

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

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MARGARET M. CELLUCCI
GOVERNOR

January 7, 1998

To the Honorable Senate and House of Representatives:

I am submitting today for your consideration a bill entitled "An Act to Further Reform the Pension and Disability Retirement System." This legislation contains a number of initiatives intended to further bolster the reform initiatives we have implemented in the state disability retirement system, clarify return to work standards, and create equity in pension benefits among state employees.

My bill includes the following proposals:

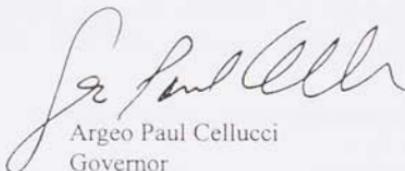
- Equity in pension treatments between judges and all other state employees is established by clarifying the current statutes. Judges with time in two state-supervised retirement systems will have their service combined to determine their pension benefits, eliminating the potential for so called 'double dipping.' The maximum allowable benefit for judges with service in two state retirement systems would be capped at 80% of the regular compensation upon which the benefit is calculated, as it is for other state employees.
- Three new provisions regarding forfeiture of return to work rights and benefits for criminal conduct are created. First, this bill eliminates the return to work requirement for disabled individuals deemed fit to return to work but convicted of crimes that would have precluded initial hiring in their position. Second, it revokes the disability pension of any such person. Third, it suspends the benefits of state police officers who are retired on disability and are incarcerated. This provision already exists for all other members.
- Return to work standards applicable after a disability retirement are clarified by requiring whole body physical examinations; requiring that individuals returning to work after 2 to 5 years on disability satisfactorily complete a retraining program; and by requiring that individuals out for more than 5 years meet the initial physical hiring standards of the position.

- The incentive to return to work for a short period of time to achieve a higher disability benefit is eliminated by requiring that individuals returning to work must “buy back” creditable service for the period they were out on disability, and by limiting disability benefits received for aggravation of the same injury within the first three years of a return to work to the same benefit level received prior to the individual’s return to work.

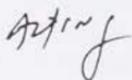
Passage of this bill will strengthen our efforts to keep undeserving individuals off the disability rolls while ensuring that those who are able to return to work are also able to perform the essential duties of their jobs. This bill also will ensure equity in treatment of service between state employees and the judiciary with time in two Chapter 32 retirement systems.

I urge your prompt and favorable consideration of this legislation.

Respectfully submitted,



Argeo Paul Cellucci
Governor



The Commonwealth of Massachusetts

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

AN ACT TO FURTHER REFORM THE PENSION AND DISABILITY RETIREMENT SYSTEM.

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. Section 39 of Chapter 31 of the General Laws, as
2 appearing in the 1996 Official Edition, is hereby amended by
3 striking the third paragraph and insert in place thereof the
4 following paragraph:—

5 If a permanent employee who has become separated from his
6 position because of disability shall be subsequently capable of
7 employment as determined pursuant to section eight of chapter 32
8 by the retirement board, as defined in section one of chapter 32,
9 such employee shall be placed in a position in the same or similar
10 title in the department from which he was separated or any other
11 department prior to the appointment from any civil service list;
12 provided, however, that in the event that such placement of such
13 employee occurs after a period of time greater than two years, but
14 not more than five years, from the date of such separation or
15 results in such employee occupying a position in a different title
16 from the title of the position from which he was separated, such
17 placement right shall be subject to the successful completion by
18 such employee of a retraining program in the case of non-public
19 safety positions, established by the appointing authority, and
20 approved by the personnel administrator, in the case of a uni-
21 formed police or corrections position, established by the personnel
22 administrator after consultation with the Criminal Justice Training
23 Council, and in the case of a uniformed fire fighter position,
24 established by the personnel administrator after consultation with
25 the Massachusetts Firefighting Academy, designed specifically to
26 retrain such employees separated for said period of time. If the

27 placement of such employee occurs after a period of time greater
28 than five years from the date of separation, placement shall be
29 subject to the successful completion of the appropriate training
30 program, as described above, and, in the event that the employee
31 is returning to a public safety police, fire or corrections position,
32 the successful completion of the medical and physical fitness
33 examination in which the employee meets the standards estab-
34 lished pursuant to section 61A of chapter 31 by the personnel
35 administrator, as required under subdivision (2) of section 8 of
36 chapter 32.

1 SECTION 2. Chapter 31 of the General Laws, as appearing in
2 the 1996 Official Edition, is hereby amended by adding after sec-
3 tion 39 the following new section:—

4 Section 39A. Notwithstanding any general or special law to the
5 contrary, a permanent employee who has been certified by a
6 regional medical panel to return to service from disability retire-
7 ment pursuant to section 8 of chapter 32 and who has been con-
8 victed of a federal or state offense, and said conviction would
9 have precluded him from being appointed to the position from
10 which he retired or any other position in the governmental unit
11 from which he retired, shall be denied reinstatement by the depart-
12 ment head for the respective department. The department head
13 shall provide a written statement regarding the failure to reinstate
14 the permanent employee accompanied by any relevant documents
15 detailing the employee's criminal history. In addition the depart-
16 ment head shall notify the retirement board of the failure to
17 reinstate the employee.

1 SECTION 3. Subdivision 2 of section 8 of said chapter 32, as
2 so appearing, is hereby amended by striking paragraph (a) and
3 inserting in place thereof the following:—

4 (a) If, within two years of the date that a member is retired
5 under section six or seven, a regional medical panel, following an
6 examination conducted in accordance with paragraph (e), deter-
7 mines that the retired member is able to perform the essential
8 duties of the position from which he retired, or if following the
9 completion of a rehabilitation program required under subdivision
10 (1), such a regional medical panel so finds, the retirement board

11 shall notify the public employee retirement administration
12 commission, the human resources division and the department
13 head and the department head shall return the member to such
14 position and his disability retirement shall be revoked; provided,
15 however, that if the retired member is able to perform the essential
16 duties of a similar position within the same department for which
17 he is qualified, as determined by the personnel administrator, and
18 such position is vacant, said member shall return to such position
19 and his disability retirement shall be revoked, provided, further,
20 however, that if such position or similar position is not vacant,
21 then the last person appointed to that rank or position will be
22 reduced in rank or position and shall be placed at the top of the
23 list to fill such rank or position for a two year period, and the
24 returning member shall take the position vacated by the person
25 whose rank is reduced.

26 If, after two years from the date that a member is retired under
27 section six or seven but prior to five years following that date, a
28 regional medical panel, following an examination conducted in
29 accordance with paragraph (e), determines that the retired member
30 is qualified for and able to perform the essential duties of the posi-
31 tion from which he retired or a similar position within the same
32 department for which he is qualified, as determined by the per-
33 sonnel administrator, the retirement board shall notify the public
34 employee retirement administration commission, the human
35 resources division and the department head, and provided the
36 position is vacant and provided that the member successfully com-
37 pletes the retraining program as required under section 39 of
38 chapter 31, the department head shall return said member to such
39 position, and his disability retirement shall be revoked. If the posi-
40 tion has been filled, the member shall be granted a preference for
41 the next available position or similar position for which he is
42 so qualified.

43 If after five years from the date that a member is retired under
44 section six or seven, a regional medical panel, following an exam-
45 ination conducted in accordance with paragraph (e), determines
46 that the retired member is qualified for and able to perform the
47 essential duties of the position from which he retired or a similar
48 position within the same department as determined by the per-
49 sonnel administrator, the retirement board shall notify the public

50 employee retirement administration commission, the human
51 resources division and the department head and, subject to the
52 successful completion of the retraining program as required by
53 section 39 of chapter 31 and, in the event that the employee is
54 returning to a public safety police, fire or corrections position,
55 subject to the successful completion of the medical and physical
56 fitness examination in which the member meets the standards
57 developed by the personnel administrator pursuant to section 61A
58 of chapter 31, the department head shall return the member to
59 such position and his disability retirement shall be revoked. If the
60 position has been filled, the member shall be granted preference
61 for the next available position or similar position for which he is
62 so qualified.

63 When under the provisions of this section, no vacancy exists in
64 the same or similar positions, the member shall continue to
65 receive such retirement allowance until such reinstatement takes
66 place or until such allowance is reduced or revoked as a result of
67 the submission of earnings information under section 91A. If, for
68 any reason other than lack of a vacancy, a retired member who has
69 been determined to be able to perform the essential duties of the
70 position from which he retired, or the essential duties of a similar
71 job within the same department for which he is qualified, does not
72 return to such position or similar position within one year of such
73 determination, his retirement allowance shall be modified pur-
74 suant to subdivision three, provided, however, that if the member
75 does not return to work due to the prohibition set forth in sec-
76 tion 39A of Chapter 31, his disability retirement shall be revoked
77 immediately upon notice from the department head to the retire-
78 ment board that said prohibition applies.

1 SECTION 4. Said subdivision 2 of section 8 of chapter 32 of
2 the General Laws as so appearing is hereby further amended by
3 striking out paragraph (b) and inserting in place thereof the
4 following paragraph:—

5 (b) All rights of the member in and to the pension provided for
6 in section six or seven shall cease as of the date on which he is
7 scheduled to report to work. Upon return to work, he shall again
8 become a member in service and regular deductions shall again be
9 made from his regular compensation. Any creditable service in

10 effect for him at the time of his retirement for disability shall
11 thereupon be restored to full force and effect. In addition, the
12 member shall receive creditable service for the time period of his
13 disability retirement, provided that he has paid into the annuity
14 savings fund of the system an amount equal to the amount he
15 would have contributed during such period had he been an active
16 member of the system in the position from which he retired, plus
17 the interest that would have been credited to his account in said
18 annuity savings fund during such period. Such payment may be
19 made in one make-up sum, or in installments upon such terms and
20 conditions as the board may prescribe. In the event the member is
21 granted a retirement pursuant to section six or section seven
22 within three years of his return to work and such retirement is
23 based on the condition or an aggravation of the condition for
24 which he had previously retired, the amount of said benefit shall
25 not exceed the amount of the benefit paid to the member prior to
26 his return to work.

1 SECTION 5. Said subdivision 2 of section 8 of chapter 32, as
2 so appearing, is hereby further amended by adding at the end
3 thereof the following paragraph:—

4 (e) In conducting an examination to make the determinations
5 set forth in this subdivision, the regional medical panel shall
6 assess the total mental and physical condition of the member.
7 In conducting such examination for a member's return to a public
8 safety police, fire or corrections position after an absence of more
9 than five years, the medical panel shall require the member's suc-
1 cessful completion of the medical and physical fitness examina-
2 tion in which the member meets the standards established by the
3 personnel administrator pursuant to section 61A of chapter 31.

1 SECTION 6. Subdivision 2 of section 26 of chapter 32, of the
2 General Laws, as appearing in the 1996 Official Edition is hereby
3 amended by adding at the end thereof the following paragraph:—

4 (c) Payments to a member retired under provisions of this sec-
5 tion who is incarcerated for having committed a felony on or after
6 the effective date of this paragraph shall cease for the period of
7 such member's incarceration. Under no circumstances shall such
8 payments be recoverable by such member after such period of
9 incarceration.

1 SECTION 7. Chapter 32 of the General Laws, as appearing
2 in the 1996 Official Edition, is hereby amended by striking out
3 section 65D½ and inserting in place thereof the following new
4 section:—

5 Section 65D½. Notwithstanding any provision of this chapter to
6 the contrary, any inactive member of a retirement system who is
7 receiving or has received a retirement allowance from such retire-
8 ment system and who is appointed by the governor to a position as
9 a chief justice, justice, associate justice, judge, associate judge or
10 special judge, may elect within thirty days of such appointment to
11 become a member in service of the system pertaining to the posi-
12 tion to which he is appointed, subject to the provisions of sec-
13 tions 65A to 65D, inclusive; provided, however, that any such
14 inactive member shall repay into the retirement system from
15 which he is receiving or had received a retirement allowance the
16 total amount of any such allowance received from the date of his
17 retirement to the date of his again becoming a member in service.

1 SECTION 8. Said Chapter 32 is hereby further amended by
2 adding after Section 65J the following new section:—

3 Section 65K. Notwithstanding any provision of this chapter to
4 the contrary, any chief justice, justice, associate justice, judge,
5 associate judge or special judge, hereinafter in this section called
6 judge, who has been granted creditable service under the provi-
7 sions of this chapter by a retirement system for service in a posi-
8 tion other than as a judge shall transfer his annuity savings
9 account from the applicable retirement system to the Judges
10 Retirement Fund referred to in section 65D. Upon retirement
11 under the provisions of sections 65A, 65B, 65D, 65H, or 65I, the
12 retirement allowance of a judge will be calculated to reflect the
13 creditable service granted for service in a position other than as a
14 judge, but in no event will the retirement allowance exceed four
15 fifths of the annual rate of salary paid to said judge at the time of
16 retirement. No judge receiving a retirement allowance pursuant to
17 the provisions of sections 65A, 65B, 65D, 65H, or 65I shall be
18 entitled to receive a retirement allowance from any other retire-
19 ment system established pursuant to the provisions of chapter 32.