

House File 2331 - Introduced

HOUSE FILE 2331
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 583)

A BILL FOR

1 An Act concerning investment of certain public funds in and
2 public contracts with companies that boycott Israel.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 12J.1 **Legislative findings and**
2 **intent.**

3 The general assembly is deeply concerned and does not
4 support boycotts and related tactics that have become a tool
5 of economic warfare that threaten the sovereignty and security
6 of allies and trade partners of the United States, including
7 the state of Israel. Therefore, the general assembly intends
8 that state funds and funds administered by the state, including
9 public employee retirement funds, should not be invested in,
10 and public contracts should not be entered into with, companies
11 that refuse to engage in commerce with Israel and boycott
12 Israel or persons doing business in Israel or territories
13 controlled by Israel.

14 Sec. 2. NEW SECTION. 12J.2 **Definitions.**

15 As used in this chapter, unless the context otherwise
16 requires:

17 1. "*Company*" means any business or business entity that is
18 publicly traded and that is not based in the United States.

19 2. "*Direct holdings*" in a company means all publicly traded
20 securities of that company that are held directly by the public
21 fund in an actively managed account or fund in which the public
22 fund owns all shares or interests.

23 3. "*Indirect holdings*" in a company means all securities
24 of that company that are held in an account or fund managed
25 by one or more persons not employed by the public fund, in
26 which the public fund owns shares or interests together with
27 other investors not subject to the provisions of this chapter.
28 Indirect holdings include but are not limited to mutual funds,
29 fund of funds, index funds, private equity funds, hedge funds,
30 and real estate funds.

31 4. "*Public entity*" means the state, political subdivisions
32 of the state, public school corporations, and all public
33 officers, boards, commissions, departments, agencies, and
34 authorities empowered by law to enter into public contracts for
35 the expenditure of public funds, including the state board of

1 regents and institutions under the control of the state board
2 of regents.

3 5. "*Public fund*" means the treasurer of state, the state
4 board of regents, the public safety peace officers' retirement
5 system created in chapter 97A, the Iowa public employees'
6 retirement system created in chapter 97B, the statewide fire
7 and police retirement system created in chapter 411, or the
8 judicial retirement system created in chapter 602.

9 6. "*Scrutinized company*" means any company that publicly
10 states it is participating in a boycott of Israel.

11 Sec. 3. NEW SECTION. 12J.3 Identification of companies —
12 notice.

13 1. a. By March 1, 2017, the public fund shall make its
14 best efforts to identify or have identified all scrutinized
15 companies in which the public fund has direct or indirect
16 holdings or could possibly have such holdings in the future and
17 shall create and make available to the public a scrutinized
18 companies list for that public fund. The public fund shall
19 review on an annual basis and update, if necessary, the
20 scrutinized companies list.

21 b. In making its best efforts to identify or have
22 identified scrutinized companies, the public fund may review
23 and rely, in the best judgment of the public fund, on publicly
24 available information regarding companies, and including other
25 information that may be provided by nonprofit organizations,
26 research firms, international organizations, and government
27 entities. The public fund may also contact asset managers
28 and institutional investors for the public fund to identify
29 scrutinized companies based upon industry-recognized lists of
30 such companies that the public fund may have indirect holdings
31 in.

32 c. The Iowa public employees' retirement system, acting
33 on behalf of the system and other public funds subject to
34 this section, may develop and issue a request for proposals
35 for third-party services to complete the identification of

1 scrutinized companies and the compilation of a scrutinized
2 companies list. The Iowa public employees' retirement system
3 shall consult with all other public funds on the development of
4 the request for proposals. However, selection of a successful
5 proposal and the final scope of services to be provided shall
6 be determined only by those public funds that have agreed to
7 utilize the third-party services. If more than one public fund
8 decides to utilize the third-party services, the participating
9 public funds shall equally share the costs of such services.

10 2. a. For each company on the scrutinized companies list,
11 the public fund shall send or have sent a written notice
12 informing the company of its status as a scrutinized company
13 and that it may become subject to divestment and restrictions
14 on investment in the company by the public fund. The notice
15 shall offer the company the opportunity to clarify its
16 activities or to cease its activities causing its inclusion
17 on the scrutinized company list. The public fund or its
18 representative shall continue to provide such written notice on
19 an annual basis if the company remains a scrutinized company.

20 b. If, following notice as provided by this section, a
21 scrutinized company ceases activity that designates it as
22 a scrutinized company and submits a written statement to
23 the public fund that it has ceased engaging in activities
24 boycotting Israel, the company shall be removed from the
25 scrutinized companies list.

26 Sec. 4. NEW SECTION. 12J.4 Prohibited investments —
27 divestment.

28 1. The public fund shall not acquire publicly traded
29 securities of a company on the public fund's most recent
30 scrutinized companies list so long as such company remains on
31 the public fund's scrutinized companies list as provided in
32 this chapter.

33 2. a. The public fund shall sell, redeem, divest, or
34 withdraw all publicly traded securities of a company on the
35 public fund's list of scrutinized companies, so long as the

1 company remains on that list, within eighteen months following
2 the first written notice sent to the scrutinized company as
3 required by section 12J.3.

4 *b.* This subsection shall not be construed to require the
5 premature or otherwise imprudent sale, redemption, divestment,
6 or withdrawal of an investment, but such sale, redemption,
7 divestment, or withdrawal shall be completed as provided by
8 this subsection.

9 3. The requirements of this section shall not apply to
10 indirect holdings of a scrutinized company. The public
11 fund shall, however, submit letters to the managers of such
12 investment funds containing scrutinized companies requesting
13 that they consider removing such companies from the fund
14 or create a similar fund with indirect holdings devoid of
15 such companies. If the manager creates a similar fund with
16 indirect holdings devoid of such companies, the public fund
17 is encouraged to replace all applicable investments with
18 investments in the similar fund consistent with prudent
19 investing standards.

20 Sec. 5. NEW SECTION. 12J.5 Reports.

21 1. *Scrutinized companies list.* Each public fund shall,
22 within thirty days after the scrutinized companies list is
23 created or updated as required by section 12J.3, make the list
24 available to the public.

25 2. *Annual report.* On October 1, 2017, and each October
26 1 thereafter, each public fund shall make available to the
27 public, and file with the general assembly, an annual report
28 covering the prior fiscal year that includes the following:

29 *a.* The scrutinized companies list as of the end of the
30 fiscal year.

31 *b.* A summary of all written notices sent as required by
32 section 12J.3 during the fiscal year.

33 *c.* All investments sold, redeemed, divested, or withdrawn as
34 provided in section 12J.4 during the fiscal year.

35 Sec. 6. NEW SECTION. 12J.6 Public entities — contract

1 requirements.

2 A public entity shall not enter into a contract of one
3 thousand dollars or more with a company to acquire or dispose
4 of services, supplies, information technology, or construction
5 unless the contract includes a written statement that the
6 company is not a scrutinized company and will not be a
7 scrutinized company for the duration of the contract.

8 Sec. 7. NEW SECTION. 12J.7 Legal obligations — immunity.

9 With respect to actions taken in compliance with this
10 chapter, including all good-faith determinations regarding
11 companies as required by this chapter, the public fund shall
12 be immune from any liability and exempt from any conflicting
13 statutory or common law obligations, including any such
14 obligations in respect to choice of asset managers, investment
15 funds, or investments for the public fund's securities
16 portfolios.

17

EXPLANATION

18 The inclusion of this explanation does not constitute agreement with
19 the explanation's substance by the members of the general assembly.

20 This bill creates new Code chapter 12J, which restricts the
21 treasurer of state, the state board of regents, the Iowa public
22 employees' retirement system (IPERS), the public safety peace
23 officers' retirement system, the statewide fire and police
24 retirement system, and the judicial retirement system, defined
25 as "public funds", from directly investing in certain companies
26 engaged in a boycott of Israel. The bill also requires all
27 public entities, including the state and political subdivisions
28 of the state, entering into contract with a company of \$1,000
29 or more to include a written statement in the contract that the
30 company will not engage in a boycott of Israel for the duration
31 of the contract.

32 Concerning public funds, the bill requires each public
33 fund to develop and maintain a list of scrutinized companies
34 that the fund has direct or indirect holdings in or in which
35 the fund may invest in the future. Each public fund shall

1 determine this list by March 1, 2017, and update it on an
2 annual basis. The bill defines "scrutinized companies" as
3 those companies that publicly state they are participating
4 in a boycott of Israel. The bill defines a "company" as any
5 business that is publicly traded and not based in the United
6 States. Once a company is listed on the scrutinized companies
7 list of a public fund, the bill requires the public fund to
8 send a notice to that company relative to the requirements of
9 the bill, to include notice that the company may qualify for
10 divestment and other investment restrictions by the public
11 fund.

12 New Code section 12J.4 requires that a public fund not invest
13 in, and shall divest from, holdings in a scrutinized company.
14 If the public fund has direct holdings in the company, the
15 public fund shall proceed to divest all assets with that
16 company in 18 months so long as the company continues active
17 business operations in Israel. The bill provides that a public
18 fund shall not be required to divest or refrain from investing
19 in a company if the public fund has indirect holdings, and not
20 direct holdings, in that company. However, public funds are
21 encouraged to move their indirect holdings to funds that do
22 not include scrutinized companies. The bill defines indirect
23 holdings to include shares in an account or fund managed by
24 persons not employed by the public fund, including mutual
25 funds, private equity funds, and other similar funds.

26 The bill further requires each public fund to prepare
27 and make available to the public, and file with the general
28 assembly, an annual report, beginning October 1, 2017,
29 concerning actions taken by the public fund relative to the
30 requirements of new Code chapter 12J in the previous fiscal
31 year.

32 The bill further provides that with respect to actions
33 taken in compliance with this bill, including all good-faith
34 determinations regarding companies as required, the public
35 fund shall be immune from any liability and exempt from any

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1 conflicting statutory or common law obligations, including
2 any such obligations in respect to choice of asset managers,
3 investment funds, or investments for the public fund.