

HOUSE No. 3727

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 passage of the accompanying bill:

An Act to protect the Massachusetts Pension Fund from the risks of investment in Iran.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Joan M. Menard	First Bristol and Plymouth
James E. Vallee	10th Norfolk
Angelo J. Puppolo, Jr.	12th Hampden
Stephen L. DiNatale	3rd Worcester
William M. Straus	10th Bristol
Frank I. Smizik	15th Norfolk
Jay R. Kaufman	15th Middlesex
Barbara A. L'Italien	18th Essex
Bradley H. Jones, Jr.	20th Middlesex
Ruth B. Balser	12th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT THE MASSACHUSETTS PENSION FUND FROM THE RISKS OF INVESTMENT IN IRAN.

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

1 As used in this act the following words shall, unless the context clearly requires otherwise, have
2 the following meanings:—
3 “Active business operations”, all business operations that are not inactive business operations.
4 “Board”, the pension reserves investment management board established pursuant to Section 23
5 of Chapter 32 of the General Laws.
6 “Business operations in Iran”, providing goods or services deployed to develop petroleum
7 resources in Iran, including by acquiring, developing, maintaining, owning, selling, possessing,
8 leasing, or operating equipment, facilities, personnel, products, services, personal property, real
9 property, or any other apparatus of business or commerce and has knowingly on or after August 5,
10 1996 made an investment or investments in Iran of at least \$20,000,000 in any 12 month period
11 which directly or significantly contributes the enhancement of Iran’s ability to develop its
12 petroleum resources; provided, however, that the mere holding or renewal of rights to property
13 not presently deployed to develop petroleum resources in Iran shall not constitute business
14 operations in Iran.

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

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

22 “Government of Iran”, the government of the Islamic Republic of Iran.

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

25 “Indirect holdings”, all securities of a company held in an account or fund, such as a mutual fund,
26 managed by 1 or more 40 persons not employed by the public fund, in which the public fund owns shares
27 or interests together with other investors not subject to the provisions of this act.

28 “Petroleum resources”, includes, but shall not be limited to:— (1) owning rights to oil blocks or natural
29 gas reserves; (2) exporting, extracting, producing, refining, processing, exploring for, transporting,
30 selling, or trading of oil or natural gas; (3) constructing, maintaining, or operating a pipeline, refinery, or
31 other oil-field infrastructure; and (4) facilitating such activities, including by providing supplies or
32 services in support of such activities, provided that, the mere retail sale of gasoline and related consumer
33 products shall not be considered oil-related activities.

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

38 “Scrutinized company”, any company conducting business operations in Iran.

39 “Substantial action”, adopting, publicizing, and implementing a formal plan to cease scrutinized business
40 operations within 1 year 63 and to refrain from any such new business operations in Iran.

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

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

52 (a)(1) the public fund shall immediately determine the companies on the scrutinized companies list in
53 which the public fund owns direct or indirect holdings;

54 (2) if, and only while such company continues to have scrutinized active business operations, the public
55 fund shall sell, redeem, divest, or withdraw all publicly-traded securities of each company identified in
56 paragraph (1) with active business operations, except as provided below, according to the following

57 schedule:— (i) at least 50 per cent of such assets shall be removed from the public fund’s assets under
58 management by 6 months after the company’s most recent appearance on the scrutinized companies list

59 (ii) 100 per cent of such assets shall be removed from the public fund’s assets under management within
60 12 months after the company’s most recent appearance on the scrutinized companies list;

61 (3) during the time period outlined in paragraph (2) the public fund may sign onto engagement letters or
62 participate in shareholder resolutions regarding the scrutinized business operations of companies

63 identified in paragraph (1) with active or inactive business operations in which the public fund still owns
64 direct or indirect holdings;

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

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69 30 (b) At no time shall the public fund acquire securities of companies on the scrutinized companies list
70 that have active business operations, except as provided in subsections (c) and (d). (c) No company which
71 the United States government affirmatively declares to be excluded from its present or any future federal
72 sanctions regime relating to the government of Iran shall be subject to divestment or investment
73 prohibition pursuant to subsections (a) and (b). (d) Notwithstanding anything herein to the contrary,
74 subsections (a) and (b) shall not apply to indirect holdings in actively managed investment funds;
75 provided, however, that the public 41 fund shall submit letters to the managers of such investment funds
76 containing companies with scrutinized active business operations requesting that they consider removing
77 such companies from the fund or create a similar actively managed fund with indirect holdings devoid of
78 such companies. If the manager creates a similar fund, the public fund shall replace all applicable
79 investments with investments in the similar fund in an expedited time frame consistent with prudent
80 investing standards. For the purposes of this section, private equity funds shall be deemed to be actively
81 managed investment funds.

82 SECTION 4. Notwithstanding any general or special law to the 2 contrary, the public fund
83 shall file a report with the clerks of the Senate and the House of Representatives and the
84 attorney general that includes the scrutinized companies list within 30 days after the list is
85 created. Annually thereafter, the public fund shall file a report to the clerks of the senate and
86 the house of representatives and the attorney general that includes: — (1) all investments sold,
87 redeemed, divested, or withdrawn in compliance with subsection (a) of section 3; (2) all

88 prohibited investments under subsection (b) of section 3; 11 and 12 (3) any progress made
89 under subsection (d) of section 3.

90 SECTION 5. Notwithstanding any general or special law to the contrary, the public fund shall be exempt
91 from any conflicting 3 statutory or common law obligations, including any such obligations in respect to
92 choice of asset managers, investment funds, or investments for the public fund's securities portfolios with
93 respect 6 to actions taken in compliance with this act, including all good faith determinations regarding
94 companies as required by this act.

95 SECTION 6. Notwithstanding any general or special law to the contrary, the public fund shall be
96 permitted to cease divesting from certain scrutinized companies pursuant to subsection (a) of section 3
97 or reinvest in certain scrutinized companies from which 5 it divested pursuant to said subsection upon
98 clear and convincing evidence showing that the total and aggregate value of all assets under
99 management by, or on behalf of, the public fund becomes equal to or less than 99.5 per cent, or 100 per
100 cent less 50 basis points, of the hypothetical value of all assets under management by, or on behalf of,
101 the public fund assuming no divestment for any company had occurred under said subsection.

102 Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this
103 section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the
104 preceding sentence. For any cessation of divestment, and in advance of such cessation, authorized by
105 this subsection, the public fund shall provide a written report to the attorney general, the senate and
106 house committees on ways and means and the joint committee on public service, updated semi-
107 annually thereafter as applicable, setting forth the reasons and justification, supported by clear and
108 convincing evidence, for its decisions to cease divestment of holdings in companies on the scrutinized
109 companies list., reinvest, or remain invested in companies with scrutinized active business operations.

110 SECTION 7. This act shall expire upon: — (i) the United States 2 Department of State removing Iran
111 from its list of state sponsors of terrorism, and certifying that Iran is no longer pursuing a nuclear

112 capability in violation of its international commitments and obligations; or (ii) the President of the United
113 States declaring that this act interferes with the conduct of the United States foreign policy.

114 SECTION 8. This act shall take effect upon passage.

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