

2017 Regular Session

HOUSE BILL NO. 685 (Substitute for House Bill No. 549 by Representative Hodges)

BY REPRESENTATIVE HODGES AND SENATORS COLOMB, MILKOVICH, AND MIZELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DEFERRED COMPENSATION: Prohibits mandated investment by participants in the Louisiana Deferred Compensation Plan in companies that boycott Israel and provides for membership of the Deferred Compensation Commission and duties of the state treasurer

1 AN ACT

2 To amend and reenact R.S. 42:1301(4), 1302(B), and 1303(1) and to enact R.S. 42:1301(10),  
3 (11), (12), and (13) and 1303.2 and R.S. 49:328, relative to the Louisiana Deferred  
4 Compensation Plan; to provide an optional investment in a treasury fund under  
5 certain circumstances; to prohibit certain mandated investments in companies that  
6 boycott Israel; to provide for membership on the Deferred Compensation  
7 Commission; to provide for quorum; to provide for the duties of the state treasurer;  
8 to provide for definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 42:1301(4), 1302(B), and 1303(1) are hereby amended and reenacted  
11 and R.S. 42:1301(10), (11), (12), and (13) and 1303.2 are hereby enacted to read as follows:

12 §1301. Definitions

13 The following words and phrases used in this Chapter, unless a different  
14 meaning is plainly required by the context, shall have the following meanings:

15 \* \* \*

16 (4) "Ex officio member" means the state treasurer, the commissioner of  
17 administration, the commissioner of insurance, ~~or~~ the commissioner of financial

1       institutions, the speaker of the House of Representatives, or the president of the  
2       Senate.

3                               \*       \*       \*

4               (10) "Boycott Israel" shall have the meaning provided in R.S. 49:328.

5               (11) "Company" shall have the meaning provided in R.S. 49:328.

6               (12) "Core mandated investment" means an investment that the commission  
7       requires participants to purchase as a condition of participation in the Louisiana  
8       Deferred Compensation Plan.

9               (13) "Investment fund manager" means any individual or company that  
10       contracts with the commission or the administrator to provide financial services or  
11       advice or to assist the commission or the administrator in selecting investment  
12       products to be placed on a list of core mandated investments.

13       §1302. Louisiana Deferred Compensation Commission

14                               \*       \*       \*

15               B.(1) The Commission shall consist of ~~seven~~ nine members as follows:

16               ~~(1)~~ (a) The state treasurer.

17               ~~(2)~~ (b) The commissioner of administration.

18               ~~(3)~~ (c) The commissioner of insurance.

19               ~~(4)~~ (d) The commissioner of financial institutions.

20               (e) The speaker of the House of Representatives.

21               (f) The president of the Senate.

22               ~~(5)~~ (g) Three participant members who shall be elected by participants in  
23       accordance with rules promulgated by the Commission.

24               (2) Four members of the commission shall constitute a quorum for the  
25       transaction of business.

26                               \*       \*       \*

27       §1303. Powers and duties

28               The commission shall have the following powers and duties:

1               (1)~~(a)~~ To select the investments and to enter into contracts with the providers  
2 of such investments.

3               **(b) If the commission requires participants to purchase shares in certain core**  
4 **mandated investments as a condition of participation in the plan, the commission**  
5 **shall offer a treasury index, treasury bond, or treasury money market fund with an**  
6 **average maturity date in excess of three years as an investment option as one of the**  
7 **core mandated investment products.**

8   \*           \*           \*

9               **§1303.2. Investment in companies that boycott Israel prohibited**

10             **A. The purpose of the Section is to ensure that if the commission requires**  
11 **participants to purchase shares in certain core mandated investments as a condition**  
12 **of participating in the plan, those investments will not include investments in**  
13 **companies that boycott Israel.**

14             **B.(1) By September fifteenth of each year beginning in 2017, the**  
15 **commission shall obtain the list of countries that boycott Israel maintained by the**  
16 **state treasurer as provided in R.S. 49:328.**

17             **(2) Subject to an appropriation by the legislature, within thirty days of**  
18 **receipt of the list obtained pursuant to Paragraph (1) of this Subsection, the**  
19 **commission shall forward the list to the investment fund managers who are under**  
20 **contract with the commission or the administrator.**

21             **C. Within one year of receipt of the list obtained pursuant to Subsection B**  
22 **of this Section and on an annual basis thereafter, the commission, with the advice**  
23 **and counsel of the administrator and the investment fund managers, shall make every**  
24 **effort, in compliance with the provisions of this Section, to divest of the core**  
25 **mandated investments that boycott Israel.**

26             **D.(1) To ensure that the provisions of this Section are properly implemented,**  
27 **the commission shall require any investment fund manager to provide the**  
28 **commission with a list of comparable investments that can replace the investment**  
29 **in a company that boycotts Israel. The comparable investment shall be economically**

1 equivalent to the investment in a company that boycotts Israel with respect to return  
2 and risk in the appropriate time horizon and equivalent with respect to fees.

3 (2) The commission shall not be required to divest of a particular core  
4 mandated investment in any company that boycotts Israel under any of the following  
5 circumstances:

6 (a) The commission determines that there is no alternative investment  
7 available that complies with the provisions of Paragraph (1) of this Subsection.

8 (b) The selection of the alternative investment for that particular core  
9 mandated investment would be inconsistent with the commission's fiduciary  
10 responsibilities under the law.

11 (c) The legislature fails to appropriate the funds necessary to carry out the  
12 provisions of this Section

13 E. The legislative auditor shall assist the legislature in determining if an  
14 appropriation is necessary to carry out the provisions of this Section by reviewing  
15 the following:

16 (1) The annual fees charged by the administrator and the investment fund  
17 managers of the plan.

18 (2) The amount charged by plan administrators and investment fund  
19 managers in other states who have enacted similar laws to screen and divest of  
20 investments in states that boycott Israel.

21 Section 2. R.S. 49:328 is hereby enacted to read as follows:

22 §328. Identifications of companies that boycott Israel

23 A. For purposes of this Section, the following definitions apply:

24 (1) "Boycott Israel" means a refusal to deal, the termination of business  
25 activities, or other actions that are intended to limit commercial relations with Israel  
26 or persons or entities doing business in Israel or territories controlled by Israel, if  
27 those actions are taken either:

28 (a) In compliance with or adherence to calls for a boycott of Israel other than  
29 those boycotts to which 50 U.S.C. §4607(c) applies.

1           (b) In a manner that discriminates on the basis of nationality, national origin,  
2           or religion and that is not based on a valid business reason.

3           (2) "Company" means a for-profit sole proprietorship, organization,  
4           association, corporation, partnership, joint venture, limited partnership, or limited  
5           liability company, including a wholly owned subsidiary, parent company, or any  
6           affiliate thereof that exists to make a profit or a mutual fund which contains stocks  
7           or bonds.

8           B.(1) By August fifteenth of each year beginning in 2017, the treasurer shall  
9           make his best effort to identify and list all companies that boycott Israel and shall  
10           make the list of companies available to state agencies and the public by posting the  
11           list on the treasurer's website.

12           (2) In maintaining the list of companies that boycott Israel, the treasurer may  
13           review and rely, as appropriate in his judgment, on any publicly available  
14           information regarding companies, including information from the state, non-profit  
15           organizations, research firms, international organizations, other states and other  
16           governmental entities.

17           C.(1) When a company is identified for inclusion on the list prepared  
18           pursuant to this Section, the treasurer shall send written notice informing the  
19           company that it has been identified as a company that boycotts Israel and that it may  
20           become subject to divestment by the state or state agencies.

21           (2) The treasurer shall provide an opportunity for the company to comment  
22           in writing. If the company demonstrates that it has not engaged in a commerce-  
23           related or investment-related boycott, divestment, or sanctions activity targeting  
24           Israel, the treasurer shall not include the company on the list for that year. If the  
25           company fails to make such a demonstration, the company may be included on the  
26           list of prohibited investments no sooner than ninety days following the date on which  
27           written notice is sent to the company as provided in Paragraph (1) of this Subsection.

28           (3) If a company included on the list prepared pursuant to this Section ceases  
29           activity that caused the company to be included on the list and the company provides

1        documentation to the treasurer evidencing that the company has ceased the activity,  
2        the treasurer shall remove the company from the list.

3        Section 3. The Louisiana State Law Institute shall place the provisions of  
4 R.S.42:1301(10), (11), (12), and (13) as enacted in this Act in alphabetical order with other  
5 definitions in R.S. 42:1301.

6        Section 4. This Act shall become effective upon signature by the governor or, if not  
7 signed by the governor, upon expiration of the time for bills to become law without signature  
8 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
9 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
10 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 685 Engrossed

2017 Regular Session

Hodges

**Abstract:** Prohibits mandated investment by participants in the La. Deferred Compensation Plan (plan) in companies that boycott Israel and provides for the treasurer to compile and maintain a list of companies that boycott Israel. Adds the speaker of the House of Representatives and the president of the Senate as members of the La. Deferred Compensation Commission (commission) and provides for quorum.

#### **I. Treasurer's list of companies that boycott Israel**

Proposed law requires that by Aug. 15 for each year beginning in 2017, the state treasurer shall make his best effort to identify and list all companies that boycott Israel, as that term is defined by proposed law, and shall make that list available to state agencies and the public by posting it on the treasurer's website. In maintaining the list, the treasurer may review and rely on any publically available information regarding companies.

Proposed law requires that when a company is identified for inclusion in the list, the treasurer shall send written notice informing the company that it may become subject to divestment by the state or state agencies. The treasurer shall then provide opportunity for the company to comment in writing. If the company demonstrates that it has not engaged in a boycott of Israel, the treasurer shall not include the company on the list. If the company fails to make such a demonstration, the company may be included on the list of prohibited investments no sooner than 90 days following the date on which written notice is sent. If a company included on the list ceases activity that caused the company to be included on the list and the company provides documentation to the treasurer evidencing that the company has ceased the activity, the treasurer shall remove the company from the list.

Proposed law defines "boycott Israel" as engaging in a refusal to deal, termination of business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or territories controlled by Israel, if those actions are taken either (a) in compliance with adherence to calls for a boycott of Israel

other than those boycotts or (b) in a manner that discriminates on the basis of nationality, national origin, or religion and that is not based on a valid business reason.

## **II. La. Deferred Compensation Plan**

Present law, pursuant to federal law, provides for a deferred compensation plan for public employees, which allows an employee to defer and invest some of his income. Present law provides for the plan to be administered by a commission.

### **a. Core mandated investments**

Present law grants the commission power to select the plan investments and to enter into contracts with the providers of such investments. Proposed law retains present law and provides that if the commission requires participants to purchase an investment as a condition of participation in the plan, the commission shall offer a treasury index, treasury bond, or treasury money market fund with an average maturity date in excess of three years as an investment option as at least one of the core mandated investment products.

Proposed law requires the commission to obtain the list of countries that boycott Israel maintained by the state treasurer pursuant to proposed law and, subject to an appropriation by the legislature, forward the list to the investment fund managers who are under contract with the commission or plan administrator. Proposed law requires that the commission, with the advice and counsel of the administrator and the investment fund managers, make every effort to divest the core mandated funds of all investments of any company that boycotts Israel.

Proposed law requires the commission to require the investment fund manager to provide a list of comparable investments that can replace the investment in a company that boycotts Israel that are equivalent with respect to return and risk in the appropriate time horizon and with respect to fees.

Proposed law provides that the commission shall not be required to divest a particular core mandated investment of any company that boycotts Israel if the commission determines that there is no alternative investment available that is a comparable investment, if the selection of the alternative investment for that particular core mandated investment would be inconsistent with the commission's fiduciary responsibilities under the law, or if the legislature fails to appropriate funds necessary to carry out proposed law.

Proposed law requires the legislative auditor to assist the legislature in determining if an appropriation is necessary to carry out proposed law by reviewing annual fees charged by the plan administrator and investment fund managers and the fees charged by administrators and investment fund managers in other states who have enacted similar laws to screen and divest of investments in states that boycott Israel.

### **b. Commission Membership**

Present law provides that the commission shall consist of seven members as follows:

- (1) The state treasurer.
- (2) The commissioner of administration.
- (3) The commissioner of insurance.
- (4) The commissioner of financial institutions.
- (5) Three participant members elected by plan participants.

Proposed law adds the speaker of the House of Representatives and the president of the Senate, or their designees, as members of the commission. Proposed law establishes that four members of the commission shall constitute quorum.

(Amends R.S. 42:1301(4), 1302(B), and 1303(1); Adds R.S. 42:1301(10), (11), (12), and (13) and 1303.2 and R.S. 49:328)