

BILL ANALYSIS

S.B. 667
By: Hughes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that the investment of Texas public pension funds in adversarial nations undermines the interests of taxpayers by funneling retirement savings into a foreign adversary's economy and that these funds may be used to strengthen the industries, military development, and influence of a foreign adversary. The bill sponsor has also informed the committee that these investments may expose Texas retirees to financial risks while supporting companies that may work against the economic and security interests of the United States, but that redirecting these funds toward more transparent investments could better align with Texas values, safeguard taxpayer dollars, and ensure economic growth benefits American workers and businesses. S.B. 667 seeks to protect the financial integrity of Texas' investments while addressing pressing national security concerns by prohibiting certain state governmental entities from investing in certain Chinese affiliated entities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 667 amends the Government Code to provide for the prohibition on certain state governmental entities from investing in certain Chinese-affiliated entities.

General Provisions

Definitions

S.B. 667 defines the following terms for purposes of the bill's provisions:

- "Chinese-affiliated entity" means a publicly traded entity that, as follows:
 - is both:
 - incorporated or headquartered in the People's Republic of China, including in the Hong Kong special administrative region, other than a U.S. subsidiary, as that term is defined by federal regulations relating to Export Administration Regulations (EAR); and
 - publicly confirmed to be controlled by the People's Republic of China, the Chinese Communist Party, or a provincial division, municipality, governmental agency, sovereign wealth fund, or political instrumentality of the People's Republic of China; or

- is identified by one or more of the appropriate government agencies to be required by the National Intelligence Law of the People's Republic of China (2017), as amended in 2018, or any successor law, to support, assist, and cooperate with the state intelligence work of the People's Republic of China and keep the secrets of the national intelligence work of the People's Republic of China;
- "direct holdings" means, with respect to a restricted entity, all securities of that restricted entity held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests;
- "entity" 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;
- "indirect holdings" means, with respect to a restricted entity, all securities of that restricted entity 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 bill's provisions, and does not include money invested under a 401(k) plan or a 457 plan as those plans are described by applicable provisions of the federal Internal Revenue Code of 1986;
- "listed restricted entity" means a restricted entity listed by the comptroller of public accounts under the bill's provisions;
- "restricted entity" means a Chinese-affiliated entity or other entity associated with the People's Republic of China that is identified or included on an entities list maintained by the federal government for the purpose of imposing prohibitions or restrictions on or against entities to address national security concerns, protect human rights, or combat unfair trade practices, and includes an entity that:
 - is listed on the supplemental entity list of certain entities or addresses subject to license requirements for specified items under applicable federal regulations with respect to the EAR as associated with the People's Republic of China because there is reasonable cause to believe the entity is involved, has been involved, or poses a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States of America; and
 - is listed in the Federal Register by the U.S. Secretary of Defense as a Chinese military company operating directly or indirectly in the United States or in any territory or possession of the United States on the most recent list compiled under applicable provisions of the federal William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, or any successor list of Chinese military companies the Secretary of Defense is required by law to compile and publish; and
- "state governmental entity" means any of the following:
 - the Employees Retirement System of Texas (ERS), including a retirement system administered by ERS;
 - the Teacher Retirement System of Texas;
 - the Texas Municipal Retirement System;
 - the Texas County and District Retirement System;
 - the Texas Emergency Services Retirement System; or
 - the permanent school fund.

Other Legal Obligations

S.B. 667 establishes that, with respect to actions taken in compliance with the bill's provisions, including all good faith determinations regarding restricted entities as required by the bill, 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 restricted entities, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

Indemnification of State Governmental Entities, Employees, and Others

S.B. 667 requires the state, in a cause of action based on an action, inaction, decision, divestment, investment, restricted entity communication, report, or other determination made or taken in connection with the bill, to indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend, the following:

- an employee, member of the governing body, or any other officer of a state governmental entity;
- a contractor of a state governmental entity;
- a former employee, 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;
- 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
- a state governmental entity.

The bill requires the state do so without regard to whether the person performed services for compensation.

No Private Cause of Action

S.B. 667 prohibits a person, including a member, retiree, or beneficiary of an applicable retirement system, an association, a research firm, a restricted entity, or any other person from suing or pursuing 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, restricted entity communication, report, or other determination made or taken in connection with the bill's provisions. The bill makes 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, liable for paying the costs and attorney's fees of a person sued in violation of these bill provisions relating to a private cause of action.

Inapplicability of Requirements Inconsistent with Fiduciary Responsibilities and Related Duties

S.B. 667 establishes that a state governmental entity is not subject to a requirement of the bill if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of its assets or other duties imposed by law relating to the investment of its assets, including the duty of care established under provisions of the Texas Constitution governing state and local retirement systems.

Reliance on Federal Determination and Restricted Entity Response

S.B. 667 authorizes the comptroller to rely on the following, in the following order of priority, without conducting any further investigation, research, or inquiry:

- a determination by a federal agency or officer made under a federal law, regulation, or executive order regarding whether an entity is a restricted entity; and
- a restricted entity's response to a communication made under the bill's provisions.

Duties Regarding Investments

Listed Restricted Entities

S.B. 667 requires the comptroller to prepare and maintain, and provide to each state governmental entity, a list of all restricted entities. In maintaining the list, the comptroller may do the following:

- review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding restricted entities, including information provided or made available by federal, state, or local governments, nonprofit organizations, research firms, and international organizations; and
- request written verification from a restricted entity that it does not meet any of the criteria in the bill's applicable definition of that term and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on the entity's written response to the request.

A restricted entity that fails to provide to the comptroller such written verification before the 61st day after receiving the request from the comptroller is presumed to be a restricted entity. The bill requires the comptroller to 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 as restricted entities. Not later than the 30th day after the date the list of restricted entities is first provided or updated, the comptroller must 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.

Identification of Investment in Listed Restricted Entities and Notice of Divestment to Listed Restricted Entities

S.B. 667 requires a state governmental entity, not later than the 30th day after the date the entity receives the list of all restricted entities from the comptroller, to notify the comptroller of the restricted entities in which the state governmental entity owns direct holdings or indirect holdings.

S.B. 667 requires the state governmental entity, for each listed restricted entity identified by the state governmental entity under the bill's provisions, to send a written notice doing the following:

- informing the restricted entity of its status as a restricted entity; and
- warning the restricted entity that it may become subject to divestment by the state governmental entity.

Divestment of Assets

S.B. 667 requires a state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed restricted entity to comply with the following schedule:

- 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 restricted entity receives written notice from the state governmental entity under the bill's provisions unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to these divestment provisions, that a later date is more prudent; and
- 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 restricted entity receives the written notice.

The bill authorizes a state governmental entity, except as provided by the bill's divestment provisions, to delay the schedule for divestment only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the state governmental entity's fiduciary duty, that divestment from listed restricted entities will

likely result in a loss in value or a benchmark deviation described by the bill's provisions relating to authorized investments in listed restricted entities. If a state governmental entity delays the schedule for divestment, the state governmental entity must submit a report to the presiding officer of each house of the legislature and the attorney general stating the reason and justification for the state governmental entity's delay in divestment from listed restricted entities. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation, including objective numerical estimates. The bill requires the state governmental entity to update the report every six months.

Investments Exempted from Divestment

S.B. 667 expressly establishes that 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 bill requires the state governmental entity to submit letters to the managers of each investment fund containing listed restricted entities requesting that they remove those restricted entities from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed restricted entities. 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.

Authorized Investment in Listed Restricted Entities

S.B. 667 authorizes a state governmental entity to cease divesting from one or more listed restricted entities only if clear and convincing evidence shows that, as follows:

- 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 restricted entities under the bill; or
- 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 restricted entities under the bill.

The bill authorizes a state governmental entity to cease divesting from a listed restricted entity as provided by these bill provisions 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 these provisions. The bill requires a state governmental entity, before the state governmental entity may cease divesting from a listed restricted entity, to 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 restricted entity. The state governmental entity must update the required report semiannually, as applicable.

Prohibited Investments

S.B. 667 prohibits a state governmental entity from acquiring securities of a listed restricted entity, except as provided by the bill's provisions relating to authorized investment in listed restricted entities.

Report and Enforcement

S.B. 667 requires each state governmental entity, not later than January 5 of each year, to file a publicly available report with the presiding officer of each house of the legislature and the attorney general that does the following:

- identifies all securities sold, redeemed, divested, or withdrawn in compliance with the bill's provisions relating to divestment of assets;

- identifies all prohibited investments under the bill's provisions relating to prohibited investments; and
- summarizes any changes made under the bill's provisions relating to investments that are exempted from divestment.

The bill authorizes the attorney general to bring any action necessary to enforce the bill's provisions.

EFFECTIVE DATE

September 1, 2025.