

1-1 By: Creighton, et al. S.B. No. 29
 1-2 (In the Senate - Filed February 22, 2017; February 27, 2017,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 March 15, 2017, reported favorably by the following vote: Yeas 7,
 1-5 Nays 2; March 15, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
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 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to state contracts with and investments in companies that
 1-20 boycott Israel.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle F, Title 10, Government Code, is
 1-23 amended by adding Chapter 2270 to read as follows:

1-24 CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING
 1-25 ISRAEL

1-26 Sec. 2270.001. DEFINITIONS. In this chapter:

1-27 (1) "Boycott Israel" has the meaning assigned by
 1-28 Section 808.001.

1-29 (2) "Company" has the meaning assigned by Section
 1-30 808.001.

1-31 (3) "Governmental entity" has the meaning assigned by
 1-32 Section 2251.001.

1-33 Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A
 1-34 governmental entity may not enter into a contract with a company for
 1-35 goods or services unless the contract contains a written
 1-36 verification from the company that it:

1-37 (1) does not boycott Israel; and

1-38 (2) will not boycott Israel during the term of the
 1-39 contract.

1-40 SECTION 2. Subtitle A, Title 8, Government Code, is amended
 1-41 by adding Chapter 808 to read as follows:

1-42 CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT
 1-43 ISRAEL

1-44 SUBCHAPTER A. GENERAL PROVISIONS

1-45 Sec. 808.001. DEFINITIONS. In this chapter:

1-46 (1) "Boycott Israel" means refusing to deal with,
 1-47 terminating business activities with, or otherwise taking any
 1-48 action that is intended to penalize, inflict economic harm on, or
 1-49 limit commercial relations specifically with Israel, or with a
 1-50 person or entity doing business in Israel or in an
 1-51 Israeli-controlled territory, but does not include an action made
 1-52 for ordinary business purposes.

1-53 (2) "Company" means a for-profit sole proprietorship,
 1-54 organization, association, corporation, partnership, joint
 1-55 venture, limited partnership, limited liability partnership, or
 1-56 limited liability company, including a wholly owned subsidiary,
 1-57 majority-owned subsidiary, parent company, or affiliate of those
 1-58 entities or business associations that exists to make a profit.

1-59 (3) "Direct holdings" means, with respect to a
 1-60 company, all securities of that company held directly by a state
 1-61 governmental entity in an account or fund in which a state

2-1 governmental entity owns all shares or interests.

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

2-10 (5) "Listed company" means a company listed by the
 2-11 comptroller under Section 808.051.

2-12 (6) "State governmental entity" means:

2-13 (A) the Employees Retirement System of Texas,
 2-14 including a retirement system administered by that system;

2-15 (B) the Teacher Retirement System of Texas;

2-16 (C) the Texas Municipal Retirement System;

2-17 (D) the Texas County and District Retirement
 2-18 System;

2-19 (E) the Texas Emergency Services Retirement
 2-20 System;

2-21 (F) The University of Texas Investment
 2-22 Management Company; and

2-23 (G) the permanent school fund.

2-24 Sec. 808.002. OTHER LEGAL OBLIGATIONS. With respect to
 2-25 actions taken in compliance with this chapter, including all good
 2-26 faith determinations regarding companies as required by this
 2-27 chapter, a state governmental entity and the comptroller are exempt
 2-28 from any conflicting statutory or common law obligations, including
 2-29 any obligations with respect to making investments, divesting from
 2-30 any investment, preparing or maintaining any list of companies, or
 2-31 choosing asset managers, investment funds, or investments for the
 2-32 state governmental entity's securities portfolios.

2-33 Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL
 2-34 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
 2-35 action, inaction, decision, divestment, investment, company
 2-36 communication, report, or other determination made or taken in
 2-37 connection with this chapter, the state shall, without regard to
 2-38 whether the person performed services for compensation, indemnify
 2-39 and hold harmless for actual damages, court costs, and attorney's
 2-40 fees adjudged against, and defend:

2-41 (1) an employee, a member of the governing body, or any
 2-42 other officer of a state governmental entity;

2-43 (2) a contractor of a state governmental entity;

2-44 (3) a former employee, a former member of the
 2-45 governing body, or any other former officer of a state governmental
 2-46 entity who was an employee, member of the governing body, or other
 2-47 officer when the act or omission on which the damages are based
 2-48 occurred;

2-49 (4) a former contractor of a state governmental entity
 2-50 who was a contractor when the act or omission on which the damages
 2-51 are based occurred; and

2-52 (5) a state governmental entity.

2-53 Sec. 808.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
 2-54 including a member, retiree, or beneficiary of a retirement system
 2-55 to which this chapter applies, an association, a research firm, a
 2-56 company, or any other person may not sue or pursue a private cause
 2-57 of action against the state, a state governmental entity, a current
 2-58 or former employee, a member of the governing body, or any other
 2-59 officer of a state governmental entity, or a contractor of a state
 2-60 governmental entity, for any claim or cause of action, including
 2-61 breach of fiduciary duty, or for violation of any constitutional,
 2-62 statutory, or regulatory requirement in connection with any action,
 2-63 inaction, decision, divestment, investment, company communication,
 2-64 report, or other determination made or taken in connection with
 2-65 this chapter.

2-66 (b) A person who files suit against the state, a state
 2-67 governmental entity, an employee, a member of the governing body,
 2-68 or any other officer of a state governmental entity, or a contractor
 2-69 of a state governmental entity, is liable for paying the costs and

3-1 attorney's fees of a person sued in violation of this section.

3-2 Sec. 808.005. RELIANCE ON COMPANY RESPONSE. The
3-3 comptroller and a state governmental entity may rely on a company's
3-4 response to a notice or communication made under this chapter
3-5 without conducting any further investigation, research, or
3-6 inquiry.

3-7 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

3-8 Sec. 808.051. LISTED COMPANIES. (a) The comptroller shall
3-9 prepare and maintain, and provide to each state governmental
3-10 entity, a list of all companies that boycott Israel. In maintaining
3-11 the list, the comptroller may review and rely, as appropriate in the
3-12 comptroller's judgment, on publicly available information
3-13 regarding companies, including information provided by the state,
3-14 nonprofit organizations, research firms, international
3-15 organizations, and governmental entities.

3-16 (b) The comptroller shall update the list annually or more
3-17 often as the comptroller considers necessary, but not more often
3-18 than quarterly, based on information from, among other sources,
3-19 those listed in Subsection (a).

3-20 (c) Not later than the 30th day after the date the list of
3-21 companies that boycott Israel is first provided or updated, the
3-22 comptroller shall file the list with the presiding officer of each
3-23 house of the legislature and the attorney general and post the list
3-24 on a publicly available website.

3-25 Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED
3-26 COMPANIES. Not later than the 30th day after the date a state
3-27 governmental entity receives the list provided under Section
3-28 808.051, the state governmental entity shall notify the comptroller
3-29 of the listed companies in which the state governmental entity owns
3-30 direct holdings or indirect holdings.

3-31 Sec. 808.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
3-32 each listed company identified under Section 808.052, the state
3-33 governmental entity shall send a written notice informing the
3-34 company of its status as a listed company and warning the company
3-35 that it may become subject to divestment by state governmental
3-36 entities.

3-37 (b) The notice must offer the company the opportunity to
3-38 clarify its Israel-related activities and must encourage the
3-39 company, not later than the 90th day after the date the company
3-40 receives notice under this section, to cease boycotting Israel in
3-41 order to avoid qualifying for divestment by state governmental
3-42 entities.

3-43 (c) If, during the time provided by Subsection (b), the
3-44 company ceases boycotting Israel, the comptroller shall remove the
3-45 company from the list maintained under Section 808.051 and this
3-46 chapter will no longer apply to the company unless it resumes
3-47 boycotting Israel.

3-48 (d) If, after the time provided by Subsection (b) expires,
3-49 the company continues to boycott Israel, the state governmental
3-50 entity shall sell, redeem, divest, or withdraw all publicly traded
3-51 securities of the company, except securities described by Section
3-52 808.055, according to the schedule provided by Section 808.054.

3-53 Sec. 808.054. DIVESTMENT OF ASSETS. (a) A state
3-54 governmental entity required to sell, redeem, divest, or withdraw
3-55 all publicly traded securities of a listed company shall comply
3-56 with the following schedule:

3-57 (1) at least 50 percent of those assets must be removed
3-58 from the state governmental entity's assets under management not
3-59 later than the 180th day after the date the company receives notice
3-60 under Section 808.053 or Subsection (b) unless the state
3-61 governmental entity determines, based on a good faith exercise of
3-62 its fiduciary discretion and subject to Subdivision (2), that a
3-63 later date is more prudent; and

3-64 (2) 100 percent of those assets must be removed from
3-65 the state governmental entity's assets under management not later
3-66 than the 360th day after the date the company receives notice under
3-67 Section 808.053 or Subsection (b).

3-68 (b) If a company that ceased boycotting Israel after
3-69 receiving notice under Section 808.053 resumes its boycott, the

4-1 state governmental entity shall send a written notice to the
 4-2 company informing it that the state governmental entity will sell,
 4-3 redeem, divest, or withdraw all publicly traded securities of the
 4-4 company according to the schedule in Subsection (a).

4-5 (c) Except as provided by Subsection (a), a state
 4-6 governmental entity may delay the schedule for divestment under
 4-7 that subsection only to the extent that the state governmental
 4-8 entity determines, in the state governmental entity's good faith
 4-9 judgment, and consistent with the entity's fiduciary duty, that
 4-10 divestment from listed companies will likely result in a loss in
 4-11 value or a benchmark deviation described by Section 808.056(a). If
 4-12 a state governmental entity delays the schedule for divestment, the
 4-13 state governmental entity shall submit a report to the presiding
 4-14 officer of each house of the legislature and the attorney general
 4-15 stating the reasons and justification for the state governmental
 4-16 entity's delay in divestment from listed companies. The report
 4-17 must include documentation supporting its determination that the
 4-18 divestment would result in a loss in value or a benchmark deviation
 4-19 described by Section 808.056(a), including objective numerical
 4-20 estimates. The state governmental entity shall update the report
 4-21 every six months.

4-22 Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
 4-23 state governmental entity is not required to divest from any
 4-24 indirect holdings in actively or passively managed investment funds
 4-25 or private equity funds. The state governmental entity shall
 4-26 submit letters to the managers of each investment fund containing
 4-27 listed companies requesting that they remove those companies from
 4-28 the fund or create a similar actively or passively managed fund with
 4-29 indirect holdings devoid of listed companies. If a manager creates
 4-30 a similar fund with substantially the same management fees and same
 4-31 level of investment risk and anticipated return, the state
 4-32 governmental entity may replace all applicable investments with
 4-33 investments in the similar fund in a time frame consistent with
 4-34 prudent fiduciary standards but not later than the 450th day after
 4-35 the date the fund is created.

4-36 Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.
 4-37 (a) A state governmental entity may cease divesting from one or
 4-38 more listed companies only if clear and convincing evidence shows
 4-39 that:

4-40 (1) the state governmental entity has suffered or will
 4-41 suffer a loss in the hypothetical value of all assets under
 4-42 management by the state governmental entity as a result of having to
 4-43 divest from listed companies under this chapter; or

4-44 (2) an individual portfolio that uses a
 4-45 benchmark-aware strategy would be subject to an aggregate expected
 4-46 deviation from its benchmark as a result of having to divest from
 4-47 listed companies under this chapter.

4-48 (b) A state governmental entity may cease divesting from a
 4-49 listed company as provided by this section only to the extent
 4-50 necessary to ensure that the state governmental entity does not
 4-51 suffer a loss in value or deviate from its benchmark as described by
 4-52 Subsection (a).

4-53 (c) Before a state governmental entity may cease divesting
 4-54 from a listed company under this section, the state governmental
 4-55 entity must provide a written report to the comptroller, the
 4-56 presiding officer of each house of the legislature, and the
 4-57 attorney general setting forth the reason and justification,
 4-58 supported by clear and convincing evidence, for deciding to cease
 4-59 divestment or to remain invested in a listed company.

4-60 (d) The state governmental entity shall update the report
 4-61 required by Subsection (c) semiannually, as applicable.

4-62 (e) This section does not apply to reinvestment in a company
 4-63 that is no longer a listed company.

4-64 Sec. 808.057. PROHIBITED INVESTMENTS. Except as provided
 4-65 by Section 808.056, a state governmental entity may not acquire
 4-66 securities of a listed company.

4-67 SUBCHAPTER C. REPORT; ENFORCEMENT

4-68 Sec. 808.101. REPORT. Not later than January 5 of each
 4-69 year, each state governmental entity shall file a publicly

5-1 available report with the presiding officer of each house of the
5-2 legislature and the attorney general that:
5-3 (1) identifies all securities sold, redeemed,
5-4 divested, or withdrawn in compliance with Section 808.054;
5-5 (2) identifies all prohibited investments under
5-6 Section 808.057; and
5-7 (3) summarizes any changes made under Section 808.055.
5-8 Sec. 808.102. ENFORCEMENT. The attorney general may bring
5-9 any action necessary to enforce this chapter.
5-10 SECTION 3. This Act takes effect September 1, 2017.

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