

# STATE OF NEW YORK

3239

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

Introduced by M. of A. LAVINE, BICHOTTE, THIELE, OTIS, HOOPER, JAFFEE, M. G. MILLER, WEPRIN, BUCHWALD, SIMANOWITZ, CYMBROWITZ, DINOWITZ, QUART, BRINDISI, HIKIND, KEARNS, GJONAJ, SKOUFIS, MOSLEY, ORTIZ, MAGNARELLI, BRAUNSTEIN, HEVESI, ABBATE, LUPINACCI, HAWLEY, FITZPATRICK, FRIEND, WALTER, KOLB, PAULIN, ROZIC, CURRAN, RA, MURRAY -- Multi-Sponsored by -- M. of A. BLAKE, McDONOUGH, McKEVITT, McLAUGHLIN, RAIA, WRIGHT -- read once and referred to the Committee on Governmental Operations

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:

Section 1. The state finance law is amended by adding a new section 165-b to read as follows:

§ 165-b. Purchasing restrictions; persons boycotting Israel. 1. As used in this section, the following definitions shall apply:

(a) "Boycott Israel" or "boycott activities" means engaging in actions that are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

(b) "Boycott Israel" or "boycott activities" do not include actions necessary to comply with applicable law in the business's home jurisdiction.

(c) "Person" means:

(i) A corporation, company, limited liability company, business, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.

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

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1 (ii) Any successor, subunit, parent entity, or subsidiary of, or any  
2 entity under common ownership or control with, any entity described in  
3 subparagraph (i) of this paragraph.

4 2. (a) A person that is identified on a list created pursuant to para-  
5 graph (b) of this subdivision as a person that boycotts Israel as  
6 described in subdivision one of this section, shall not be deemed a  
7 responsive bidder or offerer pursuant to section one hundred sixty-three  
8 of this article.

9 (b) (i) Not later than one hundred twenty days after the effective  
10 date of this section, the commissioner shall develop or contract to  
11 develop, using credible information available to the public, including  
12 but not limited to information provided by non-profit organizations,  
13 research firms, international organizations and government entities, a  
14 list of persons it determines boycott Israel as described in subdivision  
15 one of this section. If the commissioner has contracted to develop the  
16 list, the list shall be finally developed not later than one hundred  
17 twenty days after this section shall take effect. Such list, when  
18 completed, shall be posted on the website of the office of general  
19 services. A statement by a person or representative of a person with  
20 apparent authority to make such a statement, that it is participating in  
21 a boycott of Israel, or that it has initiated a boycott in response to a  
22 request for a boycott of Israel, shall be considered as evidence that a  
23 company is participating in a boycott of Israel.

24 (ii) The commissioner shall update the list every one hundred eighty  
25 days.

26 (iii) Before finalizing an initial list pursuant to subparagraph (i)  
27 of this paragraph or an updated list pursuant to subparagraph (ii) of  
28 this paragraph, the commissioner shall do all of the following:

29 (1) Provide ninety days' written notice of the commissioner's intent  
30 to include the person on the list. The notice shall inform the person  
31 that inclusion on the list would make the person a non-responsive bidder  
32 or offerer. The notice shall specify the boycott activities as described  
33 in subdivision one of this section, and provide that such person may  
34 apply to the commissioner, or to a supreme court, to be removed from  
35 such list pursuant to the requirements of this paragraph, if it ceases  
36 such activities.

37 (2) In the event a person included by the commissioner on the list to  
38 be developed and published in accordance with this paragraph, demon-  
39 strates to the commissioner or to a supreme court that such person is  
40 not engaged in such boycott activities as described in subdivision one  
41 of this section, or has ceased such boycotting activities, the commis-  
42 sioner shall remove such person from the list developed and published in  
43 accordance with this paragraph.

44 (3) The commissioner shall make a good faith effort to avoid including  
45 a person on the list who is not engaged in boycotting the state of Isra-  
46 el.

47 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, a  
48 state agency may permit a person boycotting Israel as described by  
49 subdivision one of this section to be deemed a responsive bidder or  
50 offerer, on a case-by-case basis with a state agency if:

51 (i) The boycott activities were made before the effective date of this  
52 section, such activities have not been expanded or renewed after the  
53 effective date of this section, and the person has adopted, publicized,  
54 and is implementing a plan to cease such activities and to refrain from  
55 engaging in any new boycott activities; or

1 (ii) The state agency makes a determination that the commodities or  
2 services are necessary for the state agency to perform its functions and  
3 that, absent such an exemption, the state agency would be unable to  
4 obtain the commodities or services for which the contract is offered.  
5 Such determination shall be entered into the procurement record.

6 3. (a) A state agency shall require a person that submits a bid or  
7 offer in response to a notice of procurement, or that proposes to renew  
8 an existing procurement contract with a state agency or proposes to  
9 assume the responsibility of a contractor pursuant to a procurement  
10 contract with a state agency or otherwise proposes to enter into a  
11 contract with a state agency with respect to a contract for commodities,  
12 services, construction, or contracts entered pursuant to section eight  
13 of the public buildings law or section thirty-eight of the highway law,  
14 to certify, at the time the bid is submitted or the contract is renewed  
15 or assigned, that the person or the assignee is not identified on a list  
16 created pursuant to paragraph (b) of subdivision two of this section. A  
17 state agency shall include certification information in the procurement  
18 record.

19 (b) A person that submits a bid or offer in response to a notice of  
20 procurement or that proposes to renew an existing procurement contract  
21 with a state agency or proposes to assume the responsibility of a  
22 contractor pursuant to a procurement contract with a state agency, or  
23 otherwise proposes to enter into a contract with a state agency with  
24 respect to a contract for commodities, services, construction, or  
25 contracts entered pursuant to section eight of the public buildings law  
26 or section thirty-eight of the highway law shall not utilize, on the  
27 contract with the state agency, any subcontractor that is identified on  
28 a list created pursuant to paragraph (b) of subdivision two of this  
29 section.

30 4. Upon receiving information that a person who has made the certif-  
31 ication required by subdivision three of this section is in violation  
32 thereof, the state agency shall review such information and offer the  
33 person an opportunity to respond. If the person fails to demonstrate  
34 that it has ceased its boycott activities which are in violation of this  
35 act within ninety days after the determination of such violation, then  
36 the state agency shall take such action as may be appropriate and  
37 provided for by law, rule or contract, including, but not limited to,  
38 imposing sanctions, seeking compliance, recovering damages or declaring  
39 the contractor in default.

40 5. The commissioner shall report to the governor, comptroller, the  
41 temporary president of the senate and the speaker of the assembly annu-  
42 ally on or before October first, on the status of this section and any  
43 rules or regulations adopted thereunder.

44 § 2. The retirement and social security law is amended by adding a new  
45 section 423-d to read as follows:

46 § 423-d. Investment of certain public funds in companies boycotting  
47 Israel. 1. For purposes of this section:

48 (a) "boycott Israel" means engaging in actions that are intended to  
49 penalize, inflict economic harm on, or otherwise limit commercial  
50 relations with the State of Israel or companies based in the State of  
51 Israel or in territories controlled by the State of Israel.

52 (b) "Boycott Israel" does not include actions necessary to comply with  
53 applicable law in the business's home jurisdiction.

54 2. On and after the effective date of this section, no moneys or  
55 assets of the common retirement fund shall be invested in the stocks,  
56 securities or other obligations of any institution or company boycotting

1 Israel. Notwithstanding any provision of law to the contrary, no assets  
2 of any pension or annuity fund under the jurisdiction of the comp-  
3 troller, shall be invested in any bank or financial institution which  
4 directly or through a subsidiary boycotts Israel and no such assets  
5 shall be invested in the stocks, securities or other obligations of any  
6 company which directly or through a subsidiary boycotts Israel.

7 3. The comptroller shall take appropriate action to sell, redeem,  
8 divest or withdraw any investment held in violation of the provisions of  
9 this section. This section shall not be construed to require the prema-  
10 ture or otherwise imprudent sale, redemption, divestment or withdrawal  
11 of an investment, but such sale, redemption, divestment or withdrawal  
12 shall be completed no later than three years following the effective  
13 date of this section.

14 4. Within sixty days after the effective date of this section, the  
15 comptroller shall issue a report to the governor, the comptroller, the  
16 temporary president of the senate, and the speaker of the assembly and  
17 file with the legislature a report of all investments held as of the  
18 effective date of this section which are in violation of the provisions  
19 of this section. Every year thereafter, the comptroller shall report on  
20 all investments sold, redeemed, divested or withdrawn in compliance with  
21 this section. Each report after the initial report shall provide a  
22 description of the progress which the comptroller has made since the  
23 previous report and since the effective date of this section.

24 § 3. This act shall take effect immediately.