

## **BILL ANALYSIS**

C.S.H.B. 89  
By: King, Phil  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that Israel is a key ally and trading partner of the United States and Texas should act to prevent taxpayer resources from supporting businesses which work to isolate Israel from global trade. C.S.H.B. 89 seeks to provide these protections by enacting provisions related to state contracts with and investments in companies that boycott Israel.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 89 amends the Government Code to prohibit a state agency or political subdivision of the state from entering into a contract with a company for goods and 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. The bill defines, among other terms, "boycott Israel" as 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, excluding an action made for ordinary business purposes.

C.S.H.B. 89 requires the comptroller of public accounts to prepare and maintain a list of all companies that boycott Israel and to provide that list to a state governmental entity, defined as the Employees Retirement System of Texas, including a retirement system administered by that system, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, the Texas County and District Retirement System, the Texas Emergency Services Retirement System, and the permanent school fund. The bill authorizes the comptroller, in maintaining the list, to review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies and 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, such publicly available information. The bill 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 post the list on a publicly available website and to file the list with the presiding officer of each house of the legislature and the attorney general.

C.S.H.B. 89 requires such a state governmental entity, not later than the 30th day after the date the entity receives the list of all companies that boycott Israel, to notify the comptroller of the

listed companies in which the entity owns direct holdings or indirect holdings. The bill requires the state governmental entity, for each listed company, 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 state governmental entities, and offering the company the opportunity to clarify its Israel-related activities. The bill requires a company that receives such a notice, not later than the 90th day after receiving the notice, to cease boycotting Israel in order to avoid qualifying for divestment by state governmental entities. The bill requires the comptroller to remove a company that ceases boycotting Israel during the time provided from the list of companies that boycott Israel. In such a circumstance, the bill's provisions prohibiting investment in the company expressly will no longer apply to the company unless it resumes boycotting Israel.

C.S.H.B. 89 requires a state governmental entity, if the company continues to boycott Israel after the time provided expires, to sell, redeem, divest, or withdraw all publicly traded securities of the company according to a prescribed schedule. The bill expressly does not require a state governmental entity to divest from any indirect holdings in actively or passively managed investment funds or private equity funds but requires an entity 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. The bill authorizes a state governmental entity, 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.

C.S.H.B. 89 authorizes a state governmental entity to cease divesting from one or more listed companies only if clear and convincing evidence shows that the entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the entity as a result of having to divest from listed companies or 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. The bill limits a state governmental entity's ability to cease divesting from a listed company to the extent necessary to ensure the entity does not suffer a loss in value or deviate from its benchmark. The bill requires a state governmental entity, before ceasing divesting from a listed company, to provide a written report, updated semiannually as applicable, 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. The bill prohibits a state governmental entity from acquiring securities of a listed company except as provided by the bill's provisions relating to ceasing divesting from a listed company. The bill expressly does not apply those provisions to reinvestment in a company that is no longer a listed company.

C.S.H.B. 89 sets out exemptions for a state governmental entity and the comptroller from certain conflicting statutory or common law obligations and the conditions under which the state is required to indemnify and hold harmless for actual damages certain people and entities. The bill sets out prohibitions against suit or pursuit of a private cause of action for any claim or cause of action in connection with actions made or taken for purposes of the bill's provisions relating to the investment prohibition. The bill exempts a state governmental entity from a requirement of the bill's provisions prohibiting investment in companies that boycott Israel if the entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under the Texas Constitution. The bill authorizes the comptroller and a state governmental entity to rely on a company's response to a notice or communication made in relation to the investment prohibition without conducting any further investigation, research, or inquiry.

C.S.H.B. 89 requires each state governmental entity, 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 identifies all securities of a listed company sold, redeemed, divested, or withdrawn; identifies all prohibited investments of a listed company; and summarizes any changes made under the bill's provisions relating to investments exempted from divestment. The bill authorizes the attorney general to bring any action necessary to enforce the bill's provisions relating to the prohibition against investment in companies that boycott Israel.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 89 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2270.

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

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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##### 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.

Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS.

Sec. 808.004. NO PRIVATE CAUSE OF ACTION.

No equivalent provision.

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.

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Sec. 808.002. OTHER LEGAL OBLIGATIONS.

Sec. 808.003. INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS.

Sec. 808.004. NO PRIVATE CAUSE OF ACTION.

Sec. 808.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. 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 of entity assets or other duties imposed by law relating to the investment of

entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

Sec. 808.005. RELIANCE ON COMPANY RESPONSE.

Sec. 808.006. RELIANCE ON COMPANY RESPONSE.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

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Sec. 808.051. LISTED COMPANIES. (a)

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Sec. 808.052. IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES.

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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.

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:

- (1) informing the company of its status as a listed company;
- (2) warning the company that it may become subject to divestment by state governmental entities after the expiration of the period described by Subsection (b); and
- (3) offering the company the opportunity to clarify its Israel-related activities.

(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.

(b) Not later than the 90th day after the date the company receives notice under Subsection (a), the company must 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.

(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.

(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.

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Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT.

Sec. 808.055. INVESTMENTS EXEMPTED FROM DIVESTMENT

Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

Sec. 808.057. PROHIBITED INVESTMENTS.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 808.101. REPORT.

Sec. 808.102. ENFORCEMENT.

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

Sec. 808.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

Sec. 808.057. PROHIBITED INVESTMENTS.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 808.101. REPORT.

Sec. 808.102. ENFORCEMENT.

SECTION 3. Same as introduced version.