

115TH CONGRESS
1ST SESSION

H. R. 2856

To provide for nonpreemption of measures by State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activity targeting Israel, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2017

Mr. McHENRY (for himself, Mr. VARGAS, Mr. ROYCE of California, Mr. GOTTHEIMER, Mr. EMMER, Mr. SHERMAN, Mr. ROSKAM, and Mr. SCHNEIDER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for nonpreemption of measures by State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activity targeting Israel, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating BDS Act
5 of 2017”.

1 **SEC. 2. NONPREEMPTION OF MEASURES BY STATE AND**
2 **LOCAL GOVERNMENTS TO DIVEST FROM EN-**
3 **TITIES THAT ENGAGE IN BOYCOTT, DIVEST-**
4 **MENT, OR SANCTIONS ACTIVITIES TAR-**
5 **GETING ISRAEL.**

6 (a) STATE AND LOCAL MEASURES.—Notwith-
7 standing any other provision of law, a State or local gov-
8 ernment may adopt and enforce measures that meet the
9 requirements of subsection (b) to divest the assets of the
10 State or local government from, prohibit investment of the
11 assets of the State or local government in, or restrict con-
12 tracting by the State or local government for goods and
13 services with—

14 (1) an entity that the State or local government
15 determines, using credible information available to
16 the public, knowingly engages in any commerce-re-
17 lated or investment-related boycott, divestment, or
18 sanctions activity targeting Israel;

19 (2) a successor entity or subunit of an entity
20 described in paragraph (1); or

21 (3) an entity that owns or controls, is owned or
22 controlled by, or is under common ownership or con-
23 trol with, an entity described in paragraph (1).

24 (b) REQUIREMENTS.—A State or local government
25 that seeks to adopt or enforce a measure under subsection
26 (a) shall meet the following requirements:

1 (1) NOTICE.—The State or local government
2 shall provide written notice to each entity to which
3 a measure under subsection (a) is to be applied.

4 (2) TIMING.—The measure shall apply to an
5 entity not earlier than the date that is 90 days after
6 the date on which written notice is provided to the
7 entity under paragraph (1).

8 (3) OPPORTUNITY FOR COMMENT.—The State
9 or local government shall provide an opportunity to
10 comment in writing to each entity to which a meas-
11 ure is to be applied. If the entity demonstrates to
12 the State or local government that the entity has not
13 engaged in any commerce-related or investment-re-
14 lated boycott, divestment, or sanctions activity tar-
15 geting Israel, the measure shall not apply to the en-
16 tity.

17 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
18 NEOUS TARGETING.—It is the sense of Congress
19 that a State or local government should not adopt
20 a measure under subsection (a) with respect to an
21 entity unless the State or local government has
22 made every effort to avoid erroneously targeting the
23 entity and has verified that the entity engages in
24 any commerce-related or investment-related boycott,
25 divestment, or sanctions activity targeting Israel.

1 (c) NOTICE TO DEPARTMENT OF JUSTICE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), not later than 30 days after adopting a
4 measure described in subsection (a), the State or
5 local government that adopted the measure shall
6 submit written notice to the Attorney General de-
7 scribing the measure.

8 (2) EXISTING MEASURES.—With respect to
9 measures described in subsection (a) adopted before
10 the date of the enactment of this Act, the State or
11 local government that adopted the measure shall
12 submit written notice to the Attorney General de-
13 scribing the measure not later than 30 days after
14 the date of the enactment of this Act.

15 (d) NONPREEMPTION.—A measure of a State or local
16 government that is consistent with subsection (a) is not
17 preempted by any Federal law.

18 (e) EFFECTIVE DATE.—This section applies to any
19 measure adopted by a State or local government before,
20 on, or after the date of the enactment of this Act.

21 (f) PRIOR ENACTED MEASURES.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of this section or any other provision of
24 law, and except as provided in paragraph (2), a
25 State or local government may enforce a measure

described in subsection (a) adopted by the State or local government before the date of the enactment of this Act without regard to the requirements of subsection (b).

(2) APPLICATION OF NOTICE AND OPPORTUNITY FOR COMMENT.—A measure described in paragraph (1) shall be subject to the requirements of subsection (b) on and after the date that is 2 years after the date of the enactment of this Act.

(g) DEFINITIONS AND RULES OF CONSTRUCTION.—

(1) DEFINITIONS.—In this section:

(A) ASSETS.—

(i) IN GENERAL.—Except as provided in clause (ii), the term “assets” means any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

(ii) EXCEPTION.—The term “assets” does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(B) BOYCOTT, DIVESTMENT, OR SANCTIONS ACTIVITY TARGETING ISRAEL.—The term “boycott, divestment, or sanctions activity tar-

1 “getting Israel” means any activity that is in-
2 tended to penalize, inflict economic harm on, or
3 otherwise limit commercial relations with Israel
4 or persons doing business as described in sec-
5 tion 102(b)(20)(B) of the Bipartisan Congres-
6 sional Trade Priorities and Accountability Act
7 of 2015 (19 U.S.C. 4201(b)(20)(B)).

8 (C) ENTITY.—The term “entity” in-
9 cludes—

10 (i) any corporation, company, business
11 association, partnership, or trust; and

12 (ii) any governmental entity or instru-
13 mentality of a government, including a
14 multilateral development institution (as de-
15 fined in section 1701(c)(3) of the Inter-
16 national Financial Institutions Act (22
17 U.S.C. 262r(c)(3))).

18 (D) INVESTMENT.—The term “invest-
19 ment” includes—

20 (i) a commitment or contribution of
21 funds or property;

22 (ii) a loan or other extension of credit;
23 and

24 (iii) the entry into or renewal of a
25 contract for goods or services.

1 (E) STATE.—The term “State” means
2 each of the several States, the District of Co-
3 lumbia, the Commonwealth of Puerto Rico, the
4 Commonwealth of the Northern Mariana Is-
5 lands, American Samoa, Guam, the United
6 States Virgin Islands, and any other territory
7 or possession of the United States.

8 (F) STATE OR LOCAL GOVERNMENT.—The
9 term “State or local government” includes—

10 (i) any State and any agency or in-
11 strumentality thereof;

12 (ii) any local government within a
13 State and any agency or instrumentality
14 thereof; and

15 (iii) any other governmental instru-
16 mentality of a State or locality.

17 (2) RULES OF CONSTRUCTION.—

18 (A) AUTHORITY OF STATES.—Nothing in
19 this section shall be construed to abridge the
20 authority of a State to issue and enforce rules
21 governing the safety, soundness, and solvency of
22 a financial institution subject to its jurisdiction
23 or the business of insurance pursuant to the
24 Act of March 9, 1945 (59 Stat. 33, chapter 20;

1 15 U.S.C. 1011 et seq.) (commonly known as
2 the “McCarran-Ferguson Act”).

3 (B) POLICY OF THE UNITED STATES.—

4 Nothing in this section shall be construed to
5 alter the established policy of the United States
6 concerning final status issues associated with
7 the Arab-Israeli conflict, including border delin-
8 eation, that can only be resolved through direct
9 negotiations between the parties.

10 (C) SCOPE OF NONPREEMPTION.—Nothing

11 in this section shall be construed as establishing
12 a basis for preempting or implying preemption
13 of State measures relating to actions to boycott,
14 divest from, or sanction Israel that are outside
15 the scope of subsection (a).

16 **SEC. 3. SAFE HARBOR FOR CHANGES OF INVESTMENT**
17 **POLICIES BY ASSET MANAGERS.**

18 Section 13(c)(1) of the Investment Company Act of
19 1940 (15 U.S.C. 80a–13(c)(1)) is amended—

20 (1) in subparagraph (A), by striking “; or” and
21 inserting a semicolon;

22 (2) in subparagraph (B), by striking the period
23 at the end and inserting “; or”; and

24 (3) by adding at the end the following:

1 “(C) engage in any boycott, divestment, or
2 sanctions activity targeting Israel described in
3 section 2 of the Combating BDS Act of 2017.”.

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