

HOUSE BILL NO. 501

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BOYCOTTS OF
ISRAEL; REQUIRING CERTIFICATION FROM COMPANIES ENTERING INTO CONTRACTS WITH THE
STATE OR ITS SUBDIVISIONS FOR GOODS OR SERVICES THAT THE COMPANY IS NOT ENGAGED IN
A BOYCOTT OF ISRAEL; REQUIRING THE BOARD OF INVESTMENTS TO IDENTIFY COMPANIES
ENGAGING IN A BOYCOTT OF ISRAEL; REQUIRING THE BOARD OF INVESTMENTS TO SELL ASSETS
DIRECTLY INVESTED IN COMPANIES ENGAGED IN A BOYCOTT AND TO REQUEST THAT MANAGERS
OF INDIRECT HOLDINGS CONSIDER SELLING THOSE ASSETS; PROVIDING EXCEPTIONS; REQUIRING
CERTAIN ANNUAL REPORTS; PROVIDING RULEMAKING; AMENDING SECTION 17-6-201, MCA; AND
PROVIDING AN APPLICABILITY DATE."

WHEREAS, the Montana Legislature finds and declares that boycotts and related tactics have become
a tool of economic warfare that threatens the sovereignty and security of key allies and trade partners of the
United States; and

WHEREAS, the State of Israel is the most prominent target of such boycott activity, beginning with the
Arab League Boycott adopted in 1945, even before Israel's declaration of independence as the reestablished
national state of the Jewish people; and

WHEREAS, companies that refuse to deal with United States trade partners such as Israel, or entities
that do business with or in such countries, make discriminatory decisions on the basis of national origin that
impair those companies' commercial soundness; and

WHEREAS, it is the public policy of the United States, as enshrined in several federal acts, including 50
U.S.C. § 4607, to oppose such boycotts, and Congress has concluded as a matter of national trade policy that
cooperation with Israel materially benefits United States companies and improves American competitiveness;
and

WHEREAS, Israel in particular is known for its dynamic and innovative approach in many business

sectors, and a company's decision to discriminate against Israel, Israeli entities, or entities that do business with Israel or in Israel is an unsound business practice that makes the company an unduly risky contracting partner or vehicle for investment; and

WHEREAS, the State of Montana seeks to implement a policy of examining a company's promotion or compliance with unsanctioned boycotts, divestment from, or sanctions against Israel as part of its consideration for awarding grants and contracts and supports the divestment of state assets from companies that support or promote actions to boycott, divest from, or sanction Israel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Written certification regarding prohibition of Israel boycott -- rulemaking. (1) A public agency may enter into a contract for goods or services with a company only if the contract includes a written certification that the company is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel.

(2) The department of administration shall adopt rules necessary to administer the certification required by this section. The department's rules apply to all public agencies.

(3) For the purposes of this section, the following definitions apply:

(a) (i) "Boycott of Israel", except as provided in subsection (3)(a)(ii), means refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with, or performing any other action that is intended to limit commercial relations with Israel or with a person or entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that discriminates on the basis of nationality, national origin, or religion.

(ii) The term does not mean an action included under subsection (3)(a)(i) if the action is:

(A) based on a bona fide business or economic reason;

(B) taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or

(C) taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or other federal law as it appeared on [the effective date of this act] or any other state law.

(b) "Company" means a domestic or foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other

domestic or foreign entity or business association, including, without limitation, a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of such an entity or business association, that exists for the purpose of making a profit.

NEW SECTION. Section 2. Anti-boycott certification requirement for companies. A county governing body may enter into a contract with a company for goods or services only if the county governing body complies with the certification requirements of [section 1].

NEW SECTION. Section 3. Anti-boycott certification requirement for companies. A city, town, or municipality may enter into a contract with a company for goods or services only if the city, town, or municipality complies with the certification requirements of [section 1].

NEW SECTION. Section 4. Definitions. The following definitions apply to [sections 4 through 7]:

(1) "Board" means the board of investments.

(2) (a) "Boycott of Israel", except as provided in subsection (2)(b), means refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with, or performing any other action that is intended to limit commercial relations with Israel or with a person or entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that discriminates on the basis of nationality, national origin, or religion.

(b) The term does not mean an action included under subsection (2)(a) if the action is:

(i) based on a bona fide business or economic reason;

(ii) taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or

(iii) taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or other federal law as it appeared on [the effective date of this act] or any other state law.

(3) "Company" means a domestic or foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other domestic or foreign entity or business association, including, without limitation, a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of such an entity or business association, that exists for the purpose of making a profit.

(4) "Direct holdings" means publicly traded securities of a company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(5) "Indirect holdings" means publically traded securities of a company that are held:

(a) by the board of investments in an account or fund that is managed by one or more persons who are not employed by the board of investments and in which the public fund owns shares or interests together with other investors not subject to [sections 4 through 7]; or

(b) in an index fund.

(6) "Public fund" means a trust fund administered by the board of investments.

(7) "Scrutinized company" means a company that engages in a boycott of Israel.

NEW SECTION. Section 5. List of scrutinized companies -- annual report. (1) The board of investments shall identify each scrutinized company in which a public fund has either direct holdings or indirect holdings. In making the identification, the board shall review and rely on publically available information regarding companies that are engaging in a boycott of Israel, including, without limitation, information provided by nonprofit organizations, research firms, international organizations, and government entities.

(2) The board shall create a list of all scrutinized companies identified pursuant to subsection (1) and update the list annually with the information provided by and received from the entities listed in subsection (1).

(3) The board shall prepare an annual report of investments of money from a public fund in scrutinized companies as identified pursuant to subsection (1). The report must include the amount of money allocated in the investments and other data and statistics designed to explain the past and current extent to which public funds are invested in scrutinized companies.

(4) The board of investments shall submit a copy of the report created pursuant to subsection (3) to the governor, the speaker of the house of representatives, and the president of the senate on or before February 1 of each year. The submitted report must cover all investments during the immediately preceding calendar year.

NEW SECTION. Section 6. Divestment of assets in scrutinized company -- prohibition on acquiring scrutinized company securities. (1) Except as provided in subsection (2), the board of investments:

(a) shall sell, redeem, divest, or direct holdings of a scrutinized company from the assets under its management within 3 months after preparing a list of scrutinized companies pursuant to [section 5] which includes the scrutinized company;

(b) on or before June 30 of each year, shall post on the board of investment's website a list that includes each investment that was sold, redeemed, divested, or withdrawn pursuant to subsection (1)(a);

(c) may not acquire securities of a scrutinized company as part of the direct holdings of the board of investments; and

(d) shall request that the manager of the indirect holdings of a public fund consider selling, redeeming, divesting, or withdrawing holdings of a scrutinized company from the assets under the board's management.

(2) Nothing in this section shall require the board to take action as described in this section unless the board determines and adopts findings, in good faith and based on credible information available to the public, that the action described in this section is consistent with the fiduciary responsibilities of the board.

NEW SECTION. Section 7. Rulemaking. (1) The board of investments shall adopt rules:

(a) to establish the process for giving notice to a company of the inclusion of that company on the list of scrutinized companies created pursuant to [section 5(2)]; and

(b) to establish the process for the removal of a company from the list of scrutinized companies created pursuant to [section 5(2)].

(2) The board may adopt other rules necessary to carry out the provisions of this part.

Section 8. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program -- general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(e) This section does not prevent investment in home loan mortgages under the provisions of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) subject to [section 5], determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and

1 17-6-105; and

2 (c) direct the sale of securities in the program at their full and true value when found necessary to raise
3 money for payments due from the treasury funds for which the securities have been purchased.

4 (7) The cost of administering and accounting for each investment fund must be deducted from the
5 income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of
6 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay
7 the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

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9 NEW SECTION. Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an
10 integral part of Title 18, chapter 1, part 1, and the provisions of Title 18, chapter 1, part 1, apply to [section 1].

11 (2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 23, and the
12 provisions of Title 7, chapter 5, part 23, apply to [section 2].

13 (3) [Section 3] is intended to be codified as an integral part of Title 7, chapter 5, part 43, and the
14 provisions of Title 7, chapter 5, part 43, apply to [section 3].

15 (4) [Sections 4 through 7] are intended to be codified as an integral part of Title 17, chapter 6, and the
16 provisions of Title 17, chapter 6, apply to [sections 4 through 7].

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18 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
20 the part remains in effect in all valid applications that are severable from the invalid applications.

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22 NEW SECTION. Section 11. Applicability. [Sections 1 through 3] apply to contracts entered into on
23 or after [the effective date of this act].

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