

By: Hughes

S.B. No. 667

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting state retirement systems from investing in certain Chinese-affiliated entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 8, Government Code, is amended by adding Chapter 809A to read as follows:

CHAPTER 809A. PROHIBITION ON INVESTMENT IN CERTAIN

CHINESE-AFFILIATED ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809A.001. DEFINITIONS. In this chapter:

(1) "Chinese-affiliated entity" means an entity that:

(A) is incorporated or headquartered in the People's Republic of China, other than a U.S. subsidiary, as that term is defined by 15 C.F.R. Section 772.1;

(B) is publicly confirmed to be controlled by the People's Republic of China, the Chinese Communist Party, or a provincial division, municipality, governmental agency, sovereign wealth fund, or political instrumentality of the People's Republic of China; or

(C) is identified by one or more of the appropriate government agencies to be required by the National Intelligence Law of the People's Republic of China (2017), as amended in 2018, or any successor law, to support, assist, and cooperate with the state intelligence work of the People's Republic

1 of China and keep the secrets of the national intelligence work of
2 the People's Republic of China.

3 (2) "Direct holdings" means, with respect to a
4 restricted entity, all securities of that restricted entity held
5 directly by a state retirement system in an account or fund in which
6 a state retirement system owns all shares or interests.

7 (3) "Entity" means a for-profit sole proprietorship,
8 organization, association, corporation, partnership, joint
9 venture, limited partnership, limited liability partnership, or
10 limited liability company, including a wholly owned subsidiary,
11 majority-owned subsidiary, parent company, or affiliate of those
12 entities or business associations, that exists to make a profit.

13 (4) "Indirect holdings" means, with respect to a
14 restricted entity, all securities of that restricted entity held in
15 an account or fund, such as a mutual fund, managed by one or more
16 persons not employed by a state retirement system, in which the
17 state retirement system owns shares or interests together with
18 other investors not subject to the provisions of this chapter. The
19 term does not include money invested under a plan described by
20 Section 401(k) or 457 of the Internal Revenue Code of 1986 (26
21 U.S.C. Section 401(k) or 457).

22 (5) "Listed restricted entity" means a restricted
23 entity listed by the comptroller under Section 809A.051.

24 (6) "Restricted entity" means a Chinese-affiliated
25 entity or other entity associated with the People's Republic of
26 China that is identified or included on an entities list maintained
27 by the federal government for the purpose of imposing prohibitions

1 or restrictions on or against entities to address national security
2 concerns, protect human rights, or combat unfair trade practices.

3 The term includes an entity that:

4 (A) is listed on the entity list under supplement
5 No. 4 to 15 C.F.R. Part 744 as associated with the People's Republic
6 of China because there is reasonable cause to believe the entity is
7 involved, has been involved, or poses a significant risk of being or
8 becoming involved in activities contrary to the national security
9 or foreign policy interests of the United States of America; and

10 (B) is listed in the Federal Register by the
11 United States Secretary of Defense as a Chinese military company
12 operating directly or indirectly in the United States or in any
13 territory or possession of the United States on the most recent list
14 compiled under Section 1260H of the William M. (Mac) Thornberry
15 National Defense Authorization Act for Fiscal Year 2021 (Pub. L.
16 No. 116-283, reprinted in note, 10 U.S.C. Section 113), or any
17 successor list of Chinese military companies the secretary is
18 required by law to compile and publish.

19 (7) "State retirement system" means:

20 (A) the Employees Retirement System of Texas,
21 including a retirement system administered by that system;

22 (B) the Teacher Retirement System of Texas;

23 (C) the Texas Municipal Retirement System;

24 (D) the Texas County and District Retirement
25 System; or

26 (E) the Texas Emergency Services Retirement
27 System.

1 Sec. 809A.002. OTHER LEGAL OBLIGATIONS. With respect to
2 actions taken in compliance with this chapter, including all good
3 faith determinations regarding restricted entities as required by
4 this chapter, a state retirement system and the comptroller are
5 exempt from any conflicting statutory or common law obligations,
6 including any obligations with respect to making investments,
7 divesting from any investment, preparing or maintaining any list of
8 restricted entities, or choosing asset managers, investment funds,
9 or investments for the state retirement system's securities
10 portfolios.

11 Sec. 809A.003. INDEMNIFICATION OF STATE RETIREMENT
12 SYSTEMS, EMPLOYEES, AND OTHERS. In a cause of action based on an
13 action, inaction, decision, divestment, investment, restricted
14 entity communication, report, or other determination made or taken
15 in connection with this chapter, the state shall, without regard to
16 whether the person performed services for compensation, indemnify
17 and hold harmless for actual damages, court costs, and attorney's
18 fees adjudged against, and defend:

19 (1) an employee, a member of the governing body, or any
20 other officer of a state retirement system;

21 (2) a contractor of a state retirement system;

22 (3) a former employee, a former member of the
23 governing body, or any other former officer of a state retirement
24 system who was an employee, member of the governing body, or other
25 officer when the act or omission on which the damages are based
26 occurred;

27 (4) a former contractor of a state retirement system

1 who was a contractor when the act or omission on which the damages
2 are based occurred; and

3 (5) a state retirement system.

4 Sec. 809A.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
5 including a member, retiree, or beneficiary of a retirement system
6 to which this chapter applies, an association, a research firm, a
7 restricted entity, or any other person may not sue or pursue a
8 private cause of action against the state, a state retirement
9 system, a current or former employee, a member of the governing
10 body, or any other officer of a state retirement system, or a
11 contractor of a state retirement system, for any claim or cause of
12 action, including breach of fiduciary duty, or for violation of any
13 constitutional, statutory, or regulatory requirement in connection
14 with any action, inaction, decision, divestment, investment,
15 restricted entity communication, report, or other determination
16 made or taken in connection with this chapter.

17 (b) A person who files suit against the state, a state
18 retirement system, an employee, a member of the governing body, or
19 any other officer of a state retirement system, or a contractor of a
20 state retirement system, is liable for paying the costs and
21 attorney's fees of a person sued in violation of this section.

22 Sec. 809A.005. INAPPLICABILITY OF REQUIREMENTS
23 INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A
24 state retirement system is not subject to a requirement of this
25 chapter if the state retirement system determines that the
26 requirement would be inconsistent with its fiduciary
27 responsibility with respect to the investment of entity assets or

1 other duties imposed by law relating to the investment of entity
2 assets, including the duty of care established under Section 67,
3 Article XVI, Texas Constitution.

4 Sec. 809A.006. RELIANCE ON FEDERAL DETERMINATION AND
5 RESTRICTED ENTITY RESPONSE. The comptroller may rely on the
6 following, in the following order of priority, without conducting
7 any further investigation, research, or inquiry:

8 (1) a determination by a federal agency or officer
9 made under a federal law, regulation, or executive order regarding
10 whether an entity is a restricted entity; and

11 (2) a restricted entity's response to a communication
12 made under this chapter.

13 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

14 Sec. 809A.051. LISTED RESTRICTED ENTITIES. (a) The
15 comptroller shall prepare and maintain, and provide to each state
16 retirement system, a list of all restricted entities. In
17 maintaining the list, the comptroller may:

18 (1) review and rely, as appropriate in the
19 comptroller's judgment, on publicly available information
20 regarding restricted entities, including information provided or
21 made available by federal, state, or local governments, nonprofit
22 organizations, research firms, and international organizations;
23 and

24 (2) request written verification from a restricted
25 entity that it does not meet any of the criteria in Section
26 809A.001(6) and rely, as appropriate in the comptroller's judgment
27 and without conducting further investigation, research, or

1 inquiry, on the entity's written response to the request.

2 (b) A restricted entity that fails to provide to the
3 comptroller a written verification under Subsection (a)(2) before
4 the 61st day after receiving the request from the comptroller is
5 presumed to be a restricted entity.

6 (c) The comptroller shall update the list annually or more
7 often as the comptroller considers necessary, but not more often
8 than quarterly, based on information from, among other sources,
9 those listed in Subsection (a).

10 (d) Not later than the 30th day after the date the list of
11 restricted entities is first provided or updated, the comptroller
12 shall file the list with the presiding officer of each house of the
13 legislature and the attorney general and post the list on a publicly
14 available Internet website.

15 Sec. 809A.052. IDENTIFICATION OF INVESTMENT IN LISTED
16 RESTRICTED ENTITIES. Not later than the 30th day after the date a
17 state retirement system receives the list provided under Section
18 809A.051, the state retirement system shall notify the comptroller
19 of the restricted entities in which the state retirement system
20 owns direct holdings or indirect holdings.

21 Sec. 809A.053. NOTICE OF DIVESTMENT TO LISTED RESTRICTED
22 ENTITY. For each listed restricted entity identified under Section
23 809A.052, the state retirement system shall send a written notice:

24 (1) informing the restricted entity of its status as a
25 restricted entity; and

26 (2) warning the restricted entity that it may become
27 subject to divestment by the state retirement system.

1 Sec. 809A.054. DIVESTMENT OF ASSETS. (a) A state
2 retirement system required to sell, redeem, divest, or withdraw all
3 publicly traded securities of a listed restricted entity shall
4 comply with the following schedule:

5 (1) at least 50 percent of those assets must be removed
6 from the state retirement system's assets under management not
7 later than the 180th day after the date the restricted entity
8 receives notice under Section 809A.053 unless the state retirement
9 system determines, based on a good faith exercise of its fiduciary
10 discretion and subject to Subdivision (2), that a later date is more
11 prudent; and

12 (2) 100 percent of those assets must be removed from
13 the state retirement system's assets under management not later
14 than the 360th day after the date the restricted entity receives
15 notice under Section 809A.053.

16 (b) Except as provided by Subsection (a), a state retirement
17 system may delay the schedule for divestment under that subsection
18 only to the extent that the state retirement system determines, in
19 the state retirement system's good faith judgment, and consistent
20 with the state retirement system's fiduciary duty, that divestment
21 from listed restricted entities will likely result in a loss in
22 value or a benchmark deviation described by Section 809A.056(a).
23 If a state retirement system delays the schedule for divestment,
24 the state retirement system shall submit a report to the presiding
25 officer of each house of the legislature and the attorney general
26 stating the reason and justification for the state retirement
27 system's delay in divestment from listed restricted entities. The

1 report must include documentation supporting its determination
2 that the divestment would result in a loss in value or a benchmark
3 deviation described by Section 809A.056(a), including objective
4 numerical estimates. The state retirement system shall update the
5 report every six months.

6 Sec. 809A.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
7 state retirement system is not required to divest from any indirect
8 holdings in actively or passively managed investment funds or
9 private equity funds. The state retirement system shall submit
10 letters to the managers of each investment fund containing listed
11 restricted entities requesting that they remove those restricted
12 entities from the fund or create a similar actively or passively
13 managed fund with indirect holdings devoid of listed restricted
14 entities. If a manager creates a similar fund with substantially
15 the same management fees and same level of investment risk and
16 anticipated return, the state retirement system may replace all
17 applicable investments with investments in the similar fund in a
18 time frame consistent with prudent fiduciary standards but not
19 later than the 450th day after the date the fund is created.

20 Sec. 809A.056. AUTHORIZED INVESTMENT IN LISTED RESTRICTED
21 ENTITIES. (a) A state retirement system may cease divesting from
22 one or more listed restricted entities only if clear and convincing
23 evidence shows that:

24 (1) the state retirement system has suffered or will
25 suffer a loss in the hypothetical value of all assets under
26 management by the state retirement system as a result of having to
27 divest from listed restricted entities under this chapter; or

1 (2) an individual portfolio that uses a
2 benchmark-aware strategy would be subject to an aggregate expected
3 deviation from its benchmark as a result of having to divest from
4 listed restricted entities under this chapter.

5 (b) A state retirement system may cease divesting from a
6 listed restricted entity as provided by this section only to the
7 extent necessary to ensure that the state retirement system does
8 not suffer a loss in value or deviate from its benchmark as
9 described by Subsection (a).

10 (c) Before a state retirement system may cease divesting
11 from a listed restricted entity under this section, the state
12 retirement system must provide a written report to the comptroller,
13 the presiding officer of each house of the legislature, and the
14 attorney general setting forth the reason and justification,
15 supported by clear and convincing evidence, for deciding to cease
16 divestment or to remain invested in a listed restricted entity.

17 (d) The state retirement system shall update the report
18 required by Subsection (c) semiannually, as applicable.

19 Sec. 809A.057. PROHIBITED INVESTMENTS. Except as provided
20 by Section 809A.056, a state retirement system may not acquire
21 securities of a listed restricted entity.

22 SUBCHAPTER C. REPORT; ENFORCEMENT

23 Sec. 809A.101. REPORT. Not later than January 5 of each
24 year, each state retirement system shall file a publicly available
25 report with the presiding officer of each house of the legislature
26 and the attorney general that:

27 (1) identifies all securities sold, redeemed,

1 divested, or withdrawn in compliance with Section 809A.054;

2 (2) identifies all prohibited investments under
3 Section 809A.057; and

4 (3) summarizes any changes made under Section
5 809A.055.

6 Sec. 809A.102. ENFORCEMENT. The attorney general may bring
7 any action necessary to enforce this chapter.

8 SECTION 2. This Act takes effect September 1, 2025.