

1-1 By: King of Parker, et al. H.B. No. 89  
 1-2 (Senate Sponsor - Creighton)  
 1-3 (In the Senate - Received from the House April 24, 2017;  
 1-4 April 24, 2017, read first time and referred to Committee on  
 1-5 Business & Commerce; April 25, 2017, reported favorably by the  
 1-6 following vote: Yeas 7, Nays 2; April 25, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15	X			
1-16	X			
1-17		X		

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to state contracts with and investments in companies that  
 1-21 boycott Israel.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle F, Title 10, Government Code, is  
 1-24 amended by adding Chapter 2270 to read as follows:

1-25 CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING  
 1-26 ISRAEL

1-27 Sec. 2270.001. DEFINITIONS. In this chapter:

1-28 (1) "Boycott Israel" has the meaning assigned by  
 1-29 Section 808.001.

1-30 (2) "Company" has the meaning assigned by Section  
 1-31 808.001.

1-32 (3) "Governmental entity" has the meaning assigned by  
 1-33 Section 2251.001.

1-34 Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A  
 1-35 governmental entity may not enter into a contract with a company for  
 1-36 goods or services unless the contract contains a written  
 1-37 verification from the company that it:

1-38 (1) does not boycott Israel; and

1-39 (2) will not boycott Israel during the term of the  
 1-40 contract.

1-41 SECTION 2. Subtitle A, Title 8, Government Code, is amended  
 1-42 by adding Chapter 808 to read as follows:

1-43 CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT  
 1-44 ISRAEL

1-45 SUBCHAPTER A. GENERAL PROVISIONS

1-46 Sec. 808.001. DEFINITIONS. In this chapter:

1-47 (1) "Boycott Israel" means refusing to deal with,  
 1-48 terminating business activities with, or otherwise taking any  
 1-49 action that is intended to penalize, inflict economic harm on, or  
 1-50 limit commercial relations specifically with Israel, or with a  
 1-51 person or entity doing business in Israel or in an  
 1-52 Israeli-controlled territory, but does not include an action made  
 1-53 for ordinary business purposes.

1-54 (2) "Company" means a for-profit sole proprietorship,  
 1-55 organization, association, corporation, partnership, joint  
 1-56 venture, limited partnership, limited liability partnership, or  
 1-57 limited liability company, including a wholly owned subsidiary,  
 1-58 majority-owned subsidiary, parent company, or affiliate of those  
 1-59 entities or business associations that exists to make a profit.

1-60 (3) "Direct holdings" means, with respect to a  
 1-61 company, all securities of that company held directly by a state

2-1 governmental entity in an account or fund in which a state  
 2-2 governmental entity owns all shares or interests.

2-3 (4) "Indirect holdings" means, with respect to a  
 2-4 company, all securities of that company held in an account or fund,  
 2-5 such as a mutual fund, managed by one or more persons not employed  
 2-6 by a state governmental entity, in which the state governmental  
 2-7 entity owns shares or interests together with other investors not  
 2-8 subject to the provisions of this chapter. The term does not  
 2-9 include money invested under a plan described by Section 401(k) or  
 2-10 457 of the Internal Revenue Code of 1986.

2-11 (5) "Listed company" means a company listed by the  
 2-12 comptroller under Section 808.051.

2-13 (6) "State governmental entity" means:

2-14 (A) the Employees Retirement System of Texas,  
 2-15 including a retirement system administered by that system;

2-16 (B) the Teacher Retirement System of Texas;

2-17 (C) the Texas Municipal Retirement System;

2-18 (D) the Texas County and District Retirement  
 2-19 System;

2-20 (E) the Texas Emergency Services Retirement  
 2-21 System; and

2-22 (F) the permanent school fund.

2-23 Sec. 808.002. OTHER LEGAL OBLIGATIONS. With respect to  
 2-24 actions taken in compliance with this chapter, including all good  
 2-25 faith determinations regarding companies as required by this  
 2-26 chapter, a state governmental entity and the comptroller are exempt  
 2-27 from any conflicting statutory or common law obligations, including  
 2-28 any obligations with respect to making investments, divesting from  
 2-29 any investment, preparing or maintaining any list of companies, or  
 2-30 choosing asset managers, investment funds, or investments for the  
 2-31 state governmental entity's securities portfolios.

2-32 Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL  
 2-33 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an  
 2-34 action, inaction, decision, divestment, investment, company  
 2-35 communication, report, or other determination made or taken in  
 2-36 connection with this chapter, the state shall, without regard to  
 2-37 whether the person performed services for compensation, indemnify  
 2-38 and hold harmless for actual damages, court costs, and attorney's  
 2-39 fees adjudged against, and defend:

2-40 (1) an employee, a member of the governing body, or any  
 2-41 other officer of a state governmental entity;

2-42 (2) a contractor of a state governmental entity;

2-43 (3) a former employee, a former member of the  
 2-44 governing body, or any other former officer of a state governmental  
 2-45 entity who was an employee, member of the governing body, or other  
 2-46 officer when the act or omission on which the damages are based  
 2-47 occurred;

2-48 (4) a former contractor of a state governmental entity  
 2-49 who was a contractor when the act or omission on which the damages  
 2-50 are based occurred; and

2-51 (5) a state governmental entity.

2-52 Sec. 808.004. NO PRIVATE CAUSE OF ACTION. (a) A person,  
 2-53 including a member, retiree, or beneficiary of a retirement system  
 2-54 to which this chapter applies, an association, a research firm, a  
 2-55 company, or any other person may not sue or pursue a private cause  
 2-56 of action against the state, a state governmental entity, a current  
 2-57 or former employee, a member of the governing body, or any other  
 2-58 officer of a state governmental entity, or a contractor of a state  
 2-59 governmental entity, for any claim or cause of action, including  
 2-60 breach of fiduciary duty, or for violation of any constitutional,  
 2-61 statutory, or regulatory requirement in connection with any action,  
 2-62 inaction, decision, divestment, investment, company communication,  
 2-63 report, or other determination made or taken in connection with  
 2-64 this chapter.

2-65 (b) A person who files suit against the state, a state  
 2-66 governmental entity, an employee, a member of the governing body,  
 2-67 or any other officer of a state governmental entity, or a contractor  
 2-68 of a state governmental entity, is liable for paying the costs and  
 2-69 attorney's fees of a person sued in violation of this section.

3-1 Sec. 808.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT  
 3-2 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state  
 3-3 governmental entity is not subject to a requirement of this chapter  
 3-4 if the state governmental entity determines that the requirement  
 3-5 would be inconsistent with its fiduciary responsibility with  
 3-6 respect to the investment of entity assets or other duties imposed  
 3-7 by law relating to the investment of entity assets, including the  
 3-8 duty of care established under Section 67, Article XVI, Texas  
 3-9 Constitution.

3-10 Sec. 808.006. RELIANCE ON COMPANY RESPONSE. The  
 3-11 comptroller and a state governmental entity may rely on a company's  
 3-12 response to a notice or communication made under this chapter  
 3-13 without conducting any further investigation, research, or  
 3-14 inquiry.

3-15 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

3-16 Sec. 808.051. LISTED COMPANIES. (a) The comptroller shall  
 3-17 prepare and maintain, and provide to each state governmental  
 3-18 entity, a list of all companies that boycott Israel. In maintaining  
 3-19 the list, the comptroller may review and rely, as appropriate in the  
 3-20 comptroller's judgment, on publicly available information  
 3-21 regarding companies, including information provided by the state,  
 3-22 nonprofit organizations, research firms, international  
 3-23 organizations, and governmental entities.

3-24 (b) The comptroller shall update the list annually or more  
 3-25 often as the comptroller considers necessary, but not more often  
 3-26 than quarterly, based on information from, among other sources,  
 3-27 those listed in Subsection (a).

3-28 (c) Not later than the 30th day after the date the list of  
 3-29 companies that boycott Israel is first provided or updated, the  
 3-30 comptroller shall file the list with the presiding officer of each  
 3-31 house of the legislature and the attorney general and post the list  
 3-32 on a publicly available website.

3-33 Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED  
 3-34 COMPANIES. Not later than the 30th day after the date a state  
 3-35 governmental entity receives the list provided under Section  
 3-36 808.051, the state governmental entity shall notify the comptroller  
 3-37 of the listed companies in which the state governmental entity owns  
 3-38 direct holdings or indirect holdings.

3-39 Sec. 808.053. ACTIONS RELATING TO LISTED COMPANY. (a) For  
 3-40 each listed company identified under Section 808.052, the state  
 3-41 governmental entity shall send a written notice:

3-42 (1) informing the company of its status as a listed  
 3-43 company;

3-44 (2) warning the company that it may become subject to  
 3-45 divestment by state governmental entities after the expiration of  
 3-46 the period described by Subsection (b); and

3-47 (3) offering the company the opportunity to clarify  
 3-48 its Israel-related activities.

3-49 (b) Not later than the 90th day after the date the company  
 3-50 receives notice under Subsection (a), the company must cease  
 3-51 boycotting Israel in order to avoid qualifying for divestment by  
 3-52 state governmental entities.

3-53 (c) If, during the time provided by Subsection (b), the  
 3-54 company ceases boycotting Israel, the comptroller shall remove the  
 3-55 company from the list maintained under Section 808.051 and this  
 3-56 chapter will no longer apply to the company unless it resumes  
 3-57 boycotting Israel.

3-58 (d) If, after the time provided by Subsection (b) expires,  
 3-59 the company continues to boycott Israel, the state governmental  
 3-60 entity shall sell, redeem, divest, or withdraw all publicly traded  
 3-61 securities of the company, except securities described by Section  
 3-62 808.055, according to the schedule provided by Section 808.054.

3-63 Sec. 808.054. DIVESTMENT OF ASSETS. (a) A state  
 3-64 governmental entity required to sell, redeem, divest, or withdraw  
 3-65 all publicly traded securities of a listed company shall comply  
 3-66 with the following schedule:

3-67 (1) at least 50 percent of those assets must be removed  
 3-68 from the state governmental entity's assets under management not  
 3-69 later than the 180th day after the date the company receives notice

4-1 under Section 808.053 or Subsection (b) unless the state  
 4-2 governmental entity determines, based on a good faith exercise of  
 4-3 its fiduciary discretion and subject to Subdivision (2), that a  
 4-4 later date is more prudent; and

4-5 (2) 100 percent of those assets must be removed from  
 4-6 the state governmental entity's assets under management not later  
 4-7 than the 360th day after the date the company receives notice under  
 4-8 Section 808.053 or Subsection (b).

4-9 (b) If a company that ceased boycotting Israel after  
 4-10 receiving notice under Section 808.053 resumes its boycott, the  
 4-11 state governmental entity shall send a written notice to the  
 4-12 company informing it that the state governmental entity will sell,  
 4-13 redeem, divest, or withdraw all publicly traded securities of the  
 4-14 company according to the schedule in Subsection (a).

4-15 (c) Except as provided by Subsection (a), a state  
 4-16 governmental entity may delay the schedule for divestment under  
 4-17 that subsection only to the extent that the state governmental  
 4-18 entity determines, in the state governmental entity's good faith  
 4-19 judgment, and consistent with the entity's fiduciary duty, that  
 4-20 divestment from listed companies will likely result in a loss in  
 4-21 value or a benchmark deviation described by Section 808.056(a). If  
 4-22 a state governmental entity delays the schedule for divestment, the  
 4-23 state governmental entity shall submit a report to the presiding  
 4-24 officer of each house of the legislature and the attorney general  
 4-25 stating the reasons and justification for the state governmental  
 4-26 entity's delay in divestment from listed companies. The report  
 4-27 must include documentation supporting its determination that the  
 4-28 divestment would result in a loss in value or a benchmark deviation  
 4-29 described by Section 808.056(a), including objective numerical  
 4-30 estimates. The state governmental entity shall update the report  
 4-31 every six months.

4-32 Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A  
 4-33 state governmental entity is not required to divest from any  
 4-34 indirect holdings in actively or passively managed investment funds  
 4-35 or private equity funds. The state governmental entity shall  
 4-36 submit letters to the managers of each investment fund containing  
 4-37 listed companies requesting that they remove those companies from  
 4-38 the fund or create a similar actively or passively managed fund with  
 4-39 indirect holdings devoid of listed companies. If a manager creates  
 4-40 a similar fund with substantially the same management fees and same  
 4-41 level of investment risk and anticipated return, the state  
 4-42 governmental entity may replace all applicable investments with  
 4-43 investments in the similar fund in a time frame consistent with  
 4-44 prudent fiduciary standards but not later than the 450th day after  
 4-45 the date the fund is created.

4-46 Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.  
 4-47 (a) A state governmental entity may cease divesting from one or  
 4-48 more listed companies only if clear and convincing evidence shows  
 4-49 that:

4-50 (1) the state governmental entity has suffered or will  
 4-51 suffer a loss in the hypothetical value of all assets under  
 4-52 management by the state governmental entity as a result of having to  
 4-53 divest from listed companies under this chapter; or

4-54 (2) an individual portfolio that uses a  
 4-55 benchmark-aware strategy would be subject to an aggregate expected  
 4-56 deviation from its benchmark as a result of having to divest from  
 4-57 listed companies under this chapter.

4-58 (b) A state governmental entity may cease divesting from a  
 4-59 listed company as provided by this section only to the extent  
 4-60 necessary to ensure that the state governmental entity does not  
 4-61 suffer a loss in value or deviate from its benchmark as described by  
 4-62 Subsection (a).

4-63 (c) Before a state governmental entity may cease divesting  
 4-64 from a listed company under this section, the state governmental  
 4-65 entity must provide a written report to the comptroller, the  
 4-66 presiding officer of each house of the legislature, and the  
 4-67 attorney general setting forth the reason and justification,  
 4-68 supported by clear and convincing evidence, for deciding to cease  
 4-69 divestment or to remain invested in a listed company.

5-1 (d) The state governmental entity shall update the report  
5-2 required by Subsection (c) semiannually, as applicable.

5-3 (e) This section does not apply to reinvestment in a company  
5-4 that is no longer a listed company.

5-5 Sec. 808.057. PROHIBITED INVESTMENTS. Except as provided  
5-6 by Section 808.056, a state governmental entity may not acquire  
5-7 securities of a listed company.

5-8 SUBCHAPTER C. REPORT; ENFORCEMENT

5-9 Sec. 808.101. REPORT. Not later than January 5 of each  
5-10 year, each state governmental entity shall file a publicly  
5-11 available report with the presiding officer of each house of the  
5-12 legislature and the attorney general that:

5-13 (1) identifies all securities sold, redeemed,  
5-14 divested, or withdrawn in compliance with Section 808.054;

5-15 (2) identifies all prohibited investments under  
5-16 Section 808.057; and

5-17 (3) summarizes any changes made under Section 808.055.

5-18 Sec. 808.102. ENFORCEMENT. The attorney general may bring  
5-19 any action necessary to enforce this chapter.

5-20 SECTION 3. This Act takes effect September 1, 2017.

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