

8220--A

2015-2016 Regular Sessions

I N A S S E M B L Y

June 12, 2015

Introduced by M. of A. LAVINE, SIMON, BICHOTTE, THIELE, KAMINSKY, OTIS, HOOPER, JAFFEE, MILLER, WEPRIN, BUCHWALD, SIMANOWITZ, CYMBROWITZ, SCHIMEL, DINOWITZ, QUART, BRINDISI, HIKIND, KEARNS, GJONAJ, SKOUFIS, MOSLEY, ORTIZ, MAGNARELLI, BRAUNSTEIN, HEVESI, ABBATE, NOJAY, LUPINACCI, HAWLEY, FITZPATRICK, FRIEND, LAWRENCE, WALTER, KOLB, PAULIN, ROZIC, CURRAN, RA, MURRAY -- Multi-Sponsored by -- M. of A. BLAKE, McDONOUGH, McKEVITT, McLAUGHLIN, RAIA -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 INTENDED TO PENALIZE, INFLICT ECONOMIC HARM ON, OR OTHERWISE
7 LIMIT COMMERCIAL RELATIONS WITH THE STATE OF ISRAEL OR COMPANIES BASED
8 IN THE STATE OF ISRAEL OR IN TERRITORIES CONTROLLED BY THE STATE OF
9 ISRAEL.
10 (B) "BOYCOTT ISRAEL" OR "BOYCOTT ACTIVITIES" DO NOT INCLUDE ACTIONS
11 NECESSARY TO COMPLY WITH APPLICABLE LAW IN THE BUSINESS'S HOME JURISDIC-
12 TION.
13 (C) "PERSON" MEANS:

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

LBD11575-03-6

(I) A CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, BUSINESS, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP.

(II) ANY SUCCESSOR, SUBUNIT, PARENT ENTITY, OR SUBSIDIARY OF, OR ANY ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

2. (A) A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION AS A PERSON THAT BOYCOTTS ISRAEL AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL NOT BE DEEMED A RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

(B) (I) NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER SHALL DEVELOP OR CONTRACT TO DEVELOP, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, INCLUDING BUT NOT LIMITED TO INFORMATION PROVIDED BY NON-PROFIT ORGANIZATIONS, RESEARCH FIRMS, INTERNATIONAL ORGANIZATIONS AND GOVERNMENT ENTITIES, A LIST OF PERSONS IT DETERMINES BOYCOTT 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. A STATEMENT BY A PERSON OR REPRESENTATIVE OF A PERSON WITH APPARENT AUTHORITY TO MAKE SUCH A STATEMENT, THAT IT IS PARTICIPATING IN A BOYCOTT OF ISRAEL, OR THAT IT HAS INITIATED A BOYCOTT IN RESPONSE TO A REQUEST FOR A BOYCOTT OF ISRAEL, SHALL BE CONSIDERED AS EVIDENCE THAT A COMPANY IS PARTICIPATING IN A BOYCOTT OF ISRAEL.

(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:

(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 THE BOYCOTT ACTIVITIES AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, AND PROVIDE THAT SUCH PERSON MAY APPLY TO THE COMMISSIONER, OR TO A SUPREME COURT, TO BE REMOVED FROM SUCH LIST PURSUANT TO THE REQUIREMENTS OF THIS PARAGRAPH, IF IT CEASES SUCH ACTIVITIES.

(2) IN THE EVENT A PERSON INCLUDED BY THE COMMISSIONER ON THE LIST TO BE DEVELOPED AND PUBLISHED IN ACCORDANCE WITH THIS PARAGRAPH, DEMONSTRATES TO THE COMMISSIONER OR TO A SUPREME COURT THAT SUCH PERSON IS NOT ENGAGED IN SUCH BOYCOTT ACTIVITIES AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, OR HAS CEASED SUCH BOYCOTTING ACTIVITIES, THE COMMISSIONER SHALL REMOVE SUCH PERSON FROM THE LIST DEVELOPED AND PUBLISHED IN ACCORDANCE WITH THIS PARAGRAPH.

(3) THE COMMISSIONER SHALL MAKE A GOOD FAITH EFFORT TO AVOID INCLUDING A PERSON ON THE LIST WHO IS NOT ENGAGED IN BOYCOTTING THE STATE OF ISRAEL.

(C) NOTWITHSTANDING PARAGRAPHS (A) AND (B) 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,

1 AND IS IMPLEMENTING A PLAN TO CEASE SUCH ACTIVITIES AND TO REFRAIN FROM
2 ENGAGING IN ANY NEW BOYCOTT ACTIVITIES; OR

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

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

21 (B) A PERSON THAT SUBMITS A BID OR OFFER IN RESPONSE TO A NOTICE OF
22 PROCUREMENT OR THAT PROPOSES TO RENEW AN EXISTING PROCUREMENT CONTRACT
23 WITH A STATE AGENCY OR PROPOSES TO ASSUME THE RESPONSIBILITY OF A
24 CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT WITH A STATE AGENCY, OR
25 OTHERWISE PROPOSES TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH
26 RESPECT TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR
27 CONTRACTS ENTERED PURSUANT TO SECTION EIGHT OF THE PUBLIC BUILDINGS LAW
28 OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW SHALL NOT UTILIZE, ON THE
29 CONTRACT WITH THE STATE AGENCY, ANY SUBCONTRACTOR THAT IS IDENTIFIED ON
30 A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
31 SECTION.

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

42 5. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR, COMPTROLLER, THE
43 TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ANNU-
44 ALLY ON OR BEFORE OCTOBER FIRST, ON THE STATUS OF THIS SECTION AND ANY
45 RULES OR REGULATIONS ADOPTED THEREUNDER.

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

48 S 423-D. INVESTMENT OF CERTAIN PUBLIC FUNDS IN COMPANIES BOYCOTTING
49 ISRAEL. 1. FOR PURPOSES OF THIS SECTION:

50 (A) "BOYCOTT ISRAEL" MEANS ENGAGING IN ACTIONS THAT ARE INTENDED TO
51 PENALIZE, INFLICT ECONOMIC HARM ON, OR OTHERWISE LIMIT COMMERCIAL
52 RELATIONS WITH THE STATE OF ISRAEL OR COMPANIES BASED IN THE STATE OF
53 ISRAEL OR IN TERRITORIES CONTROLLED BY THE STATE OF ISRAEL.

54 (B) "BOYCOTT ISRAEL" DOES NOT INCLUDE ACTIONS NECESSARY TO COMPLY WITH
55 APPLICABLE LAW IN THE BUSINESS'S HOME JURISDICTION.

1 2. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, NO MONEYS OR
2 ASSETS OF THE COMMON RETIREMENT FUND SHALL BE INVESTED IN THE STOCKS,
3 SECURITIES OR OTHER OBLIGATIONS OF ANY INSTITUTION OR COMPANY BOYCOTTING
4 ISRAEL. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO ASSETS
5 OF ANY PENSION OR ANNUITY FUND UNDER THE JURISDICTION OF THE COMP-
6 TROLLER, SHALL BE INVESTED IN ANY BANK OR FINANCIAL INSTITUTION WHICH
7 DIRECTLY OR THROUGH A SUBSIDIARY BOYCOTTS ISRAEL AND NO SUCH ASSETS
8 SHALL BE INVESTED IN THE STOCKS, SECURITIES OR OTHER OBLIGATIONS OF ANY
9 COMPANY WHICH DIRECTLY OR THROUGH A SUBSIDIARY BOYCOTTS ISRAEL.

10 3. THE COMPTROLLER SHALL TAKE APPROPRIATE ACTION TO SELL, REDEEM,
11 DIVEST OR WITHDRAW ANY INVESTMENT HELD IN VIOLATION OF THE PROVISIONS OF
12 THIS SECTION. THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE THE PREMA-
13 TURE OR OTHERWISE IMPRUDENT SALE, REDEMPTION, DIVESTMENT OR WITHDRAWAL
14 OF AN INVESTMENT, BUT SUCH SALE, REDEMPTION, DIVESTMENT OR WITHDRAWAL
15 SHALL BE COMPLETED NO LATER THAN THREE YEARS FOLLOWING THE EFFECTIVE
16 DATE OF THIS SECTION.

17 4. WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE
18 COMPTROLLER SHALL ISSUE A REPORT TO THE GOVERNOR, THE COMPTROLLER, THE
19 TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY AND
20 FILE WITH THE LEGISLATURE A REPORT OF ALL INVESTMENTS HELD AS OF THE
21 EFFECTIVE DATE OF THIS SECTION WHICH ARE IN VIOLATION OF THE PROVISIONS
22 OF THIS SECTION. EVERY YEAR THEREAFTER, THE COMPTROLLER SHALL REPORT ON
23 ALL INVESTMENTS SOLD, REDEEMED, DIVESTED OR WITHDRAWN IN COMPLIANCE WITH
24 THIS SECTION. EACH REPORT AFTER THE INITIAL REPORT SHALL PROVIDE A
25 DESCRIPTION OF THE PROGRESS WHICH THE COMPTROLLER HAS MADE SINCE THE
26 PREVIOUS REPORT AND SINCE THE EFFECTIVE DATE OF THIS SECTION.

27 S 3. This act shall take effect immediately.