

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/8/17
A Bill

SENATE BILL 513

By: Senator Hester
By: Representative Dotson

For An Act To Be Entitled

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

Subtitle

TO PROHIBIT PUBLIC ENTITIES FROM
CONTRACTING WITH AND INVESTING IN
COMPANIES THAT BOYCOTT ISRAEL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 25, Chapter 1, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Prohibited Contracts and Investments

25-1-501. Legislative findings.

The General Assembly finds that:

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

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

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



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

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

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

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

25-1-502. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Engage in boycotts of Israel.

(b) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

(C) Upon request from the Arkansas Development Finance

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

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

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

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

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

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

/s/Hester