

# HOUSE . . . . . No. 3491

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Harold P. Naughton, Jr.*

*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 retirement benefits for teachers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>1/15/2015</i>

# HOUSE . . . . . No. 3491

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By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 3491) of Harold P. Naughton, Jr., relative to retirement benefits for teachers. Public Service.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

An Act relative to retirement benefits for teachers.

*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 1. Chapter 32 of the General Laws, as appearing in the 2012 Official Edition,  
2   is hereby amended by adding the following section:-

3           Section 106. No teacher hired on or after the effective date of this section shall be  
4   entitled to participate in the current teachers retirement program provided for in any general or  
5   special law. A teacher, hired on or after the effective date of this section may elect to participate  
6   in the teachers alternative retirement program provided by the teacher's employer pursuant to  
7   this section. A teacher hired prior to or the effective date of this section may elect to withdraw  
8   from the teachers' system altogether and participate in the teachers alternative retirement  
9   program.

10          Each employer of a teacher hired on or after the effective date of this act and any teacher  
11   who elects to participate in the teachers alternative retirement program shall contribute on behalf

of each member of the program an amount equal to 5 per cent of the employee's gross monthly compensation. The employer shall deduct an amount for the administration of the program.

The decision to participate in the teachers alternative retirement program is irrevocable as long as the employee holds a position eligible for participation. Any service creditable under the teachers retirement system is retained after the member withdraws from the system; however, additional service credit in the teachers retirement system may not be earned while a member of the optional retirement program.

The amount of retirement contributions paid by the employee and employer shall be placed in a default fund as designated by the commission, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

The commission, acting as plan fiduciary, shall ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary shall ensure that such contributions are allocated as follows:

(1) the employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with this section.

(2) the employer contribution portion earmarked for administrative and educational expenses shall be transferred to a fund designated by the commission.

(3) the employer contribution portion earmarked for disability benefits shall be transferred to the fund designated by the commission.

(4)

The investment plan shall be administered by the commission and affected employers. The commission may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. The commission shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, school district employers, the commission and third-party contractors. The commission shall adopt rules and regulations necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

The commission shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the commission, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the commission may compensate any such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party

55 administrator, the division, the commission, employers, members, approved providers, and  
56 beneficiaries.

57         The commission shall select and contract with one or more organizations to provide  
58 educational services. With approval of the commission, the organizations may subcontract to  
59 provide components of the educational services. As a cost of administration, the commission  
60 may compensate any such contractor for its services in accordance with the terms of the contract,  
61 as is deemed necessary or proper by the board. The education organization may not be an  
62 approved provider or be affiliated with an approved provider. Educational services shall be  
63 designed by the commission and department to assist employers, eligible employees, members,  
64 and beneficiaries in order to maintain compliance with United States Department of Labor  
65 regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to  
66 assist employees in their choice of pension plan or investment plan retirement alternatives.  
67 Educational services include, but are not limited to, disseminating educational materials;  
68 providing retirement planning education; explaining the pension plan and the investment plan;  
69 and offering financial planning guidance on matters such as investment diversification,  
70 investment risks, investment costs, and asset allocation. An approved provider may also provide  
71 educational information, including retirement planning and investment allocation information  
72 concerning its products and services.

73         In evaluating and selecting a third-party administrator, the commission shall establish  
74 criteria for evaluating the relative capabilities and qualifications of each proposed administrator.  
75 In developing such criteria, the commission shall consider:

(1) The administrator's demonstrated experience in providing administrative services to public or private sector retirement systems.

(2) The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

(3) The administrator's ability and willingness to coordinate its activities with employers, the commission, and the division, and to supply to such employers, and the commission the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the commission.

(4) The cost-effectiveness and levels of the administrative services provided.

(5) The administrator's ability to interact with the members, the employers, the commission, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

(6) Any other factor deemed necessary by the commission.

In evaluating and selecting an educational provider, the commission shall establish criteria under which it shall consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the commission shall consider:

(1) Demonstrated experience in providing educational services to public or private sector retirement systems.

(2) Ability and willingness to coordinate its activities with the employers, the commission, and the division, and to supply to such employers and the commission the information and data they require, including, but not limited to, reports on educational contacts.

(3) The cost-effectiveness and levels of the educational services provided.

(4) Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

(5) Any other factor deemed necessary by the commission.

The establishment of the criteria shall be solely within the discretion of the commission.

The commission shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

(1) The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

(2) The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

The commission may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The commission may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

116           The third-party administrator may not receive direct or indirect compensation from an  
117 approved provider, except as specifically provided for in the contract with the commission.

118           The commission shall receive and resolve member complaints against the program, the  
119 third-party administrator, or any program vendor or provider; shall resolve any conflict between  
120 the third-party administrator and an approved provider if such conflict threatens the  
121 implementation or administration of the program or the quality of services to employees; and  
122 may resolve any other conflicts. The third-party administrator shall retain all member records for  
123 at least 5 years for use in resolving any member conflicts. The commission, the third-party  
124 administrator, or a provider is not required to produce documentation or an audio recording to  
125 justify action taken with regard to a member if the action occurred 5 or more years before the  
126 complaint is submitted to the commission. It is presumed that all action taken 5 or more years  
127 before the complaint is submitted was taken at the request of the member and with the member's  
128 full knowledge and consent. To overcome this presumption, the member shall present  
129 documentary evidence or an audio recording demonstrating otherwise.

130           The commission shall develop policy and procedures for selecting, evaluating, and  
131 monitoring the performance of approved providers and investment products under the investment  
132 plan. In accordance with such policy and procedures, the commission shall designate and  
133 contract for a number of investment products as determined by the commission. The commission  
134 shall also select one or more bundled providers, each of which may offer multiple investment  
135 options and related services, if such approach is determined by the board to provide value to the  
136 members otherwise not available through individual investment products. Each approved  
137 bundled provider may offer investment options that provide members with the opportunity to  
138 invest in each of the following asset classes, to be composed of individual options that represent

a single asset class or a combination thereof: money markets, United States fixed income, United States equities, and foreign stock. The commission shall review and manage all educational materials, contract terms, fee schedules, and other aspects of the approved provider relationships to ensure that no provider is unduly favored or penalized by virtue of its status within the investment plan. Additionally, the commission, consistent with its fiduciary responsibilities, shall develop one or more investment products to be offered in the investment plan.

A self-directed brokerage account shall be offered as a service to investment plan members. Notwithstanding any other provision of this section, the commission shall select a provider to offer investment plan members additional investment alternatives by providing a self-directed brokerage account. The commission shall contract with a provider to offer a self-directed brokerage account. In selecting the provider, the commission shall consider the following:

(1) Financial strength and stability as evidenced by the highest ratings assigned by nationally recognized rating services when comparing proposed providers that are so rated.

(2) Reasonableness of fees compared to other providers taking into consideration the quantity and quality of services being offered.

(3) Compliance with the Internal Revenue Code and all applicable federal and state securities laws.

(4) Available methods for members to interact with the provider and the means by which members may access account information, direct investment of funds, transfer funds, and receive funds prospectuses and related investment materials as required by state and federal regulations.

(5) The ability to provide prompt, efficient, and accurate responses to member directions, as well as providing confirmations and quarterly account statements in a timely fashion.

(6) The process by which assets are invested, as well as any waiting periods when monies are transferred.

(7) Organizational factors, including, but not limited to, financial solvency, organizational depth, and experience in providing self-directed brokerage account services to public defined contribution plans.

The provider of the self-directed brokerage account shall:

(1) Make the self-directed brokerage account available under the most beneficial terms available to any customer.

(2) Agree not to sell or distribute member lists generated through services rendered to the investment plan.

(3) Not be a bundled provider.

(4) Provide for an education component approved by the commission that is available in multimedia formats and that provides impartial and balanced information about investment options and fees associated with participation in the self-directed brokerage account.

The provider, as well as any of its related entities, may not offer any proprietary products as investment alternatives in the self-directed brokerage account. The commission shall monitor the selected provider to ensure continued compliance with established selection criteria, board policy and procedures, state and federal regulations, and any contractual provisions. The

182 provider shall ensure that a member opening a self-directed brokerage account is provided a  
183 quarterly statement that details member investments in the self-directed brokerage account. The  
184 statement shall be in lieu of, and satisfy the requirements of this section with respect to the  
185 member investments in the self-directed brokerage account. The provider shall include in the  
186 statement the following details:

187 (1) Account investment options.

188 (2) The market value of the account at the close of the current quarter and the  
189 previous quarter.

190 (3) Account gains and losses.

191 (4) Transfers into and out of the account.

192 (5) Any fees, charges, penalties, and deductions that apply to the account.

193 The self-directed brokerage account may include the following securities as investment  
194 alternatives:

195 (1) Stocks listed on a Securities and Exchange Commission regulated national  
196 exchange.

197 (2) Exchange traded funds.

198 (3) Mutual funds.

199 The self-directed brokerage account may not include the following as investment  
200 alternatives:

- 201           (1)     Illiquid investments.
- 202           (2)     Over-the-Counter Bulletin Board securities.
- 203           (3)     Pink Sheet securities.
- 204           (4)     Leveraged exchange traded funds.
- 205           (5)     Direct ownership of foreign securities.
- 206           (6)     Derivatives, including, but not limited to, futures and options contracts on  
207 securities, market     indexes, and commodities.
- 208           (7)     Buying or trading on margin.
- 209           (8)     Investment plan products.
- 210           (9)     Any investment that would jeopardize the investment plan's tax qualified status.
- 211           A member may participate in the self-directed brokerage account if the member:
- 212           (1)     Maintains a minimum balance of \$5,000 in the products offered under the  
213 investment plan.
- 214           (2)     Makes a minimum initial transfer of funds into the self-directed brokerage  
215 account of \$1,000.
- 216           (3)     Makes subsequent transfers of funds into the self- directed brokerage account in  
217 amounts of     \$1,000 or greater.

218           (4)     Pays all trading fees, commissions, administrative fees, and any other expenses  
219 associated with       participating in the self-directed brokerage account from the funds in the  
220 self- directed brokerage account.

221           (5)     Does not violate any trading restrictions established by the provider, the  
222 investment plan, or     state or federal law.

223           Employer and employee contributions shall be initially deposited into investment plan  
224 products and may be transferred to the self-directed brokerage account. Distributions are not  
225 permissible directly from assets in the self-directed brokerage account. Assets shall first be  
226 transferred to investment plan products. A distribution may be requested after the transfer is  
227 completed and all investment plan distribution requirements are met. The commission shall  
228 notify members that:

229           (1)     The commission is not responsible for managing the self-directed brokerage  
230 account beyond administrative requirements as established between the commission and the  
231 provider of the self-directed brokerage account.

232           (2)     Investment alternatives available through the self- directed brokerage account  
233 have not been subjected to any selection process, are not monitored by the commission, require  
234 investment expertise to prudently buy, manage, or dispose of, and have a risk of substantial loss.

235           (3)     The member is responsible for all administrative, investment, and trading fees  
236 associated with participating in the self-directed brokerage account.

237           The commission shall provide for an education component for eligible employees system  
238 members in a manner consistent with the provisions of this section. The education component

shall be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers. The education component shall provide system members with impartial and balanced information about plan choices for members. The education component shall involve multimedia formats. Program comparisons shall, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The commission shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules and regulations of the commission. The commission, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members enrolled before enactment of this section, with information necessary to make informed plan choice decisions. The transfer education component shall include, but is not limited to, information on:

(1) The amount of money available to a member to transfer to the defined contribution program.

(2) The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

(3) The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

(4) The rate of return from investments in the defined contribution program and the period of time over which such rate of return shall be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

(5) The historical rates of return for the investment alternatives available in the defined contribution programs.

(6) The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

(7) Payout options available in each of the retirement programs.

All school districts in the commonwealth any any other employers of teachers have an obligation to regularly communicate the existence of the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by the commission.

The requirement to deliver a prospectus shall be satisfied by delivery of a fund profile or summary profile that contains the information that would be included in a summary prospectus as described by Rule 498 under the Securities Act of 1933, 17 C.F.R. s. 230.498. If the transaction fees, expense information or other information provided by a mutual fund in the prospectus does not reflect terms negotiated by the commission or its designated agents, the requirement is satisfied by delivery of a separate document described by Rule 498 substituting accurate information; and delivery shall be effected if delivery is through electronic means and the following standards are satisfied:

(1) Electronically-delivered documents are prepared and provided consistent with style, format, and content requirements applicable to printed documents;

(2) Each member is provided timely and adequate notice of the documents that are to be delivered, and their significance, and of the member's right to obtain a paper copy of such documents free of charge;

(3) Members have adequate access to the electronic documents, at locations such as their worksites or public facilities, and have the ability to convert the documents to paper free of charge by the commission, and the board or its designated agents take appropriate and reasonable measures to ensure that the system for furnishing electronic documents results in actual receipt. Members have provided consent to receive information in electronic format, which consent may be revoked; and

(4) The commission, or its designated agent, actually provides paper copies of the documents free of charge, upon request.

The commission is not required to deliver a prospectus or other information for the underlying investments available through the self-directed brokerage account.

Benefits may not be paid under the teachers alternative retirement plan unless the member has terminated employment or is deceased and a proper application has been filed as prescribed by the commission or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The commission may cancel an application for retirement benefits if the

303 member or beneficiary fails to timely provide the information and documents required by this  
304 section and the rules of the commission. The commission shall adopt rules establishing  
305 procedures for application for retirement benefits and for the cancellation of such application if  
306 the required information or documents are not received. The commission is authorized to cash  
307 out a de minimis account of a member who has been terminated from covered employment for a  
308 minimum of 6 calendar months. A de minimis account is an account containing employer and  
309 employee contributions and accumulated earnings of not more than \$5,000 made under the  
310 provisions of this section. Such cash-out shall be a complete lump-sum liquidation of the account  
311 balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover  
312 distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal  
313 Revenue Code, on behalf of the member. Any nonvested accumulations and associated service  
314 credit, including amounts transferred to the suspense account of the fund created by the  
315 commission, shall be forfeited upon payment of any vested benefit to a member or beneficiary,  
316 except for de minimis distributions or minimum required distributions as provided under this  
317 section. If any financial instrument issued for the payment of retirement benefits under this  
318 section is not presented for payment within 180 days after the last day of the month in which it  
319 was originally issued, the third-party administrator or other duly authorized agent of the  
320 commission shall cancel the instrument and credit the amount of the instrument to the suspense  
321 account of the fund created by the commission. Any amounts transferred to the suspense account  
322 are payable upon a proper application, not to include earnings thereon, as provided in this  
323 section, within 10 years after the last day of the month in which the instrument was originally  
324 issued, after which time such amounts and any earnings attributable to employer contributions  
325 shall be forfeited. Any forfeited amounts are assets of said fund.

326 Survivor benefits are payable in accordance with the following terms and conditions:

327 (1) To the extent vested, benefits are payable only to a member's beneficiary or  
328 beneficiaries as designated by the member as provided in regulations promulgated by the  
329 commission.

330 (2) Benefits shall be paid by the third-party administrator or designated approved  
331 providers in accordance with the law, the contracts, and any applicable commission regulation,  
332 rule or policy.

333 (3) To receive benefits, the member shall be deceased.

334 In the event of a member's death, all vested accumulations, less withholding taxes  
335 remitted to the Internal Revenue Service, shall be issued as if the member retired on the date of  
336 death. No other death benefits are available for survivors of members, except for benefits, or  
337 coverage for benefits, as are otherwise provided by law or separately provided by the employer,  
338 at the employer's discretion.

339 Upon receipt by the third-party administrator of a properly executed application for  
340 distribution of benefits, the total accumulated benefit is payable by the third-party administrator  
341 to the member's surviving beneficiary or beneficiaries, as:

342 (1) A lump-sum distribution payable to the beneficiary or beneficiaries, or to the  
343 deceased member's estate;

344 (2) An eligible rollover distribution, if permitted, on

345 (3) behalf of the surviving spouse of a deceased member, whereby all accrued  
346 benefits, plus interest and investment earnings, are paid from the deceased member's account

347 directly to the custodian of an eligible retirement plan, as described in s. 402(c)(8)(B) of the  
348 Internal Revenue Code, on behalf of the surviving spouse; or

349 (4) A partial lump-sum payment whereby a portion of the accrued benefit is paid to  
350 the deceased member's surviving spouse or other designated beneficiaries, less withholding taxes  
351 remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the  
352 custodian of an eligible retirement plan, if permitted, as described in s. 402(c)(8)(B) of the  
353 Internal Revenue Code, on behalf of the surviving spouse. The proportions shall be specified by  
354 the member or the surviving beneficiary.