

HOUSE No. 3281

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker and Kenneth J. Donnelly

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 public investment in fossil fuels.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>

<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

HOUSE No. 3281

By Representative Decker of Cambridge and Senator Donnelly, a joint petition (accompanied by bill, House, No. 3281) of Marjorie C. Decker and others relative to the divestment of state pension funds from holdings in fossil fuel companies. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2269 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to public investment in fossil fuels.

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
2 requires otherwise, have the following meanings:—

3 “Board”, the pension reserves investment management board established in section 23 of
4 chapter 32 of the General Laws.

5 “Company”, a sole proprietorship, organization, association, corporation, partnership,
6 joint venture, limited partnership, limited liability partnership, limited liability company or other
7 entity or business association, including all wholly-owned subsidiaries, majority-owned
8 subsidiaries, parent companies or affiliates of such entities or business associations that exist for
9 profit-making purposes.

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

12 “Fossil fuel company”, a company identified by a Global Industry Classification System
13 code in one of the following sectors: (1) coal and consumable fuels; (2) integrated oil and gas;
14 (3) oil and gas exploration and production.

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

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

22 "Thermal coal", coal used to generate electricity, such
23 as that which is burned to create steam to run turbines. Thermal coal does not mean
24 metallurgical coal or coking coal used to produce steel.

25 "Thermal coal company" means a publicly traded company that generates 50 percent or
26 more of its revenue from the mining of thermal coal, as determined by the board.

27 SECTION 2. Notwithstanding any general or special law to the contrary, within 30 days
28 of the effective date of this act, the public fund shall facilitate the identification of all thermal
29 coal and fossil fuel companies in which the fund owns direct or indirect holdings.

30 SECTION 3. Notwithstanding any general or special law to the contrary, the public fund
31 shall take the following actions in relation to thermal coal companies in which the fund owns
32 direct or indirect holdings.

33 (a) The public fund shall sell, redeem, divest or withdraw all publicly-traded securities of
34 each thermal coal company identified in section 2 before December 31, 2017;

35 (b) If so recommended by the commission created in section 4, the public fund shall sell,
36 redeem, divest or withdraw all publicly traded securities of each fossil fuel company identified in
37 section 2 according to the following schedule: (i) at least 33 per cent of such assets shall be
38 removed from the public fund's assets under management before December 31, 2018; (ii) 67 per
39 cent of such assets shall be removed from the public fund's assets under management before
40 December 31, 2019; (iii) 100 per cent of such assets shall be removed from the public fund's
41 assets under management before December 31, 2020.

42 (b) At no time shall the public fund acquire new assets or securities of thermal coal
43 companies or, if so recommended by the commission created in section 4, fossil fuel companies.

44 SECTION 4. Notwithstanding any general or special law to the contrary, there shall be a
45 special commission to investigate and study divestment of the public fund from fossil fuel
46 companies as defined herein, but not including thermal coal companies. according to the
47 schedule in section 3 (b) of this act.

48 (a) The commission shall evaluate divestment from fossil fuels, not including thermal
49 coal, weighed against any potential increased risk that divestment may pose to the
50 Commonwealth's pension funds and retirees.

51 (b) The commission shall consist of 7 members: 1 of whom shall be the Treasurer, who
52 shall chair the commission; 1 of whom shall be the executive director of the public employee
53 retirement administration commission, or the director's designee; 1 of whom shall be a member
54 of the Retired State, County and Municipal Employees Association of Massachusetts; 1 of whom
55 shall be an active member of the Service Employees International Union, designated by the State
56 Council; 3 of whom shall be private citizens, appointed by the Treasurer, based on the citizens'
57 expertise and current employment in Environment, Social and Governance related finance,
58 institutional divestment, or climate science.

59 (c) The commission shall consult with experts in the relevant fields of economics, wealth
60 management, fiduciary law, and environmental sciences, and file a report of its
61 recommendations. The report shall include, but not be limited to: (i) recommendations on how to
62 define fossil fuel companies; (ii) a basic sensitivity analysis of the potential impact of divestment
63 on the fund's return on investment, including an analysis of the potential impact that divestment
64 from fossil fuel companies may have on the amortization schedules for the Commonwealth's
65 pension funds; (iii) an analysis and recommendations as to how best incorporate assessment of
66 carbon risk into the Investment Policy Statement; (iv) an analysis of the potential environmental
67 and policy benefits derived from divestment from fossil fuel companies; (v) recommendations on
68 divestment of indirect holdings, particularly regarding potential exceptions for mutual funds and
69 index funds that may invest in fossil fuel companies; (vi) analysis on the potential impact that
70 divestment may pose to companies and employees based in the Commonwealth; (vii)
71 recommendations on effective administration and oversight of fossil fuel divestment.

72 (d) The commission shall file a report of its recommendations, together with the actuarial
73 analysis, if any, with the clerks of the house and senate and the chairs of the house and senate

74 committee on ways and means not later than April 1, 2017. Upon the filing of the report of the
75 commission, the public fund shall immediately take action to fulfill all affirmative
76 recommendations, if any, with regard to the divestment of identified fossil fuel companies.

77 SECTION 5. Notwithstanding anything in this act to the contrary, any requirement to
78 divest the public fund from thermal coal or other fossil fuel companies shall not apply to indirect
79 holdings in actively managed investment funds; provided, however, that the public fund shall
80 submit letters to the managers of such investment funds containing thermal coal or other fossil
81 fuel companies requesting that they consider removing remove such companies from the
82 investment fund or create a similar actively managed fund with indirect holdings devoid of such
83 companies. If the manager creates a similar fund, the public fund shall replace all applicable
84 investments with investments in the similar fund in an expedited timeframe consistent with
85 prudent investing standards. For the purposes of this section, private equity funds shall be
86 deemed to be actively managed investment funds.

87 SECTION 6. 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 choice of
90 asset managers, investment funds or investments for the public fund's securities portfolios and
91 all good faith determinations regarding thermal coal and fossil fuel companies as required by this
92 act.

93 SECTION 7. Notwithstanding any general or special law to the contrary, the public fund
94 shall be permitted to cease divesting from companies under subsection (a) of section 3, reinvest
95 in companies from which it divested under said subsection (a) of said section 3 or continue to

96 invest in companies from which it has not yet divested upon clear and convincing evidence
97 showing that the total and aggregate value of all assets under management by, or on behalf of,
98 the public fund becomes: (i) equal to or less than 99.5 per cent; or (ii) 100 per cent less 50 basis
99 points of the net value of all assets under management by, or on behalf of, the public fund in the
100 previous year as a direct result of divestment. Cessation of divestment, reinvestment or any
101 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 This provision shall also apply to any divestment of the public fund from fossil fuel
104 companies.

105 For any cessation of divestment, and in advance of such cessation, authorized by this
106 subsection, the public fund shall provide a written report to the attorney general, the senate and
107 house committees on ways and means and the joint committee on public service, updated semi-
108 annually thereafter as applicable, setting forth the reasons and justification, supported by clear
109 and convincing evidence, for its decisions to cease divestment, to reinvest or to remain invested
110 in thermal coal. This provision shall also apply to any divestment of the public fund from fossil
111 fuel companies.

112 SECTION 8. Present, future, and former board members of the Public Fund, jointly and
113 individually, state officers and employees, and investment managers under contract with the
114 Public Fund shall be indemnified from the General Fund and held harmless by Commonwealth
115 from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses,
116 including court costs and attorney's fees, and against all liability, losses, and damages of any
117 nature whatsoever that these present, future, or former board members, officers, employees, or

118 contract investment managers shall or may at any time sustain by reason of any decision to
119 restrict, reduce, or eliminate investments in fossil fuel companies.

120 SECTION 9. The public fund shall file a copy of the lists of thermal coal in which the
121 fund owns direct or indirect interests with the clerks of the senate and the house of
122 representatives and the attorney general within 30 days after the lists are created. Annually
123 thereafter, the public fund shall file a report with the clerks of the senate and the house of
124 representatives and the attorney general that includes: (1) all investments sold, redeemed,
125 divested or withdrawn in compliance with subsection (a) of section 3 and (2) all prohibited
126 investments from which the public fund has not yet divested under subsection (a) of said section
127 3. This provision shall also apply to any divestment of the public fund from fossil fuel
128 companies.