

Text of the amendment (offered by Mr. Havern) to the House Bill relative to mitigating the effects of Internal Revenue Service regulations concerning Social Security coverage for part time employees of the Commonwealth and its political subdivisions (House, No. 6308, amended). December 21.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

Striking out all after the enacting clause and inserting in place thereof the following:

1 "SECTION 1. Section 64 of chapter 29 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 adding the following paragraphs: —

4 The state treasurer, on behalf of the commonwealth, shall
5 contract with every person, who is receiving compensation from
6 the commonwealth for services performed for the commonwealth
7 and who is not eligible for membership or has exercised an option
8 not to participate in the state retirement system set forth in
9 chapter 32 of the General Laws, to defer a portion of that person's
10 compensation, and shall invest the deferred portion of that
11 person's income in a deferred compensation program established
12 in accordance with the U.S. Internal Revenue Code. For persons
13 holding positions which would have rendered the holder of the
14 position eligible for participation in the commonwealth's deferred
15 compensation program on November 5, 1990, the state treasurer
16 shall contract for plan years prior to January 1, 1993, to defer
17 6 per cent of that person's regular compensation (as defined in
18 chapter 32, section 1 of the General Laws for the period
19 subsequent to December 31, 1945), but no greater than the
20 maximum deferral allowable for that person pursuant to the
21 provisions of the U.S. Internal Revenue Code for government
22 deferred compensation programs. For persons holding positions
23 which would not have rendered the holder of the position eligible
24 for participation in the commonwealth's deferred compensation

25 program on November 5, 1990, the state treasurer shall contract
26 to defer 7.5 per cent of that person's regular compensation (as
27 defined in chapter 32, section 1 of the General Laws for the period
28 subsequent to December 31, 1945), but no greater than the
29 maximum deferral allowable for that person pursuant to the
30 provisions of the U.S. Internal Revenue Code for government
31 deferred compensation programs.

32 Notwithstanding the provisions of this section, the state
33 treasurer need not contract with any part-time, seasonal or
34 temporary employee not required by the U.S. Internal Revenue
35 Code to participate in a public retirement system. All contracts
36 formed with part-time, seasonal or temporary employees pursuant
37 to the provisions of the previous paragraph shall entitle the
38 employee to a single-sum distribution of the employee's deferrals
39 plus reasonable interest.

40 Nothing in this section shall be construed to create or grant any
41 rights not previously enjoyed under chapters 32A or 150E of the
42 General Laws.

1 SECTION 2. Chapter 29 of the General Laws, as appearing in
2 the 1990 Official Edition, is hereby amended by inserting after
3 section 64C, the following section: —

4 Section 64D. Any government body (as defined in section 64B
5 of this chapter) may require any person, who is receiving
6 compensation from the governmental body for services performed
7 and who is not a member of a retirement system as provided under
8 chapter 32 of the General Laws or any other retirement system
9 which meets the requirements of Section 3121 (b)(7)(F) of the
10 Internal Revenue Code and the regulations promulgated
11 thereunder, to participate in the deferred compensation program
12 established with regard to the governmental body, or tax sheltered
13 annuity or any other defined contribution plan. The treasurer, or
14 if there is no treasurer, the chief financial officer by whatever name
15 that person is called, on behalf of a governmental body which has
16 accepted the provisions of this section shall contract with any
17 person, who is receiving compensation from the governmental
18 body for services performed for the governmental body and who
19 is not eligible for membership in the retirement system set forth
20 in chapter 32 of the General Laws that pertains to the govern-
21 mental body, to withhold from that person's compensation at least

22 such amounts as are necessary to provide the minimum level of
23 benefits required to qualify said deferred compensation program,
24 tax sheltered annuity or other defined contribution plan as a
25 retirement system for said person as defined under said
26 Section 3121 (b)(7)(F) of the Internal Revenue Code and the regu-
27 lations promulgated thereunder but no greater than permitted
28 under other provisions of the Internal Revenue Code.

29 All contracts formed with part-time, seasonal or temporary
30 employees pursuant to the provisions of the previous para-
31 graph shall entitle the employee to a single-sum distribution of
32 the employee's deferral plus reasonable interest.

33 A governmental body may accept the provisions of this
34 section by a majority vote of the selectmen for a town, the city
35 council for a city, the county council for a county, the district
36 members in a district, the members of the authority in an
37 authority, and the governing body, by whatever name and in
38 whatever form composed, in any other political subdivision, body
39 politic and corporate, or public instrumentality created by the
40 commonwealth.

41 Any governmental body already requiring, on the effective date
42 of this act, participation in a public retirement system for persons
43 who are receiving compensation from the governmental body for
44 services performed and who are not members of a retirement
45 system as provided under chapter 32 of the General Laws, shall
46 be grandfathered and shall be deemed to have accepted the provi-
47 sions of this section without the requirement of a majority vote
48 of the selectmen for a town, the city council for a city, the county
49 council for a county, the district members in a district, the
50 members of the authority in an authority, and the governing body,
51 by whatever name and in whatever form composed, in any other
52 political subdivision, body politic and corporate, or public
53 instrumentality created by the commonwealth.

1 SECTION 3. Chapter 32 of the General Laws, as appearing in
2 the 1990 Official Edition, is hereby amended by inserting after
3 section 3, the following section: —

4 Section 3A. Notwithstanding any general or special law to the
5 contrary, a person receiving compensation from the common-
6 wealth for services performed for the commonwealth who is not

7 eligible for membership in the state retirement system shall be
8 subject to the provisions of section 64 of chapter 29.

1 SECTION 4. Section 34A of chapter 235 of the General Laws,
2 as added by Chapter 77 of the Acts and Resolves of 1990, is hereby
3 amended by striking out, in lines two and three, the words "or
4 individual retirement account".

1 SECTION 5. Said Section 34A of chapter 235 is hereby further
2 amended by inserting, in line four, after the words "Act of 1974",
3 the words ", or in an individual retirement account established
4 and maintained in accordance with section 408 of the Internal
5 Revenue Code as codified at 26 U.S.C. §408.",