

# STATE OF NEW YORK

5824

2019-2020 Regular Sessions

## IN SENATE

May 15, 2019

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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 § 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 of  
10 1954;

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

13 (iv) Ireland;

14 (v) Israel;

15 (vi) Japan; and/or

16 (vii) the Republic of Korea.

17 (b) "Boycott" shall mean to engage in any activity, or to promote or  
18 encourage others to engage in any activity, that will result in any  
19 person abstaining from commercial, social or political relations, with  
20 any allied nation, or companies based in an allied nation or in territo-  
21 ries controlled by an allied nation, with the intent to penalize,  
22 inflict, or cause harm to, or otherwise promote or cast disrepute upon,  
23 such allied nation, its people or its commercial products.

24 (c) "Person" shall mean any natural person, corporation, limited  
25 liability company, unincorporated association or any other nongovern-

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

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1 mental entity, organization, or group, or any successor, subunit,  
2 parent, or subsidiary of the same.

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

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

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

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

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

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

48 (ii) the state agency makes a formal, written determination that the  
49 commodities or services offered by the person named on this list  
50 produced by the commissioner pursuant to paragraph (b) of this subdivi-  
51 sion, are necessary for the state agency to perform its functions and  
52 that, absent such an exemption, the state agency would be unable to  
53 obtain the commodities or services for which the contract is offered.

54 3. (a) A state agency shall require all persons that submit a bid or  
55 offer in response to a notice of procurement, or that propose to renew  
56 an existing procurement contract, or that propose to assume the respon-

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

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

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

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

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

41 § 423-d. Prohibition on investment of certain public funds in persons  
42 boycotting certain American allies. 1. As used in this section, the  
43 following definitions shall apply:

44 (a) "Allied nation" shall mean:

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

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

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

50 (iv) Ireland;

51 (v) Israel;

52 (vi) Japan; and/or

53 (vii) the Republic of Korea.

54 (b) "Boycott" shall mean to engage in any activity, or to promote or  
55 encourage others to engage in any activity, that will result in any  
56 person abstaining from commercial, social or political relations, with

1 any allied nation, or companies based in an allied nation or in territo-  
2 ries controlled by an allied nation, with the intent to penalize,  
3 inflict, or cause harm to, or otherwise promote or cast disrepute upon,  
4 such allied nation, its people or its commercial products.

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

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

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

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

30 4. On or before December fifteenth, two thousand nineteen, and every  
31 year thereafter, the comptroller shall issue a report to the governor,  
32 the commissioner of general services, the temporary president of the  
33 senate, and the speaker of the assembly, on all the actions taken, and  
34 all determinations made, by the comptroller, pursuant to this section,  
35 and any and all rules or regulations adopted.

36 § 3. This act shall take effect immediately.