

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 513

5 By: Senator Hester  
6 By: Representative Dotson  
7

## For An Act To Be Entitled

9 AN ACT TO PROHIBIT PUBLIC ENTITIES FROM CONTRACTING  
10 WITH AND INVESTING IN COMPANIES THAT BOYCOTT ISRAEL;  
11 AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

14 TO PROHIBIT PUBLIC ENTITIES FROM  
15 CONTRACTING WITH AND INVESTING IN  
16 COMPANIES THAT BOYCOTT ISRAEL.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code Title 25, Chapter 1, is amended to add an  
23 additional subchapter to read as follows:

### Subchapter 5 – Prohibited Contracts and Investments

#### 25-1-501. Legislative findings.

#### The General Assembly finds that:

28 (1) Boycotts and related tactics have become a tool of economic  
29 warfare that threaten the sovereignty and security of key allies and trade  
30 partners of the United States;

31 (2) The State of Israel is the most prominent target of such  
32 boycott activity, which began with but has not been limited to the Arab  
33 League Boycott adopted in 1945, even before Israel's declaration of  
34 independence as the reestablished national state of the Jewish people;

35 (3) Companies that refuse to deal with United States trade  
36 partners such as Israel, or entities that do business with or in such



1 countries, make discriminatory decisions on the basis of national origin that  
2 impair those companies' commercial soundness;

3 (4) It is the public policy of the United States, as enshrined  
4 in several federal acts, to oppose boycotts against Israel, and Congress has  
5 concluded as a matter of national trade policy that cooperation with Israel  
6 materially benefits United States companies and improves American  
7 competitiveness;

8 (5) Israel in particular is known for its dynamic and innovative  
9 approach in many business sectors, and therefore a company's decision to  
10 discriminate against Israel, Israeli entities, or entities that do business  
11 with or in Israel, is an unsound business practice, making the company an  
12 unduly risky contracting partner or vehicle for investment; and

13 (6) Arkansas seeks to act to implement Congress's announced  
14 policy of "examining a company's promotion or compliance with unsanctioned  
15 boycotts, divestment from, or sanctions against Israel as part of its  
16 consideration in awarding grants and contracts and supports the divestment of  
17 state assets from companies that support or promote actions to boycott,  
18 divest from, or sanction Israel".

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20 25-1-502. Definitions.

21 As used in this subchapter:

22 (1)(A)(i) "Boycott Israel" and "boycott of Israel" means  
23 engaging in refusals to deal, terminating business activities, or other  
24 actions that are intended to limit commercial relations with Israel, or  
25 persons or entities doing business in Israel or in Israeli-controlled  
26 territories, in a discriminatory manner.

27 (ii) "Boycott" does not include those boycotts to  
28 which 50 App. U.S.C. § 2407(c) applies.

29 (B) A company's statement that it is participating in  
30 boycotts of Israel, or that it has taken the boycott action at the request,  
31 in compliance with, or in furtherance of calls for a boycott of Israel, can  
32 be considered by the Arkansas Development Finance Authority as a type of  
33 evidence, among others, that a company is participating in a boycott of  
34 Israel;

35 (2) "Company" means a sole proprietorship, organization,  
36 association, corporation, partnership, joint venture, limited partnership,

1 limited liability partnership, limited liability company, or other entity or  
2 business association, including all wholly owned subsidiaries, majority-owned  
3 subsidiaries, parent companies, or affiliates of those entities or business  
4 associations;

5 (3) "Direct holdings" in reference to a company means all  
6 publicly traded securities of that company that are held directly by the  
7 retirement system in an actively managed account or fund in which the  
8 retirement system owns all shares or interests;

9 (4) "Indirect holdings" in reference to a company means all  
10 securities of that company that are held in an account or fund, such as a  
11 mutual fund, managed by one (1) or more persons not employed by the  
12 retirement system, in which the retirement system owns shares or interests  
13 together with other investors not subject to the provisions of this act or  
14 that are held in an index fund;

15 (5) "Public entity" means the State of Arkansas, or a political  
16 subdivision of the state, including all boards, commissions, agencies,  
17 institutions, authorities, and bodies politic and corporate of the state,  
18 created by or in accordance with state law or regulations, and does include  
19 colleges, universities, public employee retirement systems, and institutions  
20 in Arkansas as well as all units of local and municipal government;

21 (6) "Restricted companies" means companies that boycott Israel;  
22 and

23 (7) "Retirement system" means a public retirement system in  
24 Arkansas.

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26 25-1-503. Prohibition on contracting with entities that boycott  
27 Israel.

28 (a) Except as provided under subsection (b) of this section, a public  
29 entity shall not:

30 (1) Enter into a contract with a company to acquire or dispose  
31 of services, supplies, information technology, or construction unless the  
32 contract includes a written certification that the person or company is not  
33 currently engaged in, and agrees for the duration of the contract not to  
34 engage in, a boycott of Israel; or

35 (2) Engage in boycotts of Israel.

36 (b) This section does not apply to:

1           (1) A company that fails to meet the requirements under  
2 subdivision (a)(1) of this section but offers to provide the goods or  
3 services for at least twenty percent (20%) less than the lowest certifying  
4 business; or

5           (2) Contracts with a total potential value of less than one  
6 thousand dollars (\$1,000).

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8           25-1-504. Prohibition on direct investments in companies that boycott  
9 Israel.

10          (a)(1) The Arkansas Development Finance Authority shall identify all  
11 companies that boycott Israel and assemble those identified companies into a  
12 list of restricted companies to be distributed to each retirement system.

13          (2) The efforts of the Arkansas Development Finance Authority to  
14 identify companies that boycott Israel may include without limitation, the  
15 following, as appropriate:

16                 (A) Reviewing and relying on publicly available  
17 information;

18                 (B) Reviewing and relying on information provided by  
19 nonprofit organizations, research firms, and government entities; and

20                 (C) Retaining an independent research firm.

21          (3)(A) The Arkansas Development Finance Authority shall review  
22 the list of restricted companies under subdivision (a)(1) of this section on  
23 an annual basis and distribute any updates to the list of restricted  
24 companies to the retirement systems.

25                 (B) For each company newly identified and added to the  
26 list of restricted companies, the Arkansas Development Finance Authority  
27 shall send a written notice informing the company of its status and that it  
28 may become subject to divestment by the retirement systems.

29                 (C) If, following the engagement of the Arkansas  
30 Development Finance Authority under subdivision (a)(3)(B) of this section  
31 with a restricted company, that company ceases activity that designates it as  
32 a restricted company and submits a written certification to the Arkansas  
33 Development Finance Authority that it shall not reengage in such activity for  
34 the duration of any investment by the retirement systems, the company shall  
35 be removed from the restricted companies list.

36                 (D) The Arkansas Development Finance Authority shall keep

1 and maintain the list of restricted companies and all written certifications  
2 from restricted and previously restricted companies.

3 (b)(1) The retirement systems shall adhere to the following procedures  
4 for companies on the list of restricted companies:

5 (A) Each retirement system shall identify the companies on  
6 the list of restricted companies that the retirement system owns direct  
7 holdings and indirect holdings;

8 (B) The retirement system shall instruct its investment  
9 advisors to sell, redeem, divest, or withdraw all direct holdings of  
10 restricted companies from the retirement system's assets under management in  
11 an orderly and fiduciarily responsible manner within three (3) months after  
12 the appearance of the company on the list of restricted companies; and

13 (C) Upon request from the Arkansas Development Finance  
14 Authority, and at least annually by January 5 of each year, each retirement  
15 system shall provide the Arkansas Development Finance Authority with  
16 information regarding investments sold, redeemed, divested, or withdrawn in  
17 compliance under this section.

18 (2) The retirement system shall not acquire securities of  
19 restricted companies as part of direct holdings.

20 (c)(1) Subsection (b) of this section does not apply to the retirement  
21 system's indirect holdings or private market funds.

22 (2) The Arkansas Development Finance Authority shall submit  
23 letters to the managers of those investment funds identifying restricted  
24 companies and requesting that those investment funds consider removing the  
25 investments in the restricted companies from the funds.

26 (d) The costs associated with the activities of the Arkansas  
27 Development Finance Authority shall be borne equally by the boards of each  
28 retirement system.

29 (e) With respect to actions taken in compliance with this section,  
30 including all good-faith determinations regarding companies as required under  
31 this section, the retirement system and the Arkansas Development Finance  
32 Authority are exempt from any conflicting statutory or common law  
33 obligations, including any fiduciary duties and any obligations with respect  
34 to choice of asset managers, investment funds, or investments for the  
35 retirement systems' portfolios.

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