

BILL ANALYSIS

Senate Research Center
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S.B. 667
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 667 aims to regulate the investment activities of state retirement systems in Texas by prohibiting investments in entities affiliated with China. This bill is significant for several reasons:

1. National Security Concerns: The bill addresses concerns about national security by restricting state investments in entities that are affiliated with China, which may be perceived as a potential threat due to geopolitical tensions.
2. Economic Impact: By mandating divestment from certain Chinese-affiliated entities, the bill could influence the financial strategies of state retirement systems, potentially affecting their investment returns and financial health.
3. Fiduciary Responsibility: The bill emphasizes the fiduciary duty of state retirement systems to act in the best interest of their beneficiaries. It allows for exceptions if divestment would result in a loss of value or deviation from investment benchmarks, ensuring that financial prudence is maintained.
4. Reporting and Accountability: The bill requires state retirement systems to report any delays in divestment, providing transparency and accountability in their investment decisions. This includes submitting reports to legislative leaders and the attorney general, detailing the reasons for any delays.
5. Legal and Administrative Framework: The bill establishes a legal framework for identifying and managing restricted entities, including the preparation and maintenance of a list of such entities by the comptroller.

Overall, the bill aligns the investment strategies of Texas state retirement systems with broader national security and economic policies while making sure that fiduciary responsibilities are upheld.

As proposed, S.B. 667 amends current law relating to prohibiting state retirement systems from investing in certain Chinese-affiliated entities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

CHAPTER 809A. PROHIBITION ON INVESTMENT IN CERTAIN
CHINESE-AFFILIATED ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809A.001. DEFINITIONS. Defines "Chinese-affiliated entity," "direct holdings," "entity," "indirect holdings," "listed restricted entity," "restricted entity," and "state retirement system."

Sec. 809A.002. OTHER LEGAL OBLIGATIONS. Provides that, with respect to actions taken in compliance with this chapter, including all good faith determinations regarding restricted entities as required by this chapter, a state retirement system and the Comptroller of Public Accounts of the State of Texas (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 retirement system's securities portfolios.

Sec. 809A.003. INDEMNIFICATION OF STATE RETIREMENT SYSTEMS, EMPLOYEES, AND OTHERS. 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 this chapter, without regard to whether the person performed services for compensation, to 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 retirement system;
- (2) a contractor of a state retirement system;
- (3) a former employee, a former member of the governing body, or any other former officer of a state retirement system 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 retirement system who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state retirement system.

Sec. 809A.004. NO PRIVATE CAUSE OF ACTION. (a) Prohibits a person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, 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 retirement system, a current or former employee, a member of the governing body, or any other officer of a state retirement system, or a contractor of a state retirement system, 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 this chapter.

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

Sec. 809A.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. Provides that a state retirement system is not subject to a requirement of this chapter if the state retirement system 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 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution.

Sec. 809A.006. RELIANCE ON FEDERAL DETERMINATION AND RESTRICTED ENTITY RESPONSE. Authorizes the comptroller to rely on the following, in the following order of priority, without conducting any further investigation, research, or inquiry:

- (1) 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
- (2) a restricted entity's response to a communication made under this chapter.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 809A.051. LISTED RESTRICTED ENTITIES. (a) Requires the comptroller to prepare and maintain, and provide to each state retirement system, a list of all restricted entities. Authorizes the comptroller, in maintaining the list, to:

- (1) 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
- (2) request written verification from a restricted entity that it does not meet any of the criteria in Section 809A.001(6) (relating to defining "restricted entity") 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.

(b) Provides that a restricted entity that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be a restricted entity.

(c) 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 in Subsection (a).

(d) Requires the comptroller, not later than the 30th day after the date the list of restricted entities is first provided or updated, to 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 Internet website.

Sec. 809A.052. IDENTIFICATION OF INVESTMENT IN LISTED RESTRICTED ENTITIES. Requires the state retirement system, not later than the 30th day after the date a state retirement system receives the list provided under Section 809A.051, to notify the comptroller of the restricted entities in which the state retirement system owns direct holdings or indirect holdings.

Sec. 809A.053. NOTICE OF DIVESTMENT TO LISTED RESTRICTED ENTITY. Requires the state retirement system, for each listed restricted entity identified under Section 809A.052, to send a written notice:

- (1) informing the restricted entity of its status as a restricted entity; and
- (2) warning the restricted entity that it may become subject to divestment by the state retirement system.

Sec. 809A.054. DIVESTMENT OF ASSETS. (a) Requires a state retirement system to sell, redeem, divest, or withdraw all publicly traded securities of a listed restricted entity to comply with the following schedule:

(1) at least 50 percent of those assets are required to be removed from the state retirement system's assets under management not later than the 180th day after the date the restricted entity receives notice under Section 809A.053 unless the state retirement system 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 are required to be removed from the state retirement system's assets under management not later than the 360th day after the date the restricted entity receives notice under Section 809A.053.

(b) Authorizes a state retirement system, except as provided by Subsection (a), to delay the schedule for divestment under that subsection only to the extent that the state retirement system determines, in the state retirement system's good faith judgment, and consistent with the state retirement system's fiduciary duty, that divestment from listed restricted entities will likely result in a loss in value or a benchmark deviation described by Section 809A.056(a). Requires the state retirement system, if a state retirement system delays the schedule for divestment, to 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 retirement system's delay in divestment from listed restricted entities. Requires that the report include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809A.056(a), including objective numerical estimates. Requires the state retirement system to update the report every six months.

Sec. 809A.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. Provides that a state retirement system is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. Requires the state retirement system 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. Authorizes a state retirement system, If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, to 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. 809A.056. AUTHORIZED INVESTMENT IN LISTED RESTRICTED ENTITIES. (a) Authorizes a state retirement system to cease divesting from one or more listed restricted entities only if clear and convincing evidence shows that:

(1) the state retirement system has suffered or will suffer a loss in the hypothetical value of all assets under management by the state retirement system as a result of having to divest from listed restricted entities 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 restricted entities under this chapter.

(b) Provides that a state retirement system is authorized to cease divesting from a listed restricted entity as provided by this section only to the extent necessary to ensure that the state retirement system does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c) Requires a state retirement system, before the state retirement system is authorized to cease divesting from a listed restricted entity under this section, 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.

(d) Requires the state retirement system to update the report required by Subsection (c) semiannually, as applicable.

Sec. 809A.057. **PROHIBITED INVESTMENTS.** Prohibits a state retirement system, except as provided by Section 809A.056, from acquiring securities of a listed restricted entity.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 809A.101. **REPORT.** Requires each state retirement system, 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:

- (1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809A.054;
- (2) identifies all prohibited investments under Section 809A.057; and
- (3) summarizes any changes made under Section 809A.055.

Sec. 809A.102. **ENFORCEMENT.** Authorizes the attorney general to bring any action necessary to enforce this chapter.

SECTION 2. Effective date: September 1, 2025.