

House File 2 - Introduced

HOUSE FILE 2

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A BILL FOR

1 An Act relating to public contracts, public fund investing,
2 and lending practices with certain companies that engage
3 in economic boycotts based on environmental, social, or
4 governance criteria, and including effective date and
5 applicability provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 12.8, subsection 1, Code 2023, is amended
2 to read as follows:

3 1. The treasurer of state shall invest or deposit, subject
4 to chapters 12F, 12H, and 12J, and 12K and as provided by law,
5 any of the public funds not currently needed for operating
6 expenses and shall do so upon receipt of monthly notice from
7 the director of the department of administrative services of
8 the amount not so needed. In the event of loss on redemption
9 or sale of securities invested as prescribed by law, and if
10 the transaction is reported to the executive council, neither
11 the treasurer nor director of the department of administrative
12 services is personally liable but the loss shall be charged
13 against the funds which would have received the profits or
14 interest of the investment and there is appropriated from the
15 funds the amount so required.

16 Sec. 2. NEW SECTION. 12K.1 Legislative findings and intent.

17 The general assembly is deeply concerned and does not
18 support boycotts and related tactics that have become a tool
19 of economic warfare against numerous essential industries,
20 including fossil fuel production, agriculture, timber
21 production, and firearms, by corporations and public and
22 private institutional investors and proxy advisors in support
23 of environmental, social, and governance goals often at odds
24 with prudent financial management. Therefore, the general
25 assembly intends that public entities and public funds, when
26 financially prudent, should avoid doing business with companies
27 and investors that engage in such economic warfare, and
28 threaten harm to this state, its businesses, and citizens.

29 Sec. 3. NEW SECTION. 12K.2 Definitions.

30 As used in this chapter, unless the context otherwise
31 requires:

32 1. "Company" means any organization, association,
33 corporation, partnership, joint venture, limited partnership,
34 limited liability partnership, limited liability company,
35 or other entity or business association, including all

1 wholly owned subsidiaries, majority-owned subsidiaries,
2 parent companies, or affiliates of such entities or business
3 associations, that exists for profit-making purposes with at
4 least ten full-time employees.

5 2. "*Economic boycott*" means refusing to deal with,
6 terminating business activities with, or otherwise taking
7 any commercial action that is intended to penalize, inflict
8 economic harm on, limit commercial relations with, or change
9 or limit the activities of a protected company or a company
10 that does business with a protected company in order to further
11 environmental, social, or governance goals unrelated to the
12 financial condition of the protected company.

13 3. "*Explanatory evidence*" includes but is not limited to
14 advertising, statements, explanations, reports, letters to
15 clients, communications with portfolio companies, statements of
16 principles, or participation in, affiliation with, or status as
17 a signatory to, any coalition, initiative, joint statement of
18 principles, or agreement.

19 4. "*Improper financial factors*" means taking any action or
20 considering any factor, beyond what controlling federal or
21 state law requires, with a purpose to further environmental,
22 social, or governance goals based upon explanatory evidence
23 indicating such a purpose to accomplish any of the following:

24 a. Facilitating the elimination, reduction, offsetting, or
25 disclosing of greenhouse gas emissions.

26 b. Instituting or assessing corporate board criteria, or
27 employment composition, compensation, or disclosure criteria
28 that incorporates characteristics protected in this state under
29 chapter 216, the Iowa civil rights Act.

30 c. Divesting from, limiting investment in, or limiting the
31 activities or investments of any protected company.

32 5. "*Investment advisor*" means any person acting on behalf of
33 a public fund as an investment manager or proxy advisor.

34 6. "*Protected company*" means a company, without violating
35 controlling federal or state law, that meets any of the

1 following criteria:

2 *a.* Engages in the exploration, production, utilization,
3 transportation, sale, or manufacturing of fossil fuel-based
4 energy, timber, mining, or agriculture.

5 *b.* Engages in, facilitates, or supports the manufacture,
6 distribution, sale, import, export, or lawful use of firearms,
7 firearm parts, firearm accessories, or ammunition.

8 *c.* Does not meet, is not expected to meet, or does not
9 commit to meet environmental standards or disclosure criteria,
10 in particular to eliminate, reduce, offset, or disclose
11 greenhouse gas emissions.

12 *d.* Does not meet, is not expected to meet, or does not
13 commit to meet corporate board, or employment, composition,
14 compensation, or disclosure criteria that incorporates
15 characteristics protected in this state under chapter 216, the
16 Iowa civil rights Act.

17 *e.* Does not facilitate, is not expected to facilitate, or
18 does not commit to facilitate access to abortion, sex or gender
19 change, or transgender surgery.

20 7. "*Public entity*" means the state, political subdivisions
21 of the state, public school corporations, and all public
22 officers, boards, commissions, departments, agencies, and
23 authorities empowered by law to enter into public contracts for
24 the expenditure of public funds, including the state board of
25 regents and institutions under the control of the state board
26 of regents.

27 8. "*Public fund*" means the treasurer of state, the state
28 board of regents, the public safety peace officers' retirement
29 system created in chapter 97A, the Iowa public employees'
30 retirement system created in chapter 97B, the statewide fire
31 and police retirement system created in chapter 411, or the
32 judicial retirement system created in chapter 602.

33 Sec. 4. NEW SECTION. 12K.3 Public funds — requirements.

34 1. A public fund shall not do any of the following:

35 *a.* Grant proxy voting authority to any person who is not

1 a part of the public fund or adopt a practice of following
2 the recommendations of a proxy advisor unless that person
3 or advisor has a practice of, and in writing commits to,
4 following guidelines to act solely in the financial interest of
5 participants and beneficiaries of the public fund and not based
6 upon improper financial factors.

7 *b.* Enter into an agreement with an investment advisor
8 unless the investment advisor has a practice of, and in writing
9 commits to, following guidelines when engaging with portfolio
10 companies and voting shares or proxies, and to act solely in
11 the financial interest of participants and beneficiaries of the
12 public fund and not based upon improper financial factors.

13 *c.* Enter into an agreement with an investment advisor
14 unless the investment advisor has a practice of, and in writing
15 commits to, making investment decisions based solely upon the
16 financial interest of participants and beneficiaries of the
17 public fund and not based upon improper financial factors.

18 2. All proxy votes on behalf of a public fund shall be
19 tabulated and reported annually to the public fund. For
20 each vote, the report shall contain a vote caption, the
21 vote on behalf of the public fund, the recommendation of
22 company management, and, if applicable, the proxy advisor's
23 recommendation. The report shall be posted by the public fund
24 on a publicly available internet site of the public fund.

25 3. Subsection 1 does not apply if the public fund determines
26 that no economically practicable alternative is available.

27 Sec. 5. NEW SECTION. **12K.4 Public entities — contract**
28 **requirements.**

29 1. A public entity shall not enter into a contract of one
30 thousand dollars or more with a company that is engaged in an
31 economic boycott to acquire or dispose of services, supplies,
32 information technology, or construction.

33 2. A contract subject to the requirements of this section
34 shall contain a written verification from the company that it
35 does not engage in economic boycotts and will not engage in

1 economic boycotts during the term of the contract and shall
2 further provide for cancellation of the contract if the public
3 entity has reasonable cause to believe based on explanatory
4 evidence that the company is engaging in an economic boycott.

5 3. This section shall not apply if the public entity
6 determines that the requirements of this section would
7 otherwise be inconsistent with the public entity's
8 constitutional or statutory duties or would prevent the public
9 entity from obtaining the supplies or services to be provided
10 in an economically practicable manner.

11 Sec. 6. NEW SECTION. 12K.5 Enforcement.

12 1. This chapter, or any contract subject to this chapter,
13 may be enforced by the attorney general.

14 2. If the attorney general has reasonable cause to believe
15 that a person has engaged in, is engaging in, or is about to
16 engage in a violation of this chapter, the attorney general may
17 do any of the following:

18 a. Require such person to file on such forms as the attorney
19 general prescribes a statement or report in writing, under
20 oath, as to all the facts and circumstances concerning the
21 violation, and such other data and information as the attorney
22 general may deem necessary.

23 b. Examine under oath any person in connection with the
24 violation.

25 c. Examine any record, book, document, account, or paper as
26 the attorney general may deem necessary.

27 d. Pursuant to a court order, impound any record, book,
28 document, account, paper, or sample or material relating to
29 such practice and retain the same in the possession of the
30 attorney general until the completion of all proceedings
31 undertaken under this chapter or in the courts.

32 Sec. 7. Section 35A.13, subsection 4, paragraph a, Code
33 2023, is amended to read as follows:

34 a. Notwithstanding subsection 5, moneys in the fund, except
35 so much of the fund as may be necessary to be kept on hand

1 for the making of disbursements under [this section](#), shall
2 be invested by the treasurer of state, in consultation with
3 the commission and the public retirement systems committee
4 established by [section 97D.4](#), in any investments authorized for
5 the Iowa public employees' retirement system in [section 97B.7A](#),
6 including common stock, and subject to the requirements of
7 chapters [12F](#), [12H](#), [and 12J](#), [and 12K](#), and the earnings therefrom
8 shall be credited to the fund. The treasurer of state may
9 execute contracts and agreements with investment advisors,
10 consultants, and investment management and benefit consultant
11 firms in the administration of investments of moneys in the
12 fund.

13 Sec. 8. Section 97A.7, subsection 1, Code 2023, is amended
14 to read as follows:

15 1. The board of trustees shall be the trustees of the
16 retirement fund created by [this chapter](#) as provided in section
17 97A.8 and shall have full power to invest and reinvest funds
18 subject to the terms, conditions, limitations, and restrictions
19 imposed by [subsection 2](#) and [chapters 12F](#), [12H](#), [and 12J](#), [and](#)
20 [12K](#) and subject to like terms, conditions, limitations, and
21 restrictions said trustees shall have full power to hold,
22 purchase, sell, assign, transfer, or dispose of any of the
23 securities and investments of the retirement fund which have
24 been invested, as well as of the proceeds of said investments
25 and any moneys belonging to the retirement fund. The board
26 of trustees may authorize the treasurer of state to exercise
27 any of the duties of [this section](#). When so authorized the
28 treasurer of state shall report any transactions to the board
29 of trustees at its next monthly meeting.

30 Sec. 9. Section 97B.4, subsection 5, Code 2023, is amended
31 to read as follows:

32 5. *Investments.* The system, through the chief investment
33 officer, shall invest, subject to [chapters 12F](#), [12H](#), [and 12J](#),
34 [and 12K](#) and in accordance with the investment policy and
35 goal statement established by the board, the portion of the

1 retirement fund which, in the judgment of the system, is not
2 needed for current payment of benefits under [this chapter](#)
3 subject to the requirements of [section 97B.7A](#).

4 Sec. 10. Section 262.14, unnumbered paragraph 1, Code 2023,
5 is amended to read as follows:

6 The board may invest funds belonging to the institutions,
7 subject to [chapters 12F, 12H, and 12J](#), and 12K and the
8 following regulations:

9 Sec. 11. Section 411.7, subsection 1, Code 2023, is amended
10 to read as follows:

11 1. The board of trustees is the trustee of the fire
12 and police retirement fund created in [section 411.8](#) and
13 shall annually establish an investment policy to govern the
14 investment and reinvestment of the moneys in the fund, subject
15 to the terms, conditions, limitations, and restrictions
16 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
17 12K. Subject to like terms, conditions, limitations, and
18 restrictions the system has full power to hold, purchase, sell,
19 assign, transfer, or dispose of any of the securities and
20 investments in which the fund has been invested, as well as of
21 the proceeds of the investments and any moneys belonging to the
22 fund.

23 Sec. 12. NEW SECTION. 524.906 Improper considerations.

24 A state bank shall not take into account improper financial
25 factors, as defined in section 12K.2, in determining whether
26 to make a loan.

27 Sec. 13. Section 533.315, Code 2023, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 2A. Improper considerations. A state
30 credit union shall not take into account improper financial
31 factors, as defined in section 12K.2, in determining whether
32 to make a loan.

33 Sec. 14. Section 602.9111, subsection 1, Code 2023, is
34 amended to read as follows:

35 1. So much of the judicial retirement fund as may not be

1 necessary to be kept on hand for the making of disbursements
2 under [this article](#) shall be invested by the treasurer of
3 state in any investments authorized for the Iowa public
4 employees' retirement system in [section 97B.7A](#) and subject to
5 the requirements of [chapters 12F, 12H, and 12J](#), and [12K](#), and
6 the earnings therefrom shall be credited to the fund. The
7 treasurer of state may execute contracts and agreements with
8 investment advisors, consultants, and investment management and
9 benefit consultant firms in the administration of the judicial
10 retirement fund.

11 Sec. 15. EFFECTIVE DATE. This Act, being deemed of
12 immediate importance, takes effect upon enactment.

13 Sec. 16. APPLICABILITY. This Act applies to contracts and
14 loans entered into on or after the effective date of this Act.

15 EXPLANATION

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

18 This bill relates to public contracts, public fund
19 investing, and lending practices with certain companies that
20 engage in economic boycotts based on environmental, social, or
21 governance criteria.

22 The bill creates new Code chapter 12K, which restricts
23 the treasurer of state, the state board of regents, the Iowa
24 public employees' retirement system (IPERS), the public safety
25 peace officers' retirement system, the statewide fire and
26 police retirement system, and the judicial retirement system,
27 defined as "public funds", from entering into agreements with
28 investment managers or proxy advisors that take action based
29 upon improper financial factors relating to economic boycotts
30 based on environmental, social, or governance criteria and
31 not solely on the financial interest of participants and
32 beneficiaries of the public fund. The bill also prevents all
33 public entities, including the state and political subdivisions
34 of the state, from entering into a contract with a company
35 of \$1,000 or more engaged in an economic boycott based on

1 environmental, social, or governance criteria.

2 The bill defines company, economic boycott, explanatory
3 evidence, improper financial factors, investment advisor,
4 protected company, public entity, and public fund. The bill
5 defines company as any profit-making business entity with at
6 least 10 full-time employees. A protected company is defined
7 to include companies engaged in fossil fuel-based energy,
8 timber, mining, agriculture, firearms, firearm parts, firearm
9 accessories, or ammunition activities; and companies that do
10 not or will not commit to meet, beyond what is required by
11 law, environmental standards or disclosure criteria, corporate
12 board and employment, composition, compensation, or disclosure
13 criteria that incorporate characteristics protected in this
14 state under the Iowa civil rights Act, or to facilitate
15 access to abortion, sex or gender change, or transgender
16 surgery. The bill defines economic boycott as taking adverse
17 action intended to penalize a protected company. Improper
18 financial considerations is defined to mean taking any action
19 or considering any factor, beyond what controlling federal or
20 state law requires, with a purpose to further environmental,
21 social, or governance goals related to those characteristics of
22 a protected company under the bill.

23 As to public funds, the bill prevents a public fund from
24 granting proxy voting authority to a person or entering into
25 an agreement with an investment advisor unless the person or
26 investment advisor commits in writing to act solely in the
27 financial interest of participants and beneficiaries of the
28 public fund and not based upon improper financial factors. The
29 bill also requires information on all proxy votes on behalf of
30 a public fund to be posted on a publicly available internet
31 site of the public fund. Finally, the bill provides that the
32 restrictions on a public fund do not apply if the public fund
33 determines that no economically practicable alternative is
34 available.

35 As to public entities, the bill prevents all public entities

1 from entering into a contract with a company of \$1,000 or more
2 that is engaged in an economic boycott. The bill requires any
3 contract with a company subject to this provision to contain
4 a written verification from the company that it does not
5 engage in economic boycotts and will not engage in economic
6 boycotts during the term of the contract and shall further
7 provide for cancellation of the contract if the public entity
8 has reasonable cause to believe based on explanatory evidence
9 that the company is engaging in an economic boycott. The bill
10 provides that these requirements shall not apply if the public
11 entity determines that the requirements of this Code section
12 would otherwise be inconsistent with the public entity's
13 constitutional or statutory duties or would prevent the public
14 entity from obtaining the supplies or services to be provided
15 in an economically practicable manner.

16 The bill provides that the attorney general shall enforce
17 the requirements of this new Code chapter.

18 Code chapters 524 and 533, governing state banks and credit
19 unions, are amended to restrict banks and credit unions from
20 utilizing improper financial factors, as defined by the bill,
21 in determining whether to make a loan.

22 The bill makes conforming changes to Code sections 12.8,
23 35A.13, 97A.7, 97B.4, 262.14, 411.7, and 602.9111.

24 The bill takes effect upon enactment and applies to
25 contracts and loans entered into on or after the effective date
26 of the bill.