

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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 Risk of Investment in Iran.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	20th Middlesex
Viriato Manuel deMacedo	1st Plymouth
George N. Peterson, Jr.	9th Worcester
Elizabeth Poirier	14th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT THE MASSACHUSETTS PENSION FUND FROM THE RISK 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 SECTION 1. As used in this act the following words shall, unless the context clearly requires
2 otherwise, have the following meanings:-

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

5 “Board”, the pension reserves investment management board established pursuant to section
6 23 of chapter 32 of the General Laws, as appearing in the 2006 official edition.

7 “Business operations in Iran”, providing goods or services deployed to develop petroleum
8 resources in Iran, including by acquiring, developing, maintaining, owning, selling, possessing,
9 leasing, or operating equipment, facilities, personnel, products, services, personal property, real
10 property, or any other apparatus of business or commerce and has knowingly on or after August
11 5, 1996 made an investment or investments in Iran of at least \$20,000,000 in any 12 month
12 period which directly or significantly contributes to the enhancement of Iran’s ability to develop
13 its petroleum resources; provided, however, that the mere holding or renewal of rights to
14 property not presently deployed to develop petroleum resources in Iran shall not constitute
15 business operations in Iran.

16 “Company”, any 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 Iran”, the government of the Islamic Republic of Iran

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 mutual
28 fund, managed by 1 or more persons not employed by the public fund, in which the public fund
29 owns shares or interests together with other investors not subject to the provisions of this act.

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

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

40 “Scrutinized company”, any company conducting business operations in Iran

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

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45 SECTION 2. Notwithstanding any general or special law to the contrary, within 180 days of
46 the effective date of this act, the public fund shall make its best efforts to facilitate the
47 identification of all scrutinized companies in which the public fund has direct or indirect
48 holdings. The identification of scrutinized companies shall be the responsibility of an
49 independent, third-party research firm, as identified by the public fund, and based on the criteria
50 set forth in this act. By the first meeting of the public fund following the 180-day period, the
51 public fund shall assemble all scrutinized companies in which it has direct or indirect holdings
52 into a scrutinized companies list. The public fund shall update the scrutinized companies list on a
53 quarterly basis based on evolving information from the aforementioned independent, third-party
54 research firm.

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

58 (a)(1) the public fund shall immediately identify the companies on the scrutinized
59 companies list in which the public fund owns direct or indirect holdings, and shall inform each
60 company identified, by written notice, of this act and that they may be subject to divestment by
61 the public fund. The notice shall offer the company the opportunity to prove that its operations in
62 Iran do not violate this act, and shall request the company cease its scrutinized business
63 operations in Iran, within 180 days, in order to avoid divestment by the public fund;

64 (2) if within 180 days following the public fund’s notice to a company pursuant to
65 paragraph (1), that company ceases scrutinized business operations in Iran, or the public fund is
66 satisfied the company’s operations in Iran do not violate this act, the company shall be removed
67 from the scrutinized companies list and this section will cease to apply until it resumes
68 scrutinized business operations in Iran.

69 (3) after 180 days following the public fund's notice to a company pursuant to paragraph
70 (1), if, and only while such company continues to have scrutinized active business operations,
71 the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of each
72 company identified in paragraph (1) with active business operations, except as provided below,
73 according to the following schedule: (i) at least 50 per cent of such assets shall be removed from
74 the public fund's assets under management by 9 months after the company's most recent
75 appearance on the scrutinized companies list (ii) 100 per cent of such assets shall be removed
76 from the public fund's assets under management within 15 months after the company's most
77 recent appearance on the scrutinized companies list;

78 (4) during the time period outlined in paragraph (2) the public fund may sign onto
79 engagement letters or participate in shareholder resolutions regarding the scrutinized business
80 operations of companies identified in paragraph (1) with active or inactive business operations in
81 which the public fund still owns direct or indirect holdings;

82 (5) If a company identified in paragraph (1) with only inactive business operations converts
83 such operations to active business operations, paragraph (3) shall immediately apply. The
84 company shall also be immediately reintroduced onto the scrutinized companies list.

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

87 (c) No company which the United States government affirmatively declares to be excluded
88 from its present or any future federal sanctions regime relating to the government of Iran shall be
89 subject to divestment or investment prohibition pursuant to subsections (a) and (b).

90 (d) Notwithstanding anything herein to the contrary, subsections (a) and (b) shall not apply
91 to indirect holdings in actively managed investment funds; provided, however, that the public
92 fund shall submit letters to the managers of such investment funds containing companies with
93 scrutinized active business operations requesting that they consider removing such companies
94 from the fund or create a similar actively managed fund with indirect holdings devoid of such
95 companies. If the manager creates a similar fund, the public fund shall replace all applicable
96 investments with investments in the similar fund in an expedited time frame consistent with

97 prudent investing standards. For the purposes of this section, private equity funds shall be
98 deemed to be actively managed investment funds.

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100 SECTION 4. Notwithstanding any general or special law to the contrary, the public fund
101 shall file a report with the clerks of the senate and the house of representatives and the attorney
102 general that includes the scrutinized companies list within 30 days after the list is created.
103 Annually thereafter, the public fund shall file a report to the clerks of the senate and the house of
104 representatives and the attorney general that includes: (1) all investments sold, redeemed,
105 divested, or withdrawn in compliance with subsection (a) of section 3; (2) all prohibited
106 investments under subsection (b) of section 3; and (3) any progress made under subsection (d) of
107 section 3.

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

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115 SECTION 6. Notwithstanding any general or special law to the contrary, the public fund
116 shall be permitted to cease divesting from certain scrutinized companies pursuant to subsection
117 (a) of section 3 or reinvest in certain scrutinized companies from which it divested pursuant to
118 said subsection upon clear and convincing evidence showing that the total and aggregate value of
119 all assets under management by, or on behalf of, the public fund becomes equal to or less than
120 99.5 per cent, or 100 per cent less 50 basis points, of the hypothetical value of all assets under
121 management by, or on behalf of, the public fund assuming no divestment for any company had
122 occurred under said subsection. Cessation of divestment, reinvestment, or any subsequent
123 ongoing investment authorized by this section shall be strictly limited to the minimum steps
124 necessary to avoid the contingency set forth in the preceding sentence. For any cessation of

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

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132 SECTION 7. This act shall expire upon: (i) the United States Department of State removing
133 Iran from its list of state sponsors of terrorism, and certifying that Iran is no longer pursuing a
134 nuclear capability in violation of its international commitments and obligations; or (ii) the
135 President of the United States declaring that this act interferes with the conduct of the United
136 States foreign policy.

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