

Arkansas Joins the Anti-Boycott Laws Wave – How will it Effect Public Finance?



John Bryant
jbryant@mwlaw.com
(501) 688.8823

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Introduction

Over the past few years there has been a growing national trend of states enacting laws prohibiting public entities in those states from entering into contracts with companies that boycott or discriminate against the energy, fossil fuel, firearms, and ammunition industry. Since the beginning of 2023, at least 13 states have introduced bills related to this issue, or have announced plans to do so.

We have previously discussed this growing trend [here](#); [here](#); [here](#); and [here](#).

On April 11, 2023, Governor Sarah Sanders signed [Act 611](#) into law, officially bringing Arkansas into the growing group of states which have enacted anti-boycott legislation aimed at public contracting. Act 611 was originally introduced as Senate Bill 62 and was approved by the Arkansas House of Representatives on April 5, 2023, and by the Arkansas State Senate April 6, 2023.

General Prohibition Language

Act 611 specifically prohibits “public entities” from entering into a contract with “a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of energy, fossil fuel, firearms, and ammunition industries.” The Act also prohibits public entities from engaging in such boycotts directly.

Definitions

The Act defines “public entities” to include the state (and its various departments, agencies, commissions, etc.), as well as local government organizations, which would include cities, counties, public and charter schools, and public institutions of higher education.

The “companies” that public entities will be barred from contracting with under Act 611 are broadly defined to include virtually all legal structures under state law, including subsidiaries and affiliates. However, the term “company” does not include “financial services providers.” The term “financial services providers” is defined as entities regulated by the state bank or securities department or similar federal regulatory agencies, including state or national banks or trust companies, state or federal savings and loan associations, state or federal credit unions and mortgage bankers and brokers.

The term “boycott” is defined to mean, without an ordinary business purpose: (1) engaging in refusals to deal, (2) terminating business activities, or (3) other actions intended to limit public entities commercial relations with an industry in a discriminatory manner. Purposes solely related to “furthering social, political, or ideological interests” are not considered to be an ordinary business purpose.

Exceptions

The prohibitions described in Act 611 do not apply to contracts with a total potential value of less than \$75,000. Also, the prohibitions do not apply to companies that would otherwise be prohibited from contracting with a public entity under Act 611, so long as such company agrees to provide the goods or services for at least 20% less than the lowest non-prohibited business.

Potential Effect on Public Finance in Arkansas

In other states that have adopted similar anti-boycott legislation, there has arguably been an adverse financial effect on municipal issuers in those states. For example, in Texas, shortly after that state enacted its anti-boycott legislation, several large municipal bond underwriters left the state. This resulted in fewer options for Texas issuers and an increase in negotiated sales (rather than competitive offerings). In a [working paper](#) published recently by the Hutchins Center on Fiscal & Monetary Policy at Brookings, the authors estimated that Texas issuers could incur hundreds of millions of dollars in additional interest expense due to reduced underwriter competition.

There is a significant difference between the Texas anti-boycott legislation and Act 611 which will likely limit the number of affected bond underwriters in Arkansas. Specifically, the carve-out of “financial services providers” from the definition of “company” in Act 611 should provide an available exception to the certification or prohibition rule of Act 611 as regulated entities.

However, there are still public finance transactions that may be affected in Arkansas. These would be transactions in which a non-regulated entity such as a municipal leasing company is involved in the deal. In these cases, care must be taken to assure that the requirements of Act 611 are followed.