

HOUSE No. 2205

The Commonwealth of Massachusetts

PRESENTED BY:

Claire D. Cronin

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 retirees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>1/10/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>

HOUSE No. 2205

By Ms. Cronin of Easton, a petition (accompanied by bill, House, No. 2205) of Claire D. Cronin and Michael D. Brady relative to the retirement allowance for Daniel J. Brophy and the identification of similar individuals with excess earnings by the Public Employment Retirement Administration Commission. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2524 OF 2017-2018.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-First General Court
(2019-2020)**
—————

An Act relative to retirees.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Notwithstanding G.L. c. 32, §91A, or any other general or special law to the contrary,
2 Daniel J. Brophy shall continue to be paid the retirement allowance to which he is entitled
3 pursuant to G.L. c. 32, §16(1)(c) without offset related to any income he receives as a police
4 officer in Florida.

5 The Public Employment Retirement Administration Commission is hereby directed to
6 report to the Committee the identity of every individual, involuntarily retired pursuant to G.L. c.
7 32, §16, it has deemed to have received excess income under G.L. c. 32, §91A and the amount of
8 excess earnings it has ascribed to the individual so identified over the five year period preceding
9 the effective date of this state.

10 In its report, the Public Employment Retirement Administration Commission may make
11 any recommendations for legislative changes it deems appropriate to ensure that individuals who
12 are retired involuntarily, as opposed to those who themselves seek disability retirement, are not
13 unduly limited with respect to future earnings.

14

15 G.L. c. 32, §91A does not apply to Daniel Brophy because he was forced into involuntary
16 retirement pursuant to G.L. c. 32, §16, which is not “a general or special law for disability,
17 including accidental disability.”

18 The provisions of G.L. c. 32, §91A requiring refund of so-called excess earnings and
19 holdings one’s pension or retirement allowance as security therefore cannot be constitutionally
20 applied to persons forced into involuntary retirement.

21 The particular circumstances of, Daniel Brophy’s forced retirement and subsequent
22 employment in Florida preclude application of the refund/security provisions of §91A.

23 The provisions of G.L. c. 32, §91A contemplate an annual process and refund provisions
24 of the law apply only to the immediately preceding year. Even if §91A applies to those retired
25 under §16 and can be applied in the particular circumstances of Daniel Brophy’s forced
26 retirement, the Board may not now seek a refund for excess earnings reported prior to 2015.

27 The calculation of the base line in this case should be based on the definition of the
28 phrase “regular compensation” in G.L. c. 32, §1 at the time Daniel Brophy was forced into
29 involuntary retirement.