



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

ADVISORY ON TEXAS LAW PROHIBITING CONTRACTS AND INVESTMENTS WITH ENTITIES THAT DISCRIMINATE AGAINST FIREARM ENTITIES OR BOYCOTT ENERGY COMPANIES OR ISRAEL

Texas law prohibits state agencies and political subdivisions¹ (“Governmental Entities”) from contracting with businesses that boycott energy companies, discriminate against firearm entities or associations, or boycott Israel. As Attorney General, my job is to uphold state law and ensure that Texas remains a friendly state for companies to do business—including those that produce the energy we depend on and the firearms that secure our safety and freedom. And given the recent brutal Hamas terrorist attacks against Israel, it is more important than ever to enforce public policy supportive of one of America’s closest allies and a beacon of freedom in the Middle East.

Since 2017, the Texas Legislature has passed, and Governor Greg Abbott has signed into law, a series of restrictions on the ability of Governmental Entities to do business with companies² that boycott energy companies,³ discriminate against firearm entities or associations,⁴ or boycott Israel.⁵ Pursuant to these laws, no Texas Governmental Entity may enter into a contract with such boycotters or discriminators for the purchase of goods or services with a value of at least \$100,000.⁶ Moreover, contracts with Governmental Entities must include a written verification from the company that it does not and will not during the term of the contract (i) boycott energy companies (“SB 13”)⁷; (ii) have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (“SB 19”)⁸; or (iii) boycott Israel.⁹

¹ Both the anti-firearm entity discriminator law, Texas Government Code ch. 2274, and the anti-fossil fuel boycotter law, Texas Government Code ch. 2276, define “governmental entity” by cross-referencing Texas Government Code section 2251.001.

² “Company” is broadly defined under Texas Government Code section 809.001(2), but for purposes of the prohibition against contracting, it excludes a sole proprietorship. *Id.* §§ 2274.001(2), 2276.001(2).

³ *See id.* §§ 2276.001–.002.

⁴ *See id.* §§ 2274.001–.002. “Firearm entity” and “firearm trade association” are defined in Texas Government Code subsections 2274.001(6) and (7).

⁵ *Id.* § 2271.002.

⁶ *Id.* §§ 2274.002, 2276.002. Each act provides for limited exceptions to the prohibition against contracting. *See id.* §§ 2274.002(c), 2274.003, 2276.002(c).

⁷ *Id.* § 2276.002.

⁸ *Id.* § 2274.002.

⁹ *Id.* § 2271.002.

Companies Banned from Doing Business with Governmental Entities

Because the Attorney General is vested with authority to review and approve the issuance of municipal bonds in Texas, I directed my Public Finance Division to take proactive measures beyond securing written verification to verify that companies that underwrite municipal bonds in this State comply with these important laws. In January 2023, my Public Finance Division [concluded](#) that Citigroup, Inc. maintains policies that discriminate against firearm entities. As a result, Citigroup and its affiliates are currently prohibited from underwriting municipal bonds in the state of Texas.

Separately, the Comptroller of Public Accounts is required by law to prepare, maintain, and provide to certain state agencies¹⁰ involved in investing state dollars a list of publicly traded companies that boycott energy companies¹¹ or Israel¹² (but not firearm-entity discriminators). The Comptroller's [list of financial services companies](#) that boycott energy companies is required to be regularly updated. Currently, the following companies have been designated as energy company boycotters:

- Blackrock, Inc.
- BNP Paribas SA
- Credit Suisse Group AG
- Danske Bank A/S
- HSBC Holdings PLC
- Jupiter Fund Management PLC
- Nordea Bank ABP
- Schroders PLC
- Svenska Handelsbanken AB
- Swedbank AB
- UBS Group

Also, the following companies have been designated as Israel boycotters:

- ASN Bank NV
- Ben & Jerry's Homemade, Inc.
- Betsah Invest SA
- Cactus SA
- Co-Operative Group LimiteLC
- DNB Bank ASA
- Guloguz Dis Deposu Ticaret Ve Pazarlama Ltd
- Karsten Farms
- Klp Kapitalforvaltning AA
- Kommunal Landspensjonskasse Gjensidig Forsikringssselskap
- Unilever PLC

¹⁰ The Comptroller of Public Accounts prepares these lists for the limited purpose of requiring the following state entities to generally sell, redeem, divest, or withdraw all publicly traded securities of any company on the list: Employees Retirement System of Texas, 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 Texas Permanent School Fund. *Id.* §§ 809.001(7), .053, .054.

¹¹ *Id.* § 809.051.

¹² *Id.* § 808.051.

In compiling the statutorily required lists of companies that boycott energy companies and Israel, the Comptroller of Public Accounts is empowered to undertake substantial due diligence but may also rely upon the written verifications from financial companies without further investigation.¹³ It is my belief, however, that state agencies and political subdivisions should do more than simply rely upon written verifications when contracting with companies. When it comes to companies that want to do business in Texas by underwriting municipal bonds, the Office of the Attorney General will hold itself to a higher standard.

Governmental Entities Cannot Blindly Rely on Written Verifications

Governmental Entities are advised that the lists of boycotters and discriminators maintained by the Attorney General and the Comptroller of Public Accounts are not exhaustive lists of companies that are in violation of state law. These lists should be a starting point—not the end-all—in a Texas Governmental Entity’s determination of whether a company is a boycotter or a discriminator under state law. Although the law does not impose on Governmental Entities a duty to conduct a full due-diligence review of a company’s written verifications, Governmental Entities may not blindly rely on written verifications when evidence is readily and publicly available that a company is a boycotter or discriminator.

When the Comptroller of Public Accounts issued his preliminary list of companies that boycott energy companies, my Public Finance Division quickly reviewed it and agreed that UBS and its affiliates were boycotters and banned UBS from underwriting public securities in Texas.¹⁴ Any contract with any company on the Comptroller’s list, or on the Attorney General’s list, e.g., Citigroup, is likely to be illegal under SB 13, SB 19, or the Israel anti-boycott law—and any contracts, renewals, or amendments with such companies should be entertained with great caution.

Governmental Entities should also consider other red flags. It is widely known in the public finance arena that my Public Finance Division has been reviewing the policies of JP Morgan and Bank of America as they relate to doing (or not doing) business with certain firearm entities. More recently, Intuit publicly reversed course from prohibiting firearm entities from using its software. According to Senator Ted Cruz, Intuit informed his office that JP Morgan and Bank of America had pressured it to adopt such anti-firearm-entity policies. Similarly, my office has sent civil investigation demand letters to certain members of the Net Zero Banking Alliance, Institutional Shareholder Services, and Glass Lewis regarding their ESG policies.

Additionally, my Public Finance Division is issuing an All-Bond Counsel letter today, informing bond counsels that it is undertaking a review of all members (or their affiliates) of the Net Zero Banking Alliance, Net Zero Insurance Alliance, Net Zero Asset Managers Initiative, and Net Zero Asset Owner Alliance who have submitted standing letters. The Public Finance Division will require such companies to provide additional verification to prove their compliance with both

¹³ *Id.* § 809.051(a)(2).

¹⁴ When UBS was designated, Normangee ISD had to reprice bonds that UBS had previously agreed to purchase but had not yet closed. [My office represented Normangee ISD pro bono and helped them recover \\$850,000 of their losses.](#)

SB 13 and SB 19 for each offering or agreement that my office must approve during the review.¹⁵ I would encourage all Governmental Entities to undertake substantial due diligence before entering into, renewing, or amending any contracts with such companies. In doing so, Governmental Entities should be aware that the Texas Government Code defines “company” to include “a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate”¹⁶ of companies that are designated as energy company boycotters or firearm entity discriminators. Accordingly, Governmental Entities should exercise due diligence to avoid indirectly contracting with a prohibited entity.

What Types of Contracts are Covered

All State agencies and political subdivisions are advised that this prohibition’s applicability to contracts for “goods or services” for at least \$100,000 covers a wide range of government contracts, including but not limited to contracts for any of the following services:

- Accounting
- Architecture
- Audit
- Consulting
- Engineering
- Legal
- Program Development
- Real Estate
- Any other Professional Services
- Asset Management
- Brokerage
- Cash Management
- Credit Card
- Financial Custodian
- Insurance
- Investment Advisory
- Investment Banking
- Proxy Advisory
- Reporting
- Securities Lending
- Trustee or Trust
- Any other Services Related to Financial Products

Further, SB 13, SB 19, and the Israel anti-boycott law apply to other contracts if there are *any* goods or services associated with the contract and are not limited to professional or financial services. Texas Government Entities are further advised that while SB 13 and SB 19 apply only to contracts entered into after the effective date of these laws, *e.g.*, September 1, 2021—and prior to September 1, 2017 for the Israel anti-boycott law—all amendments and renewals of contracts after September 1, 2021 (or September 1, 2017) must have the anti-boycott and anti-discrimination verifications mentioned above, even if the initial contract was entered into before the effective date

¹⁵ [All-Bond Counsel Letter \(Oct. 17, 2023\)](#). I expect additional and updated guidance regarding SB 13 and SB 19 to issue from my Public Finance Division in the next few weeks.

¹⁶ Tex. Gov’t Code § 809.001(2). On September 22, 2021, my Public Finance Division issued an [All-Bond Counsel letter](#) in connection with SB 13 and SB 19 that incorporates the US Securities and Exchange Commission definition of affiliate: “‘Affiliate’ means any entity that controls, is controlled by, or is under common control with the company within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.” Regarding SB 13 and SB 19, I believe all state agencies and public subdivisions should likewise adopt this definition when applying SB 13 and SB 19.

of the law. If the governmental body does not in good faith believe such verification is true, it is prohibited from entering into such amendment or renewal.

Conclusion

It is the responsibility of all Governmental Entities to exercise due diligence to uphold both the letter and spirit of state law. All Governmental Entities are advised to exercise their own due diligence and monitor compliance with Government Code chapters 2271, 2274, and 2276 upon contract formation and any renewal or extension of the contract's term.

Moreover, governmental entities are not free to do business with firearm entity discriminators, energy company boycotters, or Israel boycotters merely because neither the Comptroller of Public Accounts nor the Attorney General has publicly designated them as such. Although Governmental Entities may not always be positioned to fully evaluate a company's policies and practices, they may not turn a blind eye to publicly known conduct. When considering whether a company is an energy company boycotter, for instance, particular notice should be taken of whether the company is a member of the Net Zero Alliance or a signatory of any other similar entity that espouses a commitment to the furtherance of so-called Environmental, Social and Governance policies.

A handwritten signature in cursive script that reads "Ken Paxton".

KEN PAXTON

Attorney General of Texas