

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT
SYSTEMS

CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES THAT
BOYCOTT CERTAIN ENERGY COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001. DEFINITIONS. In this chapter:

(1) "Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company:

(A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or

(B) does business with a company described by Paragraph (A).

(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 financial company, all securities of that financial 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) "Financial company" means a publicly traded financial services, banking, or investment company.

(5) "Indirect holdings" means, with respect to a financial company, all securities of that financial 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.

(6) "Listed financial company" means a financial company listed by the comptroller under Section 809.051.

(7) "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; and

(F) the permanent school fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding financial 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 financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an action, inaction, decision, divestment, investment, financial 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.004. 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 financial 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, financial 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff.

September 1, 2021.

Sec. 809.005. 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.006. RELIANCE ON FINANCIAL COMPANY RESPONSE. The comptroller and a state governmental entity may rely on a financial company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 809.051. LISTED FINANCIAL COMPANIES. (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all financial companies that boycott energy companies. In maintaining the list, the comptroller may:

(1) review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding financial companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities; and

(2) request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on a financial

company's written response to the request.

(b) A financial company that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be boycotting energy companies.

(c) 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).

(d) Not later than the 30th day after the date the list of financial companies that boycott energy companies 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 Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED FINANCIAL COMPANIES. Not later than the 30th day after the date a state governmental entity receives the list provided under Section 809.051, the state governmental entity shall notify the comptroller of the listed financial companies in which the state governmental entity owns direct holdings or indirect holdings.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.053. ACTIONS RELATING TO LISTED FINANCIAL COMPANY.

(a) For each listed financial company identified under Section 809.052, the state governmental entity shall send a written notice:

(1) informing the financial company of its status as a listed financial company;

(2) warning the financial 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 financial company the opportunity to clarify its activities related to companies described by Sections 809.001(1)(A) and (B).

(b) Not later than the 90th day after the date the financial company receives notice under Subsection (a), the financial company must cease boycotting energy companies in order to avoid qualifying for divestment by state governmental entities.

(c) If, during the time provided by Subsection (b), the financial company ceases boycotting energy companies, the comptroller shall remove the financial company from the list maintained under Section 809.051 and this chapter will no longer apply to the financial company unless it resumes boycotting energy companies.

(d) If, after the time provided by Subsection (b) expires, the financial company continues to boycott energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described by Section 809.055, according to the schedule provided by Section 809.054.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed financial 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 financial company receives notice under Section 809.053 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 financial company receives notice under Section 809.053 or Subsection (b).

(b) If a financial company that ceased boycotting energy companies after receiving notice under Section 809.053 resumes its boycott, the state governmental entity shall send a written notice

to the financial company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the financial 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 financial companies will likely result in a loss in value or a benchmark deviation described by Section 809.056(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 financial 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 809.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.055. 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 financial companies requesting that they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial 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.
Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff.
September 1, 2021.

Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED FINANCIAL COMPANIES. (a) A state governmental entity may cease divesting from one or more listed financial 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 financial 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 financial companies under this chapter.

(b) A state governmental entity may cease divesting from a listed financial 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 financial 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 financial 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 financial company that is no longer a listed financial company.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff.
September 1, 2021.

Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided

by Section 809.056, a state governmental entity may not acquire securities of a listed financial company.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 809.101. 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 809.054;

(2) identifies all prohibited investments under Section 809.057; and

(3) summarizes any changes made under Section 809.055.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.

Sec. 809.102. ENFORCEMENT. The attorney general may bring any action necessary to enforce this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 1, eff. September 1, 2021.