

By Mr. Bosley of North Adams, petition of Daniel E. Bosley that the Teachers' Retirement Board be authorized to establish an optional retirement program. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT RELATIVE TO AN OPTIONAL RETIREMENT PROGRAM.

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

- 1 Said Chapter 32 is hereby amended by adding after section 28N
2 the following section:—
3 Section 28O. Optional retirement program; participation.
4 (1)(a) Notwithstanding the provisions of chapter thirty-two of
5 the General Laws, or of any general or special law to the contrary
6 the teachers' retirement board shall establish an optional retire-
7 ment program under which custodial accounts described in section
8 403(b)(7) of the Internal Revenue Code, as it may be amended
9 from time to time, or contracts providing retirement and death
10 benefits may be purchased for eligible members who elect to par-
11 ticipate in the program. The benefits to be provided for partici-
12 pants in such optional retirement program shall be provided
13 through such custodial accounts or individual or group annuity
14 contracts, which may be fixed or variable in nature, or a combina-
15 tion thereof; provided that, at all times, those annuity contracts
16 issued by licensed insurers under the optional retirement program
17 shall provide the minimum values and guarantees required by the
18 laws governing such contracts in the commonwealth; and pro-
19 vided, further, that the benefits shall be payable only to partici-
20 pants in the program or their beneficiaries, and such benefits shall
21 be paid only by the selected providers in accordance with the
22 terms of the custodial accounts, annuity contracts or certificates
23 providing coverage to the participant; provided that such optional
24 retirement program shall not allow a participant to withdraw con-

25 tributions while an active participant in the commonwealth's
26 optional retirement program.

27 (b) Said board shall select at least two but no more than four
28 providers for the optional retirement program and enter into con-
29 tracts with them in accordance with the laws governing the pro-
30 curement of services for executive agencies of the commonwealth;
31 provided, that the selected providers shall be authorized to con-
32 duct business within the commonwealth, and each and every
33 provider or issuer of annuity contracts under the optional retire-
34 ment program which is a life insurance company shall hold a cer-
35 tificate of authority to do a life insurance business in the
36 commonwealth, maintain the minimum required capital and sur-
37 plus required for life insurance companies under the laws of the
38 commonwealth, be a member of the commonwealth's life and
39 health insurance guaranty association and be a member of the life
40 and health insurance guaranty associations in any and all jurisdic-
41 tions where required by law with similar retirement programs
42 funded in whole or in part through the provider's annuities in
43 which participants in the optional retirement program might par-
44 ticipate upon transfer of employment; and provided, further, that
45 said board shall coordinate the transfer of funds and information
46 between payroll centers, the selected providers and plan partici-
47 pants.

48 (c) The retirement board shall promulgate such rules and regu-
49 lations as it may deem necessary from time to time to effectuate
50 the purposes of this section. Said regulations shall be exempt from
51 the requirements of paragraph (4) of section twenty-one of this
52 chapter and of clause (b) of section fifty of chapter seven.

53 (2)(a) Participation in the optional retirement program provided
54 by this section shall be limited to persons who are otherwise eli-
55 gible for membership in the teachers' retirement system as estab-
56 lished under the provisions of chapter thirty-two; provided, that
57 they are a superintendent, assistant superintendent or principal.

58 (b) Elections to participate in the optional retirement program
59 shall be made as follows:

60 (i) Any eligible employee who is initially appointed on or after
61 the effective date of the optional retirement program may elect in
62 writing to participate in the optional retirement program within
63 ninety days of the effective date of the appointment. Any such

64 election shall be effective as of the effective date of appointment.
65 If an eligible employee fails to make an election as provided in
66 this paragraph, such employee shall become a member of the
67 teachers' retirement system established under the provisions of
68 said chapter thirty-two.

69 (ii) Any eligible employee electing to participate in the optional
70 retirement program shall be ineligible for membership in the
71 teachers' retirement system as long as he remains continuously
72 employed in any eligible position; provided, that the election by
73 an eligible employee to participate in the optional retirement pro-
74 gram shall be irrevocable for so long as the employee continues to
75 meet the eligibility requirements; provided further, however, if an
76 employee becomes ineligible to continue in the optional retire-
77 ment program, the employee shall thereafter participate in the
78 teachers' retirement system established in accordance with the
79 provisions of said chapter thirty-two.

80 (3)(a) Any eligible employee electing to participate in the
81 optional retirement program shall not be required to make contri-
82 butions to the teachers' retirement system but shall contribute to
83 the optional retirement program an amount equal to the contribu-
84 tion which would have been required had such employee been a
85 member of the teachers' retirement system.

86 (b) For each eligible employee electing to participate in the
87 optional retirement program, the teachers' retirement system shall
88 contribute an amount equal to three percent of each employee's
89 regular compensation, as defined in section one of chapter thirty-
90 two, to the optional retirement program and a plan established to
91 provide life and disability benefits to all participants in the pro-
92 gram; provided, however, that not more than one percent of said
93 contribution shall be made to the plan established to provide said
94 life and disability benefits; and provided, further, that the balance
95 of said contribution shall be remitted to the appropriate provider
96 for application to the participating employee's contract or custo-
97 dial account, less any monthly fees established by the board in
98 order to cover the reasonably necessary direct costs incurred by
99 the board in establishing and administering the plan; and pro-
100 vided, further, that no funds shall be invested in any bank or
101 financial institution which directly or through any subsidiary has
102 outstanding loans to any individual or corporation engaged in the
103 manufacture, distribution or sale of firearms, munitions, including

104 rubber or plastic bullets, tear gas, armored vehicles or military air-
105 craft for use or deployment in any activity in Northern Ireland,
106 and no assets shall be invested in the stocks, securities or other
107 obligations of any such company so engaged.

108 (c) If any eligible employee is a member of any retirement
109 system established under the provisions of said chapter thirty-two
110 at the time such employee elects to participate in the optional
111 retirement program, the employee may direct that the amount of
112 the accumulated total deductions, and any interest to which the
113 employee would be entitled under said chapter thirty-two if the
114 employee withdrew from the system, credited to such employee's
115 account in such retirement system be transferred directly to such
116 employee's account in the optional retirement program. Any such
117 transfer shall be made in the form of a direct trustee-to-trustee
118 transfer in compliance with the requirements of subchapter D of
119 chapter one of the federal Internal Revenue Code.

120 (d) The funds accumulated under the optional retirement pro-
121 gram shall be exempt from taxation. The rights of a participant to
122 a custodial account, an annuity, the annuity contracts or certifi-
123 cates providing coverage to participants, and all right in and to the
124 funds accumulated under the custodial accounts, annuity contracts
125 or certificates shall be exempt from taxation, including income
126 taxes levied under the provisions of said chapter sixty-two. No
127 assignment of any right in or to any funds or annuities under the
128 optional retirement program shall be valid except such assignment
129 as may be made for the purpose of making restitution in the case
130 of dereliction from duty by any participant as set forth in section
131 fifteen of said chapter thirty-two as long as such assignment does
132 not violate the restrictions of the Internal Revenue Code; provided
133 that nothing in this section shall prevent a participant's custodial
134 account or annuity from being attached, taken on execution,
135 assigned, or subject to other process to satisfy a support order
136 under chapter two hundred and eight, two hundred and nine, or
137 two hundred and seventy-three as long as such order constitutes a
138 qualified domestic relations order under the terms of the Internal
139 Revenue Code.