

By: Taylor

H.B. No. 819

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of retirement system funds in certain private business entities doing business in Iran.

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

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

1 to make a profit.

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

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

10 (6) "Indirect holdings" means, with respect to a
11 company, all securities of that company held in an account or fund,
12 such as a mutual fund, managed by one or more persons not employed
13 by a state governmental entity, in which the state governmental
14 entity owns shares or interests together with other investors not
15 subject to the provisions of this chapter. The term does not
16 include money invested under a plan described by Section 401(k) or
17 457 of the Internal Revenue Code of 1986.

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

20 (8) "Military equipment" means weapons, arms,
21 military supplies, and equipment that readily may be used for
22 military purposes, including radar systems and military-grade
23 transport vehicles.

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

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

1 Texas.

2 Sec. 807.002. SCRUTINIZED BUSINESS OPERATIONS. A company
3 engages in scrutinized business operations if:

4 (1) the company has business operations that involve
5 contracts with or providing supplies or services to the government
6 of Iran, a company in which the government of Iran has any direct or
7 indirect equity share, a consortium or project commissioned by the
8 government of Iran, or a company involved in a consortium or project
9 commissioned by the government of Iran; or

10 (2) the company supplies military equipment to Iran.

11 Sec. 807.003. EXCEPTION. Notwithstanding any provision of
12 this chapter, a company that the United States government
13 affirmatively declares to be excluded from its federal sanctions
14 regime relating to Iran is not subject to divestment or the
15 investment prohibition under this chapter.

16 Sec. 807.004. OTHER LEGAL OBLIGATIONS. With respect to
17 actions taken in compliance with this chapter, including all good
18 faith determinations regarding companies as required by this
19 chapter, a state governmental entity is exempt from any conflicting
20 statutory or common law obligations, including any obligations with
21 respect to making investments, divesting from any investment,
22 preparing or maintaining any list of companies, or choosing asset
23 managers, investment funds, or investments for the state
24 governmental entity's securities portfolios.

25 Sec. 807.005. INDEMNIFICATION OF STATE GOVERNMENTAL
26 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
27 action, inaction, decision, divestment, investment, company

1 communication, report, or other determination made or taken in
2 connection with this chapter, the state shall, without regard to
3 whether the person performed services for compensation, indemnify
4 and hold harmless for actual damages, court costs, and attorney's
5 fees adjudged against, and defend:

6 (1) an employee, a member of the governing body, or any
7 other officer of a state governmental entity;

8 (2) a contractor of a state governmental entity;

9 (3) a former employee, a former member of the
10 governing body, or any other former officer of a state governmental
11 entity who was an employee or officer when the act or omission on
12 which the damages are based occurred;

13 (4) a former contractor of a state governmental entity
14 who was a contractor when the act or omission on which the damages
15 are based occurred; and

16 (5) a state governmental entity.

17 Sec. 807.006. NO PRIVATE CAUSE OF ACTION. (a) A person,
18 including a member, retiree, or beneficiary of a retirement system
19 to which this chapter applies, an association, a research firm, a
20 company, or any other person may not sue or pursue a private cause
21 of action against the state, a state governmental entity, an
22 employee, a member of the governing body, or any other officer of a
23 state governmental entity, or a contractor of a state governmental
24 entity, for any claim or cause of action, including breach of
25 fiduciary duty, or for violation of any constitutional, statutory,
26 or regulatory requirement in connection with any action, inaction,
27 decision, divestment, investment, company communication, report,

1 or other determination made or taken in connection with this
2 chapter.

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

8 Sec. 807.007. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
9 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state
10 governmental entity is not subject to a requirement of this chapter
11 if the state governmental entity determines that the requirement
12 would be inconsistent with its fiduciary responsibility with
13 respect to the investment of entity assets or other duties imposed
14 by law relating to the investment of entity assets, including the
15 duty of care established under Section 67, Article XVI, Texas
16 Constitution.

17 Sec. 807.008. RELIANCE ON COMPANY RESPONSE. The
18 comptroller and a state governmental entity may rely on a company's
19 response to a notice or communication made under this chapter
20 without conducting any further investigation, research, or
21 inquiry.

22 [Sections 807.009-807.050 reserved for expansion]

23 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

24 Sec. 807.051. LISTED COMPANIES. (a) The comptroller shall
25 prepare and maintain, and provide to each state governmental
26 entity, a list of all scrutinized companies. In maintaining the
27 list, the comptroller may review and rely, as appropriate in the

1 comptroller's judgment, on publicly available information
2 regarding companies with business operations in Iran, including
3 information provided by the state, nonprofit organizations,
4 research firms, international organizations, and governmental
5 entities.

6 (b) 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 (c) Not later than the 30th day after the date the list of
11 scrutinized companies 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.

14 Sec. 807.052. IDENTIFICATION OF INVESTMENT IN LISTED
15 COMPANIES. Not later than the 14th day after the date a state
16 governmental entity receives the list provided under Section
17 807.051, the state governmental entity shall notify the comptroller
18 of the listed companies in which the state governmental entity owns
19 direct holdings or indirect holdings.

20 Sec. 807.053. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE
21 BUSINESS OPERATIONS. For each listed company identified under
22 Section 807.052 that is engaged in only scrutinized inactive
23 business operations, the state governmental entity shall send a
24 written notice informing the company of this chapter and
25 encouraging the company to continue to refrain from initiating
26 active business operations in Iran until it is able to avoid being
27 considered a listed company. The state governmental entity shall

1 continue the correspondence as the entity, in its sole discretion,
2 considers necessary, but is not required to initiate correspondence
3 more often than semiannually.

4 Sec. 807.054. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN
5 ACTIVE BUSINESS OPERATIONS. (a) For each listed company
6 identified under Section 807.052 that is engaged in scrutinized
7 active business operations, the state governmental entity shall
8 send a written notice informing the company of its listed company
9 status and warning the company that it may become subject to
10 divestment by state governmental entities.

11 (b) The notice must offer the company the opportunity to
12 clarify its Iran-related activities and must encourage the company,
13 not later than the 90th day after the date the company receives
14 notice under this section, to either cease its scrutinized business
15 operations or convert the operations to inactive business
16 operations in order to avoid qualifying for divestment by state
17 governmental entities.

18 (c) If, during the time provided by Subsection (b), the
19 company ceases scrutinized business operations, the comptroller
20 shall remove the company from the list maintained under Section
21 807.051 and this chapter will no longer apply to the company unless
22 it resumes scrutinized business operations.

23 (d) If, during the time provided by Subsection (b), the
24 company converts its scrutinized active business operations to
25 inactive business operations, the company is subject to all
26 provisions of this chapter relating to inactive business
27 operations.

1 (e) If, after the time provided by Subsection (b) expires,
2 the company continues to have scrutinized active business
3 operations, the state governmental entity shall sell, redeem,
4 divest, or withdraw all publicly traded securities of the company,
5 except securities described by Section 807.056, according to the
6 schedule provided by Section 807.055.

7 Sec. 807.055. DIVESTMENT OF ASSETS. (a) A state
8 governmental entity required to sell, redeem, divest, or withdraw
9 all publicly traded securities of a listed company shall comply
10 with the following schedule:

11 (1) at least 50 percent of those assets must be removed
12 from the state governmental entity's assets under management not
13 later than the 270th day after the date the company receives notice
14 under Section 807.054 or Subsection (b) unless the state
15 governmental entity determines, based on a good faith exercise of
16 its fiduciary discretion and subject to Subdivision (2), that a
17 later date is more prudent; and

18 (2) 100 percent of those assets must be removed from
19 the state governmental entity's assets under management not later
20 than the 450th day after the date the company receives notice under
21 Section 807.054 or Subsection (b).

22 (b) If a company that ceased scrutinized active business
23 operations after receiving notice under Section 807.054 resumes
24 scrutinized active business operations, the state governmental
25 entity shall send a written notice to the company informing it that
26 the state governmental entity will sell, redeem, divest, or
27 withdraw all publicly traded securities of the scrutinized company

1 according to the schedule in Subsection (a).

2 (c) Except as provided by that subsection, a state
3 governmental entity may delay the schedule for divestment under
4 Subsection (a) only to the extent that the state governmental
5 entity determines, in the state governmental entity's good faith
6 judgment, that divestment from listed companies will likely result
7 in a loss in value or a benchmark deviation described by Section
8 807.057(a). If a state governmental entity delays the schedule for
9 divestment, the state governmental entity shall submit a report to
10 the presiding officer of each house of the legislature and the
11 attorney general stating the reasons and justification for the
12 state governmental entity's delay in divestment from listed
13 companies. The report must include documentation supporting its
14 determination that the divestment would result in a loss in value or
15 benchmark deviation described by Section 807.057(a), including
16 objective numerical estimates. The state governmental entity shall
17 update the report every six months.

18 Sec. 807.056. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
19 state governmental entity is not required to divest from any
20 indirect holdings in actively or passively managed investment funds
21 or private equity funds. The state governmental entity shall
22 submit letters to the managers of investment funds containing
23 listed companies requesting that they consider removing those
24 companies from the fund or create a similar actively or passively
25 managed fund with indirect holdings devoid of listed companies. If
26 the manager creates a similar fund with substantially the same
27 management fees and same level of investment risk and anticipated

1 return, the state governmental entity may replace all applicable
2 investments with investments in the similar fund in a time frame
3 consistent with prudent fiduciary standards.

4 Sec. 807.057. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

5 (a) A state governmental entity may cease divesting from or may
6 reinvest in one or more listed companies if clear and convincing
7 evidence shows that:

8 (1) the state governmental entity has suffered or will
9 suffer a loss in the hypothetical value of all assets under
10 management by the state governmental entity as a result of having to
11 divest from listed companies under this chapter; or

12 (2) an individual portfolio that uses a
13 benchmark-aware strategy would be subject to an aggregate expected
14 deviation from its benchmark as a result of having to divest from
15 listed companies under this chapter.

16 (b) A state governmental entity may cease divesting from or
17 may reinvest in a listed company as provided by this section only to
18 the extent necessary to ensure that the state governmental entity
19 does not suffer a loss in value or deviate from its benchmark as
20 described by Subsection (a).

21 (c) Before a state governmental entity may cease divesting
22 from or may reinvest in a listed company under this section, the
23 state governmental entity must provide a written report to the
24 presiding officer of each house of the legislature and the attorney
25 general setting forth the reason and justification, supported by
26 clear and convincing evidence, for its decisions to cease
27 divestment, to reinvest, or to remain invested in a listed company.

1 (d) The state governmental entity shall update the report
2 required by Subsection (c) semiannually, as applicable.

3 (e) This section does not apply to reinvestment in a company
4 that is no longer a listed company.

5 Sec. 807.058. PROHIBITED INVESTMENTS. Except as provided
6 by Sections 807.003 and 807.057, a state governmental entity may
7 not acquire securities of a listed company.

8 [Sections 807.059-807.100 reserved for expansion]

9 SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

10 Sec. 807.101. EXPIRATION OF CHAPTER. This chapter expires
11 on the earlier of:

12 (1) the date the United States revokes its sanctions
13 against the government of Iran; or

14 (2) the date the United States Congress or the
15 president of the United States, through legislation or executive
16 order, declares that mandatory divestment of the type provided for
17 in this chapter interferes with the conduct of United States
18 foreign policy.

19 Sec. 807.102. REPORT. Not later than December 31 of each
20 year, each state governmental entity shall file a publicly
21 available report with the presiding officer of each house of the
22 legislature and the attorney general, that:

23 (1) identifies all securities sold, redeemed,
24 divested, or withdrawn in compliance with Section 807.055;

25 (2) identifies all prohibited investments under
26 Section 807.058; and

27 (3) summarizes any changes made under Section 807.056.

1 Sec. 807.103. ENFORCEMENT. The attorney general may bring
2 any action necessary to enforce this chapter.

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

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