

Introduced by: Mr. Weiner  
Date of introduction: September 29, 2015

**ORDINANCE NO. 15 - 093**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 26 (“ HUMAN RESOURCES”) ARTICLE 4 (“PENSIONS”), REGARDING INVESTMENTS ENSURING THAT THE PENSION BOARD DEMONSTRATES ITS COMMITMENT TO RESPONSIBLE INVESTING BY REFUSING TO INVEST IN COMPANIES THAT SUPPORT THE BOYCOTT, DIVESTMENT AND SANCTIONS MOVEMENT AND THE BOYCOTT OF THE STATE OF ISRAEL**

**WHEREAS**, there has been in recent years a global campaign, commonly referred to as the Boycott, Divestment and Sanctions Movement (BDS Movement), to increase economic and political pressure on Israel to comply with the stated goals of the movement: the end of Israeli occupation and colonization of Palestinian land, full equality for Arab-Palestinian citizens of Israel, and respect for the right of return of Palestinian refugees; and

**WHEREAS**, there is and there should be considerable debate and concern about the scope, efficacy, and morality of the BDS Movement; and

**WHEREAS**, Israel is America’s dependable, democratic ally in the Middle East—an area of paramount strategic importance to the United States; and

**WHEREAS**, the United States-Israel Free Trade Agreement formed the modern foundation of the bilateral commercial relationship between the two countries and was the first such agreement signed by the United States with a foreign country; and

**WHEREAS**, the United States-Israel Free Trade Agreement has been instrumental in expanding commerce and the strategic relationship between the United States and Israel; and

**WHEREAS**, more than \$45 billion in goods and services is traded annually between the two countries, in addition to roughly \$10 billion in United States foreign direct investment in Israel; and

**WHEREAS**, since 1996, Delaware exports to Israel have totaled more than \$217,614,976 and Israel currently ranks as Delaware’s 47th leading trade partner; and

**WHEREAS**, the United States, and Delaware in particular, continue to seek and find new opportunities to enhance cooperation with Israel, including through the enactment of the United States-Israel Enhanced Security Cooperation Act of 2012 and the United States-Israel Strategic Partnership Act of 2014; and

**WHEREAS**, it has been the policy of the United States Government to combat all elements of the Arab League Boycott of Israel by...

(A) public statements of Administration officials;

(B) enacting relevant sections of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), including sections to ensure that foreign persons comply with applicable reporting requirements relating to the boycott;

(C) enacting the 1976 Tax Reform Act (Public Law 94–455) that denies certain tax benefits to entities abiding by the boycott;

(D) ensuring through free trade agreements with Bahrain and Oman that such countries no longer participate in the boycott; and

(E) ensuring as a condition of membership in the World Trade Organization that Saudi Arabia no longer enforces the secondary or tertiary elements of the boycott; and

**WHEREAS**, it is important to the citizens of Delaware, and particularly the citizens and employees of New Castle County to similarly reject the systematic strategy of economic warfare and attempts at the delegitimation of Israel; and

**WHEREAS**, the New Castle County Pension Board has been given the full power to invest the County employee pension funds in a prudent and diligent manner and in conformity with the *New Castle County Code* and, in doing so, currently manages in excess of \$432 million; and

**WHEREAS**, New Castle County considers it an important duty of the Pension Board to demonstrate its commitment to responsible investing by refusing to invest in companies that support the BDS movement and boycott Israel.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Section 26.04.602 (“Management, administration, accounting and investments”), is hereby amended by adding the material that is underscored, as set forth below:

**Sec 26.04.602. Management, administration, accounting and investments.**

A. The Board...

B. In order...

C. 1. Notwithstanding any provision of law to the contrary, beginning January 1, 2016, the Board shall make its best efforts to identify all companies that boycott Israel and it shall assemble those identified companies into a list of restricted companies. Those efforts to so identify companies shall include the following, as appropriate in the judgment of the Board: reviewing and relying on publicly available information regarding companies that boycott Israel, including information provided by non-profit

organizations, research firms, and government entities; contacting asset managers contracted by the Board that invest in companies that boycott Israel; contacting other institutional investors that have divested from companies that boycott Israel; and retaining an independent research firm to identify companies that boycott Israel.

2. The Board shall then, through its investment managers and consultants, identify those companies on the list of restricted companies in which the pension fund owns direct holdings and indirect holdings. The Board shall then instruct its investment advisors to, in a prudent and fiduciarily responsible manner, sell, redeem, divest or withdraw all direct holdings of restricted companies from the pension fund within twelve months of the Board's instruction to do so. The pension fund may not acquire securities of restricted companies. The provisions of this subsection shall not apply to the pension fund's indirect holdings or private market funds.

3. As used in this subsection:

"Boycott Israel" shall mean engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

"Company" means any sole proprietorship, organization, corporation, partnership, joint venture, limited partnership, limited liability company or any other entity or business association, including any wholly owned subsidiary, majority owned subsidiary, parent companies or affiliates of those entities or business associations that exist for the purpose of making a profit.

"Direct holdings" in a company means all publicly traded securities of that company that are held directly by the pension fund in an actively managed account or fund in which the pension fund owns all shares or interests.

"Indirect holdings" in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the pension fund, in which the pension fund owns shares or interests together with other investors not subject to the provisions of this Section or that are held in an index fund.

"Private market fund" means any private equity fund, private equity fund or funds, venture capital fund, hedge fund, hedge fund or funds, real estate fund, or other investment vehicle that is not publicly traded.

"Restricted companies" mean companies that boycott Israel.

Section 2. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the

remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent.

Section 3. This Ordinance shall become effective upon passage by New Castle County Council and approval by the County Executive, or as otherwise provided by 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on:

---

President of County Council  
New Castle County

Approved on:

---

County Executive  
New Castle County

**SYNOPSIS:** The purpose of this Ordinance is to ensure that the Pension Board demonstrates its commitment to responsible investing by refusing to invest in companies that support the Boycott, Divestment and Sanctions movement and the boycott of the State of Israel.

**FISCAL NOTE:** There is no discernable financial impact.