SENATE DOCKET, NO. 340 FILED ON: 1/16/2013

SENATE . . . . . No. 1246

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. McGee

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 interest arbitration for state employed health care professionals..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas M. McGee	*Third Essex*
Sarah K. Peake	*4th Barnstable*

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SENATE . . . . . No. 1246

By Mr. McGee, a petition (accompanied by bill, Senate, No. 1246) of Thomas M. McGee and Sarah K. Peake for legislation relative to interest arbitration for state employees. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to interest arbitration for state employed health care professionals..

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. Chapter 150E of the General Laws of Massachusetts, as amended by Chapter 1078 of the Acts of 1973, is herby amended by adding the following new section:—

Section 4D. If an employee organization duly recognized as representing a bargaining unit of the health care professionals employed by the Commonwealth of Massachusetts (or by any political subdivision thereof) is engaged in an impasse which has continued for thirty days after the publication of the fact-finder's report pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said chapter one hundred and fifty E, said employee organization shall petition the Board of Arbitration and Conciliation hereinafter referred to as the Board, to make an investigation.

If, after an investigation, the Board determines that:

(1) the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith by the employee organization;

(2) thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine, unless waived by the parties, and an impasse exists, the Board shall notify the employer and the employee organization that the issues in dispute shall be resolved by an impartial single arbitrator selected by the parties in the same manner established by the Board for the selection of a fact-finder.

The single arbitrator shall conduct a hearing within thirty days after the date of appointment, or as soon thereafter as is practicable. The form of arbitration shall be traditional on

an issue by issue basis, with the arbitrator having the authority on each issue to accept the employer's proposal, the employee organization's proposal or such other term, which the arbitrator deems appropriate.

The single arbitrator shall preside over the hearing and shall take testimony. The proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant by the single arbitrator may be received into evidence. The arbitrator shall have the power to administer oaths and to require by subpoena, the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues presented to him for determination. If any person refuses to obey a subpoena, refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is being held, whereupon the court shall issue an appropriate order.

A record of the proceedings shall be kept, and the single arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an award by the single arbitrator. The hearing may be continued at the discretion of the single arbitrator and shall be concluded within forty days from the time of commencement, or as soon thereafter as is practicable. Within ten days after the conclusion of the hearing, or as soon as practicable thereafter, the single arbitrator shall issue an award on all issues, which shall be final and binding upon the parties, subject to appropriation. Within thirty calendar days of the issuance of the award, or as soon as is practicable thereafter, the single arbitrator shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

At any time before the rendering of an award, the single arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks and notify the Board of the remand. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand.

In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decision by the single arbitrator, request that the arbitration proceedings be terminated. The single arbitrator shall then terminate the proceedings.

The factors, among others, to be given weight by the single arbitrator in arriving at the decision shall include, when applicable:

(1) the financial ability of the commonwealth (or of the political subdivision) to meet the costs. Such factors which shall be taken into consideration shall include, but not be limited to, the commonwealth's long and short-term bonded indebtedness;

(2) the interests and health and welfare of the public;

(3) the hazards of employment, physical, educational and mental qualifications, training and skills involved;

(4) a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public or private employment in comparable communities, or other state or federal jurisdictions;

(5) the decisions and recommendations of the fact-finder, if any;

(6) the average consumer prices for goods and services, commonly known as the cost of living;

(7) the overall compensation presently received by the employees, including direct wages and fringe benefits;

(8) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(9) such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment;

(10) the stipulation of the parties.

Any determination or decision of the single-arbitrator, if supported by material and substantive evidence on the whole record shall be subject to appropriation, binding upon the parties, and may be enforced at the instance of either party, in the superior court in equity, provided however, that the scope of arbitration shall be limited to wages, hours and conditions of employment.

The commencement of a new fiscal year prior to the final award by the single arbitrator shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the single arbitrator or the award. Any award of the arbitrator may be retroactive to the expiration date of the last contract.

If the employer, or the employee organization, willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court.

90 The costs for the arbitrator under this section shall be divided equally between the parties.
91 Compensation for the arbitrator shall be in accordance with a schedule of payment established by
92 the American Arbitration Association.

93 The provisions of this amendment shall take effect immediately.