

HOUSE No. 4060

Text of an amendment to the Senate Bill providing responsible reforms in the pension system (Senate, No. 2026) as recommended by the committee on Ways and Means (House, No. 4054), as changed by the House committee on Bills in the Third Reading, and as amended and adopted by the House

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Text of House amendment to the Senate Bill providing responsible reforms in the pension 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 1 of chapter 32 of the General Laws is hereby amended by
2 inserting after the word "forty-five", in line 399, as appearing in the 2006 Official Edition the
3 following words:- through June 30, 2009.

4 SECTION 2. Said section 1 of said chapter 32 of the General Laws, as so appearing, is
5 hereby further amended by striking out, in line 433, the word "term." And inserting in place
6 thereof the following words:-

7 "Regular compensation" during any period subsequent to June 30, 2009 compensation
8 received exclusively as wages by an employee for services performed in the course of
9 employment for his employer.

10 SECTION 3. Said section 1 of said chapter 32 of the General Laws, as so appearing, is
11 hereby further amended by inserting at the end thereof the following definition:-

12 "Wages" the base salary or other base compensation of an employee paid to that
13 employee for employment by an employer. The term wages shall not include, without limitation,
14 overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from any
15 salary enhancements or salary augmentation plans which will recur for a limited or definite term,

16 indirect, in-kind or any payments for such items as housing, lodging, travel, clothing allowance,
17 annuities, welfare benefits, lump sum buyouts for workers' compensation benefits pursuant to
18 section 111F of chapter 41, workers' compensation benefits, job-related expense payments,
19 automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments
20 in lieu of or for unused vacation or sick leave, or the payment for termination, severance,
21 dismissal, or any amounts paid as premiums for working holidays, except in the case of police
22 officers, firefighters and employees of a municipal department who are employed as fire alarm
23 signal operators or signal maintenance repairmen, money paid for holidays shall be regarded as
24 regular compensation, any amounts paid as early retirement incentives or any other payment
25 made as a result of the employer having knowledge of the member's retirement, tuition or any
26 other fringe benefits, payments in kind and all payments other than payment received by an
27 individual from his employing unit for services rendered to such employing unit, shall not,
28 regardless of federal taxability, be considered regular compensation.

29 SECTION 4. Section 4 of said chapter 32 is hereby amended by striking out, in lines 5 to
30 7, inclusive, as so appearing, the words " that he shall be credited with a year of creditable
31 service for each calendar year during which he served as an elected official; and provided,
32 further".

33 SECTION 5. Subdivision (1) of said section 4 of said chapter 32, as so appearing, is
34 hereby amended by striking out paragraphs (o) and (o $\frac{1}{2}$) and inserting in place thereof the
35 following paragraph:-

36 (o) The service of any state, county or municipal employee first employed in a position
37 receiving compensation of less than \$5,000 shall not constitute creditable service for purposes of
38 this chapter.

39 SECTION 6. Subdivision (2) of section 5 of said chapter 32, as so appearing, is hereby
40 amended by adding the following paragraph:-

41 (e) A person who has been a member of 2 or more systems, and who, on or after January
42 1, 2010, has received regular compensation from 2 or more governmental units concurrently,
43 shall, upon retirement, receive a superannuation retirement allowance to become effective on the
44 date of retirement that is equal to the sum of the benefits calculated pursuant to this section as
45 though the member were retiring solely from each system; and provided, further, that,
46 notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the
47 superannuation retirement allowance attributable to membership in that system to the member.

48 SECTION 7. Section 7 of said chapter 32, as so appearing, is hereby amended by
49 striking out, in lines 68 to 73, inclusive, the words "annual rate of his regular compensation on
50 the date such injury was sustained or such hazard was undergone, or equal to seventy-two per
51 cent of the average annual rate of his regular compensation for the twelve-month period for
52 which he last received regular compensation immediately preceding the date his retirement
53 allowance becomes effective, whichever is greater" and inserting in place thereof the following
54 words:- average annual rate of his regular compensation for the 12 month period for which he
55 last received regular compensation immediately preceding the date his retirement allowance
56 becomes effective.

57 SECTION 8. Said section 7 of said chapter 32, as so appearing, is hereby further
58 amended by striking out, in lines 131 to 133, inclusive, the words "the greater of the annual rate
59 of his regular compensation on the date such injury was sustained or such hazard was undergone,
60 and".

61 SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by
62 striking out, in line 4, the words "or fails of nomination or re-election,".

63 SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further
64 amended by striking out, in lines 7 to 9, inclusive, the words ", or fails of nomination or re-
65 election, or fails to become a candidate for nomination or re-election".

66 SECTION 10A. Section 5(1)(m) of Chapter 32 of the General Laws is hereby amended
67 by striking the words "except for elected officials subject to the provisions of paragraph (b) of
68 subdivision (2) of section ten.

69 SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further
70 amended by striking out, in lines 50 and 51, the words "fails of nomination or re-election, or".

71 SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further
72 amended by striking out, in lines 72 to 77, inclusive, the words "one of the following

73 circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the
74 employee has failed of reappointment, (3) that the employee's office or position has been
75 abolished, or (4) that the employee has been removed or discharged from his position without
76 moral turpitude on his part" and inserting in place thereof the following words:- : (1) the
77 employee has failed of reappointment, (2) the employee's office or position has been abolished,
78 or (3) the employee has been removed or discharged from his position without moral turpitude
79 on his part".

80 SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further
81 amended by striking out, in line 79, the word "six" and inserting in place thereof the following
82 figure:- 10.

83 SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is
84 hereby amended by adding the following paragraph:-

85 (d) If a member is entitled to a return of his accumulated total deductions and requests such a
86 return from the board on the proscribed form, prior to the return of such accumulated total
87 deductions, the board shall contact such member's employer to determine whether such member
88 owes an obligation to the employer under the terms of any employee benefit plan, including a
89 cafeteria plan established pursuant to section 125 of Title 26 of the United States Code. If it is
90 determined that the member owes the employer under the terms of any such plan, the board shall
91 not return the accumulated total deductions until it has received notice from the employer that
92 the obligation has been satisfied.

93 SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C
94 the following section:-

95 Section 12D. Any retirement system subject to this chapter shall pay all benefits in
96 accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the
97 regulations in effect under that section, as applicable to a governmental plan as defined in section
98 414(d) of the Internal Revenue Code.

99 SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006
100 Official Edition, is hereby amended by adding the following paragraph:-

101 (c) A retirement board may require any member entitled to receive a retirement
102 allowance to designate a financial institution to which shall be directly deposited any payments
103 under any annuity, pension or retirement allowance.

104 SECTION 17. Section 19A of said chapter 32, as so appearing, is hereby amended by
105 striking out the first paragraph and inserting in its place the following paragraph:-

106 Any employee of the commonwealth, a city, town, district or other member unit of a
107 retirement system who is retired under this chapter shall, upon the request of the retiring
108 authority paying such pension or retirement allowance, or otherwise may, by assignment made in
109 writing authorize the retiring authority paying such pension or retirement allowance to withhold
110 each month such amount as he may designate for the payment of subscriber premiums applicable
111 to any hospitalization, medical or surgical insurance in effect with a non-profit hospital and
112 medical service corporation or insurance company at the time of his retirement. In the event that
113 the amount of a retiree's pension check is insufficient to accommodate the entire deduction and
114 upon notice from the retirement board, the employer for whom the retiree last worked and from
115 whom he is retired shall bill the retiree for the employee share of the premiums.

116 SECTION 18. Subdivision (5) of section 20 of said chapter 32, as so appearing, is
117 hereby amended by adding the following paragraph:-

118 (m) A retirement board may create, designate, or approve agencies or instrumentalities to
119 provide members with information about retirement planning and options and to provide retirees
120 with information about benefits and to do all other things necessary and desirable to support the
121 purposes of the retirement system.

122 SECTION 19. Chapter 32 of the General Laws, as appearing in the 2006 Official
123 Edition, is hereby amended by inserting after section 22D the following new section:-

124 Section 22E. (a) For the purposes of this section, a statutory adjustment to the
125 commonwealth pension liability is one that changes the benefits or contributions of classes of
126 members, including but not limited to early retirement incentive programs, cost-of-living
127 adjustments, the membership of said classes, or any amendments to chapter 32 that may change
128 the actuarial liability of the commonwealth pension system.

129 (b) Joint committees of the general court and the house and senate committees on
130 ways and means when reporting favorably on legislation referred to them which creates a
131 statutory adjustment to the commonwealth pension liability shall include a review, evaluation

132 and financial impact conducted by the actuary of the public employee retirement administration
133 commission pursuant to this section.

134 Upon request of a joint standing committee of the general court having jurisdiction or the
135 committee on ways and means of either branch, the actuary of the public employee retirement
136 administration commission shall conduct and prepare a review, evaluation and financial impact
137 of the statutory adjustment to the commonwealth pension liability, in consultation with other
138 relevant state agencies, and shall report to the committee within 90 days of the request.

139 SECTION 19A. Section 91 of said chapter 32 of the General Laws, as so appearing, is
140 hereby amended by striking out, in line 3, the words 'or district' and inserting in place thereof
141 the following words:- , district or authority.

142 SECTION 19B. Said section 91 of said chapter 32 of the General Laws, as so appearing,
143 is hereby further amended by inserting, in line 84, after the word 'authority' the words:-
144 including as a consultant or independent contractor or as a person whose regular duties require
145 that his time be devoted to the service of the commonwealth, city, town, district or authority
146 during regular business hours,.

147 SECTION 19C. Section 22D of Chapter 32 of the General Laws, as appearing in the
148 2006 Official Edition, is amended by striking out in line 25 the figure '2028' and inserting in
149 place thereof the following figure:- 2030.

150 SECTION 20. Chapter 182 of the acts of 2008 is hereby amended by striking out section
151 111 and inserting in place thereof the following section:-

152 Section 111. There is hereby established a special commission to study the
153 Massachusetts contributory retirement systems. The commission shall consist of 17 members: 1
154 of whom shall be the secretary of administration and finance, or her designee; 1 of whom shall
155 be the auditor of the commonwealth, or his designee; 1 of whom shall be the executive director
156 of the public employee retirement administration commission, or his designee; 1 of whom shall
157 be the executive director of the state retirement board, or his designee; 1 of whom shall be the
158 executive director of the teachers' retirement board, or her designee; 3 of whom shall be
159 members of the house of representatives, 2 of whom shall be appointed by the speaker of the
160 house and 1 of whom shall be appointed by the house minority leader; 3 of whom shall be
161 members of the senate, 2 of whom shall be appointed by the senate president and 1 of whom

162 shall be appointed by the senate minority leader; and 6 members to be appointed by the
163 governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and
164 shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have
165 professional experience in employee benefits or in actuarial science, 1 of whom shall be a
166 member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of
167 3 candidates submitted by the president of the Massachusetts AFL-CIO; and 1 of whom shall be
168 a member of the Retired State, County and Municipal Employees Association of Massachusetts.
169 The commission shall convene its first official meeting no later than June 1, 2009.

170 The commission shall make a comprehensive study of the Massachusetts contributory
171 retirement systems. The study shall include, but shall not be limited to: contribution rates paid by
172 employers and employees; vesting periods; the weight given to age versus years of service in the
173 current system; the portability of benefits in the current system; the definition of regular
174 compensation including, but not limited to, whether all forms of compensation taxable under the
175 federal income tax code should constitute regular compensation; cost-of-living-adjustments with
176 special attention paid to the cost of increasing the cost-of-living-adjustments base and the cost of
177 any recommendations the commission may make; current and future employee pension plans and
178 contribution structures; termination allowances pursuant to section 10 of chapter 32 of the
179 General Laws; group classification systems; capping annual pension benefits; penalties for
180 pension fraud; eligibility and level of benefits for employees who participate under 2 or more
181 retirement systems; potential costs, savings or benefits related to moving from a defined benefit
182 retirement system to a defined contribution retirement system for new employees, including a
183 system that maintains eligibility for employees to participate in the social security system; and
184 qualifications for credit for service pursuant to section 4 of said chapter 32, including minimum
185 compensation limits for officials to be eligible for credit for service.

186 The public employee retirement administration commission shall conduct an actuarial
187 analysis to determine the costs of any recommendations made by the commission. The
188 commission shall file a report of its study together with the actuarial analysis and
189 recommendations for legislation, if any, with the clerks of the house and senate, the chairs of the
190 house and senate committee on ways and means and the chairs of the joint committee on public
191 service no later than September 1, 2009.

192 SECTION 21. Notwithstanding any general or special law to the contrary, the
193 Massachusetts Bay Transportation Authority or any successor, shall enter into an agreement to
194 establish or amend existing retirement or pension benefits only if any employee hired after the
195 effective date of the agreement or amendment may not receive a retirement or pension benefit
196 prior to the completion of 25 years of credited pension service and attained 55 years of age. The
197 Massachusetts Bay Transportation Authority is not prohibited by this section from permitting
198 retirement prior to attaining age 55, provided however, that either: (i) the employee is entitled to

199 a disability pension under the Massachusetts bay transportation authority retirement system; or
200 (ii) the employee has earned the maximum percentage allowed under the retirement formula of
201 the Massachusetts bay transportation authority retirement system and that the employee waives
202 the ability to collect a pension and retirement benefit due until attaining age 55.

203 SECTION 22. Section 25 of chapter 32 of the General Laws shall apply to this act.

204 SECTION 22A. Section 1 of this act shall take effect July 1, 2009.

205 SECTION 22B. Section 5 of this act shall take effect July 1, 2010 and shall apply to any
206 state, county or municipal employee first employed or elected after July 1, 2010.

NO SECTION 23.

207 SECTION 24. Notwithstanding any general or special law to the contrary, the
208 Massachusetts Bay Transportation Authority or any successor authority, shall enter into an
209 agreement to establish or amend existing retirement or pension benefits only if any employee
210 hired after the effective date of the agreement or amendment may not receive a retirement or
211 pension benefit prior to the completion of 25 years of credited pension service and attained 55
212 years of age. The Massachusetts Bay Transportation Authority is not prohibited by this section
213 from permitting retirement prior to attaining age 55, provided however, that either: (i) the
214 employee is entitled to a disability pension under the Massachusetts Bay Transportation
215 Authority retirement system; or (ii) the employee has earned the maximum percentage allowed
216 under the retirement formula of the Massachusetts Bay Transportation Authority retirement
217 system and that the employee waives the ability to collect a pension and retirement benefit due
218 until attaining age 55.

219 SECTION 25. Section 42(b) of said chapter 32 of the General Laws is hereby amended
220 by adding the following language to the end of said section:- Notwithstanding the above-
221 language, any city or town that makes use of a reserve list may decline this section by an
222 affirmative vote by the local governing agency, assented to by the appointing authority as
223 defined by M.G.L. c. 31, Section 1 and effective the date said vote and assent is formally
224 submitted to the Civil Service Commission.

225 SECTION 26. Section 28M of Chapter 32 of the General Laws is hereby amended by
226 striking out the first sentence and inserting in place thereof the following new sentence:-

227 Notwithstanding the provisions of sections one to twenty-eight, inclusive, any employee
228 of the department of correction, classified under Group 4, whose major responsibilities include
229 the care and custody of prisoners, and any transportation officer working within the department
230 of correction, who has performed services in the department of correction for not less than
231 twenty years, provided, the majority of years of service was performed within one or more titles
232 in Group 4, shall, at his own request, be retired by said retirement board.

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