,
 37 partnership, joint venture, limited partnership, limited liability
 38 partnership, or limited liability company, including a wholly owned
 39 subsidiary, majority-owned subsidiary, parent company, or affiliate of
 40 those entities or business associations, that exists to make a profit.

41 (c) "Direct holdings" means, with respect to a financial company, all
 42 securities of that financial company held directly by a state govern-
 43 mental entity in an account or fund in which a state governmental entity
 44 owns all shares or interests.

45 (d) "Financial company" means a publicly traded financial services,
 46 banking, or investment company.

47 (e) "Indirect holdings" means, with respect to a financial company, all
 48 securities of that financial company held in an account or fund, such
 49 as a mutual fund, managed by one (1) or more persons not employed by a

1 state governmental entity, in which the state governmental entity owns
2 shares or interests together with other investors not subject to the
3 provisions of this chapter. The term does not include moneys invested
4 under a plan described by section 401(k) or 457 of the Internal Revenue
5 Code of 1986.

6 (f) "Listed financial company" means a financial company listed by the
7 treasurer.

8 (g) "State governmental entity" means the public employee retirement
9 system of Idaho.

10 (h) "Treasurer" means the state treasurer or other state official des-
11 ignated to maintain the record of listed financial companies.

12 (2) With respect to actions taken in compliance with this section, in-
13 cluding all good faith determinations regarding financial companies as re-
14 quired by this section, a state governmental entity and the treasurer are ex-
15 empt from any conflicting statutory or common law obligations, including any
16 obligations with respect to making investments, divesting from any invest-
17 ment, preparing or maintaining any list of financial companies, or choosing
18 asset managers, investment funds, or investments for the state governmental
19 entity's securities portfolios.

20 (3) In a cause of action based on an action, inaction, decision, divest-
21 ment, investment, financial company communication, report, or other deter-
22 mination made or taken in connection with this section, the state shall in-
23 demnify and hold harmless for actual damages, court costs, and attorney's
24 fees adjudged against and defend the officers and employees of a state gov-
25 ernmental entity.

26 (4) A person, including a member, retiree, or beneficiary of a retire-
27 ment system to which this section applies, an association, a research firm, a
28 financial company, or any other person may not sue or pursue a private cause
29 of action against the state or the state governmental entity for any claim or
30 cause of action, including breach of fiduciary duty, or for violation of any
31 constitutional, statutory, or regulatory requirement in connection with any
32 action, inaction, decision, divestment, investment, financial company com-
33 munication, report, or other determination made or taken in connection with
34 this section. A person who files suit against the state or the state govern-
35 mental entity shall be liable for paying the costs and attorney's fees of a
36 person sued in violation of this section.

37 (5) A state governmental entity is not subject to a requirement of this
38 section if the state governmental entity determines that the requirement
39 would be inconsistent with its fiduciary responsibility with respect to the
40 investment of entity assets or other duties imposed by law relating to the
41 investment of entity assets.

42 (6) The treasurer shall prepare, maintain, and provide to the state
43 governmental entity a list of all financial companies that boycott mining,
44 energy, production agriculture, or commercial timber companies. In main-
45 taining the list, the treasurer may:

46 (a) Review and rely, as appropriate in the treasurer's judgment, on
47 publicly available information regarding financial companies, in-
48 cluding information provided by the state, nonprofit organizations,
49 research firms, international organizations, and governmental enti-
50 ties; and

1 (b) Request written verification from a financial company that it does
2 not boycott mining, energy, production agriculture, or commercial tim-
3 ber companies and rely, as appropriate in the treasurer's judgment and
4 without conducting further investigation, research, or inquiry, on a
5 financial company's written response to the request.

6 (7) A financial company that fails to provide to the treasurer a writ-
7 ten verification pursuant to subsection (6) (b) of this section before the
8 sixty-first day after receiving the request from the treasurer shall be pre-
9 sumed to boycott mining, energy, production agriculture, or commercial tim-
10 ber companies.

11 (8) The treasurer shall update the list required pursuant to subsection
12 (6) of this section at least annually as the treasurer considers necessary,
13 but not more often than quarterly, based on available information.

14 (9) No later than the thirtieth day after the date the list of financial
15 companies that boycott mining, energy, production agriculture, or commer-
16 cial timber companies is first provided or updated, the treasurer shall file
17 the list with the speaker of the house of representatives and president pro
18 tempore of the senate and the attorney general and post the list on a publicly
19 available website.

20 (10) No later than the thirtieth day after the date a state governmental
21 entity receives the list provided under subsection (6) of this section, the
22 state governmental entity shall notify the treasurer of the listed financial
23 companies in which the state governmental entity owns direct holdings or in-
24 direct holdings.

25 (11) For each listed financial company identified under subsection (6)
26 of this section, the state governmental entity shall send a written notice:

27 (a) Informing the financial company of its status as a listed financial
28 company;

29 (b) Warning the financial company that it may become subject to divest-
30 ment by the state governmental entity after the expiration of the period
31 described by subsection (12) of this section, ; and

32 (c) Offering the financial company the opportunity to clarify its ac-
33 tivities relevant to the content of this section.

34 (12) No later than the ninetieth day after the date that the financial
35 company receives notice under subsection (11) of this section, the finan-
36 cial company must cease boycotting mining, energy, production agriculture,
37 or commercial timber companies in order to avoid qualifying for divestment
38 by the state governmental entity.

39 (13) If, during the time provided by subsection (12) of this section,
40 the financial company ceases boycotting mining, energy, production agricul-
41 ture, or commercial timber companies, the treasurer shall remove the finan-
42 cial company from the list maintained under subsection (6) of this section,
43 and this section will no longer apply to the financial company unless it re-
44 sumes boycotting mining, energy, production agriculture, or commercial tim-
45 ber companies.

46 (14) If, after the time provided by subsection (12) of this section ex-
47 pires and the financial company continues to boycott mining, energy, pro-
48 duction agriculture, or commercial timber companies, the state governmen-
49 tal entity shall sell, redeem, divest, or withdraw all publicly traded secu-
50 rities of the financial company, except securities described by subsection

1 (16) of this section, according to the schedule provided in subsection (15)
2 of this section.

3 (15) A state governmental entity required to sell, redeem, divest, or
4 withdraw all publicly traded securities of a listed financial company shall
5 do so within one hundred eighty (180) days.

6 (a) If a financial company that ceased boycotting mining, energy, pro-
7 duction agriculture, or commercial timber companies after receiving
8 notice under subsection (11) of this section resumes its boycott, the
9 state governmental entity shall send a written notice to the financial
10 company informing it that the state governmental entity will sell,
11 redeem, divest, or withdraw all publicly traded securities of the fi-
12 nancial company.

13 (b) Except as provided by subsections (16) through (20) of this sec-
14 tion, a state governmental entity may delay the schedule for divestment
15 only to the extent that the state governmental entity determines, in the
16 state governmental entity's good faith judgment and consistent with the
17 entity's fiduciary duty, that divestment from listed financial compa-
18 nies will likely result in a loss in value or a benchmark deviation de-
19 scribed by subsection (17) of this section.

20 (c) If a state governmental entity delays the schedule for divestment,
21 the state governmental entity shall submit a report to the speaker of
22 the house of representatives and president pro tempore of the senate
23 and the attorney general stating the reasons and justification for the
24 state governmental entity's delay in divestment from listed financial
25 companies. The report must include documentation supporting its de-
26 termination that the divestment would result in a loss in value or a
27 benchmark deviation described by subsection (17) of this section, in-
28 cluding objective numerical estimates.

29 (16) A state governmental entity is not required to divest from any in-
30 direct holdings in actively or passively managed investment funds or pri-
31 vate equity funds. The state governmental entity shall submit letters to the
32 managers of each investment fund containing listed financial companies re-
33 questing that they remove those financial companies from the fund or create
34 a similar actively or passively managed fund with indirect holdings devoid
35 of listed financial companies. If a manager creates a similar fund with sub-
36 stantially the same management fees and same level of investment risk and an-
37 ticipated return, the state governmental entity may replace all applicable
38 investments with investments in the similar fund in a time frame consistent
39 with prudent fiduciary standards but not later than the four hundred fifti-
40 eth day after the date the fund is created.

41 (17) A state governmental entity may cease divesting from one (1) or
42 more listed financial companies only if clear and convincing evidence shows
43 that:

44 (a) The state governmental entity has suffered or will suffer a loss in
45 the hypothetical value of all assets under management by the state gov-
46 ernmental entity as a result of having to divest from listed financial
47 companies under this subsection; or

48 (b) An individual portfolio that uses a benchmark-aware strategy would
49 be subject to an aggregate expected deviation from its benchmark as a

1 result of having to divest from listed financial companies under this
2 subsection.

3 (18) A state governmental entity may cease divesting from a listed fi-
4 nancial company as provided in this section only to the extent necessary to
5 ensure that the state governmental entity does not suffer a loss in value or
6 deviate from its benchmark as described by subsection (17) of this section.

7 (19) Before a state governmental entity may cease divesting from a
8 listed financial company under this section, the state governmental entity
9 must provide a written report to the treasurer, the speaker of the house of
10 representatives and president pro tempore of the senate, and the attorney
11 general setting forth the reason and justification, supported by clear and
12 convincing evidence, for deciding to cease divestment or to remain invested
13 in a listed financial company.

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

16 (21) Except as provided by subsection (5) and subsections (16) through
17 (20) of this section, a state governmental entity may not acquire securities
18 of a listed financial company.

19 (22) No later than July 1 of each year, a state governmental entity shall
20 file a publicly available report with the speaker of the house of representa-
21 tives and president pro tempore of the senate and the attorney general that:

22 (a) Identifies all securities sold, redeemed, divested, or withdrawn
23 in compliance with this section;

24 (b) Identifies all investments prohibited by this section; and

25 (c) Summarizes any changes made pursuant to this section.

26 (23) The attorney general may bring any action necessary to enforce the
27 provision of this chapter.

28 SECTION 3. An emergency existing therefor, which emergency is hereby
29 declared to exist, this act shall be in full force and effect on and after
30 July 1, 2022.