

BILL ANALYSIS

S.B. 13
By: Birdwell
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The oil and gas sector has comprised between 30 and 40 percent of the state's economic activity over the past decade. In recent years, a number of corporations have begun to prioritize their involvement in social issues, such as environmentalism, instead of focusing solely on their fiduciary responsibility. When state agencies contract with or invest funds in companies that boycott fossil fuel-based energy companies, it has a direct and adverse effect on the Texas economy. S.B. 13 seeks to ensure that taxpayer dollars are not being used to promote an agenda that hurts the state's energy sector and economy as a whole by prohibiting investments by certain state entities in companies that boycott these energy companies.

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

S.B. 13 amends the Government Code to prohibit a state agency or political subdivision from entering into an applicable contract with a company for goods and services unless the contract contains a written verification from the company that it does not and will not during the contract term boycott energy companies. That prohibition applies only to a contract with a minimum value of \$100,000 that is between such a governmental entity and a company with 10 or more full-time employees and that is to be paid at least in part from the entity's public funds.

S.B. 13 exempts from that prohibition a contract entered into in connection with or relating to the issuance, sale, or delivery of tax and revenue anticipation notes or the administration of matters related to the notes if the comptroller of public accounts determines that compliance is likely to prevent an issuance, sale, or delivery that is sufficient to address the general revenue cash flow shortfall forecast or the administration of matters related to the notes. Before making that determination, the comptroller must do the following:

- survey potential respondents or bidders to a solicitation for such a contract to determine the number of qualified potential respondents or bidders that are able to provide the written verification that they do not and will not boycott energy companies; and
- evaluate the historical bidding performance of qualified potential bidders.

S.B. 13 defines, among other terms, "boycott energy company" as refusing to deal with, terminating business activities with, or otherwise taking any action that is, solely or primarily, intended to penalize, inflict economic harm on, or limit commercial relations specifically with a

company because the company 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 with a company that does business with such a company.

S.B. 13 requires the comptroller to prepare and maintain a list of all publicly traded financial services, banking, or investment companies that boycott energy companies and to provide that list to the following state governmental entities:

- the Employees Retirement System of Texas (ERS), including a retirement system administered by ERS;
- 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 sets out provisions relating to maintaining and updating that list, including an authorization for the comptroller to request written verification from a company that it does not boycott energy companies and rely on the company's written response without further investigation. The bill establishes that a financial company that fails to provide the written verification before the 61st day after receiving the request from the comptroller is presumed to be boycotting energy companies. The bill requires the comptroller, not later than the 30th day after the date the list 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.

S.B. 13 requires each applicable state governmental entity, not later than the 30th day after the date the entity receives the list, to notify the comptroller of the listed financial companies in which the entity owns direct holdings or indirect holdings. The bill provides the following:

- the entity, for each listed company, must 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 activities related to energy companies;
- not later than the 90th day after receiving the notice, such a company must cease boycotting energy companies in order to avoid qualifying for divestment; and
- the comptroller must remove from its list a company that ceases boycotting energy companies during the time provided and, in such a circumstance, the bill's provisions prohibiting investment in the company no longer apply to the company unless it resumes boycotting energy companies.

S.B. 13 requires an applicable state governmental entity to sell, redeem, divest, or withdraw all publicly traded securities of a listed financial company that continues to boycott energy companies after the time provided expires according to a prescribed schedule. The bill expressly does not require divestment 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. 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.

S.B. 13 authorizes an applicable state governmental entity to cease divesting from one or more listed financial companies if clear and convincing evidence shows that either of the following are true:

- 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 sets out related provisions, including a limitation on the extent to which such an entity may cease divestment and a requirement that an applicable state governmental entity provide a report to the comptroller, the presiding officer of each house of the legislature, and the attorney general relating to a decision to cease divestment or to remain invested in a listed company.

S.B. 13 does the following:

- sets out exemptions for an applicable 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;
- 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 prohibiting investment in companies that boycott energy companies;
- exempts an applicable state governmental entity from a requirement of those bill provisions 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; and
- authorizes the comptroller and an applicable state governmental entity to rely on a financial company's response to a notice or communication made in relation to the investment prohibition without conducting any further investigation, research, or inquiry.

S.B. 13 requires each applicable 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 does the following:

- identifies all securities of a listed financial company sold, redeemed, divested, or withdrawn;
- identifies all prohibited investments of a listed financial 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 prohibiting investment in financial companies that boycott energy companies.

EFFECTIVE DATE

September 1, 2021.