

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Chapter 165 of the Acts of 2014 - pension provisions

DATE: August 13, 2014

On July 11, 2014 Governor Patrick signed the FY 2015 budget into law. The budget contained two outside sections that amended two sections of Chapter 32. This memorandum will summarize the two amendments and discuss board implementation of the revised provisions.

OUTSIDE SECTION 67 – Amendments to Chapter 32, §5(2)(e), the Dual Member Provision

Pursuant to Chapter 21, §26 of the Acts of 2009, the Legislature enacted provisions that significantly affected members who were employed simultaneously in two different systems subsequent to January 1, 2010, calling for retirement from separate systems. In an effort to address certain unintended consequences, the Legislature passed and the Governor signed the following into law:

SECTION 67 Subdivision (2) of section 5 of chapter 32 of the General Laws, as so appearing, is hereby amended by striking out paragraph (e) and inserting in place thereof 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 for greater than 60 days 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 or to any position whose annual regular compensation was less than \$5,000. Paragraph (d)



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of subdivision (7) of section 3 shall not apply if this paragraph applies. Upon retirement a member shall be considered a dual member if the member satisfies this paragraph. This paragraph shall only apply to the 5 years of creditable service immediately preceding a member's superannuation retirement under this section. This paragraph shall not apply to section 6.

The changes to the dual member law brought about by the preceding paragraph may be summarized as follows:

* Overlapping periods of dual service, where the member is receiving regular compensation in two different systems **for less than 60 days**, shall not be considered dual membership for the purposes of § 5(2)(e).

** A member shall not be considered a dual member if one of the positions is **compensated at less than \$5,000 per year**.

*** The provisions of the dual member law shall only apply to the **5 years of creditable service immediately preceding a member's superannuation retirement**.

**** **Benefits calculated pursuant to Chapter 32, §6** for ordinary disability are not subject to § 5(2)(e).

Due to these changes, members will now be able to fully transfer membership funds from system to system pursuant to §3(7)(d) during the course of their career. However, upon retirement, the system from which the member retires must determine if, during the last 5 years of creditable service, the member has triggered the provisions of §5(2)(e). If so, the member's contributions must be returned to the prior system, and the member shall be retired separately from those two systems. If more than two systems are involved in the last five years, please contact this office directly.

OUTSIDE SECTION 68 – Amendment to Chapter 32, §5(2)(f), the Anti-Spiking provisions

Pursuant to §18 of Chapter 176 of the Acts of 2011, now codified at G. L. c. 32, § 5(2)(f), the Legislature enacted limitations on the amount of salary increase that would be pensionable in the calculation of one's pension. This is one of two anti-spiking provisions contained in Chapter 176. In conjunction with the limitation, certain types of pay raises were excluded from the provisions of the section, including raises received via a collectively bargained contract negotiated pursuant to Chapter 150E.

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Now the Legislature has passed the following into law:

SECTION 68. Said section 5 of said chapter 32, as so appearing, is hereby further amended by inserting after the figure ‘150E’, in line 187, the following words:- , from an increase in salary for a member whose salary amount is specified by law.

Thus, this section adds:

“from an increase in salary for a member whose salary amount is specified by law.”

to the list of raises which will not be implicated by the anti-spiking provision in G.L. c. 32, §5(2)(f).

This amendment would address those positions, including certain elected and appointed officeholders, whose **salary amount** is statutorily set out in a state or federal general or special law. Therefore, raises received through a change in that salary-setting law would receive the same protection as raises received through Chapter 150E contracts.

We trust the foregoing will be of some assistance to you. If you have any further questions about this, please contact this office.