



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To authorize State and local governments to divest from entities that engage in commerce-related or investment-related boycott, divestment, or sanctions activities targeting Israel.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.**

**(no.)** \_\_\_\_\_

Making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2017, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KIRK

Viz:

1 At the appropriate place, insert the following:  
2 **TITLE \_\_\_\_\_—MATTERS RELATING**  
3 **TO ISRAEL**

4 **SEC. \_\_\_ 01. SHORT TITLE.**

5 This title may be cited as the “Combating BDS Act  
6 of 2016”.

1 **SEC. \_\_\_02. AUTHORITY OF STATE AND LOCAL GOVERN-**  
2 **MENTS TO DIVEST FROM ENTITIES THAT EN-**  
3 **GAGE IN CERTAIN BOYCOTT, DIVESTMENT,**  
4 **OR SANCTIONS ACTIVITIES TARGETING**  
5 **ISRAEL.**

6 (a) **AUTHORITY TO DIVEST.**—Notwithstanding any  
7 other provision of law, a State or local government may  
8 adopt and enforce measures that meet the requirements  
9 of subsection (b) to divest the assets of the State or local  
10 government from, or prohibit investment of the assets of  
11 the State or local government in—

12 (1) an entity that the State or local government  
13 determines, using credible information available to  
14 the public, knowingly engages in a commerce-related  
15 or investment-related boycott, divestment, or sanc-  
16 tions activity targeting Israel;

17 (2) a successor entity or subunit of an entity  
18 described in paragraph (1); or

19 (3) an entity that owns or controls, is owned or  
20 controlled by, or is under common ownership or con-  
21 trol with, an entity described in paragraph (1).

22 (b) **REQUIREMENTS.**—A State or local government  
23 that seeks to adopt or enforce a measure under subsection  
24 (a) shall meet the following requirements:

1           (1) NOTICE.—The State or local government  
2 shall provide written notice to each entity to which  
3 a measure under subsection (a) is to be applied.

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

8           (3) OPPORTUNITY FOR HEARING.—The State  
9 or local government shall provide an opportunity to  
10 comment in writing to each entity to which a meas-  
11 ure is to be applied. If the entity demonstrates to  
12 the State or local government that the entity has not  
13 engaged in a commerce-related or investment-related  
14 boycott, divestment, or sanctions activity targeting  
15 Israel, the measure shall not apply to the entity.

16           (4) SENSE OF CONGRESS ON AVOIDING ERRO-  
17 NEOUS TARGETING.—It is the sense of Congress  
18 that a State or local government should not adopt  
19 a measure under subsection (a) with respect to an  
20 entity unless the State or local government has  
21 made every effort to avoid erroneously targeting the  
22 entity and has verified that the entity engages in a  
23 commerce-related or investment-related boycott, di-  
24 vestment, or sanctions activity targeting Israel.

1 (c) NOTICE TO DEPARTMENT OF JUSTICE.—Not  
2 later than 30 days after adopting a measure pursuant to  
3 subsection (a), a State or local government shall submit  
4 written notice to the Attorney General describing the  
5 measure.

6 (d) NONPREEMPTION.—A measure of a State or local  
7 government authorized under subsection (a) is not pre-  
8 empted by any Federal law.

9 (e) EFFECTIVE DATE.—This section applies to any  
10 measure adopted by a State or local government before,  
11 on, or after the date of the enactment of this Act.

12 (f) RULE OF CONSTRUCTION.—

13 (1) AUTHORITY OF STATES.—Nothing in this  
14 section shall be construed to abridge the authority of  
15 a State to issue and enforce rules governing the  
16 safety, soundness, and solvency of a financial insti-  
17 tution subject to its jurisdiction or the business of  
18 insurance pursuant to the Act of March 9, 1945 (59  
19 Stat. 33, chapter 20; 15 U.S.C. 1011 et seq.) (com-  
20 monly known as the “McCarran-Ferguson Act”).

21 (2) POLICY OF THE UNITED STATES.—Nothing  
22 in this section shall be construed to alter the estab-  
23 lished policy of the United States concerning final  
24 status issues associated with the Arab-Israeli con-  
25 flict, including border delineation, that can only be

1 resolved through direct negotiations between the  
2 parties.

3 (g) DEFINITIONS.—In this section:

4 (1) ASSETS.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the term “assets” means  
7 any pension, retirement, annuity, or endowment  
8 fund, or similar instrument, that is controlled  
9 by a State or local government.

10 (B) EXCEPTION.—The term “assets” does  
11 not include employee benefit plans covered by  
12 title I of the Employee Retirement Income Se-  
13 curity Act of 1974 (29 U.S.C. 1001 et seq.).

14 (2) BOYCOTT, DIVESTMENT, OR SANCTIONS AC-  
15 TIVITY TARGETING ISRAEL.—The term “boycott, di-  
16 vestment, or sanctions activity targeting Israel”  
17 means any activity that is intended to penalize, in-  
18 flict economic harm on, or otherwise limit commer-  
19 cial relations with Israel or persons doing business  
20 in Israel or in Israeli-controlled territories for pur-  
21 poses of coercing political action by, or imposing pol-  
22 icy positions on, the Government of Israel.

23 (3) ENTITY.—The term “entity” includes—

24 (A) any corporation, company, business as-  
25 sociation, partnership, or trust; and

1 (B) any governmental entity or instrumen-  
2 tality of a government, including a multilateral  
3 development institution (as defined in section  
4 1701(e)(3) of the International Financial Insti-  
5 tutions Act (22 U.S.C. 262r(e)(3))).

6 (4) INVESTMENT.—The term “investment” in-  
7 cludes—

8 (A) a commitment or contribution of funds  
9 or property;

10 (B) a loan or other extension of credit; and

11 (C) the entry into or renewal of a contract  
12 for goods or services.

13 (5) STATE.—The term “State” means each of  
14 the several States, the District of Columbia, the  
15 Commonwealth of Puerto Rico, the Commonwealth  
16 of the Northern Mariana Islands, American Samoa,  
17 Guam, the United States Virgin Islands, and any  
18 other territory or possession of the United States.

19 (6) STATE OR LOCAL GOVERNMENT.—The term  
20 “State or local government” includes—

21 (A) any State and any agency or instru-  
22 mentality thereof;

23 (B) any local government within a State  
24 and any agency or instrumentality thereof; and

1                   (C) any other governmental instrumen-  
2                   tality of a State or locality.

3 **SEC. \_\_\_\_ 03. SAFE HARBOR FOR CHANGES OF INVESTMENT**  
4                   **POLICIES BY ASSET MANAGERS.**

5           Section 13(c)(1) of the Investment Company Act of  
6 1940 (15 U.S.C. 80a-13(c)(1)) is amended—

7           (1) in subparagraph (A), by striking “; or” and  
8           inserting a semicolon;

9           (2) in subparagraph (B), by striking the period  
10          at the end and inserting “; or”; and

11          (3) by adding at the end the following:

12                   “(C) engage in any boycott, divestment, or  
13                   sanctions activity targeting Israel described in  
14                   section \_\_\_\_ 02 of the Combating BDS Act of  
15                   2016.”