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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(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, and is implementing a 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 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 shall not utilize, on the contract with the state agency, any subcontractor that is identified on a list created pursuant to paragraph (b) of subdivision two of this section.

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

5. The commissioner shall report to the governor, comptroller, the temporary president of the senate and the speaker of the assembly annually on or before October first, on the status of this section and any rules or regulations adopted thereunder.

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

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

(a) "boycott Israel" 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" does not include actions necessary to comply with applicable law in the business's home jurisdiction.

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

Israel. Notwithstanding any provision of law to the contrary, no assets of any pension or annuity fund under the jurisdiction of the comptroller, shall be invested in any bank or financial institution which directly or through a subsidiary boycotts Israel and no such assets shall be invested in the stocks, securities or other obligations of any company which directly or through a subsidiary boycotts Israel.

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

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

§ 3. This act shall take effect immediately.