

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 16-0038.01 Nicole Myers x4326

HOUSE BILL 16-1284

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House Committees
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A BILL FOR AN ACT

101 **CONCERNING DIVESTMENT BY THE PUBLIC EMPLOYEES' RETIREMENT**
102 **ASSOCIATION FROM COMPANIES THAT HAVE ECONOMIC**
103 **PROHIBITIONS AGAINST THE STATE OF ISRAEL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires the public employees' retirement association (PERA) to make its best efforts to identify all companies that have economic prohibitions against Israel (restricted company), to assemble those identified companies into a list of restricted companies by January 1, 2017, and to review the list of restricted companies on a biannual basis.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
February 26, 2016

HOUSE
Amended 2nd Reading
February 25, 2016

For each company on the list of restricted companies, the bill requires PERA to send a written notice informing the company of its status and that it may become subject to divestment by PERA. If a company ceases activity that designates it as a restricted company, PERA will remove the company from the list.

If a company remains a restricted company 180 days following PERA's first engagement with the company, PERA is required to divest all direct holdings of the restricted company from its assets. If on the date of divestment PERA does not own direct holdings in a company on the list of restricted companies, PERA is prohibited from acquiring direct holdings in any company on the list of restricted companies during the time that it remains on the list.

Upon request, and at least annually, PERA is required to make available on its website information regarding investments sold, redeemed, divested, or withdrawn in compliance with the bill.

The bill specifies the circumstances under which PERA may cease divesting from companies, based on the value of the investments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 2 to article
3 54.8 of title 24 as follows:

4 PART 2

5 DIVESTMENT FROM COMPANIES THAT

6 HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL

7

8 **24-54.8-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "COMPANY" MEANS ANY ENTITY THAT HAS PUBLICLY TRADED
11 SECURITIES AND IS AN ORGANIZATION, ASSOCIATION, CORPORATION,
12 PARTNERSHIP, JOINT VENTURE, LIMITED PARTNERSHIP, LIMITED LIABILITY
13 PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY OR
14 BUSINESS ASSOCIATION, INCLUDING ALL WHOLLY OWNED SUBSIDIARIES,
15 MAJORITY-OWNED SUBSIDIARIES, OR PARENT COMPANIES OF SUCH
16 ENTITIES OR BUSINESS ASSOCIATIONS, THAT EXISTS FOR PROFIT-MAKING

1 PURPOSES.

2 (2) "DIRECT HOLDINGS" MEANS ALL PUBLICLY TRADED SECURITIES
3 OF A COMPANY HELD DIRECTLY BY THE PUBLIC EMPLOYEES' RETIREMENT
4 ASSOCIATION OR IN AN ACCOUNT OR FUND IN WHICH THE PUBLIC
5 EMPLOYEES' RETIREMENT ASSOCIATION OWNS ALL SHARES OR INTERESTS.

6 (3) "ECONOMIC PROHIBITIONS AGAINST ISRAEL" MEANS ENGAGING
7 IN ACTIONS THAT ARE POLITICALLY MOTIVATED AND ARE INTENDED TO
8 PENALIZE, INFLICT ECONOMIC HARM ON, OR OTHERWISE LIMIT
9 COMMERCIAL RELATIONS WITH THE STATE OF ISRAEL. ANY ACTIONS
10 PERMITTED UNDER APPLICABLE FEDERAL ANTI-BOYCOTT LAWS SHALL NOT
11 BE CONSIDERED ECONOMIC PROHIBITIONS AGAINST ISRAEL.

12 (4) "PUBLICLY TRADED SECURITIES" MEANS OWNERSHIP INTEREST
13 OR DEBT INSTRUMENTS THAT ARE CURRENTLY TRADED ON A SECURITIES
14 EXCHANGE THAT IS OFFICIALLY RECOGNIZED, SANCTIONED, OR
15 SUPERVISED BY A GOVERNMENTAL AUTHORITY OF THE COUNTRY IN WHICH
16 THE MARKET IS LOCATED OR CURRENTLY TRADED THROUGH AN
17 OVER-THE-COUNTER MARKET THAT IS REFLECTED BY THE EXISTENCE OF
18 AN INTERDEALER QUOTATION SYSTEM.

19 (5) "RESTRICTED COMPANIES" MEANS COMPANIES THAT HAVE
20 ECONOMIC PROHIBITIONS AGAINST ISRAEL.

21 **24-54.8-202. Transactions prohibited by the public employees'**
22 **retirement association - companies that have economic prohibitions**
23 **against Israel - restricted companies list.** (1) BY JANUARY 1, 2017, THE
24 PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED IN ARTICLE 51 OF
25 THIS TITLE SHALL MAKE ITS BEST EFFORTS TO IDENTIFY ALL RESTRICTED
26 COMPANIES IN WHICH THE ASSOCIATION HAS DIRECT HOLDINGS OR COULD
27 POSSIBLY HAVE SUCH HOLDINGS IN THE FUTURE AND ASSEMBLE THOSE

1 COMPANIES INTO A LIST OF RESTRICTED COMPANIES. THESE EFFORTS
2 SHALL INCLUDE THE FOLLOWING, AS APPROPRIATE IN THE JUDGMENT OF
3 THE ASSOCIATION:

4 (a) REVIEWING AND RELYING ON PUBLICLY AVAILABLE
5 INFORMATION REGARDING COMPANIES THAT HAVE ECONOMIC
6 PROHIBITIONS AGAINST ISRAEL, INCLUDING INFORMATION PROVIDED BY
7 NONPROFIT ORGANIZATIONS, RESEARCH FIRMS, AND GOVERNMENT
8 ENTITIES;

9 (b) CONTACTING ASSET MANAGERS CONTRACTED BY THE
10 ASSOCIATION THAT INVEST IN COMPANIES THAT HAVE ECONOMIC
11 PROHIBITIONS AGAINST ISRAEL;

12 (c) CONTACTING OTHER INSTITUTIONAL INVESTORS THAT HAVE
13 DIVESTED FROM OR ENGAGED WITH COMPANIES THAT HAVE ECONOMIC
14 PROHIBITIONS AGAINST ISRAEL; AND

15 (d) RETAINING AN INDEPENDENT RESEARCH FIRM OR
16 ORGANIZATION TO IDENTIFY COMPANIES THAT HAVE ECONOMIC
17 PROHIBITIONS AGAINST ISRAEL. IT SHALL BE REASONABLE AND SUFFICIENT
18 FOR THE ASSOCIATION TO RELY ON INFORMATION AND WORK PRODUCT
19 OBTAINED FROM SUCH RESEARCH FIRM OR ORGANIZATION; EXCEPT THAT
20 THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT
21 ASSOCIATION SHALL REVIEW AND APPROVE ANY COMPANIES IDENTIFIED
22 BY AN INDEPENDENT RESEARCH FIRM BEFORE INCLUDING SUCH COMPANIES
23 ON THE LIST OF RESTRICTED COMPANIES PURSUANT TO THIS SUBSECTION
24 (1).

25 (2) THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL
26 REVIEW THE LIST OF RESTRICTED COMPANIES ON A BIENNIAL BASIS BASED
27 ON EVOLVING INFORMATION FROM, AMONG OTHER SOURCES, THOSE LISTED

1 IN SUBSECTION (1) OF THIS SECTION.

2 (3) THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL
3 ADHERE TO THE FOLLOWING PROCEDURES FOR COMPANIES ON THE LIST OF
4 RESTRICTED COMPANIES:

5 (a) FOR EACH COMPANY NEWLY IDENTIFIED IN SUBSECTION (1) OF
6 THIS SECTION, THE ASSOCIATION SHALL SEND A WRITTEN NOTICE
7 INFORMING THE COMPANY OF ITS STATUS AND THAT IT MAY BECOME
8 SUBJECT TO DIVESTMENT BY THE ASSOCIATION.

9 (b) IF, FOLLOWING THE ASSOCIATION'S ENGAGEMENT PURSUANT TO
10 THIS SUBSECTION (3) WITH A RESTRICTED COMPANY, THAT COMPANY
11 CEASES ACTIVITY THAT DESIGNATES IT AS A COMPANY THAT HAS
12 ECONOMIC PROHIBITIONS AGAINST ISRAEL, THE COMPANY SHALL BE
13 REMOVED FROM THE LIST OF RESTRICTED COMPANIES AND THE PROVISIONS
14 OF THIS SECTION SHALL CEASE TO APPLY TO IT UNLESS IT RESUMES SUCH
15 ACTIVITIES.

16 (c) IF, AFTER ONE HUNDRED EIGHTY DAYS FOLLOWING THE
17 ASSOCIATION'S FIRST ENGAGEMENT WITH A COMPANY PURSUANT TO
18 PARAGRAPH (b) OF THIS SUBSECTION (3), THE COMPANY REMAINS A
19 RESTRICTED COMPANY, THE ASSOCIATION SHALL INSTRUCT ITS
20 INVESTMENT ADVISORS TO SELL, REDEEM, DIVEST, OR WITHDRAW ALL
21 DIRECT HOLDINGS OF RESTRICTED COMPANIES FROM THE ASSOCIATION'S
22 ASSETS UNDER MANAGEMENT IN AN ORDERLY AND FIDUCIARILY
23 RESPONSIBLE MANNER WITHIN TWELVE MONTHS AFTER THE COMPANY'S
24 MOST RECENT APPEARANCE ON THE LIST OF RESTRICTED COMPANIES.

25 (d) IF, UPON THE COMMENCEMENT OF THE DATE OF DIVESTMENT,
26 THE ASSOCIATION DOES NOT OWN DIRECT HOLDINGS IN A COMPANY ON THE
27 LIST OF RESTRICTED COMPANIES, THE ASSOCIATION IS PROHIBITED FROM

1 ACQUIRING DIRECT HOLDINGS IN ANY COMPANY ON THE LIST OF
2 RESTRICTED COMPANIES DURING THE TIME THAT IT REMAINS ON THE LIST.

3 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 2, THE
4 HOLDINGS IN THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION'S
5 DEFINED CONTRIBUTION PLANS ARE NOT SUBJECT TO THIS PART 2.

6 (5) UPON REQUEST, AND AT LEAST ANNUALLY, THE PUBLIC
7 EMPLOYEES' RETIREMENT ASSOCIATION SHALL MAKE AVAILABLE ON ITS
8 WEBSITE INFORMATION REGARDING INVESTMENTS SOLD, REDEEMED,
9 DIVESTED, OR WITHDRAWN IN COMPLIANCE WITH THIS SECTION.

10 (6) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
11 CONTRARY, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION MAY
12 CEASE DIVESTING FROM COMPANIES PURSUANT TO SUBSECTION (3) OF THIS
13 SECTION IF CLEAR AND CONVINCING EVIDENCE SHOWS THAT THE VALUE
14 FOR ALL ASSETS UNDER MANAGEMENT BY THE ASSOCIATION BECOMES
15 EQUAL TO OR LESS THAN NINETY-NINE AND ONE-HALF PERCENT, OR FIFTY
16 BASIS POINTS, OF THE HYPOTHETICAL VALUE OF ALL ASSETS UNDER
17 MANAGEMENT BY THE ASSOCIATION ASSUMING NO DIVESTMENT FOR ANY
18 COMPANY HAD OCCURRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

19 (7) WITH RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS
20 PART 2, INCLUDING ALL GOOD-FAITH DETERMINATIONS REGARDING
21 COMPANIES AS REQUIRED BY THIS SECTION, THE PUBLIC EMPLOYEES'
22 RETIREMENT ASSOCIATION IS EXEMPT FROM ANY CONFLICTING STATUTORY
23 OR COMMON LAW OBLIGATIONS, INCLUDING ANY FIDUCIARY DUTIES AND
24 ANY OBLIGATIONS WITH RESPECT TO CHOICE OF ASSET MANAGERS,
25 INVESTMENT FUNDS, OR INVESTMENTS FOR THE ASSOCIATION'S SECURITIES
26 PORTFOLIOS.

27 (8) WITH RESPECT TO ALL ACTIONS TAKEN IN GOOD FAITH

1 COMPLIANCE WITH THIS PART 2, THE PUBLIC EMPLOYEES' RETIREMENT
2 ASSOCIATION, ITS BOARD OF DIRECTORS, INDIVIDUAL BOARD MEMBERS,
3 AGENTS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, AND FIDUCIARIES
4 SHALL BE IMMUNE FROM ANY LIABILITY.

5 **24-54.8-203. Legislative intent.** BY ENACTING THIS PART 2, IT IS
6 NOT THE INTENT OF THE GENERAL ASSEMBLY TO CAUSE DIVESTITURE FROM
7 ANY COMPANY BASED IN THE UNITED STATES. THE PUBLIC EMPLOYEES'
8 RETIREMENT ASSOCIATION SHALL CONSIDER THIS INTENT WHEN
9 DEVELOPING OR REVIEWING THE LIST OF RESTRICTED COMPANIES.

10 **24-54.8-204. Severability.** IF ANY PROVISION OF THIS PART 2 OR
11 THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD
12 INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR
13 APPLICATIONS OF THIS PART 2 THAT CAN BE GIVEN EFFECT WITHOUT THE
14 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF
15 THIS PART 2 ARE DECLARED TO BE SEVERABLE.

16 **SECTION 2.** In Colorado Revised Statutes, 24-54.8-101, **amend**
17 (1) (r), (2), and (3) as follows:

18 **24-54.8-101. Legislative declaration - post-enactment review.**

19 (1) The general assembly hereby finds and declares that:

20 (r) It is the judgment of the general assembly that this ~~article~~ PART
21 1 should remain in effect only insofar as it continues to be consistent with,
22 and does not unduly interfere with, the foreign policy of the United States
23 as determined by the federal government.

24 (2) The general assembly further finds and declares that state and
25 local entities that are not subject to the requirements of this ~~article~~ PART
26 1 are encouraged to take voluntary action to divest from the companies
27 specified in this ~~article~~ PART 1.

1 (3) The general assembly further finds and declares that the
2 desired result of this ~~article~~ PART 1 for the purpose of post-enactment
3 review is that all public funds sell, redeem, divest, or withdraw
4 investments in scrutinized companies with active business operations in
5 Sudan and maintain communication with scrutinized companies with
6 inactive business operations in Sudan, in accordance with the provisions
7 of this ~~article~~ PART 1.

8 **SECTION 3.** In Colorado Revised Statutes, 24-54.8-102, **amend**
9 introductory portion and (16) (c) as follows:

10 **24-54.8-102. Definitions.** As used in this ~~article~~ PART 1, unless
11 the context otherwise requires:

12 (16) "Scrutinized company" means a company that meets any of
13 the following criteria:

14 (c) The company supplies military equipment within Sudan,
15 unless it clearly shows that the military equipment cannot be used to
16 facilitate offensive military actions in Sudan or the company implements
17 rigorous and verifiable safeguards to prevent use of that equipment by
18 forces actively participating in armed conflict, such as through post-sale
19 tracking of such equipment by the company, certification from a reputable
20 and objective third party that such equipment is not being used by a party
21 participating in armed conflict in Sudan, or sale of such equipment solely
22 to the regional government of southern Sudan or any internationally
23 recognized peacekeeping force or humanitarian organization.
24 Notwithstanding any provision of this ~~article~~ PART 1 to the contrary, a
25 social development company that is not complicit in the Darfur genocide
26 shall not be considered a scrutinized company.

27 **SECTION 4.** In Colorado Revised Statutes, 24-54.8-104, **amend**

1 (1) (b), (5), and (6) as follows:

2 **24-54.8-104. Required actions.** (1) **Engagement.** A public fund
3 shall adhere to the following procedures for companies on the scrutinized
4 companies list:

5 (b) For each company identified pursuant to paragraph (a) of this
6 subsection (1) with only inactive business operations, the public fund
7 shall send a written notice informing the company of this ~~article~~ PART 1
8 and encouraging it to continue to refrain from initiating active business
9 operations in Sudan until it is able to avoid scrutinized business
10 operations. The public fund shall continue such correspondence on a
11 semi-annual basis.

12 (5) **Excluded securities.** Notwithstanding any other provision of
13 this ~~article~~ PART 1, subsections (2) and (3) of this section do not apply to
14 indirect holdings in actively managed investment funds. A public fund
15 shall, however, submit letters to the managers of such investment funds
16 containing companies with scrutinized active business operations
17 requesting that they consider removing such companies from the fund or
18 create a similar actively managed fund with indirect holdings devoid of
19 such companies. If the manager creates a similar fund and if the public
20 fund determines investment in the similar fund is consistent with prudent
21 investment standards, the public fund shall replace all applicable
22 investments with investments in the similar fund in an expedited time. In
23 addition, notwithstanding any other provision of this ~~article~~ PART 1, for
24 passively managed indirect holdings, if the manager does not remove
25 such companies or create a similar fund consistent with prudent
26 investment standards by October 1, 2008, or nine months after the date
27 the public fund first requests the manager to act, whichever is later, then

1 the scrutinized companies with active business operations shall be
2 removed from the indirect passively managed assets of the public fund.

3 (6) **Defined contribution plans.** Notwithstanding any other
4 provision of this ~~article~~ PART 1, public funds, when discharging their
5 responsibility for operation of a defined contribution plan, shall engage
6 the manager of the investment offerings in such plans requesting that they
7 consider removing scrutinized companies from the investment offerings
8 or create an alternative investment offering devoid of scrutinized
9 companies. If the manager creates an alternative investment offering and
10 the offering is deemed consistent with prudent investor standards by the
11 public fund, the public fund shall consider including such investment
12 offering in the plan.

13 **SECTION 5.** In Colorado Revised Statutes, 24-54.8-106, **amend**
14 (1) introductory portion and (1) (c) as follows:

15 **24-54.8-106. Provisions for repeal.** (1) This ~~article~~ PART 1 is
16 repealed upon the occurrence of any one of the following:

17 (c) The congress or president of the United States, through
18 legislation or executive order, declares that mandatory divestment of the
19 type provided for in this ~~article~~ PART 1 interferes with the conduct of
20 United States foreign policy.

21 **SECTION 6. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly (August
24 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in
2 November 2016 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.