

# HOUSE . . . . . No. 2565

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Antonio F. D. Cabral*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to pension divestment from the Republic of the Union of Myanmar.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/19/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/18/2021</i>

# HOUSE . . . . . No. 2565

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By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2565) of Antonio F. D. Cabral and Elizabeth A. Malia relative to public pension divestment from certain companies that have active business operations with the Republic of the Union of Myanmar. Public Service.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act relative to pension divestment from the Republic of the Union of Myanmar.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. As used in this act the following words shall, unless the context clearly  
2 requires otherwise, have the following meanings:—

3           “Active business operations”, all business operations with Myanmar that are not inactive  
4 business operations.

5           “Board”, the pension reserves investment management board established in section 23 of  
6 chapter 32 of the General Laws.

7           “Business operations with Myanmar”, providing goods or services deployed to develop  
8 petroleum resources, insurance, information technology, gems, and jewelry (collectively referred  
9 to as “resources”) in Myanmar, including acquiring, developing, maintaining, owning, selling,  
10 possessing, leasing or operating equipment, facilities, personnel, products, services, personal  
11 property, real property or any other apparatus of business or commerce and has knowingly on or

after February 1, 2021 made an investment or investments in Myanmar of at least \$10,000,000 over a twelve-month period which directly or significantly contributes to the enhancement of Myanmar’s ability to develop its resources; provided, however, that this definition shall not apply to a company that has inactive business operations with Myanmar.

“Company”, a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies or affiliates of such entities or business associations that exist for profit-making purposes.

“Direct holdings”, all securities of a company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

“Government of Myanmar”, the government of the Republic of the Union of Myanmar.

“Inactive business operations”, the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

“Indirect holdings”, all securities of a company held in an account or fund, such as a mutual fund, managed by 1 or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to this act.

“Humanitarian assistance”, means assistance to meet humanitarian needs, including needs for food, medicine, medical supplies and equipment, education, and clothing.

“Public fund”, the Pension Reserves Investment Trust or the Pension Reserves Investment Management Board charged with managing the pooled investment fund consisting of the assets of the State Employees’ and Teachers’ Retirement Systems as well as the assets of local retirement systems under the control of the board.

“Scrutinized company”, any company conducting business operations with Myanmar.

“Substantial action”, adopting, publicizing and implementing a formal plan to cease scrutinized business operations with Myanmar within 1 year and to refrain from any such new business operations with Myanmar.

SECTION 2. Notwithstanding any general or special law to the contrary, within 90 days of the effective date of this act, the public fund shall make its best efforts to facilitate the identification of all scrutinized companies in which the public fund has direct or indirect holdings, excluding those companies that are providing humanitarian assistance to Myanmar. The identification of scrutinized companies shall be the responsibility of an independent, third-party research firm, as identified by the public fund, and based on the criteria set forth in this act. By the first meeting of the public fund following the 90 day period, the public fund shall assemble all scrutinized companies in which it has direct or indirect holdings into a scrutinized companies list. The public fund shall update the scrutinized companies list on a quarterly basis based on evolving information from the independent, third-party research firm.

SECTION 3. Notwithstanding any general or special law to the contrary, the public fund shall adhere to the following procedure for companies on the scrutinized companies list:

(a)(1) The public fund shall determine the companies on the scrutinized companies list, created under section 2, in which the public fund owns direct or indirect holdings.

(2) The public fund shall sell, redeem, divest or withdraw all publicly-traded securities of each company identified in paragraph (1) with active business operations with Myanmar, except as provided in subsection (c) and section 5, according to the following schedule: (i) at least 50 per cent of such assets shall be removed from the public fund's assets under management within 6 months after the company's most recent appearance on the scrutinized companies list; and (ii) 100 per cent of such assets shall be removed from the public fund's assets under management within 12 months after the company's most recent appearance on the scrutinized companies list; provided, however, that this paragraph shall only apply while such company continues to have scrutinized active business operations with Myanmar.

(3) During the time period outlined in paragraph (2), the public fund may sign onto engagement letters or participate in shareholder resolutions regarding the scrutinized business operations of companies identified in paragraph (1) with active or inactive business operations with Myanmar in which the public fund still owns direct or indirect holdings;

(4) If a company identified in paragraph (1) with only inactive business operations with Myanmar converts such operations to active business operations with Myanmar, paragraph (2) shall immediately apply. The company shall also be immediately placed onto the scrutinized companies list.

(b) At no time shall the public fund acquire securities of companies on the scrutinized companies list that have active business operations with Myanmar, except as provided in subsections (c) and (d).

(c) No company which the United States government affirmatively declares to be excluded from its present or future federal sanctions regime relating to the government of

Myanmar shall be subject to divestment or an investment prohibition under subsections (a) and (b).

(d) Notwithstanding anything in this act to the contrary, subsections (a) and (b) shall not apply to indirect holdings in actively managed investment funds; provided, however, that the public fund shall submit letters to the managers of such investment funds containing companies with scrutinized active business operations with Myanmar requesting that they consider removing such companies from the investment fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, private equity funds shall be deemed to be actively managed investment funds.

SECTION 4. Notwithstanding any general or special law to the contrary, with respect to actions taken in compliance with this act, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds or investments for the public fund's securities portfolios and all good faith determinations regarding companies as required by this act.

SECTION 5. Notwithstanding any general or special law to the contrary, the public fund shall be permitted to cease divesting from certain scrutinized companies under subsection (a) of section 3, reinvest in certain scrutinized companies from which it divested under said subsection (a) of said section 3 or continue to invest in certain scrutinized companies from which it has not yet divested upon clear and convincing evidence showing that the total and aggregate value of all assets under management by, or on behalf of, the public fund becomes: (i) equal to or less than

98 99.5 per cent; or (ii) 100 per cent less 50 basis points of the hypothetical value of all assets under  
99 management by, or on behalf of, the public fund assuming no divestment for any company had  
100 occurred under said subsection (a) of said section 3. Cessation of divestment, reinvestment or  
101 any subsequent ongoing investment authorized by this section shall be strictly limited to the  
102 minimum steps necessary to avoid the contingency set forth in the preceding sentence.

103 For any cessation of divestment, and in advance of such cessation, authorized by this  
104 subsection, the public fund shall provide a written report to the attorney general, the senate and  
105 house committees on ways and means and the joint committee on public service, updated semi-  
106 annually thereafter as applicable, setting forth the reasons and justification, supported by clear  
107 and convincing evidence, for its decisions to cease divestment of holdings in companies on the  
108 scrutinized companies list or to reinvest or remain invested in companies with scrutinized active  
109 business operations with Myanmar.

110 SECTION 6. The public fund shall file a copy of the scrutinized companies list with the  
111 clerks of the senate and the house of representatives and the attorney general within 30 days after  
112 the list is created. Annually thereafter, the public fund shall file a report with the clerks of the  
113 senate and the house of representatives and the attorney general that includes: (1) the most recent  
114 scrutinized companies list; (2) all investments sold, redeemed, divested or withdrawn in  
115 compliance with subsection (a) of section 3; (3) all prohibited investments from which the public  
116 fund has not yet divested under subsection (b) of said section 3; and (4) any progress made under  
117 subsection (d) of said section 3.

118 SECTION 7. This act shall expire upon the United States Department of State removing  
119 its sanctions against Myanmar.

