

BILL ANALYSIS

Senate Research Center

S.B. 253
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007 and 2013, the legislature passed acts prohibiting state retirement systems from investing in companies engaged in business with the Sudanese and Iranian governments. The intent of this legislation was to halt retirement systems' investments in companies associated with the Sudanese government's genocide in Darfur or the Iranian government's sponsorship of terrorist activities. While these acts prohibited certain retirement systems' investments, they did not apply the same prohibitions to other public funds. S.B. 253 amends the Public Funds Investment Act and the state funds investment policy to prohibit state investments in companies doing business with Sudan or Iran. This change would apply to funds in the state treasury, public investment pools, as well as those invested by local governments. The intent of this change is to broaden the applicability of the state's Iranian and Sudanese divestiture requirements to include other public investment funds.

S.B. 253 also proposes to broaden the state's divestiture policy to prohibit any publicly administered fund, including a state or local retirement fund, from investing in companies that engage in business with a foreign terrorist organization. Lastly, the bill specifies that the state's divestiture requirements relating to Iran, Sudan, and terrorist organizations shall expire in 2037. (Original Author's / Sponsor's Statement of Intent)

S.B. 253 amends current law relating to investment prohibitions and divestment requirements for certain investments of public money.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Pension Review Board is transferred to the Texas comptroller of public accounts in SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 404.024(b), Government Code, as follows:

(b) Provides that the provisions of Subsection (b) are subject to Chapter 2270. Redefines "rating category" and "rated."

SECTION 2. Amends Section 2256.017, Government Code, to create an exception under Chapter 2270.

SECTION 3. Amends Section 2256.024(a), Government Code, to create an exception under Section 2256.017.

SECTION 4. Transfers Chapter 806, Government Code, to Subtitle F, Title 10, Government Code, redesignates it as Chapter 2270 of that subtitle, and amends it, as follows:

CHAPTER 2270. New heading: PROHIBITION ON INVESTING PUBLIC MONEY IN
CERTAIN INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2270.0001. DEFINITIONS. Redesignates existing Section 806.001 as Section 2270.0001. Defines "designated foreign terrorist organization" and "investing entity." Redefines "direct holdings," "indirect holdings," "listed company," and "scrutinized company." Deletes existing definitions of "business operations," "complicit," "government of Sudan," "marginalized populations of Sudan," "military equipment," "mineral extraction activities," "oil-related activities," "power production activities," "social development company," "state governmental entity," and "substantial action." Makes nonsubstantive changes.

Sec. 2270.0002. EXCEPTION. Redesignates existing Section 806.004 as Section 2270.0002. Exempts a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a designated foreign terrorist organization from being subject to divestment or investment prohibition, notwithstanding any other law. Deletes existing Sections 806.002 (Scrutinized Business Operations) and 806.003 (Social Development Company).

Sec. 2270.0003. OTHER LEGAL OBLIGATIONS. Redesignates existing Section 806.005 as Section 2270.0003. Exempts an investing entity, rather than a state governmental entity, with respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies, from any conflicting statutory or common law obligations, including certain financial obligations. Makes a conforming change.

Sec. 2270.0004. INAPPLICABILITY OF CERTAIN REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. Exempts a certain investing entity from a requirement of this chapter if the entity determines that the requirement would be inconsistent with the entity's 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 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution.

Sec. 2270.0005. CONFLICT WITH OTHER LAW. Provides that, to the extent of a conflict between this chapter and a provision of Chapter 404 (State Treasury Operations of Comptroller) or Chapter 2256 (Public Funds Investment) regarding an investing entity's investments, this chapter prevails.

Sec. 2270.0006. New heading: INDEMNIFICATION OF INVESTING ENTITIES, EMPLOYEES, AND OTHERS. Redesignates existing Section 806.006 as Section 2270.0006. Changes references from a state governmental entity to an investing entity. Requires the state to defend an investing entity in a cause of action based on certain actions made or taken in connection with this chapter. Makes conforming and nonsubstantive changes.

Sec. 2270.0007. NO PRIVATE CAUSE OF ACTION. Redesignates existing Section 806.007 as Section 2270.0007. (a) Makes conforming changes.

(b) Makes conforming changes.

Sec. 2270.0008. RELIANCE ON COMPANY RESPONSE. Authorizes the Texas comptroller of public accounts (comptroller) and an investing entity to rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry in administering this chapter.

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO INVESTMENTS IN SUDAN

Sec. 2270.0051. DEFINITIONS. Defines "business operations," "complicit," "government of Sudan," "marginalized populations of Sudan," "military equipment,"

"mineral extraction activities," "oil-related activities," "power production activities," "social development company," and "substantial action."

Sec. 2270.0052. SCRUTINIZED BUSINESS OPERATIONS IN SUDAN. Provides that a company engages in scrutinized business operations in Sudan if the company has certain business operations with the government of Sudan or certain affiliates of the government of Sudan or the company supplies military equipment in Sudan, unless the company clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards, including certain enumerated safeguards, to prevent the use of that equipment by forces actively participating in armed conflict.

Sec. 2270.0053. SOCIAL DEVELOPMENT COMPANY. Provides that a social development company that is not complicit in the Darfur genocide is not a scrutinized company under Section 2270.0001(9)(A) (relating to the definition of "scrutinized company"), notwithstanding any other law.

SUBCHAPTER C. GENERAL PROVISIONS RELATING TO INVESTMENTS IN IRAN

Sec. 2270.0101. DEFINITIONS. Defines "business operations" and "military equipment."

Sec. 2270.0102. SCRUTINIZED BUSINESS OPERATIONS IN IRAN. Provides that a company engages in scrutinized business operations in Iran if the company has certain business operations with the government of Iran or certain affiliates of the government of Iran, or the company supplies military equipment to Iran.

SUBCHAPTER D. GENERAL PROVISIONS RELATING TO INVESTMENTS IN CERTAIN FOREIGN TERRORIST ORGANIZATIONS

Sec. 2270.0151. DEFINITIONS. Defines "business operations" and "terroristic equipment."

Sec. 2270.0152. SCRUTINIZED BUSINESS OPERATIONS WITH DESIGNATED FOREIGN TERRORIST ORGANIZATION. Provides that a company engages in scrutinized business operations with a designated foreign terrorist organization if the company has certain business operations that involve a designated foreign terrorist organization or that organization's affiliates, or the company supplies terroristic equipment to a designated foreign terrorist organization.

Sec. 2270.0153. LIST OF DESIGNATED FOREIGN TERRORIST ORGANIZATIONS. (a) Requires the comptroller to prepare and maintain a list of designated foreign terrorist organizations.

(b) Requires the comptroller to maintain the list by updating the list as necessary to reflect changes in the list of foreign organizations designated as foreign terrorist organizations by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

(c) Requires the comptroller, not later than the 30th day after the date the comptroller first prepares or updates the list of designated foreign terrorist organizations as required by this section, to file the list with the presiding officer of each house of the legislature and the Texas attorney general (attorney general) and post the list on the comptroller's Internet website.

New heading: SUBCHAPTER E. DUTIES REGARDING INVESTMENTS

Sec. 2270.0201. LISTED COMPANIES. Redesignates existing Section 806.051 as Section 2270.0201. (a) Requires the comptroller to prepare and maintain, rather than

prepare and maintain, and provide to each state governmental entity, a list of all scrutinized companies. Sets forth certain required categories of the list.

(b) Creates this subsection from existing text. Authorizes the comptroller, in maintaining the list of scrutinized companies under Subsection (a), to review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies with business operations in Sudan, in Iran, or with designated foreign terrorist organizations, as applicable, including information provided by certain entities.

(c) Redesignates existing Subsection (b) as Subsection (c) and makes conforming and nonsubstantive changes.

(d) Requires the comptroller to provide each prepared or updated list to each investing entity and post each list on the comptroller's Internet website.

(e) Redesignates existing Subsection (c) as Subsection (e). Requires the comptroller, not later than the 30th day after the date a list of scrutinized companies is provided, rather than the date the list of scrutinized companies is first provided or updated, to file the list with the presiding officer of each house of the legislature and the attorney general.

(f) Provides that, for purposes of the prohibitions and duties, the date the comptroller posts on the comptroller's Internet website a list of scrutinized companies is considered the date the comptroller receives notice of the list.

Sec. 2270.0202. IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES. Redesignates existing Section 806.052 as Section 2270.0202. Changes reference to a state governmental entity to an investing entity. Replaces Section 806.051 with Section 2270.0201. Makes nonsubstantive and conforming changes.

Sec. 2270.0203. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS. Redesignates existing Section 806.053 as Section 2270.0203. Requires an investing entity, for each listed company identified under Section 2270.0202, rather than Section 806.052, that is engaged in only inactive scrutinized business operations, to send a written notice informing the company of this chapter and encouraging the company to continue to refrain from initiating active business operations in Sudan, in Iran, and with designated foreign terrorist organizations until it is able to avoid being considered a listed company. Makes conforming changes.

Sec. 2270.0204. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS. Redesignates existing Section 806.054 as Section 2270.0204. (a) Requires an investing entity, for each listed company engaged in scrutinized active business operations, to send a notice informing the company of its listed status and warning the company that it may become subject to divestment by investing entities. Makes conforming changes.

(b) Requires that the notice offer the company the opportunity to clarify its Sudan-related, Iran-related, or designated foreign terrorist organization-related activities, as applicable, and encourage the company to either cease all scrutinized business operations described by Sections 2270.0052, 2270.0102, and 2270.0152, or convert such operations to inactive business operations in order to avoid qualifying for divestment by investing entities. Makes conforming and nonsubstantive changes.

(c) Makes a nonsubstantive change.

(d) Makes no changes to this subsection.

(e) Replaces reference to securities described by Section 806.057 according to the schedule provided by Section 806.056 with securities described by Section 2270.0207, according to the schedule provided by Section 2270.0206. Makes conforming changes.

Sec. 2270.0205. ACTIONS RELATING TO LISTED COMPANY COMPLICIT IN GENOCIDE. Redesignates existing Section 806.055 as Section 2270.0205. (a) Defines "complicit."

(b) Creates this subsection from existing text. Makes conforming changes.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further changes to this subsection.

(d) Redesignates existing Subsection (c) as Subsection (d). Requires the investing entity to take certain actions if, after receiving notice under Subsection (b), rather than Subsection (a), the listed company takes additional complicit action. Makes conforming changes.

Sec. 2270.0206. DIVESTMENT OF ASSETS. Redesignates existing Section 806.056 as Section 2270.0206. (a) Requires an investing entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company to comply with a certain schedule after the date the company receives notice under Section 2270.0204, rather than Section 806.054, or Section 2270.0205, rather than Section 806.055. Makes conforming changes.

(b) Changes a reference to Section 806.054 to Section 2270.0204. Makes conforming changes.

(c) Changes references to Section 806.058(a) to Section 2270.0208(a). Makes conforming changes.

Sec. 2270.0207. INVESTMENTS EXEMPTED FROM DIVESTMENT. Redesignates existing Section 806.057 as Section 2270.0207. Provides that an investing entity is not required to divest from any indirect holdings in actively managed investment or private equity funds. Sets forth certain actions the investing entity is required to take. Makes conforming changes.

Sec. 2270.0208. AUTHORIZED INVESTMENT IN LISTED COMPANIES. Redesignates existing Section 806.058 as Section 2270.0208. (a) Authorizes an investing entity to cease divesting from or to invest in one or more listed companies under certain circumstances and after taking certain measures. Makes conforming changes.

(b) through (e) Makes conforming changes.

Sec. 2270.0209. PROHIBITED INVESTMENTS. Redesignates existing Section 806.059 as Section 2270.0209. Changes references to Section 806.004 to Section 2270.0002 and Section 806.058 to Section 2270.0208. Makes conforming changes.

New heading: SUBCHAPTER F. EXPIRATION; REPORT; ENFORCEMENT

Sec. 2270.0251. EXPIRATION OF CHAPTER. Redesignates existing Section 806.101 as Section 2270.0251. Provides that this chapter expires September 1, 2037. Deletes existing text relating to certain dates for the chapter's expiration.

Sec. 2270.0252. REPORT. Redesignates existing Section 806.102 as Section 2270.0252. Requires each investing entity, not later than December 31 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 investments sold, redeemed, divested, or withdrawn in compliance with Section 2270.0206, identifies all prohibited investments under Section

2270.0209, and summarizes any changes made under Section 2270.0207 and to file a report with the United States presidential special envoy to Sudan that identifies investments in Sudan identified in the report as required and summarizes any changes made under Section 2270.0207 related to those investments. Makes conforming and nonsubstantive changes.

Sec. 2270.0253. ENFORCEMENT. Redesignates existing Section 806.103 as Section 2270.0253. Makes no further changes to this section.

SECTION 5. Repealer: Chapter 807 (Prohibition on Investment in Iran), Government Code.

SECTION 6. (a) Provides that on the effective date of this Act, all powers, duties, and functions of the State Pension Review Board (PRB), under Chapter 807, Government Code, as repealed by this Act, are transferred to the comptroller.

(b) Provides that all obligations and contracts; property and records in PRB's custody; funds appropriated by the legislature and other money; complaints, investigations, contested cases pending before PRB without change in status; and all necessary personnel, that relate to a power, duty, or function transferred under Subsection (a), are transferred to the comptroller on the effective date of this Act.

(c) Provides that a rule, policy, or form adopted by or on behalf of PRB that relates to a power, duty, or function transferred under Subsection (a) becomes a rule, policy, or form of the comptroller on the transfer of the related power, duty, or function and remains in effect until altered by the comptroller or unless it conflicts with a rule, policy, or form of the comptroller.

(d) Provides that an action brought or proceeding commenced before the date of a transfer, including certain cases or actions, is governed by the laws and rules applicable to the action or proceeding before the transfer.

SECTION 7. Requires the comptroller, not later than September 1, 2017, to prepare the initial list of designated foreign terrorist organizations as required by Section 2270.0153, Government Code, as added by this Act.

SECTION 8. Requires the comptroller, not later than October 1, 2017, to prepare an updated list of scrutinized companies required by Section 2270.0201, Government Code, as added by this Act, to provide the list to each investing entity, as defined by Section 2270.0001, Government Code, as added by this Act, and to post the list on the comptroller's Internet website.

SECTION 9. Effective date: upon passage or on the 91st day after the last day of the legislative session.