

# **HOUSE . . . . . No. 6122**

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## ***The Commonwealth of Massachusetts***

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HOUSE OF REPRESENTATIVES, July 15, 1988.

The committee on Public Service, to whom was recommitted the petition (accompanied by bill, House, No. 4907) of Emanuel G. Serra for legislation to make deferred compensation programs available to all public employees, reports recommending that the accompanying bill (House, No. 6122) ought to pass.

For the committee,

KEVIN P. BLANCHETTE.

**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Eighty-Eight.

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AN ACT FURTHER REGULATING THE AVAILABILITY OF DEFERRED COMPENSATION PROGRAMS FOR PUBLIC EMPLOYEES IN THE COMMONWEALTH.

1     *Whereas*, the deferred operation of this act would tend to  
2 defeat its purpose, which is to make deferred compensation  
3 programs immediately available to all public employees of the  
4 commonwealth, therefore it is hereby declared to be an emergency  
5 law, necessary for the immediate preservation of the public  
6 convenience.

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

1     Chapter 29 of the General Laws, as appearing in the 1986  
2 Official Edition, is hereby amended by inserting after section 64A  
3 the following two sections: —

4     Section 64B. The treasurer or, if there is no treasurer, the chief  
5 financial officer by whatever name that person is called, on behalf  
6 of any political subdivision, body politic and corporate, or public  
7 instrumentality created by the commonwealth or any county, city  
8 or town or group thereof by whatever name the body is called,  
9 including without limitation, an agency, authority, board,  
10 corporation or district, including also without limitation, any  
11 regional school, police, fire, refuse or sewage district, and  
12 hereinafter referred to as a "governmental body," which is not  
13 otherwise subject to any general or special law authorizing  
14 deferred compensation contracts with its employees, may contract  
15 with an employee of that governmental body to defer a portion  
16 of that employee's compensation and may, for the purposes of  
17 funding a deferred compensation program for said employee,  
18 established in accordance with the U.S. Internal Revenue Code,  
19 (the "Code") invest the deferred portion of the employee's income  
20 in a life insurance or annuity contract, mutual fund, or a bank  
21 investment trust. The treasurer or chief financial officer shall,

22 before making any such investment, solicit bids from insurance  
23 companies authorized to conduct business within the common-  
24 wealth pursuant to chapter one hundred and seventy-five, mutual  
25 fund managers, and banks, which bids shall be sealed, and opened  
26 at a time and place designated by the treasurer or chief financial  
27 officer. Any bid submitted by an insurance company, mutual  
28 fund, or bank investment trust to fund the deferred compensation  
29 program shall, where applicable, clearly indicate the interest rate  
30 which shall be paid on the deferred funds, any commissions which  
31 will be paid to the salesmen, any load imposed for the purpose  
32 of administering the funds, mortality projections, expected  
33 payouts, tax implications for participating employees and such  
34 other information as the treasurer or chief financial officer may  
35 require. Any contract entered into between an employee and the  
36 governmental body pursuant to this section shall include all such  
37 information in terms the employee can reasonable be expected to  
38 understand.

39 As used in this section the word "employee" shall have the same  
40 meaning as "employee" in section one of chapter thirty-two and  
41 shall include consultants and independent contractors who are  
42 natural persons paid by the governmental body.

43 Notwithstanding any provisions to the contrary, the treasurer  
44 or chief financial officer shall not be required to solicit bids to  
45 invest the deferred portion of an employee's income provided:  
46 (a) the treasurer or chief financial officer elects to invest such  
47 funds in the same investment products as are provided through  
48 the deferred compensation plan for employees of the common-  
49 wealth administered by the state treasurer, provided such plan  
50 resulted from the solicitation of bids in accordance with bidding  
51 requirements comparable to those required under this section; or  
52 (b) the treasurer or chief financial officer elects to invest such  
53 funds in the investment products offered pursuant to a plan  
54 developed through a competitive process, provided that such plan  
55 resulted from the solicitation of bids by a group of any  
56 combination of three or more city, town, county or public  
57 authority treasurers or treasurers or chief financial officers of  
58 governmental bodies covered by this section acting as a "Common  
59 Group" for purposes of soliciting such proposals in accordance  
60 with biding requirements comparable to those required under this  
61 section.

62 An employee may defer compensation so long as such deferral  
63 is the lesser of seven thousand five hundred dollars or thirty-three  
64 and one-third per cent of his includible compensation for a taxable  
65 year, except that for one or more of the last three taxable years  
66 ending before he attains normal retirement age under the plan,  
67 the employee may defer the lesser of fifteen thousand dollars or  
68 the sum of (1) seven thousand five hundred dollars or thirty-three  
69 and one-third per cent of his includible compensation for such  
70 year, plus (2) a sum not more than the total deferrable  
71 compensation for prior taxable years that had not in fact been  
72 deferred in such years.

73 Such deferred compensation program shall be in addition to  
74 and not a part of any retirement program or pension system as  
75 provided under said chapter thirty-two and any other benefit  
76 program provided by law for such employee. Any compensation  
77 deferred under such a plan shall continue to be included as regular  
78 compensation, as defined in section one of said chapter thirty-two,  
79 for the purpose of computing any retirement and pension benefits  
80 earned by any such employee, but any compensation so deferred  
81 shall not be included in the computation of any taxes on behalf  
82 of any such employee.

83 Section 64C. The treasurer or, if there is no treasurer, the chief  
84 financial officer, by whatever name that person is called, of any  
85 political subdivision, body politic and corporate, or public  
86 instrumentality created by the commonwealth or by any county,  
87 city, or town or group thereof by whatever name the body is called,  
88 including without limitation an agency, board, authority,  
89 corporation or district, including, also without limitation, any  
90 regional school, police, fire, refuse or sewage district, hereinafter  
91 referred to as a "governmental body," which is not subject to a  
92 general or special law authorizing deferred compensation  
93 contracts with its employees, may contract with an employee of  
94 that governmental body to make contribution for and in the name  
95 of such employee, from amounts otherwise payable to the  
96 employee as current compensation, to an Individual Retirement  
97 Account ("IRA") by such employee established in accordance  
98 with the U.S. Internal Revenue Code, (the "Code"). The  
99 participating employee may invest that portion of his income so  
100 contributed to an IRA in an annuity contract, mutual fund, bank  
101 investment trust or other investment authorized by the Code.

102 Before making such deduction, the treasurer or chief financial  
103 officer shall be required to solicit bids from insurance companies  
104 authorized to conduct business within the commonwealth  
105 pursuant to chapter one hundred and seventy-five, mutual fund  
106 managers and banks, which bids shall be sealed and opened at  
107 a time and place designated by the treasurer or chief financial  
108 officer. Any bid submitted by an insurance company, mutual  
109 fund, or bank investment trust seeking investment of the IRA  
110 contribution shall, where applicable, clearly indicate the interest  
111 rate which shall be paid on the invested funds, any commissions  
112 which will be paid to the salesmen, any load imposed for the  
113 purpose of administering the funds, expected payouts, tax  
114 implications for participating employees and such other  
115 information as the treasurer or chief financial officer may require.  
116 Upon the treasurer's or chief financial officer's determining which  
117 provider offers the product or products most beneficial to the  
118 employee in each category for which bids were solicited, the  
119 treasurer or chief financial officer may offer such employee the  
120 opportunity to establish an IRA with one or more providers. The  
121 employee who wishes to invest his IRA funds with any such  
122 provider, or combination of providers, may authorize the  
123 treasurer or chief financial officer to deduct from amounts  
124 otherwise payable to the employee, at one time or on a periodic  
125 basis, amounts to be paid into the employee's IRA. If the employee  
126 so elects, the treasurer or chief financial officer shall pay to the  
127 providers the amount designated by the employee, in the name  
128 of the employee, to the employee's IRA. Amounts so paid to the  
129 providers for the employee's IRA account shall belong exclusively  
130 to the employee. Except as otherwise provided herein, the  
131 treasurer or chief financial officer may restrict an employee's right  
132 to contract to have contributions made to an IRA through  
133 deductions and payments by the treasurer or chief financial  
134 officer, to those providers selected as the result of the competitive  
135 bidding process outlined herein, but the authority conferred upon  
136 the treasurer or chief financial officer shall not be construed to  
137 restrict or limit the right of any employee to establish one or more  
138 IRAs with such banks, insurance companies, or similar authorized  
139 institutions as the employee may choose in any manner other than  
140 through an authorized deduction by the treasurer or chief

141 financial officer of a portion of the employee's compensation as  
142 outlined herein. Any contract entered into between an employee  
143 and the governmental body pursuant to this section shall include  
144 all information in terms the employee can reasonably be expected  
145 to understand.

146 As used in this section the word "employee" shall have the same  
147 meaning as "employee" in section one of chapter thirty-two and  
148 shall also include consultants and independent contractors who  
149 are natural persons paid by the governmental body.

150 An employee may contribute a portion of his compensation to  
151 an IRA under the program outlined herein so long as such  
152 contribution, for an employee who is single, is the lesser of two  
153 thousand dollars or one hundred per cent of his compensation  
154 for a taxable year, and, for an employee who is married, the  
155 contribution is the lesser of two thousand two hundred and fifty  
156 dollars or one hundred per cent of his compensation for a taxable  
157 year, such dollar amount to be adjusted to reflect any applicable  
158 amendments to the code adopted from time to time. If an  
159 employee has any compensation deferred under a deferred  
160 compensation plan for employees of the governmental body, if  
161 one is established by the treasurer or chief financial officer under  
162 section sixty-four B, then the aggregate amount of such deferred  
163 compensation deduction and amounts contributed to such  
164 employee's IRA shall not exceed the limits imposed upon such  
165 combined deduction and contribution by the Code.

166 Notwithstanding any provisions to the contrary, the treasurer  
167 or chief financial officer shall not be required to solicit bids to  
168 invest the contributed portion of an employee's income into the  
169 employee's IRA provided: (a) the treasurer or chief financial  
170 officer is authorized by the employee to pay that portion of the  
171 employee's compensation into the employee's IRA in the same  
172 investment products as are provided through a deferred  
173 compensation or IRA plan for employees of the commonwealth  
174 administered by the state treasurer or a deferred compensation  
175 plan for employees of the governmental body administered by the  
176 treasurer or chief financial officer, provided such plan resulted  
177 from the solicitation of bids in accordance with bidding  
178 requirements comparable to those required under this section; or  
179 (b) the treasurer or chief financial officer is authorized by the

180 employee to pay that portion of the employee's compensation into  
181 the employee's IRA in the investment products offered pursuant  
182 to a deferred compensation or IRA plan developed through a  
183 competitive selection process, provided that such plan resulted  
184 from the solicitation of bids by a group of any combination of  
185 three or more city, town, county or public authority treasurers  
186 or treasurers or chief financial officers of government bodies  
187 covered by this section acting as a "Common Group" for purposes  
188 of soliciting such proposals in accordance with bidding  
189 requirements comparable to those required under this section.

190 Such IRA plan shall be in addition to and not a part of any  
191 retirement program or pension system as provided under said  
192 chapter thirty-two and any other benefit program provided by law  
193 for such employee. Any compensation contributed by the  
194 employee to his IRA under such a plan shall continue to be  
195 included as regular compensation, as defined in section one of said  
196 chapter thirty-two, for the purpose of computing any retirement  
197 and pension benefits earned by any such employee, but any  
198 compensation so contributed shall not be included in the  
199 computation of federal taxes but shall be included in the  
200 computation of state taxes withheld on behalf of any such  
201 employee.

