

By: Creighton

S.B. No. 134

A BILL TO BE ENTITLED

1 AN ACT

2 relating to state contracts with and investments in companies that
3 boycott Israel.

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

5 SECTION 1. Subtitle F, Title 10, Government Code, is
6 amended by adding Chapter 2270 to read as follows:

7 CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING
8 ISRAEL

9 Sec. 2270.001. DEFINITIONS. In this chapter:

10 (1) "Boycott Israel" has the meaning assigned by
11 Section 808.001.

12 (2) "Company" has the meaning assigned by Section
13 808.001.

14 (3) "Governmental entity" has the meaning assigned by
15 Section 2251.001.

16 Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A
17 governmental entity may not enter into a contract with a company for
18 goods or services unless the contract contains a written
19 verification from the company that it:

20 (1) does not boycott Israel; and

21 (2) will not boycott Israel during the term of the
22 contract.

23 SECTION 2. Subtitle A, Title 8, Government Code, is amended
24 by adding Chapter 808 to read as follows:

1 CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT

2 ISRAEL

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 808.001. DEFINITIONS. In this chapter:

5 (1) "Boycott Israel" means refusing to deal with,
6 terminating business activities with, or otherwise taking any
7 action that is intended to penalize, inflict economic harm on, or
8 limit commercial relations specifically with Israel, or with a
9 person or entity doing business in Israel or in an
10 Israeli-controlled territory, but does not include an action made
11 for ordinary business purposes.

12 (2) "Company" means a for-profit sole proprietorship,
13 organization, association, corporation, partnership, joint
14 venture, limited partnership, limited liability partnership, or
15 limited liability company, including a wholly owned subsidiary,
16 majority-owned subsidiary, parent company, or affiliate of those
17 entities or business associations that exists to make a profit.

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

22 (4) "Indirect holdings" means, with respect to a
23 company, all securities of that company held in an account or fund,
24 such as a mutual fund, managed by one or more persons not employed
25 by a state governmental entity, in which the state governmental
26 entity owns shares or interests together with other investors not
27 subject to the provisions of this chapter. The term does not

1 include money invested under a plan described by Section 401(k) or
2 457 of the Internal Revenue Code of 1986.

3 (5) "Listed company" means a company listed by the
4 comptroller under Section 808.051.

5 (6) "State governmental entity" means:

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

8 (B) the Teacher Retirement System of Texas;

9 (C) the Texas Municipal Retirement System;

10 (D) the Texas County and District Retirement
11 System;

12 (E) the Texas Emergency Services Retirement
13 System;

14 (F) The University of Texas Investment
15 Management Company; and

16 (G) the permanent school fund.

17 Sec. 808.002. OTHER LEGAL OBLIGATIONS. With respect to
18 actions taken in compliance with this chapter, including all good
19 faith determinations regarding companies as required by this
20 chapter, a state governmental entity and the comptroller are exempt
21 from any conflicting statutory or common law obligations, including
22 any obligations with respect to making investments, divesting from
23 any investment, preparing or maintaining any list of companies, or
24 choosing asset managers, investment funds, or investments for the
25 state governmental entity's securities portfolios.

26 Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL
27 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an

1 action, inaction, decision, divestment, investment, company
2 communication, report, or other determination made or taken in
3 connection with this chapter, the state shall, without regard to
4 whether the person performed services for compensation, indemnify
5 and hold harmless for actual damages, court costs, and attorney's
6 fees adjudged against, and defend:

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

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

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

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

18 (5) a state governmental entity.

19 Sec. 808.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
20 including a member, retiree, or beneficiary of a retirement system
21 to which this chapter applies, an association, a research firm, a
22 company, or any other person may not sue or pursue a private cause
23 of action against the state, a state governmental entity, a current
24 or former employee, a member of the governing body, or any other
25 officer of a state governmental entity, or a contractor of a state
26 governmental entity, for any claim or cause of action, including
27 breach of fiduciary duty, or for violation of any constitutional,

1 statutory, or regulatory requirement in connection with any action,
2 inaction, decision, divestment, investment, company communication,
3 report, or other determination made or taken in connection with
4 this chapter.

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

10 Sec. 808.005. RELIANCE ON COMPANY RESPONSE. The
11 comptroller and a state governmental entity may rely on a company's
12 response to a notice or communication made under this chapter
13 without conducting any further investigation, research, or
14 inquiry.

15 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

16 Sec. 808.051. LISTED COMPANIES. (a) The comptroller shall
17 prepare and maintain, and provide to each state governmental
18 entity, a list of all companies that boycott Israel. In maintaining
19 the list, the comptroller may review and rely, as appropriate in the
20 comptroller's judgment, on publicly available information
21 regarding companies, including information provided by the state,
22 nonprofit organizations, research firms, international
23 organizations, and governmental entities.

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

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

6 Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED
7 COMPANIES. Not later than the 30th day after the date a state
8 governmental entity receives the list provided under Section
9 808.051, the state governmental entity shall notify the comptroller
10 of the listed companies in which the state governmental entity owns
11 direct holdings or indirect holdings.

12 Sec. 808.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
13 each listed company identified under Section 808.052, the state
14 governmental entity shall send a written notice informing the
15 company of its status as a listed company and warning the company
16 that it may become subject to divestment by state governmental
17 entities.

18 (b) The notice must offer the company the opportunity to
19 clarify its Israel-related activities and must encourage the
20 company, not later than the 90th day after the date the company
21 receives notice under this section, to cease boycotting Israel in
22 order to avoid qualifying for divestment by state governmental
23 entities.

24 (c) If, during the time provided by Subsection (b), the
25 company ceases boycotting Israel, the comptroller shall remove the
26 company from the list maintained under Section 808.051 and this
27 chapter will no longer apply to the company unless it resumes

1 boycotting Israel.

2 (d) If, after the time provided by Subsection (b) expires,
3 the company continues to boycott Israel, the state governmental
4 entity shall sell, redeem, divest, or withdraw all publicly traded
5 securities of the company, except securities described by Section
6 808.055, according to the schedule provided by Section 808.054.

7 Sec. 808.054. DIVESTMENT OF ASSETS. (a) A state
8 governmental entity required to sell, redeem, divest, or withdraw
9 all publicly traded securities of a listed company shall comply
10 with the following schedule:

11 (1) at least 50 percent of those assets must be removed
12 from the state governmental entity's assets under management not
13 later than the 180th day after the date the company receives notice
14 under Section 808.053 or Subsection (b) unless the state
15 governmental entity determines, based on a good faith exercise of
16 its fiduciary discretion and subject to Subdivision (2), that a
17 later date is more prudent; and

18 (2) 100 percent of those assets must be removed from
19 the state governmental entity's assets under management not later
20 than the 360th day after the date the company receives notice under
21 Section 808.053 or Subsection (b).

22 (b) If a company that ceased boycotting Israel after
23 receiving notice under Section 808.053 resumes its boycott, the
24 state governmental entity shall send a written notice to the
25 company informing it that the state governmental entity will sell,
26 redeem, divest, or withdraw all publicly traded securities of the
27 company according to the schedule in Subsection (a).

1 (c) Except as provided by Subsection (a), a state
2 governmental entity may delay the schedule for divestment under
3 that subsection only to the extent that the state governmental
4 entity determines, in the state governmental entity's good faith
5 judgment, and consistent with the entity's fiduciary duty, that
6 divestment from listed companies will likely result in a loss in
7 value or a benchmark deviation described by Section 808.056(a). If
8 a state governmental entity delays the schedule for divestment, the
9 state governmental entity shall submit a report to the presiding
10 officer of each house of the legislature and the attorney general
11 stating the reasons and justification for the state governmental
12 entity's delay in divestment from listed companies. The report
13 must include documentation supporting its determination that the
14 divestment would result in a loss in value or a benchmark deviation
15 described by Section 808.056(a), including objective numerical
16 estimates. The state governmental entity shall update the report
17 every six months.

18 Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
19 state governmental entity is not required to divest from any
20 indirect holdings in actively or passively managed investment funds
21 or private equity funds. The state governmental entity shall
22 submit letters to the managers of each investment fund containing
23 listed companies requesting that they remove those companies from
24 the fund or create a similar actively or passively managed fund with
25 indirect holdings devoid of listed companies. If a manager creates
26 a similar fund with substantially the same management fees and same
27 level of investment risk and anticipated return, the state

1 governmental entity may replace all applicable investments with
2 investments in the similar fund in a time frame consistent with
3 prudent fiduciary standards but not later than the 450th day after
4 the date the fund is created.

5 Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

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

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

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

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

22 (c) Before a state governmental entity may cease divesting
23 from a listed company under this section, the state governmental
24 entity must provide a written report to the comptroller, the
25 presiding officer of each house of the legislature, and the
26 attorney general setting forth the reason and justification,
27 supported by clear and convincing evidence, for deciding to cease

1 divestment or to remain invested in a listed company.

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

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

6 Sec. 808.057. PROHIBITED INVESTMENTS. Except as provided
7 by Section 808.056, a state governmental entity may not acquire
8 securities of a listed company.

9 SUBCHAPTER C. REPORT; ENFORCEMENT

10 Sec. 808.101. REPORT. Not later than January 5 of each
11 year, each state governmental entity shall file a publicly
12 available report with the presiding officer of each house of the
13 legislature and the attorney general that:

14 (1) identifies all securities sold, redeemed,
15 divested, or withdrawn in compliance with Section 808.054;

16 (2) identifies all prohibited investments under
17 Section 808.057; and

18 (3) summarizes any changes made under Section 808.055.

19 Sec. 808.102. ENFORCEMENT. The attorney general may bring
20 any action necessary to enforce this chapter.

21 SECTION 3. This Act takes effect September 1, 2017.