

By: King of Parker

H.B. No. 2189

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,

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

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

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

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

17 (6) "State governmental entity" means:

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

20 (B) the Teacher Retirement System of Texas;

21 (C) the Texas Municipal Retirement System;

22 (D) the Texas County and District Retirement  
23 System;

24 (E) the Texas Emergency Services Retirement  
25 System; and

26 (F) the permanent school fund.

27 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to

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

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

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

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

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

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

1           (5) a state governmental entity.

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

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

20           Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT  
21 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state  
22 governmental entity is not subject to a requirement of this chapter  
23 if the state governmental entity determines that the requirement  
24 would be inconsistent with its fiduciary responsibility with  
25 respect to the investment of entity assets or other duties imposed  
26 by law relating to the investment of entity assets, including the  
27 duty of care established under Section 67, Article XVI, Texas

1 Constitution.

2 Sec. 809.006. RELIANCE ON COMPANY RESPONSE. The  
3 comptroller and a state governmental entity may rely on a company's  
4 response to a notice or communication made under this chapter  
5 without conducting any further investigation, research, or  
6 inquiry.

7 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

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

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

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

25 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED  
26 COMPANIES. Not later than the 30th day after the date a state  
27 governmental entity receives the list provided under Section

1 809.051, the state governmental entity shall notify the comptroller  
2 of the listed companies in which the state governmental entity owns  
3 direct holdings or indirect holdings.

4 Sec. 809.053. ACTIONS RELATING TO LISTED COMPANY. (a) For  
5 each listed company identified under Section 809.052, the state  
6 governmental entity shall send a written notice:

7 (1) informing the company of its status as a listed  
8 company;

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

12 (3) offering the company the opportunity to clarify  
13 its activities related to companies described by Sections  
14 809.001(1)(A) and (B).

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

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

24 (d) If, after the time provided by Subsection (b) expires,  
25 the company continues to boycott energy companies, the state  
26 governmental entity shall sell, redeem, divest, or withdraw all  
27 publicly traded securities of the company, except securities

1 described by Section 809.055, according to the schedule provided by  
2 Section 809.054.

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

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

14 (2) 100 percent of those assets must be removed from  
15 the state governmental entity's assets under management not later  
16 than the 360th day after the date the company receives notice under  
17 Section 809.053 or Subsection (b).

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

24 (c) Except as provided by Subsection (a), a state  
25 governmental entity may delay the schedule for divestment under  
26 that subsection only to the extent that the state governmental  
27 entity determines, in the state governmental entity's good faith

1 judgment, and consistent with the entity's fiduciary duty, that  
2 divestment from listed companies will likely result in a loss in  
3 value or a benchmark deviation described by Section 809.056(a). If  
4 a state governmental entity delays the schedule for divestment, the  
5 state governmental entity shall submit a report to the presiding  
6 officer of each house of the legislature and the attorney general  
7 stating the reasons and justification for the state governmental  
8 entity's delay in divestment from listed companies. The report  
9 must include documentation supporting its determination that the  
10 divestment would result in a loss in value or a benchmark deviation  
11 described by Section 809.056(a), including objective numerical  
12 estimates. The state governmental entity shall update the report  
13 every six months.

14 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A  
15 state governmental entity is not required to divest from any  
16 indirect holdings in actively or passively managed investment funds  
17 or private equity funds. The state governmental entity shall  
18 submit letters to the managers of each investment fund containing  
19 listed companies requesting that they remove those companies from  
20 the fund or create a similar actively or passively managed fund with  
21 indirect holdings devoid of listed companies. If a manager creates  
22 a similar fund with substantially the same management fees and same  
23 level of investment risk and anticipated return, the state  
24 governmental entity may replace all applicable investments with  
25 investments in the similar fund in a time frame consistent with  
26 prudent fiduciary standards but not later than the 450th day after  
27 the date the fund is created.



1       Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

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

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

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

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

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

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

27       (e) This section does not apply to reinvestment in a company

1 that is no longer a listed company.

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

5 SUBCHAPTER C. REPORT; ENFORCEMENT

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

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

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

14 (3) summarizes any changes made under Section 809.055.

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

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

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

21 Sec. 2274.001. DEFINITIONS. In this chapter:

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

24 (2) "Company" has the meaning assigned by Section  
25 809.001, except that the term does not include a sole  
26 proprietorship.

27 (3) "Governmental entity" has the meaning assigned by

1 Section 2251.001.

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

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

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

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

11 (1) does not boycott energy companies; and

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

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