

By: Sanford

H.B. No. 1902

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of certain retirement system funds in publicly traded business entities that donate to Planned Parenthood.

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

SECTION 1. Subtitle A, Title 8, Government Code, is amended by adding Chapter 808 to read as follows:

CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT DONATE TO
PLANNED PARENTHOOD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 808.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Pension Review Board.

(2) "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.

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

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

9 (5) "Listed company" means a company listed by the
10 board under Section 808.051.

11 (6) "Planned Parenthood" means the Planned Parenthood
12 Federation of America.

13 (7) "Retirement system" means the Employees
14 Retirement System of Texas or the Teacher Retirement System of
15 Texas.

16 (8) "Scrutinized company" means a company that donates
17 money or property directly to Planned Parenthood. The term does not
18 include a company whose only donations to Planned Parenthood
19 consist of making contributions to Planned Parenthood to match
20 contributions made by employees or retirees of the company.

21 Sec. 808.002. OTHER LEGAL OBLIGATIONS. With respect to
22 actions taken in compliance with this chapter, including all good
23 faith determinations regarding companies as required by this
24 chapter, a retirement system is exempt from any conflicting
25 statutory or common law obligations, including any obligation with
26 respect to making investments, divesting from any investment,
27 preparing or maintaining any list of companies, or choosing asset

1 managers, investment funds, or investments for the retirement
2 system's securities portfolios.

3 Sec. 808.003. INDEMNIFICATION OF RETIREMENT SYSTEMS,
4 EMPLOYEES, AND OTHERS. In a cause of action based on an action,
5 inaction, decision, divestment, investment, company communication,
6 report, or other determination made or taken in connection with
7 this chapter, the state shall, without regard to whether the person
8 performed services for compensation, indemnify and hold harmless
9 for actual damages, court costs, and attorney's fees adjudged
10 against, and defend:

11 (1) an employee, a member of the governing body, or any
12 other officer of a retirement system;

13 (2) a contractor of a retirement system;

14 (3) a former employee, a former member of the
15 governing body, or any other former officer of a retirement system
16 who was an employee or officer when the act or omission on which the
17 damages are based occurred;

18 (4) a former contractor of a retirement system who was
19 a contractor when the act or omission on which the damages are based
20 occurred; and

21 (5) a retirement system.

22 Sec. 808.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
23 including a member, retiree, or beneficiary of a retirement system,
24 an association, a research firm, a company, or any other person may
25 not sue or pursue a private cause of action against the state, a
26 retirement system, an employee, a member of the governing body, or
27 any other officer of a retirement system, or a contractor of a

1 retirement system, for any claim or cause of action, including
2 breach of fiduciary duty, or for violation of any constitutional,
3 statutory, or regulatory requirement in connection with any action,
4 inaction, decision, divestment, investment, company communication,
5 report, or other determination made or taken in connection with
6 this chapter.

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

12 Sec. 808.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
13 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A retirement
14 system is not subject to a requirement of this chapter if the
15 retirement system determines that the requirement would be
16 inconsistent with its fiduciary responsibility with respect to the
17 investment of the system's assets or other duties imposed by law
18 relating to the investment of the system's assets, including the
19 duty of care established under Section 67, Article XVI, Texas
20 Constitution.

21 Sec. 808.006. RELIANCE ON COMPANY RESPONSE. The board and a
22 retirement system may rely on a company's response to a notice or
23 communication made under this chapter without conducting any
24 further investigation, research, or inquiry.

25 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

26 Sec. 808.051. LISTED COMPANIES. (a) The board shall
27 prepare and maintain, and provide to each retirement system, a list

1 of all scrutinized companies. In maintaining the list, the board
2 may review and rely on, as appropriate in the board's judgment,
3 publicly available information regarding companies that donate
4 directly to Planned Parenthood, including information provided by
5 the state, nonprofit organizations, research firms, international
6 organizations, and governmental entities.

7 (b) The board shall update the list annually or more often
8 as the board considers necessary, but not more often than
9 quarterly.

10 (c) Not later than the 30th day after the date the list of
11 scrutinized companies is first provided or updated, the board shall
12 file the list with the presiding officer of each house of the
13 legislature and the attorney general.

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

20 Sec. 808.053. ACTIONS RELATING TO DONATIONS BY LISTED
21 COMPANY. (a) The board shall send a written notice to each listed
22 company identified under Section 808.052 informing the company of
23 its listed company status and warning the company that it may become
24 subject to divestment by the retirement system.

25 (b) The notice must encourage the company to cease making
26 further direct donations to Planned Parenthood, for a period of
27 time provided by board rule, in order to avoid qualifying for

1 divestment by the retirement system.

2 (c) If the company timely responds to the notice that the
3 company has ceased donating directly to Planned Parenthood, the
4 board shall remove the company from the list maintained under
5 Section 808.051 and investment in the company will no longer be
6 prohibited under this chapter unless the company resumes donating
7 directly to Planned Parenthood.

8 (d) If the company continues to donate directly to Planned
9 Parenthood, the board shall notify each affected retirement system
10 that the system is required to sell, redeem, or otherwise divest
11 itself of all publicly traded securities of the company, except
12 securities described by Section 808.055, according to the schedule
13 adopted by the board under Section 808.054.

14 Sec. 808.054. DIVESTMENT OF ASSETS. (a) The board by rule
15 shall adopt a schedule for divestment from listed companies.

16 (b) A retirement system required to sell, redeem, or
17 otherwise divest itself of all publicly traded securities of a
18 listed company shall comply with the schedule adopted by the board
19 under Subsection (a) unless the retirement system determines, based
20 on a good faith exercise of its fiduciary discretion, that a
21 different schedule is more prudent or that divestment from the
22 listed company will likely result in a loss in value or a benchmark
23 deviation described by Section 808.056(a).

24 (c) If a retirement system delays divestment under the
25 schedule adopted by the board under Subsection (a), the retirement
26 system shall submit a report to the presiding officer of each house
27 of the legislature and the attorney general stating the reasons and

1 justification for the retirement system's delay in divestment from
2 a listed company. The report must include documentation supporting
3 its determination that the divestment would result in a loss in
4 value or benchmark deviation described by Section 808.056(a),
5 including objective numerical estimates. The retirement system
6 shall update the report every six months.

7 Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
8 retirement system is not required to divest from any indirect
9 holdings in actively or passively managed investment funds or
10 private equity funds. The retirement system shall submit letters
11 to the managers of investment funds containing listed companies
12 requesting that they consider removing those companies from the
13 fund or create a similar fund with holdings devoid of listed
14 companies. If the manager creates such a similar fund with
15 substantially the same management fees and same level of investment
16 risk and anticipated return, the retirement system may replace all
17 applicable investments with investments in the similar fund in a
18 time frame consistent with prudent fiduciary standards.

19 Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

20 (a) A retirement system may cease divesting from or may reinvest in
21 one or more listed companies if clear and convincing evidence shows
22 that:

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

27 (2) an individual portfolio that uses a

1 benchmark-aware strategy would be subject to an aggregate expected
2 deviation from its benchmark as a result of having to divest from
3 listed companies under this chapter.

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

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

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

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

20 Sec. 808.057. PROHIBITED INVESTMENTS. Except as provided
21 by Section 808.056, a retirement system may not acquire securities
22 of a listed company.

23 SUBCHAPTER C. REPORT; ENFORCEMENT

24 Sec. 808.101. REPORT. Not later than December 31 of each
25 year, each retirement system shall file a publicly available report
26 with the presiding officer of each house of the legislature and the
27 attorney general that:

1 (1) identifies all securities sold, redeemed,
2 divested, or withdrawn in compliance with Section 808.054;

3 (2) identifies all prohibited investments under
4 Section 808.057; and

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

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

8 SECTION 2. (a) Not later than November 1, 2017, the State
9 Pension Review Board shall adopt rules necessary to implement
10 Chapter 808, Government Code, as added by this Act.

11 (b) Not later than January 1, 2018, the State Pension Review
12 Board shall prepare and provide to each retirement system, as
13 defined by Section 808.001, Government Code, as added by this Act,
14 the initial list of scrutinized companies required by Section
15 808.051, Government Code, as added by this Act.

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