

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 417
Mar 20, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10204-MC-4

Short Title: Anti-Boycott Divestiture. (Public)

Sponsors: Representative Loftis.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TREASURER TO RESTRICT STATE CONTRACTS WITH
3 COMPANIES ENGAGED IN BOYCOTTS OF ENERGY COMPANIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 6G of Chapter 147 of the General Statutes reads as rewritten:

6 "Article 6G.

7 "Anti-Boycotting Divestments.

8 "Part 1. Divestment From Companies Boycotting Israel.

9 "**§ 147-86.80. Definitions.**

10 The following definitions apply in this ~~Article~~Part:

11 ...

12 "**§ 147-86.81. Prohibitions on State investment.**

13 ...

14 (b) Nothing in the policy or in this ~~Article~~Part shall require the North Carolina
15 Retirement Systems or the State Treasurer to take action unless it is determined by the State
16 Treasurer, in good faith, that the action is consistent with the fiduciary responsibilities of the
17 Retirement Systems and the State Treasurer.

18 ...

19 "Part 2. Divestment From Companies Engaged in Certain Boycotts of Energy Companies.

20 "**§ 147-86.87. Divestment from companies engaged in improper boycotts.**

21 (a) Title. – This Part may be cited as the "Abusive Boycott Divestment Act of 2023."

22 (b) Definitions. – The following definitions apply in this Part:

23 (1) Boycott energy company or boycott of an energy company. – Without an
24 ordinary business purpose, the refusal to deal with a company, termination of
25 business activities with a company, or another action intended to penalize,
26 inflict economic harm on, or limit commercial relations with a company
27 because the company does one or more of the following:

28 a. Engages in the exploration, production, utilization, transportation,
29 sale, or manufacturing of fossil fuel-based energy, either with or
30 without a commitment or pledge to meet environmental standards
31 exceeding applicable federal law, State law, or both.

32 b. Does business with a company that engages in the exploration,
33 production, utilization, transportation, sale, or manufacturing of fossil
34 fuel-based energy.

35 (2) Company. – Any sole proprietorship, organization, association, corporation,
36 partnership, joint venture, limited liability partnership,



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- 1 limited liability company, or other entity or business association, including all
2 wholly owned subsidiaries, majority-owned subsidiaries, parent companies,
3 or affiliates of those entities or business associations.
- 4 (3) Restricted company. – A company included in the most recently updated
5 Restricted Company List.
- 6 (4) Restricted Company List. – The list the Treasurer is authorized to prepare,
7 maintain, and publish pursuant to subsection (c) of this section.
- 8 (5) State agency. – Any board, commission, department, executive department,
9 officer, institution, and any political subdivision of the State.
- 10 (c) Prohibition. – No more than 30 days after July 1, 2023, the State Treasurer shall adopt
11 a policy prohibiting the North Carolina Retirement Systems or the Department of the State
12 Treasurer from investing funds with or in a company engaging in a boycott of an energy
13 company. At a minimum, the policy shall provide:
- 14 (1) List of restricted companies. – Within 120 days of adoption of the policy, the
15 State Treasurer shall develop and make publicly available a list of companies
16 it determines engage in a boycott of an energy company. The State Treasurer
17 shall use any other state lists of restricted companies pursuant to similar laws
18 and any federal information or guidance on companies engaged in a boycott
19 of an energy company and any other credible information provided by
20 nonprofit organizations, research firms, governmental entities, and generally
21 public information. The State Treasurer shall make every effort to avoid
22 erroneously including a company on the list. The State Treasurer shall update
23 the list annually. Before finalizing an initial list or an updated list, the State
24 Treasurer must do all of the following before a company is included on the
25 list:
- 26 a. Provide 90 days' written notice of the State Treasurer's intent to
27 include the company on the list. The notice shall inform the company
28 that inclusion on the list would make the company ineligible for State
29 investment and may affect the company's ability to conduct other
30 business with the State and its subdivisions. The notice shall specify
31 that the company may be removed from the list if it ceases its boycott
32 of the energy company.
- 33 b. The State Treasurer shall provide a company with an opportunity to
34 comment in writing that it is not engaged in a boycott of the energy
35 company. If the company demonstrates to the State Treasurer that the
36 company is not engaged in a boycott of an energy company, the
37 company shall not be included on the list.
- 38 (2) Investments prohibited. – Neither the North Carolina Retirement Systems nor
39 the State Treasurer may invest funds with or in a company that is identified
40 on a list created pursuant to subdivision (1) of this subsection as a company
41 engaging in a boycott of an energy company.
- 42 (3) Existing investments. – Any existing investment with or in a company that is
43 identified on a list created pursuant to subdivision (1) of this subsection as a
44 company engaging in a boycott of an energy company must be divested within
45 180 days of being placed on the list created pursuant to subdivision (1) of this
46 subsection.
- 47 (4) Fiduciary duties. – Nothing in the policy or in this Part shall require the North
48 Carolina Retirement Systems or the State Treasurer to take action unless it is
49 determined by the State Treasurer, in good faith, that the action is consistent
50 with the fiduciary responsibilities of the Retirement Systems and the State
51 Treasurer.

1 (5) Exceptions. – Notwithstanding the policy, an investment may be made in a
2 company engaged in a boycott of an energy company if (i) the company is
3 eligible to contract with the State under the exception in subsection (e) of this
4 section and (ii) the State Treasurer makes a good-faith determination, on a
5 case-by-case basis, that the investments are necessary to perform its functions.

6 (d) Contract Restrictions. – A company that is identified on a list created by the State
7 Treasurer pursuant to subsection (c) of this section as a company engaging in a boycott of an
8 energy company is ineligible to contract with the State or any political subdivision of the State.
9 Any contract entered into with a company that is ineligible to contract with the State or any
10 political subdivision of the State is void ab initio. Existing contracts with companies made
11 ineligible to contract with the State or any political subdivision of the State under this Part shall
12 be allowed to expire in accordance with the terms of the contract.

13 (e) Exceptions. – The following exceptions apply:

14 (1) Subsection (d) of this section does not apply to contracts valued at one
15 thousand dollars (\$1,000) or less.

16 (2) Notwithstanding any other provision of this Part, a company engaged in a
17 boycott of an energy company may contract with the State or a political
18 subdivision of the State, on a case-by-case basis, if the State agency or
19 political subdivision makes a good-faith determination that the commodities
20 or services are necessary to perform its functions and that, absent such an
21 exemption, the State agency would be unable to obtain the commodities or
22 services for which the contract is offered. The determination shall be entered
23 into the procurement record.

24 (f) Report. – The State Treasurer shall report to the Joint Legislative Commission on
25 Governmental Operations annually by October 1 on information regarding investments sold,
26 redeemed, divested, or withdrawn in compliance with this Part.

27 (g) Private Right. – This Part does not create or authorize a private right of action to
28 enforce the provisions of this Part. A company may challenge being included on the list
29 established in this Part using the procedures in Article 3 of Chapter 150B of the General Statutes,
30 except that no company may file a contested case more than once every 365 days and no
31 attorneys' fees may be awarded under G.S. 150B-33(b)(11).

32 (h) Immunities. – A State agency may (i) disqualify restricted companies from any
33 official selection process, including competitive bidding, (ii) may refuse to enter into a contract
34 with a restricted company based on its restricted company status, and (iii) require, as a term of
35 any contract, an agreement by the company not to engage in a boycott of an energy company for
36 the duration of the contract. With respect to actions taken in compliance with this Part, a State
37 agency is immune from liability."

38 **SECTION 2.** This act is effective when it becomes law.