



HOUSE BILL 161: Divestment From Companies That Boycott Israel.

2017-2018 General Assembly

Committee:		Date:	August 14, 2017
Introduced by:		Prepared by:	Amy Darden Staff Attorney
Analysis of:	S.L. 2017-193		

OVERVIEW: *S.L. 2017-193 requires State divestment from, and prohibits State agencies from contracting with, companies that boycott Israel. S.L. 2017-193 also amends the existing Sudan and Iran Divestment statutes. This act becomes effective October 1, 2017, except for the section authorizing the State Treasurer to retain personnel to assist in its implementation, which became effective July 27, 2017.*

BILL ANALYSIS:

Part I – Divestment from Companies Boycotting Israel:

Section 1.1: establishes in Chapter 147, a new Article 6G, entitled Divestment from Companies Boycotting Israel.

Definitions are established in G.S. 147-86.80 for the following terms: Boycott Israel or boycott of Israel; Company; Investment; Restricted Company; and State agency. A boycott of Israel is defined as engaging in refusals to deal, terminating business activities, or taking actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations specifically with Israel or persons doing business in Israel or Israeli-controlled territories. It does not apply to decisions made for ordinary business purposes or for actions with an economic impact of less than \$20 million dollars in a 12-month period. Investment means the same as in G.S. 147-86.57(3), contained in the Iran Divestment Act, which is a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.

Prohibition on State Investment – G.S. 147-86.81 provides that no more than 30 days after October 1, 2017, the State Treasurer must adopt a policy prohibiting the North Carolina Retirement Systems or the Department of State Treasurer from directly investing in any company engaged in a boycott of Israel.

List of Restricted Companies – Pursuant to G.S. 147-86.81, within 120 days of adoption of the policy, the State Treasurer must use other state lists of restricted companies, federal information or guidance and any other credible information to develop and make publically available a list of companies determined to be engaged in a boycott. Every effort must be made to avoid erroneously including a company on the list and before finalizing an initial or updated list the State Treasurer must:

- Provide 90 days written notice of the intent to include the company on the list. The notice must specify that the company may be removed from the list if the company ceases its engagement in a boycott of Israel.

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- Provide a company with an opportunity to comment in writing that the company is not engaged in a boycott of Israel or has ceased its boycott. A company that has ceased a boycott must submit written certification to the state Treasurer that the company will not reengage in a boycott for the duration of any business with the State.

Identification of Investments, Investments Prohibited, Existing Investments– G.S. 147-86.81(2), (4), and (5) provide that upon completion of the initial list of restricted companies, the State Treasurer must identify any restricted companies in which the Retirement Systems own direct holdings or indirect holdings. The Retirement Systems and the State Treasurer are prohibited from investing funds with a company that is identified on the list of restricted companies. Any existing investment with a company that is identified on the list as a company engaging in restricted activities must be divested within 180 days of the adoption of the policy.

Review of the Restricted Companies List – G.S. 147-86.81(3) requires the State Treasurer to review the list of restricted companies on an annual basis and to make the updated list publically available, as well as distribute the updates to the NC Retirement Systems.

Restriction on Contracts – G.S. 147-86.82 provides that a company identified as a restricted company is ineligible to contract with the State or any political subdivisions. Any contract entered into with a restricted company is void. A company that was not initially identified, but is identified later as a restricted company will be reviewed and the company will be offered an opportunity to respond. Contracts with restricted companies in existence on October 1, 2017, will be allowed to expire in accordance with the terms of the contract. G.S. 147-86.83 provides that the restrictions on contracts do not apply to contracts valued at \$1,000 or less.

Reports – G.S. 147-86.84 requires the State Treasurer to report to the Joint Legislative Commission on Governmental Operations on an annual basis on October 1 of each year. The report must include information regarding investments sold, redeemed, divested or withdrawn in compliance with the Article.

Section 1.2(a) provides that the State Treasurer is authorized to retain the services of consultants, professional individuals, analysts, data collection firms and other persons possessing specialized skills or knowledge necessary to implement and administer the act. This section becomes effective when it becomes law.

Part II – Amend Sudan (Darfur) Divestment Act:

Section 2.1 updates the types of investments subject to divestment, consistent with the Boycott Israel Divestment and Iran Divestment programs. It also eliminates the need for definitions of *direct holdings*, *indirect holdings*, *active business operations*, and *inactive business operations*.

Section 2.2 conforms the process for developing the divestment list and notifying companies that they will be listed to the Iran and Boycott Israel Divestment programs.

Section 2.3 clarifies the Treasurer must carry out administration of the Sudan Divestment program consistent with existing fiduciary duty to the Retirement Systems. This section also conforms the list publication cycle with the Boycott Israel Divestment program.

Section 2.4 synchronizes the annual reporting cycle and content for reporting with the Boycott Israel Divestment and Iran Divestment programs by requiring reporting to the Joint Legislative Commission on Governmental Operations annually on October 1.

Section 2.5 repeals G.S. 147-86.47, which is duplicative, and repeals G.S. 147-86.48, which is no longer necessary based upon the above changes.

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Part III – Amend Iran Divestment Act:

Sections 3.1, 3.5, and 3.8 conforms the terminology used in the Iran Divestment Act to the Boycott Israel Divestment and Sudan Divestment programs by changing *person* to *company* throughout the definitions section.

Section 3.2 adds the definition of *company*, which mirrors the definition used in the Boycott Israel Divestment and Sudan Divestment programs.

Section 3.3 allows research on companies to be based on the same source material and listing criteria as the Boycott Israel Divestment and Sudan Divestment programs.

Section 3.4 repeals G.S. 147-86.59, which requires a signed certification from the contract counterparty asserting their entity is not on the divestment list. This conforms to the Boycott Israel Divestment and Sudan Divestment programs.

Section 3.6 clarifies that companies that meet the criteria of *substantial positive action* are not be subject to divestment.

Section 3.7 synchronizes the annual reporting cycle and content for reporting with the Boycott Israel Divestment and Sudan Divestment programs by requiring reporting to the Joint Legislative Commission on Governmental Operations annually on October 1.

EFFECTIVE DATE: Except as otherwise provided, the act becomes effective October 1, 2017.

Theresa Matula, Legislative Analyst, substantially contributed to this summary.