

MEMORANDUM #36, 2011

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Chapter 176 of the Acts of 2011: An Act Providing for Pension Reform and Benefit Modernization (Non-Governance Provisions)

DATE: December 8, 2011

On November 18, 2011 Governor Patrick signed Chapter 176 of the Acts of 2011, reforming and modernizing the pension laws for public employees in the Commonwealth. This new law includes provisions dealing with governance of Boards and Retirement Systems and provisions dealing with other aspects of the public pension statutes. This Memorandum will discuss the sections other than those dealing with governance. Separate Memoranda has been issued dealing with the governance aspects of Chapter 176 of the Acts of 2011. Sections impacting only the State Retirement System, public school teachers, and the special commissions established by the Act are also not included in this Memorandum.

Chapter 176 of the Acts of 2011 becomes effective on February 16, 2012 but internal effective date language governs certain sections. The effective date will be included in the discussion of each section.

Sections 29 and 30 create a local option to increase the \$250 per month minimum allowance contained in G.L. c. 32, § 12 to \$500 per month. Section 34 creates a local option that will increase the stipend paid to members of the Retirement Board. These local options may be acted upon after February 16, 2012. Please see the discussion of these sections below.

Section 55 establishes the possibility of an option change for certain retirees who entered into a same sex marriage with a specific time frame. The time for implementation contained in that section will require immediate action by the Boards. Please see the discussion of this section below.

Amending definition of “regular compensation”

Section 6 excludes from “regular compensation” any wages from the federal government that were not reported to any employing authority. This section is effective on February 16, 2012, 90 days after the bill was signed by the Governor. In its current form, the placement of the amendment appears to only amend the provision dealing with earnings prior to 1946 and may need further action to have the desired effect.

Group Classification

Section 8 provides that in order for a member to be classified in Group 2 or 4, a member must have actively performed

the duties of that position for not less than 12 months immediately preceding termination from service or retirement. This section is effective on April 2, 2012 and applies only to individuals who entered service prior to that date.

Purchase of Creditable Service

Section 9 provides that members who are reinstated to membership or re-enter membership or are otherwise entitled to purchase creditable service under G.L. c. 32, § 3 must make a make-up payment into the system within 1 year of reinstatement or re-entry, plus buyback interest. If the member enters into an installment repayment plan, the buyback must be completed within one year of reinstatement or re-entry, or within 1 year of April 2, 2012, whichever is later. If the member does not make the make-up payment within the time period described, the interest on the make-up payment will be the assumed actuarial interest. This section is effective on April 2, 2012.

Increase in Minimum Retirement Age

Section 11 amends G.L. c. 32, § 5 so that persons who become members of a Retirement System on or after April 2, 2012 and are classified in Group 1 cannot retire prior to attaining age 60. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Retirees Elected to Public Office or Appointed to Certain Positions After Retirement Choosing to Become Active Members of the Retirement System

Section 12 amends the provision of G.L. c. 32, § 5(1)(g) that allows retirees who are elected to office after retirement or are appointed to a position by a Mayor, or a City Council, or a Board of Selectmen to choose to again become active members of a Retirement System. The amendment requires those making this choice to repay the entire amount of any retirement allowance received, plus buyback interest and to meet all of the requirements of reinstatement under G.L. c. 32, § 105. This section is effective on April 2, 2012 and applies to all retirees who are elected to office after retirement or appointed to a position by a Mayor, a City Council, or a Board of Selectmen and who choose to become active members after that date.

Average Annual Rate of Regular Compensation to Utilize for Calculating Allowances

Section 13 changes the number of years to be used in calculating retirement allowances. The calculation is to be based on the high 5 years of regular compensation paid to the member during the last 5 years of creditable service or any 5 consecutive years of creditable service, whichever is greater. This section applies to any member who becomes a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Anti-Spiking and Prorating for Group Classification Provisions

Section 14 outlines the method whereby compensation increases of more than 100% in any 2 consecutive years during in the 5 years prior to retirement will be eliminated and require the regular compensation average to be calculated by using the last 5 year average rather than 3 years. This section applies to any member who becomes a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Section 18 also deals with anti-spiking and provides that the average rate of regular compensation in any year is not to

include amounts that are in excess of 10% of the rate in the 2 preceding years. This prohibition will not apply to modifications in the salary schedule negotiated in a collective bargaining agreement. This section applies to any member retiring on or after April 2, 2012. Further guidance will be issued at a later date.

Section 14 also mandates pro-rating benefits in cases where a member entered service on or after April 2, 2012 and has creditable service in more than one Group Classification. This provision becomes effective on April 2, 2012. Any active member as of April 2, 2012 may elect to receive a retirement allowance based on the pro-ration which is mandatory for those entering service on or after April 2, 2012. As the time of actual implementation nears, PERAC will issue specific guidance for these provisions.

New Age Factors for Retirement Calculations

Sections 15, 16, 17, and 23 establish new age factors to be applied to any member who becomes a member on or after April 2, 2012. In general, the new factors will increase the age when a member's allowance will be calculated using the maximum age factor. The new factors also increase the minimum age at which a member can retire. There is also a new factor table to be used for members with more than 30 years of creditable service. The 80% maximum amount that a member can receive is amended to reflect the use of a high 5 year average annual amount of regular compensation in calculating the allowance. These new factor tables and 80% limitation apply to members who become members on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions. In general, the new factors will increase the age when a member's allowance will be calculated using the maximum age factor.

The age factors for persons who became members prior to April 2, 2012 remain the same. The factors also remain the same for persons who were members prior to April 2, 2012 and who may have breaks in service but have uninterrupted membership after that date.

Treatment of Periods of Leave During Which Creditable Service is Granted

Section 19 amends G.L. c. 32, § 5(3)(b) to reflect the change in the number of years used in a retirement calculation from the average annual rate of regular compensation from 3 years to 5 years. This section applies to any member who becomes a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Termination Allowances Eliminated for New Members

Sections 24, 25, 26 and 27 eliminate the termination allowances contained in G.L. c. 32, § 10 for members who become members after April 2, 2012. These members with at least 10 years of creditable service and who are not reappointed, who are discharged without moral turpitude, who accept a position that requires resignation from an elected position in the General Court, whose position is abolished or who voluntarily resigns shall have the right to apply for superannuation upon attaining the minimum retirement age, contained in the newly enacted age factor tables, provided that they have left their funds in the Retirement System. The newly enacted factor tables will be utilized in calculating the allowance. These sections apply to any member who becomes a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions. These sections become effective April 2, 2012.

Calculation of Option D Benefit Amended to Reflect New Minimum Retirement Age Provisions

Section 28 amends the calculation of an Option D benefit, taking into account the new minimum age provisions. Under the amendment, if the member was classified in Group 1 and died prior to attaining age 60, the Option D benefit will be calculated as if the member had attained age 60 on the date that the member died. If the member is over age 60 on the date of death, the age factor for his or her actual age will be used. This section applies to any member who becomes a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Increase Minimum Allowance contained in G.L. c. 32, § 12 – Local Option

Sections 29 and 30 create a local option that would allow the minimum allowance contained in G.L. c. 32, § 12 to be increased from \$250 per month to \$500 per month. This option is accepted by a majority vote of the Retirement Board and the legislative body. The legislative body in a city is the city council subject to its charter; in a town, the town meeting; in a county, the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, the district members; and for an authority, its governing body. Acceptance shall be deemed to have occurred upon the filing of a certification of such vote with the Commission. This section is effective on February 16, 2012 and can be adopted after that date.

Repayment of Allowances Received by Members Convicted of Crimes Connected with Their Position

Section 31 provides that any member who retires on or after April 2, 2012 who was convicted of an offense that mandates forfeiture of their allowance must repay to the Retirement System any retirement allowance received after the date that the offense was committed that resulted in the conviction.

Retirement Board Hearings on Involuntary Retirement Applications

Section 32 amends G.L. c. 32, § 16(1)(b) to reflect the change in minimum age for retirement. Members who enter service on or after April 2, 2012 who have attained age 60 and have been granted creditable service in excess of 15 years or have not attained age 60 but who have been granted 20 years of creditable service may request a hearing before the Retirement Board when their employer files an application for involuntary retirement. These new age and service requirements apply to members who become a member on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Local Option Increasing Retirement Board Member Compensation

Section 34 establishes a local option that will allow the stipend paid to Retirement Board Members to be increased to \$4,500 per year. The Ex-officio Board member's compensation for services rendered to the System shall be a stipend of not more than \$4,500 per year, in the aggregate, for services rendered to the System. This option remains a local option, accepted by a vote of the legislative body. The legislative body in a city is the city council subject to its charter; in a town, the town meeting; in a county, the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, the district members; and for an authority, its governing body. This section is effective on February 16, 2012 and can be adopted after that date. The Retirement Board must notify the Commission of acceptance and provide certified copies of the votes.

Retirement Boards to Collect and Maintain Collective Bargaining Agreements

Sections 37 and 54 require all employers of members of a Retirement System to provide the Retirement Board with copies of collective bargaining agreements pertaining to the members of the System. The Retirement Board is to review the agreements for consistency with Chapter 32 and to maintain copies of all agreements. The Retirement

Board is to maintain a copy of all collective bargaining agreements and make them available to the Commission for review upon request. The sections become effective on February 16, 2011. Retirement Boards should gather all contracts in effect on that date in order to comply with these sections.

Contribution Rates Changed

Section 39 adds new provisions to G.L. c. 32, § 22(1)(b) and establishes a new contribution rate for Group 1 members who become members of a Retirement System on or after April 2, 2012. The contribution rate of these members will be reduced to 6% when the 30 years of creditable service is attained. The new contribution rate applies to members who become members on or after April 2, 2012. Please be aware that if a member who has terminated and taken a refund of his or her accumulated total deductions later becomes a member of a Retirement System, he or she is subject to all of the rights and responsibilities of G.L. c. 32 as of the date that the individual returns to membership. We encourage Retirement Boards to counsel members seeking to take a refund of their contributions of the potential ramifications of the new statutory provisions.

Creditable Service for Representatives of Employee Organizations on a Leave of Absence

Section 45 amends G.L. c. 32, § 28K making it clear that creditable service is granted to a member on a full-time or part-time leave of absence without pay to act as a representative of an employee organization. The requirement that the member make contributions to the Retirement System in order to receive creditable service remains. This section becomes effective on February 16, 2012.

This section remains subject to acceptance by a majority vote of the Retirement Board and the legislative body. The legislative body in a city, is the city council subject to its charter; in a town, by a vote at a town meeting; in a county, by a vote of the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, by a vote of the district members; and for an authority, by a vote of its governing body. Acceptance shall be deemed to have occurred upon the filing of a certification of such vote with the Commission.

New Minimum Retirement Allowance for Retirees with More Than 25 Years of Creditable Service

Section 48 adds a new section, G.L. c. 32, § 90D½, that creates a local option that will establish a \$15,000 minimum retirement allowance for retirees who had been granted in excess of 25 years of creditable service. This local option is accepted by a majority vote of the Retirement Board, and by vote of the legislative body. The legislative body in a city is the city council subject to its charter; in a town, the town meeting; in a county, the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, the district members; and for an authority, its governing body. This section is effective on February 16, 2012 and can be adopted after that date. The Retirement Board must notify the Commission of acceptance and provide certified copies of the votes.

Retirees Elected to Public Office

Section 49 eliminates the provision of G.L. c. 32, § 91(a) that allowed an elected official to retire shortly before re-election and to receive both his or her allowance and the salary paid for the elected office. This new provision prohibits an elected official from receiving both payments unless elected to a position at least one year after retiring from the public elected office. This limitation does not apply to members who retired from a position other than an elected position and are subsequently elected to a public office. This section becomes effective and applies to all members who retire on or after April 2, 2012.

Increase on Limit on Post-Retirement Earnings in the Public Sector

Section 50 increases the amount that a retiree can earn in the public sector. The limitation on the hours that a retiree can be employed remains 960, but pursuant to this amendment, the earnings from that employment when added to the member's retirement allowance cannot exceed the salary being paid to the position from which the member retired or in which the member's employment was terminated, plus \$15,000. If the retiree reaches the 960 hour limitation prior to reaching the new excess earnings limitation, such retiree must cease working even though the excess earnings limitation has not been exceeded. It must be noted that the retiree can only earn the maximum amount with the new

\$15,000 increase, if the retiree does not exceed the maximum amount allowed within the 960 hour limitation. Section 51 further provides that in the first year after the date of retirement, however, the earnings from that employment when added to the member's retirement allowance cannot exceed the salary being paid to the position from which the member retired or in which the member's employment was terminated. This section becomes effective on April 2, 2012. The earnings limitations for disability retirees contained in G.L. c. 32, § 91A have not changed.

Waiver of 91A Filings

Section 51 allows PERAC to waive the requirement that a disability retiree file an annual statement of earnings if the retiree has been retired for more than 20 years and has reported no earnings for the prior 10 years. The member must sign an affidavit under the pains and penalties of perjury indicating that should the member realize any earned income in the future the member will forthwith notify the Commission of that fact and again report under this section. This section becomes effective on April 2, 2012. PERAC will begin implementation in calendar year 2012.

Option Selection Change Available for Certain Retirees with Same Sex Spouses

Section 55 allows members who entered into a same sex marriage between May 17, 2004 and May 17, 2005 and who had retired before May 17, 2004 and selected either Option A or Option B to change their option selection to Option C, presumably in order to name their spouse as the Option C beneficiary. If a member who met that criteria has since died, the surviving spouse may ask that the Option be changed to C. The spouse changing the election would then be entitled to an Option C survivor allowance. This section becomes effective on February 16, 2012 and the option change must be made by July 1, 2012. The change in option shall be effective from the date of retirement going forward. The Retirement Board has 180 days to implement the change once the election is made. Because this change of option may result in overpayments having been made to such members, the Board shall make appropriate adjustments or arrangement for appropriate repayments upon such terms and conditions as the Board may prescribe. Retirement Boards should immediately provide notice to all members who retired between May 17, 2004 and May 17, 2005 to determine who could be eligible for this option change.

The Commission understands the comprehensive nature of Chapter 176 of the Acts of 2011 and appreciates that this statute represents a significant change in the administration of G.L. c. 32. The Commission and staff will continue to work with all of the Boards through the implementation process.

Thank you for your continued cooperation in this regard.