

SENATE No. 1644

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 pensions, fiduciary standards, and sustainable investment.

PETITION OF:

NAME:

Julian Cyr

DISTRICT/ADDRESS:

Cape and Islands

SENATE No. 1644

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1644) of Julian Cyr for legislation relative to pensions, fiduciary standards, and sustainable investment. Public Service.

The Commonwealth of Massachusetts

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

An Act relative to pensions, fiduciary standards, and sustainable investment.

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. Section 1 of chapter 32 of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by striking the definition of “Beneficiary” and inserting in
3 place thereof the following new definition:-

4 “Beneficiary”, any person who is owed a retirement pension, is paid a retirement pension,
5 is paid an early retirement pension or is paid a survivor’s pension or a person entitled to any
6 present or potential benefit on account of membership of a person other than himself, under the
7 provisions of sections one to twenty-eight, inclusive. Beneficiaries include, but are not limited to:
8 (i) newly hired state employees and current workers owed a pension obligation as part of their
9 employment agreement that can only be collected decades from now, upon retirement; (ii) new
10 retirees who are eligible and are starting to collect their monthly financial payments owed as part
11 of the pension obligation; (iii) The oldest retirees who continue to collect their monthly financial
12 payments owed as part of the pension obligation, regardless of their age; and (iv) Massachusetts

13 taxpayers who guarantee pension obligations are fulfilled in the event a pension fund fails to
14 meet that obligation on its own.

15 SECTION 2. Said section 1 of chapter 32 is hereby amended by striking the words
16 "Commonwealth's Pension Liability Fund" and replacing it with the following:- "Commonwealth
17 Pension Promise Fund".

18 SECTION 3. Said section 1 of said chapter 32 is hereby further amended by inserting
19 after the definition of "Date the system becomes operative" the following new definition:-

20 "Dignified retirement", The outcome of a successful pension fiduciary-beneficiary social
21 contract and the intention of the Commonwealth Pension Promise Fund is a dignified retirement
22 with financial security and environmental/social security.

23 SECTION 4. Said section 1 of said chapter 32 is hereby further amended by inserting
24 after the definition of "District" the following new definitions:-

25 "Divestment", the act of selling securities and other assets held by the Commonwealth
26 Pension Promise Fund for breaches of fiduciary duty to comply with the obligation to deliver to
27 beneficiaries a dignified retirement and fulfil the Duty of Care, Duty of Loyalty and Duty of
28 Impartiality, among other specific/explicit duties.

29 "Duty of Care", the explicit fiduciary duty to protect the best interests of beneficiaries
30 without harm to others.

31 "Duty of Impartiality", the explicit fiduciary duty to diverse beneficiaries in protecting
32 the interests of one beneficiary class without harming another beneficiary class. See
33 "Intergenerational loyalty".

34 “Duty of Loyalty”, the explicit fiduciary duty to perform the duties of a fiduciary in the
35 best interests of the beneficiary, regardless of the fiduciaries’ other points of view.

36 “Duty to a Common Good”, the explicit fiduciary duty to meet the foundational
37 imperative of public pensions to manage the funds to meet the obligation as a public good.

38 “Duty to a Safe Future”, the explicit fiduciary duty to invest in fiduciary-grade
39 enterprises that do not create negative externalities that accrue to future beneficiaries.

40 “Duty to Monitor”, the explicit fiduciary duty to ensure that non fiduciary third-party
41 vendors are transparent, compliant with Commonwealth law and fulfilling the fiduciary duty of
42 the fiduciary trustees held accountable for the actions of the non-fiduciary third party.

43 “Duty to Negotiate”, the explicit fiduciary duty to acknowledge the purchasing power of
44 public pensions to negotiate with fiduciary-grade enterprises better terms that meet fiduciary
45 values.

46 SECTION 5. Said section 1 of said chapter 32 is hereby further amended by inserting
47 after the definition of “Employee” the following new definition:-

48 “Environmental, Social, Governance (“ESG”)”, “ESG” stands for environmental, social,
49 and governance. ESG investing is a way of investing in companies based on their commitment to
50 one or more ESG factors. It is often also called sustainable investing, socially responsible
51 investing, and impact investing.

52 The environmental factor may focus on a company’s impact on the environment or the
53 risks and opportunities associated with the impacts of climate change on the company, its
54 business and its industry. The social factor may focus on the company’s relationship with people

55 and society, or whether the company invests in its community. The governance factor may focus
56 on issues such as how the company is run and executive compensation.

57 SECTION 6. Said section 1 of chapter 32 of the General Laws is hereby amended by
58 striking the definition of “Fiduciary” and inserting in place thereof the following new
59 definition:-

60 "Fiduciary", any person who exercises any discretionary authority or discretionary control
61 respecting management of the funds of any retirement system or exercises any authority or
62 control respecting management or disposition of its assets on behalf of its beneficiaries.

63 Fiduciaries have important responsibilities and are subject to standards of conduct because they
64 act on behalf of participants in a retirement plan and their beneficiaries. These “Duties”, defined
65 specifically above, include broadly: (i) Acting solely in the interest of plan participants and their
66 beneficiaries and with the exclusive purpose of providing benefits to them; (ii) Carrying out their
67 duties prudently; (iii) Following the plan documents Diversifying plan investments; and (iv)
68 Paying only reasonable plan expenses.

69 SECTION 7. Said section 1 of said chapter 32 is hereby further amended by inserting
70 after the definition of “Fiduciary” the following new definitions:-

71 “Fiduciary Duty”, the legal and professional obligation of persons or institutions
72 entrusted to manage the best interests of a beneficiary, including but not limited to the eligible
73 beneficiaries of the Commonwealth’s public pensions. A Full Expression of Fiduciary Duty is
74 two parts, pertaining to but not limited to, management of the Commonwealth’s public pensions
75 as a public good through (i) financial performance and (ii) the protection of future social and
76 environmental benefits.

77 “Fiduciary Malpractice”, includes breaches, intentional or otherwise, of the explicit
78 fiduciary standards as outlined in chapter 32.

79 “Fiduciary Minimums”, sufficient cash flow, generated through fiduciary-grade
80 investments and as required by actuarial forecasts, that support the provision of retirement
81 benefits – financial, social and environmental – to current and future members and the general
82 public.

83 “Fiduciary Money”, the cash and/or cash value held in the actuarial risk pool, designed
84 by actuaries to deliver on the pension promise.

85 “Fiduciary-Grade Investments”, an investment that generates fiduciary minimum returns,
86 such as cash flows, without creating or reckoning with negative externalities harmful to the
87 future.

88 SECTION 8. Said section 1 of said chapter 32 is hereby further amended by inserting
89 after the definition of “Hospital district” the following new definitions:-

90 “Intergenerational loyalty”, a unique obligation of public pension plans with their diverse
91 sets of beneficiaries. See Duty of Impartiality. One subset of beneficiary, like current retirees,
92 cannot benefit at the expense of another subset of beneficiary, like current workers not yet
93 eligible to collect their owed pension promise.

94 “Loss”, financial, social and environmental setbacks, now or in the future, created by
95 pension investment strategies. Fiduciary duty is more than financial performance, but includes a
96 reckoning with negative externalities that also constitute a loss to future beneficiaries collecting
97 their pension promise.

98 SECTION 9. Said section 1 of said chapter 32 is hereby further amended by inserting
99 after the definition of “Membership service” the following new definition:-

100 “Negative Externalities”, long-term damage or degradation to environmental, social and
101 other public goods from current activities, like nonfiduciary financial investments, that accrue to
102 the future and future beneficiaries/youngest beneficiaries owed a pension promise.

103 SECTION 10. Said section 1 of said chapter 32 is hereby further amended by inserting
104 after the definition of “Pension fund” the following new definition:-

105 “Pension Promise”, a social contract, with terms and conditions, between public pension
106 fiduciaries guided by explicit fiduciary duties and their eligible pension beneficiaries to deliver
107 regular payments of financial support upon the retirement date of the beneficiary. Beneficiaries
108 who are still working and/or are not yet eligible to receive retirement payments as per the
109 pension promise are still owed a pension promise whenever they are eligible to retire in the
110 future.

111 SECTION 11. Said section 1 of said chapter 32 is hereby further amended by inserting
112 after the definition of “Prior service” the following new definition:-

113 “Public good”, public pensions are designed, firstly, as a public good to support elderly
114 Americans with financial security to the larger benefits accruing to workers, taxpayers, the
115 economy and the Commonwealth. Preserving the public good enshrines the fund’s financial
116 obligation to current retirees who have earned their retirements through a career of public
117 service.

118 SECTION 12. Said section 1 of said chapter 32 is hereby further amended by inserting
119 after the definition of “Retirement system funding schedule” the following new definition:-

120 “Scale”, the financial size and economic influence of public pensions, compared to other
121 financial funds, in fulfilling the pension promise.

122 SECTION 13. Said section 1 of said chapter 32 is hereby further amended by inserting
123 after the definition of “Service” the following new definition:-

124 “Social Contract”, the agreement, with terms and conditions, of a pension promise
125 between a fiduciary and beneficiary owed that pension promise.

126 SECTION 14. Said section 1 of said chapter 32 is hereby further amended by inserting
127 after the definition of “Special fund for military service credit” the following new definitions:-

128 “Speculation”, a type of investment strategy that gambles fiduciary money on markets
129 and exchanges and other financial forums that manage market-clearing prices and share value of
130 securitized assets and must be reviewed for breaches of fiduciary duty.

131 “Standing”, the legal entitlement of a beneficiary to challenge fiduciary duty and
132 potential breaches of fiduciary duty. Commonwealth taxpayers, as sponsors of the public
133 pensions, have standing to challenge fiduciary performance.

134 SECTION 15. Said section 1 of said chapter 32 is hereby further amended by inserting
135 after the definition of “State police surgeon” the following new definitions:-

136 “Stewardship”, the safer alternative path investment strategy that curates a healthy future
137 for all beneficiaries owed a pension promise, and the general public.

138 “Sufficiency”, the level of cashflow return from financing activities needed to meet
139 actuarial minimums and costs in order to manage the pension plan for as long as it is obligation
140 to deliver a pension promise.

141 SECTION 16. Said section 1 of said chapter 32 is hereby further amended by inserting
142 after the definition of “Teacher” the following new definition:-

143 “Third-party Experts, Consultants, Vendors, Offerors, Asset Managers”, nonfiduciary
144 individuals or entities contracted and awarded with public pension money to generate financial
145 returns from pension fund fiduciary monies in accordance with agreed strategy.

146 SECTION 17. Said chapter 32 is hereby amended by adding the following 2 new
147 sections:-

148 Section 106. Purpose of the Commonwealth Pension Promise fund

149 The Commonwealth Pension Promise Fund, shall, by a social contract called a “pension
150 promise”, provide regular financial payments to eligible pension beneficiaries for as long as a
151 beneficiary is alive. The purpose extends to fiduciary duty practices that meet fiduciary
152 minimum cash flows invested in fiduciary-grade enterprises that have no or minimized negative
153 externalities or social/environmental damage that accrue to future or youngest beneficiaries owed
154 a dignified retirement equal to those dignified retirements of the beneficiaries before them.

155 Section 107. Pensions as public goods

156 Public Pensions shall be public goods, in keeping with their historical development to
157 assist older Commonwealth citizens for the benefits of workers, taxpayers, society and the

158 economy. The public good enshrines a retiree’s right to receive pension benefits whenever they
159 retiree and if they are already retired.

160 SECTION 18. Section 23(3) of chapter 32 of the General Laws, as appearing in the 2020
161 Official Edition, is hereby amended by striking the definition of “Fiduciary Standards” in its
162 entirety and inserting in place thereof the following new definition:-

163 "Fiduciary Standards”, A fiduciary as defined in section 1 shall execute the Duties of
164 Care, Loyalty and Impartiality along with the Duties of Negotiation, A Safe Future and Common
165 Good, as outlined in section one and in keeping with the care, skill, prudence and diligence of a
166 reasonable person acting in a stewardship manner, as defined in section one. A Fiduciary’s
167 purpose is to deliver the pension promise, as described in Section 1(a), that is made to all eligible
168 public pension beneficiaries and members, regardless of their age, employment status with the
169 state or retirement status to contribute to a dignified retirement and, additionally, a public good,
170 as describe in Section 1(b) for all Commonwealth taxpayers who contribute as sponsors to any
171 underfunded position. A Pension Promise is two-fold: 1) Providing a regular payment of
172 financial support in keeping with a dignified quality of life and 2) protecting the social and
173 environmental benefits that contribute to that dignified retirement.

174 Fiduciaries, on their own or through a non-fiduciary consultant, advisor or hired cash
175 flow manager, must meet the annual minimum fiduciary return through fiduciary-grade
176 investments, as outlined in section 1, that generate sufficient cash flows, minimum or no long-
177 term negative externalities, as outline in section 1.

178 Fiduciary-grade investments must meet the goals of diversification, risk mitigation for
179 current and future retirees, and stewardship strategies that minimize the risk of large financial

180 and environmental losses. Where a fiduciary makes a non-fiduciary choice that breaches any of
181 the explicit duties in managing the public pension, that choice must be defended in a full public
182 disclosure before that choice is executed.

183 Losses are defined in section 1. Each member of a retirement board established under this
184 chapter shall, upon the commencement of the member's term, file with the commission a
185 statement acknowledging the member is aware of and will comply with the standards set forth in
186 chapter 268A, this chapter and rules and regulations promulgated under this chapter.

187 Pension beneficiaries, members and citizens with standing as defined in section 1 can
188 challenge, in legal and other forums, the fulfilment of fiduciary duty and the actions of
189 fiduciaries on the grounds that the Duties of Care, Loyalty and Impartiality, Negotiation, A Safe
190 Future and Common Good have been breached.