AN ACT

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, prohibiting Commonwealth agencies from entering into contracts with persons who engage in boycotts against or divestment from Israel.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 62 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 38

PERSONS ENGAGED IN BOYCOTTS AGAINST OR DIVESTMENT FROM ISRAEL

Sec.

3801. Definitions.

3802. Engaging in a boycott against or divestment from Israel.

3803. List of persons engaged in a boycott against or divestment from Israel.

3804. Certification.

3805. Penalties for false certification.
§ 3801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Boycott against or divestment from Israel." Actions that are politically motivated and are intended to penalize Israel or otherwise limit commercial activities.

"Commercial activities." Owning or controlling property or assets located in, having employees or facilities located in, providing goods or services to, having distribution agreements with, issuing credit or loans to, purchasing bonds or commercial paper issued by, investing in or having equity ties to or with Israel or any company or person domiciled in Israel.

"Company." Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association.

"Department." The Department of General Services of the Commonwealth.

"Israel." The State of Israel.

"List." The list maintained by the Department of General Services under section 3803(a) (relating to list of persons engaged in a boycott against or divestment from Israel).

"Person." An individual, organization, financial institution, sole proprietorship, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association that exists for the purpose of making a profit or a government entity that includes a multilateral development institution as defined in section 1701 of the 20170HB1969PN2825 - 2 -
§ 3802. Engaging in a boycott against or divestment from
Israel.

A person engages in a boycott against or divestment from
Israel if the person has publicly announced or otherwise engages
in a boycott against or divestment from Israel.

§ 3803. List of persons engaged in a boycott against or
divestment from Israel.

(a) Duty of department.—The department shall develop a list
of persons who the department determines are engaged in a
boycott against or divestment from Israel as described in
section 3802 (relating to engaging in a boycott against or
divestment from Israel). The department shall make its
determination based on publicly available, credible information.
The department shall update the list every 180 days. Ninety days
prior to adding a person to the list, the department shall do
all of the following:

(1) Provide notice to the person of the department's
intention to add the person to the list. The notice shall
inform the person that the person's inclusion on the list
makes the person ineligible to enter into a contract with a
Commonwealth agency for goods or services. The notice shall
specify that if the department's determination as to the
person is erroneous or any of the exceptions enumerated in
subsection (d) apply, the person may regain eligibility upon
removal from the list.

(2) Provide the person an opportunity to comment in
writing to the department. The person shall maintain
eligibility if the person demonstrates that the department's
determination is erroneous or any of the exceptions
enumerated in subsection (d) apply.

(b) Ineligibility of persons on list.--A person identified
on the list shall be ineligible to enter into a contract with a
Commonwealth agency to provide for goods or services.

(c) List.--The department shall post the list on its
publicly accessible Internet website. Upon request, the
department shall provide a hard copy of the list free of charge
to the General Assembly or a public entity.

(d) Exception.--On a case-by-case basis, the department may
permit a person on the list to enter a contract with a
Commonwealth entity for goods or services if any of the
following apply:

(1) The person's boycott against or divestment from
Israel occurred before and was not expanded after the
effective date of this section.

(2) The person refrains from entering into new
agreements to engage in any future boycott against or
divestment from Israel.

(3) The department determines that the Commonwealth
entity has no other cost-effective method of obtaining the
goods or services than entering into a contract with the
person.

(4) The person has retracted the person's public
announcement of engaging in, or otherwise demonstrates that
the person is no longer engaged in, a boycott against or
divestment from Israel.

§ 3804. Certification.

(a) Availability and use of form.--

(1) The department shall make available a certification
form indicating that a person is not on the list and is eligible under this chapter to contract with a Commonwealth agency.

(2) Prior to entering into a contract with a Commonwealth agency, a person shall provide a certification form to the Commonwealth agency unless an exception applies under section 3803(d) (relating to list of persons engaged in a boycott against or divestment from Israel).

(b) Right to cure.--

(1) If the department determines, using credible information available to the public, that a person has submitted a false certification under subsection (a), the person shall be provided with written notice and an opportunity to demonstrate to the department that the department's determination is erroneous or that the person has ceased to be engaged in a boycott against or divestment from Israel within 90 days of the notice.

(2) A person who reasonably demonstrates to the department that the department's determination is erroneous or the person has ceased to be engaged in a boycott against or divestment from Israel within 90 days after the written notice shall not be subject to the penalties under section 3805 (relating to penalties for false certification).

§ 3805. Penalties for false certification.

(a) Penalties.--Subject to the provisions of section 3804(b) (relating to certification), if the department determines that a person has provided a false certification form to a Commonwealth entity under section 3804, the person shall be subject to the following:

(1) A civil penalty in the amount of $250,000 or twice
the amount of the contract, whichever is greater.

(2) Suspension of the existing contract with the Commonwealth agency for a period of three years from the date of the determination that the person submitted the false certification. Following the three-year suspension period, if the term of the contract has not expired, the Commonwealth entity or the department may terminate the contract.

(b) Report of false certification.--

(1) The department shall report to the Attorney General the name of any person who submits a false certification under this chapter and the pertinent information that led to the department's determination.

(2) No later than three years after the department makes a determination under subsection (a), the Attorney General shall determine whether to bring a civil action against the person to collect the civil penalty described in subsection (a)(1).

(3) If a court determines the person submitted a false certification, the person shall pay all reasonable costs and fees incurred in the civil action. Reasonable costs shall include the reasonable costs incurred by the department in investigating the veracity of the certification.

(4) Not more than one civil action may be brought against a person for a false certification on the same contract.

(c) No private right of action.--Nothing in this section may be construed to create or authorize a private right of action.

Section 2. This act shall take effect in 60 days.