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|   | By: King of Parker | H.B. No. 89 |

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|   | A BILL TO BE ENTITLED |
|   | AN ACT |
|   | relating to state contracts with and investments in companies that |
|   | boycott Israel. |
|   |        BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: |
|   |        SECTION 1.  Subtitle F, Title 10, Government Code, is |
|   | amended by adding Chapter 2270 to read as follows: |
|   | CHAPTER 2270. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING |
|   | ISRAEL |
|   |        Sec. 2270.001.  DEFINITIONS. In this chapter:  |
|   |              (1)  "Boycott Israel" has the meaning assigned by |
|   | Section 808.001. |
|   |              (2)  "Company" has the meaning assigned by Section |
|   | 808.001. |
|   |              (3)  "Governmental entity" has the meaning assigned by |
|   | Section 2251.001. |
|   |        Sec. 2270.002.  PROVISION REQUIRED IN CONTRACT.  A |
|   | governmental entity may not enter into a contract with a company for |
|   | goods or services unless the contract contains a written |
|   | verification from the company that it: |
|   |              (1)  does not boycott Israel; and |
|   |              (2)  will not boycott Israel during the term of the |
|   | contract. |
|   |        SECTION 2.  Subtitle A, Title 8, Government Code, is amended |
|   | by adding Chapter 808 to read as follows: |
|   | CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT |
|   | ISRAEL |
|   | SUBCHAPTER A. GENERAL PROVISIONS |
|   |        Sec. 808.001.  DEFINITIONS.  In this chapter: |
|   |              (1)  "Boycott Israel" means refusing to deal with, |
|   | terminating business activities with, or otherwise taking any |
|   | action that is intended to penalize, inflict economic harm on, or |
|   | limit commercial relations specifically with Israel, or with a |
|   | person or entity doing business in Israel or in an |
|   | Israeli-controlled territory, but does not include an action made |
|   | for ordinary business purposes. |
|   |              (2)  "Company" means a for-profit sole proprietorship, |
|   | organization, association, corporation, partnership, joint |
|   | venture, limited partnership, limited liability partnership, or |
|   | limited liability company, including a wholly owned subsidiary, |
|   | majority-owned subsidiary, parent company, or affiliate of those |
|   | entities or business associations that exists to make a profit. |
|   |              (3)  "Direct holdings" means, with respect to a |
|   | company, all securities of that company held directly by a state |
|   | governmental entity in an account or fund in which a state |
|   | governmental entity owns all shares or interests. |
|   |              (4)  "Indirect holdings" means, with respect to a |
|   | company, all securities of that company held in an account or fund, |
|   | such as a mutual fund, managed by one or more persons not employed |
|   | by a state governmental entity, in which the state governmental |
|   | entity owns shares or interests together with other investors not |
|   | subject to the provisions of this chapter. The term does not |
|   | include money invested under a plan described by Section 401(k) or |
|   | 457 of the Internal Revenue Code of 1986. |
|   |              (5)  "Listed company" means a company listed by the |
|   | comptroller under Section 808.051. |
|   |              (6)  "State governmental entity" means: |
|   |                    (A)  the Employees Retirement System of Texas, |
|   | including a retirement system administered by that system; |
|   |                    (B)  the Teacher Retirement System of Texas; |
|   |                    (C)  the Texas Municipal Retirement System; |
|   |                    (D)  the Texas County and District Retirement |
|   | System; |
|   |                    (E)  the Texas Emergency Services Retirement |
|   | System; |
|   |                    (F)  The University of Texas Investment |
|   | Management Company; and |
|   |                    (G)  the permanent school fund. |
|   |        Sec. 808.002.  OTHER LEGAL OBLIGATIONS.  With respect to |
|   | actions taken in compliance with this chapter, including all good |
|   | faith determinations regarding companies as required by this |
|   | chapter, a state governmental entity and the 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 companies, or |
|   | choosing asset managers, investment funds, or investments for the |
|   | state governmental entity's securities portfolios. |
|   |        Sec. 808.003.  INDEMNIFICATION OF STATE GOVERNMENTAL |
|   | ENTITIES, EMPLOYEES, AND OTHERS.  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, the state shall, without regard to |
|   | whether the person performed services for compensation, 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 governmental entity; |
|   |              (2)  a contractor of a state governmental entity; |
|   |              (3)  a former employee, a former member of the |
|   | governing body, or any other former officer of a state governmental |
|   | entity 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 governmental entity |
|   | who was a contractor when the act or omission on which the damages |
|   | are based occurred; and |
|   |              (5)  a state governmental entity. |
|   |        Sec. 808.004.  NO PRIVATE CAUSE OF ACTION. (a)  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 may not sue or pursue a private cause |
|   | of action against the state, a state governmental entity, a current |
|   | or former employee, a member of the governing body, or any other |
|   | officer of a state governmental entity, or a contractor of a state |
|   | governmental entity, 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)  A person who files suit against the state, a state |
|   | governmental entity, an employee, a member of the governing body, |
|   | or any other officer of a state governmental entity, or a contractor |
|   | of a state governmental entity, is liable for paying the costs and |
|   | attorney's fees of a person sued in violation of this section. |
|   |        Sec. 808.005.  RELIANCE ON COMPANY RESPONSE.  The |
|   | comptroller and a state governmental entity may 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)  The comptroller shall |
|   | prepare and maintain, and provide to each state governmental |
|   | entity, a list of all companies that boycott Israel. In maintaining |
|   | the list, the comptroller may review and rely, as appropriate in the |
|   | comptroller's judgment, on publicly available information |
|   | regarding companies, including information provided by the state, |
|   | nonprofit organizations, research firms, international |
|   | organizations, and governmental entities. |
|   |        (b)  The comptroller shall 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)  Not later than the 30th day after the date the list of |
|   | companies that boycott Israel is first provided or updated, the |
|   | comptroller shall 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 website. |
|   |        Sec. 808.052.  IDENTIFICATION OF INVESTMENT IN LISTED |
|   | COMPANIES.  Not later than the 30th day after the date a state |
|   | governmental entity receives the list provided under Section |
|   | 808.051, the state governmental entity shall notify the comptroller |
|   | of the listed companies in which the state governmental entity owns |
|   | direct holdings or indirect holdings. |
|   |        Sec. 808.053.  ACTIONS RELATING TO LISTED COMPANY. (a)  For |
|   | each listed company identified under Section 808.052, the state |
|   | governmental entity shall send a written notice informing the |
|   | company of its status as a listed company and warning the company |
|   | that it may become subject to divestment by state governmental |
|   | entities. |
|   |        (b)  The notice must offer the company the opportunity to |
|   | clarify its Israel-related activities and must encourage the |
|   | company, not later than the 90th day after the date the company |
|   | receives notice under this section, to cease boycotting Israel in |
|   | order to avoid qualifying for divestment by state governmental |
|   | entities. |
|   |        (c)  If, during the time provided by Subsection (b), the |
|   | company ceases boycotting Israel, the comptroller shall remove the |
|   | company from the list maintained under Section 808.051 and this |
|   | chapter will no longer apply to the company unless it resumes |
|   | boycotting Israel. |
|   |        (d)  If, after the time provided by Subsection (b) expires, |
|   | the company continues to boycott Israel, the state governmental |
|   | entity shall 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)  A state |
|   | governmental entity required to sell, redeem, divest, or withdraw |
|   | all publicly traded securities of a listed company shall comply |
|   | with the following schedule: |
|   |              (1)  at least 50 percent of those assets must be removed |
|   | from the state governmental entity's assets under management not |
|   | later than the 180th day after the date the company receives notice |
|   | under Section 808.053 or Subsection (b) unless the state |
|   | governmental entity 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 must be removed from |
|   | the state governmental entity's assets under management not later |
|   | than the 360th day after the date the company receives notice under |
|   | Section 808.053 or Subsection (b). |
|   |        (b)  If a company that ceased boycotting Israel after |
|   | receiving notice under Section 808.053 resumes its boycott, the |
|   | state governmental entity shall send a written notice to the |
|   | company informing it that the state governmental entity will sell, |
|   | redeem, divest, or withdraw all publicly traded securities of the |
|   | company according to the schedule in Subsection (a). |
|   |        (c)  Except as provided by Subsection (a), a state |
|   | governmental entity may delay the schedule for divestment under |
|   | that subsection only to the extent that the state governmental |
|   | entity determines, in the state governmental entity's good faith |
|   | judgment, and consistent with the entity's fiduciary duty, that |
|   | divestment from listed companies will likely result in a loss in |
|   | value or a benchmark deviation described by Section 808.056(a).  If |
|   | a state governmental entity delays the schedule for divestment, the |
|   | state governmental entity shall submit a report to the presiding |
|   | officer of each house of the legislature and the attorney general |
|   | stating the reasons and justification for the state governmental |
|   | entity's delay in divestment from listed companies.  The report |
|   | must include documentation supporting its determination that the |
|   | divestment would result in a loss in value or a benchmark deviation |
|   | described by Section 808.056(a), including objective numerical |
|   | estimates.  The state governmental entity shall update the report |
|   | every six months. |
|   |        Sec. 808.055.  INVESTMENTS EXEMPTED FROM DIVESTMENT. A |
|   | state governmental entity is not required to divest from any |
|   | indirect holdings in actively or passively managed investment funds |
|   | or private equity funds. The state governmental entity shall |
|   | 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. If a manager creates |
|   | a similar fund with substantially the same management fees and same |
|   | level of investment risk and anticipated return, the state |
|   | governmental entity may 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) A state governmental entity may cease divesting from one or |
|   | more listed companies only if clear and convincing evidence shows |
|   | that: |
|   |              (1)  the state governmental entity has suffered or will |
|   | suffer a loss in the hypothetical value of all assets under |
|   | management by the state governmental entity as a result of having to |
|   | divest from listed companies 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 companies under this chapter. |
|   |        (b)  A state governmental entity may cease divesting from a |
|   | listed company as provided by this section only to the extent |
|   | necessary to ensure that the state governmental entity does not |
|   | suffer a loss in value or deviate from its benchmark as described by |
|   | Subsection (a). |
|   |        (c)  Before a state governmental entity may cease divesting |
|   | from a listed company under this section, the state governmental |
|   | entity must 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 company. |
|   |        (d)  The state governmental entity shall update the report |
|   | required by Subsection (c) semiannually, as applicable. |
|   |        (e)  This section does not apply to reinvestment in a company |
|   | that is no longer a listed company. |
|   |        Sec. 808.057.  PROHIBITED INVESTMENTS. Except as provided |
|   | by Section 808.056, a state governmental entity may not acquire |
|   | securities of a listed company. |
|   | SUBCHAPTER C. REPORT; ENFORCEMENT |
|   |        Sec. 808.101.  REPORT. Not later than January 5 of each |
|   | year, each state governmental entity shall 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 808.054; |
|   |              (2)  identifies all prohibited investments under |
|   | Section 808.057; and |
|   |              (3)  summarizes any changes made under Section 808.055. |
|   |        Sec. 808.102.  ENFORCEMENT. The attorney general may bring |
|   | any action necessary to enforce this chapter. |
|   |        SECTION 3.  This Act takes effect September 1, 2017. |