

SENATE No. 00035

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

January 18, 2011

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislation, entitled "An Act Providing for Additional Pension Reform and Benefits Modernization."

Providing a fair, fiscally sustainable and publicly credible pension system for public employees is in the best interests of the Commonwealth, taxpayers and public employees. This legislation continues the progress of the Administration and the Legislature in overhauling the state pension system to make it more equitable and sustainable. In the last few years, the Governor and the Legislature worked together to enact significant changes that closed loopholes and curbed the most egregious abuses in the system. Additional reforms are needed in order to address the system's large unfunded liability and to ensure that the pension system will be sustainable for the future.

This legislation proposes further pension reforms to achieve the following objectives:

- Update the system to reflect demographic changes, such as the fact that people are living and working longer;
- Eliminate abuses, through anti-spiking measures, extending the number of years used to calculate pension benefits, and increasing scrutiny of legislation benefiting individual employees; and,
- Address fairness issues, through updating purchase of creditable service and buyback provisions, eliminating early retirement incentives, pro-rating benefits based on

employment history, eliminating the right to receive a pension while receiving compensation for service in an elected position, and allowing retirees who married a person of the same sex within the first year after it became legal to change their retirement option in order to provide a benefit to their spouse.

This pension reform legislation is largely informed by and based on the recommendations and work of the Pension Reform Commission chaired by Dr. Alicia Munnell. I thank Dr. Munnell and the members of the Commission for their good work.

I respectfully request your prompt enactment of this legislation.

Respectfully submitted,

DEVAL PATRICK,

Governor.

AN ACT PROVIDING FOR ADDITIONAL PENSION REFORM AND BENEFITS MODERNIZATION

PURCHASE OF CREDITABLE SERVICE (TIMING AND INTEREST RATE)

SECTION 1. Section 3 of chapter 32 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after subdivision (8) the following subdivision:-

(9) Notwithstanding any provision of this chapter to the contrary, any member who is reinstated to or re-enters the active service of a governmental unit or who is eligible to receive credit for other service under this section or under section 4 and does not pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest, or enter into a payment agreement, within 1 year of the date of reinstatement or re-entry or within 1 year after July 1, 2011, whichever is later, shall, in order to be entitled to creditable service resulting from the previous employment, be required to pay actuarial assumed interest instead of buyback interest on all remaining make-up payments. Eligibility for creditable service for periods of out-of-state service shall be conditioned upon payment into the annuity savings fund of the applicable retirement system, of an amount equal to the contributions such member in service would have otherwise paid into the retirement system for the period of service, as provided in this section, plus actuarial assumed interest.

PAYMENT BY ELECTED OFFICIALS

SECTION 2. Section 5 of said chapter 32 is hereby amended by inserting after the word “service”, in line 38, as appearing in the 2008 Official Edition, the following words:- ,together with buyback interest,.

PRORATE BENEFITS BASED ON NUMBER OF YEARS IN EACH GROUP

SECTION 3. Paragraph (a) of subdivision (2) of said section 5 of chapter 32, as so appearing, is hereby amended by adding the following sentence:- The retirement allowance for members who have served in more than one group shall consist of prorated benefits attributed to service in each group to reflect the percentage of total years of service that the member served in that group. The pro-rated benefit for the time spent in each group shall be calculated by multiplying the full benefit that a member would be eligible to receive if the member’s entire career were spent in that group, using the applicable age and years of service requirement for that group, times the ratio of the number of years of service worked in that group divided by the total years of service. If a member serving in group 2 or 4 at the time of retirement retires before reaching the minimum age appearing in the applicable table in paragraph (a) of subdivision (2) section 5 at which the member is eligible to retire (in this section called “minimum retirement age”) for a group in which the member previously served, the per cent to be used in computing the prorated benefits attributable to service in that previous group shall be the per cent for the minimum retirement age with 0.1 per cent subtracted for each year that the age at last birthday preceding retirement is under the minimum retirement age. In calculating benefits for purposes of this section, a member's service in a position not classified under section 3 shall be attributed to the group in which that service was performed, as determined by the board.

ADJUSTED RETIREMENT AGE FACTORS – 1

SECTION 4. Said section 5 of chapter 32 of the General Laws, as so appearing, is hereby further amended by inserting after the table in paragraph (a) of subdivision (2) the following table and text:-

Table Showing Percentage of the Amount of Average Annual Rate of Regular Compensation to be multiplied by the Number of Years of Creditable Service for Employees who become members of a retirement system after July 1, 2011

Per Cent	Group 1	Group 2	Group 4
2.50	67 or older	62 or older	57 or older
2.35	66	61	56
2.20	65	60	55

2.05	64	59	54
1.90	63	58	53
1.75	62	57	52
1.60	61	56	51
1.45	60	55	50

If the retirement age for receiving Social Security retirement benefits is adjusted under federal law, the secretary of administration and finance, in consultation with the commission, shall evaluate the percentages in the above table and make a recommendation to the legislature as to whether the percentages should be adjusted by legislative action.

LIMIT ANNUAL INCREASE ON RETIREMENT EARNINGS

SECTION 5. Subdivision (2) of said section 5 of chapter 32, as amended by section 7 of chapter 21 of the acts of 2009, is hereby further amended by inserting after paragraph (e) the following paragraph:-

(f) In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 7 per cent, plus an increase determined by the increase in the United States Consumer Price Index for the preceding 2 years, as reported by the actuary under paragraph (f) of subdivision (3) of section 21. This paragraph shall not apply to any increase in the annual rate of regular compensation that results from an increase in hours of employment or a change in position that is determined by the board to be bona fide.

REDUCE WITHHOLDING FOR TEACHERS SUBJECT TO ADJUSTED RETIREMENT AGE FACTORS -1

SECTION 6. Paragraph (i) of subdivision (4) of said section 5 of chapter 32 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the tenth sentence the following sentence:- In the case of any employee who becomes a member after July 1, 2011, the rate of contribution under this paragraph shall be 10.5 per cent.

MODIFY TERMINATION BENEFITS

SECTION 7. Section 10 of said chapter 32, as amended by sections 9 to 13 of chapter 21 of the acts of 2009, is hereby further amended by striking out subdivisions (1) and (2) and inserting in place thereof the following subdivision:-

(1) Any member classified in Group 1, Group 2 or Group 4, who has completed 10 or more years of creditable service, and who fails of nomination or re-election, or fails to become a candidate for nomination, re-election or election, or fails of reappointment, or is removed or discharged from his office or position without moral turpitude on his part, or accepts, during or prior to the expiration of a term for which he was elected, appointment to an office or position the acceptance of which requires under the constitution of the commonwealth resignation from the general court, or any such member whose office or position is abolished, or who resigns or voluntarily terminates his service, who leaves his accumulated total deductions in the annuity savings fund of the system of which he is a member, shall have the right upon attaining the minimum retirement age for his Group, or at any time thereafter, to apply for a superannuation retirement allowance to become effective as provided for in subdivision (3) of this section. Such allowance shall be determined in accordance with section 5 or any other section governing superannuation retirement applicable to such member upon the basis of the member's age on the date when the retirement allowance becomes effective, with an amount of creditable service equal to that with which he was credited on the date of his termination of service.

ALLOW CHANGED RETIREMENT OPTION FOR SAME SEX MARRIAGES

SECTION 8. Section 12 of said chapter 32, as appearing in the 2008 Official Edition, is hereby amended by adding the following subdivision:-

(5) Any person who retired under this chapter before May 17, 2004 and elected Option (a) or Option (b) of subdivision (2) and who married a person of the same sex before May 17, 2005 may change such selection to Option (c) of subdivision (2) at the rate that was in effect for that option on the person's retirement date. In paying the retirement allowance under the new election, the board shall make appropriate adjustments, or arrange for appropriate repayments, upon such terms and condition as the board may prescribe, so as to recover any overpayments resulting from the prior election. The change of election under this subdivision shall be made on or before January 1, 2012, and shall be retroactive to the date of retirement. The election to change retirement options under this subdivision shall be in a manner prescribed by the retirement board, and the retirement board shall have 180 days after the submission of an application to change the retirement option filed under this subdivision to implement the change.

RECOVERING PENSION PAYMENTS TO CONVICTED RETIREES AND CODIFY AG OPINION ON WITHHOLDING PENSIONS

SECTION 9. Section 15 of said chapter 32, as amended by section 53 of chapter 25 of the acts of 2009, is hereby further amended by adding the following paragraph:-

(6) If a member's final conviction of an offense results in a forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the member to repay, all benefits received after the date of the offense of which the member was convicted.

REDUCE WITHHOLDING FOR EMPLOYEES SUBJECT TO ADJUSTED RETIREMENT AGE FACTORS

SECTION 10. Subsection (b) of subdivision (1) of section 22 of said chapter 32, as appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (iv) the following paragraph:-

(iv1/2) withhold on each pay day 8.5 per cent of the regular compensation of each employee in Group 1 who is a member in service of the system, in the case of an employee who entered the service of the commonwealth or a political subdivision thereof on or after July 1, 2011; .

REDUCE WITHHOLDING FOR TEACHERS SUBJECT TO ADJUSTED RETIREMENT AGE FACTORS -2

SECTION 11. Said subsection (b) of subdivision (1) of section 22 of chapter 32, as so appearing, is hereby further amended by inserting after paragraph (vi) the following paragraph:-

(vii) withhold on each pay day 10.5 per cent of the regular compensation of each employee who participates in the alternative superannuation retirement benefit program established under subdivision (4) of section 5, in the case of an employee who entered the service of the commonwealth or a political subdivision thereof after July 1, 2011; .

PENSION FUNDING SCHEDULE

SECTION 12. Section 22C of said chapter 32, as so appearing, is hereby amended by striking out, in line 29, the words "on June 30, 2025" and inserting in place thereof the following words:- by June 30, 2040.

SECTION 13. Said section 22C of chapter 32 is hereby further amended by striking out the last paragraph of subdivision (1), as inserted by section 23 of chapter 27 of the acts of 2009, and inserting in place thereof the following paragraph:-

Notwithstanding any general or special law to the contrary, appropriations or transfers made to the Commonwealth's Pension Liability Fund in fiscal years 2012 to 2017, inclusive, shall be made in accordance with the following funding schedule: \$1,478,000,000 in fiscal year 2012, \$1,552,000,000 in fiscal year 2013, \$1,630,000,000 in fiscal year 2014, \$1,727,000,000 in fiscal year 2015, \$1,831,000,000 in fiscal year 2016, and \$1,941,000,000 in fiscal year 2017. Notwithstanding subdivision (1), any

adjustments to these amounts based on the next triennial funding schedule shall be limited to increases in the schedule amounts for each of the specified years.

STATE POLICE ADJUSTED RETIREMENT FACTOR

SECTION 14. Section 26 of said chapter 32, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 96 and 104, the word “three” and inserting in place thereof the following figure:- 2.5.

ELIMINATE RIGHT TO RECEIVE PENSION WHILE RECEIVING COMPENSATION FOR SERVICE AS AN ELECTED OFFICIAL

SECTION 15. Section 91 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 83 to 85, the words “for service in a public office to which he has thereafter been elected by direct vote of the people.”.

INCREASED SCRUTINY OF LEGISLATION BENEFITTING INDIVIDUALS

SECTION 16. Said chapter 32 of the General Laws is hereby further amended by adding the following section:-

Section 106. Before any law is enacted that provides specific retirement benefits to certain individuals that are beyond the benefits available under the General Laws, the following information shall be submitted to the joint committee on public service: (a) an analysis of the cost of the legislation and the basis for granting the exemption, (b) a confirmation of the cost analysis from the public employee retirement commission and (c) a recommendation from the board.

ADJUSTED RETIREMENT AGE FACTORS - 3

SECTION 17. Wherever, in chapter 32 of the General Laws, except in the table inserted by section 5 of this act, a retirement age of 55 is specified for Group 1, it shall be taken to mean 60; and whenever, a retirement age of 45 is specified for Group 4, it shall be taken to mean 50.

INCREASED PERIOD FOR AVERAGING EARNINGS

SECTION 18. Whenever, in chapter 32 of the General Laws, a reference is made to 3 years of creditable service or 3 consecutive years of creditable service, the number 3 shall be taken to mean 5.

STUDY OF CLASSIFICATIONS

SECTION 19. There shall be a special commission to study the Massachusetts public employees' pension classification system.

The commission shall review and make recommendations for reform regarding the Massachusetts public employees' group classification system, beginning with consideration of the work by the Blue Ribbon Panel on the Massachusetts Public Employees Pension Classification system.

The commission shall consist of 11 members: 1 of whom shall be the secretary of administration and finance, or his designee; 1 of whom shall be the executive director of the public employee retirement administration commission, or his designee; 1 of whom shall be the treasurer or his designee; 1 of whom shall be a private citizen, appointed by the governor, who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems; 1 of whom shall be appointed by the speaker of the house; 1 of whom shall be appointed by the senate president; 2 of whom shall have professional experience in employee benefits or in actuarial science and shall be appointed by the governor; 1 of whom shall be selected by the governor from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; 1 of whom shall be a member of the Massachusetts Municipal Association; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall file a report of its recommendations, together with the actuarial analysis and proposed legislation, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service not later than November 15, 2011.

EFFECTIVE DATES

SECTION 20. Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, sections 4, 7, 14, 17 and 18 shall apply only to employees who become members of a retirement system after July 1, 2011. Sections 1 and 2 shall apply only to repayments and purchases of creditable service after July 1, 2011. Section 15 shall apply to current employees and current retirees who are not currently serving in an elected public office.