

## 1 HOUSE BILL NO. 493

2 INTRODUCED BY W. MCKAMEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE INVESTMENT LAWS RELATED  
5 TO BOYCOTTS OF ISRAEL; REQUIRING THE BOARD OF INVESTMENTS TO IDENTIFY COMPANIES  
6 ENGAGING IN A BOYCOTT OF ISRAEL; REQUIRING THE BOARD OF INVESTMENTS TO SELL ASSETS  
7 DIRECTLY INVESTED IN COMPANIES ENGAGED IN A BOYCOTT AND TO REQUEST THAT MANAGERS  
8 OF INDIRECT HOLDINGS CONSIDER SELLING THOSE ASSETS; PROVIDING EXCEPTIONS; REQUIRING  
9 CERTAIN ANNUAL REPORTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION  
10 17-6-201, MCA."  
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12 WHEREAS, the Montana Legislature finds and declares that boycotts and related tactics have become  
13 a tool of economic warfare that threatens the sovereignty and security of key allies and trade partners of the  
14 United States; and

15 WHEREAS, the State of Israel is the most prominent target of such boycott activity, beginning with the  
16 Arab League Boycott adopted in 1945, even before Israel's declaration of independence as the reestablished  
17 national state of the Jewish people; and

18 WHEREAS, companies that refuse to deal with United States trade partners such as Israel, or entities  
19 that do business with or in such countries, make discriminatory decisions on the basis of national origin that  
20 impair those companies' commercial soundness; and

21 WHEREAS, it is the public policy of the United States, as enshrined in several federal acts, including 50  
22 U.S.C. 4607, to oppose such boycotts, and Congress has concluded as a matter of national trade policy that  
23 cooperation with Israel materially benefits United States companies and improves American competitiveness;  
24 and

25 WHEREAS, Israel in particular is known for its dynamic and innovative approach in many business  
26 sectors, and a company's decision to discriminate against Israel, Israeli entities, or entities that do business with  
27 Israel or in Israel is an unsound business practice that makes the company an unduly risky contracting partner  
28 or vehicle for investment; and

29 WHEREAS, the State of Montana seeks to implement a policy of examining a company's promotion or  
30 compliance with unsanctioned boycotts, divestment from, or sanctions against Israel and supports the divestment

1 of state assets from companies that support or promote actions to boycott, divest from, or sanction Israel.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 **NEW SECTION. Section 1. Definitions.** The following definitions apply to [sections 1 through 4]:

6 (1) "Board" means the board of investments.

7 (2) (a) "Boycott of Israel", except as provided in subsection (2)(b), means refusing to deal or conduct  
8 business with, abstaining from dealing or conducting business with, terminating business or business activities  
9 with, or performing any other action that is intended to limit commercial relations with Israel or with a person or  
10 entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that  
11 discriminates on the basis of nationality, national origin, or religion.

12 (b) The term does not mean an action included under subsection (2)(a) if the action is:

13 (i) based on a bona fide business or economic reason;

14 (ii) taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a  
15 nondiscriminatory manner; or

16 (iii) taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50  
17 U.S.C. 4607 or other federal law as it appeared on [the effective date of this act] or any other state law.

18 (3) "Company" means a domestic or foreign sole proprietorship, organization, association, corporation,  
19 partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other  
20 domestic or foreign entity or business association, including, without limitation, a wholly owned subsidiary,  
21 majority-owned subsidiary, parent company, or affiliate of such an entity or business association, that exists for  
22 the purpose of making a profit.

23 (4) "Direct holdings" means publicly traded securities of a company that are held directly by the public  
24 fund or in an account or fund in which the public fund owns all shares or interests.

25 (5) "Indirect holdings" means publicly traded securities of a company that are held:

26 (a) by the board of investments in an account or fund that is managed by one or more persons who are  
27 not employed by the board of investments and in which the public fund owns shares or interests together with  
28 other investors not subject to [sections 1 through 4]; or

29 (b) in an index fund.

30 (6) "Public fund" means a trust fund administered by the board of investments.

1 (7) "Scrutinized company" means a company that engages in a boycott of Israel.

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3 **NEW SECTION. Section 2. List of scrutinized companies -- annual report.** (1) The board of  
4 investments shall identify each scrutinized company in which a public fund has either direct holdings or indirect  
5 holdings. In making the identification, the board shall review and rely on publicly available information regarding  
6 companies that are engaging in a boycott of Israel, including, without limitation, information provided by nonprofit  
7 organizations, research firms, international organizations, and government entities.

8 (2) The board shall create a list of all scrutinized companies identified pursuant to subsection (1) and  
9 update the list annually with the information provided by and received from the entities listed in subsection (1).

10 (3) The board shall prepare an annual report of investments of money from a public fund in scrutinized  
11 companies as identified pursuant to subsection (1). The report must include the amount of money allocated in  
12 the investments and other data and statistics designed to explain the past and current extent to which public  
13 funds are invested in scrutinized companies.

14 (4) The board of investments shall submit a copy of the report created pursuant to subsection (3) to the  
15 governor, the speaker of the house of representatives, and the president of the senate on or before February 1  
16 of each year. The submitted report must cover all investments during the immediately preceding calendar year.

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18 **NEW SECTION. Section 3. Divestment of assets in scrutinized company -- prohibition on**  
19 **acquiring scrutinized company securities.** (1) Except as provided in subsection (2), the board of investments:

20 (a) shall sell, redeem, divest, or direct holdings of a scrutinized company from the assets under its  
21 management within 3 months after preparing a list of scrutinized companies pursuant to [section 2] that includes  
22 the scrutinized company;

23 (b) on or before June 30 of each year, shall post on the board of investment's website a list that includes  
24 each investment that was sold, redeemed, divested, or withdrawn pursuant to subsection (1)(a);

25 (c) may not acquire securities of a scrutinized company as part of the direct holdings of the board of  
26 investments; and

27 (d) shall request that the manager of the indirect holdings of a public fund consider selling, redeeming,  
28 divesting, or withdrawing holdings of a scrutinized company from the assets under the board's management.

29 (2) Nothing in this section shall require the board to take action as described in this section unless the  
30 board determines and adopts findings, in good faith and based on credible information available to the public,

1 that the action described in this section is consistent with the fiduciary responsibilities of the board.

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3 **NEW SECTION. Section 4. Rulemaking.** (1) The board of investments shall adopt rules to establish  
4 the process for:

5 (a) giving notice to a company of the inclusion of that company on the list of scrutinized companies  
6 created pursuant to [section 2(2)]; and

7 (b) the removal of a company from the list of scrutinized companies created pursuant to [section 2(2)].

8 (2) The board may adopt other rules necessary to carry out the provisions of this part.

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10 **Section 5.** Section 17-6-201, MCA, is amended to read:

11 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program  
12 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be  
13 administered by the board of investments in accordance with the prudent expert principle, which requires an  
14 investment manager to:

15 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then  
16 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters  
17 exercises in the conduct of an enterprise of a like character with like aims;

18 (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss  
19 and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

20 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified  
21 investment program.

22 (2) (a) Retirement funds may be invested in common stocks of any corporation.

23 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital  
24 stock" means only the common stock of a corporation.

25 (3) (a) This section does not prevent investment in any business activity in Montana, including activities  
26 that continue existing jobs or create new jobs in Montana.

27 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in  
28 venture capital companies. Whenever possible, preference should be given to investments in those venture  
29 capital companies that demonstrate an interest in making investments in Montana.

30 (c) In discharging its duties, the board shall consider the preservation of purchasing power of capital

1 during periods of high monetary inflation.

2 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion  
3 of a loan originated by a financial institution is not considered a direct loan.

4 (e) This section does not prevent investment in home loan mortgages under the provisions of the  
5 Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

6 (4) The board has the primary authority to invest state funds. Another agency may not invest state funds  
7 unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the  
8 laws and constitution of this state. The board has the power to veto investments made under its general  
9 supervision.

10 (5) The board shall:

11 (a) assist agencies with public money to determine if, when, and how much surplus cash is available for  
12 investment;

13 (b) determine the amount of surplus treasury cash to be invested;

14 (c) subject to [section 3], determine the type of investment to be made;

15 (d) prepare the claim to pay for the investment; and

16 (e) keep an account of the total of each investment fund and of all the investments belonging to the fund  
17 and a record of the participation of each treasury fund account in each investment fund.

18 (6) The board may:

19 (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the  
20 transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a  
21 qualified appraiser.

22 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and  
23 17-6-105;

24 (c) direct the sale of securities in the program at their full and true value when found necessary to raise  
25 money for payments due from the treasury funds for which the securities have been purchased.

26 (7) The cost of administering and accounting for each investment fund must be deducted from the  
27 income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of  
28 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay  
29 the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."  
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