

114TH CONGRESS
2D SESSION

S. _____

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.

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 2016”.

1 **SEC. 2. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
2 **TO DIVEST FROM ENTITIES THAT ENGAGE IN**
3 **CERTAIN BOYCOTT, DIVESTMENT, OR SANC-**
4 **TIONS ACTIVITIES TARGETING ISRAEL.**

5 (a) **AUTHORITY TO DIVEST.**—Notwithstanding any
6 other provision of law, a State or local government may
7 adopt and enforce measures that meet the notice require-
8 ment of subsection (b) to divest the assets of the State
9 or local government from, or prohibit investment of the
10 assets of the State or local government in—

11 (1) an entity that the State or local government
12 determines, using credible information available to
13 the public, engages in a commerce-related or invest-
14 ment-related boycott, divestment, or sanctions activ-
15 ity targeting Israel;

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

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

21 (b) **NOTICE REQUIREMENT.**—

22 (1) **IN GENERAL.**—A State or local government
23 shall provide written notice to each entity to which
24 a measure taken by the State or local government
25 under subsection (a) is to be applied before applying
26 the measure with respect to the entity.

1 (2) RULE OF CONSTRUCTION.—Paragraph (1)
2 shall not be construed to prohibit a State or local
3 government from taking additional steps to provide
4 due process with respect to an entity to which a
5 measure is to be applied under subsection (a).

6 (c) NONPREEMPTION.—A measure of a State or local
7 government authorized under subsection (a) is not pre-
8 empted by any Federal law.

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

12 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to abridge the authority of a State
14 to issue and enforce rules governing the safety, soundness,
15 and solvency of a financial institution subject to its juris-
16 diction or the business of insurance pursuant to the Act
17 of March 9, 1945 (59 Stat. 33, chapter 20; 15 U.S.C.
18 1011 et seq.) (commonly known as the “McCarran-Fer-
19 guson Act”).

20 (f) DEFINITIONS.—In this section:

21 (1) ASSETS.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term “assets” means
24 any pension, retirement, annuity, or endowment

1 fund, or similar instrument, that is controlled
2 by a State or local government.

3 (B) EXCEPTION.—The term “assets” does
4 not include employee benefit plans covered by
5 title I of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1001 et seq.).

7 (2) BOYCOTT, DIVESTMENT, OR SANCTIONS AC-
8 TIVITY TARGETING ISRAEL.—The term “boycott, di-
9 vestment, or sanctions activity targeting Israel”
10 means any activity that is intended to penalize, in-
11 flict economic harm on, or otherwise limit commer-
12 cial relations with Israel or persons doing business
13 in Israel or in Israeli-controlled territories for pur-
14 poses of coercing political action by, or imposing pol-
15 icy positions on, the Government of Israel.

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

17 (A) any corporation, company, business as-
18 sociation, partnership, or trust; and

19 (B) any governmental entity or instrumen-
20 tality of a government, including a multilateral
21 development institution (as defined in section
22 1701(c)(3) of the International Financial Insti-
23 tutions Act (22 U.S.C. 262r(e)(3))).

24 (4) INVESTMENT.—The term “investment” in-
25 cludes—

1 (A) a commitment or contribution of funds
2 or property;

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

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

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

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

14 (A) any State and any agency or instru-
15 mentality thereof;

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

18 (C) any other governmental instrumen-
19 tality of a State or locality.

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

22 Section 13(c)(1) of the Investment Company Act of
23 1940 (15 U.S.C. 80a–13(c)(1)) is amended—

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

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

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

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