

By: King of Parker, Craddick, Price,  
King of Hemphill, Bell of Montgomery

H.B. No. 2189

Substitute the following for H.B. No. 2189:

By: Paddie

C.S.H.B. No. 2189

A BILL TO BE ENTITLED

AN ACT

relating to state contracts with and investments in certain  
companies that boycott energy companies.

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

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

CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES THAT

BOYCOTT CERTAIN ENERGY COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001. DEFINITIONS. In this chapter:

(1) "Boycott energy company" means refusing to deal  
with, terminating business activities with, or otherwise taking any  
action that is, solely or primarily, intended to penalize, inflict  
economic harm on, or limit commercial relations with a company  
because the company:

(A) engages in the exploration, production,  
utilization, transportation, sale, or manufacturing of fossil  
fuel-based energy and does not commit or pledge to meet  
environmental standards beyond applicable federal and state law; or

(B) does business with a company described by  
Paragraph (A).

(2) "Company" means a for-profit sole proprietorship,  
organization, association, corporation, partnership, joint  
venture, limited partnership, limited liability partnership, or

1 limited liability company, including a wholly owned subsidiary,  
2 majority-owned subsidiary, parent company, or affiliate of those  
3 entities or business associations, that exists to make a profit.

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

8 (4) "Financial company" means a publicly traded  
9 financial services, banking, or investment company.

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

18 (6) "Listed financial company" means a financial  
19 company listed by the comptroller under Section 809.051.

20 (7) "State governmental entity" means:

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

23 (B) the Teacher Retirement System of Texas;

24 (C) the Texas Municipal Retirement System;

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

27 (E) the Texas Emergency Services Retirement

1 System; and

2 (F) the permanent school fund.

3 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to  
4 actions taken in compliance with this chapter, including all good  
5 faith determinations regarding financial companies as required by  
6 this chapter, a state governmental entity and the comptroller are  
7 exempt from any conflicting statutory or common law obligations,  
8 including any obligations with respect to making investments,  
9 divesting from any investment, preparing or maintaining any list of  
10 financial companies, or choosing asset managers, investment funds,  
11 or investments for the state governmental entity's securities  
12 portfolios.

13 Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL  
14 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an  
15 action, inaction, decision, divestment, investment, financial  
16 company communication, report, or other determination made or taken  
17 in connection with this chapter, the state shall, without regard to  
18 whether the person performed services for compensation, indemnify  
19 and hold harmless for actual damages, court costs, and attorney's  
20 fees adjudged against, and defend:

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

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

24 (3) a former employee, a former member of the  
25 governing body, or any other former officer of a state governmental  
26 entity who was an employee, member of the governing body, or other  
27 officer when the act or omission on which the damages are based

1 occurred;

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

5 (5) a state governmental entity.

6 Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person,  
7 including a member, retiree, or beneficiary of a retirement system  
8 to which this chapter applies, an association, a research firm, a  
9 financial company, or any other person may not sue or pursue a  
10 private cause of action against the state, a state governmental  
11 entity, a current or former employee, a member of the governing  
12 body, or any other officer of a state governmental entity, or a  
13 contractor of a state governmental entity, for any claim or cause of  
14 action, including breach of fiduciary duty, or for violation of any  
15 constitutional, statutory, or regulatory requirement in connection  
16 with any action, inaction, decision, divestment, investment,  
17 financial company communication, report, or other determination  
18 made or taken in connection with this chapter.

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

24 Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT  
25 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state  
26 governmental entity is not subject to a requirement of this chapter  
27 if the state governmental entity determines that the requirement

1 would be inconsistent with its fiduciary responsibility with  
2 respect to the investment of entity assets or other duties imposed  
3 by law relating to the investment of entity assets, including the  
4 duty of care established under Section 67, Article XVI, Texas  
5 Constitution.

6 Sec. 809.006. RELIANCE ON FINANCIAL COMPANY RESPONSE. The  
7 comptroller and a state governmental entity may rely on a financial  
8 company's response to a notice or communication made under this  
9 chapter without conducting any further investigation, research, or  
10 inquiry.

11 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

12 Sec. 809.051. LISTED FINANCIAL COMPANIES. (a) The  
13 comptroller shall prepare and maintain, and provide to each state  
14 governmental entity, a list of all financial companies that boycott  
15 energy companies. In maintaining the list, the comptroller may:

16 (1) review and rely, as appropriate in the  
17 comptroller's judgment, on publicly available information  
18 regarding financial companies, including information provided by  
19 the state, nonprofit organizations, research firms, international  
20 organizations, and governmental entities; and

21 (2) request written verification from a financial  
22 company that it does not boycott energy companies and rely, as  
23 appropriate in the comptroller's judgment and without conducting  
24 further investigation, research, or inquiry, on a financial  
25 company's written response to the request.

26 (b) A financial company that fails to provide to the  
27 comptroller a written verification under Subsection (a)(2) before

1 the 61st day after receiving the request from the comptroller is  
2 presumed to be boycotting energy companies.

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

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

12 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED  
13 FINANCIAL COMPANIES. Not later than the 30th day after the date a  
14 state governmental entity receives the list provided under Section  
15 809.051, the state governmental entity shall notify the comptroller  
16 of the listed financial companies in which the state governmental  
17 entity owns direct holdings or indirect holdings.

18 Sec. 809.053. ACTIONS RELATING TO LISTED FINANCIAL COMPANY.

19 (a) For each listed financial company identified under Section  
20 809.052, the state governmental entity shall send a written notice:

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

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

26 (3) offering the financial company the opportunity to  
27 clarify its activities related to companies described by Sections

1 809.001(1)(A) and (B).

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

6 (c) If, during the time provided by Subsection (b), the  
7 financial company ceases boycotting energy companies, the  
8 comptroller shall remove the financial company from the list  
9 maintained under Section 809.051 and this chapter will no longer  
10 apply to the financial company unless it resumes boycotting energy  
11 companies.

12 (d) If, after the time provided by Subsection (b) expires,  
13 the financial company continues to boycott energy companies, the  
14 state governmental entity shall sell, redeem, divest, or withdraw  
15 all publicly traded securities of the financial company, except  
16 securities described by Section 809.055, according to the schedule  
17 provided by Section 809.054.

18 Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state  
19 governmental entity required to sell, redeem, divest, or withdraw  
20 all publicly traded securities of a listed financial company shall  
21 comply with the following schedule:

22 (1) at least 50 percent of those assets must be removed  
23 from the state governmental entity's assets under management not  
24 later than the 180th day after the date the financial company  
25 receives notice under Section 809.053 or Subsection (b) unless the  
26 state governmental entity determines, based on a good faith  
27 exercise of its fiduciary discretion and subject to Subdivision

1 (2), that a later date is more prudent; and

2 (2) 100 percent of those assets must be removed from  
3 the state governmental entity's assets under management not later  
4 than the 360th day after the date the financial company receives  
5 notice under Section 809.053 or Subsection (b).

6 (b) If a financial company that ceased boycotting energy  
7 companies after receiving notice under Section 809.053 resumes its  
8 boycott, the state governmental entity shall send a written notice  
9 to the financial company informing it that the state governmental  
10 entity will sell, redeem, divest, or withdraw all publicly traded  
11 securities of the financial company according to the schedule in  
12 Subsection (a).

13 (c) Except as provided by Subsection (a), a state  
14 governmental entity may delay the schedule for divestment under  
15 that subsection only to the extent that the state governmental  
16 entity determines, in the state governmental entity's good faith  
17 judgment, and consistent with the entity's fiduciary duty, that  
18 divestment from listed financial companies will likely result in a  
19 loss in value or a benchmark deviation described by Section  
20 809.056(a). If a state governmental entity delays the schedule for  
21 divestment, the state governmental entity shall submit a report to  
22 the presiding officer of each house of the legislature and the  
23 attorney general stating the reasons and justification for the  
24 state governmental entity's delay in divestment from listed  
25 financial companies. The report must include documentation  
26 supporting its determination that the divestment would result in a  
27 loss in value or a benchmark deviation described by Section



1 809.056(a), including objective numerical estimates. The state  
2 governmental entity shall update the report every six months.

3 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A  
4 state governmental entity is not required to divest from any  
5 indirect holdings in actively or passively managed investment funds  
6 or private equity funds. The state governmental entity shall  
7 submit letters to the managers of each investment fund containing  
8 listed financial companies requesting that they remove those  
9 financial companies from the fund or create a similar actively or  
10 passively managed fund with indirect holdings devoid of listed  
11 financial companies. If a manager creates a similar fund with  
12 substantially the same management fees and same level of investment  
13 risk and anticipated return, the state governmental entity may  
14 replace all applicable investments with investments in the similar  
15 fund in a time frame consistent with prudent fiduciary standards  
16 but not later than the 450th day after the date the fund is created.

17 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED FINANCIAL  
18 COMPANIES. (a) A state governmental entity may cease divesting  
19 from one or more listed financial companies only if clear and  
20 convincing evidence shows that:

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

25 (2) an individual portfolio that uses a  
26 benchmark-aware strategy would be subject to an aggregate expected  
27 deviation from its benchmark as a result of having to divest from

1 listed financial companies under this chapter.

2 (b) A state governmental entity may cease divesting from a  
3 listed financial company as provided by this section only to the  
4 extent necessary to ensure that the state governmental entity does  
5 not suffer a loss in value or deviate from its benchmark as  
6 described by Subsection (a).

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

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

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

19 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided  
20 by Section 809.056, a state governmental entity may not acquire  
21 securities of a listed financial company.

22 SUBCHAPTER C. REPORT; ENFORCEMENT

23 Sec. 809.101. REPORT. Not later than January 5 of each  
24 year, each state governmental entity shall file a publicly  
25 available report with the presiding officer of each house of the  
26 legislature and the attorney general that:

27 (1) identifies all securities sold, redeemed,

1 divested, or withdrawn in compliance with Section 809.054;

2 (2) identifies all prohibited investments under  
3 Section 809.057; and

4 (3) summarizes any changes made under Section 809.055.  
5 Sec. 809.102. ENFORCEMENT. The attorney general may bring  
6 any action necessary to enforce this chapter.

7 SECTION 2. Subtitle F, Title 10, Government Code, is  
8 amended by adding Chapter 2274 to read as follows:

9 CHAPTER 2274. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING  
10 CERTAIN ENERGY COMPANIES

11 Sec. 2274.001. DEFINITIONS. In this chapter:

12 (1) "Boycott energy company" has the meaning assigned  
13 by Section 809.001.

14 (2) "Company" has the meaning assigned by Section  
15 809.001, except that the term does not include a sole  
16 proprietorship.

17 (3) "Governmental entity" has the meaning assigned by  
18 Section 2251.001.

19 Sec. 2274.002. PROVISION REQUIRED IN CONTRACT. (a) This  
20 section applies only to a contract that:

21 (1) is between a governmental entity and a company  
22 with 10 or more full-time employees; and

23 (2) has a value of \$100,000 or more that is to be paid  
24 wholly or partly from public funds of the governmental entity.

25 (b) A governmental entity may not enter into a contract with  
26 a company for goods or services unless the contract contains a  
27 written verification from the company that it:

1           (1) does not boycott energy companies; and

2           (2) will not boycott energy companies during the term  
3 of the contract.

4           SECTION 3. Chapter 2274, Government Code, as added by this  
5 Act, applies only to a contract entered into on or after the  
6 effective date of this Act. A contract entered into before that  
7 date is governed by the law in effect on the date the contract was  
8 entered into, and the former law is continued in effect for that  
9 purpose.

10          SECTION 4. This Act takes effect September 1, 2021.