

HOUSE No. 3907

So much of the message from His Excellency the Governor recommending legislation relative to modernizing municipal finance and government [for message, see House, No. 3905] as relates to sections 13, 14, 230, 231 and 241. Public Service.

The Commonwealth of Massachusetts

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

An Act to modernize municipal finance and government.

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 [13]. Section 9A½ of chapter 32B of the General Laws is hereby repealed.

2 SECTION 2 [14]. Said chapter 32B of the General Laws, as so appearing, is hereby
3 amended by striking out section 20, and inserting in place thereof the following 2 sections:-

4 Section 20. (a) As used in this section, the following words shall have the following
5 meanings unless the context clearly requires otherwise:

6 “Chief executive officer”, the mayor in a city and the board of selectmen in a town unless
7 some other municipal office is designated to be the chief executive officer under a local charter,
8 the county commissioners in a county and the governing board, commission or committee in a
9 district or other governmental unit.

10 “Commission”, the public employee retirement administration commission established
11 under section 49 of chapter 7.

12 “GASB”, the Governmental Accounting Standards Board.

13 “Governing body”, the legislative body in a city or town, the county commissioners in a
14 county, the regional district school committee in a regional school district, or the district meeting
15 or other appropriating body in any other governmental unit.

16 “Governmental unit“, any political subdivision of the commonwealth, which for the
17 purposes of this section shall include a municipal lighting plant, local housing or redevelopment
18 authority, regional council of government established under section 20 of chapter 34B and
19 educational collaborative as defined by section 4E of chapter 40.

20 “State Retiree Benefits Trust Fund board of trustees”, the board of trustees established by
21 section 24A of chapter 32A.

22 “Other Post-Employment Benefits Liability Trust Fund” or “OPEB Fund”; a trust fund
23 established by a governmental unit under this section for the deposit of gifts, grants and
24 appropriations and other funds for the benefit of retired employees and their dependents, the
25 payment of required contributions of the unit to the group health insurance benefits provided to
26 employees and their dependents after retirement and the reduction and elimination of the
27 unfunded liability of the unit for such benefits.

28 “OPEB Fund board of trustees”; an independent board of trustees selected by the
29 governmental unit with investing authority for the OPEB Fund.

30 “OPEB investing authority” or “investing authority”; the trustee or board of trustees
31 designated by the governmental unity to invest and reinvest the OPEB Fund using the investment
32 standard or investment vehicle established under this section.

(b) A governmental unit that accepts this section shall establish on its books and accounts the Other Post-Employment Benefits Liability Trust Fund, the assets of which shall be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents. The governmental unit may appropriate amounts to be credited to the fund and the treasurer of the governmental unit may accept gifts, grants and other contributions to the fund. The fund shall be an expendable trust subject to appropriation and shall be managed by a trustee or a board of trustees as provided in subsection (d). Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be dedicated to and become part of the fund by vote of the governing body of the governmental unit. All monies held in the fund shall be accounted for separately from other funds of the governmental unit and shall not be subject to the claims of any general creditor of the governmental unit.

(c) The treasurer of the governmental unit shall be the custodian of the OPEB Fund and shall be bonded in any additional amounts necessary to protect fund assets.

(d) The governing body of the governmental unit shall designate a trustee or board of trustees, which shall have general supervision of the management, investment and reinvestment of the OPEB Fund. The governing body may designate as the trustee or board of trustees (i) the custodian; (ii) the governmental unit's retirement board as the board of trustees; or (iii) an OPEB Fund board of trustees established by the governmental unit under subsection (e). If no designation is made, the custodian of the fund shall be the trustee and shall manage and invest the fund. The duties and obligations of the trustee or board of trustees with respect to the fund shall be set forth in a declaration of trust to be adopted by the trustee or board, but shall not be

inconsistent with this section. The declaration of trust and any amendments thereto shall be filed with the chief executive and the clerk of the governing body of the governmental unit and take effect 90 days after the date filed unless the governing body votes to disapprove any such declaration or amendment within that period. The trustee or board of trustees may employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the fund, if authorized by the governing body of the governmental unit. The trustee or trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, invest the OPEB Fund in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(e) The governing body of the governmental unit may vote to establish a separate OPEB Fund board of trustees to be the investing authority. The board of trustees shall consist of 5 to 13 individuals, including a person or persons with the investment experience desired by the governmental unit, a citizen or citizens of the governmental unit, an employee of the governmental unit, a retiree or retirees of the governmental unit, and a governmental unit officer or officers. The governmental unit employee trustee or trustees shall be selected by current employees of the unit by ballot, and the retiree trustee or trustees shall be selected by current retirees of the unit by ballot. The remainder of the trustees shall be appointed by the chief executive officer of the governmental unit. The trustees will serve for terms of 3 or 5 years as determined by the governing body of the governmental unit, and if a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term. Trustees shall be eligible for reappointment.

(f) The trustee or board of trustees shall act in a fiduciary capacity and shall discharge its duties for the primary purpose of enhancing the value of the OPEB Fund and shall act with the

79 care, skill, prudence and diligence under the circumstances then prevailing that a prudent person
80 acting in a like capacity and familiar with such matters would use in the conduct of an enterprise
81 with like character and with like aims and by diversifying the investments in the fund so as to
82 minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

83 In any civil action brought against a trustee or the board of trustees, acting within the
84 scope of official duties, the defense or settlement of which is made by legal counsel for the
85 governmental unit, such trustee or employee shall be indemnified from the OPEB Fund for all
86 expenses incurred in the defense thereof and for damages to the same extent as provided for
87 public employees in chapter 258. No trustee or employee shall be indemnified for expenses in
88 an action or damages awarded in such action in which there is shown to be a breach of fiduciary
89 duty, an act of willful dishonesty or an intentional violation of law by such trustee or employee.

90 (g) Monies in the OPEB Fund not required for expenditures or anticipated expenditures
91 within the investment period, shall be invested and reinvested by the custodian as directed by the
92 investing authority from time to time; provided such investment is made in accordance with (i)
93 section 54 of chapter 44, in the case of the treasurer or OPEB Fund board of trustees as investing
94 authority, unless the governing body of the governmental unit authorizes investment under the
95 prudent investor rule established in chapter 203C; (ii) section 23 of chapter 32, in the case of the
96 retirement board as investing authority; or (iii) sections 24 and 24A of chapter 32A, if the OPEB
97 Fund is invested in the State Retiree Benefits Trust Fund.

98 (h) Amounts in the OPEB Fund may be appropriated by a two thirds vote of the
99 governing body of the governmental unit to pay the unit's share of health insurance benefits for
100 retirees and their dependents upon certification by the trustee or board of trustees that such

101 amounts are available in the fund. The treasurer of the governmental unit after consulting with
102 the chief executive officer of the unit shall determine the amount to be appropriated from the
103 fund to the annual budget for retiree health insurance and notify the trustee or board of trustees
104 of that amount at the earliest possible opportunity in the annual budget cycle. Upon notification,
105 the trustee or board of trustees shall take diligent steps to certify those funds as available for
106 appropriation by the governmental unit, or will be available by the time the appropriation would
107 become effective or provide an explanation why the funds are or will not be available or should
108 not be made available.

109 (i) In a regional school district, appropriations of amounts to the OPEB Fund may be
110 made only in the annual budget submitted to the member cities and towns for approval. The
111 annual report submitted to the member cities and towns pursuant to clause (k) of section 16 of
112 chapter 71 shall include a statement of the balance in the fund and all additions to and
113 appropriations from the fund during the period covered by such report.

114 (j) A municipal lighting plant that establishes an OPEB fund shall pay the premiums and
115 assume the liability for the municipal share of retiree healthcare benefits attributable to lighting
116 plant employees and their dependents.

117 (k) A governmental unit that accepts this section may participate in the OPEB Fund
118 established by another governmental unit under this section upon authorization of the governing
119 boards of both units and in accordance with the procedures and criteria established by the trustee
120 or board of trustees of the fund. Each governmental unit shall remain responsible for all costs
121 attributable for the health care and other post-employment obligations for its retired employees

122 and their dependents and for completing an actuarial valuation of its liabilities and funding
123 schedule that conforms to GASB requirements.

124 The participating governmental unit may appropriate or otherwise contribute amounts to
125 the OPEB Fund as provided in subsection (b). Amounts from the fund may be appropriated by
126 the participating unit for its retiree health insurance expenses in the manner authorized in
127 subsection (h) upon a determination by the treasurer of the unit, after consulting with the chief
128 executive officer of the unit, of the necessary amount and notification of the treasurer of the
129 governmental unit maintaining the fund and the trustee or board of trustees of that amount. The
130 trustee or board of trustees shall certify those funds available for appropriation, as provided in
131 subsection (h), and the treasurer of the governmental unit maintaining the fund shall transfer the
132 amounts certified to the participating governmental unit.

133 The participating governmental unit shall be separately credited for any contributions
134 made to and appropriations from the OPEB Fund, and interest or other income generated by the
135 fund, in the accounting of the relative liabilities of each governmental unit for its retirees and
136 their dependents.

137 (l) This section may be accepted in a city or town in the manner provided in section 4 of
138 chapter 4; in a county, by vote of the county commissioners; in a regional school district, by vote
139 of the regional school committee; and in a district or other governmental unit, by vote of the
140 district meeting or other appropriating body.

141 (m) This section shall also apply to the OPEB Fund established by a governmental unit
142 under a special law, notwithstanding any provision to the contrary, upon the acceptance of this
143 section by the governmental unit.

144 Section 20A. (a) As used in this section, the following words shall have the following
145 meanings unless the context clearly requires otherwise:

146 “PERAC”, the public employee retirement administration commission established under
147 section 49 of chapter 7.

148 “GASB”, the Governmental Accounting Standards Board.

149 (b) Whenever a governmental unit obtains an actuarial valuation report in accordance
150 with GASB containing statements of the liabilities of the unit for health care and other post-
151 employment benefits for its retired employees and their dependents, it shall submit a copy to
152 PERAC no later than 90 days after receipt of such report. PERAC may require that the
153 governmental unit provide additional information related to such liabilities, normal cost and
154 benefit payments, as specified by the executive office for administration and finance in
155 consultation with PERAC. The governmental unit shall file the report and the additional
156 information with PERAC and the division of local services. PERAC shall file a summary report
157 of the information received under this section with the chairs of the house and senate committees
158 on ways and means, the secretary of administration and finance and the board of trustees of the
159 State Retiree Benefits Trust Fund established under section 24A of chapter 32A.

160 SECTION 3 [230]. Section 28A of chapter 151A of the General Laws, as so appearing,
161 is hereby amended by inserting after subsection (d) the following subsection:-

162 (e) with respect to any services described in subsections (a) and (b) that are provided to or
163 on behalf of an educational institution, benefits shall not be paid to any individual under the
164 same circumstances as described in subsections (a) through (c).

SECTION 4 [231]. Section 29 of said chapter 151A, as so appearing, is hereby amended by inserting after subsection (d)(6) the following subsection:-

(7) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week that begins in a period with respect to which such individual is receiving governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment from a defined benefit plan that is based on the previous work of such individual for the separating employer or for a base period employer shall be reduced by an amount equal to 65 per cent of the amount of such payment that is reasonably attributable to such week; provided, however, that such reduction shall apply only when such separating or base period employer employed the individual for at least 75 per cent of the individual's total length of service on which the defined benefit plan is based; and, provided further, that such reduction shall apply only if, and to the extent, then consistent with section 3304(a)(15) of the Internal Revenue Code of 1954. Payments received under the Social Security Act shall not be subject to this paragraph.

SECTION 5 [241]. Notwithstanding the provisions of any existing law, including without limitation any act or special act, the appropriate public authority for any city or town may revoke the application of Chapter 31 of the General Laws for a position or positions in any classification that are filled on or after the effective date of the revocation. Appropriate public authority will mean, as applicable, the Board of Selectmen, Mayor, City Manager or Chief Executive Officer of the City or Town.