

AMENDED IN ASSEMBLY MAY 31, 2016
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

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

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. Recognized Sovereign Nations or Peoples.~~

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 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, maintain, and post on its Internet Web site, a list of companies 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 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. *States. The bill would also require the Attorney General, on or before January 1, 2018, to provide an assessment to the Legislature of the constitutionality of prohibiting a company on the list from entering into a contract with a public entity.*~~

~~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-no*.

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

26 ~~(e)~~ Boycotts of Israel by companies doing business in California
27 undermine the aforesaid express policy and purpose of encouraging
28 trade, business, and academic cooperation between California and
29 Israel. Therefore, it is in the best interests of the State of California
30 that it not contract with any company participating in a boycott of
31 Israel.

32 ~~SEC. 3.~~

33 ~~SECTION 1.~~ Chapter 2.6 (commencing with Section 2100) is
34 added to Part 1 of Division 2 of the Public Contract Code, to read:

1 CHAPTER 2.6. ~~CALIFORNIA COMBATING THE BOYCOTT,~~
 2 ~~DIVESTMENT, AND SANCTIONS OF ISRAEL ACT OF 2016~~ *RECOGNIZED*
 3 *SOVEREIGN NATIONS OR PEOPLES*

4
 5 2100. ~~(a) Notwithstanding any other law, a public entity shall~~
 6 ~~not enter into a contract on or after January 1, 2017, to acquire or~~
 7 ~~dispose of goods, services, information technology, or for~~
 8 ~~construction if the contracting company is engaging in~~
 9 ~~discriminatory business practices in furtherance of a boycott of~~
 10 ~~any sovereign nation or peoples recognized by the government of~~
 11 ~~the United States, including, but not limited to, the nation of Israel.~~

12 ~~(b) A public entity shall notify any company that bids on or~~
 13 ~~submits a proposal for a contract with the public entity for ten~~
 14 ~~thousand dollars (\$10,000) or more, that is determined to be~~
 15 ~~engaging in discriminatory business practices, as described in~~
 16 ~~subdivision (a), that the public entity is prohibited from contracting~~
 17 ~~with the company, and permit the company to respond to the~~
 18 ~~notification. The public entity shall request that the company take~~
 19 ~~substantial action to cease its discriminatory business practices no~~
 20 ~~later than 90 days from the date that the public entity notified the~~
 21 ~~company under this subdivision. If the public entity determines~~
 22 ~~that a company has taken substantial action to cease its~~
 23 ~~discriminatory business practices before the expiration of the~~
 24 ~~90-day period, that company shall not be subject to subdivision~~
 25 ~~(a).~~

26 ~~(c) A company that, at the time of bid or proposal for a new~~
 27 ~~contract or renewal of an existing contract, is identified on a list~~
 28 ~~created pursuant to subdivision (d), is ineligible to, and shall not,~~
 29 ~~bid on, submit a proposal for, or enter into or renew a contract~~
 30 ~~with a public entity to acquire or dispose of goods, services,~~
 31 ~~information technology, or construction for ten thousand dollars~~
 32 ~~(\$10,000) or more.~~

33 ~~(d) (1)~~

34 2100. (a) The Attorney General shall develop, maintain, and
 35 post on the Internet Web site of the Office of the Attorney General
 36 a list of companies that have engaged in discriminatory business
 37 practices in furtherance of a boycott of any sovereign nation or
 38 peoples recognized by the government of the United States,
 39 including, but not limited to, the nation of Israel. *States.*

1 ~~(2) (A) The Attorney General shall provide 90 days' written~~
2 ~~notice of its intent to include the company on the list. The notice~~
3 ~~shall inform the company that inclusion on the list would make~~
4 ~~the company ineligible to bid on, submit a proposal for, or enter~~
5 ~~into or renew a contract for goods, services, information~~
6 ~~technology, or construction for ten thousand dollars (\$10,000) or~~
7 ~~more with a public entity. The notice shall specify that the~~
8 ~~company, if it ceases the discriminatory business practice described~~
9 ~~in subdivision (a) and is removed from the list, it may become~~
10 ~~eligible for a future contract, or contract renewal, for goods,~~
11 ~~services, information technology, or construction for ten thousand~~
12 ~~dollars (\$10,000) or more with a public entity.~~

13 ~~(B) The Attorney General shall provide a company with an~~
14 ~~opportunity to comment in writing to the Attorney General that it~~
15 ~~is not engaging in a discriminatory business practice described in~~
16 ~~subdivision (a). If the company demonstrates to the Attorney~~
17 ~~General that the company is not engaging in a discriminatory~~
18 ~~business practice described in subdivision (a), the company shall~~
19 ~~not be included on the list and shall be eligible to enter into or~~
20 ~~renew a contract for goods, services, information technology, or~~
21 ~~construction for ten thousand dollars (\$10,000) or more with a~~
22 ~~public entity.~~

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

29 ~~(b) (1) On or before January 1, 2018, the Attorney General~~
30 ~~shall provide an assessment to the Legislature of the~~
31 ~~constitutionality of prohibiting a company on the list developed~~
32 ~~pursuant to subdivision (a) from entering into a contract with a~~
33 ~~public entity.~~

34 ~~(2) (A) The requirement for submitting a report imposed under~~
35 ~~paragraph (1) is inoperative on January 1, 2022, pursuant to~~
36 ~~Section 10231.5 of the Government Code.~~

37 ~~(B) A report to be submitted pursuant to paragraph (1) shall~~
38 ~~be submitted in compliance with Section 9795 of the Government~~
39 ~~Code.~~

40 ~~(e)~~

1 (c) For the purposes of this section, the following definitions
2 shall apply:

3 (1) (A) “Boycott” means refusing to deal with, terminating
4 business activities with, or taking other actions that are intended
5 to penalize, inflict economic harm, or otherwise limit commercial
6 relations with the boycotted entity for reasons other than business,
7 investment, or commercial reasons.

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

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

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

12 (2) “Company” means a sole proprietorship, organization,
13 association, corporation, partnership, joint venture, limited
14 partnership, limited liability partnership, limited liability company,
15 or other entity or business association, including all wholly owned
16 subsidiaries, majority-owned subsidiaries, and parent companies,
17 that exists for the purpose of making profit.

18 (3) “Discriminatory business practices” means business
19 arrangements that are prohibited by Sections 16721 and 16721.5
20 of the Business and Professions Code.

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

23 ~~(f) This section shall not apply to a contract if either of the~~
24 ~~following apply:~~

25 ~~(1) The total value of the contract is less than ten thousand~~
26 ~~dollars (\$10,000):~~

27 ~~(2) The public entity makes a formal, written determination that~~
28 ~~the goods, services, information technology, or other matters that~~
29 ~~are the subject of the contract are necessary for the public entity~~
30 ~~to perform its functions and that, absent this exemption, the public~~
31 ~~entity would be unable to obtain said goods, services, information~~
32 ~~technology, or other matters for which the contract is offered.~~

33 ~~SEC. 4. If the Commission on State Mandates determines that~~
34 ~~this act contains costs mandated by the state, reimbursement to~~
35 ~~local agencies and school districts for those costs shall be made~~
36 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
37 ~~4 of Title 2 of the Government Code.~~