To authorize State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activities targeting Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. KIRK (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To authorize State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activities targeting Israel, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Combating BDS Act of 2016”.

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SEC. 2. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM ENTITIES THAT ENGAGE IN CERTAIN BOYCOTT, DIVESTMENT, OR SANCTIONS ACTIVITIES TARGETING ISRAEL.

(a) Authority To Divest.—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the notice requirement of subsection (b) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in—

(1) an entity that the State or local government determines, using credible information available to the public, engages in a commerce-related or investment-related boycott, divestment, or sanctions activity targeting Israel;

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

(3) an entity that owns or controls, is owned or controlled by, or is under common ownership or control with, an entity described in paragraph (1).

(b) Notice Requirement.—

(1) In General.—A State or local government shall provide written notice to each entity to which a measure taken by the State or local government under subsection (a) is to be applied before applying the measure with respect to the entity.
(2) Rule of Construction.—Paragraph (1) shall not be construed to prohibit a State or local government from taking additional steps to provide due process with respect to an entity to which a measure is to be applied under subsection (a).

(c) Nonpreemption.—A measure of a State or local government authorized under subsection (a) is not preempted by any Federal law.

(d) Effective Date.—This section applies to any measure adopted by a State or local government before, on, or after the date of the enactment of this Act.

(e) Rule of Construction.—Nothing in this section shall be construed to abridge the authority of a State to issue and enforce rules governing the safety, soundness, and solvency of a financial institution subject to its jurisdiction or the business of insurance pursuant to the Act of March 9, 1945 (59 Stat. 33, chapter 20; 15 U.S.C. 1011 et seq.) (commonly known as the “McCarran-Ferguson Act”).

(f) Definitions.—In this section:

(1) Assets.—

(A) In general.—Except as provided in subparagraph (B), the term “assets” means any pension, retirement, annuity, or endowment
fund, or similar instrument, that is controlled by a State or local government.

(B) 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.).

(2) BOYCOTT, DIVESTMENT, OR SANCTIONS ACTIVITY TARGETING ISRAEL.—The term “boycott, divestment, or sanctions activity targeting Israel” means any activity that is intended to penalize, inflict economic harm on, or otherwise limit commercial relations with Israel or persons doing business in Israel or in Israeli-controlled territories for purposes of coercing political action by, or imposing policy positions on, the Government of Israel.

(3) ENTITY.—The term “entity” includes—

(A) any corporation, company, business association, partnership, or trust; and

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))).

(4) INVESTMENT.—The term “investment” includes—
(A) a commitment or contribution of funds
or property;

(B) a loan or other extension of credit; and

(C) the entry into or renewal of a contract
for goods or services.

(5) STATE.—The term “State” means each of
the several States, the District of Columbia, the
Commonwealth of Puerto Rico, the Commonwealth
of the Northern Mariana Islands, American Samoa,
Guam, the United States Virgin Islands, and any
other territory or possession of the United States.

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

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State
and any agency or instrumentality thereof; and

(C) any other governmental instrumentality of a State or locality.

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

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

(1) in subparagraph (A), by striking “; or” and
inserting a semicolon;
(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(C) engage in any boycott, divestment, or sanctions activity targeting Israel described in section 2 of the Combating BDS Act of 2016.”.