A BILL TO BE ENTITLED

AN ACT
relating to state contracts with and investments in companies that boycott certain 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 COMPANIES THAT BOYCOTT CERTAIN ENERGY COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001. DEFINITIONS. In this chapter:

(1) "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(A) invests in or assists in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy; 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 limited liability company, 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 state
governmental entity in an account or fund in which a state
governmental entity owns all shares or interests.

(4) "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

(5) "Listed company" means a company listed by the
comptroller under Section 809.051.

(6) "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;
(E) the Texas Emergency Services Retirement
System; and
(F) the permanent school fund.

Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to
actions taken in compliance with this chapter, including all good
faith determinations regarding companies as required by this
chapter, a state governmental entity and the comptroller are exempt
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
state governmental entity's securities portfolios.

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

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

(2) a contractor of a state governmental entity;

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

(4) a former contractor of a state governmental entity
who was a contractor when the act or omission on which the damages
are based occurred; and
Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a company, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental 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 action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

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

Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that 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 entity assets, including the duty of care established under Section 67, Article XVI, Texas...
Sec. 809.006. RELIANCE ON COMPANY RESPONSE. The comptroller and a state governmental entity may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 809.051. LISTED COMPANIES. (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all companies that boycott energy companies. In maintaining the list, the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

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

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

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

Sec. 809.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
each listed company identified under Section 809.052, the state
governmental entity shall send a written notice:
(1) informing the company of its status as a listed
company;
(2) warning the company that it may become subject to
divestment by state governmental entities after the expiration of
the period described by Subsection (b); and
(3) offering the company the opportunity to clarify
its activities related to companies described by Sections
809.001(1)(A) and (B).

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

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

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

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

(1) at least 50 percent of those assets must be removed
from the state governmental entity's assets under management not
later than the 180th day after the date the company receives notice
under Section 809.053 or Subsection (b) unless the state
governmental entity determines, based on a good faith exercise of
its fiduciary discretion and subject to Subdivision (2), that a
later date is more prudent; and

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

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

(c) Except as provided by Subsection (a), a state
governmental entity may delay the schedule for divestment under
that subsection only to the extent that the state governmental
entity determines, in the state governmental entity's good faith
judgment, and consistent with the entity's fiduciary duty, that
divestment from listed companies will likely result in a loss in
value or a benchmark deviation described by Section 809.056(a). If
a state governmental entity delays the schedule for divestment, the
state governmental entity shall submit a report to the presiding
officer of each house of the legislature and the attorney general
stating the reasons and justification for the state governmental
entity's delay in divestment from listed companies. The report
must include documentation supporting its determination that the
divestment would result in a loss in value or a benchmark deviation
described by Section 809.056(a), including objective numerical
estimates. The state governmental entity shall update the report
every six months.

Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. 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 state governmental entity shall
submit letters to the managers of each investment fund containing
listed companies requesting that they remove those companies from
the fund or create a similar actively or passively managed fund with
indirect holdings devoid of listed companies. If a manager creates
a similar fund with substantially the same management fees and same
level of investment risk and anticipated return, the state
governmental entity may replace all applicable investments with
investments in the similar fund in a time frame consistent with
prudent fiduciary standards but not later than the 450th day after
the date the fund is created.
Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

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

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

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

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

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

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

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

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

SUBCHAPTER C. REPORT; ENFORCEMENT

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

(1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809.054;

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

(3) summarizes any changes made under Section 809.055.

Sec. 809.102. ENFORCEMENT. The attorney general may bring any action necessary to enforce this chapter.

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

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

Sec. 2274.001. DEFINITIONS. In this chapter:

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

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

(3) "Governmental entity" has the meaning assigned by
Sec. 2274.002. PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:

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

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

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

(1) does not boycott energy companies; and

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

SECTION 3. This Act takes effect September 1, 2021.