The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1678

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Leek and others

SUBJECT: Entities that Boycott Israel

DATE: April 1, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	**Fav/CS**
2.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1678 expands prohibitions on public entities' engagements with companies that boycott Israel. Specifically, it:

- Expands the definition of a "boycott of Israel" to include an academic boycott of Israel in which an educational institution (or any of its departments, centers, or other organs) enacts or implements restrictive policies or participates in activities that restrict ongoing or potential academic relationships on the basis of ties to Israel or its academic, educational, or research institutions.
- Requires that the State Board of Administration (SBA), on behalf of the public fund, divest from companies *and other entities [emphasis added]* (including educational institutions and foreign governments) that engage in a boycott of Israel.
- Requires that universities of the State University System endowment and retirement funds divest from companies and other entities that engage in a boycott of Israel.
- Requires applicants for the Department of State's arts and culture grants to certify that they will comply with all relevant anti-discrimination laws and will not engage in antisemitic discrimination or speech in conjunction with their grant project and provides penalties for a violation of such certification.
- Allows companies or entities that are on the scrutinized companies or other entities list that boycott Israel list to contract with state agencies and local governments for up to $100,000 per contract. Previously, such companies were totally barred.

The bill likely has an insignificant fiscal impact on state and local government revenues and expenditures. **See Section V. Fiscal Impact Statement.**

The bill takes effect July 1, 2025.

II. Present Situation:

State Definition of Antisemitism

In 2024, the Legislature adopted a definition of "antisemitism" that closely mirrors the working definition used by the International Holocaust Remembrance Alliance in order to assist with the monitoring and reporting of anti-Semitic hate crimes and discrimination, and to make residents aware of, and combat, such incidents.[1] However, the law "may not be construed to diminish or infringe upon any right protected under the First Amendment to the United States Constitution or to conflict with federal or state antidiscrimination laws."

As provided in s. 1.105, F.S., antisemitism is the certain perception of Jewish individuals which may be expressed as hatred toward such individuals. Rhetorical and physical manifestations of antisemitism are directed toward Jewish and non-Jewish individuals and their property and toward Jewish community institutions and religious facilities. Examples of antisemitism include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jewish individuals.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jewish individuals as such or the power of Jewish people as a collective, such as the myth of a worldwide Jewish conspiracy or of Jewish individuals controlling the media, economy, government, or other societal institutions.
- Accusing Jewish people as a collective of being responsible for real or imagined wrongdoing committed by a single Jewish person or group or for acts committed by non-Jewish individuals.
- Denying the fact, scope, and mechanisms, such as gas chambers, or the intentionality of the genocide of the Jewish people at the hands of Nazi Germany and its supporters and accomplices during the Holocaust.
- Accusing Jewish people as a collective, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jewish individuals worldwide, than to the interests of their respective nations.
- Denying Jewish people their right to self-determination, such as claiming that the existence of the State of Israel is a racist endeavor.
- Applying double standards by requiring of the Jewish State of Israel a standard of behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism, such as blood libel, to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jewish individuals collectively responsible for actions of the State of Israel.

[1] Chapter 2024-262, Laws of Fla.

State Board of Administration - Generally

The State Board of Administration (SBA or Board) is established by the State Constitution.[2] The Board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution and ch. 215, F.S. The Board serves as the state's investment management organization, with authority over 30 funds collectively valued at about $270.5 billion as of December 31, 2024, including $220.2 billion in the state's pension and investment plans for public employees, which accounts for 81 percent of assets under management.[3] Other funds under management include the Florida Hurricane Catastrophe Fund, Department of the Lottery Fund, Florida Prepaid College and Florida College Investment Plan, Florida State University (FSU) Research Foundation, Florida PRIME (surplus funds of local governments) and the Police and Firefighters' Premium Tax Trust Fund.[4] The Governor, Chief Financial Officer, and Attorney General serve as the SBA's Board of Trustees (Trustees), and delegate operational authority to an executive director and chief investment officer.[5] A nine-member Investment Advisory Council provides guidance on investment policy and strategy.[6]

Specific Investment Responsibilities Relating to the Florida Retirement System Pension Plan

The SBA invests the assets of the Florida Retirement System (both the Pension Plan and the Investment Plan). As fiduciaries, the Board and its Trustees must act in the best interests of the plan's participants and beneficiaries. Generally, when deciding whether to invest, the Board and the Trustees must make decisions based solely on pecuniary factors and may not subordinate the interests of participants and beneficiaries to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary interest.[7]

In this instance, "pecuniary factor" means a factor that the SBA determines will likely have "a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests."[8] Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's authority to invest the funds, including Florida Retirement System (FRS) assets, is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and how much of any fund may be invested in each investment type.[9]

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[2] Art. IV, s. 4(e) Fla. Const. (1968).
[3] State Board of Administration (SBA), *Performance Report Month Ending December 31, 2024, available at* https://www.sbafla.com/media/sr1avumn/monthly-trustee-report_december-2024.pdf (last visited March 27, 2025).
[4] A full list of SBA-managed investment funds is available in the SBA's December 2024 Monthly Performance Report at page 5, *See supra* note 3.
[5] Section 215.44, F.S.
[6] Section 215.444(2), F.S.
[7] Section 214.47(10)(b), F.S.
[8] Section 215.47(10)(a), F.S.
[9] Section 215.47, F.S., sets some key guidelines, such as:

- No more than 80 percent of assets may be invested in domestic common stocks.
- No more than 75 percent of assets may be invested in internally managed common stocks.

The Legislature has enacted three statutory exceptions to the normal fiduciary standards relating to investments of the FRS. The exceptions apply to investments in (a) certain companies doing business in Cuba, Syria, and Venezuela;[10] (b) certain companies doing business in Sudan or Iran;[11] and (c) certain companies that boycott Israel or engage in a boycott of Israel.[12] These statutory exceptions allow the Board and the Trustees to make decisions regarding investments in these "scrutinized companies" without regard to the pecuniary factors and nonpecuniary interests. The definition of "company" for purposes of this section includes all wholly-owned subsidiaries, majority-owned subsidiaries, or parent companies of such entities or business associations.[13]

FRS Investment Plan Investment Funds

While the SBA manages the funds that constitute the Pension Plan, they do not manage investments for the Investment Plan. The Investment Plan offers a diversified mix of primary investment funds in which the member can choose to invest his or her funds. These investment funds are managed by private providers (such as Fidelity, Prudential, Stephens, T. Rowe Price, and others) and have associated annual fees, as well as retirement objectives.[14]

Prohibited Investments by the SBA for Companies that Boycott Israel

In 2016, the Legislature enacted a requirement that the SBA, on behalf of the public fund, [15] divest from scrutinized companies that boycott Israel.[16] Section 215.4725, F.S., defines the term "boycott Israel" or "boycott of Israel" to mean refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. This definition does not include restrictive trade practices, or boycotts fostered or imposed by foreign countries against Israel.[17]

- No more than 3 percent of equity assets may be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets may be invested in the equity securities of any one corporation.
- No more than 80 percent of assets may be placed in corporate fixed income securities.
- No more than 25 percent of assets may be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 25 percent of assets may be invested in foreign corporate or commercial securities or obligations.

[10] Section 215.471, F.S.
[11] Section 215.473, F.S.
[12] Section 215.4725, F.S.
[13] Section 215.4725(1)(b), F.S.
[14] Florida Retirement System, *Investment Plan—Investment Fund Summary*, p. 6, January 2025, https://www.myfrs.com/pdf/forms/invest_fund_summary.pdf (last visited March 27, 2025).
[15] The "public fund" is defined as "all funds, assets, trustee, and other designates under the SBA pursuant to part I of chapter 121." This means those assets of the Florida Retirement System—both the pension plan as well as the investment plan.
[16] Chapter 2016-36, Laws of Florida, codified as s. 215.4725, F.S.
[17] Section 215.4725, F.S.

The Board must make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings,[18] and assemble, update quarterly, and publish a list of the of those companies[19] in which it has direct or indirect holdings, or could have such holdings in the future. To this end, the Board has contracted with "external research" providers. After these providers have identified the potential companies that may meet the definition of a scrutinized company, the public fund's staff review the providers' assessments and, with other publicly available information, determine whether a company has engaged in boycotts of Israel and whether those operations have ceased.[20] Companies that engage in a boycott of Israel may be subject to a divestment or prohibition on investment by the Board. Divestment does not apply to indirect holdings in actively managed commingled investment funds[21]—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.

Once a company is placed on the list of scrutinized companies that boycott Israel, the Board must inform the company of its status and that it may become subject to an investment prohibition or divestment. The notice must also encourage the company to cease its boycott of Israel within 90 days. If the scrutinized company abandons its boycott within 90 days of the engagement, then the public fund must remove it from the Scrutinized Companies that Boycott Israel List. If, after 90 days following the Board's initial engagement company, the company continues to boycott Israel, the Board must divest from all of the scrutinized company's publicly traded securities. The divestment must occur within 12 months of the company's most recent appearance on the scrutinized companies lists.[22] The public fund cannot acquire, on behalf of the FRS, any securities of companies on the scrutinized companies lists.[23]

The Board's actions to comply with the prohibition on investing with companies on the Scrutinized Companies that Boycott Israel List are adopted and incorporated into the Florida Retirement System Trust Fund investment policy statement.[24] Changes to the investment policy statement are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.[25]

The public fund may cease its divestment, or reinvest in previously divested companies, if the value of all the fund's assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.[26] If cessation of divestment is triggered, the SBA must provide and update semiannually a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.[27]

[18] Section 215.4725(2)(a), F.S.
[19] A "scrutinized company" is one which boycotts Israel or engages in a boycott of Israel. Section 215.4725(1)(f), F.S.
[20] Section 215.4725(2)-(3), F.S.
[21] Section 215.4725(3)(d), F.S.
[22] Section 215.4725(3), F.S.
[23] Section 215.4725(3)(c), F.S.
[24] *See* s. 215.475, F.S.
[25] Section 215.4725(5), F.S.
[26] Section 215.4725(6), F.S.
[27] *Id.*

Department of State's Arts and Cultural Grants

The Department of State (DOS), created in s. 20.10, F.S., houses the Division of Historical Resources, Division of Cultural Affairs, and Division of Library and Information Services, which administer grants pursuant to ch. 265, F.S.

Secretary of State – Florida's Chief Cultural Officer

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services within the DOS promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.[28] The Secretary of the DOS, as the head of these divisions, is designated as "Florida's Chief Arts and Culture Officer" and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. [29]

Division of Arts and Culture

The Division of Arts and Culture (Division) is Florida's designated state arts agency. The Division promotes arts and culture as essential to the quality of life for all Floridians. To promote excellence and encourage access to cultural opportunities, the Division provides funding, programs, and resources, including grants for programs and projects in: arts in education, local arts agencies, state service organizations, museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts.[30]

The Florida Arts and Cultural Act (Act) is set forth in ss. 265.281-265.709, F.S., to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums, and nonprofit organizations.[31] The Division is charged with directly administering and overseeing all programs authorized by the Act and may adopt rules to do so.[32] This includes:

- Arts and cultural grants to support science museums, youth and children's museums, historical museums, local arts agencies, Florida artists, state service organizations, and organizations that have cultural program activities;[33]
- An endowment to provide matching funds to local sponsoring organizations that engage in programs directly related to cultural activities;[34] and
- Grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of cultural facilities.[35]

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[28] Section 15.18, F.S.
[29] *Id.*
[30] Florida Department of State, Division of Arts and Culture, *Mission*, https://dos.fl.gov/cultural/about-us/mission/ (last visited March 27, 2025).
[31] Section 265.282, F.S.
[32] Section 265.284(3)(j), F.S.
[33] Section 265.286, F.S.
[34] Sections 265.601-265.606, F.S.
[35] Section 265.701(1), F.S.

The Florida Council on Arts and Culture must review each application for a grant and must annually submit to the Secretary for approval lists of all applications recommended by the council for award of grants, arranged in order of priority.[36]

Generally, eligibility for arts and culture grants require that:[37]

- Grantees are in good standing with the Division of Arts and Culture and the Department of State at the time of the application.
- The applicant is a public entity, or a Florida non-profit, tax exempt corporation that is registered and in active status with Florida's Division of Corporations.
- Experience in arts and cultural programming of at least one year.
- The Applicant register as a vendor with the Department of Financial Services and provide their most recent Federal 990 form.

Procurement by Governmental Entities

Chapter 287, F.S., regulates state agency[38] procurement of personal property and services.[39] Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.[40]

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[36] Sections 265.286, 265.606(1)(c), and 265.701(3), F.S.
[37] Florida Department of State, *General Program Support Grant Guidelines*, p. 5 https://files.floridados.gov/media/706640/gps-grant-guidelines-2025.pdf (last visited March 27, 2025).
[38] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[39] Generally, local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.
[40] *See* ss. 287.012(6) and 287.057, F.S.

Contracts for commodities or contractual services in excess of $35,000 must be procured utilizing a competitive solicitation process.[41] Some specified services and commodities, however, are not subject to competitive solicitation requirements.[42]

Chapter 287, F.S., establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.[43]

The DMS is statutorily designated as the central procurement authority for executive agencies and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;[44] creating uniform agency procurement rules;[45] implementing the online procurement program;[46] and establishing state term contracts.[47] The agency procurement process is partly decentralized in that an agency, except in the case of state term contracts, may procure goods and services itself in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

III. Effect of Proposed Changes:

Section 1 expands the State Board of Administration's (SBA's) divestment requirement in s. 215.4725, F.S., to include "other entities," in addition to companies, that boycott Israel. The term "other entities" is defined as an educational institution, a nonprofit organization, a state agency, various state officers, a local governmental entity or unit thereof, and a foreign government, including any of its public investment funds, public pension funds, sovereign wealth funds, or other government-sponsored investment funds. The endowment and retirement funds of the universities of the State University System must also divest from securities of companies or other entities on the Scrutinized Companies or Other Entities that Boycott Israel List ("List").

This prohibition specifically extends to acquiring the debt of a foreign government that is on the List, or of a foreign government with a sovereign wealth fund that is on the List where the government has authority to actively control or manage the fund.

Section 1 also requires the SBA to determine whether the state currently contracts or has a grant agreement with any company or entity on the List and notify each company or entity newly placed on the List that it may become barred from future grants awarded by the state in virtue of its activities.

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[41] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

[42] *See* s. 287.057(3)(e), F.S.

[43] *See* ss. 287.042(2)(c) and 120.57(3), F.S.

[44] Sections 287.032 and 287.042, F.S.

[45] Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

[46] Section 287.057(22), F.S.

[47] Sections 287.042(2) and 287.056, F.S.

The bill makes conforming changes throughout s. 215.4725, F.S., to direct the public fund to engage with, scrutinize, and ultimately divest from “other entities” that boycott Israel in a similar manner it engages with companies under the current statute.

Section 2 amends s. 265.286, F.S., to require each applicant for an arts or culture grant provided by the Department of State to sign a certification form attesting that it (1) is complying with all relevant antidiscrimination laws, including Florida’s anti-boycott rules under ss. 215.4725 and 287.135, F.S.; and (2) will not engage in antisemitic discrimination or speech in conjunction with the program or project for which its grant is awarded. Antisemitic discrimination, in this instance, includes the refusals to deal based on an individual or entity’s real or perceived connection to the State of Israel.

“Refusals to deal” is a term of art used in antitrust law to describe a refusal to cooperate with rivals in a manner that can rise to anticompetitive behavior.[48] For this reason, the sponsor may wish to substitute with a more common phrase, such as even “refusal to deal” (with no ‘s’ on the end of refusal.)

For these purposes, the bill adopts the definition of antisemitic discrimination and speech in s. 1.015, F.S. Antisemitism is defined in s. 1.015, F.S., as the certain perception of Jewish individuals which may be expressed as hatred toward such individuals. Rhetorical and physical manifestations of antisemitism are directed toward Jewish and non-Jewish individuals and their property and toward Jewish community institutions and religious facilities.

The bill provides that an applicant that is found to engage in prohibited boycotts or antisemitic speech or discrimination in conjunction with the program or project for which the grant is awarded shall disqualified from grant eligibility for 10 years after the boycott or discriminatory action has ended. The grant recipient who is found to have engaged in a boycott of Israel or antisemitic discrimination during the duration of the project or program for which the grant was awarded shall be subject to a fine equal to three times the grant award received. If the Attorney General fails to pursue a cause of action within 90 days after the grant awardee’s violation (by engaging in a boycott or antisemitic behavior), then any individual may file a complaint with the Attorney General, who must provide a written response within 30 days after his or her receipt.

Section 3 amends s. 287.135, F.S., regarding the prohibition against contracting with scrutinized companies, to:

- Expand the contracting prohibition to apply to “other entities” as well as companies (“other entities,” however, is not defined in relevant statute) for contracts entered into by a state agency or local government on or after July 1, 2025;
- Increase the current threshold to contract with a scrutinized company or other entity that boycotts Israel to less than $100,000 (current law completely bars any contracts with such companies);
- Make conforming changes, such as allowing both companies and entities that are on the scrutinized companies and other entities that boycott Israel list to prove that they should not be on the list; ensuring that both a company and entity certify that they are not engaging in a boycott of Israel at the beginning of, or renewal of a contract with an agency or local

[48] *United States v. Google LLC*, 747 F. Supp. 3d 1 (D.D.C. 2024).

government; and providing for a civil action against both a company and entity in the instance that one has submitted a false certification.

Section 4 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

Federal Preemption

The U.S. Constitution's Supremacy Clause establishes that federal statutes, treaties, and the U.S. Constitution are "the supreme Law of the Land."[49]

Accordingly, federal law may preempt state action that thwarts federal law in three ways:

- By an express statement of its intent to occupy a field. Express preemption need not be total, however—it can preempt all state laws or only certain state laws.
- With "a framework of regulation so pervasive that Congress left no room for the States to supplement it or where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[50]
- Where state law conflicts, leaving an actor to choose whether to adhere to state or federal law.[51] The state law may also be subject to conflict preemption where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[52]

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[49] U.S. CONST. art. VI, cl. 2.
[50] *Arizona v. U.S.*, 567 U.S. 387, 399 (2012).
[51] *Crosby v. Nat'l. Foreign Trade Council*, 530 U.S. at 372 (2000).
[52] *Nat'l Foreign Trade Council, Inc. v. Giannoulias*, 523 F. Supp. 2d 731 (N.D. Ill. Feb. 23, 2007), quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

The federal government's authority to act in the realm of foreign affairs is vested by the U.S. Constitution.[53] State laws that intrude into this field of foreign affairs and improperly impact foreign affairs, even where not explicitly preempted by prior federal action, may be invalid.[54] Courts have generally held, however, that the state's intrusion must have more than an "incidental effect" on foreign affairs in order to be considered an encroachment onto the federal government's powers.[55] It is likely that any affects this bill has on foreign affairs would be "incidental," and, for this reason, permissible under a purely Supremacy Clause analysis.

Foreign Commerce Clause

Article I, section 8, clause 3 of the U.S. Constitution grants Congress the power to "regulate commerce with foreign nations ...." Conversely, in conjunction with the aforementioned Supremacy Clause, this provision serves as a limitation on states' authority to encroach onto the realm of foreign commerce. The "dormant foreign commerce power"[56] voids state acts upon foreign commerce because of the Constitution's overriding concern for national uniformity in foreign commerce—even in instances when Congress has not affirmatively acted.[57] A state may impermissibly encroach on the federal government's prerogative to regulate foreign commerce if the action creates a risk of conflict or impedes the federal government's ability to speak in "one voice."[58] Courts generally view state action in this context with a heightened scrutiny that assumes the supremacy of federal action in the realm of foreign relations.[59]

A state's actions may, however, be permissible where the state acts as a market participant, rather than market regulator—states have generally been found to act as a participant where they act in their proprietary capacity to spend or invest funds in a manner that comports with the economic or ideological sentiments of their citizens. This exception, however, is limited to instances where a state's acts do not have a substantial regulatory effect outside the particular market in which it participates. Moreover, it is unclear whether the market participant exception applies to the Foreign Commerce Clause.[60]

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[53] *See, e.g.*, U.S. CONST., Art. I, s. 8 (power to declare war, maintain a military, and regulate foreign commerce); U.S. CONST., Art. II, s. 2 (power to enter into treaties); U.S. CONST., Art. III, s. 2 (power to hear case involving foreign states and citizens).

[54] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n. v. Garamendi*, 539 U.S. 396 (2003) (finding that the President's powers in foreign policy were so great as to outweigh any need for a direct expression of preemption.)

[55] *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

[56] *See generally*, Stephen Mulligan, Congressional Research Service, *Constitutional Limits on States' Power over Foreign Affairs*, 3-4 (Aug. 15, 2022), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10808 (last visited Mar. 14, 2025).

[57] *United States v. Davila-Mendoza*, 972 F.3d 1264 (11th Cir. 2020).

[58] *Japan Line v. County of Los Angeles*, 441 U.S. 434, 446 (1979).

[59] "The premise […] is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise […] must be rejected. When construing Congress' power to 'regulate Commerce with foreign Nations,' a more extensive constitutional inquiry is required." *Japan Line* at 446.

[60] *National Foreign Trade Council v. Giannoulias*, 523 F.Supp.2d 731, 748 (N.D. Ill. Feb. 23, 2007).

A reviewing court may find that the divestment and contracting provisions implicate the aforementioned constitutional provisions.

Freedom of Speech

Both the federal and state constitutions protect freedom of speech, and, specifically, prohibit the government from passing laws abridging free speech.[61] "[T]he bedrock principle underlying" the guarantee of freedom of speech "is that states cannot prohibit speech merely because it offends the sensibilities of others."[62] While both the state and federal constitutions protect freedom of speech, such protection is not absolute. The government may constitutionally regulate speech in specific instances, so long as the government has a sufficient government interest justifying the restriction and uses an appropriately tailored approach. The bill instills a limitation on speech for recipients of public funds and grants—they may not engage in antisemitic speech or violate the provisions of specified laws. The question, therefore, is whether the conditions are sufficiently tailored.

Generally, the government is given more latitude in regulations of speech as conditions of public funds; moreover, there tend to be additional latitudes where arts and culture are involved as well.[63] A condition becomes unconstitutional, however, in "situations in which the government has placed a condition on the *recipient* of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program."[64] A similar provision in one of President Trump's recent executive orders is currently enjoined from enforcement following a finding that the provision likely violates the First Amendment.[65]

The restrictions on antisemitic speech in this bill apply to use of public funds in conjunction with the subsidized program (grants) and therefore would likely pass a First Amendment challenge.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

Those companies and other entities, including nonprofit organizations, that engage in a boycott of Israel will be subject to divestment from the State Board of Administration (SBA) and universities of the State University System endowment and retirement funds.

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[61] FLA. CONST. art. I, s. 4; U.S. CONST. amend. I.
[62] *McElhaney v. Williams*, 81 F.4th 550, 557 (6th Cir. 2023), cert. denied, 144 S. Ct. 696 (2024).
[63] *Nat'l Endowment for the Arts v. Finlay*, 524 U.S. 569, 587-588 (1998).
[64] *Rust v. Sullivan*, 500 U.S. 173, 197 (1991) (emphasis in original).
[65] *Nat'l Ass'n of Diversity Officers in Higher Education v. Trump*, __ F. Supp. 3d __, 2025 WL 573764 (D. Md. Feb. 21, 2025).

Additionally, applicants for arts and culture grants from the Department of State (DOS) may be impacted by eligibility restrictions.

C. Government Sector Impact:

The State Board of Administration (SBA), the Department of State (DOS), local governments, and state agencies may be required to expend funds to research entities' activities to determine whether they impermissibly boycott Israel or engage in antisemitic behavior.

State agencies and local governments may be required to cancel contracts where the contractor does not comply with the law. This may require state and local governments to expend funds to procure an alternative vendor.

The DOS may incur litigation costs to collect fines assessed against grant recipients who violate their certifications to not violate specific antidiscrimination laws or engage in antisemitic discrimination.

VI. Technical Deficiencies:

The bill provides, at lines 310-313, that antisemitic discrimination and speech has the same definition has s. 1.015, F.S. Section 1.015, F.S., defines antisemitism but does not define antisemitic discrimination or antisemitic speech. Additionally, this definition is an inclusive definition, and therefore the prohibited actions of Department of State (DOS) grant applicants and recipients may be considered vague.

Section 2 requires a grant applicant to certify that it will comply with the anti-boycott rules in the proposed language of ss. 215.4725 and 287.135, F.S. These statutes provide instruction to the SBA in the course of its investment decisions and to local governments and state agencies in the course of their procurement decisions, respectively. While a grant awardee may be a local government, it may also be a nonprofit organization or individual. It would be impossible for such non-regulated entities to comply with these provisions, as there is no applicable law with which to comply.

Section 2 disqualifies from eligibility for a DOS arts and culture grant a grant *applicant* found to be engaging in any boycott action, antisemitic discrimination, or antisemitic speech in conjunction with the program…for which the grant is awarded. It may be more logical for this disqualification to apply to grant awardees because applicants cannot exercise any action in conjunction with the program or project for which a grant is awarded, because they have not yet been awarded a grant.

Section 2 requires the Attorney General to pursue a cause of action within 90 days after "a violation." It is unclear if this means the discovery of the violation, the first day of the violation, the last day of the violation, or any day of the violation. It is also unclear what cause of action the Attorney General should pursue.

VII. Related Issues:

The State Board of Administration (SBA) does not have information on the entities with which the state contracts or provides grants. Thus, it may be difficult for the SBA to comply with the requirements as directed on lines 166-171. Additionally, the SBA will be required to use its own funds to research the eligibility of companies and entities that are subject to contract restrictions under ch. 287, F.S., and grant restrictions under ch. 265, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.4725, 265.286, and 287.135.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 18, 2025:

- Reverts to the current definition of the public fund and places a separate requirement to divest from companies and other entities that boycott Israel on the State University System's (SUS) retirement and endowment funds.
- Clarifies that the public fund and SUS funds are prohibited from investing in specific funds of a foreign government that is on the Scrutinized List of Companies or Other Entities that Boycott Israel only where the foreign government is engaged in the control or management of that fund.
- Reverts to current law regarding the public fund's exception from the divestment requirements of s. 215.4725, F.S., in those instances where divestment would cause significant impact to the fund.
- Requires that the Department of State's (DOS) arts and culture grant applicants certify that they will comply with relevant antidiscrimination laws and not engage in antisemitic discrimination or speech in conjunction with the program or project for which their grant is awarded.
- Deletes a provision regarding SUS procurement from ch. 287, F.S., which covers only state agency and local government procurement issues.
- Applies the state agency and local government contracting provisions updated by the bill prospectively only.
- Removes the unnecessary use of "United States or Foreign" throughout the bill.
- Corrects drafting errors and makes conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.