115TH CONGRESS
1ST SESSION

S. 170

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 activities targeting Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. Rubio (for himself, Mr. Manchin, Mr. Crapo, Mr. Nelson, Mr. Cornyn, Mr. Cardin, Mr. Graham, Mr. Menendez, Mr. Hatch, Mr. Wyden, Mr. Cotton, Mr. Blumenthal, Mr. Portman, Mr. Peters, Mr. Cruz, Ms. Stabenow, Ms. Murkowski, Mr. Bennet, and Mr. Blunt) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

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 activities targeting Israel, and for other purposes.

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

SECTION 1. SHORT TITLE.

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

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

(a) State and Local Measures.—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (b) to divest the assets of the State or local government from, prohibit investment of the assets of the State or local government in, or restrict contracting by the State or local government for goods and services with—

(1) an entity that the State or local government determines, using credible information available to the public, knowingly 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) Requirements.—A State or local government that seeks to adopt or enforce a measure under subsection (a) shall meet the following requirements:
(1) NOTICE.—The State or local government shall provide written notice to each entity to which a measure under subsection (a) is to be applied.

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

(3) OPPORTUNITY FOR COMMENT.—The State or local government shall provide an opportunity to comment in writing to each entity to which a measure is to be applied. If the entity demonstrates to the State or local government that the entity has not engaged in a commerce-related or investment-related boycott, divestment, or sanctions activity targeting Israel, the measure shall not apply to the entity.

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

(e) NOTICE TO DEPARTMENT OF JUSTICE.—
(1) IN GENERAL.—Except as provided in paragraph (2), not later than 30 days after adopting a measure described in subsection (a), the State or local government that adopted the measure shall submit written notice to the Attorney General describing the measure.

(2) EXISTING MEASURES.—With respect to measures described in subsection (a) adopted before the date of the enactment of this Act, the State or local government that adopted the measure shall submit written notice to the Attorney General describing the measure not later than 30 days after the date of the enactment of this Act.

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

(e) 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.

(f) PRIOR ENACTED MEASURES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section or any other provision of law, and except as provided in paragraph (2), a 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) Rules of Construction.—

(1) Authority of States.—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”).

(2) Policy of the United States.—Nothing in this section shall be construed to alter the established policy of the United States concerning final status issues associated with the Arab-Israeli conflict, including border delineation, that can only be resolved through direct negotiations between the parties.
(3) **Scope of Nonpreemption.**—Nothing in this section shall be construed as establishing a basis for preemption or implying preemption of State measures relating to boycott, divestment, or sanctions activity targeting Israel that are outside the scope of subsection (a).

(h) **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 pur-
poses 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 2017.”.