

SENATE BILL NO. 228—SENATORS BUCK, HANSEN, STONE
AND TITUS

MARCH 8, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to governmental financial administration. (BDR 23-945)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to governmental financial administration; prohibiting the Public Employees' Retirement Board from investing, providing investment advice or engaging in shareholder proxy voting for any purpose other than the financial interest of the Public Employees' Retirement System; prohibiting, under certain circumstances, certain governmental entities from contracting with companies that engage in economic boycotts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of article 9 of the Nevada Constitution requires that any money paid for the purpose of funding and administering the Public Employees' Retirement System must never be used for any other purposes other than funding and administering the System. (Nev. Const. Art. 9, §2) **Section 2** of this bill prohibits the Public Employees' Retirement Board from investing the money in its funds for any purpose other than funding and administering the System, including any social, political or ideological purpose.

Existing law authorizes the Board to employ investment counsel and certain other investment services to ensure the Board invests effectively and to safeguard the money in the System. (NRS 286.680) **Section 1** of this bill requires that any person employed by the Board as investment counsel, proxy advisor, service provider or to provide shareholder proxy voting services must agree in writing that the person will only provide advice or vote based solely on the financial interest of the System and not for any social, political or ideological purpose. **Section 1** also authorizes the Attorney General to bring a civil action against any person who violates such a written agreement for a civil penalty in an amount equal to three times the amount paid by the Board to the person for his or her services.



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Existing law authorizes contracts between governing bodies of a local government or state agencies within the Executive Department of the State Government and private contractors and sets forth requirements for the procurement of goods and services by those governing bodies and state agencies. (Chapters 332 and 333 of NRS) **Sections 3 and 4** of this bill prohibit the governing body of a local government and the Administrator of the Purchasing Division of the Department of Administration, with certain exceptions, from entering into certain contracts with a company unless the contract includes a written certification that the company is not engaged in, and agrees for the duration of the contract not to engage in, an economic boycott. **Sections 3 and 4** define "economic boycott" as refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with a company that: (1) engages in certain activities relating to fossil fuels, timber, mining or agriculture; (2) engages in certain activities relating to firearms, ammunition or component parts and accessories of firearms or ammunition; (3) does not meet, is not expected to meet or does not commit to meet certain environmental standards or disclosure criteria relating to the environment; (4) does not meet, is not expected to meet or does not commit to meet certain employment, composition, compensation or disclosure criteria for the company or company board relating to certain protected characteristics; (5) does not facilitate, is not expected to facilitate or does not commit to facilitate access to abortions, sex or gender change or transgender surgeries; or (6) does business with any such company. **Sections 3 and 4** further authorize a district attorney or the Attorney General, respectively, to bring a civil action against any company that violates an agreement not to engage in an economic boycott to recover a civil penalty in an amount equal to three times the amount paid to the company.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 286.680 is hereby amended to read as follows:

286.680 1. In addition to the provisions of chapter 355 of NRS, the Board may invest and reinvest the money in its funds as provided in this section and NRS 286.682 and may employ investment counsel for that purpose. The Board may also employ investment supervisory services, trust audit services and other related investment services which it deems necessary to invest effectively and safeguard the money in the System's funds.

2. No person engaged in business as a broker or dealer in securities or who has a direct pecuniary interest in any such business who receives commissions for transactions performed as agent for the Board is eligible for employment as investment counsel for the Board.

3. The Board shall not engage investment counsel unless:

(a) The principal business of the person selected by the Board consists of giving continuous advice as to the investment of money on the basis of the individual needs of each client;



(b) The person and the person's predecessors have been continuously engaged in such a business for a period of 5 or more years;

(c) The person is registered as an investment adviser under the laws of the United States as from time to time in effect, or is a bank or an investment management subsidiary of a bank; ~~and~~

(d) The contract between the Board and the investment counsel is of no specific duration and is voidable at any time by either party ~~H~~; and

(e) The person agrees in writing to provide advice as to the investment of money that is solely based on the financial interest of the System and, in accordance with NRS 286.682, not for any social, political or ideological purpose.

4. The Board shall not:

(a) Grant shareholder proxy voting authority to any person, unless the person agrees in writing to follow the guidelines of the Board to act solely in the financial interest of the System and, in accordance with NRS 286.682, not for any social, political or ideological purpose; or

(b) Follow the recommendations of a proxy advisor or other service provider for voting unless the advisor or provider agrees in writing to provide recommendations that are solely based on the financial interest of the System and, in accordance with NRS 286.682, not for any social, political or ideological purpose.

5. The Board and its individual members are not liable for investment decisions made by investment counsel if they obtain qualified investment counsel, establish proper objectives and policies for investments, and issue appropriate interim directives. Investment counsel is liable for any investment decision that is not made in accordance with the objectives and policies established by the Board and any applicable interim directives.

~~5.1~~ 6. The expenses incurred in obtaining and reviewing services pursuant to the provisions of this section and the reimbursements to employees for their expenses incurred in connection with investment decisions must be paid out of the Public Employees' Retirement Fund and the Police and Firefighters' Retirement Fund in proportion to their respective assets.

~~6.1~~ 7. The Board shall tender invitations to banks and credit unions for commercial banking and trust services, consider proposals submitted by interested banks and credit unions, and consider contracts for commercial banking and trust services at least every 5 years.

8. The Board shall post annually on the Internet website of the Board a report of all proxy votes taken on behalf of the Board, which must include, without limitation:



- (a) *The vote taken;*
- (b) *The recommendation of the Board; and*
- (c) *The recommendation of the proxy advisor, if any.*

9. *If, after an investigation, the Attorney General has reasonable cause to believe that a person has violated a written agreement to act solely in the financial interest of the System and, in accordance with NRS 286.682, not for any social, political or ideological purpose, the Attorney General may bring an action to recover a civil penalty in an amount equal to three times the money paid to the person for the services provided by the person to the Board.*

Sec. 2. NRS 286.682 is hereby amended to read as follows:

286.682 1. The Board may invest the money in its funds in every kind of investment which persons of prudence, discretion and intelligence acquire or retain for their own account.

2. *The Board shall not invest the money in its funds for any purpose other than funding and administering the System, including, without limitation, any social, political or ideological purpose:*

(a) *To eliminate, reduce, offset or disclose greenhouse gas emissions;*

(b) *To institute or assess the employment, composition, compensation or disclosure criteria of a company or company board on the basis of criteria relating to race, religious creed, color, age, sex, disability, sexual orientation, gender identity or expression or national origin or ancestry;*

(c) *To divest from, limit investment in or limit the activities or investments of any company for failing or not committing to meet environmental standards or disclosures;*

(d) *Relating to access to abortions, sex or gender change or transgender surgeries; or*

(e) *To divest from, limit investment in or limit the activities or investments of any company that engages in, facilitates or supports the manufacture, import, distribution, marketing, advertising, sale or lawful use of firearms, ammunition or components, parts and accessories of firearms or ammunition.*

Sec. 3. NRS 332.065 is hereby amended to read as follows:

332.065 1. Except as otherwise provided by specific statute, if the estimated annual amount required to perform a contract is more than \$100,000, the governing body or its authorized representative:

(a) Shall advertise the contract in the manner prescribed in NRS 332.045; and

(b) May issue a solicitation for the contract.



2. If the estimated annual amount to perform a contract is more than \$100,000 and the method for obtaining the contract designated in the solicitation is an invitation to bid, the governing body or its authorized representative must, except as otherwise provided by specific statute, award the contract to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder may be judged on the basis of:

- (a) Price;
- (b) Conformance to specifications;
- (c) Qualifications of the bidder, including, without limitation:
 - (1) The possession of or limit on any required license of the bidder;
 - (2) The financial responsibility of the bidder;
 - (3) The experience of the bidder; and
 - (4) The ability of the bidder to perform the contract;
- (d) Adequacy of the equipment of the bidder;
- (e) Past performance;
- (f) Performance schedule or delivery date;
- (g) If the contract requires the delivery of goods, the total cost of ownership of the goods;
- (h) If the contract requires the delivery of goods, the purpose for which the goods to be supplied are required;
- (i) The best interests of the public; and
- (j) Such other criteria as may be set forth by the governing body or its authorized representative in the advertisement or solicitation, as applicable, that pertains to the contract.

➤ If after the lowest responsive and responsible bidder has been awarded the contract, during the term of the contract he or she does not perform in accordance with the bid specifications, or if he or she repudiates the contract, the governing body or its authorized representative may reaward the contract to the next lowest responsive and responsible bidder without requiring that new bids be submitted. Reawarding the contract to the next lowest responsive and responsible bidder is not a waiver of any liability of the initial bidder awarded the contract.

3. Except as otherwise provided by specific statute, if the estimated annual amount to perform a contract is more than \$100,000 and the method for obtaining the contract designated in the solicitation is a method other than an invitation to bid, the governing body or its authorized representative shall award such a contract taking into account the minimum requirements for a responding offeror prescribed in the solicitation pursuant to NRS 332.043 and the method prescribed in that solicitation for awarding the contract.



4. A governing body or its authorized representative shall not enter into a contract pursuant to this section with a company unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract not to engage in ~~the~~:

(a) A boycott of Israel ~~the~~; or

(b) Except as otherwise provided in subsection 6, an economic boycott.

5. For the purposes of determining whether a company is engaged in an economic boycott pursuant to paragraph (b) of subsection 4, evidence indicating a purpose other than an ordinary business purpose, including, without limitation, a social, political or ideological purpose may include, without limitation:

(a) Branding, advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principle or commitments; or

(b) Participating in, affiliating with or status as a signatory to any coalition, initiative, joint statement of principles or agreement.

6. The provisions of paragraph (b) of subsection 4 do not apply:

(a) To a company with less than 10 full-time employees; or

(b) If the governing body or its authorized representative determines that such provisions would:

(1) Interfere with any statutory duty of the governing body relating to the issuance, incurrence or management of debt obligations or the deposit, custody, management, borrowing or investment of money;

(2) Prevent the governing body from entering into a contract in an economically practicable manner; or

(3) Interfere with any contracts entered into by the governing body.

7. If, after an investigation, the district attorney has reasonable cause to believe that a company has violated the requirements of paragraph (b) of subsection 4, the district attorney may bring an action to recover a civil penalty in an amount equal to three times the money paid to the company for the contract.

8. As used in this section:

(a) “Boycott of Israel”:

(1) Means, except as otherwise provided in subparagraph (2), refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with:

(I) Israel; or



(II) A person or entity doing business in Israel or in territories controlled by Israel,
➔ if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion.

(2) Does not include an action that is described in subparagraph (1) if the action:

(I) Is based on a bona fide business or economic reason;

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

(III) Is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

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

(c) *“Economic boycott” means, without an ordinary business purpose, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with a company that, without violating any provision of federal or state law:*

(1) Engages in the exploration, production, utilization, transportation, sale or manufacturing of fossil fuel-based energy, timber, mining or agriculture;

(2) Engages in, facilitates or supports the manufacture, import, distribution, marketing, advertising or sale of the lawful use of firearms, ammunition or component parts and accessories of firearms or ammunition;

(3) Does not meet, is not expected to meet or does not commit to meet environmental standards or disclosure criteria relating to environmental standards, including, without limitation, standards or criteria to eliminate, reduce, offset or disclose greenhouse gas emissions;

(4) Does not meet, is not expected to meet or does not commit to meet any criteria relating to race, religious creed, color, age, sex, disability, sexual orientation, gender identity or expression or national origin or ancestry for the employment, composition, compensation or disclosure criteria of the company or the board of the company;



(5) Does not facilitate, is not expected to facilitate or does not commit to facilitate access to abortions, sex or gender change or transgender surgeries; or

(6) Does business with a company described in subparagraphs (1) to (5), inclusive.

(d) “Ordinary business purpose”:

(1) Means an action that is based on a bona fide business or economic reason.

(2) Does not include an action that is taken to further social, political or ideological purposes.

(e) “Total cost of ownership” includes, without limitation:

(1) The history of maintenance and repair of the goods;

(2) The cost of routine maintenance and repair of the goods;

(3) Any warranties provided in connection with the goods;

(4) The cost of replacement parts for the goods; and

(5) The value of the goods as used goods when given in trade on a subsequent purchase.

Sec. 4. NRS 333.338 is hereby amended to read as follows:

333.338 1. The Administrator shall not enter into a contract with a company unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract not to engage in ~~the~~:

(a) A boycott of Israel ~~the~~; or

(b) Except as otherwise provided in subsection 3, an economic boycott.

2. For the purposes of determining whether a company is engaged in an economic boycott pursuant to paragraph (b) of subsection 1, evidence indicating a purpose other than an ordinary business purpose, including, without limitation, a social, political or ideological purpose may include, without limitation:

(a) Branding, advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principle or commitments; or

(b) Participating in, affiliating with or status as a signatory to any coalition, initiative, joint statement of principles or agreement.

3. The provisions of paragraph (b) of subsection 1 do not apply:

(a) To a company with less than 10 full-time employees;

(b) If the Administrator determines that such provisions would:

(1) Interfere with any statutory duty of the State relating to the issuance, incurrence or management of debt obligations or the deposit, custody, management, borrowing or investment of money;

(2) Prevent the State from entering into a contract in an economically practicable manner; or



(3) Interfere with any contracts entered into by the State.

4. If, after an investigation, the Attorney General has reasonable cause to believe that a company has violated the requirements of paragraph (b) of subsection 1, the Attorney General may bring an action to recover a civil penalty in an amount equal to three times the money paid to the company for the contract.

~~13.1~~ 5. The Administrator shall adopt regulations as necessary to carry out the provisions of this section.

6. As used in this section:

(a) "Boycott of Israel":

(1) Means, except as otherwise provided in subparagraph (2), refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with:

(I) Israel; or

(II) A person or entity doing business in Israel or in territories controlled by Israel,

↳ if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion.

(2) Does not include an action that is described in subparagraph (1) if the action:

(I) Is based on a bona fide business or economic reason;

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

(III) Is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

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

(c) "Economic boycott" means, without an ordinary business purpose, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with a company that, without violating any provision of federal or state law:



(1) Engages in the exploration, production, utilization, transportation, sale or manufacturing of fossil fuel-based energy, timber, mining or agriculture;

(2) Engages in, facilitates or supports the manufacture, import, distribution, marketing, advertising or sale of the lawful use of firearms, ammunition or component parts and accessories of firearms or ammunition;

(3) Does not meet, is not expected to meet or does not commit to meet environmental standards or disclosure criteria relating to environmental standards, including, without limitation, standards or criteria to eliminate, reduce, offset or disclose greenhouse gas emissions;

(4) Does not meet, is not expected to meet or does not commit to meet any criteria relating to race, religious creed, color, age, sex, disability, sexual orientation, gender identity or expression or national origin or ancestry for the employment, composition, compensation or disclosure criteria of the company or the board of the company;

(5) Does not facilitate, is not expected to facilitate or does not commit to facilitate access to abortions, sex or gender change or transgender surgeries; or

(6) Does business with a company described in subparagraphs (1) to (5), inclusive.

(d) “Ordinary business purpose”:

(1) Means an action that is based on a bona fide business or economic reason.

(2) Does not include an action that is taken to further social, political or ideological purposes.

