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H.B. No. 89

A BILL TO BE ENTITLED

1 AN ACT
2 relating to state contracts with and investments in companies that
3 boycott Israel.

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

5 SECTION 1. Subtitle F, Title 10, Government Code, is
6 amended by adding Chapter 2270 to read as follows:

7 CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING
8 ISRAEL

9 Sec. 2270.001. DEFINITIONS. In this chapter:

10 (1) "Boycott Israel" has the meaning assigned by
11 Section 808.001.

12 (2) "Company" has the meaning assigned by Section
13 808.001.

14 (3) "Governmental entity" has the meaning assigned by
15 Section 2251.001.

16 Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A
17 governmental entity may not enter into a contract with a company for
18 goods or services unless the contract contains a written
19 verification from the company that it:

20 (1) does not boycott Israel; and

21 (2) will not boycott Israel during the term of the
22 contract.

23 SECTION 2. Subtitle A, Title 8, Government Code, is amended
24 by adding Chapter 808 to read as follows:

1 CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT

2 ISRAEL

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 808.001. DEFINITIONS. In this chapter:

5 (1) "Boycott Israel" means refusing to deal with,
6 terminating business activities with, or otherwise taking any
7 action that is intended to penalize, inflict economic harm on, or
8 limit commercial relations specifically with Israel, or with a
9 person or entity doing business in Israel or in an
10 Israeli-controlled territory, but does not include an action made
11 for ordinary business purposes.

12 (2) "Company" means a for-profit sole proprietorship,
13 organization, association, corporation, partnership, joint
14 venture, limited partnership, limited liability partnership, or
15 limited liability company, including a wholly owned subsidiary,
16 majority-owned subsidiary, parent company, or affiliate of those
17 entities or business associations that exists to make a profit.

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

22 (4) "Indirect holdings" means, with respect to a
23 company, all securities of that company held in an account or fund,
24 such as a mutual fund, managed by one or more persons not employed
25 by a state governmental entity, in which the state governmental
26 entity owns shares or interests together with other investors not
27 subject to the provisions of this chapter. The term does not

1 include money invested under a plan described by Section 401(k) or
2 457 of the Internal Revenue Code of 1986.

3 (5) "Listed company" means a company listed by the
4 comptroller under Section 808.051.

5 (6) "State governmental entity" means:

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

8 (B) the Teacher Retirement System of Texas;

9 (C) the Texas Municipal Retirement System;

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

12 (E) the Texas Emergency Services Retirement
13 System; and

14 (F) the permanent school fund.

15 Sec. 808.002. OTHER LEGAL OBLIGATIONS. With respect to
16 actions taken in compliance with this chapter, including all good
17 faith determinations regarding companies as required by this
18 chapter, a state governmental entity and the comptroller are exempt
19 from any conflicting statutory or common law obligations, including
20 any obligations with respect to making investments, divesting from
21 any investment, preparing or maintaining any list of companies, or
22 choosing asset managers, investment funds, or investments for the
23 state governmental entity's securities portfolios.

24 Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL
25 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
26 action, inaction, decision, divestment, investment, company
27 communication, report, or other determination made or taken in

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

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

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

8 (3) a former employee, a former member of the
9 governing body, or any other former officer of a state governmental
10 entity who was an employee, member of the governing body, or other
11 officer when the act or omission on which the damages are based
12 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. 808.004. 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, a current
22 or former employee, a member of the governing body, or any other
23 officer of a state governmental entity, or a contractor of a state
24 governmental entity, for any claim or cause of action, including
25 breach of fiduciary duty, or for violation of any constitutional,
26 statutory, or regulatory requirement in connection with any action,
27 inaction, decision, divestment, investment, company communication,

1 report, or other determination made or taken in connection with
2 this 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. 808.005. 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. 808.006. 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 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

23 Sec. 808.051. LISTED COMPANIES. (a) The comptroller shall
24 prepare and maintain, and provide to each state governmental
25 entity, a list of all companies that boycott Israel. In maintaining
26 the list, the comptroller may review and rely, as appropriate in the
27 comptroller's judgment, on publicly available information

1 regarding companies, including information provided by the state,
2 nonprofit organizations, research firms, international
3 organizations, and governmental entities.

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

8 (c) Not later than the 30th day after the date the list of
9 companies that boycott Israel is first provided or updated, the
10 comptroller shall file the list with the presiding officer of each
11 house of the legislature and the attorney general and post the list
12 on a publicly available website.

13 Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED
14 COMPANIES. Not later than the 30th day after the date a state
15 governmental entity receives the list provided under Section
16 808.051, the state governmental entity shall notify the comptroller
17 of the listed companies in which the state governmental entity owns
18 direct holdings or indirect holdings.

19 Sec. 808.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
20 each listed company identified under Section 808.052, the state
21 governmental entity shall send a written notice:

22 (1) informing the company of its status as a listed
23 company;

24 (2) warning the company that it may become subject to
25 divestment by state governmental entities after the expiration of
26 the period described by Subsection (b); and

27 (3) offering the company the opportunity to clarify

1 its Israel-related activities.

2 (b) Not later than the 90th day after the date the company
3 receives notice under Subsection (a), the company must cease
4 boycotting Israel in order to avoid qualifying for divestment by
5 state governmental entities.

6 (c) If, during the time provided by Subsection (b), the
7 company ceases boycotting Israel, the comptroller shall remove the
8 company from the list maintained under Section 808.051 and this
9 chapter will no longer apply to the company unless it resumes
10 boycotting Israel.

11 (d) If, after the time provided by Subsection (b) expires,
12 the company continues to boycott Israel, the state governmental
13 entity shall sell, redeem, divest, or withdraw all publicly traded
14 securities of the company, except securities described by Section
15 808.055, according to the schedule provided by Section 808.054.

16 Sec. 808.054. DIVESTMENT OF ASSETS. (a) A state
17 governmental entity required to sell, redeem, divest, or withdraw
18 all publicly traded securities of a listed company shall comply
19 with the following schedule:

20 (1) at least 50 percent of those assets must be removed
21 from the state governmental entity's assets under management not
22 later than the 180th day after the date the company receives notice
23 under Section 808.053 or Subsection (b) unless the state
24 governmental entity determines, based on a good faith exercise of
25 its fiduciary discretion and subject to Subdivision (2), that a
26 later date is more prudent; and

27 (2) 100 percent of those assets must be removed from

1 the state governmental entity's assets under management not later
2 than the 360th day after the date the company receives notice under
3 Section 808.053 or Subsection (b).

4 (b) If a company that ceased boycotting Israel after
5 receiving notice under Section 808.053 resumes its boycott, the
6 state governmental entity shall send a written notice to the
7 company informing it that the state governmental entity will sell,
8 redeem, divest, or withdraw all publicly traded securities of the
9 company according to the schedule in Subsection (a).

10 (c) Except as provided by Subsection (a), a state
11 governmental entity may delay the schedule for divestment under
12 that subsection only to the extent that the state governmental
13 entity determines, in the state governmental entity's good faith
14 judgment, and consistent with the entity's fiduciary duty, that
15 divestment from listed companies will likely result in a loss in
16 value or a benchmark deviation described by Section 808.056(a). If
17 a state governmental entity delays the schedule for divestment, the
18 state governmental entity shall submit a report to the presiding
19 officer of each house of the legislature and the attorney general
20 stating the reasons and justification for the state governmental
21 entity's delay in divestment from listed companies. The report
22 must include documentation supporting its determination that the
23 divestment would result in a loss in value or a benchmark deviation
24 described by Section 808.056(a), including objective numerical
25 estimates. The state governmental entity shall update the report
26 every six months.

27 Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A

1 state governmental entity is not required to divest from any
2 indirect holdings in actively or passively managed investment funds
3 or private equity funds. The state governmental entity shall
4 submit letters to the managers of each investment fund containing
5 listed companies requesting that they remove those companies from
6 the fund or create a similar actively or passively managed fund with
7 indirect holdings devoid of listed companies. If a manager creates
8 a similar fund with substantially the same management fees and same
9 level of investment risk and anticipated return, the state
10 governmental entity may replace all applicable investments with
11 investments in the similar fund in a time frame consistent with
12 prudent fiduciary standards but not later than the 450th day after
13 the date the fund is created.

14 Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

15 (a) A state governmental entity may cease divesting from one or
16 more listed companies only if clear and convincing evidence shows
17 that:

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

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

26 (b) A state governmental entity may cease divesting from a
27 listed company as provided by this section only to the extent

1 necessary to ensure that the state governmental entity does not
2 suffer a loss in value or deviate from its benchmark as described by
3 Subsection (a).

4 (c) Before a state governmental entity may cease divesting
5 from a listed company under this section, the state governmental
6 entity must provide a written report to the comptroller, the
7 presiding officer of each house of the legislature, and the
8 attorney general setting forth the reason and justification,
9 supported by clear and convincing evidence, for deciding to cease
10 divestment or to remain invested in a listed company.

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

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

15 Sec. 808.057. PROHIBITED INVESTMENTS. Except as provided
16 by Section 808.056, a state governmental entity may not acquire
17 securities of a listed company.

18 SUBCHAPTER C. REPORT; ENFORCEMENT

19 Sec. 808.101. REPORT. Not later than January 5 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 808.054;

25 (2) identifies all prohibited investments under
26 Section 808.057; and

27 (3) summarizes any changes made under Section 808.055.

1 Sec. 808.102. ENFORCEMENT. The attorney general may bring
2 any action necessary to enforce this chapter.

3 SECTION 3. This Act takes effect September 1, 2017.