

BILL ANALYSIS

Senate Research Center
85R15045 TSR-F

H.B. 89
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is a concerted effort underway to isolate Israel from the global community through discriminatory trade practices that include boycotting, divestment, and sanctions (BDS) against Israeli-based businesses and companies doing business in Israel. This movement seeks to disrupt Israel's economy by coercing United States (U.S.) firms to cease doing business with Israel, its citizens, and companies. The Israeli economy is intertwined with its surrounding economies and is a valuable trade partner to Texas and an essential U.S. ally. Efforts to isolate the Israeli economy are detrimental to Israel as well its trade partners, allies, and neighboring economies. Texas should not support these efforts by doing business with or investing in companies that boycott Israel.

Several states have adopted measures to deter businesses from engaging in such discriminatory trade practices. State law currently restricts investment in Iran and Sudan to prevent public funds from going to organizations that support terrorism or genocide. Similar legislation is needed to prevent Texas' taxpayer resources from supporting businesses engaged in discriminatory trade practices against Israel. H.B. 89 addresses this issue by prohibiting state contracting with and investing in companies that boycott Israel.

H.B. 89 amends current law relating to state contracts with and investments in companies that boycott Israel.

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 F, Title 10, Government Code, by adding Chapter 2270, as follows:

CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Sec. 2270.001. DEFINITIONS. Defines "boycott Israel," "company," and "governmental entity."

Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. Prohibits a governmental entity from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

SECTION 2. Amends Subtitle A, Title 8, Government Code, by adding Chapter 808, as follows:

CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT ISRAEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 808.001. DEFINITIONS. Defines "boycott Israel," "company," "direct holdings," "indirect holdings," "listed company," and "state governmental entity."

Sec. 808.002. OTHER LEGAL OBLIGATIONS. Provides that, with respect to actions taken in compliance with this chapter, including certain good faith determinations, a state governmental entity (SGE) and the Texas comptroller of public accounts (comptroller) are exempt from any conflicting statutory or common law obligations, including certain obligations.

Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS. Requires the state, 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, to indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against and defend certain individuals and entities, without regard to whether the person performed services for compensation.

Sec. 808.004. 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 company, or any other person, from suing or pursuing a private cause of action against certain bodies and people 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) Provides that a person who files suit against certain individuals or entities is liable for paying the costs and attorney's fees of a person sued in violation of this section.

Sec. 808.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. Provides that 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 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. 808.006. RELIANCE ON COMPANY RESPONSE. Authorizes the comptroller and an SGE to 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. 808.051. LISTED COMPANIES. (a) Requires the comptroller to prepare and maintain, and provide to each SGE, a list of all companies that boycott Israel. Authorizes the comptroller, in maintaining the list, to review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies, including information provided by certain entities.

(b) 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).

(c) Requires the comptroller, not later than the 30th day after the date the list of companies that boycott Israel is first provided or updated, to file the list with the presiding officer of each house of the legislature and the Texas attorney general (attorney general) and post the list on a publically available website.

Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES. Requires an SGE, not later than the 30th day after the date an SGE receives the provided list, to notify the comptroller of the listed companies in which the SGE owns direct or indirect holdings.

Sec. 808.053. ACTIONS RELATING TO LISTED COMPANY. (a) Requires the SGE, for each listed company identified under Section 808.052, to send a written notice informing the company of its status as a listed company, warning the company that it may become subject to divestment by SGEs after the expiration of the period described by Subsection (b), and offering the company the opportunity to clarify its Israel-related activities.

(b) Requires the company, not later than the 90th day after the date the company receives notice under Subsection (a), to cease boycotting Israel in order to avoid qualifying for divestment by SGEs.

(c) Requires the comptroller, if, during the time provided by Subsection (b), the company ceases boycotting Israel, to remove the company from the list maintained under Section 808.051 and provides that this chapter will no longer apply to the company unless it resumes boycotting Israel.

(d) Requires the SGE, if, after the time provided by Subsection (b) expires, the company continues to boycott Israel, to sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 808.055, according to the schedule provided by Section 808.054.

Sec. 808.054. DIVESTMENT OF ASSETS. (a) Requires an SGE required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company to comply with a certain schedule.

(b) Requires the SGE, if a company that ceased boycotting Israel after receiving notice under Section 808.053 resumes its boycott, to send a written notice to the company informing it that the SGE will sell, redeem, divest, or withdraw all publicly traded securities of the company according to the schedule in Subsection (a).

(c) Authorizes an SGE, except as provided by Subsection (a), to delay the schedule for divestment only to the extent that the SGE determines, in a certain manner, that divestment from listed companies will likely result in a loss in values or a benchmark deviation described by Section 808.056(a). Requires the SGE, if an SGE 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 reasons and justification for the SGE's delay in divestment from listed companies. Requires the report to include certain documentation. Requires the SGE to update the report every six months.

Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. Provides that an SGE is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. Requires the SGE to 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. Authorizes the SGE, 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. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES. (a) Authorizes an SGE to cease divesting from one or more listed companies only if clear and convincing evidence shows certain real or potential outcomes.

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

(c) Requires the SGE, before an SGE may cease divesting from a listed company 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 reasons and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed company.

(d) Requires the SGE to update the required report semiannually, as applicable.

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

Sec. 808.057. PROHIBITED INVESTMENTS. Prohibits an SGE, except as provided by Section 808.056, from acquiring securities of a listed company.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 808.101. REPORT. Requires each SGE, 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 makes certain identifications and summarizes certain changes.

Sec. 808.102. ENFORCEMENT. Authorizes the attorney general to bring any action necessary to enforce this chapter.

SECTION 3. Effective date: September 1, 2017.