

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2844**

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**Introduced by Assembly Member Bloom**

**(Principal coauthors: Assembly Members Levine, Medina, and Nazarian)**

(Principal coauthors: Senators Allen, Block, Glazer, Hertzberg, Jackson, and Wolk)

**(Coauthors: Assembly Members Campos, Dababneh, and Olsen)**

February 19, 2016

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An act to add Chapter 2.6 (commencing with Section 2100) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2844, as amended, Bloom. Public contracts: California Combating the Boycott, Divestment, and Sanctions of Israel Act of 2016.

Existing law governs the procurement process for contracts of specified public entities. Existing law prohibits a person that, at the time of bid or proposal for a new contract or renewal of an existing contract, engages in investment activities in Iran from bidding on, submitting a proposal for, or entering into, a contract with a public entity for goods or services of \$1,000,000 or more.

This bill, with certain exceptions, would prohibit a public entity, which includes state and local entities, from entering into a contract,

on or after January 1, 2017, with a company that is ~~participating in the boycott of Israel, as provided: *engaging in discriminatory business practices in furtherance of a boycott of any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation of Israel.*~~ The bill would require the Attorney General to develop, ~~or contract to develop, maintain, and post on its Internet Web site, a list of companies it determines are engaging in a boycott of Israel: *that are engaging in discriminatory business practices in furtherance of a boycott of any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation of Israel.*~~ The bill would prohibit a company that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on that list from bidding on, submitting a proposal for, or entering into or renewing a contract with a public entity to acquire or dispose of goods, services, information technology, or construction for \$10,000 or more. The bill would require a public entity to ~~require a company that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, the public entity with respect to a contract for goods or services for \$10,000 or more to certify, at the time the bid is submitted or the contract is renewed, that the company is not identified on the list. The bill would provide that if a public entity or the Department of General Services determines that a company has submitted a false certification, and the company fails to demonstrate to the local public entity or the Department of General Services that the company has ceased engaging in a boycott of Israel within 90 days after the determination of a false certification, the company would be subject to a civil penalty of \$250,000 or twice the amount of the contract for which the false certification was made, whichever is greater, termination of an existing contract with the awarding body at the option of the awarding body or the Department of General Services, and ineligibility to bid on a contract for a period of 3 years from the date of the determination that the company submitted the false certification. The bill would find and declare that these provisions of this bill are a matter of statewide concern due to the political nature of contracting with a company that is participating in the boycott of Israel, and therefore, these provisions apply to charter cities, charter counties, and a charter city and county and supersede any inconsistent charter provision. *notify any company that bids on or submits a proposal for a contract with the public entity for \$10,000 or more, that is determined to be engaging in discriminatory business practices in furtherance of a boycott of any*~~

*sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation of Israel, that the public entity is prohibited from contracting with the company and to request that the company take substantial action to cease its discriminatory business practices.*

By imposing additional duties with respect to local public contracting, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Combating the Boycott, Divestment, and Sanctions of  
3 Israel Act of 2016.

4 SEC. 2. The Legislature finds and declares the following:

5 (a) The United States and Israel have a unique bond based on  
6 their shared, enduring values, which are reflected in the virtues  
7 and principles of freedom and democracy, and have stood together  
8 as allies since Israel was first formed as a nation.

9 (b) California and Israel have established business partnerships  
10 and trade relations with each other, and those partnerships have  
11 helped enhance the agricultural, educational, energy, entertainment,  
12 health, medical, scientific, and water policies in California, Israel,  
13 and the United States.

14 (c) On March 5, 2014, as the culmination of an effort started as  
15 Assembly Bill 1032 of the 2009–10 Regular Session, the Governor  
16 of California and the Prime Minister of Israel signed a  
17 memorandum of understanding (MOU) for strategic partnerships  
18 for joint innovation, exchanges, and cooperation between California  
19 and Israel.

20 (d) In July 2015, the Legislature affirmed its support for the  
21 MOU by passing Senate Concurrent Resolution 25, noting that

1 participants in the MOU had already expanded cooperation between  
 2 Israel and California in areas such as alternative energy, agriculture,  
 3 business innovation, and academia, and declaring that collaboration  
 4 with Israel will foster peace and democracy in the Middle East.

5 (e) Boycotts of Israel by companies doing business in California  
 6 undermine the aforesaid express policy and purpose of encouraging  
 7 trade, business, and academic cooperation between California and  
 8 Israel. Therefore, it is in the best interests of the State of California  
 9 that it not contract with any company participating in a boycott of  
 10 Israel.

11 ~~(f) Notwithstanding any other law, including, but not limited~~  
 12 ~~to, Section 1100.7 of the Public Contract Code, the provisions of~~  
 13 ~~this measure address the political nature of contracting with a~~  
 14 ~~company that is participating in the boycott of Israel and the need~~  
 15 ~~for the government of this state to respond to the policies of Israel~~  
 16 ~~in a uniform fashion, a matter of statewide concern, and therefore,~~  
 17 ~~shall apply to charter cities, charter counties, and a charter city~~  
 18 ~~and county.~~

19 SEC. 3. Chapter 2.6 (commencing with Section 2100) is added  
 20 to Part 1 of Division 2 of the Public Contract Code, to read:

21

22 CHAPTER 2.6. CALIFORNIA COMBATING THE BOYCOTT,  
 23 DIVESTMENT, AND SANCTIONS OF ISRAEL ACT OF 2016  
 24

25 2100. (a) Notwithstanding any other law, ~~and except as~~  
 26 ~~provided in subdivision (d)~~, a public entity shall not enter into a  
 27 contract on or after January 1, 2017, to acquire or dispose of goods,  
 28 services, information technology, or for construction if the  
 29 contracting company is ~~participating in a boycott of Israel.~~  
 30 *engaging in discriminatory business practices in furtherance of a*  
 31 *boycott of any sovereign nation or peoples recognized by the*  
 32 *government of the United States, including, but not limited to, the*  
 33 *nation of Israel.*

34 (b) *A public entity shall notify any company that bids on or*  
 35 *submits a proposal for a contract with the public entity for ten*  
 36 *thousand dollars (\$10,000) or more, that is determined to be*  
 37 *engaging in discriminatory business practices, as described in*  
 38 *subdivision (a), that the public entity is prohibited from contracting*  
 39 *with the company, and permit the company to respond to the*  
 40 *notification. The public entity shall request that the company take*

1 *substantial action to cease its discriminatory business practices*  
2 *no later than 90 days from the date that the public entity notified*  
3 *the company under this subdivision. If the public entity determines*  
4 *that a company has taken substantial action to cease its*  
5 *discriminatory business practices before the expiration of the*  
6 *90-day period, that company shall not be subject to subdivision*

7 (a).

8 ~~(b)~~

9 (c) A company that, at the time of bid or proposal for a new  
10 contract or renewal of an existing contract, is identified on a list  
11 created pursuant to subdivision (e) as a company engaging in a  
12 ~~boycott of Israel~~ (d), is ineligible to, and shall not, bid on, submit  
13 a proposal for, or enter into or renew a contract with a public entity  
14 to acquire or dispose of goods, services, information technology,  
15 or construction for ten thousand dollars (\$10,000) or more.

16 ~~(e) (1) The Department of General Services shall, using~~  
17 ~~information available to the public contained in the report presented~~  
18 ~~to the Congress pursuant to Section 909 of the Federal Trade~~  
19 ~~Facilitation and Trade Enforcement Act of 2015, develop, or~~  
20 ~~contract to develop, a list of companies it determines are engaging~~  
21 ~~in a boycott of Israel.~~

22 ~~(2) The Department of General Services shall update the list~~  
23 ~~every 180 days.~~

24 ~~(3) Before finalizing an initial list pursuant to paragraph (1) or~~  
25 ~~an updated list pursuant to paragraph (2), the Department of~~  
26 ~~General Services shall do all of the following before a company~~  
27 ~~is included on the list:~~

28 (d) (1) *The Attorney General shall develop, maintain, and post*  
29 *on the Internet Web site of the Office of the Attorney General a*  
30 *list of companies that have engaged in discriminatory business*  
31 *practices in furtherance of a boycott of any sovereign nation or*  
32 *peoples recognized by the government of the United States,*  
33 *including, but not limited to, the nation of Israel.*

34 ~~(A) Provide~~

35 (2) (A) *The Attorney General shall provide 90 days' written*  
36 *notice of its intent to include the company on the list. The notice*  
37 *shall inform the company that inclusion on the list would make*  
38 *the company ineligible to bid on, submit a proposal for, or enter*  
39 *into or renew a contract for goods, services, information*  
40 *technology, or construction for ten thousand dollars (\$10,000) or*

1 more with a public entity. The notice shall specify that the  
2 company, if it ceases ~~engaging in a boycott of Israel~~ *the*  
3 *discriminatory business practice described in subdivision (a)* and  
4 is removed from the list, *it* may become eligible for a future  
5 contract, or contract renewal, for goods, services, information  
6 technology, or construction for ten thousand dollars (\$10,000) or  
7 more with a public entity.

8 (B) ~~The Department of General Services Attorney General~~ shall  
9 provide a company with an opportunity to comment in writing to  
10 ~~the Department of General Services Attorney General~~ that it is not  
11 ~~engaging in a boycott of Israel.~~ *discriminatory business practice*  
12 *described in subdivision (a)*. If the company demonstrates to the  
13 ~~Department of General Services Attorney General~~ that the company  
14 is not engaging in a ~~boycott of Israel~~, *discriminatory business*  
15 *practice described in subdivision (a)*, the company shall not be  
16 included on the list and shall be eligible to enter into or renew a  
17 contract for goods, services, information technology, or  
18 construction for ten thousand dollars (\$10,000) or more with a  
19 public entity, ~~unless the company is otherwise ineligible to bid on~~  
20 ~~a contract pursuant to subparagraph (C) of paragraph (2) of~~  
21 ~~subdivision (d).~~ *entity*.

22 (3) *If a company submits a comment in writing as authorized*  
23 *in subparagraph (B) of paragraph (2) and the Attorney General*  
24 *refuses to remove the company from the list, and the company*  
25 *continues to believe that it is not engaging in a discriminatory*  
26 *practice a described in subdivision (a), the company may seek*  
27 *appropriate relief in superior court.*

28 (4) ~~The Department of General Services~~ shall make every effort  
29 ~~to avoid erroneously including a company on the list.~~

30 (d) ~~(1) A public entity shall require a company that submits a~~  
31 ~~bid or proposal to, or otherwise proposes to enter into or renew a~~  
32 ~~contract with, the public entity with respect to a contract for goods~~  
33 ~~or services for ten thousand dollars (\$10,000) or more to certify,~~  
34 ~~at the time the bid is submitted or the contract is renewed, that the~~  
35 ~~company is not identified on a list created pursuant to subdivision~~  
36 ~~(e) as a company that is engaging in a boycott of Israel. A state~~  
37 ~~agency shall submit the certification information to the Department~~  
38 ~~of General Services.~~

39 (2) ~~If a public entity, or the Department of General Services in~~  
40 ~~the case of a state agency, determines, using credible information~~

1 available to the public and after providing 90 days' written notice  
2 and an opportunity to comment in writing to the company for it to  
3 demonstrate that it is not engaging in a boycott of Israel, that a  
4 company has submitted a false certification, and the company fails  
5 to demonstrate to the local public entity or the Department of  
6 General Services that the company has ceased engaging in a  
7 boycott of Israel within 90 days after the determination of a false  
8 certification, the company shall be subject to all of the following:

9 (A) Pursuant to an action under subdivision (c), a civil penalty  
10 in an amount that is equal to the greater of two hundred fifty  
11 thousand dollars (\$250,000) or twice the amount of the contract  
12 for which the false certification was made. Only one civil penalty  
13 may be imposed with respect to one or more certifications made  
14 to any public entity that are false as a result of a particular contract.

15 (B) Termination of an existing contract with the awarding body  
16 at the option of the awarding body or the Department of General  
17 Services.

18 (C) Ineligibility to bid on a contract for a period of three years  
19 from the date of the determination that the company submitted the  
20 false certification.

21 (e) (1) A local public entity, or the Department of General  
22 Services in the case of a state agency, shall report to the Attorney  
23 General the name of a company that the local public entity or the  
24 Department of General Services has determined has submitted a  
25 false certification under paragraph (2) of subdivision (d), together  
26 with its information as to the false certification, and the Attorney  
27 General shall determine whether to bring a civil action against the  
28 company to collect the penalty described in subparagraph (A) of  
29 paragraph (2) of subdivision (d).

30 (2) The awarding body of a local public entity may report to  
31 the city attorney, county counsel, or district attorney the name of  
32 a company that the awarding body determines has submitted a  
33 false certification under paragraph (2) of subdivision (d), together  
34 with its information as to the false certification, and the city  
35 attorney, county counsel, or district attorney may determine  
36 whether to bring a civil action against the company to collect the  
37 penalty described in subparagraph (A) of paragraph (2) of  
38 subdivision (d).

39 (3) If it is determined in an action under this subdivision that a  
40 company submitted a false certification, the company shall pay all

1 reasonable costs and fees incurred in a civil action, including costs  
2 incurred by the awarding body for investigations that led to the  
3 finding of the false certification and all reasonable costs and fees  
4 incurred by the Attorney General, city attorney, county counsel,  
5 or district attorney.

6 ~~(4) Only one civil action against a company to collect the penalty~~  
7 ~~described in subparagraph (A) of paragraph (2) of subdivision (d)~~  
8 ~~may be brought for a false certification on a contract.~~

9 ~~(5) A civil action to collect the penalty described in~~  
10 ~~subparagraph (A) of paragraph (2) of subdivision (d) must~~  
11 ~~commence within three years from the date the certification was~~  
12 ~~made.~~

13 ~~(f) An unsuccessful bidder, or any other company other than~~  
14 ~~the awarding body, shall have no right to protest the award of a~~  
15 ~~contractor contract renewal on the basis of a false certification.~~

16 ~~(g) This section does not create or authorize a private right of~~  
17 ~~action or enforcement of the penalties provided for in subparagraph~~  
18 ~~(A) of paragraph (2) of subdivision (d).~~

19 ~~(h)~~

20 ~~(e) For the purposes of this section, the following definitions~~  
21 ~~shall apply:~~

22 ~~(1) (A) “Boycott Israel” or “boycott of Israel” “Boycott” means~~  
23 ~~refusing to deal with, terminating business activities with, or taking~~  
24 ~~other actions that are intended to penalize, inflict economic harm,~~  
25 ~~or otherwise limit commercial relations with Israel or persons or~~  
26 ~~entities incorporated in Israel or doing business in Israel the~~  
27 ~~boycotted entity for reasons other than business, investment, or~~  
28 ~~commercial reasons. A statement by a company that it is~~  
29 ~~participating in a boycott of Israel, or that it has initiated a boycott~~  
30 ~~in response to a request for a boycott of Israel or in compliance~~  
31 ~~with, or in furtherance of, calls for a boycott of Israel, may be~~  
32 ~~considered by a public entity to be evidence that a company is~~  
33 ~~participating in a boycott of Israel.~~

34 ~~(B) “Boycott” does not include any of the following:~~

35 ~~(i) A decision based on business or economic reasons.~~

36 ~~(ii) Termination or prohibition of commercial activity within a~~  
37 ~~particular jurisdiction that is required by federal or state law.~~

38 ~~(2) “Company” means a sole proprietorship, organization,~~  
39 ~~association, corporation, partnership, joint venture, limited~~  
40 ~~partnership, limited liability partnership, limited liability company,~~

1 or other entity or business association, including all wholly owned  
2 subsidiaries, majority-owned subsidiaries, and parent companies,  
3 that exists for the purpose of making profit.

4 (3) *“Discriminatory business practices” means business*  
5 *arrangements that are prohibited by Sections 16721 and 16721.5*  
6 *of the Business and Professions Code.*

7 ~~(3) “Public~~

8 (4) *“Public entity” shall have the same meaning as defined in*  
9 *subdivision (a) of Section 5100.*

10 ~~(i)~~

11 (f) This section shall not apply to a contract if either of the  
12 following apply:

13 (1) The total value of the contract is less than ten thousand  
14 dollars (\$10,000).

15 (2) The public entity makes a formal, written determination that  
16 the goods, services, information technology, or other matters that  
17 are the subject of the contract are necessary for the public entity  
18 to perform its functions and that, absent this exemption, the public  
19 entity would be unable to obtain said goods, services, information  
20 technology, or other matters for which the contract is offered.

21 SEC. 4. If the Commission on State Mandates determines that  
22 this act contains costs mandated by the state, reimbursement to  
23 local agencies and school districts for those costs shall be made  
24 pursuant to Part 7 (commencing with Section 17500) of Division  
25 4 of Title 2 of the Government Code.