

# BILL SUMMARY

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December 2017

## **The Combating BDS Act of 2017 (S.170 and H.R.2856)**

The Combating BDS Act of 2017 (S. 170 and H.R.2856) would permit state and local governments to restrict business with entities that promote boycotts, divestment, or sanctions (BDS) targeting Israel. Led by Sens. Marco Rubio (R-FL) and Joe Manchin (D-WV), and Reps. Patrick McHenry (R-NC) and Juan Vargas (D-CA), the measures reflect Congress's view that efforts by state and local governments to divest from, or bar contracting with, entities engaged in commercial or investments-related boycotts of Israel do not conflict with federal law.

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### **Key Provisions:**

- Seeks to ensure that states and local governments have the right to divest public funds from entities that engage in commerce-related or investment-related BDS activity targeting Israel.
- Provides that states and local governments have the right to prohibit or limit public contracts for goods or services with entities that engage in BDS.
- Provides safe harbor protection to asset managers from lawsuits that may arise from carrying out divestment, pursuant to the law.
- Emphasizes that nothing in the bill alters established U.S. policy concerning final status issues between Israel and the Palestinians, which can only be resolved through direct negotiations between the parties.
- Limits its scope to commercial activities between companies and state and local governments, and does not restrict free speech. U.S. courts have repeatedly said that states can place conditions on companies that want to do business with them.
- The legislation mirrors a provision within current federal law, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), that authorized such action vis-à-vis companies invested in Iran's energy sector, and has successfully protected state laws that required such divestment.

### **State Activity:**

- More than 34 state legislatures around the country have introduced resolutions and legislation to combat BDS since 2014.
  - Governors from 24 states have signed anti-BDS divestment legislation into law.
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