

## **PENSION REFORM UPDATE**

Chapter 21 of the Acts of 2009, *AN ACT PROVIDING RESPONSIBLE REFORMS IN THE PENSION SYSTEM*, has been signed into law by the Governor, with an emergency preamble. The impact of the bill and the effective dates of certain reforms are undergoing analysis. However, it is clear that the Legislature intends that this bill will:

- eliminate one day for one year of service
- change the definition of regular compensation
- prohibit creditable service for employees earning under \$5,000
- change the calculation for a member serving simultaneously in 2 pension systems
- eliminate “working out grade” disability calculations
- eliminate termination retirement allowances for elected officials
- require elected officials to serve ten years prior to vesting in pension system

### **A Formal Technical Advisory Will Be Issued by the Public Employee Retirement Administration Commission at a Later Date.**

However, in an effort to keep the System’s members as fully informed as possible, the following is the Board’s **unofficial** preliminary interpretation.

Section 1 - establishes the effective date of June 30, 2009 for Section 2, pertaining to amendments to the definition of “Regular Compensation.”

Sections 2 and 3 – amends the definition of “Regular Compensation.” The sections specifically exclude housing allowances, lodging, travel, annuities or other retirement benefits, automobile usage, insurance premiums and other reimbursements. See Section 23, below.

Section 4 - eliminates the “one day of service equals one year or creditable service” provision for elected officials who serve for any part of a year.

Section 5 - eliminates creditable service buyback for service as an unpaid town moderator, selectman, alderman, city councilor, school committee member, and time served as an unpaid library trustee. This section adds another section to Chapter 32 that prohibits a person from receiving creditable service for time spent in a position for which they receive a salary of less than \$5,000 for service occurring on or after July 1, 2009. See Section 25, below.

Section 6 - A technical change required by the removal of elected officials from termination allowances under Section 10 .

Section 7 - changes the pension calculations of a person belonging to two retirement systems, by calculating each benefit separately. This section impacts individuals who receives compensation in two retirement systems after January 1, 2010. However, the individual was vested in both systems prior to January 1, 2010 this section will not apply.

Section 8 - requires that disability retirement calculations be based on an individual’s average annual rate of regular compensation and not on the salary being paid on the date the disabling injury was sustained.

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Sections 9, 10, 11, 12 - eliminates an elected official's ability to collect a termination allowance retirement before age 55.

Section 13 - changes the vesting requirement for elected officials from 6 years to 10 years.

Section 14 - allows a local retirement board to restrict withdrawal of a member's accumulated deductions if the member owes money to any employee benefit plan.

Section 15 - requires a retirement plan to begin making annuity payments to an individual who is over 70 ½, not working and not collecting a payment, thereby ensuring compliance with the federal Internal Revenue Code.

Section 16 - allows a retirement board to require the direct deposit of a member's retirement allowance.

Section 17 - allows for a direct withholding from a member's retirement benefit for the purposes of paying retiree healthcare contributions.

Section 18 - allows local retirement boards to extend their funding schedule from 2028 to 2030.

Section 19 - allows the Legislature to request a financial impact statement from PERAC for any bill that makes a "statutory adjustment" to the Commonwealth's pension liability.

Section 20 - extends the existing restrictions on post-retirement public service to employees of "authorities."

Section 21 - prohibits a retiree from working more than 960 hours as a consultant or independent contractor whose regular duties require that his time be devoted to the service of the commonwealth, city, town, district or authority.

Section 22 - addresses the duties of the special retirement commission.

Section 23 - allows any amounts included in a collective bargaining agreement that are defined as regular compensation to be included for the purpose of calculation a pension. However, said amounts will no longer be counted at the end of the current collective bargaining agreement or June 30, 2012, whichever is sooner.

Section 24 - establishes an effective date of July 1, 2009 for Section 1 of this act.

Section 25 - establishes an effective date of July 1, 2009 for Section 5 of this act. However, for those already serving in a position earning less than \$5,000, Section 5 will be effective at the end of his/her term, appointment, or contract, or July 1, 2012, whichever is sooner.

Section 26 - establishes that the act will take effect for anyone retiring after July 1, 2009 unless otherwise specified in the act.

# Chapter 21 of the Acts of 2009

## AN ACT PROVIDING RESPONSIBLE REFORMS IN THE PENSION SYSTEM

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

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

SECTION 1. [Section 1 of chapter 32](#) of the General Laws is hereby amended by inserting after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition, the following words:- through June 30, 2009.

SECTION 2. The definition of “Regular compensation” in said section 1 of said chapter 32, as so appearing, is hereby further amended by adding the following sentence:- “Regular Compensation”, during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

SECTION 3. Said section 1 of said chapter 32, as amended by section 15 of [chapter 130 of the acts of 2008](#), is hereby further amended by adding the following definition:- “Wages”, the base salary or other base compensation of an employee paid to that employee for employment by an employer; provided, however, that “wages” shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member’s retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers’ retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as “regular compensation” rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers’ retirement system.

SECTION 4. [Section 4 of said chapter 32](#) of the General Laws is hereby amended by striking out, in lines 5 to 7, inclusive, as so appearing, the words “, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further”.

SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the following paragraph:-

(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

SECTION 6. [Section 5 of said chapter 32](#), as so appearing, is hereby amended by striking out, in lines 69 and 70, the words “, except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten,”.

SECTION 7. Subdivision (2) of said [section 5 of said chapter 32](#), as so appearing, is hereby amended by adding the following paragraph:-

(e) A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.

SECTION 8. [Section 7 of said chapter 32](#), as so appearing, is hereby amended by striking out, in lines 69 to 73, inclusive, the words “or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater; provided, however” and inserting in place thereof the following words:- ; provided, however, that if an individual was in a temporary or acting position on the date such injury was sustained or hazard undergone the amount to be provided under this subdivision shall be based on the average annual rate of the individual’s regular compensation during the previous 12-month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard was undergone; provided, further,.

SECTION 9. [Section 10 of said chapter 32](#), as so appearing, is hereby amended by striking out, in line 4, the words “, or fails of nomination or re-election”.

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

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

SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 72 to 77, inclusive, the words “one of the following circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the employee has failed of reappointment, (3) that the employee’s office or position has been abolished, or (4) that” and inserting in place thereof the following words:- : (1) the employee has failed of reappointment; (2) the employee’s office or position has been abolished; or (3).

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

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

(d) If a member is entitled to a return of his accumulated total deductions and requests such a return from the board on the prescribed form, then prior to the return of such accumulated total deductions, the board shall contact the member’s employer to determine whether the member owes an obligation to the employer under an employee benefit plan, including a cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that the member owes the employer under any such plan, the board shall not return the accumulated total deductions until it has received notice from the employer that the obligation has been satisfied.

SECTION 15. Said [chapter 32](#) is hereby further amended by inserting after section 12C the following section:-

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

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

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

SECTION 17. [Section 19A of said chapter 32](#) is hereby amended by striking out the first paragraph, as so appearing, and inserting in place thereof the following paragraph:-

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

SECTION 18. Section 22D of said chapter 32, as so appearing, is amended by striking out, in line 25, the figure “2028” and inserting in place thereof the following figure:- 2030.

SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D the following section:-

Section 22E. (a) For the purposes of this section, “statutory adjustment to the commonwealth pension liability” shall mean an adjustment that changes the benefits or contributions of classes of members including, but not limited to, early retirement incentive programs, cost-of-living adjustments, the membership of those classes or any amendments to chapter 32 that may change the actuarial liability of the commonwealth pension system.

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

SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line 3, as appearing in the 2006 Official Edition, the words “or district,” and inserting in place thereof the following words:- , district or authority.

SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting after the word “authority”, in line 84, the following words:- , including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section 111 and inserting in place thereof the following section:-

Section 111. There shall be a special commission to study the Massachusetts contributory retirement systems. The commission shall consist of the secretary of administration and finance or her designee; the state auditor or his designee; the executive director of the public employee retirement administration commission or his designee; the executive director of the state retirement board or his designee; the executive director of the teachers’ retirement board or her designee; 3 members of the house of representatives, 1 of whom shall be appointed by the house minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting not later than June 1, 2009.

The commission shall make a comprehensive study of the Massachusetts contributory retirement systems. The study shall include, but not be limited to: contribution rates paid by employers and employees; vesting periods; the weight given to age versus years of service in the current system; the portability of benefits in the current system; the definition of regular compensation including, but not limited to, whether all forms of compensation taxable under the federal income tax code should constitute regular compensation; cost-of-living-adjustments with special attention paid to the cost of increasing the cost-of-living-adjustments base; current and future employee pension plans and contribution structures; termination allowances pursuant to section 10 of chapter 32 of the General Laws; group classification systems, including the classification of department of correction employees under section 28M of said chapter 32; capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for employees who participate under 2 or more retirement systems; potential costs, savings or benefits related to moving from a defined benefit retirement system to a defined contribution retirement system for new employees, including a system that maintains eligibility for employees to participate in the Social Security system; qualifications for credit for service pursuant to section 4 of said chapter 32, including minimum compensation limits for officials to be eligible for credit for service, and the cost of any recommendations the commission may make.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall prepare a report of its findings and recommendations, together with the actuarial analysis and any recommendations for legislation, if any, to implement those recommendations by filing the same with the clerks of the senate and house of representatives, the chairs of the house and senate committee on ways and means and the senate and house chairs of the joint committee on public service not later than September 1, 2009.

SECTION 23. Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of "regular compensation" by law or by regulation prior to the effective date of this act and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of "regular compensation" during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after June 30, 2012 shall not be considered regular compensation.

SECTION 24. Section 1 of this act shall take effect July 1, 2009.

SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that creditable service shall be granted for the service of any state, county or municipal employee serving in a paid position earning less than \$5,000 after July 1, 2009, if such service is subject to a specified term as a result of an election, appointment or contract and the election, appointment or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible for creditable service under chapter 32 of the General Laws; and provided further, that such creditable service shall be granted until the expiration of the term, appointment or contract or July 1, 2012, whichever first occurs.

SECTION 26. Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, this act shall apply to all members of retirement systems who retire after July 1, 2009.

*Approved June 2 , 2009*