

## **BILL ANALYSIS**

C.S.H.B. 819  
By: Taylor, Van  
Pensions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 2007, Governor Rick Perry issued a letter to the Employees Retirement System of Texas and the Teacher Retirement System of Texas asking the retirement systems to begin the process of divesting investments in companies that do business with Iran. C.S.H.B. 819 seeks to codify the governor's request into state law and make it applicable to other retirement systems in Texas.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 819 amends the Government Code to establish that, for purposes of provisions prohibiting the investment by a state governmental entity in Iran, a company engages in scrutinized business operations if the company has business operations involving contracts with or providing supplies or services to any of the following: the government of Iran, a company in which the government of Iran has any direct or indirect equity share, a consortium or project commissioned by the government of Iran, or a company involved in such a commissioned consortium or project. The bill defines "state governmental entity" as the Employees Retirement System of Texas (ERS), including a retirement system administered by ERS, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, the Texas County and District Retirement System, and the Texas Emergency Services Retirement System. The bill establishes that a company also engages in scrutinized business operations if the company supplies military equipment to Iran. The bill exempts from its provisions a company that the U.S. government affirmatively declares to be excluded from its federal sanctions regime relating to Iran. The bill exempts a state governmental entity from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the entity's securities portfolios.

C.S.H.B. 819 requires the state, in a cause of action based on a determination made or taken in connection with provisions relating to the prohibition against investing state governmental entity funds in Iran, to indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and to defend, without regard to whether services were performed for compensation, a state governmental entity, a current or former entity employee, a current or former member of the entity's governing body, any other current officer of the entity, a current contractor of the entity, or any other former officer or contractor of the entity who was an entity employee, officer, or contractor when the act or omission on which the damages are based occurred, and the state governmental entities.

C.S.H.B. 819 prohibits a person from suing or pursuing a private cause of action against the state, a state governmental entity, an entity employee, a member of the governing body or any other officer of the entity, or a contractor of the entity for any claim or cause of action, including

breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any determination made or taken in connection with provisions relating to the prohibition against investing entity funds in Iran. The bill makes a person who files such a suit liable for paying the costs and attorney's fees of the sued person. The bill exempts a state governmental entity from a requirement under its provisions if the affected entity determines the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of those assets. The bill authorizes the comptroller of public accounts and a state governmental entity, without conducting any further investigation, research, or inquiry, to rely on a company's response to a notice or communication made under its provisions.

C.S.H.B. 819 requires the comptroller to prepare, maintain, and provide to each state governmental entity, not later than January 1, 2014, a list of all scrutinized companies and to update the list at least annually, but not more often than quarterly, based on publicly available information that the comptroller is authorized to review and rely on regarding companies with business operations in Iran. The bill requires the comptroller to file the list with the presiding officer of each house of the legislature and the attorney general not later than the 30th day after the date the list of scrutinized companies is first provided or updated and requires each state governmental entity, as applicable, to notify the comptroller of the listed companies in which the respective entity owns direct holdings or indirect holdings not later than the 14th day after the date the entity receives the list.

C.S.H.B. 819 requires each state governmental entity to send a written notice to each listed company in which the entity has direct or indirect holdings and that engages only in scrutinized inactive business operations informing the company of the prohibition against investing entity funds in Iran and encouraging the company to continue to refrain from initiating active business operations in Iran until it is able to avoid being considered a listed company. The bill requires the state governmental entity to continue such correspondence as it considers necessary but specifies that the entity is not required to initiate correspondence more often than semiannually. The bill requires the state governmental entities to send a written notice to each listed company in which the entity has direct or indirect holdings and that engages in scrutinized active business operations warning the company that it may become subject to divestment by state governmental entities, offering the company the opportunity to clarify its Iran-related activities, and encouraging the company to either cease its scrutinized business operations or convert the operations to inactive business operations within a specified period in order to avoid qualifying for divestment. The bill requires the comptroller to remove a company from the list of scrutinized companies if the company ceases scrutinized business operations during the prescribed time limit and makes its provisions inapplicable to a company that does not resume scrutinized business operations. The bill subjects a company that converts its scrutinized active business operations to inactive business operations during the prescribed time limit to all the bill's provisions relating to inactive business operations. The bill requires a state governmental entity to sell, redeem, divest, or withdraw all publicly traded securities of a company if the company continues to have scrutinized active business after the prescribed time limit expires.

C.S.H.B. 819 sets out a schedule for such divestment by a state governmental entity and requires the entity to send written notice to a company that previously received notice and ceased scrutinized active business operations but later resumes such operations informing it of the impending sale, redemption, divestment, or withdrawal of all publicly traded securities of the scrutinized company according to that schedule. The bill authorizes the state governmental entities to delay the schedule for divestment only to the extent that the applicable entity determines in good faith that divestment from listed companies will likely result in a loss in value or a benchmark deviation and sets out the form and content of the report that an entity choosing this delay is required to submit to the presiding officer of each house of the legislature and to the attorney general stating the reasons and justification for the delay.

C.S.H.B. 819 establishes that a state governmental entity is not required to divest from any

indirect holdings in actively or passively managed investment funds or private equity funds. The bill requires a state governmental entity to submit letters to the managers of investment funds containing listed companies requesting that they consider removing those companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed companies. The bill authorizes a state governmental entity, if a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, to replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards.

C.S.H.B. 819 authorizes a state governmental entity to cease divesting from or to reinvest in one or more listed companies if clear and convincing evidence shows that taking such an action has caused or will cause the applicable entity to suffer a loss in the hypothetical value of all assets under the entity's management or that an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark. The bill authorizes a state governmental entity to cease divesting from or to reinvest in one or more listed companies only to the extent necessary to ensure that the entity does not suffer a loss in value or deviate from its benchmark and, before the state governmental entity takes such action, requires the entity to provide a written report, which is updated semiannually, as applicable, to the presiding officer of each house of the legislature and the attorney general, setting forth the reason and justification for its decision to take such action with supporting clear and convincing evidence. The bill establishes that these provisions do not apply to reinvestment in a company that is no longer a listed company. The bill prohibits a state governmental entity from acquiring securities of a listed company.

C.S.H.B. 819 requires each state governmental entity to file a publicly available report with the presiding officer of each house of the legislature and the attorney general, not later than December 31 of each year, that identifies all securities sold, redeemed, divested, or withdrawn in compliance with statutory provisions relating to the divestment of assets, identifies all prohibited investments, and summarizes any changes made to managed funds under provisions relating to investments exempted from divestment.

C.S.H.B. 819 authorizes the attorney general to bring any action necessary to enforce the bill's provisions.

C.S.H.B. 819 establishes that its provisions expire on the earlier of the date the United States revokes its sanctions against the government of Iran or the date the U.S. Congress or the president of the United States declares that mandatory divestment interferes with the conduct of U.S. foreign policy.

### **EFFECTIVE DATE**

January 1, 2014.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 819 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subtitle A, Title 8, Government Code, is amended by adding Chapter 807 to read as follows:  
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#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 8, Government Code, is amended by adding Chapter 807 to read as follows:  
CHAPTER 807. PROHIBITION ON

INVESTMENT IN IRAN  
SUBCHAPTER A. GENERAL  
PROVISIONS

Sec. 807.001. DEFINITIONS. In this chapter:

(1) "Active business operations" means all business operations that are not inactive business operations.

(2) "Business operations" means engaging in commerce in any form in Iran, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(4) "Direct holdings" means, with respect to a company, all securities of that company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.

(5) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated to generate revenue but not presently deployed to generate revenue.

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

(7) "Listed company" means a company listed by the comptroller under Section 807.051.

(8) "Military equipment" means weapons, arms, military supplies, and equipment that

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(7) "Listed company" means a company listed by the comptroller under Section 807.051.

(8) "Military equipment" means weapons, arms, military supplies, and equipment that

readily may be used for military purposes, including radar systems and military-grade transport vehicles.

(9) "Scrutinized company" means a company that engages in scrutinized business operations described by Section 807.002.

(10) "State governmental entity" means the Employees Retirement System of Texas or the Teacher Retirement System of Texas.

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(9) "Scrutinized company" means a company that engages in scrutinized business operations described by Section 807.002.

(10) "State governmental entity" means:

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

(B) the Teacher Retirement System of Texas;

(C) the Texas Municipal Retirement System;

(D) the Texas County and District Retirement System; and

(E) the Texas Emergency Services Retirement System.

Sec. 807.002. SCRUTINIZED BUSINESS OPERATIONS.

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Sec. 807.003. EXCEPTION.

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Sec. 807.004. OTHER LEGAL OBLIGATIONS.

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Sec. 807.005. INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS.

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Sec. 807.006. NO PRIVATE CAUSE OF ACTION. (a)

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Sec. 807.007. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES.

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Sec. 807.008. RELIANCE ON COMPANY RESPONSE.

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[Sections 807.009-807.050 reserved for expansion]

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

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Sec. 807.051. LISTED COMPANIES.

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Sec. 807.052. IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES.

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Sec. 807.053. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS.

Sec. 807.054. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS.

Sec. 807.055. DIVESTMENT OF ASSETS.

Sec. 807.056. INVESTMENTS EXEMPTED FROM DIVESTMENT.

Sec. 807.057. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

Sec. 807.058. PROHIBITED INVESTMENTS.

[Sections 807.059-807.100 reserved for expansion]

SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

Sec. 807.101. EXPIRATION OF CHAPTER.

Sec. 807.102. REPORT.

Sec. 807.103. ENFORCEMENT.

SECTION 2. Not later than January 1, 2014, the comptroller of public accounts shall prepare and provide to each state governmental entity, as defined by Section 807.001, Government Code, as added by this Act, the list of scrutinized companies required by Section 807.051, Government Code, as added by this Act.

SECTION 3. This Act takes effect January 1, 2014.

Sec. 807.053. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS.

Sec. 807.054. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS.

Sec. 807.055. DIVESTMENT OF ASSETS.

Sec. 807.056. INVESTMENTS EXEMPTED FROM DIVESTMENT.

Sec. 807.057. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

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Sec. 807.102. REPORT.

Sec. 807.103. ENFORCEMENT.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.