

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/8/17
A Bill

SENATE BILL 513

5 By: Senator Hester
6 By: Representative Dotson
7

For An Act To Be Entitled

9 AN ACT TO PROHIBIT PUBLIC ENTITIES FROM CONTRACTING
10 WITH AND INVESTING IN COMPANIES THAT BOYCOTT ISRAEL;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO PROHIBIT PUBLIC ENTITIES FROM
16 CONTRACTING WITH AND INVESTING IN
17 COMPANIES THAT BOYCOTT ISRAEL.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 25, Chapter 1, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 5 – Prohibited Contracts and Investments
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26 25-1-501. Legislative findings.

27 The General Assembly finds that:

28 (1) Boycotts and related tactics have become a tool of economic
29 warfare that threaten the sovereignty and security of key allies and trade
30 partners of the United States;

31 (2) The State of Israel is the most prominent target of such
32 boycott activity, which began with but has not been limited to the Arab
33 League Boycott adopted in 1945, even before Israel's declaration of
34 independence as the reestablished national state of the Jewish people;

35 (3) Companies that refuse to deal with United States trade
36 partners such as Israel, or entities that do business with or in such



1 countries, make discriminatory decisions on the basis of national origin that
2 impair those companies' commercial soundness;

3 (4) It is the public policy of the United States, as enshrined
4 in several federal acts, to oppose boycotts against Israel, and Congress has
5 concluded as a matter of national trade policy that cooperation with Israel
6 materially benefits United States companies and improves American
7 competitiveness;

8 (5) Israel in particular is known for its dynamic and innovative
9 approach in many business sectors, and therefore a company's decision to
10 discriminate against Israel, Israeli entities, or entities that do business
11 with or in Israel, is an unsound business practice, making the company an
12 unduly risky contracting partner or vehicle for investment; and

13 (6) Arkansas seeks to act to implement Congress's announced
14 policy of "examining a company's promotion or compliance with unsanctioned
15 boycotts, divestment from, or sanctions against Israel as part of its
16 consideration in awarding grants and contracts and supports the divestment of
17 state assets from companies that support or promote actions to boycott,
18 divest from, or sanction Israel".

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20 25-1-502. Definitions.

21 As used in this subchapter:

22 (1)(A)(i) "Boycott Israel" and "boycott of Israel" means
23 engaging in refusals to deal, terminating business activities, or other
24 actions that are intended to limit commercial relations with Israel, or
25 persons or entities doing business in Israel or in Israeli-controlled
26 territories, in a discriminatory manner.

27 (ii) "Boycott" does not include those boycotts to
28 which 50 App. U.S.C. § 2407(c) applies.

29 (B) A company's statement that it is participating in
30 boycotts of Israel, or that it has taken the boycott action at the request,
31 in compliance with, or in furtherance of calls for a boycott of Israel, can
32 be considered by the Arkansas Development Finance Authority as a type of
33 evidence, among others, that a company is participating in a boycott of
34 Israel;

35 (2) "Company" means a sole proprietorship, organization,
36 association, corporation, partnership, joint venture, limited partnership,

1 limited liability partnership, limited liability company, or other entity or
2 business association, including all wholly owned subsidiaries, majority-owned
3 subsidiaries, parent companies, or affiliates of those entities or business
4 associations;

5 (3) "Direct holdings" in reference to a company means all
6 publicly traded securities of that company that are held directly by the
7 public entity in an actively managed account or fund in which the public
8 entity owns all shares or interests;

9 (4) "Indirect holdings" in reference to a company means all
10 securities of that company that are held in an account or fund, such as a
11 mutual fund, managed by one (1) or more persons not employed by the public
12 entity, in which the public entity owns shares or interests together with
13 other investors not subject to the provisions of this act or that are held in
14 an index fund;

15 (5) "Public entity" means the State of Arkansas, or a political
16 subdivision of the state, including all boards, commissions, agencies,
17 institutions, authorities, and bodies politic and corporate of the state,
18 created by or in accordance with state law or regulations, and does include
19 colleges, universities, a statewide public employee retirement system, and
20 institutions in Arkansas as well as units of local and municipal government;

21 (6) "Restricted companies" means companies that boycott Israel;
22 and

23 (7) "Retirement system" means a public retirement system in
24 Arkansas.

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26 25-1-503. Prohibition on contracting with entities that boycott
27 Israel.

28 (a) Except as provided under subsection (b) of this section, a public
29 entity shall not:

30 (1) Enter into a contract with a company to acquire or dispose
31 of services, supplies, information technology, or construction unless the
32 contract includes a written certification that the person or company is not
33 currently engaged in, and agrees for the duration of the contract not to
34 engage in, a boycott of Israel; or

35 (2) Engage in boycotts of Israel.

36 (b) This section does not apply to:

1 (1) A company that fails to meet the requirements under
2 subdivision (a)(1) of this section but offers to provide the goods or
3 services for at least twenty percent (20%) less than the lowest certifying
4 business; or

5 (2) Contracts with a total potential value of less than one
6 thousand dollars (\$1,000).

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8 25-1-504. Prohibition on direct investments in companies that boycott
9 Israel.

10 (a)(1) A public entity through its asset managers shall identify all
11 companies that boycott Israel and assemble those identified companies into a
12 list of restricted companies to be distributed to each retirement system.

13 (2) For each company newly identified and added to the list of
14 restricted companies, the public entity through its asset managers shall send
15 a written notice informing the company of its status and that it may become
16 subject to divestment by the public entity.

17 (3) If, following the engagement by the public entity through
18 its assets managers with a restricted company, that company ceases activity
19 that designates it as a restricted company and submits a written
20 certification to the public entity that it shall not reengage in such
21 activity for the duration of any investment by the public entity, the company
22 shall be removed from the restricted companies list.

23 (4) The public entity shall keep and maintain the list of
24 restricted companies and all written certifications from restricted and
25 previously restricted companies.

26 (b)(1) The public entity shall adhere to the following procedures for
27 companies on the list of restricted companies:

28 (A) Each public entity shall identify the companies on the
29 list of restricted companies that the public entity owns direct holdings and
30 indirect holdings;

31 (B) The public entity shall instruct its investment
32 advisors to sell, redeem, divest, or withdraw all direct holdings of
33 restricted companies from the public entity's assets under management in an
34 orderly and fiduciarily responsible manner within three (3) months after the
35 appearance of the company on the list of restricted companies; and

36 (C) Upon request from the Arkansas Development Finance

1 Authority, each public entity shall provide the Arkansas Development Finance
2 Authority with information regarding investments sold, redeemed, divested, or
3 withdrawn in compliance under this section.

4 (2) The public entity shall not acquire securities of restricted
5 companies as part of direct holdings.

6 (c)(1) Subsection (b) of this section does not apply to the public
7 entity's indirect holdings or private market funds.

8 (2) The public entity shall submit letters to the managers of
9 those investment funds identifying restricted companies and requesting that
10 those investment funds consider removing the investments in the restricted
11 companies from the funds.

12 (d) The costs associated with the divestment activities of the public
13 entity shall be borne by the respective public entity.

14 (e) With respect to actions taken in compliance with this section,
15 including all good-faith determinations regarding companies as required under
16 this section, any statewide retirement system and the Arkansas Development
17 Finance Authority are exempt from any conflicting statutory or common law
18 obligations, including any fiduciary duties and any obligations with respect
19 to choice of asset managers, investment funds, or investments for the
20 statewide retirement systems' portfolios.

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22 /s/Hester

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25 **APPROVED: 03/27/2017**