

115TH CONGRESS
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S. 170

To provide for nonpreemption of measures by State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activities targeting Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. RUBIO (for himself, Mr. MANCHIN, Mr. CRAPO, Mr. NELSON, Mr. CORNYN, Mr. CARDIN, Mr. GRAHAM, Mr. MENENDEZ, Mr. HATCH, Mr. WYDEN, Mr. COTTON, Mr. BLUMENTHAL, Mr. PORTMAN, Mr. PETERS, Mr. CRUZ, Ms. STABENOW, Ms. MURKOWSKI, Mr. BENNET, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for nonpreemption of measures by State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activities targeting Israel, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating BDS Act
5 of 2017”.

1 **SEC. 2. NONPREEMPTION OF MEASURES BY STATE AND**
2 **LOCAL GOVERNMENTS TO DIVEST FROM EN-**
3 **TITIES THAT ENGAGE IN CERTAIN BOYCOTT,**
4 **DIVESTMENT, OR SANCTIONS ACTIVITIES**
5 **TARGETING ISRAEL.**

6 (a) STATE AND LOCAL MEASURES.—Notwith-
7 standing any other provision of law, a State or local gov-
8 ernment may adopt and enforce measures that meet the
9 requirements of subsection (b) to divest the assets of the
10 State or local government from, prohibit investment of the
11 assets of the State or local government in, or restrict con-
12 tracting by the State or local government for goods and
13 services with—

14 (1) an entity that the State or local government
15 determines, using credible information available to
16 the public, knowingly engages in a commerce-related
17 or investment-related boycott, divestment, or sanc-
18 tions activity targeting Israel;

19 (2) a successor entity or subunit of an entity
20 described in paragraph (1); or

21 (3) an entity that owns or controls, is owned or
22 controlled by, or is under common ownership or con-
23 trol with, an entity described in paragraph (1).

24 (b) REQUIREMENTS.—A State or local government
25 that seeks to adopt or enforce a measure under subsection
26 (a) shall meet the following requirements:

1 (1) NOTICE.—The State or local government
2 shall provide written notice to each entity to which
3 a measure under subsection (a) is to be applied.

4 (2) TIMING.—The measure shall apply to an
5 entity not earlier than the date that is 90 days after
6 the date on which written notice is provided to the
7 entity under paragraph (1).

8 (3) OPPORTUNITY FOR COMMENT.—The State
9 or local government shall provide an opportunity to
10 comment in writing to each entity to which a meas-
11 ure is to be applied. If the entity demonstrates to
12 the State or local government that the entity has not
13 engaged in a commerce-related or investment-related
14 boycott, divestment, or sanctions activity targeting
15 Israel, the measure shall not apply to the entity.

16 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
17 NEOUS TARGETING.—It is the sense of Congress
18 that a State or local government should not adopt
19 a measure under subsection (a) with respect to an
20 entity unless the State or local government has
21 made every effort to avoid erroneously targeting the
22 entity and has verified that the entity engages in a
23 commerce-related or investment-related boycott, di-
24 vestment, or sanctions activity targeting Israel.

25 (c) NOTICE TO DEPARTMENT OF JUSTICE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), not later than 30 days after adopting a
3 measure described in subsection (a), the State or
4 local government that adopted the measure shall
5 submit written notice to the Attorney General de-
6 scribing the measure.

7 (2) EXISTING MEASURES.—With respect to
8 measures described in subsection (a) adopted before
9 the date of the enactment of this Act, the State or
10 local government that adopted the measure shall
11 submit written notice to the Attorney General de-
12 scribing the measure not later than 30 days after
13 the date of the enactment of this Act.

14 (d) NONPREEMPTION.—A measure of a State or local
15 government that is consistent with subsection (a) is not
16 preempted by any Federal law.

17 (e) EFFECTIVE DATE.—This section applies to any
18 measure adopted by a State or local government before,
19 on, or after the date of the enactment of this Act.

20 (f) PRIOR ENACTED MEASURES.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of this section or any other provision of
23 law, and except as provided in paragraph (2), a
24 State or local government may enforce a measure
25 described in subsection (a) adopted by the State or

1 local government before the date of the enactment of
2 this Act without regard to the requirements of sub-
3 section (b).

4 (2) APPLICATION OF NOTICE AND OPPOR-
5 TUNITY FOR COMMENT.—A measure described in
6 paragraph (1) shall be subject to the requirements
7 of subsection (b) on and after the date that is 2
8 years after the date of the enactment of this Act.

9 (g) RULES OF CONSTRUCTION.—

10 (1) AUTHORITY OF STATES.—Nothing in this
11 section shall be construed to abridge the authority of
12 a State to issue and enforce rules governing the
13 safety, soundness, and solvency of a financial insti-
14 tution subject to its jurisdiction or the business of
15 insurance pursuant to the Act of March 9, 1945 (59
16 Stat. 33, chapter 20; 15 U.S.C. 1011 et seq.) (com-
17 monly known as the “McCarran-Ferguson Act”).

18 (2) POLICY OF THE UNITED STATES.—Nothing
19 in this section shall be construed to alter the estab-
20 lished policy of the United States concerning final
21 status issues associated with the Arab-Israeli con-
22 flict, including border delineation, that can only be
23 resolved through direct negotiations between the
24 parties.

1 (3) SCOPE OF NONPREEMPTION.—Nothing in
2 this section shall be construed as establishing a basis
3 for preempting or implying preemption of State
4 measures relating to boycott, divestment, or sanc-
5 tions activity targeting Israel that are outside the
6 scope of subsection (a).

7 (h) DEFINITIONS.—In this section:

8 (1) ASSETS.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term “assets” means
11 any pension, retirement, annuity, or endowment
12 fund, or similar instrument, that is controlled
13 by a State or local government.

14 (B) EXCEPTION.—The term “assets” does
15 not include employee benefit plans covered by
16 title I of the Employee Retirement Income Se-
17 curity Act of 1974 (29 U.S.C. 1001 et seq.).

18 (2) BOYCOTT, DIVESTMENT, OR SANCTIONS AC-
19 TIVITY TARGETING ISRAEL.—The term “boycott, di-
20 vestment, or sanctions activity targeting Israel”
21 means any activity that is intended to penalize, in-
22 flict economic harm on, or otherwise limit commer-
23 cial relations with Israel or persons doing business
24 in Israel or in Israeli-controlled territories for pur-

1 poses of coercing political action by, or imposing poli-
2 icy positions on, the Government of Israel.

3 (3) ENTITY.—The term “entity” includes—

4 (A) any corporation, company, business as-
5 sociation, partnership, or trust; and

6 (B) any governmental entity or instrumen-
7 tality of a government, including a multilateral
8 development institution (as defined in section
9 1701(c)(3) of the International Financial Insti-
10 tutions Act (22 U.S.C. 262r(c)(3))).

11 (4) INVESTMENT.—The term “investment” in-
12 cludes—

13 (A) a commitment or contribution of funds
14 or property;

15 (B) a loan or other extension of credit; and

16 (C) the entry into or renewal of a contract
17 for goods or services.

18 (5) STATE.—The term “State” means each of
19 the several States, the District of Columbia, the
20 Commonwealth of Puerto Rico, the Commonwealth
21 of the Northern Mariana Islands, American Samoa,
22 Guam, the United States Virgin Islands, and any
23 other territory or possession of the United States.

24 (6) STATE OR LOCAL GOVERNMENT.—The term
25 “State or local government” includes—

1 (A) any State and any agency or instru-
2 mentality thereof;

3 (B) any local government within a State
4 and any agency or instrumentality thereof; and

5 (C) any other governmental instrumen-
6 tality of a State or locality.

7 **SEC. 3. SAFE HARBOR FOR CHANGES OF INVESTMENT**
8 **POLICIES BY ASSET MANAGERS.**

9 Section 13(c)(1) of the Investment Company Act of
10 1940 (15 U.S.C. 80a-13(c)(1)) is amended—

11 (1) in subparagraph (A), by striking “; or” and
12 inserting a semicolon;

13 (2) in subparagraph (B), by striking the period
14 at the end and inserting “; or”; and

15 (3) by adding at the end the following:

16 “(C) engage in any boycott, divestment, or
17 sanctions activity targeting Israel described in
18 section 2 of the Combating BDS Act of 2017.”.

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