

SENATE No. 2079

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act providing responsible reforms in the pension system.

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 Section 1 of chapter 32 of the General Laws is hereby amended by inserting
2 after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition, the following
3 words:- through June 30, 2009.

4 SECTION The definition of “Regular compensation” in said section 1 of said chapter
5 32, as so appearing, is hereby further amended by adding the following sentence:- “Regular
6 Compensation”, during any period subsequent to June 30, 2009, shall be compensation received
7 exclusively as wages by an employee for services performed in the course of employment for his
8 employer.

9 SECTION Said section 1 of said chapter 32, as amended by section 15 of chapter 130 of
10 the acts of 2008, is hereby further amended by adding the following definition:-

11 “Wages”, the base salary or other base compensation of an employee paid to that
12 employee for employment by an employer; provided, however, that “wages” shall not include,
13 without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts

14 derived from salary enhancements or salary augmentation plans which will recur for a limited or
15 definite term, indirect, in-kind or other payments for such items as housing, lodging, travel,
16 clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation,
17 job-related expense payments, automobile usage, insurance premiums, dependent care
18 assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the
19 payment for termination, severance, dismissal or any amounts paid as premiums for working
20 holidays, except in the case of police officers, firefighters and employees of a municipal
21 department who are employed as fire alarm signal operators or signal maintenance repairmen
22 money paid for holidays shall be regarded as regular compensation, amounts paid as early
23 retirement incentives or any other payment made as a result of the employer having knowledge
24 of the member's retirement, tuition, payments in kind and all payments other than payment
25 received by an individual from his employing unit for services rendered to such employing unit,
26 regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case
27 of a teacher employed in a public day school who is a member of the teachers' retirement system,
28 salary payable under the terms of an annual contract for additional services in such school and
29 compensation for services rendered by a teacher in connection with a school lunch program or
30 for services in connection with a program of instruction of physical education and athletic
31 contests as authorized by section 47 of chapter 71 shall be regarded as "regular compensation"
32 rather than as bonus or overtime and shall be included in the salary on which deductions are to be
33 paid to the annuity savings fund of the teachers' retirement system.

34 SECTION 4. Section 4 of said chapter 32 of the General Laws is hereby amended by
35 striking out, in lines 5 to 7, inclusive, as so appearing, the words " , that he shall be credited with

36 a year of creditable service for each calendar year during which he served as an elected official;
37 and provided, further”

38 SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by
39 striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the
40 following paragraph:-

41 (o) The service of a state, county or municipal employee employed or elected in a
42 position receiving compensation of less than \$5,000 annually, which service occurs on or after
43 July 1, 2009, shall not constitute creditable service for purposes of this chapter.

44 SECTION 6. Section 5 of said chapter 32, as so appearing, is hereby amended by
45 striking out, in lines 69 and 70, the words “,except for elected officials subject to the provisions
46 of paragraph (b) of subdivision (2) of section ten,”.

47 SECTION 7. Subdivision (2) of said section 5 of said chapter 32, as so appearing, is
48 hereby amended by adding the following paragraph:-

49 (e) A person who has been a member of 2 or more systems and who, on or after January
50 1, 2010, has received regular compensation from 2 or more governmental units concurrently
51 shall, upon retirement, receive a superannuation retirement allowance to become effective on the
52 date of retirement that is equal to the sum of the benefits calculated pursuant to this section as
53 though the member were retiring solely from each system; provided, however, that
54 notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the
55 superannuation retirement allowance attributable to membership in that system to the member;
56 and provided further, that this section shall not apply to any member who has vested in 2 or more
57 systems as of January 1, 2010.

58 SECTION 8. Section 7 of said chapter 32, as so appearing, is hereby amended by
59 striking out, in lines 69 to 73, inclusive, the words “or equal to seventy-two per cent of the
60 average annual rate of his regular compensation for the twelve-month period for which he last
61 received regular compensation immediately preceding the date his retirement allowance becomes
62 effective, whichever is greater; provided, however” and inserting in place thereof the following
63 words:- ; provided, however, that if an individual was in a temporary or acting position on the
64 date such injury was sustained or hazard undergone the amount to be provided under this
65 subdivision shall be based on the average annual rate of the individual’s regular compensation
66 during the previous 12-month period for which he last received regular compensation
67 immediately preceding the date such injury was sustained or such hazard was undergone;
68 provided, further”,

69 SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by
70 striking out, in line 4, the words “, or fails of nomination or re-election”.

71 SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further
72 amended by striking out, in lines 7 to 9, inclusive, the words “, or fails of nomination or re-
73 election, or fails to become a candidate for nomination or re-election”.

74 SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further
75 amended by striking out, in lines 50 and 51, the words “fails of nomination or re-election, or”.

76 SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further
77 amended by striking out, in lines 72 to 77, inclusive, the words “one of the following
78 circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the
79 employee has failed of reappointment, (3) that the employee’s office or position has been

80 abolished, or (4) that” and inserting in place thereof the following words:- : (1) the employee has
81 failed of reappointment; (2) the employee’s office or position has been abolished; or (3).

82 SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further
83 amended by striking out, in line 79, the word “six” and inserting in place thereof the following
84 figure:- 10.

85 SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is
86 hereby amended by adding the following paragraph:-

87 (d) If a member is entitled to a return of his accumulated total deductions and requests
88 such a return from the board on the prescribed form, then prior to the return of such accumulated
89 total deductions, the board shall contact the member’s employer to determine whether the
90 member owes an obligation to the employer under an employee benefit plan, including a
91 cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that the member
92 owes the employer under any such plan, the board shall not return the accumulated total
93 deductions until it has received notice from the employer that the obligation has been satisfied.

94 SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C
95 the following section:-

96 Section 12D. A retirement system subject to this chapter shall pay all benefits in
97 accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the
98 regulations in effect under that section, as applicable to a governmental plan as defined in section
99 414(d) of the Internal Revenue Code.

100 SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006
101 Official Edition, is hereby amended by adding the following paragraph:-

102 (c) A retirement board may require a member entitled to receive a retirement allowance
103 to designate a financial institution to which shall be directly deposited any payments under any
104 annuity, pension or retirement allowance.

105 SECTION 17. Section 19A of said chapter 32 is hereby amended by striking out the first
106 paragraph, as so appearing, and inserting in place thereof the following paragraph:-

107 Any employee of the commonwealth, a city, town, district or other member unit of a
108 retirement system who is retired under this chapter shall, upon the request of the retiring
109 authority paying such pension or retirement allowance, or otherwise may, by assignment made in
110 writing authorize the retiring authority paying such pension or retirement allowance to withhold
111 each month such amount as he may designate for the payment of subscriber premiums applicable
112 to any hospitalization, medical or surgical insurance in effect with a nonprofit hospital and
113 medical service corporation or insurance company at the time of his retirement. In the event that
114 the amount of a retiree's pension check is insufficient to accommodate the entire deduction and
115 upon notice from the retirement board, the employer for whom the retiree last worked and from
116 whom he is retired shall bill the retiree for the employee share of the premiums.

117 SECTION 18. Section 22D of said chapter 32, as so appearing, is amended by striking
118 out, in line 25, the figure "2028" and inserting in place thereof the following figure:- 2030.

119 SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D
120 the following section:-

121 Section 22E. (a) For the purposes of this section, “statutory adjustment to the
122 commonwealth pension liability” shall mean an adjustment that changes the benefits or
123 contributions of classes of members including, but not limited to, early retirement incentive
124 programs, cost-of-living adjustments, the membership of those classes or any amendments to
125 chapter 32 that may change the actuarial liability of the commonwealth pension system.

126 (b) Upon request of a joint standing committee of the general court having jurisdiction or
127 upon request of the committee on ways and means of either branch, the actuary of the public
128 employee retirement administration commission shall conduct and prepare a review, evaluation
129 and financial impact of the statutory adjustment to the commonwealth pension liability, in
130 consultation with other relevant state agencies, and shall report to the committee within 90 days
131 of the request.

132 SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line 3,
133 as appearing in the 2006 Official Edition, the words “or district,” and inserting in place thereof
134 the following words:- , district or authority.

135 SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting
136 after the word “authority”, in line 84, the words “, including as a consultant or independent
137 contractor or as a person whose regular duties require that his time be devoted to the service of
138 the commonwealth, county, city, town, district or authority during regular business hours.

139 SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section
140 111 and inserting in place thereof the following section:-

141 Section 111. There shall be a special commission to study the Massachusetts
142 contributory retirement systems. The commission shall consist of the secretary of administration

143 and finance or her designee; the state auditor or his designee; the executive director of the public
144 employee retirement administration commission or his designee; the executive director of the
145 state retirement board or his designee; the executive director of the teachers' retirement board or
146 her designee; 3 members of the house of representatives, 1 of whom shall be appointed by the
147 house minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate
148 minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private
149 citizen who shall serve as chair of the commission and shall not be a member of any of the 106
150 contributory retirement systems, 2 of whom shall have professional experience in employee
151 benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal
152 Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of
153 the Massachusetts AFL-CIO and 1 of whom shall be a member of the Retired State, County and
154 Municipal Employees Association of Massachusetts. The commission shall convene its first
155 official meeting not later than June 1, 2009.

156 The commission shall make a comprehensive study of the Massachusetts contributory
157 retirement systems. The study shall include, but not be limited to: contribution rates paid by
158 employers and employees; vesting periods; the weight given to age versus years of service in the
159 current system; the portability of benefits in the current system; the definition of regular
160 compensation including, but not limited to, whether all forms of compensation taxable under the
161 federal income tax code should constitute regular compensation; cost-of-living-adjustments with
162 special attention paid to the cost of increasing the cost-of-living-adjustments base; current and
163 future employee pension plans and contribution structures; termination allowances pursuant to
164 section 10 of chapter 32 of the General Laws; group classification systems, including the
165 classification of department of correction employees under section 28M of said chapter 32;

166 capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for
167 employees who participate under 2 or more retirement systems; potential costs, savings or
168 benefits related to moving from a defined benefit retirement system to a defined contribution
169 retirement system for new employees, including a system that maintains eligibility for employees
170 to participate in the Social Security system; qualifications for credit for service pursuant to
171 section 4 of said chapter 32, including minimum compensation limits for officials to be eligible
172 for credit for service, and the cost of any recommendations the commission may make.

173 The public employee retirement administration commission shall conduct an actuarial
174 analysis to determine the costs of any recommendations made by the commission. The
175 commission shall prepare a report of its findings and recommendations, together with the
176 actuarial analysis and any recommendations for legislation, if any, to implement those
177 recommendations by filing the same with the clerks of the senate and house of representatives,
178 the chairs of the house and senate committee on ways and means and the senate and house chairs
179 of the joint committee on public service not later than September 1, 2009.

180 SECTION 23. Notwithstanding any special or general law to the contrary, any amount,
181 benefit or payment included in the definition of “regular compensation” by law or by regulation
182 prior to the effective date of this act and included in any applicable collective bargaining
183 agreement or individual contract for employment in effect on May 1, 2009, shall continue to be
184 included in the definition of “regular compensation” during the term of that collective bargaining
185 agreement or contract; provided, however, that any such amount, benefit or payment received
186 after June 30, 2012 shall not be considered regular compensation..

187 SECTION 24. Section 1 of this act shall take effect July 1, 2009.

188 SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that
189 creditable service shall be granted for the service of any state, county or municipal employee
190 serving in a paid position earning less than \$5,000 after July 1, 2009, if such service is subject to
191 a specified term as a result of an election, appointment or contract and the election, appointment
192 or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible
193 for creditable service under chapter 32 of the General Laws; and provided further, that such
194 creditable service shall be granted until the expiration of the term, appointment or contract or
195 July 1, 2012, whichever first occurs.

196 SECTION 26. Notwithstanding any general or special law to the contrary and except as
197 expressly provided otherwise, this act shall apply to all members of retirement systems who
198 retire after July 1, 2009.