



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2021

Via email to: fredric.weber@nortonrosefulbright.com

Mr. Fredric A. Weber
Norton Rose Fulbright
1301 McKinney, Suite 5100
Houston, Texas 77010-3095

Re: Contract Verifications Required by Senate Bills 13 and 19

Dear Mr. Weber:

In your letter to me dated July 30, 2021, as supplemented on August 18, 2021, you ask whether any of the recommended verifications proposed in your letter would prevent this office from approving bonds if included in bond purchase agreements or accepted bids by which they are sold.¹ This is to inform you that we cannot accept the qualifying language² described in your letter because it conflicts with Senate Bills 13 and 19, as passed by the 87th Legislature. This conflict arises because the qualifying language conditions the verifications with what the underwriter understands defined terms to not mean and what undefined terms do mean. Put simply, Senate Bills 13 and 19 require verification of compliance with the law, not with what underwriters understand the law to mean.

Compliance with Senate Bill 13 requires written verification in the contract that the company³ does not boycott energy companies and will not boycott energy companies during the term of the contract.⁴ The underwriter may not qualify this verification by explaining what it understands “ordinary business purpose” to mean as an undefined term in the definition of “boycott energy company”.

Compliance with Senate Bill 19 requires written verification in the contract that the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the contract.⁵ The statute expressly defines what “discriminate against a firearm entity” means and does not mean. The definition expressly

¹ We write this response pursuant to our authority under section 402.044 of the Government Code, which requires that we advise the proper legal authorities in regard to the issuance of bonds that by law require the attorney general’s approval.

² This qualifying language is described in your letter as the “SB 13 Understandings” and the “SB 19 Understandings” and contained in the letter’s attachments.

³ “Company” has the meaning assigned by Tex. Gov’t Code § 809.001, except that the term does not include a sole proprietorship. Act of May 28, 2021, 87th R.S., S.B. 13, § 2 (to be codified at Tex. Gov’t Code § 2274.001(2)).

⁴ Act of May 28, 2021, 87th R.S., S.B. 13, § 2 (to be codified at Tex. Gov’t Code § 2274.002(b)).

⁵ Act of May 28, 2021, 87th R.S., S.B. 19, § 1 (to be codified at Tex. Gov’t Code § 2274.002(b), with “company” as defined in § 2274.001(2)).

excludes a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association."⁶ The underwriter may not qualify its verification by explaining what it understands "traditional business reason" to mean.

Additionally, the underwriter may not qualify its verification on the flawed premise that a company may withhold trade or relationships from a firearm entity for undertaking specified activities not common to all firearm entities when the specified activities by their nature make an entity a firearm entity – the manufacture, distribution, supply, or sale of firearms or firearm accessories. To assert, for example, that the type of firearm sold or the type of customer served does not relate "solely to the status of being a firearm entity" is inconsistent with the statute. These type of activities are directly what makes them firearms entities.

Moreover, Senate Bill 19 precludes a blanket policy against a class of firearm entities based on the type of weapons sold or age of the customer served, even if such policy is allegedly derived from traditional business reasons previously observed in similar customers, because the exception contained in the statute requires such reasons to be "specific to the customer". In other words, a customer qualification policy grouping a class of customers based on the types of weapons sold or customers served is a refusal to do business against an entire class of firearm entities for a firearm activity, not a refusal against a particular customer for a traditional business reason. Such above mentioned qualifications conflict with Senate Bill 19 and it would be unreasonable for an issuer to accept a contract verification from an underwriter on this basis.

To conclude, we will not approve bonds when the record of proceedings contradicts state law. Underwriters must be able to make unqualified verifications of compliance with Senate Bills 13 and 19.

Sincerely,



Leslie Brock
Assistant Attorney General
Chief, Public Finance Division

⁶ S.B. 19, § 1 (to be codified at Tex. Gov't Code § 2274.001(3)(B)(ii)(bb)).