

Senate Study Bill 3087 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON DANIELSON)

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 sole proprietorship, organization,
18 association, corporation, partnership, joint venture, limited
19 partnership, limited liability partnership, limited liability
20 company, or other entity or business association, including
21 all wholly owned subsidiaries, majority-owned subsidiaries,
22 parent companies, or affiliates of such entities or business
23 associations.

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

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

1 4. "*Public entity*" means the state, political subdivisions
2 of the state, public school corporations, and all public
3 officers, boards, commissions, departments, agencies, and
4 authorities empowered by law to enter into public contracts for
5 the expenditure of public funds, including the state board of
6 regents and institutions under the control of the state board
7 of regents.

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

14 6. "*Scrutinized company*" means any company engaging in
15 refusals to deal, terminating business activities, or engaging
16 in other actions that are intended to limit commercial
17 relations with Israel, or persons or entities doing business
18 in Israel or in territories controlled by Israel, when such
19 actions are taken in compliance or adherence to calls for
20 a boycott of Israel other than those boycotts otherwise
21 authorized by federal law and in a manner that discriminates
22 on the basis of nationality, national origin, religion, or
23 other unreasonable basis, and is not based on a valid business
24 reason. A company's statement that it is participating in a
25 boycott of Israel, or that it has taken the boycott action at
26 the request, in compliance with, or in furtherance of calls for
27 a boycott of Israel, can be considered one type of evidence,
28 among others, that a company is a scrutinized company.

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

31 1. a. By March 1, 2017, the public fund shall make its
32 best efforts to identify or have identified all scrutinized
33 companies in which the public fund has direct or indirect
34 holdings or could possibly have such holdings in the future and
35 shall create and make available to the public a scrutinized

1 companies list for that public fund. The public fund shall
2 review on an annual basis and update, if necessary, the
3 scrutinized companies list.

4 *b.* In making its best efforts to identify or have
5 identified scrutinized companies, the public fund may review
6 and rely, in the best judgment of the public fund, on publicly
7 available information regarding companies, and including other
8 information that may be provided by nonprofit organizations,
9 research firms, international organizations, and government
10 entities. The public fund may also contact asset managers
11 and institutional investors for the public fund to identify
12 scrutinized companies based upon industry-recognized lists of
13 such companies that the public fund may have indirect holdings
14 in.

15 *c.* The Iowa public employees' retirement system, acting
16 on behalf of the system and other public funds subject to
17 this section, may develop and issue a request for proposals
18 for third-party services to complete the identification of
19 scrutinized companies and the compilation of a scrutinized
20 companies list. The Iowa public employees' retirement system
21 shall consult with all other public funds on the development of
22 the request for proposals. However, selection of a successful
23 proposal and the final scope of services to be provided shall
24 be determined only by those public funds that have agreed to
25 utilize the third-party services. If more than one public fund
26 decides to utilize the third-party services, the participating
27 public funds shall equally share the costs of such services.

28 2. *a.* For each company on the scrutinized companies list,
29 the public fund shall send or have sent a written notice
30 informing the company of its status as a scrutinized company
31 and that it may become subject to divestment and restrictions
32 on investment in the company by the public fund. The notice
33 shall offer the company the opportunity to clarify its
34 activities or to cease its activities causing its inclusion
35 on the scrutinized company list. The public fund or its

1 representative shall continue to provide such written notice on
2 an annual basis if the company remains a scrutinized company.

3 *b.* If, following notice as provided by this section, a
4 scrutinized company ceases activity that designates it as a
5 scrutinized company and submits a written certification to the
6 public fund that it shall not reengage in such activity for
7 the duration of any investment by the public fund, the company
8 shall be removed from the scrutinized companies list.

9 **Sec. 4. NEW SECTION. 12J.4 Prohibited investments —**
10 **divestment.**

11 1. The public fund shall not acquire publicly traded
12 securities of a company on the public fund's most recent
13 scrutinized companies list so long as such company remains on
14 the public fund's scrutinized companies list as provided in
15 this chapter.

16 2. *a.* The public fund shall sell, redeem, divest, or
17 withdraw all publicly traded securities of a company on the
18 public fund's list of scrutinized companies, so long as the
19 company remains on that list, within ninety days following
20 the first written notice sent to the scrutinized company as
21 required by section 12J.3.

22 *b.* This subsection shall not be construed to require the
23 premature or otherwise imprudent sale, redemption, divestment,
24 or withdrawal of an investment, but such sale, redemption,
25 divestment, or withdrawal shall be completed as provided by
26 this subsection.

27 3. The requirements of this section shall not apply to
28 indirect holdings of a scrutinized company. The public
29 fund shall, however, submit letters to the managers of such
30 investment funds containing scrutinized companies requesting
31 that they consider removing such companies from the fund
32 or create a similar fund with indirect holdings devoid of
33 such companies. If the manager creates a similar fund with
34 indirect holdings devoid of such companies, the public fund
35 is encouraged to replace all applicable investments with

1 investments in the similar fund consistent with prudent
2 investing standards.

3 **Sec. 5. NEW SECTION. 12J.5 Reports.**

4 1. *Scrutinized companies list.* Each public fund shall,
5 within thirty days after the scrutinized companies list is
6 created or updated as required by section 12J.3, make the list
7 available to the public.

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

12 a. The scrutinized companies list as of the end of the
13 fiscal year.

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

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

18 **Sec. 6. NEW SECTION. 12J.6 Public entities — contract**
19 **requirements.**

20 A public entity shall not enter into a contract of one
21 thousand dollars or more with a company to acquire or dispose
22 of services, supplies, information technology, or construction
23 unless the contract includes a written certification that
24 the company is not a scrutinized company and will not be a
25 scrutinized company for the duration of the contract.

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

27 With respect to actions taken in compliance with this
28 chapter, including all good-faith determinations regarding
29 companies as required by this chapter, the public fund shall
30 be immune from any liability and exempt from any conflicting
31 statutory or common law obligations, including any such
32 obligations in respect to choice of asset managers, investment
33 funds, or investments for the public fund's securities
34 portfolios.

35

EXPLANATION

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

3 This bill creates new Code chapter 12J, which restricts the
4 treasurer of state, the state board of regents, the Iowa public
5 employees' retirement system (IPERS), the public safety peace
6 officers' retirement system, the statewide fire and police
7 retirement system, and the judicial retirement system, defined
8 as "public funds", from directly investing in certain companies
9 engaged in a boycott of Israel. The bill also requires all
10 public entities, including the state and political subdivisions
11 of the state, entering into contract with a company of \$1,000
12 or more to include a written certification in the contract that
13 the company will not engage in a boycott of Israel for the
14 duration of the contract.

15 Concerning public funds, the bill requires each public
16 fund to develop and maintain a list of scrutinized companies
17 that the fund has direct or indirect holdings in or in which
18 the fund may invest in the future. Each public fund shall
19 determine this list by March 1, 2017, and update it on an
20 annual basis. The bill defines "scrutinized companies" as
21 those companies engaging in refusals to deal, terminating
22 business activities, or engaging in other actions that
23 are intended to limit commercial relations with Israel, or
24 persons or entities doing business in Israel or in territories
25 controlled by Israel. Once a company is listed on the
26 scrutinized companies list of a public fund, the bill requires
27 the public fund to send a notice to that company relative
28 to the requirements of the bill, to include notice that
29 the company may qualify for divestment and other investment
30 restrictions by the public fund.

31 New Code section 12J.4 requires that a public fund not invest
32 in, and shall divest from, holdings in a scrutinized company.
33 If the public fund has direct holdings in the company, the
34 public fund shall proceed to divest all assets with that
35 company in 90 days so long as the company continues active

1 business operations in Israel. The bill provides that a public
2 fund shall not be required to divest or refrain from investing
3 in a company if the public fund has indirect holdings, and not
4 direct holdings, in that company. However, public funds are
5 encouraged to move their indirect holdings to funds that do
6 not include scrutinized companies. The bill defines indirect
7 holdings to include shares in an account or fund managed by
8 persons not employed by the public fund, including mutual
9 funds, private equity funds, and other similar funds.

10 The bill further requires each public fund to prepare
11 and make available to the public, and file with the general
12 assembly, an annual report, beginning October 1, 2017,
13 concerning actions taken by the public fund relative to the
14 requirements of new Code chapter 12J in the previous fiscal
15 year.

16 The bill further provides that with respect to actions
17 taken in compliance with this bill, including all good-faith
18 determinations regarding companies as required, the public
19 fund shall be immune from any liability and exempt from any
20 conflicting statutory or common law obligations, including
21 any such obligations in respect to choice of asset managers,
22 investment funds, or investments for the public fund.