



# LEGISLATIVE UPDATE

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January 28, 2021





# Legislative Update

*There are endless topics we could cover, but in the interest of your time and sanity, we plan on discussing the following in this presentation:*

- Special legislation relevant to retirement
  - We will explain what special legislation is and how the process works
  - We'll focus on the two most prominent, maximum age and disability
  - Touch on others
- Discuss PERAC's bills for the 2021-22 legislative session
- Provide a general update on where things currently stand with the Legislature and provide some resources

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## What's Special About Special Legislation?

- Massachusetts General Laws are codified and have broad application
  - MGL Ch. 32, Section 20
- Session laws are laws passed in a legislative year that may, or may not, create or amend the General Laws
  - Chapter 842 of the Acts of 2020
- Special legislation is a session law
  - That does not create or amend the General Laws
  - Has a narrow application
  - Authorizes activity that is beyond what current statutes allow.  
It's an exception or an act to address an emergency situation i.e.: c.53 of 2020...

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### NOTES:

# IT'S SPECIAL!!!

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## Not Irene Triplett, But ....

- Judith Corrigan is fond of illustrating the length of time pension obligations can last with Irene Triplett who just passed late in 2020 and was the last person receiving a Civil War pension
- Chapter 421 of the Acts of 2018 is a good illustration of how special special legislation can be.
  - It amended Chapter 154 of the Acts of 1983
  - Was for an MDC police officer
  - Injured in an accident in 1978
  - Directed the State Retirement Board to return all retirement deductions made with interest as of the date of retirement

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### NOTES:

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## RETIREMENT SPECIAL LEGISLATION

### By the Numbers

*Over the last three years there have been:*

- **25 laws** allowing a public safety employee to work beyond maximum retirement age
- **4 laws** authorizing enhanced disability benefits
- **7 laws** allowing veterans working in public service to buy back their military service after the initial 180-day window
- **2 laws** dealing with survivor benefits
- **2 laws** authorizing the purchase of non-military creditable service
- **2 laws** dealing with a group of employees joining, or transferring to, a retirement system
- **1 law** allowing for an early retirement incentive

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## Nature of Special Legislation

- Drafted locally/approved locally
- Filed as a home-rule petition
- Retirement board/Ch. 32 practitioners often not consulted
- Home rule petition viewed as local matter-difficult to amend
- Creates expectations for member
- While we aim for uniformity, details can vary

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### NOTES:

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# Disability Special Legislation — Chapter 117 of the Acts of 2020

- SECTION 1.** (a) Notwithstanding any general or special law to the contrary, the retirement board of the city of Salem shall retire Brian Benson, a police officer of the police department of the city, who as a result of injuries sustained while in the performance of his duties in October 2014, is totally and permanently incapacitated from performing the essential duties of a police officer; provided, however, that subdivision (2) of section 8 of chapter 32 of the General Laws shall apply as of the date of Brian Benson's retirement pursuant to this act.
- (b) The annual amount of pension payable to Brian Benson shall be equal to the regular rate of compensation which would have been paid had he continued in service as a police officer of the city of Salem at the grade held by him at the time of his retirement until his death or reaching mandatory retirement age whichever comes first. The additional benefits granted in this act shall be funded and administered by the retirement board of Salem, consistent with and subject to chapter 32 of the General Laws. All amounts paid under this act shall be non-taxable to the extent allowable under state and federal law.
- (c) Upon attaining the mandatory retirement age for a police officer of the city of Salem, Brian Benson shall receive a pension pursuant to section 7 of said chapter 32, a yearly amount of pension equal to 80 per cent of the annual rate of the compensation he was receiving on the day before he reaches the mandatory retirement age for a police officer in the city of Salem.

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# Disability Special Legislation — Chapter 117 of the Acts of 2020 *(Continued)*

- SECTION 2.** Brian Benson shall be entitled to receive indemnification for all hospital, medical and related expenses that have been or may be incurred after the date of his retirement as a result of the injuries sustained by him while in the performance of his duties in October, 2014, in accordance with sections 100 and 100B of chapter 41 of the General Laws.
- SECTION 3.** In addition to the benefits granted herein and upon retirement, Brian Benson shall receive a lump sum from the retirement board of the city of Salem equal to his total accumulated retirement deductions.

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## NOTES:

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## Disability Special Legislation — Chapter 117 of the Acts of 2020 *(Continued)*

**SECTION 4.** If Brian Benson is married at the time of retirement, then upon his death, should his wife, Shannon, survive him, the retirement board of the city of Salem shall pay to her an annuity in the amount of 75 per cent of the amount of the pension which otherwise would have been payable to him until her death. The pension benefits provided for in this section and subsection (c) of section 1 shall be subject to section 103 of chapter 32 of the General Laws.

**SECTION 5.** In the event that both Brian Benson and his wife, Shannon, die before their children reach the age of 18 or 22, as provided in this act, the payments that would otherwise have been made to Shannon shall be payable, in equal shares, to each surviving child under the age of 18; provided, however, that payments shall continue for the benefit of a surviving child 18 years or older who, on or before the date of death of Shannon or Brian, whichever is later, had been medically determined to be permanently physically or mentally incapacitated from earning or for the benefit of a child under the age of 22 who is enrolled as a full-time student.

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## Disability Special Legislation — Chapter 117 of the Acts of 2020 *(Continued)*

**SECTION 6.** The payments provided for in this act shall only be made when Brian Benson has been examined by a medical panel, pursuant to section 6 of chapter 32 of the General Laws, in which a majority of the physicians have certified to the retirement board of the city of Salem that the member is mentally or physically incapacitated from further duty and that such incapacity is likely to be permanent, and that the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which retirement is claimed; provided, however, that the public employee retirement administration commission may, upon request, waive such examination if the member has already been approved by a medical panel and the board and is receiving a disability benefit as of the effective date of this act. The commission shall promptly notify the retirement board of the city of Salem of such waiver.

**SECTION 7.** This act shall take effect upon its passage.

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### NOTES:





## DISABILITY LEGISLATION

### THINGS TO LOOK FOR

- Sections 8 and 91 application
- The rate of pension
- Reference disability section 7
- Tax free
- Pension at maximum age
- Return of deductions
- Surviving spouse/children
- Medical panel
- Effective date



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## Maximum Age Legislation — Chapter 51 of the Acts of 2020

**SECTION 1.** Notwithstanding any general or special law to the contrary, William G. Brooks, III, chief of police of the town of Norwood, **may continue to serve in that position until reaching the age of 70,** the date of his retirement or the date he is relieved of his duties by the general manager of the town of Norwood at the general manager's discretion, whichever occurs first; provided, however, that William G. Brooks, III is mentally and physically capable of performing the duties of his office. The general manager may, at the town's own expense, require that William G. Brooks, III be examined annually by a physician designated by the general manager, to determine such physical and mental capability. **No further deductions shall be made from the regular compensation** of William G. Brooks, III pursuant to chapter 32 of the General Laws for service subsequent to his reaching the age of 65 and **upon retirement he shall receive a superannuation retirement allowance equal to the allowance that he would have been entitled to had he retired upon reaching age 65.**

**SECTION 2.** **This act shall take effect upon its passage.**

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### NOTES:

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## MAXIMUM AGE LEGISLATION

### THINGS TO LOOK FOR

- When the extended service must end
- No further deductions past age 65
- Upon retirement, superannuation retirement calculated as of age 65
- Effective date



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## Other Special Legislation

- Veterans buybacks
- Directing creditable service
- Death benefits
- Early retirement
- Joining or transferring to a system
  - Hampshire Council of Governments from Hampshire Regional to State
  - Western Mass Emergency Communications join Hampden

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### NOTES:

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## PERAC's 2021-22 LEGISLATIVE AGENDA

- An Act Relative to Pension Forfeiture
- An Act Relative to the Recovery of Overearnings
- An Act Relative to Wages
- An Act Relative to Modifications of Retirement Allowances
- An Act Relative to Accidental Disability and Group 1 Emotional Distress
- An Act Relative to Veterans' Buyback
- An Act to Protect Gender Pay Equity
- An Act Providing for Statement of Financial Interests Flexibility



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## An Act Relative to Pension Forfeiture

- Redraft of Section 15 in its entirety
- Only felony convictions result in forfeiture
- Partial forfeiture for members with 10 or more years of service
- Members with less than 10 years of service as of date of conviction get a return of deductions with no interest
- Option C pop up available for beneficiary
- Appeal directly to Superior Court
- All forfeited members prohibited from being a member of a retirement system in the future
- Restitution may be made from accumulated deductions

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### NOTES:

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## What Would Trigger Forfeiture?

- Felony convictions for crimes involving laws applicable to position or crimes committed in the course of employment.
- Specific crimes:
  - Primary job responsibility involves contact with children:
    - Child pornography, sexually violent offense against minor or involving a child who member has contact with as part of their job duties.

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## Forfeiture Amount Member With 10 or More Years of Service

- Forfeiture of 1/3rd , 2/3rd of allowance, full or to a minimum allowance.
- Minimum allowance = benefit member would receive if they retired at minimum age for group 1 with 10 years of service but no less than what would be paid as the annuity portion of a full retirement allowance.

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### NOTES:



## How Does Board Determine Amount?

- Severity of the crime, including actual sentence, maximum sentence;
- Amount of monetary loss and/or financial gain to member;
- Degree of public trust in member's position;
- Role of member in fraudulent scheme;
- Recommendation of prosecuting AAG or DA;
- Any other factor board determines justice requires.

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## What About Beneficiaries?

- Board must determine “innocent” beneficiary.
- If member selects Option C at time of retirement then the reduced amount determined by forfeiture is paid to the member.
- Upon member's death Option C beneficiary will receive full Option C benefit that would have been paid had forfeiture not occurred.

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### NOTES:

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## Less Than 10 Years Of Service

- If a member has less than 10 years of service as of the date of conviction they will be forfeited and receive a return of accumulated deductions with zero interest.
- They will also be prohibited from being a member of a retirement system again.

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## Appeals

- Any person aggrieved by a forfeiture decision shall appeal to Superior Court.
- No more appeals to CRAB and/or District Court.

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### NOTES:

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## Restitution

- If the member has misappropriated funds of their employer then restitution may be made using all or a portion of the accumulated total deductions on account with the retirement System.
- If restitution is made then upon retirement the annuity portion of a retirement allowance will be reduced to reflect the restitution.

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## An Act Relative to the Recovery of Overearnings

- Would amend Section 91 of Chapter 32 to clarify that a retirement board may only recover overearnings in an amount equal to the amount paid as a retirement allowance in any given year.

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### NOTES:

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## An Act Relative to Wages

- Amends Chapter 32 to provide that sick, vacation and personal leave taken while receiving workers compensation is regular compensation.
- Vernava decision

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## An Act Relative to Modification of Retirement Allowances

- Amends Section 8 of Chapter 32
- Modification of a retirement allowance would occur if PERAC determines that a disability retiree has had excess earnings for 3 consecutive years which result in the repayment of their entire retirement allowance.

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### NOTES:

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## An Act Relative to Accidental Disability and Group 1 Emotional Distress

- Provides that all members may use official records of their employer when filing an emotional disability claim.
- Currently only Group 2, 3 or 4 members who are not subject to Chapter 152 may rely upon official records rather than personal injury reports.

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## An Act Relative to Veterans' Buyback

- Ch. 32 Sec. 4 (1)(h) allows veterans who are members in service to buy up to four years of creditable service for their military service
- This was a creation of Ch. 71 of the Acts of 1996
- Section 3 of Chapter 71, while not codified in MGL Ch. 32, states a veteran has 180 days to enter into an agreement to purchase
- We continue to see special legislation allowing individuals, or certain groups of people, to buy back their military time after the initial 180-day period
  - Fall River
  - Chicopee

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### NOTES:

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## An Act Relative to Veterans' Buyback *(Continued)*

- PERAC filed a veterans buyback bill that would address the issue holistically
  - Eliminates the 180-day timeframe and replaces it within one year after vesting, effectively 11 years
  - The time for completing the buyback would remain up to boards as in Ch. 32 Sec. 4 (1)(h) so long as the creditable service isn't granted until the purchase is complete
    - In one sum or in installments, upon such terms and conditions as the board may prescribe
  - Additionally, the bill creates a one-time, one-year grace period for all veterans who are members in service to make a buyback which they previously did not complete
  - Reported favorably from Public Service in 2019-20 session, many sponsors in Senate budget, inclusion in larger veterans bill

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## An Act to Protect Gender Pay Equity

- The Massachusetts Equal Pay Act, Chapter 177 of the Acts of 2016, prohibits wage discrimination based on gender. An employer can't pay someone less than they pay an employee of a different gender who does comparable work.
- This Act updated an existing statute by replacing M.G.L. Ch. 149, Sec. 105A in its entirety and took effect on July 1, 2018.
- *"An employer who is paying a wage differential in violation of this section shall not reduce the wages of any employee solely in order to comply with this section."*
- Therefore, the remedy to address gender pay inequity is to raise the pay of an affected person, rather than cut the pay of another.

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### NOTES:

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## An Act to Protect Gender Pay Equity *(Continued)*

- The MWRA Retirement Board made PERAC aware of members who had their pay increased in relation to the Massachusetts Equal Pay Act, but are coming up against anti-spiking provisions.
- Section 18 of Chapter 176 of the Acts of 2011 introduced anti-spiking provisions codified as M.G.L. Ch. 32, Sec. 5(2)(f)
  - further amended by Section 68 of Chapter 165 of the Acts of 2014.
- Regular compensation can't exceed the average of regular compensation received in the two preceding years by more than 10 percent. Exemptions:
  - Increase in the number of hours worked;
  - Overtime wages (not regular compensation but included in Section 18);
  - Bona fide change in position;
  - Modification in salary or salary schedule negotiated for bargaining unit members of Chapter 150E; and
  - Salary amount which is specified by law.

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## An Act to Protect Gender Pay Equity *(Continued)*

- The Massachusetts Equal Pay Act does not prescribe a salary by law, but rather, dictates measures to ensure equitable pay, and therefore salary increases resulting from the law's implementation are not exempt from anti-spiking provisions.
- PERAC's bill inserts language into M.G.L. Ch. 32 Sec. (5)(2)(f) adding an exemption from anti-spiking for salary actions related to the Massachusetts Equal Pay Act.

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### NOTES:

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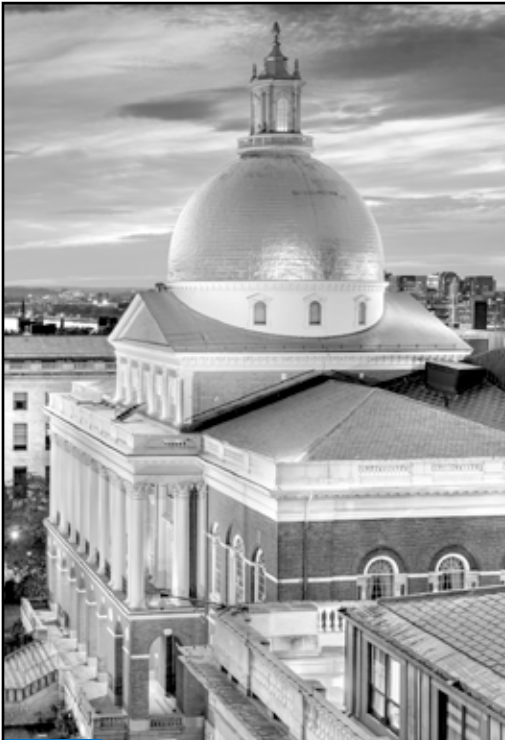
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# An Act Providing for SFI Flexibility

- Statute does not currently provide any flexibility or discretion in the Commission's application of the law regarding filing Statements of Financial Interests.
- Similar situation to continuing education, which PERAC addressed with Chapter 439 of the Acts of 2018 to provide for a hardship waiver process in Ch. 32, Sec. 20.
- To provide similar statutory discretion, PERAC filed this bill to allow a board member to petition for a waiver from the lifetime ban on board service due for not filing their SFI to extenuating circumstances, provided that the person comes into compliance with their filings.

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## LEGISLATURE LATEST

- Governor's budget filed yesterday
- New Speaker
- New leadership positions
- New committee chairs and assignments
- Expect new Public Service chairs
- Bill filing deadline pushed back to Feb. 19

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### NOTES:

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## RESOURCES/CONTACT INFORMATION

- [malegislature.gov/ClerksOffice/House](http://malegislature.gov/ClerksOffice/House)
- [malegislature.gov/ClerksOffice/Senate](http://malegislature.gov/ClerksOffice/Senate)
- Searches – make sure correct legislative session; chamber and bill number together H1234
- **Patrick Charles**
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### NOTES:

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