

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 262**

BY SENATORS PHILLIPS, GRADY, MARTIN, MAYNARD,

KARNES, HAMILTON, AND WOODRUM

[Passed March 12, 2022; in effect 90 days from passage]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §12-1C-1, §12-1C-2, §12-1C-3, §12-1C-4, §12-1C-5, §12-1C-6, and  
3 §12-1C-7, all relating generally to financial institutions engaged in boycotts of energy  
4 companies; defining terms; authorizing the State Treasurer to publish a list of financial  
5 institutions engaged in boycotts of energy companies; requiring the Treasurer to publicly  
6 post the list and submit the list to certain public officials; requiring the list to contain certain  
7 information; requiring the Treasurer to send written notice to a financial institution prior to  
8 its inclusion on the list; establishing required content of said written notice; requiring the  
9 Treasurer to remove a financial institution from the list if it presents information  
10 demonstrating that it is not engaged in a boycott of energy companies; preventing financial  
11 institutions from being compelled to produce certain information; setting forth sources of  
12 information on which the Treasurer may rely in preparing the list; authorizing the Treasurer  
13 to exclude financial institutions on the list from the selection process for state banking  
14 contracts; authorizing the Treasurer to refuse to enter into a banking contract with a  
15 financial institution on the list; authorizing the Treasurer to require, as a term of a banking  
16 contract, an agreement by the financial institution not to engage in a boycott of energy  
17 companies; limiting liability for actions taken in compliance with the new article; and  
18 exempting the Investment Management Board from the new article.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1C. FINANCIAL INSTITUTIONS ENGAGED IN BOYCOTTS OF ENERGY  
COMPANIES.**

**§12-1C-1. DEFINITIONS.**

- 1 (a) For the purposes of this article, the following terms shall have the following meanings:  
2 (1) "Banking contract" means a contract entered into by the Treasurer and a financial  
3 institution pursuant to this chapter, to provide banking goods or services to a spending unit.

4               (2) "Boycott of energy companies" means without a reasonable business purpose, refusal  
5 to deal with a company, termination of business activities with a company, or another action that  
6 is intended to penalize, inflict economic harm on, or limit commercial relations with a company  
7 because the company:

8               (A) Engages in the exploration, production, utilization, transportation, sale, or  
9 manufacturing of fossil fuel-based energy;

10              (B) Engages in the exploration, production, utilization, transportation, sale, or  
11 manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental  
12 standards beyond applicable federal and state law; or

13              (C) Does business with a company that engages in the exploration, production, utilization,  
14 transportation, sale, or manufacturing of fossil fuel-based energy.

15              (3) "Company" means any sole proprietorship, organization, association, corporation,  
16 partnership, joint venture, limited partnership, limited liability partnership, limited liability company,  
17 or other entity or business association, including all wholly owned subsidiaries, majority-owned  
18 subsidiaries, parent companies, or affiliates of those entities or business associations, that exist  
19 for the purpose of making profit.

20              (4) "Financial institution" means a bank, national banking association, non-bank financial  
21 institution, a bank and trust company, a trust company, a savings and loan association, a building  
22 and loan association, a mutual savings bank, a credit union, or a savings bank.

23              (5) "Reasonable business purpose" includes any purpose directly related to:

24               (A) Promoting the financial success or stability of a financial institution;

25               (B) Mitigating risk to a financial institution;

26               (C) Complying with legal or regulatory requirements; or

27               (D) Limiting liability of a financial institution.

28              (6) "Restricted financial institution" means a financial institution included in the most  
29 recently updated restricted financial institution list.

30           (7) "Restricted financial institution list" means the list of financial institutions prepared,  
31        maintained, and published pursuant to this article.

32           (8) "Treasurer" refers to the West Virginia State Treasurer.

**§12-1C-2. Restricted financial institutions list.**

1           (a) The Treasurer is authorized to prepare and maintain a list of financial institutions that  
2        are engaged in a boycott of energy companies.

3           (b) The Treasurer must publicly post the restricted financial institution list on the  
4        Treasurer's website and submit a copy of the list to the Governor, the President of the Senate,  
5        and the Speaker of the House of Delegates.

6           (c) A citation to this article and a brief summary of the purpose of the list must appear at  
7        the top of the list, including a statement that inclusion on the list is not an indication of unsafe or  
8        unsound operating conditions of any financial institution nor any risk to consumer deposits.

9           (d) The Treasurer must update the restricted financial institution list annually, or more often  
10      as the Treasurer considers necessary.

**§12-1C-3. Notice to financial institutions.**

1           (a) Forty-five days prior to including a financial institution on the restricted financial  
2        institution list, the Treasurer must send a written notice to the institution containing the following  
3        information:

4           (1) That the Treasurer has determined that the financial institution is a restricted financial  
5        institution;

6           (2) That the financial institution will be placed on the restricted financial institution list in 45  
7        days unless, within 30 days following the receipt of the written notice, the restricted financial  
8        institution demonstrates that it is not engaged in a boycott of energy companies;

9           (3) That the restricted financial institution list is published on the Treasurer's website; and

10          (4) That the institution's placement on the list may render the institution ineligible to enter  
11        into, or remain in, banking contracts with the State of West Virginia.

12           (b) Following a restricted financial institution's inclusion on the restricted financial  
13 institution list, the Treasurer will remove the institution from the list if the institution demonstrates  
14 that it has ceased all activity that boycotts energy companies.

**§12-1C-4. Sources of information.**

1           (a) In determining whether to include a financial institution on the restricted financial  
2 institution list, the Treasurer shall consider and may rely upon the following information:

3           (1) A financial institution's certification that it is not engaged in a boycott of energy  
4 companies;

5           (2) Publicly available statements or information made by the financial institution, including  
6 statements by a member of a financial institution's governing body, an executive director of a  
7 financial institution, or any other officer or employee of the financial institution with the authority  
8 to issue policy statements on behalf of the financial institution; or

9           (3) Information published by a state or federal government entity.

10          (b) In determining whether to include a financial institution on the restricted financial  
11 institution list, the Treasurer may not rely solely on the following information:

12          (1) Statements or complaints by an energy company; or

13          (2) Media reports of a financial institution's boycott of energy companies.

14          (c) A financial institution may not be compelled to produce or disclose any data or  
15 information deemed confidential, privileged, or otherwise protected from disclosure by state or  
16 federal law.

**§12-1C-5. Restricted financial institutions.**

1           (a) In selecting a financial institution to enter into a banking contract, the Treasurer is  
2 authorized to disqualify restricted financial institutions from the competitive bidding process or  
3 from any other official selection process.

4           (b) The Treasurer is authorized to refuse to enter into a banking contract with a restricted  
5 financial institution based on its restricted financial institution status.

6                   (c) The Treasurer is authorized to require, as a term of any banking contract, an agreement  
7 by the financial institution not to engage in a boycott of energy companies for the duration of the  
8 contract.

**§12-1C-6. Limitation on liability.**

1                   With respect to actions taken in compliance with this article, a public agency, public official,  
2 public employee, or member or employee of a financial institution is immune from liability.

**§12-1C-7. Exemptions.**

1                   The provisions of this section do not apply to the duties, actions, and transactions of the  
2 West Virginia Investment Management Board as set forth in §12-6-1 *et seq.* of this code.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

The within ..... this the .....  
Day of ....., 2022.

.....  
*Governor*