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SENATE BILL DRS45249-MR-57 (02/28)

Short Title: Divestment From Companies That Boycott Israel. (Public)

Sponsors: Senators Tucker, Gunn, and Brock (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING STATE DIVESTMENT FROM, AND PROHIBITING STATE
3 AGENCIES FROM CONTRACTING WITH, COMPANIES THAT BOYCOTT ISRAEL.

4 Whereas, boycotts and related tactics have become a tool of economic warfare that
5 threaten the sovereignty and security of key allies and trade partners of the United States; and

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

10 Whereas, companies that refuse to deal with United States trade partners such as
11 Israel, or entities that do business with or in such countries, make discriminatory decisions on
12 the basis of national origin that impair those companies' commercial soundness; and

13 Whereas, it is the public policy of the United States, as enshrined in several federal
14 acts, to oppose boycotts against Israel, and Congress has concluded as a matter of national trade
15 policy that cooperation with Israel materially benefits United States companies and improves
16 American competitiveness; and

17 Whereas, Israel in particular is known for its dynamic and innovative approach in
18 many business sectors, and, therefore, a company's decision to discriminate against Israel,
19 Israeli entities, or entities that do business with or in Israel is an unsound business practice
20 making such a company an unduly risky contracting partner or vehicle for investment; Now,
21 therefore,

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.** Chapter 147 of the General Statutes is amended by adding a new
24 Article to read:

25 "Article 6G.

26 "Divestment From Companies Boycotting Israel.

27 "**§ 147-86.80. Definitions.**

28 The following definitions apply in this Article:

29 (1) Boycott Israel or boycott of Israel. – Engaging in refusals to deal,
30 terminating business activities, or taking actions that are intended to
31 penalize, inflict economic harm, or otherwise limit commercial relations
32 specifically with Israel, or persons or entities doing business in Israel or in
33 Israeli-controlled territories. This term does not apply to decisions made for
34 ordinary business purposes.

35 (2) Company. – Any sole proprietorship, organization, association, corporation,
36 partnership, joint venture, limited partnership, limited liability partnership,



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

4 (3) Direct holdings. – All publicly traded securities of a company that are held
5 directly in an actively managed account or fund in which the North Carolina
6 Retirement System or State Treasurer owns all shares or interests.

7 (4) Indirect holdings. – All securities of a company that are held in an account
8 or fund, such as a mutual fund, managed by one or more persons not
9 employed by the State, in which North Carolina Retirement Systems or State
10 Treasurer owns shares or interests together with other investors not subject
11 to the provisions of this Article or that are held in an index fund.

12 (5) Restricted company. – A company that appears on the list of companies that
13 are engaged in a boycott of Israel developed by the State Treasurer under
14 G.S. 147-86.81(a)(1).

15 (6) State agency. – Any board, commission, department, executive department,
16 officer, institution, and any political subdivision of the State.

17 **"§ 147-86.81. Prohibitions on State investment.**

18 (a) No more than 30 days after October 1, 2017, the State Treasurer shall adopt a policy
19 prohibiting the North Carolina Retirement Systems or the Department of State Treasurer from
20 directly investing in any company engaged in a boycott of Israel. At a minimum, the policy
21 shall provide for the following:

22 (1) List of restricted companies. – Within 120 days of adoption of the policy, the
23 State Treasurer shall develop and make publicly available a list of
24 companies it determines to be engaged in a boycott of Israel. In the
25 development of this list, the State Treasurer shall use any other state lists of
26 restricted companies pursuant to similar laws and any federal information or
27 guidance on companies that boycott Israel, information provided by
28 nonprofit organizations, research firms, and governmental entities, and
29 generally publicly available information. The State Treasurer shall make
30 every effort to avoid erroneously including a company on the list. Before
31 finalizing an initial or updated list, the State Treasurer must do all of the
32 following before a company is included on the list:

33 a. Provide 90 days' written notice of the State Treasurer's intent to
34 include the company on the list. The notice shall inform the company
35 that inclusion on the list would make the company ineligible for State
36 investment, may result in the company becoming subject to
37 divestment by the North Carolina Retirement Systems, and may
38 affect the company's ability to conduct business with the State and its
39 subdivisions. The notice shall specify that the company may be
40 removed from the list if the company ceases its engagement in a
41 boycott of Israel.

42 b. The State Treasurer shall provide a company with an opportunity to
43 comment in writing that the company is not engaged in a boycott of
44 Israel or has ceased its boycott of Israel. If the company demonstrates
45 to the State Treasurer that the company has not been engaged in a
46 boycott of Israel, the company shall not be placed on the list. If a
47 company had been engaged in a boycott of Israel but has ceased the
48 boycott, it must submit a written certification to the State Treasurer
49 that the company will not reengage in a boycott of Israel for the
50 duration of any business with the State. The State Treasurer shall

- 1 keep all written certifications from restricted and previously
2 restricted companies.
- 3 (2) Identification of investments. – Upon completion of the initial list of
4 restricted companies created pursuant to subdivision (1) of this subsection,
5 the State Treasurer shall identify any restricted companies in which the
6 North Carolina Retirement Systems owns direct holdings and indirect
7 holdings.
- 8 (3) Review of restricted companies list. – The State Treasurer shall review the
9 list of restricted companies created pursuant to subdivision (1) of this
10 subsection on an annual basis. This updated list shall be made publicly
11 available and any updates shall be distributed to the North Carolina
12 Retirement Systems.
- 13 (4) Direct holdings prohibited. – Neither the North Carolina Retirement Systems
14 nor the State Treasurer may make direct investments in a restricted
15 company. Neither the North Carolina Retirement Systems nor the State
16 Treasurer may acquire securities of restricted companies as part of direct
17 holdings.
- 18 (5) Existing direct holdings. – The North Carolina Retirement Systems and the
19 State Treasurer shall sell, redeem, divest, or withdraw all direct holdings of a
20 restricted company and shall instruct all investment advisors to sell, redeem,
21 divest, or withdraw all direct holdings of restricted companies, within 90
22 days after a company is placed on the State Treasurer's list of restricted
23 companies.
- 24 (6) Indirect holdings permitted. – The prohibitions under subdivision (3) of this
25 subsection shall not apply to the North Carolina Retirement Systems' or the
26 State Treasurer's indirect holdings or private market funds. The State
27 Treasurer shall submit a written request to the manager of each investment
28 fund identifying restricted companies and requesting that the investment
29 fund consider removing the investments in the restricted companies from the
30 fund. Written requests required under this subdivision are required to be
31 made only once to each investment fund.
- 32 (b) With respect to the actions taken in compliance with subsection (a) of this section,
33 including all good-faith determinations of restricted companies, the North Carolina Retirement
34 Systems and the State Treasurer are exempt from any conflicting statutory or common law
35 obligations, including any fiduciary duties and any obligations with respect to choice of asset
36 managers, investment funds, or investments for the North Carolina Retirement Systems
37 portfolio.
- 38 **§ 147-86.82. Restrictions on contracts with the State or subdivisions of the State.**
- 39 (a) A company that is identified as a restricted company is ineligible to contract with
40 the State or any political subdivision of the State.
- 41 (b) Any contract entered into with a company that is identified as a restricted company
42 at the time of contract is void ab initio.
- 43 (c) Upon receiving information that a company that was not identified as a restricted
44 company at the time of contract has later been identified as a restricted company, the State
45 agency shall review the information and offer the company an opportunity to respond. If the
46 company fails to demonstrate that the company should not have been identified as a restricted
47 company within 90 days after notification by the State agency, then the State agency shall take
48 action as may be appropriate and provided for by law, rule, or contract.
- 49 (d) Contracts in existence on October 1, 2017, with restricted companies shall be
50 allowed to expire in accordance with the terms of the contract.
- 51 **§ 147-86.83. Exceptions.**

1 G.S. 147-86.82 shall not apply to contracts valued at one thousand dollars (\$1,000) or less.

2 **"§ 147-86.84. Reporting.**

3 The State Treasurer shall report to the Joint Legislative Commission on Governmental
4 Operations annually by March 1 on information regarding investments sold, redeemed,
5 divested, or withdrawn in compliance with this Article."

6 **SECTION 2.(a)** Pursuant to G.S. 147-69.3(g), the State Treasurer is authorized to
7 retain the services of consultants, professional individuals, analysts, data collection firms, or
8 other persons possessing specialized skills or knowledge necessary for the proper
9 implementation and administration of the requirements of this act.

10 **SECTION 2.(b)** This section is effective when it becomes law.

11 **SECTION 3.** Except as otherwise provided, this act becomes effective October 1,
12 2017.