COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,

Petitioner-Appellant

v.

CLINTON RETIREMENT BOARD,

Respondent-Appellee.[1]

CR-18-0438

DECISION

Respondent Clinton Retirement Board (CRB) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), ordering the CRB to reimburse petitioner, the Massachusetts Teachers' Retirement System (MTRS), the full amount of the May 18, 2018, Reimbursement Request that MTRS made to CRB, pursuant to G.L. c. 32, § 3(8)(c). Both MTRS and CRB submitted an Assented-to Motion to Submit on the Papers, which was allowed on May 31, 2019. The magistrate's decision is dated July 26, 2019. CRB filed a timely appeal to us.

We incorporate the DALA decision by reference and adopt its findings of fact 1 - 25 as our own. After reviewing the record and considering the arguments by the parties, we affirm the DALA decision for the reasons set forth in its Conclusion. We add the following explanation to address the two issues presented by CRB: (1) whether we have jurisdiction over matters involving G.L. c. 32, § 3(8)(c), governing the payment of funds between Chapter 32 retirement systems and (2) whether there is any time limit on reimbursement requests

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[1] This matter involves four members of MTRS, each of whom had prior service within the Clinton Retirement System: Ms. Patricia Kerrigan (retired 8/23/2008); Ms. Susan Montagna (retired 9/30/2008); Ms. Cynthia Rochford (retired 12/31/2009); and Ms. Suzanne Mahoney (retired 6/30/2010).

under Section 3(8)(c). We conclude that the magistrate correctly determined that we have jurisdiction to hear this appeal pursuant to G.L. c. 32, § 16(4), and that MTRS was not (as CRB contends) limited to pursuing an action in contract. We further conclude that MTRS is entitled to full reimbursement of its May 18, 2018, reimbursement request in the amount of $140,452.67 in accordance with the provisions of G.L. c. 32, § 3(8)(c), and is in no way barred by the six-year statute of limitations on contract actions in G.L. c. 260, § 2.

Our conclusion on these issues is grounded in the meaning and purpose of G.L. c. 32, § 3(8)(c). Under Section 3(8)(c) a governmental unit (*i.e.*, a Chapter 32 retirement system) has a mandatory obligation to "reimburse[] in full . . . for such portion of the pension as shall be computed by the [Public Employee Retirement Administration Commission (PERAC)] actuary," that the system owes the Chapter 32 retirement system, that is actually paying a member's pension. This statutory obligation flows from the circumstance where a portion of the pension being paid by one retirement system is attributable to service the member previously provided to a governmental unit covered by a separate system. After the PERAC actuary determines the yearly amount the prior system must reimburse the system paying the pension, that system sends a notice of the amount owed to the prior system and the statute requires prompt payment of that amount. G.L. c. 32, § 3(8)(c). Imposing an artificial temporal constraint on the statutory obligation (as CRB proposes) will defeat Section 3(8)(c)'s fundamental purpose—protecting the soundness and equity of the burdens placed on each system by ensuring that every Chapter 32 retirement system contributes (through reimbursement to the paying system) its full share of a former member's retirement allowance. *See Arlington Contrib. Ret. Bd. v. Contrib. Ret. App. Bd.*, 75 Mass. App. Ct. 437, 444-445 (2009).[2]

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[2] There is also the potential for a windfall for the retirement system that collected retirement deductions from a member early in her career, but which then avoids paying its fair share of the retirement allowance for that member when it is paid by another system years later, solely on the basis of a delay in requesting the reimbursement beyond an asserted six-year limitations period. This is because, while accumulated total deductions are transferred when a change in membership occurs pursuant to §3(8)(a), the earlier retirement system still retains and can continue to invest and benefit from the investment income and employer contributions it received because of the individual's membership. Consequently, when the public employee changes membership between the two retirement systems, the earlier retirement system retains money intended to help fund the pension portion of that public

Based on the plain language and purpose of Section 3(8)(c), we also conclude that the Legislature did not intend that a delayed request for reimbursement defeat the obligation that each unit bear its full share of the pension cost. That Section 3(8)(c) includes a provision that permits a governmental unit to pursue an action in contract to seek recovery where a system has refused or failed to make such a reimbursement payment is of no relevance. This language is permissive in nature, not mandatory, and does not limit governmental units from seeking reimbursements owed under G.L. c. 32, § 3(8)(c) through an action in contract alone. Nor does it prohibit the aggrieved system from enforcing its right to reimbursement by pursuing an appeal to the Contributory Retirement Appeal Board (CRAB) under G.L. c. 32, § 16(4), in the event of another board's refusal to pay.

FACTUAL BACKGROUND

As the Magistrate's factual findings reflect, each of the individual retirees were members, with some years of creditable service early in their careers, of the Clinton Retirement System, before they finished their careers as members of MTRS. *See, e.g.,* Finding of Fact 6 (Susan Montagna worked in Clinton from January 1, 1976 to June 30, 1978 and from Jan. 1, 1979 to June 30, 1979). Thereafter, each retiree had many years of creditable service as members of MTRS, from which they each retired, between 2008 and 2010. Findings of Fact 7-10. Before each of them retired, the CRB notified MTRS, sometimes in response to an MTRS request to CRB that it take Section 3(8)(c) liability for the retiree, of each retiree's time of creditable service with CRB and the amount of retirement deductions CRB had taken for each of them. Findings of Fact 2-6.[3]

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employee's retirement allowance. *See* G.L. c. 32, §§ 1, 22(6)(a)(i) – (iii); PERAC Memorandum #23/2017. This is where the potential for a windfall for the earlier retirement system may occur if it does not reimburse in full the paying retirement system for its portion of the pension, as calculated by the actuary and taking into account the member's length of service in each system. G.L. c. 32, § 3(8)(c). As we noted in our decision in *MTRS v. Haverhill Ret. Syst*., CR-06-0051 (July 22, 2010), "Manifestly, the Legislature considered that, because the first contributory retirement system retains the employer contributions and all investment earnings, fairness and maintaining the financial integrity of the second contributory retirement system justifies making the first system liable, as determined by the actuary, for a portion of the member's total pension."

[3] MTRS sent its letter to CRB regarding its liability for a portion of the pension for Suzanne Mahoney on December 29, 2006, 3 ½ years before she actually retired. Findings of Fact 2, 10. The CRB disclosed to MTRS the details of Cynthia Rochford's service on March 1,

In November 2016, MTRS sent PERAC the information necessary to calculate CRB's Section 3(8)(c) liability for Suzanne Mahoney and, in February 2017, PERAC notified CRB that it owed MTRS $1,422.56 per year for its portion of Suzanne Mahoney's retirement allowance. Findings of Fact 11, 12, 13. In April 2017, MTRS sent PERAC the information necessary to calculate CRB's Section 3(8)(c) liability for Cynthia Rochford and, in September 2017, PERAC notified CRB that it owed MTRS $1,265.15 per year for its portion of Cynthia Rochford's retirement allowance. Findings of Fact 14, 15, 19. In July 2017, MTRS sent PERAC the information necessary to calculate CRB's Section 3(8)(c) liability for Patricia Kerrigan and, in November 2017, PERAC notified CRB that it owed MTRS $2,938.22 per year for its portion of Patricia Kerrigan's retirement allowance. Findings of Fact 16, 18, 20. Also in July 2017, MTRS sent PERAC the information necessary to calculate CRB's Section 3(8)(c) liability for Susan Montagna and, in November 2017, PERAC notified CRB that it owed MTRS $3,294.26 per year for its share of Susan Montagna's retirement allowance. Findings of Fact 17, 18, 21.

On February 6, 2018, and March 30, 2018, MTRS sent CRB spreadsheets listing all the amounts then owing MTRS for the portions of retirement allowances for which CRB had Section 3(8)(c) liability, including amounts for the four retirees involved here. Finding of Fact 22. On June 29, 2018, the CRB Administrator wrote back to MTRS, enclosing payment for the bulk of the monies due. She refused to pay, however, for "retroactive billing in excess of six years for four retirees [the ones involved in this case]." Finding of Fact 24; Petitioner Exhibit 10. Asserting that CRB "isn't liable for Section 3(8)(c) charges that go back further than six (6) years from the date issued," she refused to pay, and withheld, approximately $25,000. *Id*.

DISCUSSION

1. CRB first contends that we lack jurisdiction, as (in its view), an action in contract is the sole avenue for resolving a denial of a Section 3(8)(c) reimbursement request. Based on our interpretation of the language of the statute, as well as prior precedent, we disagree with

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2007, over 2 ½ years before she retired. Findings of Fact 3, 9. In April 2008, MTRS requested CRB accept its Section 3(8)(c) liability for Patricia Kerrigan, who retired in August of 2008. Findings of Fact 4, 5, 7. And, in July 2008, CRB advised MTRS of the creditable service attributed to the CRB for Susan Montagna, who then retired from MTRS in September of 2008. Findings of Fact 6, 8.

CRB's contention and instead find that we have the statutory authority to adjudicate MTRS's request for reimbursement.[4]

CRAB is delegated by law with "the final responsibility for the administration and uniform application of the retirement laws." *Kozlowski v. Contrib. Ret. App. Bd*., 61 Mass. App. Ct. 783, 786 (2004). Proceedings before CRAB are governed by G.L. c. 32, § 16(4), which provides:

> On matters other than those subject to review by the district court as provided for in subdivision (3), or other than those which would have been subject to review had the requirement for the minimum period of creditable service been fulfilled, any person when aggrieved by any action taken or decision of the retirement board or the public employee retirement administration commission rendered, or by the failure of a retirement board or the public employee retirement administration commission to act, may appeal to the contributory retirement appeal board by filing therewith a claim in writing within fifteen days of notification of such action or decision of the retirement board or the commission, or may so appeal within fifteen days after the expiration of the time specified in sections one to twenty-eight, inclusive, within which a board or the commission must act upon a written request thereto, or within fifteen days after the expiration of one month following the date of filing a written request with the board or the commission if no time for action thereon is specified, in case the board or the commission failed to act thereon within the time specified or within one month, as the case may be.

G.L. c. 32, § 16(4).[5] This broad language allows for "any person" aggrieved by an action of a retirement board, or by the failure of a retirement board to act, to appeal to CRAB. We interpret "any person" to include a retirement board (*i.e.*, a Chapter 32 retirement system) and consider our jurisdiction to extend to situations in which a retirement board is "aggrieved" by

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[4] CRB challenges the DALA decision by arguing that jurisdiction to enforce or interpret the provisions of Section 3(8)(c) is only proper in the district or superior court through an action in contract, and thus MTRS's use of the administrative review process under Section 16(4) is improper. CRB further argues that while Section 16(4) "provides the general administrative appeal process when a retirement board or PERAC action aggrieves a person," CRB Br. at *6, "the Legislature intended the sole remedy available to an aggrieved party would lie in a contract action in either the district or superior court, depending on the amount in controversy." *Id.* at *7. The language used in the statute itself, however, does not express any such limitation on the remedy available.

[5] There are exclusions to this broad language, but none are present in this appeal involving MTRS and CRB. G.L. c. 32, §§ 16(3)-(4).

a decision, typically of PERAC or of another board (as in this case). There is no doubt that a governmental agency can be a "person aggrieved," as that language is used in Section 16(4). Issues arise under the provisions of Chapter 32 between (and among) retirement boards and PERAC, for example, in various contexts; the cost sharing provisions in Section 3(8)(c), being just one example. And courts regularly adjudicate those disputes. *See Haverhill Ret. Syst. v. Contrib. Ret. App. Bd*., 82 Mass. App. Ct. 129 (2012); *Arlington*, 75 Mass. App. Ct. at 444-445. *See also Town of Marion v. Mass. Hous. Fin. Agency*, 68 Mass. 208, 210 (2007) (recognizing Town's potential standing as person aggrieved under G.L. c. 30A, § 14).[6]

This specific appeal involves G.L. c. 32, § 3(8)(c), which sets out the responsibilities between Chapter 32 retirement systems where a public employee retiree has accrued creditable service with two or more public employers to which different retirement systems pertain. *See Arlington*, 75 Mass. App. Ct. at 442 (quoting *Lexington v. Bedford*, 378 Mass. 562, 572 (1979)). Section 3(8)(c) provides:

> Whenever any retired member…receives a pension…from a system pertaining to one governmental unit in a case where a portion of such pension…is attributable to service in a second governmental unit to which another system pertains, the first governmental unit ***shall be reimbursed in full***, in accordance with the provisions of this paragraph, by the second governmental unit for such portion as shall be computed by the [PERAC] actuary…The treasurer of the first governmental unit shall annually, on or before January fifteenth, upon the certification of the board of the system from which said disbursements have been made, notify the treasurer of the second governmental unit of the amount of reimbursement due therefrom for the previous year and such latter treasurer shall

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[6] In our view, adopting a narrowed reading of "any person" is unreasonable as it would limit Section 16(4) appeals to just an individual aggrieved by a decision of a retirement board or PERAC such that a retirement board aggrieved by decisions of another board or PERAC would be unable to obtain relief under Section 16(4). *See, e.g., Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321, 329 (2015) ("'[O]ur respect for the Legislature's considered judgment dictates that we interpret the statute to be sensible, rejecting unreasonable interpretations unless the clear meaning of the language requires such an interpretation.'") (quoting *DiFiore v. Am. Airlines, Inc.*, 454 Mass. 486, 490-91 (2009)). Such an interpretation would also risk creating inconsistencies and confusion in the interpretation of Chapter 32, if similar or identical legal issues are subject to resolution either by a court's de novo review or CRAB's decision-making (and fact-finding) with deferential judicial review under c. 30A, solely based on the identity of the parties. And, by the same token, such a reading would create a grave risk of (and incentive for) parties to bypass the general legislative grant of authority to CRAB to consistently apply and construe the provisions of Chapter 32, in the first instance. *See, e.g., Retirement Bd. of Stoneham v. Mass. Teachers' Ret. Sys.*, 99 Mass. App. Ct. 1111, 2021 WL 628581, *1-3 (2021) (Rule 23.0 Decision).

> forthwith take such steps as may be necessary to insure prompt payment of such amount. All such payments due under the provisions of this paragraph from the second governmental unit shall be charged to the pension fund of the system pertaining thereto and as received they shall be credited to or appropriated for the pension fund of the system pertaining to the first governmental unit. In default of any such payment, ***the first governmental unit may maintain an action of contract*** to recover the same; provided that there shall be no such reimbursement if the two systems involved are the state employees' retirement system and the teachers' retirement system.

G.L. c. 32, § 3(8)(c) (emphasis added).

Thus, where a member is entitled to receive a pension due to service for two different governmental employers to which two different Chapter 32 retirement systems pertain, the system paying the pension is entitled to reimbursement from the earlier system for the portion of the pension attributable to that earlier creditable service. The amount of that obligatory reimbursement is determined by PERAC's actuary and the system paying the pension shall bill the earlier retirement system for that portion. This payment to the system paying the pension shall be reimbursed "in full" for the earlier system's portion of the pension. The statute provides for a schedule for seeking the reimbursement and permits the system owed reimbursement to maintain an action of contract if the prior system is "[i]n default of any such payment." G.L. c. 32, § 3(8)(c).[7]

The magistrate correctly rejected CRB's argument, determining that the statute does not "limit the first governmental unit to filing an action in contract," nor does it "close off other remedies to the MTRS," including an appeal to CRAB. *MTRS v. Clinton Ret. Bd*., CR-18-0438 at 7 (DALA 7/26/2019) (citing *MTRS v. Lynn Ret. Bd*. CR-10-134 (DALA 8/30/2013, aff'd CRAB Mar. 28, 2014)). Although the statute provides that, in default of payment, the first governmental unit "may maintain an action of contract," the DALA magistrate correctly held that "[t]he language 'may' clearly leaves the option of the MTRS ("first governmental unit") to pursue a remedy at its discretion." *Id*. Additionally, this reading of Section 3(8)(c) does not "render the 'action [of] contract' language" superfluous as

[7] Under G.L. c. 32, § 3(8)(a), when a member changes employment and becomes a member of a different retirement system, the monies in the member's annuity savings account must be transferred to the new retirement system's annuity savings fund.

claimed by CRB, *see* CRB Br. at *8, but rather, to permit aggrieved parties to resolve disputes related to Section 3(8)(c) by another means, and to give the board, at its option, judicial remedies for a breach of contract. This is so, even though the obligations between retirement systems are not a matter of contract but are entirely statutory.[8]

Our determination here is consistent with our past precedent. We have previously determined that "issues of reimbursement among governmental entities or retirement boards are properly addressed on appeal to DALA and CRAB by 'person[s] aggrieved' by a retirement board action under G.L. c. 32, § 16(4). We see nothing in the alternate contract action provided under § 3(8)(c) that would negate the appeal rights provided under § 16(4)." *Mass. Teachers' Ret. Sys. v. Lynn Ret. Bd.*, CR-10-134 (CRAB Mar. 2014). Rather, "[b]ecause retirement systems are the ultimate recipient of funds, much of the litigation surrounding reimbursements or 'liability,' under § 3(8)(c), is conducted between retirement systems," with retirement systems like MTRS being a "person … aggrieved" under G.L. c. 32, § 16(4). *Id.* at 3. The Superior Court in *Lynn Retirement System v. Contributory Retirement Appeal Bd. and MTRS* (14-CV-1402-B, Curran, J., Mar. 13, 2015), affirmed our determination, observing that "CRAB and DALA routinely decide disputes between retirement systems involving G.L. c. 32, § 3(8)(c); those decisions are routinely appealed to the Superior Court and appellate courts, and are done so under G.L. c. 30A and the Rules of Appellate Procedure. See generally *Haverhill Ret. Syst. v. Contributory Retirement Appeal Bd.*, 82 Mass. App. Ct. 129 (2012); *Arlington Contributory Retirement Bd., v. Contributory Retirement Appeal Bd.*, 75 Mass. App. Ct. 437 (2009)."

For these reasons, we conclude that MTRS appropriately filed its appeal under G.L. c. 32, § 16(4), and that we have jurisdiction to adjudicate this appeal in accordance with our broad statutory authority. *See, e.g., Retirement Bd. of Stoneham v. Mass. Teachers' Ret. Sys.*, 99 Mass. App. Ct. 1111, 2021 WL 628581, *1-3 (2021) (Rule 23.0 Decision). We

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[8] This provision is also consistent with a legislative intent to waive sovereign immunity under these limited circumstances, ensuring that the aggrieved system has available to it the contract remedies courts may provide. And, in order to enforce the ability of a system to actually collect monies that are owed it automatically by mandatory operation of statute, but where CRAB does not have the authority to actually enforce its orders, a court's enforcement mechanisms are thereby made available, in the event of a system's intransigence. See discussion, *infra*, of *State Bd. of Ret. v. Woodward*, 446 Mass. 698, 705-08 (2006).

accordingly turn to CRB's next argument—that there is a time limit on Section 3(8)(c) reimbursement requests.

2. CRB next asserts that the language in Section 3(8)(c) renders this a contractual matter, implicating the six-year statute of limitations, presumably set forth in G.L. c. 260, § 2. In CRB's view, allowing MTRS to recover for more than six years from the date of the reimbursement request would create an inequity, because CRB has not had the opportunity to properly budget for and pay out surprise retirees' funds. Therefore, CRB urges that any amount beyond six years from the date of the reimbursement request should be barred by the statute of limitations for actions in contract. Because there is no indication in the language or purpose of Section 3(8)(c) that the Legislature intended that Chapter 32 retirement systems (which includes the State Retirement System) be bound by a statute of limitations, we find CRB's argument unpersuasive. *Dep't of Pub. Welfare v. Anderson*, 377 Mass. 23, 32-33 (1979). *See also Commonwealth v. Owens-Corning Fiberglass Corp.*, 38 Mass. App. Ct. 600, 603 (1995) ("the Commonwealth is not bound by a statute of limitations unless it expressly consents to be bound by such a statute").

We begin with the language of Section 3(8)(c), which we find meaningful here for three distinct reasons. *Boston Ret. Bd. v. Contrib. Ret. App. Bd*., 441 Mass. 78, 83 (2004) (goal in interpreting a statute is to give effect to the Legislature's intent, beginning with the words of the statute); *Arlington*, 75 Mass. App. Ct. at 442 (intent of the statute must be ascertained from all its parts, and from the subject to which it relates; CRAB must interpret it so as to render the legislation effective, consonant with sound reason and common sense). First, Section 3(8)(c) does not contain a statute of limitations and its text instead reflects an express legislative directive that the first governmental unit (MTRS) be "*reimbursed in full*." G.L. c. 32, § 3(8)(c) (emphasis added). As the administrative agency with the responsibility of administering and uniformly applying the retirement laws, we conclude that this language shows the Legislature's intention to require full reimbursement by the second governmental unit for its proportional share of the pension cost. We see no other interpretation of Section 3(8)(c) that encompasses the overall purpose of the public pension system in the Commonwealth.

Second, as shown by the statute's plain language, the requirement that CRB pay MTRS is mandatory, the product of a legislative policy that such reimbursement take place by

operation of law. *See State Bd. of Ret. v. Woodward*, 446 Mass. 698, 705-08 (2006).[9] Indeed, Section 3(8)(c) provides that the second governmental unit shall be "reimburse[d] in full [by the first governmental unit] … for such portion of the pension as shall be computed by the actuary." The statute does not allow for any discretionary decision-making by the governmental entity, or the waiver, by a retirement system's inaction, of an important funding and distribution mechanism. Reimbursement under Section 3(8)(c) is an automatic legal consequence of the retirees having creditable service in multiple systems, here CRB and MTRS. This is especially the case where the obligation to make reimbursement is unquestioned and required by law, and the calculation of the amount of the payment is made by a third party (the PERAC actuary) and unlikely to be susceptible of genuine dispute. It is the Legislature's prerogative to assign obligations to governmental entities with Chapter 32 retirement systems, and nothing in that balance of responsibilities suggests any freedom on the part of one of the governmental entities to ignore or challenge the mandate on the grounds that a certain period of time has elapsed since the original obligation accrued.

Third, the time frames for billing other systems set forth in Section 3(8)(c) do not evince a legislative intent to bar the claims in the event of a delayed request for reimbursement. "When a statute or regulation 'relates only to the time of performance of a

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[9] The situation here is similar in many respects to *Woodward*, where the Supreme Judicial Court held that no limitations period applied to G.L. c. 32, § 15(4), forfeiture proceedings. 446 Mass. at 705-08. In *Woodward*, a Massachusetts state representative was convicted of crimes stemming from bribes paid to him by Hancock Mutual Life Insurance Company. *Id.* at 699. At least five years after these convictions, the State Board of Retirement informed Woodward that it was considering forfeiture of his retirement benefits under G.L. c. 32, § 15(4). *Id.* The Board of Retirement ultimately concluded that Woodward's benefits had, in fact, been forfeited, and Woodward appealed the determination under G.L. c. 32, § 16(3), to the Wrentham Division of the District Court Department. *Id.* at 700. Woodward argued that the Board of Retirement's ability to end his retirement benefits under Section 15(4) should be governed by the six-year contractual statute of limitations set out in G.L. c. 260, § 2 (the same statute of limitation CRB references in the present dispute). *Id.* In rejecting that argument, the SJC in *Woodward* distinguished between "actions in contract" and "mandatory" events occurring "by operation of law." *Id.* at 705-6. The SJC held that forfeiture under Section 15(4) "is mandatory and occurs by operation of law" and that it "is an automatic legal consequence of conviction of certain offenses," allowing no discretionary decision-making by the administrative agency (citation omitted). *Id.* at 705. The Court stressed that "[i]t would be illogical to permit the board to accomplish by inattention or inaction what it is prohibited from doing as a matter of discretion." *Id*. at 708.

duty by a public officer and does not go to the essence of the thing to be done, it is only a regulation for the orderly and convenient conduct of public business and not a condition precedent to the validity of the act done.'" *Anderson Insulation Co., Inc. v. Dep't of Pub. Health*, 48 Mass. App. Ct. 80, 85 (1999) (quoting *Cheney v. Coughlin*, 201 Mass. 204, 311 (1909)). We view those time frames as an attempt to provide orderly processes and to accommodate retirement systems' planning needs. But, standing alone, and in the absence of express language applying a statute of limitations to the first system's bills for reimbursement, we do not read into the provisions any potential bar to "full" reimbursement.

We next turn to the purpose of Section 3(8)(c), examining it in the context of the practical realities of Chapter 32 retirement systems. Here, CRB had the benefit of the retirees' services, and took in their retirement deductions, and does not deny liability for its share. A delay in MTRS's requests for reimbursement does not rationally allow CRB to alter its reimbursement of its proportional share of the pension due, as this frustrates the statutory purpose to maintain the financial stability of the entire public pension system and to proportionately spread the costs of retirement allowances among responsible systems via reimbursement in full. The magistrate here correctly explained that "[t]he spirit of the Legislature in its enactment of Section 3(8)(c) is to ensure long-term stability of all public pension plans in the Commonwealth of Massachusetts. Ergo, without full reimbursement from the CRB, the purpose of pension viability is harmed." *MTRS v. Clinton Ret. Bd*., CR-18-0438 at 7 (DALA 7/26/2019). *See Lynn Ret. Bd.* at 8, CR-18-0438 (DALA July 16, 2019) (*aff'd* CRAB Mar. 28, 2014). In *Lynn*, CRAB agreed with the magistrate further observing that "a delayed request for reimbursement cannot defeat the critical obligation that each unit bear its proportional share of the pension cost." *Lynn Retirement Board* at 2, CR-18-0438 (CRAB Mar. 28, 2014).

Our interpretation of Section 3(8)(c)'s purpose is consistent with the Appeals Court's decision in *Haverhill Retirement System v. Contributory Retirement Appeal Bd*., 82 Mass. App, Ct. 129, 132-133 (2012). There, the Appeals Court explained that Section 3(8)(c)'s purpose "is to ensure that a member of multiple contributory retirement systems will receive a pension based on all the member's years of creditable service to the full extent permitted by those retirement systems." 82 Mass. App. Ct. at 132-33. The court further elaborated that the statute "provides that the retirement system that recognizes service on other contributory

systems and that pays the pension portion of the benefit for all the years of service must be *recompensed in full* for the portion of the pension benefit attributable to service in another contributory system." *Id*. (emphasis added). And it added that "[f]ailing to require full funding of the retirement system that provides the pension benefit would defeat the statutory purpose of financial stability…and would discourage the detection and correction of errors in administration." *Id.* at 134.[10] Further, we note that the Appeals Court acknowledged that failing to require full funding to the retirement system that provides the pension benefit also "would visit a windfall on the system that received [the employer] contributions." *Id*. at 135. We found no public policy or could conceive of any that "the Legislature intended a retirement system in the position of [the earlier retirement system] to retain employer contributions and investment income, leaving a different retirement system entirely responsible for the pension portion of [the member's] retirement allowance." *MTRS v. Haverhill Ret. Syst*., CR-06-0051 *5-6.

All of this supports our conclusion that the Legislature made the language in Section 3(8)(c) mandatory to maintaining financial stability of the public retirement systems. G.L. c. 32, § 16(4) ("[T]he first governmental unit *shall be reimbursed in full…by the second governmental unit* for such portion of the pension as shall be computed by the actuary.") (emphasis added). Having "full" reimbursement required under G. L. c. 32, § 3(8)(c), is inconsistent with the imposition of the statute of limitations in G.L. c. 260, § 2.

3. While this matter was pending, the Supreme Judicial Court issued its decision in *Suburban Home Health Care, Inc. v. Executive Office of Health and Human Services, Office of Medicaid*, 488 Mass. 347 (2021), holding that a six-year statute of limitations applied to MassHealth's recoupment proceedings under the provisions of G.L. c. 118E.[11] The statutory

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[10] *See Lynn Ret. Board v. MTRS*, Do. No. 14-CV-1402-B (3/13/2015), at *3; *MTRS v. Clinton Ret. Bd*., CR-18-0438 at 8 (DALA 7/26/2019). *See also MTRS v. Lynn Retirement Bd*., CR-10-134 (DALA Aug. 30, 2013), *citing Goldberg v. Board of Health of Granby*, 444 Mass. 627 (2005).

[11] G.L. c. 118E governs payments made to providers under the Commonwealth's Medicaid program, and provides for, among other things, the recoupment of overpayments made to providers.

scheme, and MassHealth's regulations, set forth extensive processes for determining a provider's liability to repay MassHealth for overpayments to the provider, and the circumstances under which MassHealth could recoup the overpayments. The SJC decided that MassHealth had six years to initiate recovery proceedings from the time it received relevant records from the provider. In its decision, the SJC determined that the essential nature of the right at issue between MassHealth and the home health care provider was contractual in nature and that most of the concerns underlying statutes of limitations were implicated because "most, if not all, of the concerns underlying statutes of limitations [were] implicated here." *Id*. at 352.[12] In supplemental briefing, CRB urges us to extend *Suburban* from Chapter 118E to Chapter 32. We decline to do so for three reasons.

First, unlike in *Suburban*, there is no contractual claim at issue here, nor are the concerns underlying a statute of limitations implicated in this type of case. No contractual agreement between the two governmental entities exists here, let alone a relationship between a governmental entity and a private party.[13] The obligation of the second governmental unit to reimburse the first governmental unit for its proportional share of the pension payments occurs by operation of law and is a mandatory aspect of being a Chapter 32 retirement system participant. The provision of a contractual cause of action simply gives the aggrieved

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[12] Of note, Suburban (the provider) was required to sign a provider agreement with the Office of Medicaid, promising to provide goods and services, comply with all applicable laws, and maintain the necessary records and provide them upon request. In return, MassHealth promised to reimburse Suburban.

[13] This division of responsibilities and liabilities is, as well, between separate governmental entities and not, as in *Suburban*, a private business or individual and a government benefits system. As well, CRB does not deny that the members, who are the subject of the reimbursement requests, had service with it, nor has CRB argued that the calculations made by PERAC's actuary were incorrect. Indeed, the evidentiary source for the calculation of the amount the second retirement system must pay is based on the employment, payroll, and retirement deduction records of the second retirement system itself, or those of its participating government employers. Witness testimony is extremely unlikely to be needed. Moreover, the records upon which all retirement allowance and pension calculations and decisions are made are likely to be decades old, in many cases, because such calculations reflect the entirety of a member's career. For the same reason, there is no concern for a retirement system's "sleeping on its rights" or a retirement system being entitled, at some point, to "repose" from a risk of liability.

retirement system access to contractual judicial remedies and a way to obtain the enforcement authority of the court.

Second, the fundamental purpose of a statute of limitations is to "promote efficient, accurate, and equitable resolution of disputes, requiring parties to proceed within a reasonable amount of time of notice of the claim when evidence is available and before memories fade." *Suburban*, 488 Mass. at 351 (citing *Klein v. Catalano*, 386 Mass. 701, 709 (1982)). Imposition of a statute of limitations "discourage[s] plaintiffs from sleeping on their rights," *id*. (citing *Artis v. District of Columbia*, 138 S. Ct. 594, 608 (2018)), and "helps to preserve the integrity and accuracy of the judicial process by ensuring that courts have sufficient, reliable evidence to decide cases," *id.* (citing *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-449 (1944)). But the fundamental purposes discussed in *Suburban* for applying a statute of limitations—discouraging a party from sleeping on its rights and preserving the accuracy and reliability of evidence, *see id*. at 351—simply do not exist here.[14] Every retirement system is aware, from the first day of an employee's membership in the system, of the potential for it to be liable to make pension payments, years into the future. That liability stretches throughout the vested member's lifetime, *and* a beneficiary's lifetime, depending on the option the retiree has chosen. Thus, where an employee has, at any time in his or her career, been a member of a public retirement system, that retirement system *must* anticipate that, at some time in the future, it might be liable for future pension payments. Section 3(8)(c) helps to ensure that likelihood. And it commits every retirement system to pay its "full" share of such future pension liabilities. Indeed, CRB maintained the retirees' records here back to the 1970's, was aware of its liability, and provided MTRS the pertinent records at the time of, or before, the retirees' actual dates of retirement.

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[14] We do not read *Suburban* as establishing a presumptive rule that all administrative agencies' statutory and regulatory collection or recoupment obligations are subject to some statute of limitations, the precise one to be decided by the court, if there is an absence of legislative language expressly exempting the process from a limitations period. For the reasons explained above, the categorical public financial importance of spreading the cost of pension payments among responsible systems, the absence of nearly any concern for those policies underlying limitations periods, and the absence of any legislative language intending to impose such a limitations period all warrant not reading a statute of limitations into the statutory language here.

Third, Section 3(8)(c) "provides that the retirement system that recognizes service in other contributory systems and that pays the pension portion of the benefit for all the years of service must be recompensed in full for the portion of the pension benefit attributable to service in another contributory system." *Haverhill Ret. Sys.*, 82 Mass. App. Ct. at 133. "The Legislature's choice of, and reliance on, the actuarial calculation of the cost of the pension benefit, rather than a simple reimbursement of employer contributions (with or without earnings due), reflects a legislative commitment to calculating the liability of the transferring fund in such a way that the receiving fund is *fully compensated* for the true actuarial cost of the pension benefit." *Id.* (emphasis added). This allows retirement systems to "spread some of the cost of the pension to those other" responsible systems. *Lexington v. Bedford*, 378 Mass. at 572. Where the Legislature sought to avoid "the imposition on paying units of the burden of bearing the entire cost of a pension when the pension was based on creditable service elsewhere," *Arlington*, 75 Mass. App. Ct. at 444-445, recognizing a statute of limitations defense would be inconsistent with that purpose.

For these reasons, we conclude that the fundamental purpose for imposing a statute of limitations, as in *Suburban,* do not apply here. We further find that the nature of the claim between the governmental entities is not contractual in nature. And even if a six-year statute of limitations in G.L. c. 260, § 2, applies to the contract action made necessary by a system's refusal to pay an invoice, that limitations period would run from the breach, which in this circumstance is CRB's 2018 refusal to pay the MTRS invoice.[15] *See LeMaitre v. Mass. Turnpike Auth'y*, 70 Mass. App. Ct. 634, 637 n.10 (2007) (the general rule is that a contract

[15] CRB's argument also begs the question of when an alleged contractual action accrues, from which any statute of limitations would begin to run. Here, Section 3(8)(c) authorizes "an action of contract" "in default of any [reimbursement] payment." The breach, therefore, occurred upon "default" or refusal to pay, in violation of the statute's requirements. MTRS's resort to CRAB for enforcement took place well before six years from the CRB refusal to pay. *See Melrose Hous. Auth. v. New Hampshire Ins. Co.*, 402 Mass. 27, 32 (1988) (contract claim accrues at time of breach).

action accrues at the time the contract is breached). Thus, in any event, no limitations period had passed here.[16]

CONCLUSION

For the reasons set forth herein, the judgment of the DALA magistrate is affirmed.

SO ORDERED.

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[16] We would add that we do not condone or encourage any retirement system's undue delay in seeking the reimbursement it is owed under Section 3(8)(c). It would certainly serve important interests in the full funding of public retirement systems and in the predictability of budgeting for payment of such liabilities for such requests to be made in a timely manner. *See, e.g.,* PERAC Memorandum #23/2017, #37/2017; and PERAC Calculation Policy 15-001. We simply decide that there is no reason to read into the provisions for reimbursement and sharing of costs enacted by the Legislature any provision for extinguishing rights in, and responsibilities for, such cost sharing by importing a contract-based limitations provision from outside of Chapter 32. This is especially true given the financial importance of such cost-sharing provisions.

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