

# HOUSE . . . . . No. 5765

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## *The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, June 18, 1991.

The committee on Public Service, to whom were referred the petition (accompanied by bill, House, No. 617) of AFSCME Council 93 and Marc R. Pacheco for legislation to provide an emergency disability retirement application procedure for public employees with terminal illnesses, the petition (accompanied by bill, House, No. 1424) of the Professional Fire Fighters of Massachusetts and Timothy F. O'Leary for legislation to define regional medical panels, the petition (accompanied by bill, House, No. 2742) of Alvin E. Thompson and another relative to medical panels under the public employees' accidental disability retirement law, and the petition (accompanied by bill, House, No. 4053) of the Massachusetts Association of Contributory Retirement Systems and William G. Reinstein for legislation to further define regional medical panels under the public employees retirement law, reports recommending that the accompanying bill (House, No. 5765) 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 Ninety-One.

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### AN ACT RELATIVE TO DISABILITY RETIREMENTS.

*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. Paragraph (a) of subdivision (3) of section 6 of  
2 chapter 32, as appearing in the 1990 Official Edition, is hereby  
3 amended in lines 94 through 96, inclusive, by striking out the  
4 following words: — No physician having previously examined the  
5 member, except as part of a prior disability medical panel, shall  
6 serve on the regional medical panel examining the member.

1 SECTION 2. Paragraph (a) of said subdivision (3) of said  
2 section 6, as so appearing, is further amended by striking the text  
3 of lines 119 to 126, inclusive, and inserting in place thereof the  
4 following: —

5 Such regional medical panel shall consist of three registered  
6 physicians, who shall not be associated physicians, and who shall  
7 be selected as follows: one physician who shall be designated by  
8 the commissioner of public employee retirement and who shall,  
9 so far as practicable, be skilled in the particular branch of medicine  
10 or surgery involved in the case, and who shall serve as chairman  
11 of the medical panel, a second physician who shall be designated  
12 by the board except as otherwise provided for in paragraph (b)  
13 of this subdivision, and a third physician who shall be designated  
14 by such member at the time of his application for retirement under  
15 this section or section seven or if the application for the retirement  
16 of such member is filed by the head of his department, as provided  
17 in subdivision (1) of section sixteen, within sixty days of a request  
18 thereof by the board. Upon failure of such member to designate  
19 a physician within said sixty days the other two designated  
20 physicians shall choose and appoint the third physician on the  
21 medical panel.

1 SECTION 3. Said subdivision (3) of section 6, as so appearing,  
2 is hereby further amended by striking out paragraphs (b) and (c)  
3 and inserting in place thereof the following paragraphs: —

4 (b) Any medical examination of any member under the  
5 provisions of sections six to eight, inclusive, shall be conducted  
6 as soon as practicable and at a time and place convenient for all  
7 of the interested parties; provided, however, that if the retirement  
8 board certifies that such member is urgently terminally ill, the  
9 medical panel shall meet within 10 days of such notification of  
10 the board to the commissioner of public employee retirement;  
11 provided, however that such examinations shall so far as  
12 practicable occur within a region established by the commissioner  
13 which has a reasonable geographical proximity to the board and  
14 member. The arrangement for the examination shall be made by  
15 the commissioner after sufficient notice to the retirement board  
16 and applicant and shall be conducted on a timely basis. In the  
17 case of any such examination of an employee of the common-  
18 wealth, the state retirement board shall notify the state agency  
19 having jurisdiction over the said employee to designate a physician  
20 to assist the state retirement board in representing the  
21 commonwealth in the medical panel examinations; and provided,  
22 further, that in the case of any teacher, the school committee or  
23 board of trustees having jurisdiction over such teacher shall upon  
24 request of the teachers' retirement board, designate a physician  
25 in representing the municipality or other governmental body.

26 For the purposes of this section, "urgently terminally ill" shall  
27 mean that the illness is sufficiently life-threatening to create a  
28 reasonable expectation that the member will not live for one  
29 hundred and eighty days after the filing of the application for  
30 disability retirement.

31 If the panel fails to meet within sixty days after appointment  
32 by the commissioner, or in the case of a terminal illness, within  
33 ten days, to conduct their examination, or at any earlier time upon  
34 the request of the applicant, the commissioner shall require the  
35 three physicians to meet separately to conduct such examination  
36 and the employer's physician and legal counsel and the member's  
37 physician and legal counsel shall have the opportunity to attend  
38 each such examination. Upon receipt of such a request from an

39 applicant, the commissioner shall establish such separate  
40 examinations as soon as practicable thereafter. At the discretion  
41 of the member and his legal counsel and the employer and his  
42 legal counsel, said legal counsels may be present during the  
43 decision making process of the panel; provided, however, that  
44 neither counsel shall have a vote in the final determination of such  
45 panel.

46 No member shall be required to undergo any examination, re-  
47 examination or hearing unless he has received prior notification,  
48 in writing, of his right, if any, to be represented by his legal counsel  
49 and by his physician at such examination, re-examination or  
50 hearing. Such notification shall be made on a form prescribed by  
51 the commissioner.

52 (c) The physicians composing the regional medical panel may  
53 obtain x-ray plates or other medical evidence which, in their  
54 judgement is necessary to determine the natural and proximate  
55 cause, nature and degree of disability of such member and shall  
56 obtain any existing evidence from initial and in-service  
57 examinations conducted pursuant to section sixty-one A of  
58 chapter thirty-one. The member and the employer may each be  
59 represented by counsel. A physical examination of such member  
60 shall be conducted by the medical panel.

61 The medical panel, after completing such examination pursuant  
62 to this section, shall within sixty days, or within ten days in the  
63 event that the member has been certified by the retirement board  
64 to be urgently terminally ill, report their findings and  
65 recommendations to the board. The regional medical panel shall  
66 attach to their finding a certificate, approved by the commissioner,  
67 certifying that their findings were arrived at independently of each  
68 other and free of undue influence of any kind.

69 At the discretion of the employer and its physician, said  
70 physician may be present and may answer questions from the  
71 panel during the decision making process of the panel; provided,  
72 however, that said physician shall not have a vote in the final  
73 determination of such panel; and provided, further, that said  
74 physician may disagree with the findings of such panel and may  
75 indicate such opinion by signing and noting his objections on an  
76 appropriate medical certificate and by submitting a written  
77 statement as to his opinion involving such case.

78 Upon receipt of such medical panel report, the board shall  
79 within thirty days notify the employee and governmental unit in  
80 writing of the panel's finding.

81 The fees and expenses of physicians for services on any medical  
82 panel and all expenses for obtaining x-rays or other medical  
83 evidence in connection with such examination shall upon the  
84 approval of the commissioner be paid by the commonwealth in  
85 accordance with a fee and expense schedule established by the  
86 house and senate committees on ways and means.

1 SECTION 4. Subdivision (4) of said section 6, as so appearing,  
2 is hereby amended in line 219 by adding after the word "designee"  
3 the following: —

4 ; or

5 (3) the board certifies that such member is urgently terminally  
6 ill, in which case the board shall make a final determination of  
7 such ordinary disability within six days of the date of filing of  
8 such application.





