

HOUSE No. 2791

The Commonwealth of Massachusetts

PRESENTED BY:

Erika Uyterhoeven

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 concerning investments of the Massachusetts Pension Reserve Investment Management (PRIM).

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/19/2021</i>

HOUSE No. 2791

By Ms. Uytterhoeven of Somerville, a petition (accompanied by bill, House, No. 2791) of Erika Uytterhoeven relative to certain investments of the Massachusetts Pension Reserve Investment Management. Public Service.

The Commonwealth of Massachusetts

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

An Act concerning investments of the Massachusetts Pension Reserve Investment Management (PRIM).

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

1 Chapter 32 of the General Laws is hereby amended by adding the following section:

2 For domestic equity investments in the private real estate, private equity, and private
3 infrastructure asset classes, including partnerships, joint ventures, co-investment vehicles,
4 commingled investments, and direct investments entered into after the enactment of this bill in
5 which MassPRIM has an equity interest greater than 50 percent, either directly or through one or
6 more external managers, the Chief Investment Officer (CIO) or the external manager shall
7 require that all developers and operators of enterprises thus financed must as a condition of the
8 pension system’s funding of the investment agree to, and abide by, the following requirements:
9 with respect to any construction-related activities financed by the investment, to use good faith
10 efforts to ensure that responsible contractors are included in the bidding by, and selection of, all
11 contractors and subcontractors at any tier performing any construction, delivery to the job site of
12 major construction materials, maintenance, repair, or restoration, including, without limitation,

13 alterations, additions, improvements, painting, installations of fixtures, mechanical, electrical,
14 plumbing, or with respect to any other construction or installation-related work, and structures,
15 equipment and systems fabricated for a specific job site.

16 A contractor shall be excluded from bidding on projects if such contractor or any of its
17 senior officials has been debarred in the 36 months preceding the bidding deadline by a
18 governmental authority for failure to pay prevailing wages or benefits on any prior job for which
19 it is required by law. A responsible contractor is one which: submits to the property or external
20 manager a responsible contractor self-certification on a form acceptable to the CIO;
21 communicates and furnishes this section to subcontractors; provides the CIO and the external
22 manager with responsible contractor documentation; selects subcontractors in a manner
23 consistent with this section; and pays workers fair wages and fair benefits including employer-
24 supported family health care coverage, pension benefits and state registered apprenticeship
25 training programs, based on relevant market factors that include the nature and location of the
26 project, comparable job or trade classifications, and the scope and complexity of the work.

27 With respect to any long-term operations financed by the investment, that any operator of
28 such operations shall make a good faith effort to secure an agreement with a bona fide labor
29 organization requesting to enter in to such an agreement solely with respect to such operations in
30 which the labor organization agrees not to strike, picket, boycott, or take economic action against
31 the operations for the duration of the investment. A bona fide labor organization is one which is a
32 member of either the AFL-CIO or Change to Win, and has at least 100 collective bargaining
33 agreements or 50,000 members in the same industry as the long- term operations.

34 For domestic equity investments in the private real estate, private equity and private
35 infrastructure asset classes, including partnerships, joint ventures, co-investment vehicles,
36 commingled investments, and direct investments entered into after the enactment of this bill, in
37 which the Mass PRIM has an equity interest equal to or less than 50 percent, the CIO shall
38 encourage external managers to follow the practices of this section and shall give preference in
39 the selection of external managers and placement of additional investments to those which
40 provide the best level of return at an acceptable level of risk and follow such practices.

41 The CIO of Mass PRIM shall not approve any investment that has the potential to
42 eliminate public sector jobs, would pose a reputational risk to the State-administered retirement
43 systems, or could bring public or regulatory scrutiny to the retirement systems.

44 Before presenting any investment to Mass PRIM for possible investment, the CIO shall
45 identify any features of the proposed investment that could potentially lead to significant loss of
46 public sector jobs, pose reputational risks, or subject the retirement systems to regulatory
47 scrutiny.

48 The CIO, subject to the direction of Mass PRIM's Board, shall exercise due diligence in
49 the selection of external managers. The CIO shall consider at least the following factors about
50 the external manager and companies in its current and historical portfolios: any violations, fines,
51 citations, or findings by a state or federal regulatory agency, including but not limited to,
52 environmental fines and violations, unfair labor practices, or OSHA fines and violations; the
53 record of securing labor peace agreements with labor organizations; disputes with labor
54 organizations in the previous five years and the outcomes of such disputes; any complaints about
55 the external manager, its portfolio companies or construction contractors received from

56 concerned citizens or organizations; and whether the external manager proposes an investment
57 strategy that is premised on, or has the potential to create, significant public sector job loss.

58 Prospective external managers and their portfolio companies shall be of good character
59 and shall have demonstrated observance of local, state, and national laws (including, by way of
60 illustration, those related to insurance, taxes, labor, anti-discrimination, environmental, and
61 occupational health and safety). External managers and their portfolio companies shall be
62 evaluated for their record of compliance with the policies, including any responsible contractor
63 policies of public pension plans for which they serve or have served as external managers and
64 shall be required to disclose any instances of non-compliance with such policies and to certify
65 that they and their portfolio companies are not out of compliance with any such policies at the
66 time of any proposed investment by Mass PRIM. External managers shall have demonstrated a
67 past practice of, and capacity for, managing risks, including, without limitation, investment risks,
68 interest rate risks, compliance risks, the risk of labor disputes, and the risk of malfeasance or
69 ineptitude on the part of contractors, subcontractors, or operators. Whenever possible, external
70 managers shall be chosen by competitive bidding and evaluated on their likelihood of producing
71 competitive, risk-adjusted rates of return.

72 The report of Mass PRIM on the performance of external managers shall include
73 identification of all investments held as of the date of the report that are in violation of Section
74 106 of Chapter 32 of the M.G.L. Mass PRIM and the CIO may take appropriate action to sell,
75 redeem, divest, or withdraw any investment held in violation of Section 106 of Chapter 32 of the
76 M.G.L., when efforts to cure the violation are unsuccessful. This section shall not be construed to
77 authorize the premature or otherwise imprudent sale, redemption, divestment, or withdrawal of
78 an investment.

79 This act shall take effect 180 days following the date of enactment except the CIO may
80 take any anticipatory administrative action in advance as shall be necessary for the
81 implementation of this act.