

6086

2015-2016 Regular Sessions

I N S E N A T E

November 6, 2015

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, in relation to purchasing restrictions on persons boycotting Israel; and to amend the retirement and social security law, in relation to the investment of certain public funds in companies boycotting Israel

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new section
2 165-b to read as follows:
3 S 165-B. PURCHASING RESTRICTIONS; PERSONS BOYCOTTING ISRAEL. 1. AS
4 USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:
5 (A) "BOYCOTT ISRAEL" OR "BOYCOTT ACTIVITIES" MEANS ENGAGING IN ACTIONS
6 THAT ARE POLITICALLY MOTIVATED AND ARE INTENDED TO PENALIZE, INFLICT
7 ECONOMIC HARM ON, OR OTHERWISE LIMIT COMMERCIAL RELATIONS WITH THE STATE
8 OF ISRAEL OR COMPANIES BASED IN THE STATE OF ISRAEL OR IN TERRITORIES
9 CONTROLLED BY THE STATE OF ISRAEL.
10 (B) "PERSON" MEANS:
11 (I) A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY,
12 BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOV-
13 ERNMENTAL ENTITY, ORGANIZATION, OR GROUP.
14 (II) ANY SUCCESSOR, SUBUNIT, PARENT ENTITY, OR SUBSIDIARY OF, OR ANY
15 ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY DESCRIBED IN
16 SUBPARAGRAPH ONE OF THIS PARAGRAPH.
17 2. (A) A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARA-
18 GRAPH (B) OF THIS SUBDIVISION AS A PERSON THAT BOYCOTTS ISRAEL AS
19 DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL NOT BE DEEMED A
20 RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE
21 OF THIS ARTICLE.
22 (B) (I) NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE
23 DATE OF THIS SECTION, THE COMMISSIONER SHALL DEVELOP OR CONTRACT TO

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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DEVELOP, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, A LIST OF PERSONS IT DETERMINES BOYCOTTS ISRAEL AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION. IF THE COMMISSIONER HAS CONTRACTED TO DEVELOP THE LIST, THE LIST SHALL BE FINALLY DEVELOPED NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THIS SECTION SHALL TAKE EFFECT. SUCH LIST, WHEN COMPLETED, SHALL BE POSTED ON THE WEBSITE OF THE OFFICE OF GENERAL SERVICES.

(II) THE COMMISSIONER SHALL UPDATE THE LIST EVERY ONE HUNDRED EIGHTY DAYS.

(III) BEFORE FINALIZING AN INITIAL LIST PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH OR AN UPDATED LIST PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMMISSIONER SHALL DO ALL OF THE FOLLOWING BEFORE A PERSON IS INCLUDED ON THE LIST:

(1) PROVIDE NINETY DAYS' WRITTEN NOTICE OF THE COMMISSIONER'S INTENT TO INCLUDE THE PERSON ON THE LIST. THE NOTICE SHALL INFORM THE PERSON THAT INCLUSION ON THE LIST WOULD MAKE THE PERSON A NON-RESPONSIVE BIDDER OR OFFERER. THE NOTICE SHALL SPECIFY THAT THE PERSON, IF IT CEASES ITS BOYCOTT ACTIVITIES AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, MAY BE REMOVED FROM THE LIST.

(2) THE COMMISSIONER SHALL PROVIDE A PERSON WITH AN OPPORTUNITY TO COMMENT IN WRITING THAT IT IS NOT ENGAGED IN BOYCOTTING ISRAEL. IF THE PERSON DEMONSTRATES TO THE COMMISSIONER THAT THE PERSON IS NOT ENGAGED IN SUCH BOYCOTT ACTIVITIES AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, THE PERSON SHALL NOT BE INCLUDED ON THE LIST.

(3) THE COMMISSIONER SHALL MAKE EVERY EFFORT TO AVOID ERRONEOUSLY INCLUDING A PERSON ON THE LIST.

(C) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, A STATE AGENCY MAY PERMIT A PERSON BOYCOTTING ISRAEL AS DESCRIBED BY SUBDIVISION ONE OF THIS SECTION TO BE DEEMED A RESPONSIVE BIDDER OR OFFERER, ON A CASE-BY-CASE BASIS WITH A STATE AGENCY IF:

(I) THE BOYCOTT ACTIVITIES WERE MADE BEFORE THE EFFECTIVE DATE OF THIS SECTION, SUCH ACTIVITIES HAVE NOT BEEN EXPANDED OR RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE PERSON HAS ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO CEASE SUCH ACTIVITIES AND TO REFRAIN FROM ENGAGING IN ANY NEW BOYCOTT ACTIVITIES; OR

(II) THE STATE AGENCY MAKES A DETERMINATION THAT THE COMMODITIES OR SERVICES ARE NECESSARY FOR THE STATE AGENCY TO PERFORM ITS FUNCTIONS AND THAT, ABSENT SUCH AN EXEMPTION, THE STATE AGENCY WOULD BE UNABLE TO OBTAIN THE COMMODITIES OR SERVICES FOR WHICH THE CONTRACT IS OFFERED. SUCH DETERMINATION SHALL BE ENTERED INTO THE PROCUREMENT RECORD.

3. (A) A STATE AGENCY SHALL REQUIRE A PERSON THAT SUBMITS A BID OR OFFER IN RESPONSE TO A NOTICE OF PROCUREMENT, OR THAT PROPOSES TO RENEW AN EXISTING PROCUREMENT CONTRACT WITH A STATE AGENCY OR PROPOSES TO ASSUME THE RESPONSIBILITY OF A CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT WITH A STATE AGENCY OR OTHERWISE PROPOSES TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH RESPECT TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR CONTRACTS ENTERED PURSUANT TO SECTION EIGHT OF THE PUBLIC BUILDINGS LAW OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW, TO CERTIFY, AT THE TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED OR ASSIGNED, THAT THE PERSON OR THE ASSIGNEE IS NOT IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION. A STATE AGENCY SHALL INCLUDE CERTIFICATION INFORMATION IN THE PROCUREMENT RECORD.

(B) A PERSON THAT SUBMITS A BID OR OFFER IN RESPONSE TO A NOTICE OF PROCUREMENT OR THAT PROPOSES TO RENEW AN EXISTING PROCUREMENT CONTRACT WITH A STATE AGENCY OR PROPOSES TO ASSUME THE RESPONSIBILITY OF A CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT WITH A STATE AGENCY, OR

1 OTHERWISE PROPOSES TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH
2 RESPECT TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR
3 CONTRACTS ENTERED PURSUANT TO SECTION EIGHT OF THE PUBLIC BUILDINGS LAW
4 OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW SHALL NOT UTILIZE, ON THE
5 CONTRACT WITH THE STATE AGENCY, ANY SUBCONTRACTOR THAT IS IDENTIFIED ON
6 A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
7 SECTION.

8 4. UPON RECEIVING INFORMATION THAT A PERSON WHO HAS MADE THE CERTIF-
9 ICATION REQUIRED BY SUBDIVISION THREE OF THIS SECTION IS IN VIOLATION
10 THEREOF, THE STATE AGENCY SHALL REVIEW SUCH INFORMATION AND OFFER THE
11 PERSON AN OPPORTUNITY TO RESPOND. IF THE PERSON FAILS TO DEMONSTRATE
12 THAT IT HAS CEASED ITS BOYCOTT ACTIVITIES WHICH ARE IN VIOLATION OF THIS
13 ACT WITHIN NINETY DAYS AFTER THE DETERMINATION OF SUCH VIOLATION, THEN
14 THE STATE AGENCY SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND
15 PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO,
16 IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR DECLARING
17 THE CONTRACTOR IN DEFAULT.

18 5. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR AND THE LEGISLATURE
19 ANNUALLY ON OR BEFORE OCTOBER FIRST, ON THE STATUS OF THIS SECTION AND
20 ANY RULES OR REGULATIONS ADOPTED THEREUNDER.

21 S 2. The retirement and social security law is amended by adding a new
22 section 423-d to read as follows:

23 S 423-D. INVESTMENT OF CERTAIN PUBLIC FUNDS IN COMPANIES BOYCOTTING
24 ISRAEL. 1. FOR PURPOSES OF THIS SECTION, "BOYCOTT ISRAEL" MEANS ENGAGING
25 IN ACTIONS THAT ARE POLITICALLY MOTIVATED AND ARE INTENDED TO PENALIZE,
26 INFLICT ECONOMIC HARM ON, OR OTHERWISE LIMIT COMMERCIAL RELATIONS WITH
27 THE STATE OF ISRAEL OR COMPANIES BASED IN THE STATE OF ISRAEL OR IN
28 TERRITORIES CONTROLLED BY THE STATE OF ISRAEL.

29 2. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, NO MONEYS OR
30 ASSETS OF THE COMMON RETIREMENT FUND SHALL BE INVESTED IN THE STOCKS,
31 SECURITIES OR OTHER OBLIGATIONS OF ANY INSTITUTION OR COMPANY BOYCOTTING
32 ISRAEL. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO ASSETS
33 OF ANY PENSION OR ANNUITY FUND UNDER THE JURISDICTION OF THE COMP-
34 TROLLER, SHALL BE INVESTED IN ANY BANK OR FINANCIAL INSTITUTION WHICH
35 DIRECTLY OR THROUGH A SUBSIDIARY BOYCOTTS ISRAEL AND NO SUCH ASSETS
36 SHALL BE INVESTED IN THE STOCKS, SECURITIES OR OTHER OBLIGATIONS OF ANY
37 COMPANY WHICH DIRECTLY OR THROUGH A SUBSIDIARY BOYCOTTS ISRAEL.

38 3. THE COMPTROLLER SHALL TAKE APPROPRIATE ACTION TO SELL, REDEEM,
39 DIVEST OR WITHDRAW ANY INVESTMENT HELD IN VIOLATION OF THE PROVISIONS OF
40 THIS SECTION. THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE THE PREMA-
41 TURE OR OTHERWISE IMPRUDENT SALE, REDEMPTION, DIVESTMENT OR WITHDRAWAL
42 OF AN INVESTMENT, BUT SUCH SALE, REDEMPTION, DIVESTMENT OR WITHDRAWAL
43 SHALL BE COMPLETED NO LATER THAN THREE YEARS FOLLOWING THE EFFECTIVE
44 DATE OF THIS SECTION.

45 4. WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE
46 COMPTROLLER SHALL FILE WITH THE LEGISLATURE A REPORT OF ALL INVESTMENTS
47 HELD AS OF THE EFFECTIVE DATE OF THIS SECTION WHICH ARE IN VIOLATION OF
48 THE PROVISIONS OF THIS SECTION. EVERY YEAR THEREAFTER, THE COMPTROLLER
49 SHALL REPORT ON ALL INVESTMENTS SOLD, REDEEMED, DIVESTED OR WITHDRAWN IN
50 COMPLIANCE WITH THIS SECTION. EACH REPORT AFTER THE INITIAL REPORT SHALL
51 PROVIDE A DESCRIPTION OF THE PROGRESS WHICH THE COMPTROLLER HAS MADE
52 SINCE THE PREVIOUS REPORT AND SINCE THE EFFECTIVE DATE OF THIS SECTION.

53 S 3. This act shall take effect immediately.