

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 161

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

Sponsors: Representatives Ross, Szoka, Hardister, and W. Richardson (Primary Sponsors).
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Referred to: Pensions and Retirement

February 22, 2017

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

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

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

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

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

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

21 Whereas, North Carolina seeks to act to implement Congress's announced policy of
22 "examining a company's promotion or compliance with unsanctioned boycotts, divestment from,
23 or sanctions against Israel as part of its consideration in awarding grants and contracts and
24 supports the divestment of State assets from companies that support or promote actions to boycott,
25 divest from, or sanction Israel"; Now, therefore,

26 The General Assembly of North Carolina enacts:

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

29 "Article 6G.

30 "Divestment From Companies Boycotting Israel.

31 "§ 147-86.80. Definitions.

32 The following definitions apply in this Article:

- 33 (1) Boycott Israel or boycott of Israel. – Engaging in refusals to deal, terminating
34 business activities, or taking actions that are intended to penalize, inflict
35 economic harm, or otherwise limit commercial relations specifically with Israel,



1 or persons or entities doing business in Israel or in Israeli-controlled territories.

2 This term does not apply to decisions made for ordinary business purposes.

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

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

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

16 (5) Restricted company. – A company that appears on the list of companies that are
17 engaged in a boycott of Israel developed by the State Treasurer under
18 G.S. 147-86-81(a)(1).

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

21 **§ 147-86.81. Prohibitions on State investment.**

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

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

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

44 b. The State Treasurer shall provide a company with an opportunity to
45 comment in writing that the company is not engaged in a boycott of
46 Israel or has ceased its boycott of Israel. If the company demonstrates to
47 the State Treasurer that the company has not been engaged in a boycott
48 of Israel, the company shall not be placed on the list. If a company had
49 been engaged in a boycott of Israel but ceases to engage in that boycott,
50 it must submit a written certification to the State Treasurer that the
51 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 publically 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 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 its investment funds. The request shall identify restricted companies and request that the investment fund consider removing the investments in the restricted companies from the fund. Written requests required under this subdivision must only be made 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 restricted company to contract is void ab initio.

(c) Existing contracts with restricted companies shall be allowed to expire in accordance with the terms of the contract.

"§ 147-86.83. Exceptions.

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

(b) If a company fails to meet the certification requirements under G.S. 147-86.84 but offers to provide the good or services to be contracted for at a cost at least twenty percent (20%) less than the lowest certifying business, then G.S. 147-86.82 shall not apply.

"§ 147-86.84. Certification required.

(a) A State agency shall certify that a company that attempts to contract with the State or political subdivision of the State is not a restricted company at the time the bid is submitted or the contract is entered into, renewed, or assigned. The term "attempts to contract" shall include any contract renewal or assumption. A State agency shall include certification information in the procurement record. If a State agency and the same company enter into multiple contracts or

1 multiple contract renewals or assumptions within 180 days after a certification is made, a new
2 certification need not be made.

3 (b) A company that contracts with the State or a political subdivision of the State,
4 including a contract renewal or assumption, shall not utilize on the contract with the State agency
5 any subcontractor that is a restricted company.

6 (c) Upon receiving information that a company has been certified as required by
7 subsection (a) of this section is in violation of the certification, the State agency shall review the
8 information and offer the company an opportunity to respond. If the company fails to demonstrate
9 that the company should not have been identified as a restricted company within 90 days after the
10 determination of the violation, then the State agency shall take action as may be appropriate and
11 provided for by law, rule, or contract.

12 **"§ 147-86.85. Reporting.**

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

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

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

21 **SECTION 3.** Except as otherwise provided, this act becomes effective October 1,
22 2017.