HOUSE DOCKET, NO. 3863 FILED ON: 1/20/2023

HOUSE . . . . . No. 2450

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Antonio F. D. Cabral	*13th Bristol*	*1/20/2023*
Christopher Hendricks	*11th Bristol*	*1/26/2023*
Paul A. Schmid III	*8th Bristol*	*2/1/2023*
Vanna Howard	*17th Middlesex*	*2/1/2023*

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HOUSE . . . . . No. 2450

By Representative Cabral of New Bedford, a petition (accompanied by bill, House, No. 2450) of Antonio F. D. Cabral and others relative to public pension fund divestment from the Republic of the Union of Myanmar. Public Service.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

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

"Active business operations", all business operations with Myanmar that are not inactive business operations.

"Board", the pension reserves investment management board established in section 23 of chapter 32 of the General Laws.

"Business operations with Myanmar", providing goods or services deployed to develop petroleum resources, insurance, information technology, gems, and jewelry (collectively referred to as "resources") in Myanmar, including acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal 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

13 over a twelve-month period which directly or significantly contributes to the enhancement of
14 Myanmar's ability to develop its resources; provided, however, that this definition shall not
15 apply to a company that has inactive business operations with Myanmar.

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

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

23 "Government of Myanmar", the government of the Republic of the Union of Myanmar.

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

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

30 "Humanitarian assistance", means assistance to meet humanitarian needs, including
31 needs for food, medicine, medical supplies and equipment, education, and clothing.

32 "Public fund", the Pension Reserves Investment Trust or the Pension Reserves
33 Investment Management Board charged with managing the pooled investment fund consisting of

34 the assets of the State Employees' and Teachers' Retirement Systems as well as the assets of
35 local retirement systems under the control of the board.

36 "Scrutinized company", any company conducting business operations with Myanmar.

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

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

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

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

54 (2) The public fund shall sell, redeem, divest or withdraw all publicly-traded securities of
55 each company identified in paragraph (1) with active business operations with Myanmar, except
56 as provided in subsection (c) and section 5, according to the following schedule: (i) at least 50
57 per cent of such assets shall be removed from the public fund's assets under management within
58 6 months after the company's most recent appearance on the scrutinized companies list; and (ii)
59 100 per cent of such assets shall be removed from the public fund's assets under management
60 within 12 months after the company's most recent appearance on the scrutinized companies list;
61 provided, however, that this paragraph shall only apply while such company continues to have
62 scrutinized active business operations with Myanmar.

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

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

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

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

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

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

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

92 SECTION 5. Notwithstanding any general or special law to the contrary, the public fund
93 shall be permitted to cease divesting from certain scrutinized companies under subsection (a) of
94 section 3, reinvest in certain scrutinized companies from which it divested under said subsection
95 (a) of said section 3 or continue to invest in certain scrutinized companies from which it has not
96 yet divested upon clear and convincing evidence showing that the total and aggregate value of all
97 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.

120 SECTION 8. The treasurer shall conform all public fund investments related to

121 companies doing business with Myanmar with 50 U.S.C. 1701.