S

SENATE BILL 329

Short Title: Divestment From Companies That Boycott Israel. (Public)

Sponsors: Senators Tucker, Gunn, Brock (Primary Sponsors); Pate, Rabin, and Sanderson.

Referred to: Rules and Operations of the Senate

March 22, 2017

A BILL TO BE ENTITLED
AN ACT REQUIRING STATE DIVESTMENT FROM, AND PROHIBITING STATE
AGENCIES FROM CONTRACTING WITH, COMPANIES THAT BOYCOTT ISRAEL.

Whereas, boycotts and related tactics have become a tool of economic warfare that threaten the sovereignty and security of key allies and trade partners of the United States; and

Whereas, the State of Israel is the most prominent target of such boycott activity, which began with, but has not been limited to, the Arab League Boycott adopted in 1945, even before Israel's declaration of independence as the reestablished national state of the Jewish people; and

Whereas, companies that refuse to deal with United States trade partners such as Israel, or entities that do business with or in such countries, make discriminatory decisions on the basis of national origin that impair those companies' commercial soundness; and

Whereas, it is the public policy of the United States, as enshrined in several federal acts, to oppose boycotts against Israel, and Congress has concluded as a matter of national trade policy that cooperation with Israel materially benefits United States companies and improves American competitiveness; and

Whereas, Israel in particular is known for its dynamic and innovative approach in many business sectors, and, therefore, a company's decision to discriminate against Israeli, Israeli entities, or entities that do business with or in Israel is an unsound business practice making such a company an unduly risky contracting partner or vehicle for investment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 6G.

"§ 147-86.80. Definitions.

The following definitions apply in this Article:

(1) Boycott Israel or boycott of Israel. – Engaging in refusals to deal, terminating business activities, or taking actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations specifically with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories. This term does not apply to decisions made for ordinary business purposes.

(2) Company. – Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership,
limited liability company, or other entity or business association, including
all wholly owned subsidiaries, majority-owned subsidiaries, parent
companies, or affiliates of those entities or business associations.

(3) Direct holdings. – All publicly traded securities of a company that are held
directly in an actively managed account or fund in which the North Carolina
Retirement System or State Treasurer owns all shares or interests.

(4) Indirect holdings. – All securities of a company that are held in an account
or fund, such as a mutual fund, managed by one or more persons not
employed by the State, in which North Carolina Retirement Systems or State
Treasurer owns shares or interests together with other investors not subject
to the provisions of this Article or that are held in an index fund.

(5) Restricted company. – A company that appears on the list of companies that
are engaged in a boycott of Israel developed by the State Treasurer under
G.S. 147-86.81(a)(1).

(6) State agency. – Any board, commission, department, executive department,
officer, institution, and any political subdivision of the State.

"§ 147-86.81. Prohibitions on State investment.

(a) No more than 30 days after October 1, 2017, the State Treasurer shall adopt a policy
prohibiting the North Carolina Retirement Systems or the Department of State Treasurer from
directly investing in any company engaged in a boycott of Israel. At a minimum, the policy
shall provide for the following:

(1) List of restricted companies. – Within 120 days of adoption of the policy, the
State Treasurer shall develop and make publicly available a list of
companies it determines to be engaged in a boycott of Israel. In the
development of this list, the State Treasurer shall use any other state lists of
restricted companies pursuant to similar laws and any federal information or
guidance on companies that boycott Israel, information provided by
nonprofit organizations, research firms, and governmental entities, and
generally publicly available information. The State Treasurer shall make
every effort to avoid erroneously including a company on the list. Before
finalizing an initial or updated list, the State Treasurer must do all of the
following before a company is included on the list:

a. Provide 90 days' written notice of the State Treasurer's intent to
include the company on the list. The notice shall inform the company
that inclusion on the list would make the company ineligible for State
investment, may result in the company becoming subject to
divestment by the North Carolina Retirement Systems, and may
affect the company's ability to conduct business with the State and its
subdivisions. The notice shall specify that the company may be
removed from the list if the company ceases its engagement in a
boycott of Israel.

b. The State Treasurer shall provide a company with an opportunity to
comment in writing that the company is not engaged in a boycott of
Israel or has ceased its boycott of Israel. If the company demonstrates
to the State Treasurer that the company has not been engaged in a
boycott of Israel, the company shall not be placed on the list. If a
company had been engaged in a boycott of Israel but has ceased the
boycott, it must submit a written certification to the State Treasurer
that the company will not reengage in a boycott of Israel for the
duration of any business with the State. The State Treasurer shall
keep all written certifications from restricted and previously restricted companies.

(2) Identification of investments. – Upon completion of the initial list of restricted companies created pursuant to subdivision (1) of this subsection, the State Treasurer shall identify any restricted companies in which the North Carolina Retirement Systems owns direct holdings and indirect holdings.

(3) Review of restricted companies list. – The State Treasurer shall review the list of restricted companies created pursuant to subdivision (1) of this subsection on an annual basis. This updated list shall be made publicly available and any updates shall be distributed to the North Carolina Retirement Systems.

(4) Direct holdings prohibited. – Neither the North Carolina Retirement Systems nor the State Treasurer may make direct investments in a restricted company. Neither the North Carolina Retirement Systems nor the State Treasurer may acquire securities of restricted companies as part of direct holdings.

(5) Existing direct holdings. – The North Carolina Retirement Systems and the State Treasurer shall sell, redeem, divest, or withdraw all direct holdings of a restricted company and shall instruct all investment advisors to sell, redeem, divest, or withdraw all direct holdings of restricted companies, within 90 days after a company is placed on the State Treasurer’s list of restricted companies.

(6) Indirect holdings permitted. – The prohibitions under subdivision (3) of this subsection shall not apply to the North Carolina Retirement Systems’ or the State Treasurer’s indirect holdings or private market funds. The State Treasurer shall submit a written request to the manager of each investment fund identifying restricted companies and requesting that the investment fund consider removing the investments in the restricted companies from the fund. Written requests required under this subdivision are required to be made only once to each investment fund.

(b) With respect to the actions taken in compliance with subsection (a) of this section, including all good-faith determinations of restricted companies, the North Carolina Retirement Systems and the State Treasurer are exempt from any conflicting statutory or common law obligations, including any fiduciary duties and any obligations with respect to choice of asset managers, investment funds, or investments for the North Carolina Retirement Systems portfolio.

§ 147-86.82. Restrictions on contracts with the State or subdivisions of the State.

(a) A company that is identified as a restricted company is ineligible to contract with the State or any political subdivision of the State.

(b) Any contract entered into with a company that is identified as a restricted company at the time of contract is void ab initio.

(c) Upon receiving information that a company that was not identified as a restricted company at the time of contract has later been identified as a restricted company, the State agency shall review the information and offer the company an opportunity to respond. If the company fails to demonstrate that the company should not have been identified as a restricted company within 90 days after notification by the State agency, then the State agency shall take action as may be appropriate and provided for by law, rule, or contract.

(d) Contracts in existence on October 1, 2017, with restricted companies shall be allowed to expire in accordance with the terms of the contract.

§ 147-86.83. Exceptions.
G.S. 147-86.82 shall not apply to contracts valued at one thousand dollars ($1,000) or less.

"§ 147-86.84. Reporting.
The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations annually by March 1 on information regarding investments sold, redeemed, divested, or withdrawn in compliance with this Article."

SECTION 2.(a) Pursuant to G.S. 147-69.3(g), the State Treasurer is authorized to retain the services of consultants, professional individuals, analysts, data collection firms, or other persons possessing specialized skills or knowledge necessary for the proper implementation and administration of the requirements of this act.

SECTION 2.(b) This section is effective when it becomes law.

SECTION 3. Except as otherwise provided, this act becomes effective October 1, 2017.