HOUSE . . . . . No. 3688

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to promote equity in pension benefits.

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

SECTION 1. Notwithstanding paragraph (b) of subsection (2) of section 40 of chapter 15A of the General Laws, or any other general or special law to the contrary, any employee who elected, prior to May 16, 2004, the effective date of the Goodridge v. Department of Public Health, 440 Mass. 309 (2003) decision, to participate in the optional retirement program provided in said section 40 because the option of marriage did not become available to that employee under the laws of the Commonwealth prior to May 16, 2004 may elect to withdraw from the optional retirement program and apply for membership in the state employees' retirement system by filing an application for this election no later than 1 year after the issuance of a favorable Private Letter Ruling as required in section 7 of this act.

SECTION 2. Any employee who elects to apply for membership in the state employees' retirement system under section 1 shall, upon attaining membership in that plan, forfeit all benefits rights and privileges under the Optional Retirement Program. The Department of Higher Education will take such action as necessary to distribute plan assets attributable to Employee Plan Contributions to the former participant. Such action may include the transfer of assets attributable to Employee Plan Contributions to the State Board of Retirement, to the extent necessary to purchase any past service to which the employee may be eligible under the State Employees' Retirement System.

SECTION 3. The board of higher education, in consultation with the state board of retirement, shall promulgate regulations concerning this election and transfer of funds within ninety (90) days after the issuance of a favorable Private Letter Ruling as required in section 7 of this act.

SECTION 4. Notwithstanding any general or special law to the contrary, upon the transfer of funds specified in section 2, any employee who makes the election provided for in section 1 shall participate in the state employees' retirement system under chapter 32 of the

25 General Laws as of the date that employee is considered to have entered service under section 5
26 of this act.

27 SECTION 5. For purposes of determining the percentage of regular compensation which
28 shall be withheld under section 22 of chapter 32 of the General Laws for any employee making
29 the election provided for in section 1, the employee shall be considered to have entered service
30 (a) as of the effective date of the employee's appointment if the employee was initially appointed
31 on or after the effective date of the optional retirement program, (b) as of the date the employee
32 became a member in service before electing to participate in the optional retirement program if
33 the employee transferred his accumulated total deductions and interest to the optional retirement
34 program under paragraph (c) of subsection (3) of section 40 of chapter 15A of the General Laws,
35 or (c) as of the date the employee became a member in service before electing to participate in
36 the optional retirement program, if the employee withdrew his accumulated deductions upon
37 electing to participate in the optional retirement program, but pays in a lump sum the amount of
38 total accumulated contributions withdrawn, with interest, within 6 months of making the election
39 provided for in section 1.

40 SECTION 6. Within one hundred and twenty (120) days of the effective date of this
41 Act, the Department of Higher Education and the State Board of Retirement shall, either jointly
42 or individually, seek a Private Letter Ruling on behalf of the Commonwealth from the Internal
43 Revenue Service regarding the impact of sections 1 through 5 of this act on the applicability and
44 continued compliance of both the Optional Retirement Program and the State Employees'
45 Retirement System (respectively or jointly) with the Internal Revenue Code, including but not
46 limited to Section 414(h) of the Code.

47 SECTION 7. Sections 1 through 5 of this Act shall not take effect unless and until the
48 Internal Revenue Service issues a favorable Private Letter Ruling which determines that sections
49 1 through 5 of this act would not result in any non-compliances with the Internal Revenue Code,
50 including but not limited to Section 414(h) of the Code. The effective date of sections 1 through
51 5 of this act shall be the date of said favorable Private Letter Ruling.