

# STATE OF NEW YORK

2492--A

2017-2018 Regular Sessions

## IN SENATE

January 13, 2017

Introduced by Sens. PHILLIPS, FELDER, KAMINSKY, MURPHY, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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 certain American allies. 1. As used in this section, the following definitions shall apply:

(a) "Allied nation" shall mean:

(i) any country that is a member of the North Atlantic Treaty Organization;

(ii) any country that is a signatory of the Southeast Asia Treaty of 1954;

(iii) any country, other than Venezuela, that is a signatory of the Rio Treaty of 1947;

(iv) Ireland;

(v) Israel;

(vi) Japan; and/or

(vii) the Republic of Korea.

(b) "Boycott" shall mean to engage in any activity, or to promote or encourage others to engage in any activity, that will result in any person abstaining from commercial, social or political relations, with any allied nation, or companies based in an allied nation or in territories controlled by an allied nation, with the intent to penalize,

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

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1 inflict, or cause harm to, or otherwise promote or cast disrepute upon,  
2 such allied nation, its people or its commercial products.

3 (c) "Person" shall mean any natural person, corporation, limited  
4 liability company, unincorporated association or any other nongovern-  
5 mental entity, organization, or group, or any successor, subunit,  
6 parent, or subsidiary of the same.

7 2. (a) Any person that is identified on a list created pursuant to  
8 paragraph (b) of this subdivision as a person that boycotts, as defined  
9 in paragraph (b) of subdivision one of this section, any allied nation,  
10 as defined in paragraph (a) of subdivision one of this section, shall  
11 not be deemed a responsive bidder or offerer, pursuant to section one  
12 hundred sixty-three of this article.

13 (b) Not later than ninety days after the effective date of this  
14 section, and then annually thereafter, the commissioner shall develop  
15 and publish, using credible information available to the public, a list  
16 of persons determined by the commissioner, that have engaged in the  
17 boycotting of any allied nation. The commissioner shall not include any  
18 person on the list required to be so developed and published if the  
19 commissioner determines that such person engaging in boycotting an  
20 allied nation, engaged in such boycotting in order to comply with a  
21 provision of law of an allied nation in which such person resides or  
22 conducts business operations. Such list, when developed and published,  
23 shall be posted on the website of the office of general services.

24 (c) In the event a person included by the commissioner on the list to  
25 be developed and published in accordance with paragraph (b) of this  
26 subdivision, demonstrates to the commissioner that such person has  
27 permanently ceased their boycotting of any allied nation, or obtains a  
28 court order from a supreme court that such person shall be removed from  
29 such list due to the court's determination that such person has perma-  
30 nently ceased their boycotting of any allied nation, then the commis-  
31 sioner shall remove such person from such list so developed and  
32 published in accordance with paragraph (b) of this subdivision.

33 (d) Prior to the final development and publication of the list  
34 required to be produced pursuant to paragraph (b) of this subdivision,  
35 the commissioner shall provide written notice of all persons to be  
36 included on the list, of the commissioner's intent to so include such  
37 person on such list, together with written notice informing such person  
38 that inclusion on such list would make such person a non-responsive  
39 bidder or offerer, and that such person may apply to the commissioner,  
40 or to a supreme court, to be removed from such list pursuant to the  
41 requirements of paragraph (c) of this subdivision.

42 (e) Notwithstanding paragraph (a) of this subdivision, a state agency  
43 may permit a person promoting or otherwise taking action to boycott any  
44 allied nation to be deemed a responsive bidder or offerer, on a case-by-  
45 case basis with a state agency if:

46 (i) the promotion or other boycott action occurred prior to the effec-  
47 tive date of this section, such activities have not been expanded or  
48 renewed after the effective date of this section, and the person has  
49 adopted, publicized, and is implementing a formal plan to cease all  
50 boycotting of any allied nation and to refrain from engaging in any new  
51 boycott of any allied nation; or

52 (ii) the state agency makes a formal, written determination that the  
53 commodities or services offered by the person named on this list  
54 produced by the commissioner pursuant to paragraph (b) of this subdivi-  
55 sion, are necessary for the state agency to perform its functions and

1 that, absent such an exemption, the state agency would be unable to  
2 obtain the commodities or services for which the contract is offered.

3 3. (a) A state agency shall require all persons that submit a bid or  
4 offer in response to a notice of procurement, or that propose to renew  
5 an existing procurement contract, or that propose to assume the respon-  
6 sibility of a contractor pursuant to a procurement contract, or other-  
7 wise propose to enter into a contract with a state agency with respect  
8 to a contract for commodities, services, construction, or contracts  
9 entered into pursuant to section eight of the public buildings law or  
10 section thirty-eight of the highway law, to certify, at the time the bid  
11 is submitted, or the contract is renewed or assigned, that the person or  
12 the assignee is not identified on the list developed and published  
13 pursuant to paragraph (b) of subdivision two of this section, and all  
14 state agencies shall include such certification information in the  
15 procurement record.

16 (b) All persons that submit a bid or offer in response to a notice of  
17 procurement, or that propose to renew an existing procurement contract  
18 with a state agency, or that propose to assume the responsibility of a  
19 contractor pursuant to a procurement contract with a state agency, or  
20 otherwise propose to enter into a contract with a state agency with  
21 respect to a contract for commodities, services, construction, or  
22 contracts entered into pursuant to section eight of the public buildings  
23 law or section thirty-eight of the highway law, shall certify that they  
24 have not boycotted any allied nations, and that they are not identified  
25 on the list developed and published pursuant to paragraph (b) of subdi-  
26 vision two of this section.

27 4. Upon receiving information that a person who has made the certifi-  
28 cation required by subdivision three of this section, is, in fact, in  
29 violation of such certification, the state agency shall review such  
30 information, notify such person and offer them an opportunity to respond  
31 to such information, within thirty days of such notice, and if such  
32 person fails to demonstrate that they have ceased any boycott of any  
33 allied nation, then, the state agency shall take such action as may be  
34 appropriate and provided for by law, rule or contract, including, but  
35 not limited to, notifying the commissioner of such person's boycott or  
36 boycotts of any and all allied nations, imposing sanctions, seeking  
37 compliance, recovering damages, and/or declaring such person in default.

38 5. On or before December fifteenth, two thousand eighteen, and every  
39 year thereafter, the commissioner shall issue a report to the governor,  
40 the comptroller, the temporary president of the senate, and the speaker  
41 of the assembly, on all the actions taken, and all determinations made,  
42 by the commissioner pursuant to this section, and any and all rules or  
43 regulations adopted.

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. Prohibition on investment of certain public funds in persons  
47 boycotting certain American allies. 1. As used in this section, the  
48 following definitions shall apply:

49 (a) "Allied nation" shall mean:

50 (i) any country that is a member of the North Atlantic Treaty Organ-  
51 ization;

52 (ii) any country that is a signatory of the Southeast Asia Treaty;

53 (iii) any country, other than Venezuela, that is a signatory of the  
54 Rio Treaty;

55 (iv) Ireland;

56 (v) Israel;

1 (vi) Japan; and/or

2 (vii) the Republic of Korea.

3 (b) "Boycott" shall mean to engage in any activity, or to promote or  
4 encourage others to engage in any activity, that will result in any  
5 person abstaining from commercial, social or political relations, with  
6 any allied nation, or companies based in an allied nation or in territo-  
7 ries controlled by an allied nation, with the intent to penalize,  
8 inflict, or cause harm to, or otherwise promote or cast disrepute upon,  
9 such allied nation, its people or its commercial products.

10 (c) "Person" shall mean any natural person, corporation, limited  
11 liability company, unincorporated association or any other nongovern-  
12 mental entity, organization, or group, or any successor, subunit,  
13 parent, or subsidiary of the same.

14 2. (a) Any person that is identified on the list created pursuant to  
15 paragraph (b) of subdivision two of section one hundred sixty-five-b of  
16 the state finance law, as being a person that has engaged in a boycott  
17 of any allied nation, shall not be eligible to receive investment of any  
18 moneys or assets of the common retirement fund in any stocks, securities  
19 or other obligations of such person so identified on such list developed  
20 and published by the commissioner of general services.

21 (b) Notwithstanding any provision of law to the contrary, no assets of  
22 any pension or annuity fund under the jurisdiction of the comptroller,  
23 shall further be invested in any bank or financial institution which  
24 directly, or through a parent or subsidiary boycotts an allied nation  
25 and no such assets shall otherwise be invested in the stocks, securities  
26 or other obligations of any person which directly, or through a parent  
27 or subsidiary entity, boycotts any allied nation.

28 3. The comptroller shall take appropriate action to sell, redeem,  
29 divest or withdraw any investment held in violation of the provisions of  
30 this section. This section shall not be construed to require the prema-  
31 ture or otherwise imprudent sale, redemption, divestment or withdrawal  
32 of an investment, but such sale, divestment or withdrawal shall be  
33 completed no later than five years following the effective date of this  
34 section.

35 4. On or before December fifteenth, two thousand eighteen, and every  
36 year thereafter, the comptroller shall issue a report to the governor,  
37 the commissioner of general services, the temporary president of the  
38 senate, and the speaker of the assembly, on all the actions taken, and  
39 all determinations made, by the comptroller, pursuant to this section,  
40 and any and all rules or regulations adopted.

41 § 3. This act shall take effect immediately.