

**Senate File 2281 - Introduced**

SENATE FILE 2281  
BY COMMITTEE ON STATE  
GOVERNMENT

(SUCCESSOR TO SSB 3087)

**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 scrutinized company included on  
4 a scrutinized company list created by a public fund pursuant  
5 to section 12J.3 to acquire or dispose of services, supplies,  
6 information technology, or construction.

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

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

16 EXPLANATION

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

19 This bill creates new Code chapter 12J, which restricts the  
20 treasurer of state, the state board of regents, the Iowa public  
21 employees' retirement system (IPERS), the public safety peace  
22 officers' retirement system, the statewide fire and police  
23 retirement system, and the judicial retirement system, defined  
24 as "public funds", from directly investing in certain companies  
25 engaged in a boycott of Israel. The bill also requires all  
26 public entities, including the state and political subdivisions  
27 of the state, not to enter into a contract of \$1,000 or more  
28 with a scrutinized company included on a scrutinized company  
29 list created by a public fund.

30 Concerning public funds, the bill requires each public  
31 fund to develop and maintain a list of scrutinized companies  
32 that the fund has direct or indirect holdings in or in which  
33 the fund may invest in the future. Each public fund shall  
34 determine this list by March 1, 2017, and update it on an  
35 annual basis. The bill defines "scrutinized companies" as

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

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

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

30 The bill further provides that with respect to actions  
31 taken in compliance with this bill, including all good-faith  
32 determinations regarding companies as required, the public  
33 fund shall be immune from any liability and exempt from any  
34 conflicting statutory or common law obligations, including  
35 any such obligations in respect to choice of asset managers,

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1 investment funds, or investments for the public fund.