



Memorandum # 27/2002

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Chapter 46 of the Acts of 2002

DATE: June 10, 2002

On February 28, 2002, Governor Swift signed Chapter 46 of the Acts of 2002 which brings the Massachusetts retirement law into compliance with the federal limitations on the dollar amounts of retirement allowances and the compensation used to calculate retirement allowances. The Act was an emergency law and took effect immediately upon passage.

Chapter 46 of the Acts of 2002 only affects the highest paid public employees. Only retirement systems whose membership includes individuals who were members of a retirement system before February 28, 2002 and who earned regular compensation above the federal limitations will need to accept the local option provisions of the Act. For 2002, the federal limit on compensation used in the calculation of retirement allowances is \$200,000 and may be higher in certain circumstances. Any system which believes its membership includes such individuals should contact the Commission for assistance in adopting and administering the Act's excess benefit provisions.

For any member who attained membership on or after February 28, 2002, the amount of regular compensation on which his or her retirement allowance is calculated and from which contributions are to be taken is restricted to the limitations provided by federal law.

Again, this provision is extremely limited in effect and will not apply to most retirement systems and most retirement system members. We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.

Chapter 46 of the Acts of 2002

AN ACT RELATIVE TO THE CALCULATION OF CERTAIN RETIREMENT CONTRIBUTIONS AND BENEFITS.

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. Subdivision (3) of [section 40 of chapter 15A](#) of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding the following paragraph:-

(f) After December 31, 1995, no contribution shall be made under any provision of this section in excess of, or on the basis of compensation in excess of, any limitation that may be imposed pursuant to federal law, including, but not limited to, the limitations in 26 U.S.C. sections 401(a)(17), 402(g), 403(b) and 415, to the extent such limitations apply. The board of higher education may adopt rules and regulations as it deems necessary from time to time to effectuate the purposes of this section, including, but not limited to, rules or regulations establishing such limitations only when it determines that such limitations are necessary to comply with applicable provisions of the United States Internal Revenue Code. For these purposes section 13212(d)(3) of the Revenue Reconciliation Act of 1993, Public Law 103-66, which provides for a special governmental limit under 26 U.S.C. section 401(a)(17), and section 1.401(a)(17)-1(d)(4) of the United States Treasury Regulations, which provides rules implementing said section 13212(d)(3), shall apply to all members in service who were members in service on or before December 31, 1995.

SECTION 2. The definition of "Regular compensation" in [section 1 of chapter 32](#) of the General Laws, as so appearing, is hereby amended by adding the following 2 paragraphs:-

Notwithstanding any provision of this chapter to the contrary, after December 31, 1995, regular compensation for any member shall not include salary, wages or other compensation in whatever form in any calendar year in excess of any annual limitation that may be imposed pursuant to federal law on the amount of compensation that may be taken into account when calculating benefits under plans described in 26 U.S.C. section 401(a), including, but not limited to, the applicable limits for any calendar year under 26 U.S.C. section 401(a)(17). The limitations applicable in a calendar year to members who were members in service on or before December 31, 1995 shall be the limit provided in section 1.401(a)(17)-1(d)(4) of the United States Treasury Regulations. The limitations applicable to a member under the preceding 2 sentences shall be calculated and applied by the board of the system that pertains to such member based upon the applicable provisions of said section 401(a)(17) and the regulations promulgated under that section including said section 1.401(a)(17)-1(d)(4), as in effect and applicable to governmental plans from time to time.

If, as a result of a mistake in applying the limitations of the preceding paragraph, contributions or deductions are made by or on behalf of any member of a system based on compensation in excess of the limitations specified in such preceding paragraph, the board of the system that pertains to such member shall direct the taking of corrective action with respect to such excess which is consistent with such rules or procedures as may be established from time to time by the United States Internal Revenue Service.

SECTION 3. Subdivision (3) of section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-

(f) Notwithstanding any other provision of this chapter to the contrary, after December 31, 1995, no retirement allowance shall be payable to a member in any calendar year, which for the purposes of applying the limitations of this paragraph shall be the limitation year, in excess of any annual limitation that may be imposed pursuant to federal law on plans described in 26 U.S.C. section 401(a), including, but not limited to, the applicable limitations of 26 U.S.C. section 415. The limitations applicable to a member under the preceding sentence shall be calculated and applied by the board of the system that pertains to such member based upon the applicable provisions of said section 415 and the regulations promulgated thereunder as in effect from time to time and the retirement allowance calculated for such member under the other provisions of this section shall not exceed the limitations applicable to the member under the preceding sentence.

If, as a result of a mistake in applying the foregoing limitations, any member of a system receives a retirement allowance in any calendar year that exceeds such limitations, the board of the system that pertains to such member shall direct the taking of corrective action with respect to such excess which is consistent with such rules or procedures as may be established from time to time by the United States Internal Revenue Service.

SECTION 4. Paragraph (e) of subdivision (8) of section 22 of said chapter 32, as so appearing, is hereby amended by striking out the third and fourth sentences and inserting in place thereof the following 2 sentences:- All amounts required by the pension funds and special funds for military service credit of such systems and all amounts required by the separate funds for such systems established by section 104, excluding any employee contributions paid into the fund established by paragraph (a) of section 104, shall be provided by distribution of such amounts from the Commonwealth's Pension Liability Fund. Any such distribution shall be detailed in a written report by the commissioner of administration and filed in advance with the house and senate committees on ways and means. Except as otherwise provided in this subdivision or section 104, and subject to the provisions of the operating trust agreement adopted by the PRIM board pursuant to subdivision (2A) of section 23, any such distribution shall be made pursuant to sections 1 to 28, inclusive.

SECTION 5. Section 22C of said chapter 32, as so appearing, is hereby amended by inserting after the word "system", in line 3, the following words:- , including, without limitation, the amounts required under section 104.

SECTION 6. Subdivision (1) of section 22D of said chapter 32, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- In each fiscal year the governmental units within such a retirement system shall appropriate to the Pension Fund and Pension Reserve Fund of such system and, if applicable, to 1 or both of the separate funds described in section 104 the amount necessary to fully fund the system, including, without limitation, any amounts required by section 104, pursuant to that schedule.

SECTION 7. Said [chapter 32](#) is hereby further amended by adding the following section:-

Section 104. (a) Notwithstanding any other provision of this chapter to the contrary, there shall be established with respect to the state employees' retirement system and the teachers' retirement system, and with respect to any other system that has established a funding schedule pursuant to the provisions of subdivision (6A) of section 22 or section 22D and that accepts the provisions of this paragraph by majority vote of the board of such system, a separate fund, which shall be entitled the section 401(a)(17) excess fund and shall be maintained by the board of such system to provide benefits to such member, or beneficiary of such member, who was in service prior to the effective date of this section and whose retirement allowance granted pursuant to sections 1 to 28, inclusive, had been calculated using, or for whom contributions or deductions in any year is or had been based on, regular compensation. Benefits provided to any such member or beneficiary pursuant to this paragraph shall be calculated by the applicable board based on the difference between (i) the amount of the retirement allowance that would have been payable to such affected member, or his beneficiary, pursuant to said sections 1 to 28, inclusive, if such benefit, deduction or contribution had been determined without regard to the limitations of 26 U.S.C. section 401(a)(17), and (ii) the amount of the retirement allowance actually payable to such member or beneficiary under this chapter, taking into account the limitations imposed by said 26 U.S.C. section 401(a)(17). Benefits shall be paid under this paragraph in the same manner, and subject to the same requirements and restrictions, as retirement allowances otherwise payable pursuant to said sections 1 to 28, inclusive, except to the extent necessary to comply with 26 U.S.C. section 401(a)(17). The benefits payable pursuant to the provisions of this paragraph combined with any amounts paid pursuant to the provisions of any other section of this chapter shall in no event exceed any limits on retirement allowances established by said sections 1 to 28, inclusive, except such limitations contained in the definition of regular compensation in section 1 with respect to 26 U.S.C. section 401(a)(17). Regular and additional deductions shall be collected from any such member in service prior to the effective date of this section as provided in subdivision (1) of section 22 without regard to the limitations contained in said definition of regular compensation with respect to said 26 U.S.C. section 401(a)(17), and any such deductions based on regular compensation in excess of said limitations shall be transferred to said separate fund rather than to the Annuity Savings Fund. The applicable board shall maintain records of such excess deductions, and the crediting of regular interest thereon, as if such deductions were accumulating in an individual member account in the Annuity Savings Fund, and it shall be an obligation of said separate fund to pay any amount in respect of such deductions and interest that any such member would have been entitled to withdraw had such deductions and interest accumulated in the Annuity Savings Fund, but such deductions and interest may be commingled with other moneys in that fund and used for the purposes of that fund. In the case of the state employees' and teachers' retirement systems, such separate fund shall be maintained as part of the PRIT Fund, and moneys shall be transferred to such separate fund from the commonwealth's Pension Liability Fund in such amount as may be determined by the state board of retirement and teachers' retirement board, respectively. In the case of all other systems, moneys shall be appropriated to such fund pursuant to subdivision (1) of section 22D.

(b) Notwithstanding any other provision of this chapter to the contrary, there shall be established with respect to the state employees' retirement system and the teachers' retirement system, and with respect to any other system that has established a funding schedule under subdivision (6A) of section 22 or section 22D and that accepts the provisions of this paragraph by majority vote of the board of such system, a separate fund, which shall be a qualified governmental plan excess benefit arrangement, as described in 26 U.S.C. section 415(m), and which shall be entitled the Section 415 Excess Benefit Fund and maintained by the board of such system, solely for the purpose of paying benefits as described herein. Such benefits shall be paid from such separate

fund to members, or beneficiaries in respect of members, who were in service prior to the effective date of this section, and the amounts in such fund shall be used for no other purpose. The amount of the benefit payable to such a member or beneficiary from such separate fund shall be the difference between (i) the amount of the retirement allowance that would have been payable pursuant to sections 1 to 28, inclusive, including, without limitation, the limitations of section 26 U.S.C. section 401(a)(17) contained in the definition of regular compensation in section 1, if the limitations of section 26 U.S.C. section 415, contained in paragraph (f) of subdivision (3) of section 5, did not exist, and (ii) the amount of the retirement allowance actually payable to the member or beneficiary under said sections 1 to 28, inclusive, taking into account the limitations contained in said paragraph (f) of subdivision (3) of section 5. No amounts may be deferred, either directly or indirectly, by any member from such member's compensation to such qualified governmental plan excess benefit arrangement. Benefits shall be paid under this section in the same manner, and subject to the same requirements and restrictions, as retirement allowances otherwise payable under said sections 1 to 28, inclusive, except to the extent necessary to comply with 26 U.S.C. section 415. The benefits payable under this paragraph combined with any amounts paid under any other section of this chapter shall in no event exceed the limits on retirement allowances otherwise established by said sections 1 to 28, inclusive, other than the limits imposed by said paragraph (f) with respect to 26 U.S.C. section 415. In the case of the state employees' and teachers' retirement systems, such separate fund shall be maintained as part of the PRIT Fund, and moneys shall be transferred to such separate fund from the commonwealth's Pension Liability Fund in such amount as may be determined by the state board of retirement and teachers' retirement board, respectively. In the case of all other systems, moneys shall be appropriated to such fund pursuant to subdivision (1) of section 22D.

Approved February 28, 2002.