

6378

I N S E N A T E

January 8, 2016

Introduced by Sens. MARTINS, FELDER, FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law and the retirement and social security law, in relation to purchasing restrictions

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 CERTAIN AMERICAN
4 ALLIES. 1. AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL
5 APPLY:
6 (A) "ALLIED NATION" SHALL MEAN:
7 (I) ANY COUNTRY THAT IS A MEMBER OF THE NORTH ATLANTIC TREATY ORGAN-
8 IZATION;
9 (II) ANY COUNTRY THAT IS A SIGNATORY OF THE SOUTHEAST ASIA TREATY;
10 (III) ANY COUNTRY, OTHER THAN VENEZUELA, THAT IS A SIGNATORY OF THE
11 RIO TREATY;
12 (IV) IRELAND;
13 (V) ISRAEL;
14 (VI) JAPAN; AND/OR
15 (VII) THE REPUBLIC OF KOREA.
16 (B) "BOYCOTT" SHALL MEAN TO ENGAGE IN ANY ACTIVITY, OR TO PROMOTE OR
17 ENCOURAGE OTHERS TO ENGAGE IN ANY ACTIVITY, THAT WILL RESULT IN ANY
18 PERSON ABSTAINING FROM COMMERCIAL, SOCIAL OR POLITICAL RELATIONS, WITH
19 ANY ALLIED NATION, OR COMPANIES BASED IN AN ALLIED NATION OR IN TERRITO-
20 RIES CONTROLLED BY AN ALLIED NATION, WITH THE INTENT TO PENALIZE,
21 INFLECT, OR CAUSE HARM TO, OR OTHERWISE PROMOTE OR CAST DISREPUTE UPON,
22 SUCH ALLIED NATION, ITS PEOPLE OR ITS COMMERCIAL PRODUCTS.
23 (C) "PERSON" SHALL MEAN ANY NATURAL PERSON, CORPORATION, LIMITED
24 LIABILITY COMPANY, UNINCORPORATED ASSOCIATION OR ANY OTHER NONGOVERN-
25 MENTAL ENTITY, ORGANIZATION, OR GROUP, OR ANY SUCCESSOR, SUBUNIT,
26 PARENT, OR SUBSIDIARY OF THE SAME.
27 2. (A) ANY PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO
28 PARAGRAPH (B) OF THIS SUBDIVISION AS A PERSON THAT BOYCOTTS, AS DEFINED

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

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1 IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION, ANY ALLIED NATION,
2 AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, SHALL
3 NOT BE DEEMED A RESPONSIVE BIDDER OR OFFERER, PURSUANT TO SECTION ONE
4 HUNDRED SIXTY-THREE OF THIS ARTICLE.

5 (B) NOT LATER THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS
6 SECTION, AND THEN ANNUALLY THEREAFTER, THE COMMISSIONER SHALL DEVELOP
7 AND PUBLISH, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, A LIST
8 OF PERSONS DETERMINED BY THE COMMISSIONER, THAT HAVE ENGAGED IN THE
9 BOYCOTTING OF ANY ALLIED NATION. SUCH LIST, WHEN DEVELOPED AND
10 PUBLISHED, SHALL BE POSTED ON THE WEBSITE OF THE OFFICE OF GENERAL
11 SERVICES.

12 (C) IN THE EVENT A PERSON INCLUDED BY THE COMMISSIONER ON THE LIST TO
13 BE DEVELOPED AND PUBLISHED IN ACCORDANCE WITH PARAGRAPH (B) OF THIS
14 SUBDIVISION, DEMONSTRATES TO THE COMMISSIONER THAT SUCH PERSON HAS
15 PERMANENTLY CEASED THEIR BOYCOTTING OF ANY ALLIED NATION, OR OBTAINS A
16 COURT ORDER FROM A SUPREME COURT THAT SUCH PERSON SHALL BE REMOVED FROM
17 SUCH LIST DUE TO THE COURT'S DETERMINATION THAT SUCH PERSON HAS PERMA-
18 NENTLY CEASED THEIR BOYCOTTING OF ANY ALLIED NATION, THEN THE COMMIS-
19 SIONER SHALL REMOVE SUCH PERSON FROM SUCH LIST SO DEVELOPED AND
20 PUBLISHED IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

21 (D) PRIOR TO THE FINAL DEVELOPMENT AND PUBLICATION OF THE LIST
22 REQUIRED TO BE PRODUCED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION,
23 THE COMMISSIONER SHALL PROVIDE WRITTEN NOTICE OF ALL PERSONS TO BE
24 INCLUDED ON THE LIST, OF THE COMMISSIONER'S INTENT TO SO INCLUDE SUCH
25 PERSON ON SUCH LIST, TOGETHER WITH WRITTEN NOTICE INFORMING SUCH PERSON
26 THAT INCLUSION ON SUCH LIST WOULD MAKE SUCH PERSON A NON-RESPONSIVE
27 BIDDER OR OFFERER, AND THAT SUCH PERSON MAY APPLY TO THE COMMISSIONER,
28 OR TO A SUPREME COURT, TO BE REMOVED FROM SUCH LIST PURSUANT TO THE
29 REQUIREMENTS OF PARAGRAPH (C) OF THIS SUBDIVISION.

30 (E) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, A STATE AGENCY
31 MAY PERMIT A PERSON PROMOTING OR OTHERWISE TAKING ACTION TO BOYCOTT ANY
32 ALLIED NATION TO BE DEEMED A RESPONSIVE BIDDER OR OFFERER, ON A
33 CASE-BY-CASE BASIS WITH A STATE AGENCY IF:

34 (I) THE PROMOTION OR OTHER BOYCOTT ACTION OCCURRED PRIOR TO THE EFFEC-
35 TIVE DATE OF THIS SECTION, SUCH ACTIVITIES HAVE NOT BEEN EXPANDED OR
36 RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE PERSON HAS
37 ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO CEASE ALL
38 BOYCOTTING OF ANY ALLIED NATION AND TO REFRAIN FROM ENGAGING IN ANY NEW
39 BOYCOTT OF ANY ALLIED NATION; OR

40 (II) THE STATE AGENCY MAKES A FORMAL, WRITTEN DETERMINATION THAT THE
41 COMMODITIES OR SERVICES OFFERED BY THE PERSON NAMED ON THIS LIST
42 PRODUCED BY THE COMMISSIONER PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVI-
43 SION, ARE NECESSARY FOR THE STATE AGENCY TO PERFORM ITS FUNCTIONS AND
44 THAT, ABSENT SUCH AN EXEMPTION, THE STATE AGENCY WOULD BE UNABLE TO
45 OBTAIN THE COMMODITIES OR SERVICES FOR WHICH THE CONTRACT IS OFFERED.

46 3. (A) A STATE AGENCY SHALL REQUIRE ALL PERSONS THAT SUBMIT A BID OR
47 OFFER IN RESPONSE TO A NOTICE OF PROCUREMENT, OR THAT PROPOSE TO RENEW
48 AN EXISTING PROCUREMENT CONTRACT, OR THAT PROPOSE TO ASSUME THE RESPON-
49 SIBILITY OF A CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT, OR OTHER-
50 WISE PROPOSE TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH RESPECT
51 TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR CONTRACTS
52 ENTERED INTO PURSUANT TO SECTION EIGHT OF THE PUBLIC BUILDINGS LAW OR
53 SECTION THIRTY-EIGHT OF THE HIGHWAY LAW, TO CERTIFY, AT THE TIME THE BID
54 IS SUBMITTED, OR THE CONTRACT IS RENEWED OR ASSIGNED, THAT THE PERSON OR
55 THE ASSIGNEE IS NOT IDENTIFIED ON THE LIST DEVELOPED AND PUBLISHED
56 PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, AND ALL

1 STATE AGENCIES SHALL INCLUDE SUCH CERTIFICATION INFORMATION IN THE
2 PROCUREMENT RECORD.

3 (B) ALL PERSONS THAT SUBMIT A BID OR OFFER IN RESPONSE TO A NOTICE OF
4 PROCUREMENT, OR THAT PROPOSE TO RENEW AN EXISTING PROCUREMENT CONTRACT
5 WITH A STATE AGENCY, OR THAT PROPOSE TO ASSUME THE RESPONSIBILITY OF A
6 CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT WITH A STATE AGENCY, OR
7 OTHERWISE PROPOSE TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH
8 RESPECT TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR
9 CONTRACTS ENTERED INTO PURSUANT TO SECTION EIGHT OF THE PUBLIC BUILDINGS
10 LAW OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW, SHALL CERTIFY THAT THEY
11 HAVE NOT BOYCOTTED ANY ALLIED NATIONS, AND THAT THEY ARE NOT IDENTIFIED
12 ON THE LIST DEVELOPED AND PUBLISHED PURSUANT TO PARAGRAPH (B) OF SUBDI-
13 VISION TWO OF THIS SECTION.

14 4. UPON RECEIVING INFORMATION THAT A PERSON WHO HAS MADE THE CERTIF-
15 ICATION REQUIRED BY SUBDIVISION THREE OF THIS SECTION, IS, IN FACT, IN
16 VIOLATION OF SUCH CERTIFICATION, THE STATE AGENCY SHALL REVIEW SUCH
17 INFORMATION, NOTIFY SUCH PERSON AND OFFER THEM AN OPPORTUNITY TO RESPOND
18 TO SUCH INFORMATION, WITHIN THIRTY DAYS OF SUCH NOTICE, AND IF SUCH
19 PERSON FAILS TO DEMONSTRATE THAT THEY HAVE CEASED ANY BOYCOTT OF ANY
20 ALLIED NATION, THEN, THE STATE AGENCY SHALL TAKE SUCH ACTION AS MAY BE
21 APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT
22 NOT LIMITED TO, NOTIFYING THE COMMISSIONER OF SUCH PERSON'S BOYCOTT OR
23 BOYCOTTS OF ANY AND ALL ALLIED NATIONS, IMPOSING SANCTIONS, SEEKING
24 COMPLIANCE, RECOVERING DAMAGES, AND/OR DECLARING SUCH PERSON IN DEFAULT.

25 5. ON OR BEFORE DECEMBER FIFTEENTH, TWO THOUSAND SIXTEEN, AND EVERY
26 YEAR THEREAFTER, THE COMMISSIONER SHALL ISSUE A REPORT TO THE GOVERNOR,
27 THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER
28 OF THE ASSEMBLY, ON ALL THE ACTIONS TAKEN, AND ALL DETERMINATIONS MADE,
29 BY THE COMMISSIONER PURSUANT TO THIS SECTION, AND ANY AND ALL RULES OR
30 REGULATIONS ADOPTED.

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

33 S 423-D. PROHIBITION ON INVESTMENT OF CERTAIN PUBLIC FUNDS IN PERSONS
34 BOYCOTTING CERTAIN AMERICAN ALLIES. 1. AS USED IN THIS SECTION, THE
35 FOLLOWING DEFINITIONS SHALL APPLY:

36 (A) "ALLIED NATION" SHALL MEAN:

37 (I) ANY COUNTRY THAT IS A MEMBER OF THE NORTH ATLANTIC TREATY ORGAN-
38 IZATION;

39 (II) ANY COUNTRY THAT IS A SIGNATORY OF THE SOUTHEAST ASIA TREATY;

40 (III) ANY COUNTRY, OTHER THAN VENEZUELA, THAT IS A SIGNATORY OF THE
41 RIO TREATY;

42 (IV) IRELAND;

43 (V) ISRAEL;

44 (VI) JAPAN; AND/OR

45 (VII) THE REPUBLIC OF KOREA.

46 (B) "BOYCOTT" SHALL MEAN TO ENGAGE IN ANY ACTIVITY, OR TO PROMOTE OR
47 ENCOURAGE OTHERS TO ENGAGE IN ANY ACTIVITY, THAT WILL RESULT IN ANY
48 PERSON ABSTAINING FROM COMMERCIAL, SOCIAL OR POLITICAL RELATIONS, WITH
49 ANY ALLIED NATION, OR COMPANIES BASED IN AN ALLIED NATION OR IN TERRITO-
50 RIES CONTROLLED BY AN ALLIED NATION, WITH THE INTENT TO PENALIZE,
51 INFLECT, OR CAUSE HARM TO, OR OTHERWISE PROMOTE OR CAST DISREPUTE UPON,
52 SUCH ALLIED NATION, ITS PEOPLE OR ITS COMMERCIAL PRODUCTS.

53 (C) "PERSON" SHALL MEAN ANY NATURAL PERSON, CORPORATION, LIMITED
54 LIABILITY COMPANY, UNINCORPORATED ASSOCIATION OR ANY OTHER NONGOVERN-
55 MENTAL ENTITY, ORGANIZATION, OR GROUP, OR ANY SUCCESSOR, SUBUNIT,
56 PARENT, OR SUBSIDIARY OF THE SAME.

1 2. (A) ANY PERSON THAT IS IDENTIFIED ON THE LIST CREATED PURSUANT TO
2 PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FIVE-B OF
3 THE STATE FINANCE LAW, AS BEING A PERSON THAT HAS ENGAGED IN A BOYCOTT
4 OF ANY ALLIED NATION, SHALL NOT BE ELIGIBLE TO RECEIVE INVESTMENT OF ANY
5 MONEYS OR ASSETS OF THE COMMON RETIREMENT FUND IN ANY STOCKS, SECURITIES
6 OR OTHER OBLIGATIONS OF SUCH PERSON SO IDENTIFIED ON SUCH LIST DEVELOPED
7 AND PUBLISHED BY THE COMMISSIONER OF GENERAL SERVICES.

8 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO ASSETS OF
9 ANY PENSION OR ANNUITY FUND UNDER THE JURISDICTION OF THE COMPTROLLER,
10 SHALL FURTHER BE INVESTED IN ANY BANK OR FINANCIAL INSTITUTION WHICH
11 DIRECTLY, OR THROUGH A PARENT OR SUBSIDIARY BOYCOTTS AN ALLIED NATION
12 AND NO SUCH ASSETS SHALL OTHERWISE BE INVESTED IN THE STOCKS, SECURITIES
13 OR OTHER OBLIGATIONS OF ANY PERSON WHICH DIRECTLY, OR THROUGH A PARENT
14 OR SUBSIDIARY ENTITY, BOYCOTTS ANY ALLIED NATION.

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

22 4. ON OR BEFORE DECEMBER FIFTEENTH, TWO THOUSAND SIXTEEN, AND EVERY
23 YEAR THEREAFTER, THE COMPTROLLER SHALL ISSUE A REPORT TO THE GOVERNOR,
24 THE COMMISSIONER OF GENERAL SERVICES, THE TEMPORARY PRESIDENT OF THE
25 SENATE, AND THE SPEAKER OF THE ASSEMBLY, ON ALL THE ACTIONS TAKEN, AND
26 ALL DETERMINATIONS MADE, BY THE COMPTROLLER, PURSUANT TO THIS SECTION,
27 AND ANY AND ALL RULES OR REGULATIONS ADOPTED.

28 S 3. This act shall take effect immediately.