

# HOUSE . . . . . No. 3353

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## The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments (striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 50, striking out the emergency preamble and inserting in place thereof the following emergency preamble:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for a fair and orderly manner in which the number of executive department employees may be reduced in order to decrease expenditures by the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”; and

Striking out the title and inserting in place thereof the following title: “An Act relative to state personnel.”) of the House Bill providing for an employee retirement incentive program (House, No. 3189, amended), reports recommending passage of the accompanying bill (House, No. 3353). May 1, 2015.

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**The Commonwealth of Massachusetts**

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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An Act relative to state personnel.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for a fair and orderly manner in which the number of executive department employees may be reduced in order to decrease expenditures by the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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. Words used in this act shall have the same meanings as those in chapter 32 of the General Laws unless the context clearly requires otherwise; provided, however, that the following words shall have the following meanings:

“Agency”, the office of the governor, an executive office established in section 2 of chapter 6A of the General Laws or an agency, bureau, department, office or division of the commonwealth reporting to such executive office or under the control of the governor.

“Critical position”, a position that is important to an agency’s ability to carry out its mission, as determined by the secretary of administration and finance, after consultation with the head of the agency and the secretary of the relevant executive office.

“Executive department employee”, a person who is employed by an agency.

SECTION 2. (a) Notwithstanding any general or special law to the contrary, the secretary of administration and finance shall achieve direct payroll savings of not less than \$325,100,000 or net savings of not less than \$171,900,000 in fiscal year 2016 through implementation of this act.

(b) The savings in subsection (a) may be achieved through: (i) continuing the interim hiring controls policy, dated January 9, 2015, through fiscal year 2016; (ii) offering 1-time incentive payments to encourage employees to resign or retire; (iii) implementing the retirement incentive program as described in sections 3 to 8, inclusive; or (iv) requiring layoffs of employees in accordance with any relevant collective bargaining agreements. The total number of executive department employees that may be reduced under this act shall not exceed 5,000.

(c) Not later than May 8, 2015, the secretary of administration and finance may designate, in writing, critical positions which shall not be eligible for the programs in this act and shall file a report of such designations with the house and senate committees on ways and means and the state board of retirement listing the critical positions by agency.

(d) The secretary of administration and finance shall, not later than May 8, 2015, provide notice to the state board of retirement, established in section 18 of chapter 10 of the General Laws, on the number of executive department employees reduced, or expected to be reduced, under clauses (i), (ii) and (iv) of subsection (b). The board shall reduce the total number of

eligible employees that retire under sections 3 to 8, inclusive, by the number of executive department employees reduced, or expected to be reduced, under said clauses (i), (ii) and (iv).

SECTION 3. (a) Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary, and not before receiving from the secretary of administration and finance the report required under subsection (c) of section 2, and the notice required under subsection (d) of said section 2, the state board of retirement shall establish and implement a retirement incentive for executive department employees, in this act referred to as the retirement incentive program. The board shall prioritize its selection of participants in the retirement incentive program based on total creditable service as of June 30, 2015, with participants who have the greater total length of service receiving priority.

(b) To be considered eligible by the state board of retirement for any of the benefit options under the retirement incentive program, an employee shall: (i) be an executive department employee as of the effective date of this act and through the date of retirement established in section 4; (ii) be a member in service of the state employees' retirement system pursuant to clause (i) of paragraph (a) of subdivision (1) of section 3 of chapter 32 of the General Laws as of the effective date of this act; (iii) be classified in Group 1 of the state employees' retirement system pursuant to paragraph (g) of subdivision (2) of said section 3 of said chapter 32 as of the effective date of this act; (iv) be eligible to receive a superannuation retirement allowance in the absence of the retirement incentive program pursuant to subdivision (1) of section 5 of said chapter 32 or subdivision (1) of section 10 of said chapter 32 as of the effective date of this act; and (v) file a timely application with the board pursuant to section 4.

(c) Notwithstanding subsections (a) and (b), the following employees shall not be eligible to receive any benefit from the retirement incentive program: (i) employees whose compensation is funded from a capital appropriation, federal grant or trust as each is defined in section 1 of chapter 29 of the General Laws as of the filing date for the application pursuant to section 4; (ii) elected officials; (iii) employees or members of the state employees' retirement system who, as of the effective date of this act, are not contributing to the retirement system pursuant to section 90G3/4 of chapter 32 of the General Laws or have not completed reinstatement pursuant to section 105 of said chapter 32; and (iv) employees in positions designated as critical under subsection (c) of section 2.

(d) An employee who receives any benefit under this act shall not be eligible for the provisions of section 40 of chapter 79 of the acts of 2014.

(e) An employee eligible under this act may not utilize the spousal benefit established in section 322 of chapter 149 of the acts of 2004 in combination with the benefit options provided in section 5.

(f) The Massachusetts Transportation Trust Fund established in section 4 of chapter 6C of the General Laws shall not be considered a trust for the purposes of this section and an employee whose compensation is paid from the fund shall be eligible to receive a benefit from the retirement incentive program provided that the employee satisfies all of the other requirements for eligibility.

SECTION 4. Notwithstanding section 5 of chapter 32 of the General Laws, the state board of retirement shall receive an eligible employee's application for retirement on or after May 11, 2015, but not later than June 12, 2015, in order for the employee to be eligible to

receive the retirement benefit provided in this act. The retirement date requested in an eligible employee's application shall be June 30, 2015. The application for retirement may be delivered to the board in person, by mail or in a manner as the board may approve, including by electronic means.

SECTION 5. (a) An employee who is eligible for the retirement incentive program may request in the application for retirement that the state board of retirement credit the employee with an additional retirement benefit pursuant to this section. Each such employee shall request and receive a combination of years of creditable service and years of age, in full-year increments; provided, however, that the sum of the years of creditable service and years of age shall not be greater than 5 years to determine the employee's superannuation retirement allowance pursuant to paragraph (a) of subdivision (2) of section 5 of chapter 32 of the General Laws.

Notwithstanding the credit, the total normal yearly amount of the retirement allowance, as determined pursuant to said section 5 of said chapter 32, of any employee who retires and receives the retirement incentive program benefit shall not exceed  $\frac{4}{5}$  of the average annual rate of the employee's regular compensation as determined pursuant to said section 5 of said chapter 32.

(b) An employee shall not: (i) be eligible for more than 1 of the incentives offered in this act; (ii) become eligible for 1 incentive by virtue of the application of a different incentive; or (iii) utilize the incentive to qualify for any other rights or benefits under chapter 32 of the General Laws. An employee who retires and receives an additional retirement benefit pursuant to this act shall be considered retired for superannuation under said chapter 32 and shall be subject to said chapter 32. A married employee who retires and receives an additional benefit

under this act shall be subject to the requirements of the second paragraph of subdivision (1) of section 12 of said chapter 32.

(c) Notwithstanding paragraph (a) of subdivision (2) of section 5 of chapter 32 of the General Laws, an eligible employee retiring under the retirement incentive program who has served in more than 1 group shall receive a retirement allowance as if the employee served only as a Group 1 employee for the entire length of state service and shall not receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the employee rendered in each group.

SECTION 6. The state board of retirement shall provide retirement counseling to employees who apply to retire under the retirement incentive program or to eligible employees who request retirement counseling. Counseling by the board shall include, but need not be limited to: (i) a full explanation of the retirement benefits provided by the retirement incentive program; (ii) a comparison of the expected lifetime retirement benefits payable to an employee under the retirement incentive program and under chapter 32 of the General Laws; (iii) the election of a retirement option under section 12 of said chapter 32; (iv) the restrictions on employment after retirement; (v) the laws relative to the payment of cost-of-living adjustments to the retirement allowance; and (vi) the effect of federal and state taxation on retirement income.

The group insurance commission shall provide counseling regarding the provision of health care benefits under chapter 32A of the General Laws.

Each employee shall sign a statement that the employee has received counseling or does not want to receive counseling prior to the approval by the board of the employee's application for superannuation benefits and the additional benefit provided by this act.

SECTION 7. Pursuant to section 98 of chapter 32 of the General Laws, the state treasurer may make advance payments in an amount not to exceed any retirement allowance actually due and under any terms and conditions the state board of retirement may prescribe to an employee who is eligible for retirement under the retirement incentive program and who does not receive a retirement allowance within 90 days of the effective date of retirement. Section 91 of said chapter 32 shall not apply for calendar year 2015 to previously retired employees of the board engaged to implement this act.

SECTION 8. Notwithstanding any general or special law or any collective bargaining agreement or other employment contract to the contrary and in consideration of the benefits conferred in this act, an employee who elects to retire under this act and is eligible to receive a payment in lieu of accrued vacation time, unused sick leave or other benefit under the collective bargaining agreement or other employment contract shall waive the requirement that the payment shall be remitted within 30 days and shall instead receive: 1/3 of the payment on September 1, 2015; 1/3 of the payment on July 1, 2016; and 1/3 of the payment on July 1, 2017. An employee who elects to retire under this act shall sign a statement that the employee has agreed to receive the payment according to the schedule outlined in this section prior to the approval of the employee's application for superannuation benefits and the additional benefit provided by this act by the state board of retirement. The board shall deny an application for the retirement incentive program under this act by an employee who belongs to a bargaining unit for which a collective bargaining agreement inconsistent with this section is in effect at the time of the application unless the employee organization representing the employee has filed with the board and the secretary of administration and finance a statement waiving any inconsistent



provisions of the agreement on behalf of all members of the bargaining unit who file applications for the retirement incentive program pursuant to this act.

SECTION 9. The secretary of an executive office, with the approval of the secretary of administration and finance, may fill an executive department position vacated as a result of participation by an eligible employee in the retirement incentive program and the governor may fill a position in the office of the governor vacated by such participation; provided, however, that the total annualized cost of regular compensation paid out by the commonwealth in fiscal year 2016 for all refilled positions shall not exceed 20 per cent of the total annualized cost of regular compensation that would have been paid out by the commonwealth during fiscal year 2016 for positions vacated in the executive department pursuant to the retirement incentive program had the positions not been vacated; and, provided further, that the total annualized cost of regular compensation paid out by the commonwealth in fiscal year 2017 for all refilled positions shall not exceed 20 per cent of the total annualized cost of regular compensation which would have been paid out by the commonwealth during fiscal year 2017 for the positions vacated in the executive department pursuant to the retirement incentive program had the positions not been vacated.

Notwithstanding section 91 of chapter 32 of the General Laws, or section 181 of chapter 25 of the acts of 2009, an employee retired under this act shall not be re-employed in state service, whether as a consultant, an independent contractor or a person whose regular duties require time devoted to state service, within 30 days after the date of retirement. A member who retired under the retirement incentive program shall be eligible for reinstatement under section 105 of said chapter 32.

SECTION 10. Not later than May 27, 2015, the secretary of administration and finance shall file with the house and senate committees on ways and means a report detailing: the number of employee applications received for the retirement incentive program to date; the official positions of the employees; an estimate of how many additional applications are anticipated to be received by the June 12, 2015 application deadline; and the impact of received and anticipated applications on each agency's ability to carry out its responsibilities as provided by law. The report shall also detail the anticipated direct payroll savings from the retirement incentive program based on the number of applications received or anticipated to be received on or before June 12, 2015. If the anticipated direct payroll savings is less than \$325,100,000 or if the anticipated net savings is less than \$171,900,000 in fiscal year 2016, the report shall describe in detail the additional measures, including implementation of clauses (i), (ii) and (iv) of subsection (b) of section 2, necessary to generate total direct payroll savings equal to or exceeding a net savings of \$171,900,000 in fiscal year 2016.

SECTION 11. Not later than May 27, 2015, the secretary of administration and finance shall file with the house and senate committees on ways and means a report detailing the implementation of clauses (i), (ii) and (iv) of subsection (b) of section 2, including: (i) the number of employees who separated from state service pursuant to each clause; (ii) the official positions of the employees; (iii) an estimate of how many additional separations the secretary anticipates by June 30, 2015; (iv) the impact that all completed and anticipated separations will have on each agency's ability to carry out its responsibilities as provided by law; and (v) the estimated salary savings in fiscal years 2015, 2016 and 2017.

SECTION 12. The comptroller, in conjunction with the state board of retirement, shall certify to the house and senate committees on ways and means by June 15, 2015 the total value

of compensation of the last pay period prior to June 30, 2015, by line item, of each individual who has enrolled in the retirement incentive program. For each position, the list shall include: the item of appropriation in which the position is funded; the name of the agency, bureau, department, office or division of the executive department that is funded by the item; the classification title of the position; the salary range for the title and the salary payable to the person who retired from the position; the retirement date for the person who retired or will retire from the position; and the amounts of accrued vacation time, unused sick leave or other accrued benefit for each employee as of the employee's date of retirement.

SECTION 13. The executive director of the public employee retirement administration commission shall analyze, study and evaluate the costs and actuarial liabilities attributable to the additional benefits payable pursuant to this act. The commission shall file a report with the secretary of administration and finance, the joint committee on public service and the house and senate committees on ways and means by January 15, 2016.

SECTION 14. The secretary of administration and finance shall file with the house and senate committees on ways and means reports detailing: the number of employees participating in the retirement incentive program; the estimated salary savings in fiscal years 2016 and 2017 as a result of the employees' participation; the number of positions that have been or are expected to be refilled before June 30, 2016; and the estimated salary costs in fiscal years 2016 and 2017 attributable to the refilled positions. For each position that has not been refilled, the reports shall detail how the duties and expertise associated with the position have been or will be fulfilled or otherwise accounted for by the relevant agency. The first report shall be filed by December 1, 2015, and the second report shall be filed by December 1, 2016.