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COMMONWEALTH OF MASSACHUSETTS

The Appeals Court

PLYMOUTH COUNTY, SS.

No. 2018-P-1221

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PLYMOUTH COUNTY RETIREMENT BOARD,  
*Plaintiff-Appellee,*

v.

CONTRIBUTORY RETIREMENT APPEALS BOARD,  
*Defendant-Appellant.*

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APPEAL FROM A JUDGMENT OF THE PLYMOUTH COUNTY SUPERIOR COURT

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**BRIEF OF THE CONTRIBUTORY RETIREMENT APPEALS BOARD**

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### **QUESTIONS PRESENTED**

The Contributory Retirement Appeal Board (CRAB) is the agency charged with adjudicating disputes that arise under the Commonwealth's public employee retirement statute and, accordingly, is the agency with expertise in the interpretation and application of that statute, G.L. c. 32 (Chapter 32). The question presented in this appeal is:

Whether the Superior Court erred in vacating CRAB's decision that Chapter 32 requires a member of the retirement system who previously served as a permanent-intermittent police officer for the same governmental unit, and was compensated for that service, to remit make-up payments to the Commonwealth's contributory retirement fund in order to obtain retirement credit for such service?

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

This is an appeal from the Superior Court's conclusion that CRAB incorrectly interpreted a provision in Chapter 32 concerning a member's right to retirement credit for service provided prior to membership in the system. CRAB asks this Court to reverse the Superior Court's substitution of its own

interpretation of that provision, and to affirm CRAB's reasonable interpretation of the statute it is charged with administering.

### **Prior Proceedings**

On March 19, 2014, the Plymouth County Retirement Board ("the Board"), wrote to Antonio Gomes ("Gomes"), a member of the Plymouth County retirement system, informing him that in order to receive retirement credit for his prior service as a permanent-intermittent police officer for the town of Plymouth, it was necessary for him to remit make-up payments. Gomes appealed the decision to the Division of Administrative Law Appeals (DALA). RA. 33.

During the proceeding before DALA, the magistrate joined the Public Employee Retirement Administration Commission (PERAC), the state agency charged with overseeing local retirement boards, as a necessary party. RA. 24.

The DALA magistrate entered judgment in favor of the Board's decision. RA. 36, 47. The Board (which changed its position and now argued that Chapter 32 did not require make-up payments) appealed to CRAB, which affirmed the magistrate's decision and held that

make-up payments were required under the statute.

RA. 49, 59;

The Board timely appealed CRAB's decision to the Superior Court under G.L. c. 30A, § 14. On June 27, 2018, following briefing and a hearing on the Board's motion for judgment on the pleadings, the court entered judgment against CRAB and in favor of the Board. RA. 6-7.

### **Statement of Facts**

The individual at the center of this dispute over the meaning of a statute is Antonio Gomes, a police officer for the town of Plymouth. RA. 40. For Gomes, and others similarly situated, the outcome of this case will determine whether he will receive, at no cost, five years of full-time retirement credit for years he worked as a permanent-intermittent police officer before becoming a member of the Plymouth County retirement system.

Gomes worked for the town of Plymouth as a permanent-intermittent police officer from June 21, 1987 to July 31, 1992. RA. 50. In each of the years he was so employed, Gomes worked and was compensated. RA. 50. Gomes was not, at that time, a member of the Plymouth County retirement system. RA. 50.

The town of Plymouth appointed Gomes to the position of a full-time police officer on July 31, 1992. RA. 40. Gomes became a member of the Plymouth County retirement system on October 4, 1992. RA. 50.

After becoming a member of the retirement system, Gomes sought retirement credit for his prior service as a permanent-intermittent police officer. RA. 41. The Board had always interpreted Chapter 32 to require an individual such as Gomes to "remit contributions and interest to the System in order to receive credit rendered as a reserve [or permanent-intermittent] police officer." RA. 33. Accordingly, on September 1, 1998, the Board sent a letter to Gomes in which it informed him he would need to pay \$5,266.35 to purchase his prior creditable service. Gomes made the payments over a two-year period. RA. 41.

In March of 2003, it became evident that PERAC interpreted Chapter 32 differently from the Board. Under PERAC's interpretation, Gomes did not have to pay for the prior creditable service. RA. 41. PERAC therefore ordered the Board to refund Gomes the money he had paid, with interest. The Board did so. RA. 41.

At the time PERAC issued its order to the Board, CRAB had not yet opined on these differing interpretations. However, CRAB finally did do so in June of 2013, in the case *MacAloney v. Worcester Regional Ret. System, et. al.*, CR. 11-19 (CRAB June 21, 2013) (Add., p. 120); RA. 41.

In *MacAloney*, CRAB held that a member of a retirement system who had previously served as a call-firefighter (and by extension, a permanent-intermittent police officer such as Gomes) must remit make-up payments pursuant to § 4(2)(c) of Chapter 32, before receiving retirement credit for that pre-membership service. (Add., p. 141) The *MacAloney* decision superseded PERAC's position that the statute did not require make-up payments to receive credit for such prior service. RA. 31, 42.

In light of *MacAloney*, and a PERAC memorandum distributed to retirement boards notifying them of the change, the Board wrote Gomes a letter in which it stated that it "ha[d] no choice but to require police officers and firefighters who originally paid for service, and then were issued refunds at PERAC's direction, to remit those funds previously refunded, together with buyback interest from June 21, 2013 [the

date CRAB decided *MacAloney*].” RA. 34. Gomes then appealed under G.L. c. 32, § 16(4).

### **Statutory Background**

#### **1. The Commonwealth’s Contributory Retirement System.**

Under the Commonwealth’s contributory retirement system for public employees, a municipality is permitted to establish a contributory retirement system for its employees, as are counties. G.L. c. 32, §§ 20(3), (4) (Add., p. 78, 80).<sup>1</sup> There are over a hundred such contributory retirement systems in the Commonwealth, and each system is governed by a retirement board. *Id.* at § 20(1)(b). (Add., p. 77) The retirement board must manage the retirement system “in a manner consistent with applicable laws,” *Ret. Bd. of Stoneham v. Contributory Ret. Appeal Bd.*, 476 Mass. 130, 132 (2016), citing G.L. c. 32, § 20(4)(b), (5)(b). The contributory retirement system as a whole is overseen by PERAC. *Boston Ret. Bd. v. Contributory Retirement Appeal Board*, 441 Mass. 78, 84 (2004).

Public employees who are a member of a retirement system are statutorily required to contribute a

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<sup>1</sup> CRAB has included all relevant sections of Chapter 32 in the Addendum to this brief.

portion of their salary to the system. G.L. c. 32, §§ 22(1)(a)-(f). (Add., p. 93-96) The public employer also contributes into the retirement system on behalf of its employees who are members. *Id.* at § 22(7)(c). (Add., p. 105) The fiscal health of the various retirement systems depends upon these monetary contributions. *Id.* at § 22; *Rockett v. State Bd. of Ret.*, 77 Mass. App. Ct. 434, 439-40 (2010) (describing the contributory retirement system as a system “maintained by deductions from the compensation paid to its members”).

In exchange for their contributions, members of a retirement system receive a retirement allowance based upon the total years and months of “creditable service” connected to their public employment. See G.L. c. 32, §§ 5(1)(a) & 10(1); *Jette v. Norfolk County Ret. Bd.*, CR-14-720 (CRAB October 23, 2017) (“The law is intended to provide retirement benefits for public employees within the Commonwealth based on their years of service, age, and compensation”) (Add., p. 169).

This case requires the court to consider language in Chapter 32 that governs “creditable service” that may be available to a member of a retirement system

for prior periods of service in the same governmental body. More specifically, the language addresses service provided as a non-fulltime or temporary employee prior to becoming a member of the retirement system, and the member's payment obligations when credit for such service is requested by a former permanent-intermittent police officer. The applicable language dates from 1945, as modified by two amendments in 1964 and 1965. See St. 1945, c. 658; St. 1964, c.125; St. 1965, c. 73. (Add., p. 114-117)

**2. Retirement Credit for Part-Time,  
Provisional, Temporary, Temporary  
Provisional, Seasonal, or Intermittent  
Employment or Service.**

The Legislature delegated to local retirement boards the exclusive authority to determine whether, and under what conditions, "part-time, provisional, temporary, temporary provisional, seasonal or intermittent" employees may become members of the retirement system.<sup>2</sup> G.L. c. 32, § 3(2)(d) ("the board shall have and exercise full jurisdiction to

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<sup>2</sup> The exclusive authority is limited only to the extent that "any person holding a position for which the annual compensation is fixed in an amount of two hundred dollars or less shall not be eligible for membership except by vote of the board." *Id.*, § 3(2)(d). (Add., p. 52)

determine" eligibility for membership) (Add., p.52). Depending in part on the circumstances of each case, such employees have been variously referred to by the courts as "non-fulltime employees," *Retirement Bd. of Stoneham*, 476 Mass. at 137, "non-permanent employees," *Manning v. Contributory Ret. Appeal Bd.*, 29 Mass. App. Ct. 253, 255 (1990), and "part-time" employees, *Gallagher v. Contributory Ret. Appeal Bd.*, 4 Mass. App. Ct. 1, 7-8 (1976).<sup>3</sup> CRAB will hereinafter refer to the group as a whole as non-fulltime or temporary employees.

After a board chooses to allow non-fulltime or temporary employees membership (and establishes the eligibility criteria), § 4(2)(b) of Chapter 32 provides a retirement board with considerable discretion to determine the amount of credit a member may receive for non-fulltime service. G.L. c. 32, § 4(2)(b) (providing boards with the authority to "fix and determine how much service in any calendar year is

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<sup>3</sup> Other employees' eligibility for membership is dependent upon the satisfaction of statutory criteria. *Stoneham*, 476 Mass. at 135-136 (noting membership comes through statutory criteria or, for non-fulltime members, "the action of a local retirement board").

equivalent to a year of service") (Add., p. 72-73).<sup>4</sup>

Section 4(2)(b) does not include any instructions with respect to the members' payment obligations. However, there is no dispute that these temporary or non-fulltime members must pay into the system to receive credit for their service. See G.L. c. 32, § 22 (Add., p. 93); *Rockett*, 77 Mass. App. Ct. at 439-40.

A retirement board also has some discretion to determine the amount of credit its members may receive for prior (i.e., pre-membership) non-fulltime or temporary service performed for the governmental unit. Pursuant to § 4(2)(c):

In the case of any employee of any governmental unit who is a member of the retirement system pertaining thereto, the board may allow credit, upon whatever proportionate basis it shall determine . . . for any previous period of part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service . . .

(Add., p. 74) Language delegating this discretion to local boards is also found in the second sentence of § 4(2)(b), which reads, in relevant part:

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<sup>4</sup> The rules must be approved by PERAC, and, under § 4(1)(a), "in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year."

In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit . . . the board shall fix and determine the amount of creditable *prior service*, if any, and the amount of credit for membership service[.]

(Emphasis added) (Add., p. 74). That said, the Legislature did impose exceptions to this broad grant of discretion.

The exceptions are set forth in two provisos in § 4(2)(b). First, with respect to seasonal employees, a board is required to credit "as the equivalent of one year of service, actual full-time service of not less than seven months during any one calendar year." *Id.* at § 4(2)(b).

Second, and most relevant here, with respect to reserve or permanent-intermittent police officers, and permanent-intermittent and call fire-fighters who later become permanent members of the fire department, the board must, *if* it chooses to grant such persons membership,

credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer . . . was on his respective list and was eligible for assignment to duty[.]

*Id.* Thus, for instance, a reserve or permanent-intermittent police officer who was eligible for duty

for two years would receive full-time credit for those two years. This is true even if the individual did not perform any service. See *id.* ("and was eligible for assignment to duty" (emphasis added)).<sup>5</sup>

3. **Paying for Retirement Credit for Previous Periods of Part-time, Provisional, Temporary, Temporary Provisional, Seasonal, or Intermittent Employment or Service.**

As explained above, a retirement board may grant a member retirement credit for pre-membership service (prior service) as a non-fulltime or temporary employee for that governmental body. Section 4(2)(c) governs members' payment for credit for prior service. It allows for credit for prior service

*provided, that . . . he pays into the annuity savings fund . . . make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation . . . together with buyback interest.*

G.L. c. 32, § 4(2)(c) (emphasis added) (Add., p. 74).

In short, to receive credit for prior service, a member must remit the amount she or he would have paid

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<sup>5</sup> The Legislature's 2009 amendment to G.L. c. 32, § 4(1)(o), could significantly limit the reach of this five-year provision. See St. 2009, c. 21, § 25. (Add., p. 44). While the issue is not presented in this case, under the new § 4(1)(o), after 2009, "creditable service" cannot include service where the individual received compensation of less than \$5,000 annually.

through withdrawals as a member, plus interest.

*See, id.*

#### **SUMMARY OF THE ARGUMENT**

CRAB's application of the requirement in § 4(2)(c) that members pay for credit for pre-membership service to Gomes's application for five years of creditable service is consistent with the plain language of that section. CRAB's interpretation also recognizes that a statute should be construed as a whole, so that it serves the Legislature's intended purpose. After considering the meaning of the section of Chapter 32 most relevant to the question presented -- namely, § 4(2)(c) -- CRAB considered other sections of Chapter 32. Those sections establish that CRAB's reading of the statute is consistent with Chapter 32 as a whole, as well as the function of a contributory retirement system more generally. It should therefore be upheld as reasonable. Pp. 20-26.

The Superior Court's reasoning should be rejected because it fails to defer to CRAB's reasonable construction of the statute and, in so doing, ignores the clear signal of legislative intent in § 4(2)(c). The court incorrectly began its analysis with § 4(2)(b) and then refused to move beyond it. The

court therefore missed the Legislature's creation of a payment obligation in the very next subsection.

Accordingly, the court's interpretation does not serve the intended purpose of the statute. Pp. 26-28.

The Superior Court also erred in its reading of this Court's decision in *Lawrence Retirement Board v. Contributory Retirement Appeal Board*. In *Lawrence*, this Court considered § 4(1) as a whole and held that because the majority of subsections in § 4(1) did contain a payment requirement, the absence of such a requirement in § 4(1)(b) indicated a legislative intent not to create one. The Court noted that it could not create a payment obligation the Legislature clearly did not intend to create. But in this case, the Superior Court failed to consider § 4(2) as a whole - a section that does indeed impose a payment requirement for non-fulltime or temporary employees. Here, then, CRAB's interpretation of § 4(2) is wholly consistent with *Lawrence*, and it is the Superior Court that deviated from the Legislature's intent by effectively creating a new exception in § 4(2)(c) not present in the statute itself. Pp. 28-30.

And the Superior Court further erred in finding, despite CRAB's reasonable interpretation to the

contrary, that permanent-intermittent police officers do not fall within the scope of the payment provision in § 4(2)(c). Indeed, the Superior Court's reading of the statute is itself unreasonable and contrary to common sense, because the end-result is to leave permanent-intermittent police officers with no clear path to membership in the retirement system. And yet, the Legislature clearly contemplated that such membership would be possible. Pp. 31-34.

Nor is CRAB's reasonable reading of the statute undermined by a different CRAB decision relied on by the Board below, *Grimes v. Malden Retirement Board*, CR-15-5 (November 18, 2016). In *Grimes*, the Malden Retirement Board did not compensate Grimes for the time he served as a reserve police officer, and therefore the Legislature's formula in § 4(2)(c) for establishing the amount due for the purchase of prior service resulted in free service for Grimes. But an arguably inequitable result between Gomes and Grimes does not establish an error in CRAB's statutory interpretation. The allowance of five years of creditable service irrespective of how much service is actually performed - as § 4(2)(b) indisputably requires for reserve or permanent-intermittent police

officers, and permanent-intermittent and call fire-fighters - will necessarily result in some inequity. And, to the extent that inequity is furthered by the payment formula, the remedy must be created by the Legislature, not the courts. Pp. 34-36.

### **ARGUMENT**

#### **I. CRAB's Interpretation of § 4(2)(c) is a Reasonable Construction of a Statutory Provision Concerning Retirement Credit and Payment for Prior Non-Fulltime or Temporary Service.**

The Plymouth County Retirement Board allows members such as Gomes to be credited for previous periods of non-fulltime or temporary employment. RA. 33. Therefore, under § 4(2)(b), because Gomes' prior service was as a permanent-intermittent police officer, the Board must credit Gomes five years of full-time service for the first five years he served as a permanent-intermittent police officer for the town of Plymouth. See G.L. c. 32, § 4(2)(b) (board must "credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer . . . was on his respective list and was eligible for assignment to duty"). The question here is whether, as for other members obtaining credit for prior non-fulltime or temporary service, § 4(2)(c) requires

Gomes to first remit make-up payments "in the amount of what would have been withheld as regular deductions."

The starting point for all questions of statutory interpretation is the plain language of the statute, considered in the context of the statutory scheme as a whole. *City of New Bedford v. Energy Facilities Siting Council*, 413 Mass. 482, 485 (1992) ("the language of the statute [is] the principal source of insight into Legislative purpose") (internal quotations and citations omitted); *Ret. Bd. of Stoneham*, 476 Mass. at 135 ("Courts must look to the statutory scheme as a whole").

In this case, the plain language of § 4(2)(c), and the statutory scheme that is Chapter 32, establish that CRAB reasonably answered the question presented in the affirmative, and the Board did not meet its heavy burden to demonstrate the invalidity of CRAB's interpretation. *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 263-64 (2001) (in challenge to agency ruling, plaintiff "bore the burden of demonstrating the invalidity of the commission's ruling"). See also *Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 463 (1985) (in

the area of retirement law "the need for judicial deference is particularly true"); *Rockett*, 77 Mass. App. Ct. at 437-38 (acknowledging complexity of retirement law and "that CRAB has been charged with a principal role in interpreting" Chapter 32).

**A. Section 4(2)(c) of Chapter 32 Requires That a Member Who, Prior to Becoming a Member, Received Compensation While Performing Non-Fulltime or Temporary Service, Must Remit Make-Up Payments As a Condition of Obtaining Retirement Credit.**

The section of Chapter 32 that governs payment obligations for retirement credit for prior non-fulltime or temporary service for the same governmental body is 4(2)(c). Thus, the inquiry into meaning begins there. *Ret. Bd. of Stoneham*, 476 Mass. at 135. Section 4(2)(b), while relevant, performs a different function - namely, it establishes how much prior service a member may be entitled to receive.<sup>6</sup>

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<sup>6</sup> It is possible to read certain ambiguous language within § 4(2)(c) as suggesting that the scope of "previous period" of service is limited to service performed prior to January 1, 1946, and, similarly, to read the second sentence of § 4(2)(b) as suggesting that it is limited to "prior service" and "membership service" pre-dating January 1, 1946. See e.g., G.L. c. 32, § 4(2)(c) ("under the provisions of the law or under the board's rules and regulations in effect during such previous period before eligibility for membership, established either by law or board ruling in effect prior to January first, nineteen hundred and forty-six, for which such service credit was given

(footnote continued)

In § 4(2)(c) the Legislature provided boards with discretion to grant credit for prior service, but imposed a financial condition. A member must pay "into the annuity savings fund" the amount that "would have been withheld as regular deductions" during his prior period of service. G.L. c. 32, § 4(2)(c). Thus, from the plain language of the statute, because the Board chose to provide Gomes with credit for his prior service, Gomes must pay for the credit consistent with the terms of § 4(2)(c).

Other statutory provisions in Chapter 32 support CRAB's interpretation. *Leary v. Contributory Ret. Appeal Bd.*, 421 Mass. 344, 347 (1995) (quoting *Holbrook v. Holbrook*, 1 Pick. 248, 250 (1823)) (when

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(footnote continued)  
upon attaining membership"). CRAB has not so read these provisions, and to so read them would render the usefulness of the section nearly extinct. It is well-settled that "[w]here the draftsmanship of a statute is faulty or lacks precision, it is [the court's] duty to give the statute a reasonable construction." *School Comm. of Greenfield v. Greenfield Ed. Ass'n*, 385 Mass. 70, 79-80 (1982). Here, it would be unreasonable to apply the terms of the subsection to such a limited population of individuals. This is particularly true given that the Legislature has repeatedly amended the two sections, which indicates that it also views the subsections as forward-looking components of the retirement system. See e.g., St. 1964, c.125 (Add., p. 114); St. 1965, c. 73 (Add., p. 116); St. 1988, c. 172 (Add., p. 118).

interpreting a statute "it is proper, no doubt, to look into the other parts of the statute").

To begin with, the Legislature's decision to require payment for such credit in § 4(2)(c) accords with the fact that the statute does typically require most members to pay for credit for non-membership service. Under § 4(1) of Chapter 32 there are an abundance of opportunities for a member to obtain credit for non-membership service. See, e.g., G.L. c. 32, § 4(1)(b)-(n), (p)-(s).<sup>7</sup> In the majority of situations where the Legislature granted credit, the Legislature required members to pay for the credit. See, *Lawrence Ret. Bd. v. Contributory Ret. Appeal Bd.*, 87 Mass. App. Ct. 1124 (2015) (unpublished decision) (noting thirty-two sections and subsections in the retirement law explicitly requiring payment for creditable service, and approximately nine sections that do not) (Add., p. 42). However, in § 4(1) the Legislature did not adopt -- as it did in § 4(2) -- a uniform formula for determining the cost of the

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<sup>7</sup> Section 4(1) contains other provisions as well, including the general rule that "[a]ny member in service shall . . . be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto." G.L. c. 32, § 4(1)(a). (Add., p. 63)

creditable service. Compare G.L. c. 32 §§ 4(1)(g <sup>1</sup>/<sub>2</sub>), (l <sup>1</sup>/<sub>2</sub>), (q), (s), with *id.* §§ 4(1)(h), (h <sup>1</sup>/<sub>2</sub>), (l <sup>3</sup>/<sub>4</sub>), (n), (p). (Add., p. 63-71)

Similarly, § 3 of Chapter 32 includes other categories of non-membership creditable service, and the Legislature also consistently required the member to pay for the credit. See, e.g., G.L. c. 32, § 3(3) (make-up payments for late entry into membership); § 3(5) (requiring payment for credit for intra-state service where no system existed); § 3(6) (make-up payments for reinstatement or re-entry into active service); § 3(8) (make-up payments by member who withdrew contributions after separation from service and is reestablishing membership). (Add., pp. 55-61)

These provisions requiring payment for credit are, moreover, not surprising in light of the statutory scheme as a whole. Chapter 32 is, after all, a "contributory" retirement system, which necessarily requires contributions for the system to remain solvent. See *Rockett*, 77 Mass. App. Ct. at 439-40. This is not to say that the Legislature cannot exempt certain members from paying for credit - but such is certainly not the case here, where § 4(2)(c) expressly requires payment for credit for

past non-membership service by non-fulltime and temporary service.

In sum, § 4(2)(c) by its plain terms creates a general rule that credit for prior service may be granted only if the member remits make-up payments in the amount that would have been withheld had the person been a member at the time of the service. Accordingly, CRAB's interpretation of the statute was eminently reasonable. See Saving clauses, exceptions, provisos, 1A Sutherland Statutory Construction § 20:22 (7th ed.) (noting that when "a statute announces a general rule and makes no exception to that rule, a court is ordinarily not authorized to create an exception or add a qualifying provision not intended by the lawmakers").

**B. The Superior Court's Disregard of § 4(2)(c) and Exclusive Focus on § 4(2)(b) Contravenes the General Rule that a Statute Should be Construed as a Whole to Produce an Internal Consistency.**

Neither the Superior Court -- nor the Board -- offer alternative arguments that could support the conclusion that CRAB's interpretation of the statute is unreasonable. *Boston Ret. Bd.*, 441 Mass. at 82. (where CRAB's statutory interpretation is reasonable,

the court should not supplant it with its own judgment).

The error in the court's alternative interpretation flows from its complete disregard of all of § 4(2)(c). In the court's view, because § 4(2)(b) directs retirement boards who choose to provide credit for non-fulltime or temporary prior service to provide police officers such as Gomes with full-time credit, for a maximum of five years, for any period of time he was on a list and eligible for assignment to duty, and because § 4(2)(b) itself does not contain a payment requirement, the credit is therefore free. RA. 15. Thus, the court concluded, there was "no need to refer to § 4(2)(c)" at all. RA. 16. As explained below, this is not a reasonable construction of the statute.

**1. The Superior Court's Analysis Contravenes Basic Principles of Statutory Construction.**

The court's reasoning violates the cardinal rule that, when construing a statute, the statute must be read as a whole "to produce an internal consistency." *Telesetsky v. Wight*, 395 Mass. 868, 873 (1985). To stop reading at the end of § 4(2)(b) is illogical, because the very next subsection answers the question

presented. The Legislature could not reasonably have adopted the payment obligation included in § 4(2)(c) for some purpose other than to specify the formula for calculating the cost of prior creditable non-fulftime or temporary service referenced in § 4(2)(b).

The court's construction violates another rule as well because the interpretation necessarily means that, although the Legislature did not expressly say so, its intent in § 4(2)(b) was to exempt reserve and permanent-intermittent police officers from the payment requirement found in § 4(2)(c). But a court must not "read into the statute a provision which the Legislature did not see fit to put there, nor add words that the Legislature had an option to, but chose not to include." *Commissioner of Correction v. Superior Court Dep't of Trial Court For Cty. of Worcester*, 446 Mass. 123, 126 (2006).

**2. Neither § 4(1)(b) nor this Court's Lawrence Decision Supplies a Persuasive Reason for Ignoring the Clear Mandate of § 4(2)(c).**

The Superior Court's reliance on the decision *Lawrence Ret. Bd.*, 87 Mass. App. Ct. at 1124, and G. L. c. 32, § 4(1)(b), to support its faulty analysis of the plain language of the statute is misplaced.

RA. 14. In *Lawrence*, the Appeals Court concluded that

the absence of a payment requirement in § 4(1)(b), and the nonexistence of any payment requirement elsewhere, necessitated a finding that the member seeking credit for non-membership service did not need to pay for the retirement credit. (Add., p. 42-43) Seizing on this reasoning, but without considering the structural differences between § 4(1) and § 4(2), the Superior Court below found the same must be true with respect to a permanent-intermittent police officer's right to prior creditable service. RA. 16. ("Similarly here, § 4(2)(b) allows credit for Gomes' prior service without requiring payment"). To the contrary, *Lawrence* actually supports CRAB's interpretation of the statute.

The differences between the respective statutory sections are significant. In *Lawrence*, the court came to its conclusion only after noting that, in the many subsections that comprise § 4(1), the Legislature had generally expressly required payment, but failed to do so in subsection (b). 87 Mass. App. Ct. at 1124. (Add., p. 42-43) The court then turned to the established rule of statutory interpretation that, "where the Legislature has employed specific language in one paragraph, but not in another, the language

should not be implied where it is not present."

*Beeler v. Downey*, 387 Mass. 609, 616 (1982); see *Lawrence*, 87 Mass. App. Ct. at 1124 (Add., p. 42-43). Accordingly, the Appeals Court properly found that credit received pursuant to § 4(1)(b) required no contribution from the member.

CRAB's interpretation is not inconsistent with the reasoning in *Lawrence*, because CRAB does not infer a payment requirement for Gomes's prior creditable service "where it is not present." To the contrary, the payment requirement is present in § 4(2)(c): the statutory sub-subsection immediately following the sub-subsection granting members the ability to get these five years of credit for their prior non-fulltime or temporary service. Notably, the payment requirement for non-fulltime and temporary employees' *during* membership service - *i.e.*, payment for credit such non-fulltime or temporary employees receive for service performed while they are members - is also not found in § 4(2)(b) but instead is present elsewhere in Chapter 32. See G.L. c. 32, § 22.

Oddly, then, as noted *supra* at p. 27-28, it is in fact the Superior Court that implied language where it is not present. The Superior Court exempted the

police officers and firefighters referenced in § 4(2)(b) from the dictates of § 4(2)(c). This court should decline to follow suit.

**3. The Superior Court Erred in Concluding that Reserve and Permanent-Intermittent Police Officers are Not "Part-time, Provisional, Temporary, Temporary Provisional, Seasonal or Intermittent" Employees Within the Meaning of § 4(2)(c).**

In addition to its misplaced reliance upon *Lawrence* and § 4(1)(b), the Superior Court also erred when it concluded that reserve and permanent-intermittent police officers are not among the non-fulltime or temporary employees referenced in § 4(2)(c). See RA. 17 (noting that § 4(2)(b) is "the only section that specifically addresses permanent-intermittent police officers"). Excluding reserve and permanent-intermittent police officers from the list of employees listed in § 4(2)(c) is inconsistent with case law construing the same phrase and violates several rules of statutory interpretation.

First, the plain meaning of "part-time, provisional, temporary, temporary provisional, seasonal or intermittent" employees would include a reserve or permanent-intermittent police officer. *Matter of E.C.*, 479 Mass. 113, 118 (2018) ("If the

words used are not otherwise defined in the statute, we afford them their plain and ordinary meaning"). An intermittent employee is no less "intermittent" simply because he is permanently intermittent. The operative word, to determine whether someone constitutes a non-fulltime employee is "intermittent," not the permanency of the intermittent position.

Similarly, the ordinary meaning of "reserve" suggests the position is part-time, intermittent, provisional, or temporary, depending upon whether the reserve officer actually performed services at any point, or remained only at-call. See, Oxford English Dictionary: A New English Dictionary, 1970 (defining "Reserve" as "to keep for future use or enjoyment" or "to refrain from using or enjoying at once"; "Intermittent" as that which "intermits or ceases for a time; coming at intervals"; and "Provisional" as "Of, belonging to, or of the nature of temporary provision or arrangement"). (Add., p. 172-178) Not surprisingly then, at least one court has already referred to the first-responders referenced in § 4(2)(b) as "part-time" employees. *Gallagher*, 4 Mass. App. Ct. at 9.

Second, the Superior Court's reading would lead to absurd results. It is well established that where words "are used in one part of a statute in a definite sense, they should be given the same meaning in another part of the statute." *Hallett v. Contributory Ret. Appeal Bd.*, 431 Mass. 66, 69 (2000). Applying this rule, the Superior Court's reading of the statute would create a category of employees -- reserve and permanent-intermittent police officers, and permanent-intermittent and call firefighters -- with no clear path to membership in the Commonwealth's contributory retirement system.

As explained above, § 3(2)(d) of Chapter 32 provides the boards with *exclusive* jurisdiction to determine eligibility for part-time, provisional, temporary, temporary provisional, seasonal or intermittent employees to join that retirement system. *See, supra* at pp. 12-13. The only other clear path to membership, then, is as a "regularly employed" individual under G.L. c. 32, § 3(i). And "'regularly employed' according to its usual meaning refers to continuous employment as distinguished from sporadic, intermittent, or temporary employment." *Retirement*

*Bd. of Concord v. Collieran*, 34 Mass. App. Ct. 486, 489 (1993).

It would be nonsensical for the Legislature to expressly create certain rights to creditable service for the police officers and firefighters referenced in § 4(2)(b), only to deprive them of any clear path to eligibility for membership in that retirement system on the same basis as other part-time employees. Where the agency "charged with a principal role in interpreting G.L. c. 32," offers an alternative, far more reasonable reading, it must be adopted. *Rockett*, 77 Mass. App. Ct. at 437-38.

**II. CRAB's *Grimes* Decision Does Not Contradict or Otherwise Undermine the Validity of CRAB's Interpretation of § 4(2).**

In litigating this case before the Superior Court, the Board devoted considerable attention to CRAB's decision in *Grimes v. Malden Retirement Bd., et. al.*, CR-15-5 (Add., p. 144). While the Superior Court did not accept the Board's invitation to opine on the case, the Board's argument warrants a brief response to explain why *Grimes* is not inconsistent with the decision at issue here.

*Grimes* is a case where the very same payment formula that applies here results in a payment of

"zero" for the affected member to receive credit for his past service. George Grimes served as a reserve police officer for the Malden Police Department for one year and one month before being appointed to the Department as a full-time employee. (Add., p. 146) Accordingly, § 4(2)(b) required the Malden Retirement Board to credit him with one year, one month of full-time service. Unlike Gomes, however, Grimes had never performed any actual service for the Department and the City of Malden did not compensate him. (Add., p. 146) As a result, the Legislature's formula in § 4(2)(c) to determine the sum that must be paid for prior creditable service (i.e., "an amount equal to that which would have been withheld as regular deductions from his regular compensation"), resulted in no payment obligation. (Add., p. 152)

Contrary to the Board's suggestion below, the disparity between Grimes' "free" credit and Gomes' requirement to pay does not render CRAB's interpretation erroneous. Rather, the outcomes simply represent the application of the same formula to a different set of facts. The result requires each man to pay a percentage of whatever income he earned while serving in his role.

Moreover, the Legislature's policy decision to provide a full year's credit, regardless of actual hours worked, necessarily results in some inequities. For instance, a reserve officer who works frequently for five years will receive the same amount of creditable time as a reserve officer who works infrequently. But it is axiomatic that a court does not make policy, and the court cannot ignore what is plainly the Legislature's intent, even if it recognizes "a potential unfairness within a statute's clear language ... [or] a potential anomaly." *Housman v. LBM Fin., LLC*, 80 Mass. App. Ct. 213, 218 (2011) (quoting *Commonwealth v. Mandell*, 61 Mass. App. Ct. 526, 528 (2004)). Thus, to the extent the outcome is viewed as unreasonable, a remedy for that fact may only be provided by the Legislature, not the court. *Commonwealth v. Vickey*, 381 Mass. 762, 767 (1980) ("when the statute appears not to provide for an eventuality, there is no justification for judicial legislation").

### **CONCLUSION**

For all the reasons stated above, this court should vacate the decision of the Superior Court and enter judgment in favor of CRAB.

Respectfully submitted,

CONTRIBUTORY RETIREMENT  
APPEAL BOARD,

By its attorney,

/s/ Suleyken Walker

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**CERTIFICATION PURSUANT TO MASS. R. APP. P. 16(k)**

I, , hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure.

/s/ Suleyken D. Walker

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Suleyken D. Walker  
Assistant Attorney General  
Suleyken D. Walker

## **ADDENDUM**

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87 Mass.App.Ct. 1124  
 Unpublished Disposition  
 NOTICE: THIS IS AN UNPUBLISHED OPINION.  
 Appeals Court of Massachusetts.

LAWRENCE RETIREMENT BOARD  
 v.  
 CONTRIBUTORY RETIREMENT  
 APPEAL BOARD & others.<sup>1</sup>

No. 14-P-818.

|  
 May 27, 2015.

By the Court (CYPHER, HANLON & AGNES, JJ.<sup>6</sup>).

MEMORANDUM AND ORDER  
 PURSUANT TO RULE 1:28

\*1 The Lawrence retirement board (board) appeals from a Superior Court judgment affirming a decision of the Contributory Retirement Appeal Board (CRAB). CRAB ordered the board to award three members of the Lawrence retirement system (LRS)—Mary Ann Bergeron, Priscilla Schiavoni, and Joseph Costanzo (collectively, the members)—credit for their past service with the Merrimack Valley Regional Transit Authority (MVRTA) after they became members of the LRS when the MVRTA accepted the provisions of G.L. c. 32, §§ 1–28, on July 1, 2008.

In this appeal, the board seeks a reversal of the CRAB order, asserting that it was error to credit the members for their past service without requiring them to make any monetary contribution to the retirement system.

*Background.* After the MVRTA voted to join the LRS, the board sought an opinion in March, 2008, from the Public Employee Retirement Administration Commission (PERAC), the board's oversight authority, with respect to crediting the members for their prior service. PERAC stated that pursuant to G.L. c. 32, § 4(1)(b), they would receive credit "without any additional contributions made to the LRS." On November 22, 2011, the request of the members for such credit was denied by the board. The members appealed to the Division of Administrative

Law Appeals. An administrative magistrate, in a decision issued on September 7, 2012, held that the members "shall have counted as creditable service the period of their employment with the MVRTA prior to July 1, 2008, and they shall not be required to pay for the creditable service." That decision was affirmed by CRAB on June 12, 2013. The board appealed to the Superior Court under G.L. c. 30A, § 14(7), and in a decision dated April 9, 2014, a Superior Court judge upheld CRAB's decision.

We now turn to the central issue whether the members are required to pay for their past service for which they were credited.

*Discussion.* 1. *Standard of review.* We recognize that "CRAB has been charged with a principal role in interpreting G.L. c. 32, the governing statute. *Namay v. Contributory Retirement Appeal Bd.*, 19 Mass.App.Ct. 456, 463 (1985). We accept the facts found by CRAB when there is substantial evidence to support them, see *Fergione v. Director of the Div. of Employment Security*, 396 Mass. 281, 283 (1985), and also accept the reasonable inferences CRAB draws from the facts. See *Salem v. Massachusetts Commn. Against Discrimination*, 44 Mass.App.Ct. 627, 641 (1998)." *Rockett v. State Bd. of Retirement*, 77 Mass.App.Ct. 434, 437–438 (2010). "[W]here a question of law is involved, we act de novo." *Bristol County Retirement Bd. v. Contributory Retirement Appeal Bd.*, 65 Mass.App.Ct. 443, 451 (2006).

2. *Credit for prior service.* CRAB's conclusion that a section of the contributory retirement law, G.L. c. 32, § 4(1)(b), is controlling in this case, was based on its adoption of the findings of fact of the administrative magistrate.<sup>2</sup> In reviewing those findings we observe that the magistrate analyzed the numerous sections of the statute which apply to circumstances where payment for entry or participation in the system is or is not required.<sup>3</sup> There are eight sections in addition to § 4(1)(b) which do not contain an explicit payment requirement, and there are thirty-two sections and subsections which explicitly require payment for creditable service. The magistrate properly focused on § 4(1)(b), which states in relevant part:

\*2 "Periods of service in any governmental unit prior to the date a system becomes operative therein rendered by any employee who becomes a member when such

system first becomes operative in such governmental unit, ... shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be counted as creditable prior service.”

The wording of this section unambiguously describes the circumstances of the members in this case—they served in a governmental unit (MVRTA) prior to the time when a retirement system became operative when the unit accepted G.L. c. 32, and, unlike the sections noted above which explicitly require payment for credit for that service, § 4(1)(b) is silent. Here, “where the Legislature has employed specific language [requiring payment in certain sections], but not in another, the language should not be implied where it is not present.” *Beeler v. Downey*, 387 Mass. 609, 616 (1982).<sup>4</sup>

Therefore, CRAB's conclusion that § 4(1)(b) is controlling in this case is amply supported by the evidence, is reasonable, and, we conclude, is correct as matter of law. *Rockett v. State Bd. of Retirement*, 77 Mass.App.Ct. at 438, and cases cited.<sup>5</sup>

*Judgment affirmed.*

#### All Citations

87 Mass.App.Ct. 1124, 31 N.E.3d 78 (Table), 2015 WL 3387128

#### Footnotes

1 Mary Ann Bergeron, Priscilla Schiavoni, and Joseph Costanzo.

6 The panelists are listed in order of seniority.

2 Both CRAB and the administrative magistrate referred to an administrative decision, *Carr v. Framingham Retirement Bd.*, CRAB docket no. CR-10-761-762-763 (June 12, 2013), as containing facts substantially similar to the facts in the present case. That decision concluded that employees of the Metro West Regional Transit Authority were entitled to credit for their past service without payment when it became subject to a contributory retirement system. The decision also presents a statutory history of G.L. c. 32 and § 4(1)(b). That section has remained unchanged since 1945.

3 Such payments variously have been referred to as “purchase of prior membership”; “buyback of service”; and “make-up payments.”

4 At the end of its brief the board again asserts that an inequity results from allowing members credit for long terms of service without requiring them to pay into the system, resulting in “disproportionately burdening the [s]ystem as a whole.” This issue cogently was addressed by the administrative magistrate at the end of his decision. Referring to G.L. c. 32, § 22(7)(c)(iii), he opined that the MVRTA is required to make a special appropriation to make the LRS whole for any portion of the members' retirement allowances attributable to service performed before they were members of the LRS. The magistrate assumed the board was unaware of this statutory provision for unfunded liabilities.

In any event, we think it is clear from the statutory scheme that the Legislature treats certain categories of creditable service differently.

5 We have not overlooked arguments made in the board's brief, but because they do not comply with the requirements of Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975), we conclude they require no discussion.

2009 Mass. Legis. Serv. Ch. 21 (S.B. 2079) (WEST)

MASSACHUSETTS 2009 LEGISLATIVE SERVICE

General Court, 2009 First Annual Session

Additions and deletions are not identified in this document.

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CHAPTER 21

S.B. No. 2079

PENSION SYSTEM REFORMS

AN ACT providing responsible reforms in the pension system

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

<< MA ST 32 § 1 >>

SECTION 1. Section 1 of chapter 32 of the General Laws is hereby amended by inserting after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition, the following words:— through June 30, 2009.

<< MA ST 32 § 1 >>

SECTION 2. The definition of “Regular compensation” in said section 1 of said chapter 32, as so appearing, is hereby further amended by adding the following sentence:— “Regular Compensation”, during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

SECTION 3. Said section 1 of said chapter 32, as amended by section 15 of chapter 130 of the acts of 2008, is hereby further amended by adding the following definition:—

<< MA ST 32 § 1 >>

“Wages”, the base salary or other base compensation of an employee paid to that employee for employment by an employer; provided, however, that “wages” shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member’s retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the

case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as "regular compensation" rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers' retirement system.

<< MA ST 32 § 4 >>

SECTION 4. Section 4 of said chapter 32 of the General Laws is hereby amended by striking out, in lines 5 to 7, inclusive, as so appearing, the words ", that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further".

SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the following paragraph:—

<< MA ST 32 § 4 >>

(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

<< MA ST 32 § 5 >>

SECTION 6. Section 5 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 and 70, the words ", except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten,".

SECTION 7. Subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:—

<< MA ST 32 § 5 >>

(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 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.

<< MA ST 32 § 7 >>

SECTION 8. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 to 73, inclusive, the words "or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater; provided, however" and inserting in place thereof the following words:— ; provided, however, that if an individual was in a temporary or acting position on the date such injury was sustained or hazard undergone the amount to be provided under this subdivision shall be based on the average annual rate of the individual's regular compensation during the previous 12-month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard was undergone; provided, further,.

<< MA ST 32 § 10 >>

SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by striking out, in line 4, the words ", or fails of nomination or re-election".

<< MA ST 32 § 10 >>

SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 7 to 9, inclusive, the words ", or fails of nomination or re-election, or fails to become a candidate for nomination or re-election".

<< MA ST 32 § 10 >>

SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words "fails of nomination or re-election, or".

<< MA ST 32 § 10 >>

SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 72 to 77, inclusive, the words "one of the following circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the employee has failed of reappointment, (3) that the employee's office or position has been abolished, or (4) that" and inserting in place thereof the following words:— : (1) the employee has failed of reappointment; (2) the employee's office or position has been abolished; or (3).

<< MA ST 32 § 10 >>

SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in line 79, the word "six" and inserting in place thereof the following figure:— 10.

SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:—

<< MA ST 32 § 11 >>

(d) If a member is entitled to a return of his accumulated total deductions and requests such a return from the board on the prescribed form, then prior to the return of such accumulated total deductions, the board shall contact the member's employer to determine whether the member owes an obligation to the employer under an employee benefit plan, including a cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that the member owes the employer under any such plan, the board shall not return the accumulated total deductions until it has received notice from the employer that the obligation has been satisfied.

SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C the following section:—

<< MA ST 32 § 12D >>

Section 12D. A retirement system subject to this chapter shall pay all benefits in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan as defined in section 414(d) of the Internal Revenue Code.

SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:—

<< MA ST 32 § 13 >>

(c) A retirement board may require a member entitled to receive a retirement allowance to designate a financial institution to which shall be directly deposited any payments under any annuity, pension or retirement allowance.

SECTION 17. Section 19A of said chapter 32 is hereby amended by striking out the first paragraph, as so appearing, and inserting in place thereof the following paragraph:—

<< MA ST 32 § 19A >>

Any employee of the commonwealth, a city, town, district or other member unit of a retirement system who is retired under this chapter shall, upon the request of the retiring authority paying such pension or retirement allowance, or otherwise may, by assignment made in writing authorize the retiring authority paying such pension or retirement allowance to withhold each month such amount as he may designate for the payment of subscriber premiums applicable to any hospitalization, medical or surgical insurance in effect with a nonprofit hospital and medical service corporation or insurance company at the time of his retirement. In the event that the amount of a retiree's pension check is insufficient to accommodate the entire deduction

and upon notice from the retirement board, the employer for whom the retiree last worked and from whom he is retired shall bill the retiree for the employee share of the premiums.

<< MA ST 32 § 22D >>

SECTION 18. Section 22D of said chapter 32, as so appearing, is amended by striking out, in line 25, the figure “2028” and inserting in place thereof the following figure:— 2030.

SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D the following section:—

<< MA ST 32 § 22E >>

Section 22E. (a) For the purposes of this section, “statutory adjustment to the commonwealth pension liability” shall mean an adjustment that changes the benefits or contributions of classes of members including, but not limited to, early retirement incentive programs, cost-of-living adjustments, the membership of those classes or any amendments to chapter 32 that may change the actuarial liability of the commonwealth pension system.

(b) Upon request of a joint standing committee of the general court having jurisdiction or upon request of the committee on ways and means of either branch, the actuary of the public employee retirement administration commission shall conduct and prepare a review, evaluation and financial impact of the statutory adjustment to the commonwealth pension liability, in consultation with other relevant state agencies, and shall report to the committee within 90 days of the request.

<< MA ST 32 § 91 >>

SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line 3, as appearing in the 2006 Official Edition, the words “or district,” and inserting in place thereof the following words:—, district or authority.

<< MA ST 32 § 91 >>

SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting after the word “authority”, in line 84, the following words:—, including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section 111 and inserting in place thereof the following section:—

Section 111. There shall be a special commission to study the Massachusetts contributory retirement systems. The commission shall consist of the secretary of administration and finance or her designee; the state auditor or his designee; the executive director of the public employee retirement administration commission or his designee; the executive director of the state retirement board or his designee; the executive director of the teachers’ retirement board or her designee; 3 members of the house of representatives, 1 of whom shall be appointed by the house minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL–CIO and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting not later than June 1, 2009.

The commission shall make a comprehensive study of the Massachusetts contributory retirement systems. The study shall include, but not be limited to: contribution rates paid by employers and employees; vesting periods; the weight given to age versus years of service in the current system; the portability of benefits in the current system; the definition of regular compensation including, but not limited to, whether all forms of compensation taxable under the federal income tax code should constitute regular compensation; cost-of-living-adjustments with special attention paid to the cost of increasing the cost-of-living-adjustments base; current and future employee pension plans and contribution structures; termination allowances pursuant to section 10 of chapter 32 of the General Laws; group classification systems, including the classification of department of correction employees under section 28M of said chapter 32; capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for employees who participate under 2 or more retirement systems; potential costs, savings or benefits related to moving from a defined benefit retirement system to a defined contribution retirement system for new employees, including a system that maintains eligibility for employees to participate

in the Social Security system; qualifications for credit for service pursuant to section 4 of said chapter 32, including minimum compensation limits for officials to be eligible for credit for service, and the cost of any recommendations the commission may make.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall prepare a report of its findings and recommendations, together with the actuarial analysis and any recommendations for legislation, if any, to implement those recommendations by filing the same with the clerks of the senate and house of representatives, the chairs of the house and senate committee on ways and means and the senate and house chairs of the joint committee on public service not later than September 1, 2009.

SECTION 23. Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of "regular compensation" by law or by regulation prior to the effective date of this act and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of "regular compensation" during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after June 30, 2012 shall not be considered regular compensation.

<< Note: MA ST 32 § 1 >>

SECTION 24. Section 1 of this act shall take effect July 1, 2009.

<< Note: MA ST 32 § 4 >>

SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that creditable service shall be granted for the service of any state, county or municipal employee serving in a paid position earning less than \$5,000 after July 1, 2009, if such service is subject to a specified term as a result of an election, appointment or contract and the election, appointment or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible for creditable service under chapter 32 of the General Laws; and provided further, that such creditable service shall be granted until the expiration of the term, appointment or contract or July 1, 2012, whichever first occurs.

<< Note: MA ST 32 §§ 1, 4, 5, 7, 10, 11, 13, 19A, 22D, 91 >>

<< Note: MA ST 32 §§ 12D, 22E >>

SECTION 26. Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, this act shall apply to all members of retirement systems who retire after July 1, 2009.

Approved June 16, 2009.

MA LEGIS 21 (2009)

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32. Retirement Systems and Pensions (Refs & Annos)

M.G.L.A. 32 § 3

§ 3. Membership

Effective: November 7, 2018

Currentness

(1) *Kind of Membership.* -- (a) Membership in a system shall consist of two kinds as follows:--

(i) *Member in Service.*-- Any member who is regularly employed in the performance of his duties, except a member retired for disability who upon partial recovery is restored to active service as provided for in paragraph (2) (a) of section eight. Any member in service shall continue as such during any period of authorized leave of absence with pay or during any period of authorized leave of absence without pay if such leave is due to his mental or physical incapacity for duty or if such authorized leave of absence without pay is for not more than one year or is to permit such member to perform his duties as a member of a retirement board. In any event the status of a member in service shall continue as such until his death or until his prior separation from the service becomes effective by reason of his retirement, resignation, failure of re-election or reappointment, removal or discharge from his office or position, or by reason of an authorized leave of absence without pay other than as provided for in this clause. Any member in service shall have full voting powers in the system as provided for in section twenty of this chapter and in section sixteen of chapter fifteen.

(ii) *Member Inactive.* -- Any member in service who has been retired and who is receiving a retirement allowance, any member in service whose employment has been terminated and who may be entitled to any present or potential retirement allowance or to a return of his accumulated total deductions under the provisions of sections one to twenty-eight inclusive, or any member in service who is on an authorized leave of absence without pay other than as provided for in clause (i) of this paragraph. Any member in-active shall have full voting rights as provided for in section twenty of this chapter and in section sixteen of chapter fifteen.

(b) A beneficiary shall not be deemed to be a member of the system nor shall he have any voting rights therein.

(c) No description of a person having any rights or privileges under the provisions of sections one to twenty-eight inclusive, such as member in service, member inactive, beneficiary or otherwise, shall serve to deprive him of any such rights or privileges. A member shall retain his membership in the system so long as he is living and entitled to any present or potential benefit therein.

(2) *Eligibility for Membership.* -- (a) Membership in a system as a member in service as defined in clause (i) of paragraph (1) (a) of this section shall comprise the following persons:--

(i) Any employee who is a present member in service, including any employee for whom regular deductions are being made whether or not he was classified as a member under provisions of earlier laws;

(ii) Any employee in active service who is not now a member but who, while under the maximum age for the group in which he would be classified, hereafter files with the board on a prescribed form a written application for membership, subject to the provisions of sections one to twenty-eight inclusive; provided, that during his present period of service he had previously been eligible for membership;

(iii) Any person who hereafter resigns, transfers or is promoted from a position in the service under which he had inchoate rights to a non-contributory pension under this chapter or under corresponding provisions of earlier laws or of any other general or special law, to accept a position subject to the provisions of sections one to twenty-eight inclusive, if at the time of such resignation, transfer or promotion he is under the maximum age for the group in which he would be classified;

(iv) Any person, except as specifically otherwise provided for in sections one to twenty-eight, inclusive, who enters or re-enters the service as an employee of the commonwealth, a teacher as defined in section one, or an employee of any political subdivision of the commonwealth for which a system established under the provisions of such sections, or under corresponding provisions of earlier laws, is in operation on the date when he becomes an employee; provided, that any such person who becomes regularly employed, as determined by the board as provided for in paragraph (d) of this subdivision, on a part-time, provisional, temporary, temporary provisional, seasonal or intermittent basis, shall become a member in service, if he is to be classified in Group 1, upon the completion of six calendar months of service, and any other such person shall become a member in service upon his entry into service; and provided, further, that a physician or dentist who is employed as an intern in a municipal hospital shall not become a member unless he files a written application for membership within ninety days of his appointment.

(v) Any state official as defined in section one hereafter appointed to office who files with the board on a prescribed form a written application for membership within ninety days after the date of assuming the duties of his position; provided, that a member becoming a state official shall retain his membership and a state official who is a member shall remain a member upon his reappointment or upon his appointment or election to any other position which would otherwise entitle him to membership;

(vi) Any person hereafter elected by popular vote to a state, county or municipal office or position who files with the board on a prescribed form a written application for membership within ninety days after the date of assuming office; provided, that a member becoming an elected official shall retain his membership and an elected official who is a member shall remain a member upon his re-election or upon his election or appointment to any other position which would otherwise entitle him to membership;

(vii) Any person who hereafter is reinstated to or who re-enters the active service of the governmental unit in which he was formerly employed as provided for in subdivision (6) of this section; provided, that any such person who fails to pay into the annuity savings fund of the system the amount of the accumulated regular deductions, if any, withdrawn by him together with buyback interest to the date of reemployment, or fails to make provision for payment thereof, under the terms set forth in such subdivision, shall be considered as a person first entering the employ of such governmental unit and shall become a member in service only under the conditions applicable to such person as set forth in this section;

(viii) Any employee who enters the active service of any governmental unit and who was a member of any system established under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws or of any special law, and who hereafter transfers or re-establishes his membership as provided for in subdivision (8) of this section to or in the system which pertains to such governmental unit; provided, that any such employee who fails to transfer or re-establish his membership as so provided for shall be considered as a person first entering the employ of such governmental unit and shall become a member in service only under the conditions applicable to such person as set forth in this section; and

(ix) Any member retired for disability who upon recovery hereafter is restored to full active service as provided for in paragraph (2) (b) of section eight.

(x) Any employee as defined in section one.

(xi) Any employee, any part or all of whose salary, wages or other compensation is derived from federal grants made to the commonwealth or to any political subdivision thereof, which federal grants are used by the commonwealth or political subdivision for the payment of salaries, and who as a result thereof is eligible for membership in the United States civil service retirement system, or who otherwise is eligible for such membership, and who also is eligible for membership in any retirement system established under this act, may have such portion of his salary, wages or other compensation as is derived from federal grants included in his regular compensation as defined by section one, but as a condition precedent to membership, he shall file an affidavit with the retirement board certifying that he is not a member of the United States civil service retirement system, eligible to make contributions thereto based upon his current salary. If the employee certifies that he is a member of the United States civil service retirement system, eligible to make contributions thereto based upon his current salary, he thereby waives all rights to membership in any retirement system established under this chapter, and no deductions shall be made from his compensation for any retirement system established under this chapter. If, when becoming a member of a retirement system established under this chapter, he is not a member of the United States civil service retirement system, eligible to make contributions thereto based upon his current salary, but later at any time before retirement becomes a member of the United States civil service retirement system, except after resignation or discharge from the service which makes him eligible to membership in a retirement system established under this chapter, he shall cease to be a member of any retirement system established under this chapter, and his accumulated deductions shall be returned to him. When he or any beneficiary of his becomes eligible to receive any benefit under this chapter, he or his beneficiary, as a condition precedent to the receipt of such benefit, shall file an affidavit stating that the member is not or was not at his death a member of or eligible to receive any benefits under the United States civil service retirement system. Eligibility for membership in a retirement system established under this chapter and the right to receive a retirement allowance or benefit thereunder shall not be affected by the receipt of a federal pension or retirement allowance by a "veteran" for federal service, as defined in section one, or by any potential right thereto. Any employee who on January first, nineteen hundred and fifty-two was a member of the United States civil service retirement system and also a member of a retirement system established under this chapter, and any employee who was a member of the United States civil service retirement system and thereafter ceased to be a federal employee and became eligible for membership in a retirement system established under this chapter, and any employee who was a member under this chapter and thereafter resigned or was discharged and became a federal employee, may continue his membership in both systems on the condition that he shall at his retirement, or his beneficiary shall at his death, present to the

retirement board established under this chapter proof of the amount of the retirement or survivorship allowance to be received from the United States civil service retirement system, and the retirement or survivorship allowance from the system established under this chapter shall be fixed at an amount which shall not exceed the difference between the annual federal retirement or survivorship allowance and the largest annual salary received by the employee during a calendar year of the employment which made him eligible for membership in the retirement system established under this chapter.

<[ There are no clauses (xii) and (xiii).]>

(xiv) Any person who is appointed as a member of the judiciary on or after January second, nineteen hundred and seventy-five, shall become a member subject to the provisions of section sixty-five D.

(b) Any person who is an employee of any governmental unit on the date when a system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, hereafter becomes operative therein, shall become a member in service as of such date unless within ninety days thereafter he shall file with the board on a prescribed form a notice of his election not to become a member and a duly executed waiver of all present and prospective benefits which might otherwise accrue to him if he became a member. No other pension or retirement law of the commonwealth whether general or special shall be applicable to any such member on or after the date such system becomes operative in such governmental unit, except as otherwise provided for in subdivision (7) of this section or in section twenty-five. In so far as practicable and not later than sixty days after the date such a system becomes operative in such governmental unit, the board shall notify each such employee in writing, or through meetings duly announced or by other means, of his rights and duties if he becomes a member and shall furnish him with a prescribed form to be filed with the board upon which he may give notice of his election to become a member in service or not to become a member, as he may elect.

(c) Any employee otherwise eligible for membership, who has elected not to become a member in service, may thereafter apply for and be admitted to membership upon the terms and conditions set forth in subdivision (3) or (8) of this section if on the date of application he is under the maximum age for his group.

(d) In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official, the board shall have and exercise full jurisdiction to determine such employee's eligibility for membership; provided, that any person holding a position for which the annual compensation is fixed in an amount of two hundred dollars or less shall not be eligible for membership except by vote of the board; and provided further, that any teacher employed in the school department of the city of Boston on a provisional, temporary, temporary provisional or similar basis shall, upon the completion of a school year of service in the public schools of said city, become a member in service of the Boston retirement system. For the purposes of this paragraph, a school year of service shall be deemed to have been completed upon the termination of a school year in which the teacher, while holding a certificate granted by the board of education under section thirty-eight G of chapter seventy-one or while exempt from the provisions of said section because of employment as a teacher in the service of said city prior to the effective date of said section thirty-eight G, has actually performed teaching duties on more than one hundred and twenty school days, whether or not consecutive, in such school year.

<[ There is no paragraph (e).]>

(f) Any employee who was not eligible for membership because of originally entering the service of any governmental unit after attaining age 60 but before attaining age 65, may apply for and be admitted upon the terms and conditions set forth in subdivisions (3) and (3A).

(g) Department heads shall furnish to the board within thirty days after employing any new personnel or after the receipt of a written request therefor, a statement giving the name, address, title, rate of regular compensation, duties, date of birth and length and class of service of each employee in his department, and shall notify the board within thirty days of any change in the title, address, rate of compensation, duties or service of any employee in his department. Thereupon the board shall classify each member in one of the following groups; provided that a member entering service prior to April 2, 2012 must be actively employed in a Group 2 or Group 4 position by a governmental unit which is subject to a retirement system under chapter 32, and must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding termination or retirement in order to qualify for the retirement allowance calculation of said group contained in subdivision (2) of section 5:

*Group 1.* – Officials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.

<[ Group 2 of paragraph (g) of subdivision (2) effective until November 7, 2018. For text effective November 7, 2018, see below.]>

*Group 2.* – Public works building police; permanent watershed guards and permanent park police; University of Massachusetts police; employees of the Massachusetts Port Authority, comprising guards, guard sergeants, head guard and chief of waterfront police; officials and employees of the office of public safety and inspections of the division of professional licensure and the division of inspection of the department of fire services having police powers; employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen; ambulance attendants of a municipal department who are required to respond to fires and perform duties assigned to them; employees of a city or town who are employed as licensed electricians and elevator maintenance men employed by a county; employees of Cushing hospital; employees of the trial court of the commonwealth who hold the position of chief probation officer, assistant chief probation officer, probation officer in charge or probation officer, chief court officer, assistant chief court officer or court officer; officers and employees of the general court having police powers; employees of the commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners; employees of the department of children and families holding the title of social worker A/B, C or D or successive titles who have been employed in such titles for 10 years or more; and employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children and employees of Cushing hospital.

<[ Group 2 of paragraph (g) of subdivision (2) as amended by 2018, 221 effective November 7, 2018. For text effective until November 7, 2018, see above.]>

*Group 2.* – Public works building police; permanent watershed guards and permanent park police; University of Massachusetts police; employees of the Massachusetts Port Authority, comprising guards, guard sergeants, head guard and chief of waterfront police; officials and employees of the office of public safety and inspections of the division of professional licensure and the division of inspection of the department of fire services having police powers; employees of a

municipal department who are employed as fire or police signal operators or signal maintenance repairmen; ambulance attendants of a municipal department who are required to respond to fires and perform duties assigned to them; employees of a city or town who are employed as licensed electricians and elevator maintenance men employed by a county; employees of the South Essex sewerage district who are employed as licensed electricians; employees of Cushing hospital; employees of the trial court of the commonwealth who hold the position of chief probation officer, assistant chief probation officer, probation officer in charge or probation officer, chief court officer, assistant chief court officer or court officer; officers and employees of the general court having police powers; employees of the commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners; employees of the department of children and families holding the title of social worker A/B, C or D or successive titles who have been employed in such titles for 10 years or more; and employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children and employees of Cushing hospital.

*Group 3.* -- Officers and inspectors of the department of state police referred to in section twenty-six, who shall be retired and receive retirement allowances as provided for in said section and in sections six and seven, anything in sections one to twenty-eight, inclusive, to the contrary notwithstanding.

*Group 4.* -- Division of law enforcement of the department of fisheries, wildlife and recreational vehicles; conservation officer of the city of Haverhill having duties similar to a law enforcement officer of the department of fisheries, wildlife and recreational vehicles; employees of the Massachusetts Port Authority at the General Edward Lawrence Logan International Airport, comprising permanent crash crewmen, fire control men, assistant fire control men; members of police and fire departments not classified in *Group 1*; any police officer of the Massachusetts Bay Transportation Authority; employees whose regular compensation is paid by the United States from funds allocated to the Massachusetts National Guard and who are regularly and permanently employed under the control of the military department of the commonwealth and whose duties in such employment require substantially all normal working hours and whose continued employment is based upon federal recognition in the Massachusetts National Guard; members of the Massachusetts military reservation fire department; members of the 104th fighter wing fire department; members of the Devens fire department established pursuant to chapter 498 of the acts of 1993; employees of a municipal gas or electric generating or distribution plant who are employed as linemen, electric switchboard operators, electric maintenance men, steam engineers, boiler operators, firemen, oilers, mechanical maintenance men, and supervisors of said employees who shall include managers and assistant managers; employees of the Massachusetts Port Authority who are employed as licensed electricians, utility technicians, steam engineers, watch engineers, boiler operators, or steam firemen, and supervisors of said employees, at an electrical generating or distribution plant; employees of the department of correction who are employed at any correctional institution or prison camp under the control of said department and who hold the position of correction officer, female correction officer, industrial instructor, recreation officer, assistant industrial shop manager, industrial shop manager, assistant to the supervisor of industries, supervisor of industries, senior correction officer, senior female correction officer, supervising correction officer, supervising female correction officer, prison camp officer, senior prison camp officer, supervising prison camp officer, assistant deputy superintendent; employees of the parole board who hold the position of parole officer or parole supervisor; chief of security for the University of Massachusetts medical school or supervising identification agent; employees who hold the position of state hospital steward in the department of correction; the sheriff, superintendent, assistant superintendent, assistant deputy superintendent and correction officers of county correctional facilities; district attorneys, assistant district attorneys who have been employed in such capacity for ten years or more; the chief fire warden and the district fire wardens in the executive office of environmental affairs and the fire marshal of the department of fire services in the executive office of public safety; but the fire marshal shall have been a member of group 4 for ten years or have had ten years or more employment at the department of fire services or its predecessor agencies, the division of fire prevention and the Massachusetts firefighting academy, before being eligible for benefits under this section.

A municipality may elect to place in Group 4 uniformed employees of a municipal or public emergency medical service who

are certified at any level by the department of public health as an emergency medical technician. This section shall take effect in a municipality upon its acceptance in the following manner: in a city having a Plan D or Plan E charter, by majority vote of its city council and approved by the manager; in any other city by majority vote of the city council and approved by the mayor; in a town, by vote of the board of selectmen.

(h) Nothing contained in this section shall be construed to impair the rights of any member whose office or position is subject to chapter thirty-one or to the rules and regulations made under authority thereof.

(3) *Late Entry into Membership.* -- Notwithstanding his filing of notice and waiver under paragraph (b) of subdivision (2) of this section, any employee who, having or having had the right to become a member, failed to become or elected not to become a member, may apply for and be admitted to membership if under the maximum age for his group on the date of his application; provided, that during his present period of service he had previously been eligible for membership; and any employee who, having had the right to become a member of any retirement system established under the provisions of this chapter, or under corresponding provisions of earlier laws or any special law, failed to become or elected not to become a member, may apply for and be admitted to membership if under the maximum age for his group on the date of his application. No employee shall otherwise be admitted to membership except by vote of the retirement board of the system for which application is made, and then only if that board finds that his failure to become or his election not to become a member was caused by circumstances other than those generally applicable to employees. No such member shall be entitled to full credit for service rendered prior to the date of his becoming a member, unless before the date any retirement allowance becomes effective for him he shall have paid into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation had he joined the system at his earliest opportunity, together with buyback interest. Upon the completion of such make-up payments such member shall be entitled to all creditable service to which he would have been entitled had he joined the system when first eligible to become a member. In the event any retirement allowance becomes effective for him before the completion of such make-up payments, such member shall, in addition to credit for his actual membership service, be entitled to credit for that proportion of his service rendered prior to the date of his becoming a member which the total amount of his make-up payments actually made, together with buyback interest thereon to the date his retirement allowance becomes effective, bears to the total amount of what his make-up payments, together with buyback interest thereon to such latter date, would have been had he made payment thereof in one sum on such latter date.

(3A) *Equal Privileges For Certain Members.* -- An employee who is a member of a retirement system or who is entitled to become a member and who fulfills all the conditions required for a member during the period commencing July first, nineteen hundred and thirty-seven, and ending January first, nineteen hundred and forty-six, may pay into the annuity saving fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, make-up payments of an amount not to exceed that which would have been withheld as regular deductions from his regular compensation had the deductions been based on his total earnings rather than the prescribed limit or limits in force during this period, together with interest on such make-up payments. Upon the completion of payment of such make-up payments, together with interest thereon, such member shall be entitled to such additional retirement allowance as said additional contributions would entitle him. In the event such member retires before the completion of payment of such make-up payments and interest thereon, such member shall, in addition to the retirement allowance provided by his regular contribution, be entitled to credit for that proportion of his additional contribution made prior to the time of his retirement.

(4) *Credit for Teachers for Out-of-State Service.* -- Any member in service, or any member inactive on authorized leave of absence of the teachers' retirement system, or any member in service, or any member inactive on authorized leave of absence of any other contributory retirement system who is employed in a teaching position or as a principal, supervisor or president in a school or college, or employed in the department of education as supervisor of teachers or of educational methods, who

had rendered service in any other state for any previous period as a teacher, principal, supervisor or superintendent in the public day schools or other day school under exclusive public control and supervision, or in a public academy, or as a teacher, principal, supervisor or president in a state normal school, state teachers college or like institution, or other college under exclusive public control and supervision, or in a public academy, or who was employed in a state department of education as supervisor of teachers or of educational methods, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, had such service been rendered in a public school of the commonwealth and had he been a member of the teachers' retirement system during the period the service was rendered; provided, that for such service which was rendered prior to July first, nineteen hundred and fourteen, payment shall be made equal to the regular deductions which would have been withheld from his regular compensation if the teachers' retirement system, as established by chapter eight hundred and thirty-two of the acts of nineteen hundred and thirteen, had been in effect during the period the service was rendered, and the interest to July first, nineteen hundred and fourteen, shall be computed at the rate of three per cent. Payment shall not be made and no credit shall be allowed for service in other states in excess of the total Massachusetts service to which the member would be entitled to receive credit if he remained in service to age sixty-five, with a maximum credit for service in other states not to exceed ten years; provided, that no credit shall be allowed and no payment shall be accepted for any service for which the member shall be entitled to receive a retirement allowance from any other state. In addition to the payment of such sum or instalments thereof, such member shall also pay into the annuity savings fund an amount of interest such that at the completion of such payments the value of his accumulated payments, together with buyback interest thereon, actually made on account of such previous out-of-state service, shall equal the value of his accumulated buyback deductions which would have resulted if regular deductions had been made when regular compensation for such service was actually received. Upon the completion of such payments, such member shall receive the same credit for such period of his previous out-of-state service, or portion thereof elected, as would have been allowed if such service had been rendered by him in a public school of the commonwealth. Such member shall furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed under this subdivision. At the time a retirement allowance becomes due to a member or to a beneficiary under option (d) of subdivision (2) of section twelve, if the Massachusetts service on the date either retirement allowance becomes effective, or on the date the member attained age sixty-five, whichever first occurs, is less than the service in other states for which the member has paid, credit shall be allowed only for the most recent service rendered in other states equal to such Massachusetts service, and the amount paid for additional service shall be refunded with accumulated interest, refund to be made only when the retirement allowance becomes due to the member or to the beneficiary under option (d) of subdivision (2) of section twelve, and if it is found that payment has been accepted for any service for which the member is entitled to a retirement allowance from any other state, the amount paid for such service with accumulated interest shall also be refunded with no retirement credit allowed.

For the purposes of this subdivision the words "service in any other state for any previous period as a teacher, principal, supervisor or superintendent in the public day schools or other day school under exclusive public control and supervision" shall be deemed to include service rendered in an overseas dependent school conducted under the supervision of the department of defense of the government of the United States, and service rendered in the public schools of the Commonwealth of Puerto Rico; provided, that any credit to be allowed shall not exceed five years of the maximum credit of ten years allowable for service in other states as provided in this section.

(4A) *Credit for Teachers for Nonpublic School Service.* -- Any member in service, or any member inactive on authorized leave of absence of the teachers' retirement system or the state retirement system or the Boston retirement system, who holds a certificate issued by the department of education or is exempted from the requirement of certification or any member who is employed in a public institution of higher education as a faculty member or professional employee not under the jurisdiction of the human resources division within the executive office for administration and finance classification system and who was previously engaged in teaching pupils or as an administrator in a nonpublic school prior to January first, nineteen hundred and seventy-three may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the appropriate system in one sum, or in installments, upon such terms and conditions as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, had such service been rendered in a public school of the

commonwealth or public institution of higher education and had he been a member of the teachers' retirement system or the state retirement system during the period such service was rendered. Payment shall not be made and no credit shall be allowed for service in nonpublic schools in excess of the total Massachusetts service to which the member would be entitled to receive credit if he remained in service to age sixty-five, with a maximum credit for service in nonpublic schools not to exceed ten years; provided that no credit shall be allowed and no payment shall be accepted for any service on account of which the member shall be entitled to receive a retirement allowance or other similar payment from the nonpublic school system, the federal government or any other source. In addition to the payment of such sum, or installments thereof, such member shall also pay into the appropriate annuity savings fund an amount of interest such that at the completion of such payments the value of his accumulated payments, together with buyback interest thereon, actually made on account of such previous nonpublic school service, shall equal the value of his accumulated buyback deductions which would have resulted if regular deductions had been made when regular compensation for such service was actually received. Upon the completion of such payments, such member shall receive the same credit for such period of his previous nonpublic school service, or portion thereof elected, as would have been allowed if such service had been rendered by him in a public school of the commonwealth or public institution of higher education. Such member shall furnish the appropriate board with such information as it shall require to determine the amount, to be paid and the credit to be allowed under this subdivision. At the time a retirement allowance becomes due to a member or to a beneficiary under option (d) of subdivision (2) of section twelve, if the Massachusetts service on the date either retirement allowance becomes effective, or on the date the member attained the age of sixty-five, whichever first occurs, is less than the service in nonpublic schools for which the member has paid, credit shall be allowed only for the most recent service rendered in nonpublic schools equal to such Massachusetts service, and the amount paid for additional service shall be refunded with accumulated interest, refund only to be made when the retirement allowance becomes due to the member or to the beneficiary under option (d) of subdivision (2) of section twelve, and if it is found that payment has been accepted for any service for which the member is entitled to a retirement allowance from any nonpublic school system, the amount paid for such service with accumulated interest shall also be refunded with no retirement credit allowed.

(5) *Credit for Members for Intra-State Service in Governmental Units Where No System Existed.* -- Any member of any system who had rendered service as an employee of any governmental unit other than that by which he is presently employed, for any previous period during which the first governmental unit had no contributory retirement system or during which he had inchoate rights to a non-contributory pension or in a position which was not subject to an existing retirement system, or which was specifically excluded therefrom but which would be covered under the law now in effect, or any member who during any period of service for the governmental unit by which he is presently employed had such inchoate rights or was so excluded from membership, or any member of any retirement system who had rendered service as an employee in the governmental unit by which he is presently employed and who separated from such service and who had a right to become a member of the existing retirement system pertaining thereto, but who did not exercise such right before separation from such service, or any member who had a right to become a member of an existing system in any other governmental unit and who did not exercise such right, and who, when he left the service of such other governmental unit, had such right, or any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, in no event aggregating more than twenty years, had such service been rendered in the governmental unit by which he is presently employed and in a position subject to the provisions of this chapter, or to corresponding provisions of earlier laws. In addition to the payment of such sum or instalments thereof, such member shall also pay into the annuity savings fund an amount of interest such that at the completion of such payments the value of his accumulated payments, together with buyback interest thereon, actually made on account of such previous intrastate service shall equal the value of his accumulated buyback deductions which would have resulted if regular deductions had been made when regular compensation for such service was actually received. Upon the completion of such payments such member shall receive the same credit for such period of his previous intrastate service or portion thereof elected as would have been allowed if such service had been rendered by him in the governmental unit by which he is presently employed. Such member shall furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed under this subdivision.

(a) Any person who is now a member or who becomes a member of a system applicable to any governmental unit shall be given credit in such system for any service rendered as a constitutional officer or as a member of the general court by depositing in the annuity savings fund of such system such sums and under such conditions as are set forth under said sections.

<[ There is no paragraph (b).]>

(6) *Leave of Absence and Reinstatement to or Re-entry into Active Service.* -- (a) Leaves and periods of absence of any member duly authorized with full regular compensation shall not be deemed an interruption of membership or service and shall be counted as full creditable service. Leaves and periods of absence of any member duly authorized without regular compensation or with partial regular compensation, while not to be deemed a termination of membership or service, shall not be counted as creditable service except as specifically otherwise provided for in section four. The board shall have full power to make such rules, regulations and findings as it may deem necessary, consistent with the provisions of sections one to twenty-eight inclusive, relating to leaves and periods of absence and the rights and duties of any member during the same as will effectuate the purposes of such sections.

(b) Any member inactive whose service has been terminated otherwise than by retirement but whose membership has been retained by failure to withdraw his accumulated total deductions, shall become a member in service upon his reinstatement to or re-entry into the active service of his former employer in a position which is subject to the provisions of sections one to twenty-eight inclusive.

(c) Any former member who is reinstated to or who re-enters the active service of the governmental unit in which he was formerly employed to serve in a position which is subject to the provisions of this chapter, within two years from the date of his separation therefrom, may again become a member in service and may pay into the annuity savings fund of the system in one make-up sum, or in installments upon such terms and conditions as the board may prescribe, an amount equal to the accumulated regular deduction withdrawn by him, together with the buyback interest to the date of reemployment. No such member shall be eligible for any disability benefit under the provisions of this chapter, until such member makes a repayment of accumulated regular deductions and buyback interest, to said respective retirement system. Upon making such make-up payment such member shall be entitled to all creditable service resulting from such previous employment.

(d) Any former member who is reinstated to or who re-enters the active service of the governmental unit in which he was formerly employed to serve in a position which is subject to the provision of this chapter, more than two years after the date of his last separation therefrom may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with buyback interest. Upon such re-employment and upon making such payment in one sum or upon making provision for payment thereof in instalments, as the case may be, such former member shall again become a member. A member who did not, at the earliest opportunity, either return in one sum the permitted make-up payment, or provide for such repayment in instalments, and whose membership was contingent on such payment either in one sum or his making provision for the payment thereof in instalments, may, during the period permitted for such payment, also pay as an additional make-up payment the deductions omitted from the date when the make-up payment for previous membership could first have been paid, with buyback interest. Upon the completion of such make-up payments such member shall be entitled to all creditable service resulting from his previous employment. In the event any retirement allowance becomes effective for him before the completion of such

make-up payments, such member shall, in addition to credit for his actual membership service rendered since the date of his last becoming a member, be entitled to credit for that proportion of his previous creditable service rendered prior to such date which the total amount of his make-up payments actually made, together with buyback interest thereon to the date his retirement allowance becomes effective, bears to the total amount of what his make-up payments, together with buyback interest thereon to such latter date, would have been had he made payment thereof in one sum on such latter date.

(e) Anything in sections one to twenty-eight inclusive to the contrary notwithstanding, no person who becomes a member under subdivision (3) of this section, and no member who is reinstated to or who re-enters active service as provided for in paragraph (b), (c) or (d) of this subdivision, or who transfers or re-establishes his membership as provided for in subdivision (8) of this section, shall be eligible to receive a superannuation retirement allowance, an ordinary disability retirement allowance or a termination retirement allowance unless and until he shall have been in active service for at least two consecutive years, including any period or periods of leave of absence credited as membership service, subsequent to the date of commencement of his new employment, or unless, in the case of any member who is reinstated to or who re-enters active service as provided for in paragraph (b) of this subdivision or who transfers his membership as provided for in paragraph (8) (a) of this section, he was eligible to receive a retirement allowance under the provisions of section ten at the time of his last separation from service; provided that, in the case of a member whose account is transferred under said paragraph (8) (a), this paragraph shall not apply after the member has rendered service or attained an age so that he would have been eligible to retire if he had continued to be a member of the retirement system from which his account was transferred.

(f) Any employee who last terminated his service in any political subdivision of the commonwealth before a contributory retirement system established under the provisions of this chapter, or under corresponding provisions of earlier laws or under any special law, became operative in such political subdivision and who is reinstated to or who re-enters the active service of such political subdivision after such a system becomes operative therein shall become a member upon his re-employment in a position which is subject to the provisions of such retirement system. Upon becoming a member he shall be entitled to all creditable service resulting from his previous employment in such political subdivision. In no event shall any such member be eligible to receive a superannuation retirement allowance or a termination retirement allowance unless and until he shall have been in active service for at least five years, including any period or periods of leave of absence credited as membership service, subsequent to the date of commencement of his new employment.

(7) *Dual Membership.* -- (a) Any person employed by two or more governmental units which have established contributory retirement systems under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws, shall, subject to the provisions of such sections, become a member in service of each such system to which he is eligible by reason of his employment in such governmental units and shall receive pensions, retirement allowances or other benefits from each such system according to the applicable provisions of such sections. If any such person is or becomes a member of two or more such systems on or after January first, nineteen hundred and forty-six, the treasurer of each such governmental unit shall withhold five per cent of the regular compensation due such member on each pay day from such governmental unit for deposit to the credit of such member in the annuity savings fund of the appropriate system.

(b) In no event shall the total benefits received by such member from all such systems be greater than he would have received had his total regular compensation been received from a single governmental unit. The amount of any pension, retirement allowance or other benefit to be paid on account of any person who is a member of two or more such systems shall be computed and paid in such proportions as may be ordered by the actuary. No pension or retirement allowance shall become effective on account of any such person's membership in one system until the date the member terminates his service in any other governmental unit. Any board may conduct separate medical examinations for any member who is a member of two or more systems; provided, however, that the commission may suspend or otherwise limit such examination upon recommendation of the regional medical panel if it determines such second examination would be unnecessary based on the

evidence of the first examination. Any such person so jointly employed shall have all the rights and be subject to the liabilities under the provisions of sections one to twenty-eight, inclusive, as a member of each such system, and his liability for regular deductions and his right to benefits from each system shall be based upon his regular compensation received from the governmental unit to which such system pertains.

(c) Any person who is a member of two or more systems and who on or after January first, nineteen hundred and forty-six, receives regular compensation paid jointly by two or more governmental units, shall, subject to the provisions of sections one to twenty-eight inclusive, while continuing in such joint employment, be allowed creditable service in each system for all such employment in the governmental unit to which each system pertains. In no event shall any such person during such joint employment be allowed creditable service in any one system for a total period of service longer than he would have been credited with had he been a full-time employee of the governmental unit to which such system pertains. In all cases of joint employment involving membership in two or more such systems, the amount of creditable service allowed to any such person shall be subject to the approval of the actuary.

(d) If any person who is a member of two or more systems terminates his service in one governmental unit other than by retirement but continues in service in one or more other governmental units, his membership in the system pertaining to the former governmental unit shall thereupon be transferred to the system of the governmental unit to which he is devoting the major portion of his employment and the provisions of subdivision (8) of this section shall be applicable; provided, however, that an individual awarded a disability pension from the system pertaining to the former governmental unit who continues his service in one or more other governmental units shall waive receipt of the disability retirement allowance during the period of such continued service, and provided further, that the membership of such individual awarded a disability pension shall not thereupon be transferred to the system of the governmental unit to which he is devoting the major portion of his employment. In no event shall any member be eligible to receive a retirement allowance from one system while continuing in service in any governmental unit, except as provided for in section ninety-one, or in section twenty-six of chapter six hundred and seventy of the acts of nineteen hundred and forty-one, or in chapter sixteen of the acts of nineteen hundred and forty-two as amended. In no event shall any member who terminates his service in one governmental unit be entitled to withdraw his accumulated total deductions from the system pertaining to such governmental unit while still retaining his membership in any other system, except for the purpose of transfer thereof to such other system.

(e) Any person who is a member of one or more contributory retirement systems established under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws, and who is also a member of a contributory retirement system established and operative under any special law, shall be subject to the provisions of this subdivision to the extent such provisions are not inconsistent with those of the special law. In all such cases the amount of creditable service allowed to any such person and the amount of any pension, retirement allowance or other benefit to be paid on his account shall be computed by the actuary.

(f) The provisions of paragraphs (a) to (e) inclusive of this subdivision shall not apply to any person employed by Suffolk County whose regular compensation received from the county at the time of his employment was more than one half of his combined regular compensation from all governmental units.

(g) Any person retired under the provisions of this chapter, or under corresponding provisions of earlier laws or of any other general or special law, shall receive only such benefits as are allowed or granted by the particular provisions of the law under which he is retired.

(8) *Transfer or Re-establishment of Membership.* -- (a) Any member of any contributory retirement system established under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws or of any special law, who, while still a member and before the date any retirement allowance becomes effective for him, becomes employed in a position in any other governmental unit in which such a system is operative, shall thereupon have his membership transferred to the second system, or if a teacher as defined in section one shall retain his membership in the teachers' retirement system, and shall be entitled to all creditable service resulting from his previous employment; provided, that such position is subject to the provisions of the law pertaining to the second system or to the teachers' retirement system, as the case may be. Such transfer of membership, if required, shall be effectuated by transferring within ninety days after the date of commencement of his new employment the amount of the accumulated total deductions credited to his account in the annuity savings fund of the system from which he is being separated to the annuity savings fund of the second system.

(b) Any former member of any contributory retirement system established under the provisions of this chapter, or under corresponding provisions of earlier laws or of any special law, who subsequently becomes employed in a position in any other governmental unit in which such a system is operative, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system pertaining to his new employment in one sum, or in instalments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him from the system from which he last became separated, together with buyback interest; provided, that such position is subject to the provisions of the law relating to the system pertaining to his new employment. Upon commencing such employment and upon making such payment in one sum, or upon making provision for payment thereof in instalments, as the case may be, such former member shall become a member of the system pertaining to his new employment. A member who did not, at the earliest opportunity, either return in one sum the permitted make-up payment, or provide for such repayment in instalments, and whose membership was contingent on such payment either in one sum or his making provision for the payment thereof in instalments, may, during the period permitted for such payment, also pay as an additional make-up payment the deductions omitted from the date when the make-up payment for previous membership could first have been paid, with buyback interest. Notwithstanding any provision of this chapter to the contrary, a member who is reinstated to, or re-enters the active service of, a governmental unit, or who is eligible to receive credit for other service under this section, and who does not, (i) pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest; or (ii) make provision for the repayment in installments, upon such terms and conditions as the board may prescribe, to pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest, within 1 year from the date of reinstatement or re-entry or within 1 year after April 2, 2012, whichever is later, shall pay actuarial assumed interest instead of buyback interest on all make-up payments to be entitled to creditable service resulting from the previous employment. Upon the completion of such make-up payments such member shall be entitled to all creditable service resulting from his previous employment. In the event any retirement allowance becomes effective for him before the completion of such make-up payments, such member shall, in addition to credit for his actual membership service rendered since the date of his becoming a member of the system pertaining to his new employment, be entitled to credit for that proportion of his previous creditable service attributable to his former membership in the system from which he last became separated which the total amount of his make-up payments actually made, together with buyback interest thereon to the date his retirement allowance becomes effective, bears to the total amount of what his make-up payments, together with buyback interest thereon to such latter date, would have been had he made payment thereof in one sum on such latter date.

(c) Whenever any retired member or beneficiary receives a pension or survivor's allowance from a system pertaining to one governmental unit in a case where a portion of such pension or survivor's allowance 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 of the pension as shall be computed by the actuary. The actuary shall consider length of service and whether the respective systems have elected to accept the provisions of paragraph (b ½) of subdivision (1) of section twenty-two when computing such portions. No system which has not accepted the provisions of said paragraph shall be assessed any costs for service in any other system which has accepted the provisions of said paragraph. In any case where creditable service is allowed for any period served in the armed forces, where a member became employed in a position in a governmental unit other than the governmental unit wherein he was

employed prior to entering such military service, the cost of any pension attributable to such creditable service shall be divided equally between the two retirement systems involved, and the actuary shall, on the same basis, determine the amount to be transferred from the special fund for military service credit, established under the provisions of subdivision (4) of section twenty-two, of the system of the governmental unit by which the member was employed prior to entering such military service to the special fund for military service credit in the second retirement system. 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 such disbursements have been made, notify the treasurer of the second governmental unit of the amount of reimbursement due therefrom for the previous fiscal year and such latter treasurer shall 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; provided, however, that if the commonwealth is the first governmental unit, any payments received shall be credited to the General Fund. 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.

(d) The pertinent provisions of this subdivision shall apply to the extent not inconsistent therewith to any person otherwise subject thereto who has transferred his employment from one governmental unit to another prior to January first, nineteen hundred and forty-six, as well as to any such person who so transfers his employment on or after such date. The provisions of paragraph (6) (e) of this section shall be applicable to any member whose membership is transferred or re-established as provided for in this subdivision.

### Credits

Added by St.1945, c. 658, § 1. Amended by St.1946, c. 403, §§ 1 to 3; St.1946, c. 481; St.1946, c. 492; St.1946, c. 538, § 1; St.1946, c. 603, § 1; St.1947, c. 388, §§ 1 to 3; St.1947, c. 416; St.1947, c. 423; St.1947, c. 660, §§ 2, 4; St.1947, c. 667, §§ 2 to 4; St.1948, c. 393; St.1949, c. 578, § 1; St.1949, c. 746, § 1; St.1950, c. 600, § 2; St.1950, c. 728; St.1951, c. 505, § 1; St.1951, c. 644, §§ 1, 2; St.1952, c. 157; St.1952, c. 428, § 1; St.1952, c. 515, § 1; St.1952, c. 524, §§ 1 to 3; St.1954, c. 445, § 1; St.1954, c. 684, §§ 1 to 5; St.1955, c. 560; St.1955, c. 695, §§ 1 to 5; St.1956, c. 418, §§ 1, 2; St.1956, c. 609, §§ 1, 2; St.1957, c. 255; St.1957, c. 630, § 1; St.1958, c. 321, §§ 2, 3; St.1958, c. 359, § 1; St.1958, c. 550; St.1958, c. 578, § 1; St.1958, c. 589, § 1; St.1959, c. 381; St.1960, c. 535; St.1960, c. 571; St.1960, c. 602; St.1961, c. 409; St.1961, c. 474; St.1962, c. 548; St.1963, c. 749, § 1; St.1964, c. 514, § 1; St.1966, c. 622; St.1967, c. 597, § 7; St.1967, c. 826, §§ 2, 3; St.1968, c. 516; St.1968, c. 542, §§ 1, 2; St.1968, c. 650, §§ 1, 2; St.1969, c. 110; St.1969, c. 219; St.1969, c. 625, § 2; St.1969, c. 740, §§ 1 to 4; St.1969, c. 816; St.1970, c. 662, §§ 1, 2; St.1970, c. 751; St.1971, c. 94; St.1971, c. 886; St.1971, c. 969, § 1; St.1971, c. 992, §§ 1, 2; St.1971, c. 1012, § 18; St.1972, c. 284, § 1; St.1972, c. 809, §§ 1, 2; St.1973, c. 609; St.1973, c. 725; St.1973, c. 947; St.1973, c. 987, §§ 1, 2; St.1973, c. 1003, § 6; St.1973, c. 1083, §§ 1, 2; St.1973, c. 1211, § 2; St.1973, c. 1222, §§ 1, 2; St.1974, c. 626, §§ 1, 2; St.1975, c. 706, §§ 83 to 85; St.1978, c. 442, § 14; St.1978, c. 523, § 1; St.1979, c. 485, §§ 1, 2; St.1980, c. 170, §§ 2, 3; St.1980, c. 329, § 88; St.1981, c. 351, § 168; St.1981, c. 760, § 9; St.1982, c. 339; St.1982, c. 630, §§ 10, 11; St.1983, c. 613; St.1984, c. 189, § 39; St.1985, c. 751, § 1; St.1987, c. 572; St.1987, c. 697, §§ 20 to 23; St.1991, c. 412, §§ 31, 32; St.1992, c. 333, § 1; St.1993, c. 100, § 1; St.1993, c. 139; St.1994, c. 60, § 63; St.1995, c. 38, § 52; St.1996, c. 71, § 1; St.1996, c. 306, § 7; St.1996, c. 465; St.1998, c. 161, § 247; St.1998, c. 194, § 107; St.1998, c. 463, § 35; St.2000, c. 123, §§ 3 to 15; St.2000, c. 159, §§ 80, 81; St.2004, c. 279, §§ 2, 3, eff. July 1, 2005; St.2004, c. 280, § 2, eff. July 1, 2005; St.2008, c. 308, § 2, eff. Sept. 1, 2008; St.2008, c. 467 eff. April 9, 2009; St.2011, c. 176, §§ 8, 9, eff. April 2, 2012; St.2012, c. 139, § 62, eff. July 1, 2012; St.2014, c. 313, § 2, eff. Sept. 9, 2014; St.2015, c. 86, § 3, eff. Dec. 24, 2015; St.2017, c. 6, § 53, eff. Mar. 27, 2017; St.2017, c. 47, § 24, eff. July 1, 2017; St.2017, c. 161, § 2, eff. Oct. 15, 2017; St.2018, c. 221, eff. Nov. 7, 2018.

M.G.L.A. 32 § 3, MA ST 32 § 3

Current through Chapter 295 of the 2018 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32. Retirement Systems and Pensions (Refs & Annos)

M.G.L.A. 32 § 4

§ 4. Creditable service

Effective: December 24, 2015

Currentness

(1) *Qualifications for Credit for Service.* -- (a) Any member in service shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.

(b) Periods of service in any governmental unit prior to the date a system becomes operative therein rendered by any employee who becomes a member when such system first becomes operative in such governmental unit, or who becomes a member as otherwise provided for in paragraph (6) (f) of section three, shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be counted as creditable prior service; provided, that in no event shall any such person be credited with more than one year of creditable service for all such prior service rendered during any one calendar year.

(c) Creditable service in the case of any member shall include any period of his continuous absence with full regular compensation, or in the event of his absence with partial regular compensation such period or portion thereof, if any, as the board shall determine. Creditable service in the case of any member may be allowed by the board for any period of his continuous absence without regular compensation which is not in excess of one month. Any portion of any leave or period of continuous absence of any member without regular compensation which is in excess of one month shall not be counted as creditable service except as specifically otherwise provided for in this section, but no duly authorized leave or period of absence shall be deemed to be a termination of membership or service.

(d) Any person who became or becomes an employee by reason of the taking over by the commonwealth, or by the metropolitan district commission or by any district, of any institution, or of any public or quasi-public enterprise, controlled and operated by a political subdivision of the commonwealth or by a corporation, except such a person employed by the metropolitan district water supply commission who has not elected or does not elect to become a member of the state employees' retirement system, shall be credited with such service as would have been creditable service had it been rendered by him under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws.

(e) This section shall not apply to any employee who was eligible to and did not join a contributory retirement system established under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws or of any special law, or to any such employee who was formerly a member of any such system, to the extent applicable to his service prior to his last becoming a member, unless and until he shall pay into the annuity savings fund of the system the makeup payments, if any, required by subdivision (3), (6) or (8), as the case may be, of section three.

(f) Creditable service for periods of out-of-state service in the case of any member who has acquired the right to credit for such service as a member of the teachers' retirement system, or creditable service for periods of intra-state service in other governmental units where no system existed in the case of any employee who is a member of any system, shall be allowed as provided for in subdivision (4) or (5) respectively, of section three, or as provided for under corresponding provisions of earlier laws to the extent that such credit had been established prior to January first, nineteen hundred and forty-six.

(f ½ ) Creditable service for periods of nonpublic school service in the case of any member who has acquired the right to credit for such service as a member of the teachers' retirement system, shall be allowed as provided for in subdivision (4A) of section three; provided that such nonpublic school service was rendered prior to January first, nineteen hundred and seventy-three.

(g) Any person who is a member of one or more systems and who has received or shall receive regular compensation paid jointly by two or more governmental units, shall, subject to the provisions of subdivision (7) of section three, while continuing in such joint employment, be allowed such creditable service as the board or boards may determine subject to the approval

of the actuary; provided, that in no event shall any such person be credited with more than one year of creditable service for all such service rendered during any one calendar year.

(g ½ ) The period or periods before 1975 during which any member in service of the teachers' retirement system or any teacher who is a member of the Boston retirement system resigned for the purposes of maternity leave or was on unpaid leave of absence for such purposes from the governmental unit in which the member was employed as a teacher and had established membership in a Massachusetts contributory retirement system shall be allowed as creditable service, on a proportionate basis which the board shall determine according to rules and regulations adopted by the board and approved by the commission; provided, that no credit shall be allowed unless such member has paid into the Annuity Savings Fund of the system by December 31, 2001, in one sum or in installments, upon such terms and conditions as the board may prescribe, an amount equal to the deductions that would have been withheld had the member continued in service, as determined by the board, together with buyback interest. No credit shall be allowed and no payment shall be accepted under this paragraph until such member shall have completed ten or more years of membership service, but if any such member completes ten years of service after December 31, 2001, the member shall be permitted to make payment under this paragraph within 18 months of the date she has completed ten years of service. The maximum creditable service allowable under this paragraph for any member shall not exceed four years.

(g ¾ ) The period or periods before 1975 during which any retired member of the Teachers Retirement System or any member who retired as a teacher from the Boston retirement system who (i) is living and retired before September 1, 2000, (ii) resigned for the purposes of maternity leave or was on unpaid leave of absence for such purposes from the governmental unit in which the member was employed as a teacher, and (iii) had established membership in a Massachusetts contributory retirement system shall be allowed under this paragraph a maximum of creditable service not to exceed 4 years creditable service. No credit shall be allowed under this paragraph for any member who was not retired as of September 1, 2000. The credit allowed under this paragraph shall increase the retirement allowance payments beginning on April 2, 2012.

(h) The period or periods during which any member who is a veteran as defined in section one was on leave of absence from the governmental unit to which the system of which he is a member pertains, for the purpose of serving in such campaign and until he was discharged or released from such service in the armed forces, shall be allowed as creditable service.

Any such period of leave of absence which is subsequent to his becoming a member of such system shall be counted as membership service, and any such period prior thereto shall be counted as prior service; provided, that he would have been entitled to such credit in the event he had continued in the active service of such governmental unit during the period of time covered by such leave of absence.

Any member who served in the armed forces between January first, nineteen hundred and forty and the termination of the Selective Service Act of 1948, shall have such actual service credited to him as creditable service when reinstated or reemployed in his former position or in a similar position or when employed in any governmental unit in a position which is subject to the provisions of sections one to twenty-eight, inclusive, within two years of his discharge or release from such service; provided, however, that such service shall not be construed to include service for more than four years unless such further period of service in excess of four years was involuntary service required by the government of the United States or unless such service in excess of four years was rendered prior to July first, nineteen hundred and sixty-four and such member was reinstated or reemployed on or before June thirtieth, nineteen hundred and sixty-six. The provisions of sections nine and nine A of chapter seven hundred and eight of the acts of nineteen hundred and forty-one, as amended, and as may be further amended, shall be applicable to any person referred to in section one of said chapter seven hundred and eight who is a member of any retirement system established under the provisions of this chapter whose last discharge or release from military service was under honorable conditions as defined in defense department regulations.

Notwithstanding the provisions of this chapter or any other general or special law, rule or regulation to the contrary, a member in service of a retirement system as defined in section one who is a veteran who served in the armed forces of the United States shall be entitled to credit for active service in the armed services of the United States; provided, however, that such active service shall not be credited until such member has paid into the annuity savings fund of such system, in one sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments, for each year of creditable service sought, of an amount equal to the ten percent of the regular annual compensation of the member when said member entered the retirement system; and, provided further that such creditable service shall not be construed to include service for more than four years provided further, that such creditable service shall not be allowed for any period of active service for which said veteran has received credit pursuant to paragraph (h) of subsection (1) of section 4 of chapter thirty-two of the General Laws. This act shall apply to National Guard and Active Reserve personnel, both former and present. Creditable service time, both enlisted and commissioned may be applied toward retirement on a ratio of five years guard service or five years active reserve service substitutable for each year of active service.

(h ½ ) Any member in service of the teachers' retirement system or teacher who is a member of the Boston retirement system, and who is or was employed as a teacher as defined by section 1 in a vocational-technical school or in a public school's vocational-technical program approved by the department of education under chapter 74 may receive creditable service for any period or periods of prior work experience in the occupational field in which the member became a vocational-technical teacher and which was required as a condition of the member's employment and licensure under regulations of the department of education. No credit shall be allowed until the member has paid into the Annuity Savings Fund of the system before any retirement allowance becomes effective for the member, in 1 sum, or in installments, upon the terms and conditions that the board prescribes, makeup payments of an amount equal to 10 per cent of the regular annual compensation of the member as of the member's most recent date of entry into membership in the teachers' retirement system or as a teacher in the Boston retirement system, for each year of service purchased plus buyback interest thereon. No credit shall be allowed and no payment shall be accepted under this paragraph until the member has completed 10 or more years of membership service. The creditable service allowable under this paragraph for any member shall not exceed 3 years. Members in service of a retirement system who make application for this creditable service shall be notified by the retirement board of their eligibility for such creditable service, and, if they are eligible, shall also be notified by the retirement board that they have the following options: (1) to purchase the service in a lump sum within 180 days of the notice, or (2) to enter into an installment agreement within 180 days of the notice to pay for the service.

(i) Any member who is an employee of the division of banks and loan agencies and who is assigned by the commissioner of banks to serve in the liquidation of any banking corporation under the supervision of said commissioner and who receives compensation for such service from the funds of such corporation, shall deposit in the annuity savings fund of the state retirement system such amounts as he would have contributed during the period of such service, but in no event for more than three years, had he remained on the payroll of the commonwealth. In such case he shall receive full credit for such service as if his salary had been paid by the commonwealth.

(j) Credit shall be allowed for any additional contribution made by an employee for the period between July first, nineteen hundred and thirty-seven, and January first, nineteen hundred and forty-six, for salary in excess of the limit or limits allowed in the retirement system during that period.

(k) Any member whose services have been requested of the governor by the United States Department of State and who was granted a leave of absence to perform such services shall receive full credit for retirement purposes, for the period of such service, provided that he pays into the annuity savings fund of the state employees' retirement system the amount that would have been withheld as regular deductions from his salary had he not been granted such leave.

(l) Any member of a retirement system who most recently became a member prior to January first, nineteen hundred and eighty-eight, and who is engaged in a teaching position and who previously served in a position in the state department of education under the control of the commissioner of education, but who was paid directly by the federal government from federal funds, may establish such service as creditable service by depositing in the annuity savings fund of the system of which he is a member an amount equal to five per cent of the compensation received during such period of service, plus buyback interest to the date of such deposit.

(l ½ ) Any member of a retirement system who most recently became a member on or after January first, nineteen hundred and eighty-eight, and is engaged in a teaching position and who has previously served in a position in the state department of education under the control of the commissioner of education but who was paid directly by the federal government from federal funds, may establish such service as creditable service by depositing in the annuity savings fund of the system of which he is a member the amount which would have been withheld as regular deductions from his salary for such service, plus buyback interest to the date of such deposit.

(l ¾ ) A member of the state retirement system who is eligible to receive a retirement benefit pursuant to this chapter who served as an employee of an educational collaborative prior to 1983 may establish such service as creditable service by depositing in the annuity savings fund of the state retirement system in 1 sum or in installments, upon such terms and conditions as the board may prescribe, an amount equal to 10 per cent of the compensation received by the member during such period plus buyback interest to the date of the deposit.

(m) Any employee who was a member in service at the time of sustaining an injury or undergoing a hazard on account of which he received weekly payments for total incapacity under the provisions of sections sixty-nine to seventy-five, inclusive, of chapter one hundred and fifty-two, or a lump sum settlement payable under section forty-eight of said chapter

one hundred and fifty-two shall have credited to him as creditable service under the system any period prior to June first, nineteen hundred and fifty-one during which he received such weekly payments, or any such period prior to said date represented by the allocation of any lump sum settlement payable to him in lieu of such weekly payments; provided, that such employee returned to his former position, or a similar position, upon the termination of the leave caused by such injury or hazard.

(n) Any member of a retirement system who most recently became a member prior to January first, nineteen hundred and eighty-eight and who previously served in a position with the Veterans Employment Service of the United States Employment Service and who, during such service, was attached to and served at offices of the division of employment and training, but who was paid directly by the Federal Government from federal funds, may establish such services as creditable service by depositing in the annuity savings fund of the system of which he is a member an amount equal to five per cent of the compensation received by him during such period of service, plus buyback interest to the date of such deposit.

(n ½) Any member of a retirement system who first became a member on or after January first, nineteen hundred and eighty-eight, and who previously served in a position with the Veterans Employment Service of the United States Employment Service and who, during such service, was attached to and served at offices of the division of employment and training, but who was paid directly by the Federal Government from federal funds, may establish such service as creditable service by depositing in the annuity savings fund of the system of which he is a member the amount which would have been withheld as regular deductions from his salary for such service, plus buyback interest to the date of such deposit.

(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

(p) Any member of a contributory retirement system who is engaged in a teaching position and holds a certificate issued by the department of education or is exempted from the requirement of certification and who was previously engaged in teaching pupils in any non-public school in the commonwealth, if the tuition of all such pupils taught was financed in part or in full by the commonwealth may, before the date any retirement allowance becomes effective for him, establish such service as creditable service by depositing into the annuity savings fund of the system of which he is a member in one sum, or in installments, upon such terms and conditions as the board may prescribe, an amount equal to five per cent

of the compensation received by him during such period of service plus buyback interest to the date of such deposit for such previous period, or most recent portion thereof, as he may elect. Payment shall not be made and no credit shall be allowed for such non-public school service in excess of the total service rendered in a public school of the commonwealth to which the member would be entitled to receive credit if he remained in service to age sixty-five, with the maximum credit for service in such non-public schools not to exceed ten years; provided, that no credit shall be allowed and no payment shall be accepted for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source. Upon completion of such payments, such member shall receive the same credit for such period of his previous non-public school service or portion thereof elected, as would have been allowed had such service been rendered by him in a public school of the commonwealth. Such member shall furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed under this paragraph. At the time a retirement allowance becomes due to a member or to a beneficiary under option (d) of subdivision (2) of section twelve, if the service rendered in public schools of the commonwealth on the date either the retirement allowance becomes effective, or on the date the member attained age sixty-five, whichever occurs first, is less than the service in said non-public schools for which the member has paid, credit shall be allowed only for the most recent service rendered in said non-public schools equal to such service rendered in the public schools of the commonwealth and the amount paid for such additional service shall be refunded with accumulated interest, refund to be made only when the retirement allowance becomes due to the member or to the beneficiary under option (d) of subdivision (2) of section twelve, and if it is found that payment has been accepted for any service for which the member is entitled to a retirement allowance, annuity or pension from any other source, the amount paid for such service with accumulated interest shall also be refunded with no retirement credit allowed.

(q) Any veteran employed in the service of the commonwealth or of any county, city, town or district, or any housing authority or any redevelopment authority thereof, who is a member in service in a public retirement system, and who is elected to the office of national commander of any congressionally chartered veterans organization, shall, while on leave of absence for the purpose of acting in a full-time capacity in said office, be considered on leave of absence without pay for the period of his term of office as national commander; provided, however, that such leave of absence shall not exceed fifteen months; and, provided further, that the period of time of such leave of absence shall be deemed creditable service for retirement purposes upon said member's depositing into the retirement fund of the system of which he is a member the total amount of the payments said member would have paid into the system had he remained in the service during said leave of absence, in one lump sum, or in installments, upon such terms as the board of retirement may prescribe. The provisions of this paragraph shall be effective for the members of the state employees' retirement system

and of the teachers' retirement system and for the members of a county retirement system by vote of the county retirement board, subject to the approval of the county commissioners, of a town retirement system by vote of the town retirement board, subject to the approval of the town meeting, of a city retirement system by vote of the city retirement board subject to the approval of the council, and of a district retirement system by vote of the district retirement board, subject to the approval of the district meeting.

An active or inactive member of a contributory system who was a member of the judiciary and resigned from office without meeting the requirements for retirement or resignation as set forth in the third or fourth paragraphs of said section sixty-five A may not establish such judicial service as creditable service for retirement purposes except by depositing into the annuity saving fund of the system of which he is a member in one sum, or in installments, upon such terms and conditions as the board may prescribe, an amount equal to seven per cent of the compensation received by him during such period of judicial service plus regular interest to the date of such deposit for such previous period, or most recent portion thereof, as he may elect. Payment shall not be made and no credit shall be allowed for any such judicial service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source. Upon completion of such payments, such member shall receive the same credit for such period of his previous judicial service or portion thereof elected as would have been allowed had such service been rendered by him while an active member of such system.

(r) Notwithstanding any general or special law to the contrary, a member in service or member inactive, as defined in section 3, of a retirement system, who served as a volunteer to the Peace Corps, who completes 10 or more years of membership service as a public school teacher or public school guidance counselor, and who retires on or after September 1, 2002, shall receive full credit for the period of such volunteer service but not more than 3 years. Eligibility for the creditable service of members in service of a retirement system shall be conditioned upon payment, in 1 sum or in installments upon such terms as the applicable retirement board may provide, into the annuity savings fund of the applicable retirement system, of an amount equal to the contributions such member in service would have otherwise paid into the retirement system plus buyback interest thereon for the period of volunteer service based upon the annual salary the member received in the first year of membership service after that volunteer service.

(s) Any member in service of the state employees' retirement system who, immediately preceding the establishment of membership in that system or re-entry into active service in that system, was compensated for service to the commonwealth as a contract employee for any department, agency, board or commission of the commonwealth may establish as

creditable service up to 4 years of that service if the member has 10 years of creditable service with the state employees' retirement system, and if the job description of the member in the position which the member holds upon entry into service or re-entry into active service is substantially similar to the job description of the position for which the member was compensated as a contract employee. No credit shall be allowed until the member has paid into the Annuity Savings Fund of the state employees' retirement system before any retirement allowance becomes effective for the member, in a lump sum or in installments, upon the terms and conditions that the state board of retirement prescribes, makeup payments of an amount equal to that which would have been withheld as regular deductions for the service as a contract employee if the service had been rendered as a state employee and the member had been a member of the state employees' retirement system during the period the service was rendered, plus buyback interest on that amount. Eligible members who worked part-time as contract employees shall be eligible for creditable service proportionately equal to their part-time service.

Upon completion of the payments, the member shall receive the same credit for the period of previous service as a contract employee as would have been allowed if the service had been rendered by the member as a state employee. Members in service of the state retirement system who make application for this creditable service shall, subject to the rules and regulations of the state board of retirement, be notified by the state board of retirement of their eligibility for creditable service and, if they are eligible, shall also be notified by the state board of retirement that they have the following options: (1) to purchase the service in a lump sum within 180 days after the date of the notice; or (2) to enter into an installment agreement within 180 days after the date of the notice to pay for the service. No creditable service shall be allowed under this section unless the member provides documentation of the member's service as a contract employee satisfying the state board of retirement's requirements.

(2) *Filing and Verification of Statements of Service.* -- (a) Each person becoming a member of the system shall, within one year thereafter and under such rules and regulations adopted by the board and approved by the public employee retirement administration commission, file a detailed statement of all service for which he claims credit rendered by him as an employee of any governmental unit prior to the date as of which such system became operative herein including in such statement such facts as the board may require. Each such person shall also so file a detailed statement of any other service rendered by him as an employee prior to the date of his becoming a member for which he may claim credit as provided for in subdivisions (3) to (8) inclusive, of section three, or in paragraph (c) of this subdivision.

(b) The board, subject to rules and regulations promulgated by the commission, shall fix and determine how much service in any calendar year is equivalent to a year of service.

In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official or of any person elected by popular vote to a county or municipal office or position, the board, under appropriate rules and regulations which shall be subject to the approval of the actuary, shall fix and determine the amount of creditable prior service, if any, and the amount of credit for membership service of any such employee who becomes a member, including any prescribed waiting period before eligibility for membership, established either by law or board ruling, prior to January first, nineteen hundred and forty-six, for which such service credit was given upon attaining membership; provided, that in the case of any such employee whose work is found by the board to be seasonal in its nature, the board shall credit as the equivalent of one year of service, actual full-time service of not less than seven months during any one calendar year; and provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment; and provided, further, that such service as a permanent-intermittent or call fire fighter shall be credited only if such permanent-intermittent or call fire fighter was later appointed as a permanent member of the fire department. For a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter retiring from a governmental unit accepting the provisions of this sentence, the board shall credit, in addition to the five years of credit allowed pursuant to the preceding sentence, as one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was assigned to and actually performed duty as a reserve or permanent-intermittent police officer or reserve, permanent-intermittent or call fire fighter; provided, however, that such service as a permanent-intermittent or call fire fighter shall be credited only if such fire fighter was later appointed as a permanent member of the fire department; provided, further, that this sentence shall take effect in a city by vote of the city council in accordance with its charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, in a town whose eligible employees are members of the county retirement system of the county wherein such town lies by vote of a town meeting and by acceptance by the county commissioners of said county, in a district which maintains a separate contributory retirement system by vote of the district meeting, and in a district the eligible employees of which are members of a county retirement system by vote of the district meeting and by acceptance of the county commissioners of said county.

(b ½ ) In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon

the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department. This paragraph shall take effect in a city by vote of the city council in accordance with its city charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, in a town whose eligible members are members of the county retirement system of the county wherein such town lies by vote of the town meeting, in a district which maintains a separate contributory retirement system by vote of the district meeting, and in a district the eligible employees of which are members of a county retirement system by vote of the district meeting.

(c) In the case of any employee of any governmental unit who is a member of the retirement system pertaining thereto, the board may allow credit, upon whatever proportionate basis it shall determine under appropriate rules and regulations which shall be subject to the approval of the actuary, for any previous period of part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service rendered by him after such a retirement system becomes operative and while he was not eligible for membership excluding any prescribed waiting period under the provisions of the law or under the board's rules and regulations in effect during such previous period before eligibility for membership, established either by law or board ruling in effect prior to January first, nineteen hundred and forty-six, for which such service credit was given upon attaining membership; provided, that after becoming a member or being reinstated as such, and before the date any retirement allowance becomes effective for him, he pays into the annuity savings fund of the system in one sum, or in installments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation had he been eligible for membership and been a member of such system during such previous period, together with buyback interest. In the event any retirement allowance becomes effective for him before the completion of such make-up payments, such member shall, in addition to credit for his actual membership service, be entitled to credit for that proportion of his service rendered prior to the date of his becoming a member which the total amount of his make-up payments actually made, together with regular interest thereon to the date his retirement allowance becomes effective, bears to the total amount of what his make-up payments, together with regular interest thereon to such latter date, would have been had he made payment thereof in one sum on such latter date.

(d) The board shall verify as soon as practicable after the filing of any such statement of service, the service therein claimed, and shall certify as creditable service all or such part of the service claimed as may be allowable under such rules and regulations as the board may adopt subject to the approval of the actuary.

(3) *Prior Service Certificates.* -- (a) The board, upon its verification of any statement of service of any member entitled to credit for prior service, shall issue to him a prior service certificate certifying the length of service rendered by him prior to the date the system became operative with which he is credited by the board. Such prior service certificate shall, for retirement purposes, be final and conclusive as to such service as long as his membership continues; provided, that any member may within one year from the date of issue or modification of such certificate request the board in writing to modify or correct his prior service certificate. The board shall issue said prior service certificate within six months of the filing of a statement of service of any member.

(b) The prior service certificate of any member shall become void upon the cessation of his membership or shall become void upon the termination of his service otherwise than by retirement unless he remains a member inactive and unless as such he is eligible to receive a retirement allowance under the provisions of section ten. If his membership is restored or reinstated as provided for in subdivision (6) of section three, or is transferred or reestablished as provided for in subdivision (8) of such section, he shall again be entitled to such prior service credit or to that proportion thereof which he restores to the extent that he pays into the annuity savings fund of the system the make-up payments, if any, required by such subdivisions. Upon the completion of any such make-up payments, or if none are required then upon his again becoming a member in service as provided for in said subdivisions, his prior service certificate shall be fully reinstated.

(4) *Membership and Retirement Certificates.* -- The board shall issue to each person upon his becoming a member of any system a certificate of membership therein which shall remain in effect as long as such membership continues. The board, subject to the approval of the commission, shall issue to each member upon his retirement, or when a retirement allowance becomes effective for him under the provisions of section ten, a retirement certificate which shall be evidence of his right to a retirement allowance and shall state the amount thereof. Under this section, the board, with the approval of the commission, shall adopt rules and regulations to provide that such member shall on an annual basis file an affidavit under the penalties of perjury, certifying such information as the board deems appropriate. Any certificate issued under this subdivision or under subdivision (3) of this section shall be on a prescribed form.

#### **Credits**

Added by St.1945, c. 658, § 1. Amended by St.1946, c. 403, §§ 4, 5; St.1946, c. 493, § 1; St.1946, c. 538, § 2; St.1947, c. 660, § 3; St.1952, c. 524, § 4; St.1954, c. 627, § 8; St.1954, c. 684, § 6;

St.1955, c. 695, § 6; St.1959, c. 548, § 1; St.1959, c. 576, § 1A; St.1960, c. 619, § 2; St.1961, c. 433; St.1961, c. 494; St.1961, c. 597, § 4; St.1962, c. 544, § 2; St.1962, c. 584; St.1963, c. 239, § 1; St.1964, c. 125; St.1964, c. 580, § 2; St.1964, c. 738; St.1965, c. 73; St.1965, c. 726, § 2; St.1966, c. 509, § 1; St.1966, c. 671, § 2; St.1969, c. 625, § 1; St.1969, c. 778; St.1971, c. 894; St.1973, c. 760; St.1975, c. 49; St.1979, c. 556, § 1; St.1982, c. 630, §§ 12 to 14; St.1987, c. 273, § 1; St.1987, c. 697, §§ 24 to 28; St.1988, c. 172; St.1990, c. 177, § 94; St.1992, c. 333, § 2; St.1994, c. 197; St.1995, c. 171, § 1; St.1996, c. 71, § 2; St.1996, c. 188, § 1; St.1996, c. 306, § 8; St.1998, c. 161, § 248; St.1998, c. 456, § 1; St.2000, c. 114, § 1; St.2002, c. 116, § 4; St.2002, c. 394; St.2002, 468, §§ 1 to 1B; St.2005, c. 6, § 4, eff. Feb. 24, 2005; St.2005, c. 90, eff. Dec. 14, 2005; St.2005, c. 130, § 3, eff. Nov. 11, 2005; St.2006, c. 161, § 1, eff. Oct. 17, 2006; St.2008, c. 302, §§ 7, 8, eff. July 1, 2008; St.2009, c. 21, § 4, eff. June 16, 2009; St.2009, c. 21, § 5, eff. July 1, 2009; St.2011, c. 176, § 10, eff. April 2, 2012; St.2012, c. 36, § 6, eff. April 2, 2012; St.2015, c. 86, § 4, eff. Dec. 24, 2015.

#### Notes of Decisions (39)

M.G.L.A. 32 § 4, MA ST 32 § 4

Current through Chapter 20 of the 2017 1st Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32. Retirement Systems and Pensions (Refs & Annos)

M.G.L.A. 32 § 20

§ 20. Administration by boards

Effective: April 9, 2013

Currentness

(1) *State Employees' Retirement System.* -- (a) The contributory retirement system for state employees shall be known as the "state employees' retirement system" and all of its business shall be transacted under such name.

(b) The state employees' retirement system shall be managed by the state board of retirement provided for in section eighteen of chapter ten. Said board shall have the general powers and duties set forth in subdivision (5) of this section.

(2) *Teachers' Retirement System.* -- (a) The contributory retirement system for teachers shall be known as the "teachers' retirement system" and all of its business shall be transacted under such name.

(b) The teachers' retirement system shall be managed by the teachers' retirement board provided for in section sixteen of chapter fifteen. Such board shall have the general powers and duties set forth in subdivision (5) of this section.

(c) Whenever, after July first, nineteen hundred and fourteen, any city or town, except the city of Boston, retires a teacher who is not eligible for a pension payable by the teachers' retirement system under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, and pays to such teacher a pension in accordance with the provisions of section forty-three, or chapter five hundred and eighty-nine of the acts of nineteen hundred and eight and acts in amendment thereof, or chapter five hundred and twenty-one of the acts of nineteen hundred and twenty-two and acts in amendment thereof, and the chairman or secretary of the school committee of such city or town certifies under oath to the teachers' retirement board the amount of such pension paid during any period prior to the immediately preceding July first for which reimbursement has not been made and furnishes such other information as the latter board may require, such city or town shall be reimbursed therefor by the commonwealth; provided, that no such reimbursement shall be granted unless such retirement has been approved by the latter board; and provided, that the amount of such reimbursement shall in no event be in excess of the amount, as determined by the latter board, to which such teacher would have been entitled as a pension had he been a member of the teachers' retirement system. In its annual report the teachers' retirement board shall include a statement of the amount expended prior to the immediately preceding July first by each city and town in the payment of pensions under this paragraph, for which such cities and towns have not received and should receive reimbursement. On the basis of such statement, the general court may make an appropriation for the reimbursement of such

cities and towns up to such preceding July first.

(3) *Systems for Counties.* -- (a) The contributory retirement system established in any county under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws, shall be known and all of its business shall be transacted under a name which shall be designated by the board of such system and which shall include in its designation the name of such county.

(b) Each such county system shall be managed by a retirement board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: the county treasurer, but if there is no county treasurer the director of finance, who shall be a member ex officio and serve as chairman; a second member appointed by the county commissioners; two members hereinafter referred to as the elected members; and one member of the county retirement board advisory council who shall be elected by a majority of those present and voting at a public meeting of said council, properly posted, called specifically for such election pursuant to paragraph (g). The election of the elected member shall be conducted in accordance with the provisions of paragraph (h).

The elected member shall be an active or retired member of the county retirement system or one whose retirement is being reimbursed by that system in accordance with the provisions of paragraph (c) of subdivision (8) of section three. Each member of the board shall continue to serve in office until the expiration of his term, and the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member, or in the event of a vacancy in either of said offices, his successor shall be elected as aforesaid for a term of three years, or for the unexpired portion thereof, as the case may be.

(c) The members of the board of any such county system shall serve without compensation, but they shall be reimbursed for any expense or loss of salary or wages which they may incur through service on such board from the expense fund of the system. Nothing in this paragraph shall prevent any county treasurer from being compensated for services rendered in the active administration of the system, in his capacity as county treasurer but not as a member of the board, provided, that such compensation shall not exceed fifteen hundred dollars per annum.

(d) The retirement board chairman shall employ such clerical and other assistants as may be required to transact the business of the county retirement system. All such clerical and other assistants, whether permanent or temporary employees, shall be removed from office only upon the two thirds vote of the county retirement board. The county retirement board shall classify and approve its employees in accordance with the general personnel guidelines and pay scales adopted for county personnel. All permanent employees employed pursuant to this paragraph shall be members of the county retirement system, but shall not be eligible to be a member or candidate for election to the county retirement board.

(e) Any such county retirement board may employ an attorney from time to time as required, but such attorney shall not be a member in service of the system or a member of the retirement board.

(f) The board of any such county system and the treasurer of the county in which it is established shall respectively be and act as the board and treasurer-custodian of such system with respect to the employees of any town or district who become members of such system as provided for in paragraph (3) (b), (3) (c) or (4) (b) of section twenty-eight, or who have become

members thereof under corresponding provisions of earlier laws. The treasurer or other disbursing officer of any such town or district, as the case may be, shall act as a liaison officer between the employees thereof and the board of such system.

(g) There shall be a county retirement board advisory council, in this subdivision called the council, consisting of all the treasurers, elected or appointed, of each town, unit or district belonging to the county retirement system and the county treasurer. A chairman shall be elected from among the members. The council shall meet at the call of the chairman, but in no event less than twice in each year. The council shall supervise and certify the procedures involved in the election of the elected member of the county retirement board, as provided in paragraphs (b) and (h). Upon certification by the county retirement board and the council, the actuary of the division of insurance shall be furnished with an estimate of the expenses and costs of administration of the system for the ensuing year. The actuary shall, on or before December fifteenth in each year, specify by written notice to the council and the board the amounts so required to be paid from the pension fund, the annuity reserve fund, the military service fund, and the administration fund, as provided in subdivision (7) of section twenty-two. The actuary shall also advise and determine the amounts to be allocated to each governmental unit for the aforementioned amounts.

The county retirement board advisory council, at a meeting called specifically for that purpose, shall elect one of its members as a member of the county retirement board at the expiration of the current appointed member's term, as provided in paragraph (b).

(h) The election of the elected member shall be supervised by the county retirement board advisory council, which shall serve as the election board. The council shall make available nomination papers to any member in or retired from service so requesting and shall require that such nomination papers be signed by the candidate, and returned to the office of the county retirement board for safekeeping until the election board shall meet. The county treasurer or his agent shall give a duplicate receipt for such nomination papers to each candidate. Completed nomination papers shall contain the signatures and addresses of at least five active or retired members of said retirement system. The election board shall determine whether each candidate has filed nomination papers containing the signatures and addresses of at least five active or retired members of said system. If, after investigation, the election board determines that a candidate has filed nomination papers containing less than five signatures as required, the election board shall declare said nomination papers invalid and shall notify said candidate of such determination. If, after investigation, the election board determines that only one candidate has filed the requisite number of signatures, the election board shall declare said candidate to be the elected member of the county retirement board. If, after investigation, the election board determines that more than one candidate has obtained the requisite number of valid signatures, the election board shall notify said candidates of such determination and shall immediately prepare election ballots, and set the date for the election, which shall be held within forty days.

The election board shall mail ballots to all members of the retirement system, whether active or retired. The election board shall instruct each member to place an appropriate marking on the face of the printed ballot next to the name of one candidate, insert said ballot into a ballot envelope and said ballot envelope into the prestamped envelope, seal said prestamped envelope and mail said envelope to the election board in care of the county retirement board, within twenty days after they were mailed. Any envelope postmarked later than twenty days after such mailing shall not be used to determine the elected member. The election board shall notify each candidate of the time and location of the tabulation of the ballots and shall permit all such candidates to be present at said tabulation. At the specified time for tabulation, the election board shall assemble all envelopes and inspect said envelopes. Any envelope which has been opened prior to said date, or which has not been signed on the rear by the appropriate addressee shall be invalidated and shall not be used to determine the elected member. The election board shall assemble all properly signed, unopened envelopes and shall open each envelope and separate the enclosed ballot from said envelope. The election board shall assemble all ballots and shall tabulate the vote for each candidate. Any ballot which contains a marking for more than the number of vacancies shall be declared invalid.

The election board shall notify each candidate in writing of the results of said election. All envelopes and ballots received by

the election board, including those determined to be invalid, shall be preserved by the election board for two years. The costs incurred by the election board in administering the election shall be paid from the county retirement system administration fund.

(4) *Systems for cities and towns.* -- (a) The contributory retirement system established in any city or town under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, shall be known and all of its business shall be transacted under a name which shall be designated by the board of such system and which shall include in its designation the name of such city or town, as the case may be.

(b) Each such city or town system shall be managed by a retirement board which shall have the general powers and duties set forth in subdivision (5). Such board shall consist of five members and shall be chosen in the following manner, except as provided in paragraph (c), the city auditor or town accountant or other officer having similar powers and duties who shall be a member ex officio, a second member appointed by the board of selectmen in a town, the mayor in a city, the city manager in a city having a Plan D or Plan E form of government, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the mayor in a city or the board of selectmen in a town shall determine, and a fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years. If the fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, said member shall be appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth member shall be so arranged as not to expire in the year of expiration of the term of the fifth member.

(c) In any city or town exercising the local option contained in this subsection shall upon the recommendation of the city manager with the approval of the city council or the board of aldermen in a Plan D or Plan E city, or the mayor with the approval of the city council or the board of aldermen in any other city, or board of selectmen with the approval of town meeting in a town may adopt the following method for selection of the members of the retirement board. Such board shall consist of five members and shall be chosen as follows:

The city manager in a Plan D or Plan E city, the mayor in any other city, the board of selectmen in a town shall appoint two members for a period of three years, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as mayor in a city, or city manager in a Plan D or Plan E city, or town council or board of selectmen in a town shall determine. The fifth member shall be appointed by the public employee retirement administration commission after being nominated by the other four members provided, however, in the event said four members cannot agree on such nominee to submit to the commission within ten days, then each member shall within five days submit a list of three names of individuals ready and willing to serve, and the commission shall then appoint the fifth member from such list who shall be a resident of such community and who shall not be a current or former member of the retirement system under this chapter or an official of the governmental unit. Each member of the city or town retirement board provided for in paragraphs (b) and (c) shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three-year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member. The mayor of a city, the board of selectmen of a town under the manager of a municipality having a town council form of government shall notify in writing all heads of departments of such city or town of any such vacancy in said board to be filled by election, and a notice of such vacancy and election shall be posted in a conspicuous place in such city or town.

(d) The members of the board of any such city or town system shall serve without compensation, but they shall be reimbursed from the expense fund of such system for any expense or loss of salary or wages which they may incur through service on such board. Nothing in this paragraph shall prevent any city auditor, town accountant or other officer having similar powers and duties, or any other person who serves in the active administration of the system in lieu of the city auditor, town accountant or other officer having similar powers and duties, from being compensated for services rendered in the active administration of the system; provided, that the compensation for such services shall be not less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d ½ ) Notwithstanding the provisions of paragraph (d), in any city or town which accepts the provisions of this paragraph, nothing shall prevent the city auditor, town accountant or other officer having similar powers and duties or any other person who serves in the active administration of the system in lieu of the city auditor, town accountant or other officer having similar powers and duties being compensated for services rendered in the active administration of the system; provided, that the compensation for such services shall be not less than two hundred nor more than three thousand dollars per annum, and shall be payable from the expense fund of the system.

(e) Each such board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of such system.

(f) The city solicitor or town counsel, or other officer having similar powers and duties, shall be the legal adviser of such board, except in such cases as such board deems necessary, it may employ a private attorney whose fees shall be paid from the expense fund of such board. In case there is no town counsel in a town, such board may employ an attorney from time to time as required.

(g) A city or town treasurer, may be compensated for services rendered as custodian of the funds of the retirement system; provided, that the compensation for such services shall be not more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(h) Notwithstanding the provisions of paragraph (g), in any city or town which accepts the provisions of this paragraph, nothing shall prevent a city or town treasurer from being compensated for services rendered as custodian of the funds of the retirement system; provided, that the compensation for such services shall not be more than three thousand dollars per annum, and shall be payable from the expense fund of the system.

(4 ¼ ) (a) The contributory retirement system established for the Massachusetts Housing Finance Agency under the provisions of sections one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Massachusetts Housing Finance Agency Employees' Retirement System".

(b) Said system shall be managed by an retirement<sup>1</sup> board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: the treasurer of the agency who shall be a member ex officio, a second member appointed by the appointing authority of the agency, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term,

not exceeding three years, as the chairman of the agency shall determine, and a fifth member who shall not be an employee, retiree, or official of the governmental unit and shall be appointed by the other four members for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on such board. Nothing in this paragraph shall prevent the treasurer, or any other person who serves in the active administration of the system in lieu of the treasurer, from being compensated for services rendered in the active administration of the system; provided, that the compensation for such services shall be not less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The resident counsel of the agency shall be the legal advisor of the board.

(f) The treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

<[ There is no subdivision (4 ½ ).]>

(4 ¾ ) (a) The contributory retirement system established for the Massachusetts Bay Transportation Authority police under the provisions of section one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the Massachusetts Bay Transportation Authority police retirement system.

(b) Said system shall be managed by an retirement' board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: the treasurer of the authority who shall be a member ex officio, a second member appointed by the appointing authority of the authority, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the chairman of the authority shall determine, and a fifth member who shall not be an employee, retiree, or official of the governmental unit and who shall be appointed by the other four members for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member.

Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on such board. Nothing in this paragraph shall prevent the treasurer or any other person who serves in the active administration of the system from receiving compensation; provided, that the compensation for such services shall be not less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The resident counsel of the authority shall be the legal advisor of the board.

(f) The treasurer may be compensated for services rendered as custodian of the funds of the retirement system provided that the compensation for such services shall be not more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

(4 ¼ ) (a) The contributory retirement system established for the Massachusetts Port Authority under the provisions of sections one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Massachusetts Port Authority Employees' Retirement System".

(b) Said system shall be managed by an retirement<sup>1</sup> board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: the secretary-treasurer of the authority who shall be a member ex officio, a second member appointed by the appointing authority of the authority, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the chairman of the authority shall determine, and a fifth member who shall not be an employee, retiree or official of the governmental unit and who shall be appointed by the other four members for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. If a fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, the authority board shall appoint a fifth member for a term of three years. Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on said board. Nothing in this paragraph shall prevent the secretary-treasurer, or any other person who serves in the active administration of the system in lieu of the secretary-treasurer, from being compensated for services rendered in the active administration of the system; provided, that the compensation for such services shall not be less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The chief legal counsel of the Authority shall be the legal advisor of the board; provided, that in such cases as the board deems necessary it may employ other counsel whose fees shall be paid from the expense fund of the system.

(f) The secretary-treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

(4 ½ A) (a) The contributory retirement system established for the Greater Lawrence Sanitary District under the provisions of sections one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Greater Lawrence Sanitary District Employees Retirement System".

(b) Said system shall be managed by an retirement<sup>1</sup> board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: The treasurer of the district who shall be a member ex officio, a second member appointed by the appointing authority of the districts, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the director of the district shall determine, and a fifth member who shall not be an employee, retiree, or official of the governmental unit who shall be chosen by the other four for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. If a fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, the district commission shall appoint a fifth member for a term of three years. Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on said board. Nothing in this paragraph shall prevent the secretary-treasurer, or any other person who serves in the active administration of the system in lieu of the secretary-treasurer, from being compensated for services rendered in the active administration of the system;

provided, that the compensation for such services shall not be less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The legal counsel of the district shall be the legal advisor of the board; provided, that in such cases as the board deems necessary it may employ other counsel whose fees shall be paid from the expense fund of the system.

(f) The treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

(4 ½ B) (a) The contributory retirement system established for the Blue Hills Regional Vocational School under the provisions of section one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Blue Hills Regional Vocational School retirement system".

(b) Said system shall be managed by an retirement<sup>1</sup> board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: The treasurer of the school system who shall be a member ex officio, a second member appointed by the appointing authority of the system, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the superintendent-director of the school system shall determine, and a fifth member who shall not be an employee, retiree, or official of the governmental unit who shall be chosen by the other four for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. If a fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, the school system board shall appoint a fifth member for a term of three years. Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the System for any expense or loss of salary or wages which they may incur through service on such board. Nothing in this paragraph shall prevent the treasurer, or any other person who serves in the active administration of the system in lieu of the treasurer, from being compensated for services rendered in the active administration of the system provided that the compensation for such services shall be not less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system;

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system;

(e) In such cases as the board deems necessary it may employ counsel whose fees shall be paid from the expense fund of the system;

(f) The treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

(4 ½ C) (a) The contributory retirement system established for the Minuteman Regional Vocational Technical School District under the provisions of sections one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Minuteman Regional Vocational Technical School District Employees' Retirement System".

(b) Said system shall be managed by an retirement<sup>1</sup> board which shall have the general powers and duties set forth in subdivision (5). Said board shall consist of five members as follows: The treasurer of the district who shall be a member ex officio, a second member appointed by the appointing authority of the district, a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the superintendent-director of the district shall determine, and a fifth member who shall not be an employee, retiree, or official of the governmental unit who shall be chosen by the other four for a term of three years. Future elections of the third and fourth members shall be held under the supervision of such retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. If a fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, the district school committee shall appoint a fifth member for a term of three years. Each member of such retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of said offices, his successor shall be elected or appointed as aforesaid for a three year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on said board. Nothing in this paragraph shall prevent the treasurer, or any other person who serves in the active administration of the system in lieu of the treasurer, from being compensated for services rendered in the active administration of the system; provided, however, that the compensation for such services shall not be less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board, by majority vote, shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The legal counsel of the district shall be the legal advisor of the board; provided, however, that, in such cases as the board deems necessary, it may employ other counsel whose fees shall be paid from the expense fund of the system.

(f) The treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

(4 ½ D) (a) The contributory retirement system established for employees of the Massachusetts Water Resources Authority under sections 1 to 28, inclusive, shall be known as, and all of its business shall be transacted under the name of the Massachusetts Water Resources Authority Employees' Retirement System.

(b) The system shall be managed by a retirement board which shall have the general powers and duties set forth in subdivision (5). The board shall consist of 5 members as follows: the secretary of the authority who shall be a member ex officio, a second member appointed by the board of directors of the authority for a term of 3 years, a third and fourth member who shall be elected by the members in or retired from service of this system from among their number for a term of 3 years, and a fifth member who shall not be an employee, retiree or official of the government unit and who shall be appointed by the other 4 members for a term of 3 years. Future elections of the third and fourth members shall be held under the supervision of the retirement board and the term of the third and fourth members shall be so arranged so as not to expire in the year of expiration of the term of the fifth member. If a fifth member is not chosen by the other 4 members within 30 days after the expiration of the term of the fifth member, the public employee retirement administration commission shall appoint a fifth member for a term of 3 years. Each member of the retirement board shall continue to hold office until the expiration of that member's term and until the qualification of the member's successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either of those offices, a successor shall be elected or appointed as provided in this paragraph for a 3 year term or for the unexpired portion of the term, but in no event shall the term of the third and fourth member expire in the same year as the term of the fifth member.

(4 ½ E) No employee, contractor, vendor or person receiving remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from a person doing business with a retirement board shall be eligible to serve on a retirement board; provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which the person is employed; and provided further, this subdivision shall apply only to individuals who first become members of a retirement board on or after April 2, 2012.

(5) *General Powers and Duties of Boards.* -- (a) The board of any system established under the provisions of sections one to twenty-eight inclusive, or under corresponding provisions of earlier laws, shall meet at least once in each month for the transaction of such business as may properly come before it. It shall keep a record of all of its proceedings.

(b) Any such board may adopt by-laws and make rules and regulations consistent with law, which shall be subject to approval as provided for in subdivision (4) of section twenty-one. It shall provide for the payment of retirement allowances and other benefits and for all other necessary expenditures under the applicable provisions of sections one to twenty-eight

inclusive, or under corresponding provisions of earlier laws or of any special law, and shall have such other powers and shall perform such other duties and functions as are necessary to comply with such provisions. The head of any department upon request from the board shall promptly furnish it with such information as shall be required to effectuate the provisions of sections one to twenty-eight inclusive. Any such board shall have the power to take evidence, subpoena witnesses, administer oaths and examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Fees for such witnesses shall be the same as for witnesses before the courts in civil actions, and shall be paid from the expense fund of such system.

(c)(1) Whenever any such board shall find it impossible or impracticable to consult an original record to determine the date of birth, length of service, amount of regular compensation or other pertinent fact with regard to any member, it may, subject to the approval of the actuary, use estimates thereof on any basis which in its judgment is fair and just. The board, upon discovery of any error in any record of the system, shall, as far as practicable, correct such record.

(2) When an error exists in the records maintained by the system or an error is made in computing a benefit and, as a result, a member or beneficiary receives from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct or had the error not been made, the records or error shall be corrected and as far as practicable, and future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid. If it is determined that a member has contributed an incorrect amount to the retirement system, the member shall be required to contribute an amount sufficient to correct such error or the board shall pay an amount to the member to correct such error, as the case may be.

(3) At the request of a member or beneficiary who has been determined to have been paid amounts in excess of those to which he is entitled or at the request of a member who has been determined to owe funds to the retirement system, the board may waive repayment or recovery of such amounts provided that:

(i) the error in any benefit payment or amount contributed to the system persisted for a period in excess of one year;

(ii) the error was not the result of erroneous information provided by the member or beneficiary; and

(iii) the member or beneficiary did not have knowledge of the error or did not have reason to believe that the benefit amount or contribution rate was in error.

(4) This paragraph shall apply to any demand made after January 1, 1995 for repayment of excess payment or amounts owed to a retirement system made by a retirement board.

(d) Any such board may designate a neutral medical doctor or doctors with training or experience in the particular field of medicine applicable to the disability to advise the board in the determination of applications for ordinary disability retirement, accidental disability retirement, or in the case of an application for accidental death benefit.

- (e) The board of each system shall keep a record of the date of birth of each member of the system, and also shall keep a record of the date of birth of each other employee who entered or re-entered the service of the governmental unit to which such system pertains after attaining age sixty and after the date when the system became operative therein. It shall be the duty of such board to notify each such member or employee, the head of his department and the treasurer or other disbursing officer responsible for paying his compensation, of the date when such member or employee will attain the maximum age for his group, and such member or employee shall not be employed in any governmental unit after such date except as otherwise provided for in sections one to twenty-eight, inclusive. Such notification shall be made in writing not less than thirty days nor more than four months prior to such date.
- (f) The board of each such system shall annually submit to the appropriate authority an estimate of the expense of administration and the cost of operation of the system for the fiscal year for which an appropriation for the system is to be made as provided for in subdivision (7) of section twenty-two.
- (g) Each board of each system shall keep in convenient form such data as is required under section fifty of chapter seven and section twenty-one of this chapter, by the public employee retirement administration commission, for the purpose of valuing the assets, determining the liabilities of the system, making actuarial investigation of the experience of the system, and for promulgating rules and regulations governing the administrative procedures for maximizing the assets of such systems. Such data shall be submitted to the office of the public employee retirement administration commission within such time as he may specify. If the commission determines that there has been unreasonable delay in the filing of any such required data, the commission shall so notify such board in writing. If within thirty days thereafter the commission has not received such required data, he shall so notify the board and the chief executive officer for the governmental unit or units to which the system pertains. The commission may petition the superior court to compel compliance with this paragraph. To ensure the maintenance of accurate and current membership records and payment information, the commission may, for any system which fails to submit the requested information within sixty days of the second board notification, send his agent or agents to examine the records and accounts of the system and to direct such actions by the board or its employees as may be required to comply with acceptable recordkeeping and accounting standards.
- (h) Each board shall annually, on or before May first, file in the office of the public employee retirement administration commission the financial statement of the system which is required by the provisions of paragraph (c) of subdivision (1) or paragraph (e) of subdivision (2) of section twenty-three. The state board of retirement and the teachers' retirement board shall each file such report annually, on or before December 31, in the office of the public employee retirement administration commission which shall show the financial condition of their respective retirement system as of June 30 of the prior fiscal year as required by paragraph (a) of said subdivision (1) of said section 23. Investments of the system shall be carried at values determined by the commissioner in accordance with the requirements of paragraph (b) of subdivision (1) of section twenty-one.
- (i) Each board shall prepare annually a report which shows the financial condition of the system as of December thirty-first of the previous year in a manner which can be easily understood by the members of said system. Such report shall contain information showing the financial transactions of the previous year, statistical information with reference to the membership of the system, a summary of the findings of any timely audit reports, a summary of the board's investment policy, a summary of the system's investment portfolio as of December thirty-first of the previous year, and information with regard to the system's most recent actuarial valuation including the unfunded actuarial liability as of the valuation date. Each board shall file a copy of its report with the governmental unit in which the system is established. A copy of the report or a summary thereof shall be made available upon request to each member of the system and to other interested persons. Each board shall annually, on or before July first, furnish to each member of the system an annual statement for the previous calendar year

relative to the status of the member's account. Such statement shall show either the total contribution since the member entered the retirement system, the total amount of interest which has accrued, and the combined total in the account as of the end of the previous calendar year, or the regular deductions for the previous calendar year, additional deductions, if any, for the previous calendar year, regular interest credited for the previous calendar year, and accumulated total deductions as of the close of the previous calendar year. The state retirement board shall file a copy of its report with the governor, and with the state treasurer for publication in his annual report. The teachers' retirement board shall file a copy of its report with the governor and with the state treasurer, and with the commissioner of education for publication in the annual report of the department of education. The retirement board of each county, city or town system shall file a copy of its report with the county commissioners, the mayor or the board of selectmen, for publication in the annual report of the county, city or town, as the case may be. The retirement board of the Massachusetts Department of Transportation employees' retirement system shall file a copy of its report with the authority for publication in the authority's annual report to the governor and to the general court. The retirement board of the Massachusetts Bay Transportation Authority police retirement system shall file a copy of its report with the authority for publication in the authority's annual report to the governor and to the general court. The retirement board of the Massachusetts Housing Finance Agency employees' retirement system shall file a copy of its report with the agency for publication in the agency's annual report to the governor, to the general court and to the comptroller. The retirement board of the Massachusetts Port Authority employees' retirement system shall file a copy of its report with the Authority for publication in the Authority's annual report to the governor and to the general court. The retirement board of the Greater Lawrence Sanitary District employees' retirement system shall file a copy of its report with the district commission for publication in the district's annual report. The retirement board of the Blue Hills Regional Vocational school system shall file a copy of its report with the school system for publication in the authority's annual report to the governor and to the general court. The retirement board of the Minuteman Regional Vocational Technical School District shall file a copy of its report with the district for publication in the district's annual report. Copies of the reports of the retirement board shall be furnished upon request to members of the system and to other interested persons. Each board shall annually, on or before July first, furnish to each member of the system an annual statement for the previous calendar year relative to the status of the member's account. Such statement shall show either the total contribution since the member entered the retirement system, the total amount of interest which has accrued, and the combined total in the account as of the end of the previous calendar year, or the regular deductions for the previous calendar year, additional deductions, if any, for the previous calendar year, regular interest credited for the previous calendar year, and accumulated total deductions as of the close of the previous calendar year.

(j) Each board shall, at the time of the retirement of any member, or at the time of the determination of the allowance for the beneficiary of a deceased member, give to such member or beneficiary in writing the following notice:-- "The pension or retirement allowance hereafter payable under the contributory retirement law shall not be a bar to the receipt of old age assistance or public welfare, except in so far as it shall be treated as an available resource under such laws."

(k) Upon the written request of any member or his authorized representative, each board shall provide such member or representative, within thirty days of receipt of such request, a written notice of the benefits to which such member is or may be entitled under the provisions of this chapter, including the dates on which such member will become eligible to receive such benefits, and the effect of such benefits, if any, on any benefits such member may be eligible to receive pursuant to the federal social security act. Such notice shall be on a form prescribed by the public employee retirement administration commission.

(l) Each board shall file the reports required by section 14 of chapter 119A which shall include the filing of a report on or before March 1 with the IV-D agency providing the name, address, date of birth, status and social security number of all members of the system as of December 31 of the previous year. The IV-D agency shall use such information solely for the purposes outlined in chapter 119A and the use of such information shall be subject to the limitations set forth in said chapter 119A.

(m) For the purposes of paragraphs (h) and (i) of this subdivision and paragraph (a) of subdivision (1) of section 23, the state board of retirement and the teachers' retirement board may write off outstanding pension payments that remain payable or receivable to the respective systems and which the systems have been unable to recover or properly pay for more than 3 calendar years. All write-offs of receivable and payable amounts shall be approved by the state board of retirement or the teachers' retirement board, whichever is appropriate. The state employees' retirement system and the teachers' retirement system shall maintain a record of all amounts written off.

(6) *Retirement Board Members Compensation.* -- The elected and appointed members of a city, town, county, regional, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend; provided, however, that the stipend shall not be less than \$3,000 per year and not more than \$4,500 per year; provided, further, that the stipend shall be paid from funds under the control of the board as shall be determined by the commission; and provided, further, that an ex-officio member of a city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of not more than \$4,500 per year in the aggregate for services rendered in the active administration of the retirement system.

(7) *Retirement Board Member Training.* -- During each full term of service retirement board members shall undertake 18 hours of training; provided, however, that not less than 3 hours of such training shall take place each year and not more than 9 hours may take place in any single year; provided, however, that nothing in this subdivision shall prohibit such retirement board members from undertaking more than 18 hours of training.

Such training shall consist of 9 hours sponsored by the commission, which shall include, at a minimum, the topics of fiduciary responsibility, ethical conduct and conflict of interest and 9 hours of training on topics prescribed by the commission provided by the Massachusetts Association of Contributory Retirement Systems or other local, state, regional and national organizations recognized by the commission as having expertise in retirement issues of importance to retirement board members or other entities, as the commission may determine.

The commission shall arrange for at least 18 sessions during each year for members to complete this requirement. In addition, the commission shall schedule additional sessions or otherwise make accommodations to ensure that members are afforded the maximum opportunity to complete this requirement.

The commission shall annually provide retirement boards with a statement of completion of education form on or before December 31. The board shall provide the forms to their members. The form shall set forth the training as required by this subdivision the member has undertaken during that year. Board members shall submit the completed form to the commission by January 31 of the year following. The commission shall annually provide the member with a summary of the member's status regarding the completion of this requirement by March 1.

Failure to successfully complete the requirements of this subdivision shall prohibit a board member from serving beyond the conclusion of the term in which the failure took place. If the non-complying member is an ex-officio member or a second member, of a board the appointing authority for the second member shall appoint a different individual to serve on the board; provided, however, that the replacement of an ex-officio member shall be an individual experienced in the field of finance or auditing; and provided further, that in a regional retirement system non-complying members shall be replaced in the same manner as is set forth for the selection of the members.

Each retirement board shall notify all board members and prospective board members of the requirement to complete education requirements at the time of receiving information about seeking election to a retirement board or prior to being appointed to a retirement board.

The commission shall annually notify board members of the requirement to complete continuing education.

#### Credits

Added by St.1945, c. 658, § 1. Amended by St.1946, c. 267; St.1948, c. 488, § 1; St.1948, c. 508, § 1; St.1950, c. 163; St.1954, c. 642, § 1; St.1956, c. 422, § 2; St.1956, c. 609, § 3; St.1958, c. 408; St.1960, c. 240; St.1966, c. 266, §§ 1, 2; St.1967, c. 597, §§ 14, 15; St.1971, c. 481, §§ 2, 3; St.1971, c. 1012, §§ 6, 7; St.1973, c. 94; St.1973, c. 1003, §§ 11, 12; St.1977, c. 890, §§ 1, 2; St.1978, c. 364, §§ 1, 2; St.1978, c. 487, §§ 10, 11; St.1978, c. 523, §§ 2 to 6; St.1979, c. 136, § 1; St.1979, c. 267, § 1; St.1980, c. 316; St.1980, c. 556, §§ 11 to 13; St.1982, c. 630, §§ 22 to 24; St.1983, c. 364, §§ 10, 11; St.1986, c. 557, §§ 46, 47; St.1987, c. 697, §§ 50 to 55; St.1989, c. 562; St.1995, c. 38, § 53; St.1996, c. 306, §§ 23 to 33; St.1996, c. 427, §§ 6A, 7; St.1997, c. 3, §§ 1 to 5; St.1997, c. 11, §§ 19, 20; St.1998, c. 64, § 14; St.1998, c. 252, § 3; St.2000, c. 159, § 91; St.2006, c. 273, § 1, eff. Aug. 22, 2006; St.2009, c. 25, §§ 54, 55, eff. July 1, 2009; St.2010, c. 112, §§ 11, 12, eff. July 1, 2010; St.2011, c. 176, §§ 33, 34, eff. Feb. 16, 2012; St.2011, c. 176, § 35, eff. April 2, 2012; St.2012, c. 447, §§ 1, 2, eff. April 9, 2013.

#### Footnotes

<sup>1</sup>

So in enrolled bill; probably should read "a retirement".

M.G.L.A. 32 § 20, MA ST 32 § 20

Current through Chapter 295 of the 2018 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title IV. Civil Service, Retirements and Pensions (Ch. 31-32b)

Chapter 32. Retirement Systems and Pensions (Refs & Annos)

M.G.L.A. 32 § 22

§ 22. Methods of financing

Effective: July 1, 2017

Currentness

All the assets of each system as they exist at the commencement of business on January first, nineteen hundred and forty-six, and all the assets of each system received, acquired or held on or after such date shall, subject to the provisions of sections one to twenty-eight, inclusive, be credited according to the purposes for which they are received, acquired or held to one of the seven following funds in the system: the Annuity Savings Fund, the Annuity Reserve Fund, the Pension Fund, the Special Fund for Military Service Credit, the Expense Fund, the Pension Reserve Fund, and the Commonwealth's Pension Liability Fund. The Boston retirement system shall establish those funds to credit assets received, acquired or held attributable to non-teacher members of that system and shall also establish the funds to credit assets received, acquired or held attributable to teachers who are members of that system. As provided in subdivision (8), all of the assets of the state employees' and teachers' retirement systems and of any other participating system shall be held in the PRIT Fund, as well as such assets of purchasing systems as shall be transferred to the PRIT Fund upon the purchase of shares therein.

(1) *Annuity Savings Fund.* -- (a) The annuity savings fund of each system shall be the fund provided for the accumulation of the regular deductions and additional deductions of the members of the system and into which such deductions shall be paid as they are made and to which regular interest shall be transferred to be credited to the accounts of such members as provided for in subdivision (6) of this section.

(b) The treasurer or other disbursing officer in charge of payroll in any governmental unit to which a system pertains, and the treasurer or other disbursing officer in charge of payrolls in any free public library the employees of which are eligible for membership in a system, shall, upon written notice from the board:

(i) withhold on each pay day 5 per cent of the regular compensation of each employee who is a member in service of the system, which is received on the day by the member on account of service rendered to him on or after January 1, 1946, and not later than the date of his attaining the maximum age for his group, in the case of an employee who entered the service of the commonwealth or a political subdivision thereof before January 1, 1975;

(ii) withhold on each pay day 7 per cent of the regular compensation of each employee who is a member in service of the system, which is received on the day by the member on account of service rendered by him on or after January 1, 1975, and not later than the date of his attaining the maximum age for his group, in the case of an employee who entered the service of

the commonwealth or a political subdivision thereof on or after January 1, 1975, but before January 1, 1984;

(iii) withhold on each pay day 8 per cent of the regular compensation of each employee who is a member in service of the system, which is received on the day by the member on account of service rendered by him on or after January 1, 1984, and not later than the date of his attaining the maximum age for his group in the case of an employee who entered the service of the commonwealth or a political subdivision thereof on or after January 1, 1984, but before July 1, 1996;

(iv) withhold on each pay day 9 per cent of the regular compensation of each employee who is a member in service of the system, which is received on the day by the member on account of service rendered by him on or after July 1, 1996, and not later than the date of his attaining the maximum age for his group in the case of an employee who entered the service of the commonwealth or a political subdivision thereof on or after July 1, 1996;

(v) withhold on each pay day 12 per cent of the regular compensation of each employee who is a member of the state police appointed pursuant to section 10 of chapter 22C, and is a member in service of the system, which is received on the day by the member on account of service rendered by the employee on or after July 1, 1996, and not later than the date of his attaining the maximum age for his group in the case of an employee who entered the service of the state police on or after July 1, 1996;

(vi) withhold on each pay day 11 per cent of the regular compensation of each employee who participates in the alternative superannuation retirement benefit program established under subdivision (4) of section 5 on account of such service rendered by him on or after July 1, 2001;

(vii) withhold on each pay day 6 per cent of the regular compensation of each employee in group 1 who is a member in service of the system, in the case of an employee who became a member of a retirement system of the commonwealth or a political subdivision thereof on or after April 2, 2012 and who has least 30 years of creditable service; and

(viii) withhold on each pay day 8 per cent of the regular compensation of each employee who is a member in service of the system and participates in the alternative superannuation retirement benefit program established under subdivision (4) of section 5, in the case of an employee who became a member of a retirement system of the commonwealth or a political subdivision thereof on or after April 2, 2012 and who has least 30 years of creditable service.

In the case of any teacher the withholding shall be made upon written notice from the school committee or board of trustees or other employing authority, to the treasurer or other disbursing officer of the political subdivision by which such teacher is employed.

(b ½ ) The provisions of section fifty of chapter three hundred and sixty-seven of the acts of nineteen hundred and seventy-eight shall not apply to any member of the state employees' and state teachers' retirement system, or systems electing to accept the provisions of this paragraph. Any system may accept the provisions of this paragraph by majority vote of the board of each such system, subject to the approval of the legislative body. For purposes of this paragraph "legislative body" shall mean a town meeting in a town, the city council in a city, the county retirement board advisory council in a

county, and the district members in a district. Acceptance shall be deemed to have occurred upon the filing of a certification of such votes with the commission. Any system electing to accept the provisions of this paragraph shall be required to annually appropriate to the Pension Reserve Fund, in addition to such other amount as might be required by this chapter, an amount equal to the employer's normal cost of removing the restriction provided by said section fifty of said chapter three hundred and sixty-seven, plus such amount as is required to amortize over thirty years the liability created by such removal for such of those employees who entered service on or after January first, nineteen hundred and seventy-nine and prior to January first, nineteen hundred and eighty-eight. For any member of any system accepting the provisions of this paragraph who entered the service of the commonwealth or a political subdivision thereof on or after January first, nineteen hundred and seventy-nine, the treasurer or other disbursing officer in charge of payroll in any governmental unit to which a system pertains, shall withhold on each pay day, in addition to the amounts withheld pursuant to paragraph (b) an additional two per cent of such member's regular compensation over thirty thousand dollars. In any system filing a certificate of acceptance with the commission on or before July first, nineteen hundred and eighty-eight, the treasurer or other disbursing officer in charge of payroll in any governmental unit to which a system pertains shall withhold, from the regular compensation of such member subject to the additional amounts provided for by this paragraph, in such installments as the retirement board shall direct, an amount equal to the additional amount which would have been withheld from such member's regular compensation pursuant to this paragraph between January first, nineteen hundred and eighty-eight and the date the certificate of acceptance is filed. In any system filing a certification of acceptance with the commission after July first, nineteen hundred and eighty-eight, the additional deduction shall start as of the date of filing said application and no deductions shall be made from any regular compensation received between January first, nineteen hundred and eighty-eight and the date said certification is filed; provided, however, that the liability created by removing the restriction provided by said section fifty for the payroll period from January first, nineteen hundred and eighty-eight and the date said certification is filed shall be added to the amount to be amortized over thirty years through the annual appropriation as required by this paragraph; and provided, further, that all service in such system after January first, nineteen hundred and eighty-eight shall be credited as non-section fifty restricted service. Notwithstanding any other provision of this chapter, the calculation of the retirement allowance of any member who entered service after January first, nineteen hundred and seventy-nine where such member has both section fifty restricted service and non-section fifty restricted service, shall be calculated based upon the years of creditable service subject to the restriction and the years of non-section fifty service, as the actuary shall determine. In the state employees' retirement system and the state teachers' system, and in any other system accepting the provisions of this paragraph, the allowance payable to any member, or eligible beneficiary thereof, who entered the service of the commonwealth or a political subdivision thereof on or after January first, nineteen hundred and seventy-nine and who retired from said system prior to the date on which such system accepted this paragraph, shall be recalculated as of the date of such acceptance, and as of said date the provisions of said section fifty of said chapter three hundred and sixty-seven shall not apply to such allowance; provided, however, that the provisions of this sentence shall not be deemed to require any additional contributions to be made by any such member or eligible beneficiary thereof. The state employees' and state teachers' retirement systems shall be deemed to have accepted the provisions of this paragraph as of January first, nineteen hundred and eighty-eight. The additional contributions required under this paragraph shall not apply to any employee who participates in the alternative superannuation retirement benefit program established in subdivision (4) of section 5.

(c) Any such treasurer or other disbursing officer in charge of payrolls, for the purpose of determining the regular compensation and regular deductions of any member in service who is receiving a non-cash maintenance allowance in the form of full or partial boarding and housing, shall add to the amount of the cash payment for the regular services of such member an amount at a rate which shall be determined by the personnel administrator if such member is a member of the state employee's retirement system or of the teachers' retirement system, by the county personnel board if such member is a member of any county system, and by the retirement board if such member is a member of a city or town system. The sum of such amount and the amount of such cash payment shall be the regular compensation upon which regular deductions shall be made on and after January first, nineteen hundred and forty-six. The regular compensation of any such member for any period, for purposes of computing retirement allowances, shall include not only the amount of the cash payment for his regular services but also the amount of any non-cash maintenance allowance at the rate in effect for him for such period under the provisions of this paragraph or under corresponding provisions of earlier laws.

(d) Any member in service of any system, whose regular deductions during any period of his employment were made at a

lower rate, or on the basis of a lower maximum limit, than that in effect during such period for a majority of the members of such system, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments over a period not exceeding five years, upon such terms and conditions as the board may prescribe, an amount equal to the difference between the aggregate of the regular deductions which would have been credited to his account in such annuity savings fund had they been made at the rate, and subject to the maximum limit, in effect for a majority of the members of such system during such period and the aggregate of the regular deductions actually credited to his account therein. In addition to the payment of such sum or instalments thereof, such member shall also pay into the annuity savings fund an amount of interest such that at the date of completion of such payments the total value of his regular deductions actually made, including such payments, together with regular interest on all such deductions and payments to such date, shall be equal to the value of what his regular deductions would have been, together with regular interest thereon to such date, had they been made at the rate, and subject to the maximum limit, in effect for a majority of the members of such system throughout the whole period of his employment.

(e) In addition to the regular deductions referred to in paragraphs (b) and (c) of this subdivision, any such treasurer or other disbursing officer in charge of payrolls shall, upon written notice to him by the board, deduct from the regular compensation of any member in service such sums as the board shall designate and upon such terms and conditions as it shall prescribe, as may be required for the purpose of carrying out the provisions of paragraph (d) of this subdivision, or the provisions of subdivision (3), (4), (5), (6) or (8) of section three or of paragraph (2) (c) of section four, or other corresponding applicable provisions of sections one to twenty-eight inclusive. The board may permit a reduction, suspension or termination of any such deductions being made under the provisions of this paragraph if such member shall so request in writing and if it finds that he is unable to continue them without undue hardship, but no withdrawal of the same shall be made except in the manner provided for the withdrawal of other accumulated regular deductions.

(f) The deductions provided for under this subdivision shall be made notwithstanding that the minimum compensation provided by law for any member may be reduced thereby. Each member shall be deemed to consent and agree to the deductions provided for in this subdivision and shall receipt for his full salary or compensation. The payment of his full salary or compensation less such deductions shall be considered a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him during the period covered by such payment, except as to any benefits in the nature of an annuity, pension, retirement allowance or return of accumulated total deductions as provided for in sections one to twenty-eight inclusive.

(g) Any member in service or any member inactive on authorized leave of absence, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments over a period of years, for the purpose of providing an additional annuity, such amount as he shall designate, subject to the limitation hereinafter specified in this paragraph and subject to such terms and conditions as the board may prescribe. Any such member may authorize the board in writing to instruct the treasurer or other disbursing officer in charge of payrolls to withhold for such purpose on each pay day from the regular compensation of such member such amount as he shall designate, subject to such limitation and subject to such terms and conditions as the board may prescribe. All amounts so paid or so withheld shall be considered as additional deductions as defined in section one. The total additional deductions for any such member as of any date shall be so limited that such total, together with regular interest on such additional deductions to such date, shall not exceed the portion of his accumulated regular deductions on such date which is derived from that part of his annual regular compensation not in excess of thirty-six hundred dollars in any year. Such accumulated additional deductions shall be used upon his retirement to provide an additional annuity for him in accordance with the provisions of subdivision (2) of section twelve, or shall be paid as provided for in section eleven upon his prior death or withdrawal from the system. The board shall permit a reduction, suspension or termination of such additional deductions if such member shall so request in writing.

(h) The various amounts withheld under the provisions of this subdivision for deposit in the Annuity Savings Fund of any system shall, subject to the provisions of paragraphs (i), (j) and (k), be transferred forthwith to such system by the treasurer or other disbursing officer in charge of payrolls, accompanied on a prescribed form by a statement or voucher for such deductions. Such amounts shall be credited by the board to the accounts of the respective members for whom such deductions have been made, and shall be paid into and become a part of the Annuity Savings Fund of such system.

(i) In the case of teachers who are members of the teachers' retirement system, the various amounts withheld for any month for deposit in the annuity savings fund of such system shall, together with proper vouchers therefor, be transmitted by the disbursing authorities to the secretary of the teachers' retirement board on or before the tenth day of the next succeeding month. The secretary shall thereupon credit the accounts of such members with their respective deductions and pay all such sums received to the state treasurer for deposit in the annuity savings fund of such system.

(j) In the case of each member of any county system whose regular compensation is paid by the commonwealth, the state treasurer shall make the withholdings for any month required by the provisions of this subdivision and shall transmit them, together with proper vouchers therefor, on or before the tenth day of the next succeeding month to the county treasurer for deposit in the annuity savings fund of such system to the credit of the respective accounts of each such member.

(k) The treasurer or other disbursing officer in charge of payrolls in any free public library the employees of which are eligible for membership in a system, shall transmit forthwith to the city or town treasurer of the city or town in which such library is located, the amounts which he has withheld from the members as provided for in this subdivision, together with proper vouchers therefor. Such city or town treasurer shall thereupon transfer such amounts for deposit in the annuity savings fund of such system to the credit of the respective accounts of such members as provided for in paragraph (h) of this subdivision in the case of other members thereof.

(l) The amount of the accumulated total deductions of any member paid or withdrawn under the provisions of sections one to twenty-eight inclusive, shall be paid from the annuity savings fund of the system and charged to his account therein. Upon the retirement of any member, the amount of his accumulated total deductions shall be transferred from his account in the annuity savings fund of the system to the annuity reserve fund thereof. Amounts shall be transferred to the annuity savings fund from the annuity reserve fund as provided for in paragraph (2) (b) of this section and from the annuity savings fund to the pension fund as provided for in paragraph (6) (d) of this section.

(2) *Annuity Reserve Fund.* -- (a) The annuity reserve fund of each system shall be the fund to which the accumulated total deductions of a member shall be transferred from his account in the annuity savings fund of the system when a retirement allowance becomes effective for him, and to which also shall be transferred at such time from the special fund for military service credit any amounts then standing to the credit of his account therein. The total amounts so transferred on account of any member shall thereby establish the initial annuity reserve for the annuity provided for him under the provisions of subdivision (2) of section twelve. Interest at the annual rate set forth in the definition of actuarial equivalent appearing in section one shall be transferred to the annuity reserve fund as provided for in subdivision (6) of this section. All annuities and all benefits for which such initial annuity reserve was established shall be paid from the annuity reserve fund.

(b) If any member who has been retired for disability is later restored upon recovery to active service before attaining the age sixty-five as provided for in paragraph (b) of subdivision (2) of section eight, an amount equal to the annuity reserve at the

date of his restoration with respect to his annuity shall be transferred from the Annuity Reserve Fund of the system to the credit of his account in the Annuity Savings Fund thereof.

(c) If the balance remaining in the annuity reserve fund of any system at the close of business on December thirty-first of any year after the transfer of interest thereto as provided for in clause (ii) of paragraph (a) of subdivision (6), is in excess of the total amount of the annuity reserve determined for such system as of such date in accordance with the provisions of paragraph (b) of subdivision (3) of section twenty-one, the amount of such excess shall be transferred as of the next following September thirtieth from the Annuity Reserve Fund to the Pension Reserve or Commonwealth's Pension Liability Fund of such system. If such balance is less than the total amount of such annuity reserve, an amount equal to such deficiency shall, to the extent not included in any deficiency being made up under the provisions of this paragraph, be similarly transferred as of such next following September thirtieth from the Pension Fund to the Annuity Reserve Fund.

(3) *Pension Fund.* -- (a) The Pension Fund of each system shall be the fund to which shall be credited all amounts appropriated by the governmental unit or transferred from the Pension Reserve Fund or Commonwealth's Pension Liability Fund pursuant to a funding schedule established pursuant to section twenty-two C or twenty-two D for the purpose of providing for the cost of operation of the system exclusive of the expenses of administration, except such amounts as may be appropriated for the special fund for military service credit under the provisions of subdivision (4). Any balance remaining in the investment income account of the system at the close of business on December thirty-first of any year shall be transferred to the Pension Reserve Fund or the Commonwealth's Pension Liability Fund, and any deficit in such account at such time shall be made up by transfer from the pension fund to such account of an amount equal to such deficit as provided for in clause (iii) of paragraph (a) of subdivision (6).

(b) All pensions to members or to beneficiaries and all pensions paid under the provisions of paragraph (c) of subdivision (8) of section three or paragraph (b) of subdivision (4) of section seven shall be paid from the pension fund of the system, and all amounts received under said provisions shall be credited to such fund or to the General Fund as otherwise provided in those sections. Amounts shall be transferred between the Pension Fund or the Commonwealth's Pension Liability Fund, as applicable, and the annuity reserve fund as provided for in paragraph (c) of subdivision (2) and shall be transferred to the Pension Fund or the Commonwealth's Pension Liability Fund, as applicable, from the annuity savings fund as provided for in paragraph (d) of subdivision (6) and from the special fund for military service credit as provided for in paragraph (c) of subdivision (4). Amounts shall also be paid from the Pension Fund or the Commonwealth's Pension Liability Fund, as applicable, of one system and transferred to the special fund for military service credit of a second system as provided for in paragraph (d) of said subdivision (4). The board shall, with the approval of the actuary, make any other transfer between the Pension Fund or the Commonwealth's Pension Liability Fund, as applicable, and any other fund of the system which may be necessary to effectuate the purposes of sections one to twenty-eight, inclusive; provided, however, that no such transfers shall be made from the Commonwealth's Pension Liability Fund except pursuant to schedules submitted in advance by the commissioner of administration to the house and senate committees on ways and means.

(c) Any profit realized on the sale or maturity of any investment of any system, due to the amount received therefor being in excess of its book value on the date of its sale or maturity, shall be credited to the Pension Reserve Fund of the system or recognized over a period of years as prescribed by the commissioner of public employee retirement. Any loss sustained on the sale or maturity of any investment, due to the amount received therefor being less than its book value on the date of its sale or maturity, shall be charged to said Pension Reserve Fund or amortized over a period of years as prescribed by said commissioner. Any investment which is required to be valued at its market value under the provisions of paragraph (b) of subdivision (1) of section twenty-one, shall be included in the assets of the system on the date of any valuation thereof at its market value on such date as determined in accordance with said provisions. Any excess of such market value over the value at which such investment was included in the assets of the system on the date of the last previous valuation thereof, shall be

credited forthwith to said Pension Reserve Fund or recognized over a period of years as prescribed by said commissioner, and any amount by which such market value is less than the value at which such investment was included in such assets, shall be charged forthwith to such fund or amortized over a period of years as prescribed by said commissioner.

In prescribing the period of years for amortization of gains and losses the public employee retirement administration commission shall act in a manner consistent with the periods prescribed by the government accounting standards board or allowed by the Employee Retirement Income Security Act.

Notwithstanding the foregoing provisions or any other general or special law to the contrary, the commonwealth shall assume the cost to any retirement system participating in the Pension Reserves Investment Trust Fund for the charge to the pension fund of such system for the amortization of any loss sustained on the transfer of such system's assets to the Pension Reserves Investment Trust Fund due to the value of the units in said fund upon such transfer being less than the book value of the system assets transferred to said fund on the date of transfer; provided, however, that the commonwealth shall assume only the cost of such system for a loss in an amount equal to or less than twenty per cent of the book value of the system's total portfolio on said date of transfer; provided, further, that the commonwealth shall assume only the costs for such losses to participating systems transferring their assets to the Pension Reserves Investment Trust Fund on or before July first, nineteen hundred and eighty-six; and provided further, that such assumable losses shall not be included in the determination of required appropriations set forth in subparagraph (iii) of paragraph (d). Such losses incurred by participating systems upon the transfer of their assets to the Pension Reserves Investment Fund shall be amortized over the average time to maturity of the entering system's fixed income securities transferred or ten years, whichever is less.

(d) The amount to be appropriated for any fiscal year for the pension fund of any system, as provided for in subdivision (7) of this section, shall be equal to the excess of the sum of the charges in clauses (i) to (iv) inclusive of this paragraph over the sum of the credits in clauses (v) to (vii), inclusive:

*Charges.* -- (i) The total amount, as estimated by the actuary from data furnished by the board, of the pension payments to be paid from the pension fund of the system during the fiscal year for which such appropriation is being made;

(ii) The amount of that part of the deficiency, if any, in the annuity reserve fund of the system as of January first, nineteen hundred and forty-six, to be made up during such fiscal year under the provisions of paragraph (2) (c) of this section;

(iii) The amount of the deficiency, if any, in the pension fund at the close of business on the September thirtieth immediately preceding such fiscal year, after the transfers provided for in paragraph (2) (d) of this section have been made as of such date and after the credits and charges to such fund have been made as of such date following the valuation provided for in paragraph (c) of this subdivision; and

(iv) The amount, if any, by which the total yearly amount of the pensions payable from the system with respect to all retired members and beneficiaries who are receiving pensions therefrom at the close of business on the September thirtieth immediately preceding such fiscal year, exceed any balance in the pension fund remaining at the close of business on such date after the transfers, credits and charges referred to in clause (iii) of this paragraph applicable for such fiscal year have been made; provided, that the amount of the charge to be made under the provision of this clause shall not be greater than twenty per cent of such total.

*Credits.* -- (v) The sum of the amounts, if any, received and credited to the pension fund under the provisions of paragraph (8) (c) of section three and paragraph (4) (b) of section seven during the twelve-month period ending on the September thirtieth immediately preceding such fiscal year, and the amounts, if any, transferred from the special fund for military service credit to the pension fund under the provisions of paragraph (4) (c) of this section during such period; provided, that the amount of the credit to be allowed under the provisions of this clause shall not be greater than the amount by which any balance in the pension fund remaining at the close of business on such date after the transfers, credits and charges referred to in clause (iii) of this paragraph applicable for such fiscal year have been made, exceeds five per cent of the ledger assets of the system as of such date after the valuation referred to in said clause (iii) has been made, nor greater than the amount by which such balance exceeds the total yearly amount of the pensions payable from the system with respect to all retired members and beneficiaries who are receiving pensions therefrom at the close of business on such date; and

(vi) The amount, if any, by which the charge determined under the provisions of clause (i) of this paragraph applicable for such fiscal year, exceeds the largest of the corresponding charges included in such appropriations for the system for the first three full fiscal years of its operation after December thirty-first, nineteen hundred and forty-five; provided, that the amount of the credit to be allowed under the provisions of this clause shall not be greater than twenty per cent of such charge for such fiscal year, nor greater than the amount by which any balance in the pension fund remaining at the close of business on the September thirtieth immediately preceding such fiscal year after the transfers, credits and charges referred to in clause (iii) of this paragraph applicable for such fiscal year have been made, exceeds the sum of the amount of any credits allowed under the provisions of clause (v) of this paragraph applicable for such fiscal year and five per cent of the ledger assets of the system as of such date after the valuation referred to in said clause (iii) has been made, nor greater than the amount by which such balance exceeds the sum of the amount of any credits allowed under the provisions of clause (v) of this paragraph applicable for such fiscal year and the total yearly amount of the pensions payable from the system with respect to all retired members and beneficiaries who are receiving pensions therefrom at the close of business on such date.

(vii) The amount, if any, transferred to such pension fund from the pension reserve fund of the system pursuant to subdivision (6A).

(4) *Special Fund for Military Service Credit.* -- (a) The special fund for military service credit shall be the fund provided in each system under the provisions of sections nine and nine A of chapter seven hundred and eight of the acts of nineteen hundred and forty-one, as amended by chapter four hundred and nineteen of the acts of nineteen hundred and forty-three and as may be further amended, to which shall be credited the amount appropriated for any fiscal year, as provided for in subdivision (7) of this section, for the purpose of establishing the amounts which would have been paid into such system as regular deductions by members thereof on military leave of absence from the governmental unit by which they were employed had such members remained in the active service of such governmental unit. Regular interest shall be transferred to the special fund for military service credit as provided for in subdivision (6) of this section.

If a city or town notifies the teachers' retirement board that all teachers referred to in section one of chapter seven hundred and eight of the acts of nineteen hundred and forty-one, as amended, have either returned to the public school service of Massachusetts, or that the period has expired during which they were permitted to return and have military assessments credited to their accounts, and that there are no other members who were formerly employed by the city or town who will be entitled to have military assessments credited to their accounts, the said board shall, during the month of January following the receipt of such notice, refund to the city or town any amount standing to its credit in the special fund for military service credit provided for in this section.

(b) In the event of the retirement of any member, or in the event a member-survivor benefit under the provisions of option (d) of subdivision (2) of section twelve becomes effective on account of any member whose last discharge or release from military service as set forth in said chapter seven hundred and eight of the acts of nineteen hundred and forty-one, as amended, and as may be further amended, was under honorable conditions as defined in defense department regulations, for whom a liability has been established in the special fund for military service credit, an amount equal to the value of the regular deductions credited to his account under the provisions of sections nine and nine A of said chapter seven hundred and eight for the period of his military leave of absence, together with regular interest thereon to the date his retirement allowance becomes effective, shall be transferred from his account in such fund to the annuity reserve fund of such system and shall be added to and merged with the amount of his accumulated regular deductions being transferred as of such date from the annuity savings fund of such system to the annuity reserve fund thereof. The total of such amounts transferred on his account shall be used in determining the amount of the regular annuity provided for him under the provisions of subdivision (2) of section twelve, and the aggregate of his regular deductions, including the amount thereof transferred from the special fund for military service credit, shall be used in determining the normal yearly amount of his retirement allowance to the extent such allowance is dependent upon the amount of his regular deductions.

(c) In the event of the withdrawal from the system of any member, whose last discharge or release from military service as set forth in said chapter seven hundred and eight, as amended, and as may be further amended, was under honorable conditions as defined in defense department regulations, for whom a liability has been established in the special fund for military service credit, or in the event of his death before any retirement allowance becomes effective for him, and without a member-survivor benefit under the provisions of option (d) of subdivision (2) of section twelve or payment of allowances under the provisions of section twelve B becoming effective on account of the death of such member, any amount being held to the credit of his account in the special fund for military service credit shall be released and shall be used to reduce the amount of the next appropriation for the pension fund of the governmental unit or units which paid to establish the military service credit for him, in the proportions originally paid by each unit for that purpose; provided, that if such member shall later be reinstated in the system or become a member of another retirement system, and shall deposit in full the amount he withdrew with accumulated interest, said governmental unit or units shall add the amount of such reduction, with regular interest, to the amount of its or their next appropriation for the special fund for military service credit; and further provided, that if the person is a member of the teachers' retirement system, the whole or portion of the said amount, as the case may be, which was paid by a city or town shall be returned to the city or town with accumulated interest, and the portion, if any, of the said amount which was paid by the commonwealth shall be transferred to the pension fund of said system. If a former member of said system, on whose account such an adjustment has been made, is later reinstated a member of said system, and returns in full the amount he withdrew with accumulated interest, the city or town which received the refund as provided above shall be notified, and it shall pay to the special fund for military service credit of said system the amount it received from said fund, with accumulated interest at three per cent to the date of payment to said fund, and the portion, if any, which was transferred to the pension fund of said system shall be transferred from said pension fund with three per cent accumulated interest to the said special fund for military service credit, and these amounts shall again be held for the credit of the member, to be used only for retirement purposes.

(d) If any member, whose last discharge or release from military service as set forth in said chapter seven hundred and eight, as amended, and as may be further amended, was under honorable conditions as defined in defense department regulations, for whom a liability had previously been established in the special fund for military service credit of one system for any period of his military leave of absence while a member of such system, is retired while a member of a second system, or in the event a member survivor benefit under the provisions of option (d) of subdivision (2) of section twelve, or payment of allowances under the provisions of section twelve B becomes effective on account of his death while a member of a second system, an amount equal to the value of the regular deductions with which he was credited under the provisions of sections nine and nine A of said chapter seven hundred and eight for such period of his military leave of absence, together with regular interest thereon to the date his retirement allowance, member survivor benefit, or allowances provided for under the provisions of section twelve B becomes effective, shall be paid from the pension fund of the first system at the date on which said retirement, member survivor benefit, or allowances under the provisions of section twelve B becomes effective and transferred to the special fund for military service credit of the second system to be credited to his account therein, and thereafter such account shall be handled in the manner set forth in paragraph (b) of this subdivision; provided, that such

transfer shall be made and credit for such period of his military leave of absence allowed only if he has transferred his membership from the first system to the second system as provided for in paragraph (8) (a) of section three, or only if and only to the extent he has re-established credit for his former membership by paying into the annuity savings fund of the second system the make-up payments provided for in paragraph (8) (b) of such section.

(5) *Expense Fund.* -- The expense fund of each system shall be the fund to which shall be credited the amount appropriated for any fiscal year, as provided for in subdivision (7) of this section, for the purpose of providing for the payment of all expenses of administration of the system for such year, and from which all such expenses shall be paid; provided, however, that each retirement board shall adopt an annual budget and supplemental budgets as deemed necessary by said board. Said budgets shall be funded solely from the investment income account of each system and without any further appropriation from the municipality, county or other governmental unit the current or former employees of which are served by said board. Notwithstanding the foregoing, at least thirty days prior to the adoption of said budgets, the boards shall file said budgets with the appropriate legislative body of the governmental unit the current or former employees of which are served by said board. Said governmental unit at its option may, but shall not be required to, appropriate additional monies for use by the retirement board in carrying out the purposes of section five B.

(6) *Investment Income Account and Regular Interest.* -- (a) All income in each system derived from the interest and dividends earned on the invested funds of the system during any calendar year shall be credited to an investment income account. Upon the payment or transfer of funds from any member's account during any year, the amount of any regular interest to be credited for such year to his account in the annuity savings fund of the system upon his withdrawal, death or retirement, and the amount of any regular interest to be credited for such year to his account, if any, in the special fund for military service credit upon his retirement, shall be transferred to such accounts from such investment income account. Any balance remaining in such investment income account at the close of business on December thirty-first of such year shall be transferred to the several funds of the system as follows:

(i) Amounts equal to the amounts of regular interest to be credited for such year to the accounts in the annuity savings fund and in the special fund for military service credit of all members for whom accounts exist therein as of the end of such year, shall be transferred to such funds and credited to the accounts of such members;

(ii) An amount of interest computed at the annual rate set forth in the definition of actuarial equivalent appearing in section one shall be determined on the basis of the average of the balances outstanding in the annuity reserve fund on the first day of each month during such year and shall be transferred to such fund; and

(iii) Any balance remaining in the investment income account after the transfers heretofore provided for in this paragraph have been made, shall be transferred to the Pension Reserve Fund, and any amount by which such balance is insufficient to carry out the preceding provisions of this paragraph shall be charged to the pension fund and credited to the investment income account for the purpose of making up the deficit.

(iv) Prior to making the transfers provided for in clause (iii) the state employees' retirement system shall transfer from its investment income account to the General Fund an amount equal to the amount set forth in the state budget for the administration of said system and the state teachers' retirement system shall transfer from its investment income account to the General Fund an amount equal to the amount set forth in the state budget for the administration of said system.

(v) Prior to making the transfers provided for in clause (iii) the state employees' retirement system shall transfer to the General Fund an amount equal to the estimated amount, as certified to the secretary of administration and finance by the office of the treasurer, for those retirement-related costs incurred by the office of the treasurer on behalf of the state employees' retirement system; and the state teachers' retirement system shall transfer to the General Fund an amount equal to the estimated amount, as certified to the secretary of administration and finance by the office of the treasurer, for those retirement-related costs incurred by the office of the treasurer on behalf of the state teachers' retirement system.

(b) The phrase "regular interest" as used in sections one to twenty-eight, inclusive, shall mean the interest credited to any member's account in the Annuity Savings Fund of any system during the period of his membership therein or to his account in the special fund for military service credit during such period. As applied to such interest for any period prior to January first, nineteen hundred and forty-six, "regular interest" shall mean interest at the rate in effect and allowed in such system from time to time during such period. As applied to such interest on balances outstanding in any such accounts as of the commencement of business on January first, nineteen hundred and forty-six, or as applied to such interest credited on regular deductions made on or after such date in the nature of make-up payments, or otherwise, on account of service rendered by any member prior to such date, "regular interest" shall mean interest credited at the rate of three per cent per annum. As applied to such interest credited on all other regular deductions and on all additional deductions made on or after January first, nineteen hundred and forty-six, and on all amounts thereafter transferred from any member's account in the Annuity Savings Fund or from his account in the special fund for military service credit in any contributory retirement system established under the provisions of a special law to his account in the corresponding fund of a system maintained under the provisions of sections one to twenty-eight, inclusive, "regular interest" for the calendar years nineteen hundred and forty-six and nineteen hundred and forty-seven shall mean interest credited at the rate of three per cent per annum. For any calendar year subsequent to nineteen hundred and forty-seven and prior to nineteen hundred and eighty-four, "regular interest" shall mean interest credited at the average earned rate which shall be determined by the actuary from the investment earnings of all systems maintained under the provisions of said sections and which shall be calculated on the basis of data contained in the annual statements of such latter systems filed in the office of the commissioner of insurance for the second calendar year preceding that for which such rate is to be applied. Such average earned rate shall be taken to the nearest tenth of one per cent and shall be obtained from the ratio which the total income derived from the interest and dividends earned on the invested funds of all such systems during the calendar year covered by such annual statements bears to the mean of the total ledger assets of all such systems at the beginning and end of such year. For any calendar year beginning subsequent to December thirty-first, nineteen hundred and eighty-three, "regular interest" shall mean interest credited at a rate established by the commission, in consultation with the commissioner of banks. The rate established by the commission shall be taken to the nearest tenth of one per cent and shall be obtained from the average rates paid on individual savings accounts by a representative sample of financial institutions; provided, that said commission shall sample no less than ten such financial institutions.

(c) Regular interest credited on or after January first, nineteen hundred and forty-six, shall be compounded annually on December thirty-first of each year, and subject to the provisions of paragraph (d) of this subdivision shall be allowed upon the balance outstanding in each member's account as of the immediately preceding December thirty-first. No interest shall be allowed on regular deductions or on additional deductions for the year in which they are made; except, that in the case of any make-up payment of regular deductions paid in full in one sum for deposit in any member's account in the annuity savings fund of any system, or in the case of any amount transferred from his account in the annuity savings fund or in the special fund for military service credit of one system for deposit in his account in the corresponding fund of another system, regular interest shall be allowed upon such sum or amount from the date of deposit if such date is the first day of a month, otherwise regular interest shall be allowed from the first day of the month immediately following such date of deposit. Upon the payment or transfer during any year of funds from any member's account in the annuity savings fund of any system, or upon the transfer during any year of funds from his account in the special fund for military service credit, regular interest shall, subject to the provisions of paragraph (d) of this subdivision, be allowed upon the balance outstanding in his account as of the immediately preceding December thirty-first, and also upon any deposit made for him during any year under the provisions

set forth in the exception appearing in the preceding sentence of this paragraph, for the number of completed months which have elapsed between such December thirty-first or the date of such deposit, as the case may be, and the date of the payment or transfer of the funds from his account.

(d) Anything in this subdivision to the contrary notwithstanding, regular interest in the case of any member inactive whose service was terminated prior to January first, nineteen hundred and forty-six, shall be allowed upon any balance outstanding in his account on such date only in accordance with and to the extent permitted under the provisions of the law applicable to him and in effect on the date of his termination of service. In the case of any member whose service is terminated on or after January first, nineteen hundred and forty-six, regular interest shall continue to accrue on any balance in his account, but no regular interest shall be included in the amount of any accumulated total deductions which are to be paid to the member under the provisions of subdivision (1) of section eleven for any period after the expiration of two years from the end of the month immediately preceding the date of his termination of service. Upon the payment to the member of the amount of his accumulated total deductions, any regular interest already credited to his account which is not to be included in such amount under the provisions of this paragraph, shall thereupon be transferred from his account in the annuity savings fund of the system to the pension fund thereof.

(6A) *Pension Reserve Fund.* -- (a) The Pension Reserve Fund of each system shall be credited all amounts set aside by a system for the purpose of establishing a reserve to meet future pension liabilities, including such amounts as may be set aside pursuant to a funding schedule established in accordance with section twenty-two C or twenty-two D. Such amounts shall include without limitation the annual balance in the investment income account as provided for in clause (iii) of paragraph (a) of subdivision (6) the undistributed accumulated total deductions as provided for in section eleven and all monies recovered for the cost of fringe benefits from federal grants. From time to time, a system may credit to the Pension Reserve Fund other amounts appropriated to it or otherwise made available by the governmental unit. The Pension Reserve Fund for the state employees' and teachers' retirement systems shall be the Commonwealth's Pension Liability Fund.

(b) Amounts may be transferred to the Pension Fund for the purpose of meeting present pension liabilities in accordance with a schedule developed by the board of each system and approved by the actuary to amortize unfunded pension liabilities. Such schedule of payments shall be designed to maintain a funding schedule which pays the normal cost of benefits for the system and amortizes any unfunded actuarial liability either as a fixed ratio of payroll or in accordance with the funding schedules provided for in section twenty-two C or twenty-two D, as applicable; provided, however, that any such amounts transferred from the Pension Reserve Funds of the state employees' and state teachers' systems shall be detailed by the commissioner of administration in a written report submitted in advance to the house and senate committees on ways and means. Such schedule shall be adjusted in accordance with any state contributions provided from the PRIT Fund to meet the unfunded pension liability of the system.

(7) *Appropriations.* -- In order to effectuate the provisions of sections one to twenty-eight, inclusive, and to provide for each system the amounts required for the Commonwealth's Pension Liability Fund, the Pension Fund, the special fund for military service credit and the expense fund described in subdivisions (3), (4), (5), and (8), respectively, of this section, the following provisions are hereby made:

(a) *Expense Funds of the State Employees' Retirement System and the Teachers' Retirement System.* -- The state board of retirement and the teachers' retirement board shall each adopt annual budgets and supplemental budgets as deemed necessary by the boards. Said budgets shall include all salaries for personnel employed by the state board of retirement and the teachers' retirement board and said budgets shall be funded from the investment income of each system without further

appropriation. Said budgets shall not exceed 103 per cent of the prior year operating expenditures; provided, however, that for fiscal year 1998 said budgets shall not exceed 134 per cent of the fiscal year 1997 operating expenditures. In the event that said boards determine that said 103 per cent is not sufficient to fund said operations, said boards shall submit spending plans detailing all expenditures to the house and senate committees on ways and means for review 45 days prior to adopting a budget in excess of 103 per cent of the prior year expenditure. At least thirty days prior to the adoption of said budgets the boards shall file said budgets with the house and senate committees on ways and means and the joint committee on public service.

(b) *Pension funds of the state employees' retirement system, the teachers' retirement system and the Boston retirement system.* — The state board of retirement, the teachers' retirement board and the Boston retirement system for the purpose of funding their teacher retirement benefits, on or before October fifteenth in each year, shall furnish the actuary with such information as he may require to enable him to determine the amount to be distributed from the Commonwealth's Pension Liability Fund to the pension funds of said systems, for the fiscal year commencing on the next following July first. The actuary shall, on or before December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said boards the amounts so required. Upon the receipt of such notice, said board shall certify forthwith to the PRIM board the amounts necessary to be distributed and paid for such fiscal year for the Pension Fund and the special fund for military service credit of the respective system. The amounts necessary to be appropriated and paid for such fiscal year by the commonwealth for said Commonwealth's Pension Liability Fund shall be determined in accordance with the funding schedule adopted by the commissioner of administration pursuant to section twenty-two C, and items of appropriation for such amounts shall be included in the appropriations for such fiscal year for the PRIM board or such department as the commissioner of administration shall determine to be allocated to the Commonwealth's Pension Liability Fund.

(c) *Systems for Counties, Cities and Towns.* — (i) The retirement board of each county, city or town contributory retirement system maintained under the provisions of sections one to twenty-eight inclusive, shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund thereof for the fiscal year commencing on the next following July first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid; provided, however, that any community which has a valid and current actuarial report shall only appropriate the amount specified in their actuarial report and the actuary shall not require a larger amount to be appropriated. In addition to the foregoing, the Boston retirement system shall furnish to the actuary any information that the actuary requires to determine the amount payable on account of the employment of teachers in the city of Boston. The actuary shall determine the amount payable on account of the employment of such teachers and a separate amount payable as a result of the employment of all other members of the Boston retirement system. The actuary shall specify in a written notice to the Boston retirement system the specific amounts payable as a result of the employment of teachers in the city of Boston and of all members of the Boston retirement system other than teachers. The amounts to be paid for the three aforesaid funds of any such system for any such fiscal year, shall be allocated to each governmental unit the employees of which are members of any such system, in the proportion that the aggregate of the annual rates of regular compensation of all members in service of such system who are employees of any such government unit at the close of business on the September thirtieth immediately preceding such fiscal year, bears to the total of such aggregates for all members in service of such system on such date.

(ii) The board of each such county contributory retirement system shall, on or before the January first next following the receipt of such notice from the actuary, certify to the county commissioners of any such county the amounts necessary to be paid for such fiscal year for the three aforesaid funds of any such system by each governmental unit the employees of which are members thereof. Items of appropriation providing for any such amounts allocated to such county shall be included in the appropriations for such fiscal year for such county for the several funds of such system. Any such amounts allocated to any hospital district the employees of which are members of such system, shall be assessed by such county commissioners in the

following May, with the assessments for maintenance of such hospital district made in accordance with section eighty-five of chapter one hundred and eleven, and shall be collected in the same manner as therein provided and paid to the treasurer-custodian of such system to be credited to the several funds thereof. Such county commissioners shall, upon the receipt of such certification from such county retirement board, certify forthwith to the board of selectmen of each town and to the treasurer or other disbursing officer of each district the employees of which in either case are members of such system, the amounts which have been allocated to such town or district and the amounts so certified shall be appropriated and paid thereby to the treasurer-custodian of such system to be credited to the several funds thereof. Payments by towns and districts hereunder shall be made one half on the first day of July next following and the remainder on the first day of the following January.

(iii) The board of each such city or town contributory retirement system shall, on or before the January first next following the receipt of such notice from the actuary, certify to the mayor in a city or to the board of selectmen in a town, as the case may be, and to the treasurer or other disbursing officer of each district the employees of which are members of any such system, the amounts necessary to be paid for such fiscal year for the three aforesaid funds of such system which have been allocated to such city, town or district, and the amounts so certified shall be appropriated and paid thereby to the treasurer-custodian of such system to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of any such system for the period prior to the date when the first regular annual appropriation is due from any governmental unit the employees of which become eligible for membership in such system, shall be paid into the several funds thereof by special appropriations of such governmental unit.

(iv) If any governmental unit fails to include any amounts so certified in its appropriations for such fiscal year, the assessors or other taxing authorities shall nevertheless include such amounts in the next tax levy. All amounts so certified shall be a legal obligation of any such governmental unit and may be recovered in an action of contract by the retirement board of any such contributory retirement system.

(d) Such amounts as are necessary to cover the requirements or meet any deficiencies of any fund of any system prior to the date when an appropriation or assessment is available, shall be paid from any available funds in the treasury of the governmental unit obligated by law to support such system and charged against the next regular appropriation or assessment, as the case may be.

<[ There is no paragraph (e).]>

(f) *Massachusetts Bay Transportation Authority Police Retirement System.* — The retirement board of the Massachusetts Bay Transportation Authority police retirement system shall on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of such system by the authority for the fiscal year commencing on the next following January first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the authority the amounts necessary to be paid for such fiscal year for the three aforesaid funds of such system and the amounts so certified shall be included by appropriate terms in the authority's budget for such fiscal year and shall be paid by the authority to the treasurer-custodian of such system to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the period prior to the date when the first regular annual payment is due from the authority shall be paid into the several funds thereof by special payments of the authority.

(g) *Massachusetts Housing Finance Agency Employees' Retirement System.* -- The retirement board of the Massachusetts Housing Finance Agency employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of such system by the agency for the fiscal year commencing on the next following January first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the agency the amounts necessary to be paid for such fiscal year for the three aforesaid funds of such system and the amounts so certified shall be included by appropriate items in the agency's budgets for such fiscal year and shall be paid by the agency to the treasurer-custodian of such system to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the period prior to the date when the first regular annual payment is due from the agency shall be paid into the several funds thereof by special payments of the agency.

(h) The retirement board of the Massachusetts Port Authority employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of said system by the Authority for the fiscal year commencing on the next following July first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the Authority the amount necessary to be paid for such fiscal year for the three aforesaid funds of said system and the amount so certified shall be included by appropriate items in the Authority's budgets for such fiscal year and shall be paid by the Authority to the treasurer-custodian of said system in twelve equal monthly installments to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the fiscal year prior to the beginning of the next fiscal year after this section shall become effective shall be paid into the several funds thereof in equal monthly installments by special payments of the Authority.

(i) The retirement board of the Greater Lawrence Sanitary District employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of said system by the Greater Lawrence Sanitary District for the fiscal year commencing on the next following January first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the district the amount necessary to be paid for such fiscal year for the three aforesaid funds of said system and the amount so certified shall be included by appropriate items in the district budgets for such fiscal year and shall be paid by the district to the treasurer-custodian of said system in twelve equal monthly installments to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the fiscal year prior to the beginning of the next fiscal year after this section shall become effective shall be paid into the several funds thereof in equal monthly installments by special payments of the Authority.

(j) The Blue Hills Regional Vocational School employees' retirement system. The retirement board of the Blue Hills Regional Vocational School employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of such system by the Authority for the fiscal year commencing on the next following July first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The Board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the Authority the amount necessary to be paid for such fiscal year for the three aforesaid funds of such System and the amount so specified shall be included by appropriate items in the Authority's budgets for such fiscal year and shall be paid by the school system to the treasurer-custodian of such system in twelve equal monthly installments to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the

requirements of the retirement system for the fiscal year prior to the beginning of the next fiscal year after this section shall become effective shall be paid into the several funds thereof in equal monthly installments by special payments of the school system.

(k) The retirement board of the Minuteman Regional Vocational Technical School District employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of said system by the school district for the fiscal year commencing on the next following July first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the school district the amount necessary to be paid for such fiscal year for the three aforesaid funds of said system and the amount so certified shall be included by appropriate items in the school district's budgets for such fiscal year and shall be paid by the school district to the treasurer-custodian of said system in twelve equal monthly installments to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the fiscal year prior to the beginning of the next fiscal year after this section shall become effective shall be paid into the several funds thereof in equal monthly installments by special payments of the school district.

(8) *PRIT Fund* -- (a) There shall be a Pension Reserves Investment Trust Fund administered by the PRIM board established in section twenty-three for the purpose of depositing, investing and disbursing amounts set aside to meet further liabilities of the various systems. The assets of the state employees' retirement system, the teachers' retirement system and assets of the Boston retirement system attributable to teachers who are members of that system shall be held in the PRIT Fund.

(b) All amounts which the state may appropriate each year subsequent to January first, nineteen hundred and eighty-four pursuant to section twenty-two B to meet unfunded pension liabilities shall be deposited in the PRIT Fund and credited to the account of the state employees' retirement system, the teachers' retirement system and other participating systems as follows: the amount determined for each system shall be proportionate to the amount of assets of each system participating in the PRIT Fund as of July first for each fiscal year beginning on such date; provided, however, that for the purposes of this paragraph the amount of the combined assets of the state employees' and teachers' retirement systems shall be deemed not to exceed eighty percent of the total amount of the assets in the PRIT Fund as of June thirtieth, nineteen hundred and eighty-seven; and provided further, that a system participating in the PRIT Fund after January first, nineteen hundred and eighty-eight shall receive the greater of either the system's share of the state appropriation pursuant to section twenty-two B or the amount the system would receive in an annual pension funding grant pursuant to section twenty-two D. Systems which elected to participate in the PRIT Fund on or before January first, nineteen hundred and eighty-eight and which are eligible to receive an annual pension funding grant from the commonwealth pursuant to section twenty-two D shall receive an amount equal to such system's share of the state appropriation pursuant to section twenty-two B in addition to the amount such system would receive in an annual pension funding grant pursuant to section twenty-two D. The amounts so determined for each participating system and an amount equal to the regular interest on assets in the PRIT Fund shall be credited to the several retirement systems.

(c) Upon notification by the chief executive officer and legislative body of a governmental unit of a decision to participate, systems shall transfer ownership and control of all the assets of the system to the PRIM board. The PRIM board shall hold such assets in trust for the participating systems. The PRIM board shall credit assets and earnings on such assets to the individual systems. The PRIM board shall calculate regular interest as defined in subdivision (6) to allocate earnings among the various funds of each system. The board of each system shall continue to administer the system in accordance with sections one to twenty-eight, inclusive, including the maintenance of accounts in accordance with the funds provided for in this section. The PRIM board shall transfer monies to the various funds of the participating systems to allow them to carry

out their duties under this chapter. The board of each participating system shall notify the PRIM board of the amounts needed for the various funds for the next fiscal year no later than ninety days before the start of the next fiscal year. The PRIM board shall develop a schedule of transfers to be made to said systems during the next fiscal year and notify the systems of that schedule no later than thirty days prior to the start of the next fiscal year. The PRIM board shall transfer such amounts in accordance with said schedule during the course of said fiscal year. From time to time such boards may make supplemental requests of the PRIM board if the initial request is found to be insufficient. Within thirty days of such request, the PRIM board shall approve or deny such request. Any denial of such a request must be accompanied by a written statement of the reasons therefor.

The procedure for determining participation shall occur as follows: on or before January first of each year, the PRIM board shall notify each system in writing of their option to participate in the PRIT Fund. Such notice shall be accompanied by a financial report and a description of the rights and duties of the PRIM board if a system elects to participate. The decision to participate shall be made by the board of each system, subject to the approval of the legislative body and the chief executive officer of each governmental unit. The decision of the board shall be deemed to have been approved unless the legislative body and the chief executive officer act to disapprove such decision by July first of the year in which the decision of such board is made. The board of each system shall notify the PRIM board and the appropriate legislative body and chief executive officer by May first of each year of its decision.

For any system which is receiving an annual pension funding grant from the commonwealth pursuant to the provisions of section twenty-two D in which the annualized time-weighted-rate of return is less than the assumption for investment rate of return approved by the actuary in the most recent actuarial valuation for the system, over any five year cycle, and said time-weighted-rate of return is less than the annualized time-weighted-rate of return for the pension reserve investment trust fund, over any five year cycle, the commission shall notify the PRIM board and the appropriate legislative body, chief executive officer, and the board of said system shall be deemed to have voted to participate.

After the decision of a board of a system to participate has been approved, the decision to participate may not be revoked for five years. Such revocation shall become effective six months after the PRIM board receives notification of such decision by such board. For purposes of this section, "legislative body" shall mean a town meeting in a town, the city council in a city, the county advisory board in a county, the district members in a district, and the members of an authority in an authority. For purposes of this section, "chief executive officer" shall mean the board of selectmen in a town, the mayor in a city, except in a city with plan D or plan E form of government it shall mean the city manager, municipality with a council form of government, the town manager and the county commissioners in a county. In a district or in an authority, "chief executive officer" shall mean the members of such district or authority. A system may purchase offerings of the PRIT Fund in accordance with paragraph (b) of subdivision (2) of section twenty-three without becoming a participating system for purposes of this section.

(c ½ ) The commission shall annually review the investment performance and funded ratio of all systems using data compiled as of January 1 of the year in which the review occurs. If on or before July 1 the funded ratio data as of January 1 is not available, the most recent data shall be used. A system found by the commission to have a funded ratio of less than 65 per cent and an average rate of return during the previous 10 years that is at least 2 percentage points less than that of the PRIT Fund rate of return over the same period shall be declared underperforming by the commission. The commission shall notify, in writing, any system deemed to be underperforming pursuant to this paragraph that it shall transfer ownership and control of all of its assets to the PRIM board. The notice shall include, without limitation: (i) a financial report on the specific underperforming system; (ii) a description of the rights and duties of the PRIM board; and (iii) a schedule for the transfer of ownership and control of a system's assets to the PRIM board pursuant to this paragraph. A transfer of the ownership and control of a system's assets pursuant to this paragraph shall be in perpetuity.

The PRIM board shall hold assets in trust for the participating systems. The PRIM board shall credit assets and earnings on the assets to the individual systems. The PRIM board shall calculate regular interest as defined in subdivision (6) to allocate

earnings among the various funds of each system. The board of each system shall continue to administer the system in accordance with sections 1 to 28, inclusive, including the maintenance of accounts in accordance with the funds provided for in this section. The PRIM board shall transfer monies to the various funds of the participating systems to allow them to carry out their duties pursuant to this chapter. The board of each participating system shall notify the PRIM board of the amounts needed for the various funds for the next fiscal year not later than 90 days before the start of the next fiscal year. The PRIM board shall develop a schedule of transfers to be made to the systems during the next fiscal year and notify the systems of that schedule not later than 30 days before the start of the next fiscal year. The PRIM board shall transfer those amounts in accordance with the schedule during the course of the fiscal year. From time to time, the boards may make supplemental requests of the PRIM board if the initial request is found to be insufficient. Within 30 days after the request, the PRIM board shall approve or deny it, but a denial shall be accompanied by a written statement of the reasons therefor.

A system ordered by the commission to transfer its assets under this paragraph may appeal for an exemption to a 4-member review board which shall consist of the executive director of the PRIM board or his designee, the secretary of administration and finance or his designee, a member selected by the state treasurer from a list of 3 names submitted by the Massachusetts Association of Contributory Retirement Systems and 1 member of a municipal employee union to be appointed by the governor. The system shall file written notice of its appeal with the secretary of administration and finance not later than 30 days after receiving the commission's order to transfer its assets. The review board may establish rules for its own procedure and the rules shall not be subject to chapter 30A. The review board may grant an exemption from the transfer requirement of this paragraph if its rate of return has exceeded the PRIT Fund rate of return for the previous 2 years or if the system's rate of return was affected by other extenuating circumstances. The review board may also consider the system's management costs, its risk return ratio and any other factors it deems appropriate. The grant of an exemption shall require the concurrence of at least 3 of the 4 members or their designees. A system may seek judicial review of the review board's decision to deny an exemption in the manner provided in section 14 of chapter 30A. An exemption granted by the review board pursuant to this paragraph shall take effect only upon the approval of a majority of the local governing body as follows: in a county, by the county commissioners, in a city having a Plan D or Plan E charter, by the city council and the manager, in any other city the city council and the mayor, in a town shall, by the board of selectmen, in a regional retirement system by the regional retirement board advisory council and in all other districts, by the governing board. The local governing body shall vote whether or not to approve the review board's grant of exemption within 30 days after the review boards' decision to provide an exemption.

(d) The amounts in the PRIT Fund shall be invested and managed in accordance with the authority of the PRIM board as created in section twenty-three. Amounts in the PRIT Fund shall be transferred back to each system for withdrawal or payment to members as otherwise provided by sections one to twenty-eight, inclusive.

All other amounts shall be distributed to each system during such calendar years as the actuary shall determine pursuant to subdivision (6A). Such distributions shall be transferred to the pension fund of each system for such year. On March first, nineteen hundred and eighty-four and each subsequent calendar year, the public employee retirement administration commission shall publish a report of the projected schedule of distribution of amounts from the PRIT Fund, as developed by the actuary, and file such report with each system, with the commissioner of administration, and with the house and senate committees on ways and means.

(e) There shall be a Commonwealth's Pension Liability Fund which shall be within the PRIT Fund and to which shall be credited all assets of the state employees' and teachers' retirement systems, other than assets credited to the systems' Annuity Savings Funds, Annuity Reserve Funds and expense funds. Except for transfers to and from the Annuity Savings Funds, Annuity Reserve Funds and expense funds of such systems in accordance with the provisions of sections one to twenty-eight, inclusive, all transfers of funds to or from such systems shall be made to or from the Commonwealth's Pension Liability Fund as provided herein. 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.

Amounts in the Commonwealth's Pension Liability Fund shall include, but not be limited to, the following:

- (i) all amounts appropriated by the commonwealth to meet its pension liabilities, including amounts appropriated pursuant to clause (a) of the third paragraph of section twenty-one of chapter one hundred and thirty-eight, the state share of amounts appropriated pursuant to section twenty-two B and amounts appropriated pursuant to section twenty-two C; provided, however, that the state treasurer may act as agent of the PRIM board to disburse benefit payments pursuant to any such appropriation;
  - (ii) all monies transferred from the annuity reserve funds of the state employees' retirement system and the teachers' retirement system pursuant to paragraph (c) of subdivision (2) or from the investment accounts of such systems pursuant to clause (iii) of paragraph (a) of subdivision (6);
  - (iii) all undistributed accumulated total deductions for the state employees' retirement system and the teachers' retirement system transferred pursuant to subdivision (3) of section 11; and
  - (iv) all assets of the state employees' retirement system and the teachers' retirement system except assets credited to such systems' expense funds, annuity savings funds and annuity reserve funds.
- (9) In order to offset the anticipated costs for funding a county contributory retirement system, any governmental unit participating in the system may appropriate in any year an amount not exceeding five per cent of the amount raised in the preceding year by assessment under clause (i) of paragraph (c) of subdivision (7). Any interest shall be added to and become part of such special fund.

Such special fund shall be separate and distinct from any pension financing requirements of this chapter and all sums in such special fund shall be appropriated and used only for the purpose of offsetting the anticipated future cost of funding the contributory retirement system.

The treasurer of the governmental unit making the appropriation shall be the custodian of all funds deposited pursuant to this subdivision. Such funds may be invested in the same manner as retirement system funds pursuant to subdivision (2) of section twenty-three.

Such funds may be utilized in accordance with the provisions of subdivision (6A), or, subject to the approval of the actuary, in accordance with the provisions of paragraph (c) of subdivision (7), or subdivision (3) of section twenty-two D.

(10) Each governmental unit to which a system pertains and any free public library the employees of which are eligible for membership in a system, pursuant to the provisions of section four hundred and fourteen (h) (2) of the United States Internal Revenue Code, shall assume and pay the contributions which would be payable by the employees as members under paragraph (b) of subdivision (1). Such contributions, although designated as employee contributions, will be paid by the applicable governmental unit or free public library employing the employee in lieu of contributions by the employee. No employee will have the option of choosing to receive such contributed amounts directly instead of having them paid by the employing governmental unit or free public library to the applicable system. The contributions so assumed shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The contributions so assumed shall be treated and identified, without limitation, as member contributions for all purposes of the retirement system, except as specifically provided to the contrary in this subdivision, and for all purposes of chapter sixty-two.

Employee contributions assumed pursuant to this subdivision shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from an employee's compensation equal to the amounts of the employee's contributions assumed by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this chapter or for purposes of determining any other employee benefits. Assumed contributions shall be transferred to the retirement system of which the employee is a member in accordance with the provisions of paragraph (h) of subdivision (1) and shall be credited to a separate fund within the employee's account in the Annuity Savings Fund of such system in order that the amounts contributed prior to the effective date for the assumption of employee contributions may be distinguished from the amounts contributed on or after the date on which the governmental employer is required by law to assume the employee's contributions.

#### Credits

Added by St.1945, c. 658, § 1. Amended by St.1947, c. 388, § 8; St.1947, c. 617; St.1949, c. 560, §§ 1, 2; St.1951, c. 407; St.1951, c. 530, § 1; St.1952, c. 392; St.1952, c. 433; St.1952, c. 434, § 2; St.1954, c. 656, § 1; St.1957, c. 516, § 3; St.1961, c. 597, §§ 1 to 3; St.1963, c. 514; St.1967, c. 597, § 18; St.1969, c. 849, §§ 2, 3; St.1971, c. 766, § 1; St.1971, c. 1012, § 10; St.1973, c. 1003, § 15; St.1974, c. 249; St.1974, c. 398; St.1978, c. 487, § 14; St.1980, c. 556, § 16; St.1982, c. 630, § 26; St.1983, c. 364, § 14; St.1983, c. 412; St.1983, c. 661, §§ 8 to 16; St.1984, c. 189, § 42; St.1984, c. 373, §§ 3 to 6; St.1987, c. 697, §§ 63 to 75; St.1991, c. 138, §§ 114, 364 to 366; St.1992, c. 133, §§ 354, 355; St.1992, c. 286, § 113; St.1993, c. 110, § 98; St.1996, c. 151, § 176; St.1996, c. 306, §§ 35, 36, 58; St.1996, c. 315, §§ 4 to 8; St.1996, c. 340; St.1996, c. 427, § 8; St.1996, c. 450, § 88; St.1997, c. 43, § 57; St.2000, c. 114, §§ 4, 5; St.2002, c. 46, § 4; St.2007, c. 68, §§ 1, 2, eff. Oct. 1, 2007; St.2009, c. 25, § 56, eff. July 1, 2009; St.2010, c. 112, §§ 13 to 17, eff. May 22, 2010; St.2011, c. 176, § 39, eff. April 2, 2012; St.2015, c. 86, §§ 6, 7, eff. Dec. 24, 2015; St.2017, c. 5, § 7, eff. Mar. 28, 2017; St.2017, c. 47, § 26, eff. July 1, 2017.

M.G.L.A. 32 § 22, MA ST 32 § 22

Current through Chapter 295 of the 2018 2nd Annual Session

End of Document

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ACTS  
AND  
RESOLVES  
PASSED BY THE  
**General Court of Massachusetts**  
IN THE YEAR  
**1964**  
TOGETHER WITH  
TABLES SHOWING CHANGES IN THE STATUTES, ETC.

PUBLISHED BY  
**KEVIN H. WHITE**  
Secretary of the Commonwealth



BOSTON  
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1964

**Chap. 123.** AN ACT REQUIRING QUARTERLY INSPECTIONS OF HOTELS BY THE STATE FIRE MARSHAL OR HIS AUTHORIZED REPRESENTATIVE.

*Be it enacted, etc., as follows:*

The last paragraph of section 4 of chapter 148 of the General Laws, as amended by section 5 of chapter 446 of the acts of 1959, is hereby further amended by adding the following sentence: — Said marshal or such head of a fire department shall also make an inspection every three months of the premises specified in innholders' licenses issued under chapter one hundred and forty.

*Approved March 2, 1964.*

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**Chap. 124.** AN ACT AUTHORIZING CITIES AND TOWNS TO INSTALL PAVEMENT MARKINGS ACCORDING TO THE DESIGN SPEED OF THE HIGHWAY.

*Be it enacted, etc., as follows:*

SECTION 1. Chapter 89 of the General Laws is hereby amended by striking out section 1, as amended by section 2 of chapter 646 of the acts of 1951, and inserting in place thereof the following section: — *Section 1.* When persons traveling with vehicles meet on a way, each shall seasonably drive his vehicle to the right of the middle of the traveled part of such way, so that the vehicles may pass without interference, except that the department of public works may modify such restriction by pavement markings on state highways, on ways leading thereto and on all main highways between cities and towns. The department may by permit, revocable upon notice, authorize cities and towns to modify such restriction by pavement markings. All markings shall be in accordance with accepted standards of engineering practice, as provided in section two of chapter eighty-five.

SECTION 2. Section 4 of said chapter 89, as most recently amended by section 3 of said chapter 646, is hereby further amended by inserting after the word "towns", in line 11, the words: — ; and may by permit, revocable upon notice, authorize cities and towns to alter said provision by the use of such restrictive pavement markings.

*Approved March 2, 1964.*

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**Chap. 125.** AN ACT PROVIDING THAT SERVICE AS A RESERVE POLICE OFFICER OR RESERVE FIRE FIGHTER BE CREDITED AS FULL TIME SERVICE UNDER THE CONTRIBUTORY RETIREMENT LAW.

*Be it enacted, etc., as follows:*

Paragraph (b) of subdivision (2) of section 4 of chapter 32 of the General Laws, as amended by section 4 of chapter 403 of the acts of 1946, is hereby further amended by inserting after the word "year", in line 21, the words: — ; and, provided further, that the board shall credit service as a reserve police officer or as a reserve fire fighter as full time service, said credited service not to exceed a maximum of five years.

*Approved March 2, 1964.*

# ACT

Approved by the People, November 3, 1964  
Chapter 740, Acts of 1964

AND

# ACTS AND RESOLVES

PASSED BY THE

**General Court of Massachusetts**

IN THE YEAR

**1965**

TOGETHER WITH

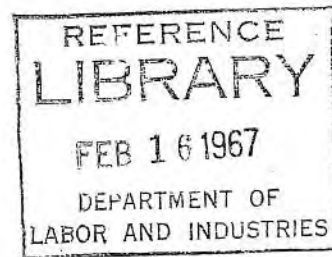
RETURNS OF VOTES UPON QUESTION SUBMITTED TO  
VOTERS

TABLES SHOWING CHANGES IN THE STATUTES, ETC.

PUBLISHED BY

**KEVIN H. WHITE**

**Secretary of the Commonwealth**



BOSTON

WRIGHT & POTTER PRINTING COMPANY

1965

; where and the date when  
rked or failure to allow an  
violation of this section;  
ive to transportation shall  
or agents.  
ion shall be punished by a  
dollars or by imprisonment  
provisions of this section  
lic health, local boards of  
to serve criminal process;  
and of section eighty-two  
area declared to be con-  
enty-four or corresponding  
roved February 25, 1965.

THE REGISTRAR OF MOTOR  
UAL INSPECTIONS IN HIS  
THE INSPECTION OF SCHOOL

aws is hereby amended by  
by chapter 178 of the acts  
following sentence:— The  
gulations prepared by him  
ons providing for the peri-  
trailers between April first  
first and October fifteenth,  
ose of determining whether  
pment maintained in good  
orn, exhaust system, steer-  
mber plates, rear windows,  
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ber in each year in addition  
red to.  
proved February 25, 1965.

CONTROL AND ERADICATION OF  
IALS.

of the General Laws, as most  
527 of the acts of 1956, is  
e last two sentences and in-  
sentences:— It shall be un-  
r for transportation any un-  
of age, and any vaccinated  
age, that has been tested for

brucellosis and has reacted positively to such tests, except cattle moved under permit issued by the director to slaughtering establishments under state or federal inspection. Any person, firm or corporation who buys, sells or transports any cattle known to be positive to an approved test for brucellosis, except animals under twenty-four months of age which were vaccinated from the age four through eight months and accompanied by an official record of vaccination or except unvaccinated animals less than six months of age, or except animals for immediate slaughter, shall be fined not more than two hundred dollars for each animal bought, sold or transported.

SECTION 2. Said chapter 129 is hereby further amended by striking out section 36D, as most recently amended by chapter 371 of the acts of 1960, and inserting in place thereof the following section:— *Section 36D.* Vaccinated animals which are over twenty-four months of age may be imported into the commonwealth if within thirty days prior to entry they have been submitted to an agglutination blood test at a laboratory approved by the state of origin, and have reacted negatively. Vaccinated animals twenty-four months of age and under may be imported into the commonwealth without a blood test if accompanied by a certificate stating the animals have been vaccinated between the ages of four through eight months by an approved veterinarian.

The director, his authorized agent, or a veterinarian designated by the director shall make by random selection such blood tests for brucellosis of all cattle imported into the commonwealth which are over six months of age, as will effectively control brucellosis.

SECTION 3. Said chapter 129 is hereby further amended by striking out section 36F, as most recently amended by chapter 449 of the acts of 1958, and inserting in place thereof the following section:— *Section 36F.* The director, his authorized agent or a veterinarian designated by the director shall make by random selection such blood tests for brucellosis of all cattle imported into the commonwealth which are over six months of age and unvaccinated or over twenty-four months of age whether or not officially vaccinated, as will effectively control brucellosis.

*Approved February 25, 1965.*

**Chap. 73.** AN ACT PROVIDING THAT SERVICE AS A PERMANENT INTER-  
MITTENT POLICE OFFICER BE CREDITED AS FULL-TIME  
SERVICE UNDER THE CONTRIBUTORY RETIREMENT SYSTEM.

*Be it enacted, etc., as follows:*

Subdivision (2) of section 4 of chapter 32 of the General Laws is hereby amended by striking out paragraph (b), as most recently amended by chapter 738 of the acts of 1964, and inserting in place thereof the following paragraph:—

(b) The board shall fix and determine how much service in any calendar year is equivalent to a year of service. In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official or of any person elected by popular vote to a county or municipal office or position, the board, under appropriate rules and regulations which shall be subject to the approval of the actuary, shall fix and determine

the amount of creditable prior service, if any, and the amount of credit for membership service of any such employee who becomes a member, including any prescribed waiting period before eligibility for membership, established either by law or board ruling, prior to January first, nineteen hundred and forty-six, for which such service credit was given upon attaining membership; provided, that in the case of any such employee whose work is found by the board to be seasonal in its nature, the board shall credit as the equivalent of one year of service, actual full-time service of not less than seven months during any one calendar year; and provided, further, that the board shall credit service as a reserve police officer, permanent intermittent police officer or as a reserve or call fire fighter as full-time service, said credited service not to exceed a maximum of five years, and provided, further, that such service as a call fire fighter shall be credited only if such call fighter was later appointed as a permanent member of the fire department.

*Approved February 25, 1965.*

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**Chap. 74.** AN ACT RELATIVE TO GUARANTY FUNDS OF SAVINGS BANKS.

*Be it enacted, etc., as follows:*

Paragraph 1 of section 58 of chapter 168 of the General Laws, as appearing in section 1 of chapter 432 of the acts of 1955, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — The trustees shall, as of the close of each ordinary dividend period, cause to be transferred to the guaranty fund until it amounts to seven and one-half per cent of the whole amount of deposits, not less than one-eighth nor more than one-fourth of one per cent of the whole amount of deposits, if the dividend period is six months, or a proportional percentage of such amount of deposits if the dividend period is less than six months, provided that the trustees may at their election make the whole or any part of any such transfer to surplus instead of to the guaranty fund, if immediately after said transfer the guaranty fund shall amount to not less than five per cent of the whole amount of deposits; and provided further that no amount shall be required to be transferred to the guaranty fund if at the close of any dividend period the guaranty fund shall amount to not less than five per cent of the whole amount of deposits and either the guaranty fund and surplus in the aggregate amount to not less than eleven per cent of the whole amount of deposits, or the surplus, undivided profits and reserves, at the beginning of the taxable year of such corporation, determined in accordance with federal income tax laws and regulations relating to mutual savings banks, shall in the aggregate amount to not less than twelve per cent of the whole amount of deposits.

*Approved February 25, 1965.*

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**Chap. 75.** AN ACT PLACING THE POSITIONS OF CUSTODIAN AND SUPERVISORS OF CUSTODIANS IN THE SCHOOL SYSTEM OF THE TOWN OF LUDLOW UNDER THE CIVIL SERVICE LAW.

*Be it enacted, etc., as follows:*

SECTION 1. The positions of custodian and supervisors of custodians in the school system of the town of Ludlow shall, upon the effective date

1988 Mass. Legis. Serv. 172 (West)

MASSACHUSETTS

LEGISLATIVE SERVICE

Acts of the General Court

1988 Regular Session

Additions and deletions are not  
indicated in this database.

Changes in tabular material are not indicated

CHAPTER 172

POLICE OFFICERS—FIRE FIGHTERS—RETIREMENT BENEFITS

AN ACT regulating the retirement benefits of certain permanent-intermittent and reserve police officers and fire fighters.

Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:

MA ST 32 § 4

Paragraph (b) of subdivision (2) of section 4 of chapter 32 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by adding the following sentence:— For a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter retiring from a governmental unit accepting the provisions of this sentence, the board shall credit, in addition to the five years of credit allowed pursuant to the preceding sentence, as one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was assigned to and actually performed duty as a reserve or permanent-intermittent police officer or reserve, permanent-intermittent or call fire fighter; provided, however, that such service as a permanent-intermittent or call fire fighter shall be credited only if such fire fighter was later appointed as a permanent member of the fire department; provided, further, that this sentence shall take effect in a city by vote of the city council in accordance with its charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, in a town whose eligible employees are members of the county retirement system of the county wherein such town lies by vote of a town meeting and by acceptance by the county commissioners of said county, in a district which maintains a separate contributory retirement system by vote of the district meeting, and in a district the eligible employees of which are members of a county retirement system by vote of the district meeting and by acceptance of the county commissioners of said county.

Approved July 25, 1988.

MA LEGIS 172



THE COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD  
ONE ASHBURTON PLACE, 20<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02108

June 21, 2013

*Catherine E. Sullivan, Chair*  
*Joseph I. Martin, Esquire*  
*Kenneth Pariser, M.D.*  
*Peter Sturges, Esquire*

Mr. Brenton MacAloney, pro se  
34 Academy Street  
Westminster, MA 01473

Michael Sacco, Esq.  
Post Office Box 479  
Southampton, MA 01073

Derek Moitoso, Esq.  
Public Employees Retirement  
Admin. Commission  
5 Middlesex Ave.  
Somerville, MA 02145

Re: Brenton MacAloney v. Worcester Regional System, and Public  
Employee Retirement Administration Commission,  
CR No. 11-19.

Dear Counsel:

Enclosed please find the Amended Decision of the Contributory Retirement Appeal Board. Any party aggrieved by the Decision may, within thirty (30) days of receipt of this notice and the enclosed decision, appeal to the Superior Court in accordance with the provisions of Massachusetts General Laws, Chapter 30A, § 14.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine E. Sullivan (CS)".

Catherine E. Sullivan  
Assistant Attorney General  
Chair  
(617) 963-2822

CES/db  
Enclosure

cc: Richard Heidlage, Esquire, DALA (w/original)

COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD

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BRENTON MACALONEY,

Petitioner-Appellant,

v.

WORCESTER REGIONAL RETIREMENT SYSTEM AND PUBLIC  
EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,

Respondents-Appellees.<sup>1</sup>

CR-11-19

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AMENDED DECISION

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Petitioner Brenton MacAloney and respondents Worcester Regional Retirement System (WRRS) and Public Employee Retirement Administration Commission (PERAC) appeal from a decision of the Chief Administrative Magistrate of the Division of Administrative Law Appeals (DALA), relating to the calculation of creditable service for MacAloney, Fire Chief of the Westminister, Massachusetts Fire Department and a former call firefighter in that town. The chief magistrate held a hearing on the WRRB's motion to

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<sup>1</sup> We have received objections from all three parties. We designate the petitioner as the appellant and the respondents as appellees for purposes of this decision. For ease of reference we include the Public Employee Retirement Administration Commission (PERAC) as a respondent although it was named below as a third party.

dismiss, which he treated as a motion for summary decision, on September 8, 2011 and admitted 36 exhibits.<sup>2</sup> His decision is dated October 7, 2011.

All three parties filed timely appeals with us. After the parties' submissions to us were completed, we requested supplemental memoranda, which were filed and for which we thank the parties. We adopt the chief magistrate's Findings of Fact 1-23 as our own.

For the following reasons, we hold that the 1964 amendments to G.L. c. 32, § 4(2)(b) did not preempt the WRRB's local rules as applied to MacAloney's case. Thus, MacAloney is entitled to both five years' creditable service for his call firefighting pursuant to G.L. c. 32, § 4(2)(b) and creditable service pursuant to WRRB's local rules for his call firefighter service following his initial five years in the manner described below. We conclude, however, that MacAloney's receipt of prior, non-membership service credit under § 4(2) and under local retirement board rules is subject to the provisions of §§ 3(2)(c), 3(3), 3(5), and 4(2)(c), which require make-up payments. We express no opinion as to MacAloney's creditable service arising from his positions other than call firefighter, as there does not appear to be any dispute concerning that calculation.

*Background.* MacAloney held various part-time positions for the Town of Westminster from June 26, 1967 until he was appointed to the full-time

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<sup>2</sup> The chief magistrate also accepted memoranda of law, some with attached documents, which were marked as Exhibits A through R. We accept copies of those exhibits as an exception to our rule that memoranda should not be filed with us. See CRAB Standing Order 2008-1, ¶ 4.a.(5).

position of Fire Chief as of July 1, 1998.<sup>3</sup> His part-time positions for the first ten years of his employment included elections and registration worker, school custodian, monument caretaker, dispatcher, and special police officer. In addition, throughout this thirty-one year period, MacAloney served as a call firefighter.<sup>4</sup>

At the time MacAloney began his employment with the town, under the rules of the Worcester County Retirement Board (now the WRRS), he could become eligible to join the retirement system in either of two ways: (1) he could join if, in any calendar year, he worked the equivalent of 130 days or more in any position other than as a firefighter (or other positions not applicable here) or (2) he could join if he earned \$200 or more per year as a call firefighter (or certain other positions).<sup>5</sup> Although he reached both these thresholds earlier,<sup>6</sup> MacAloney joined the retirement system in 1974, and the town then began deducting retirement contributions from MacAloney's pay.<sup>7</sup>

Under the retirement system's rules prior to 1984, part-time workers other than firefighters earned creditable service "based on actual service

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<sup>3</sup> We agree with MacAloney that July 1, 1998 is the date when he assumed the position of full-time Fire Chief for the Town of Westminster. Finding 9; Exs. 19, 28, 29.

<sup>4</sup> Findings of Fact 8-9; Ex. 9.

<sup>5</sup> Finding 1.

<sup>6</sup> In 1970 MacAloney earned at least \$200 for his call firefighter work (\$205) and in 1972 he worked the equivalent of 130 days, or 1,040 hours (1,167.5 hours) in non-call-firefighting positions. Ex. 6.

<sup>7</sup> Findings 8-9; Exs. 6, 9, 24. It appears that deductions were made, starting on April 16, 1974, from MacAloney's pay for both his regular part-time work and his work as a call firefighter.

rendered” (Board Rule 2). Call firefighters (and reserve police officers) earned one month of creditable service for each year of service (Board Rule 4).<sup>8</sup> These rules had been approved in 1957 by an actuary with the Division of Insurance<sup>9</sup> pursuant to the version of G.L. c. 32, § 4(2)(b) then in effect.<sup>10</sup> Thus, member call firefighters and reserve police officers paid into their retirement system’s annuity fund via deductions from their pay at the applicable statutory rate, but they received creditable service based on the Board’s Rule 4.

Seven years later, in 1964, the Legislature twice amended § 4(2)(b). The first amendment added the following language:

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<sup>8</sup> Finding 1. A 1976 rule requiring employees to work at least twenty hours per week within a calendar year to be eligible for membership was limited to persons hired after September 1, 1976 and so had no application to MacAloney. Finding 3.

<sup>9</sup> Finding 2; Exs. 14-15. See St. 1982, c. 630, § 50 (transferring retirement functions from Division of Insurance to Public Employee Retirement Administration).

<sup>10</sup> G.L. c. 32, § 4(2)(b), as amended through St. 1946, c. 403, § 4, provided in relevant part that:

The board shall fix and determine how much service in any calendar year is equivalent to a year of service. In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit . . . the board, under appropriate rules and regulations which shall be subject to the approval of the actuary, shall fix and determine the amount of creditable prior service, if any, and the amount of credit for membership service of any such employee who becomes a member . . . .

and, provided, further, that the board shall credit service as a reserve police officer or as a reserve fire fighter as full-time service, said credited service not to exceed a maximum of five years.<sup>11</sup>

This amendment imposed no requirement that reserve police officers or reserve firefighters become permanent members of their department in order to receive full-time credit of up to five years. Four months later, however, the Legislature passed a second amendment, bringing call firefighters within this “five-year rule” – but only if they later became permanent members of their department:

and, provided, further, that the board shall credit service as a reserve police officer or as a reserve *or call* fire fighter as full-time service, said credited service not to exceed a maximum of five years; *and, provided further, that such service as a call fire fighter shall be credited only if such call fire fighter was later appointed as a permanent member of the fire department.*<sup>12</sup>

In 1965, “permanent intermittent” police officers were added to those benefitting from the five-year rule.<sup>13</sup>

In 1966, the Legislature rewrote the section to clarify what was meant by “service” in the included positions and to add “permanent-intermittent” firefighters. As amended, the section read:

and, provided, further, that the board shall credit *as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment*; and, provided, further, that such

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<sup>11</sup> St. 1964, c. 125 (approved March 2, 1964).

<sup>12</sup> St. 1964, c. 738 (approved July 9, 1964) (added provisions emphasized).

<sup>13</sup> St. 1965, c. 73 (approved Feb. 25, 1965).

service as a *permanent-intermittent* or call fire fighter shall be credited only if such *permanent-intermittent* or call fire fighter was later appointed as a permanent member of the fire department.<sup>14</sup>

Thus, as of 1974, when MacAloney first joined the retirement system, two sets of rules were extant that related to his creditable service: the Board's Rule 4, issued under § 4(2)(b), and the "five-year rule" provided by the 1964-1966 amendments to § 4(2)(b).

In 1984, the Worcester County Retirement Board adopted a new supplementary regulation (the "four-month regulation"), which, as approved by the Public Employee Retirement Administration (the predecessor agency to PERAC), provided that call firefighters who earned \$225 or more in a calendar year were to be credited with four months of creditable service for that year, "but only if such firefighter is later appointed a permanent member of the fire department." The DALA magistrate found that this regulation replaced the previous rule, Board Rule 4, concerning creditable service for call firefighters. The new regulation was approved by letter dated December 28, 1984.<sup>15</sup>

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<sup>14</sup> St. 1966, c. 509, § 1 (approved Aug. 15, 1966) (in pertinent part; amended portions in italics).

<sup>15</sup> The regulation read:

Call firefighters – when earnings are \$225 per year or more, then 4 months of creditable service is allowed for each calendar year, but only if such firefighter is later appointed as a permanent member of the fire department pursuant to G.L. c. 32, s. 4(2)(b).

Findings 4, 21; Exs. 11, 20.

Two subsequent amendments to G.L. c. 32, § 4(2) affecting creditable service for call firefighters were passed by the Legislature, neither of which has direct application here. In 1988, the Legislature enacted a local option under § 4(2)(b) which, if adopted by a town, city, county, or district, entitled call firefighters who later became permanent members of their department to be credited with additional service, beyond the five years already provided for in the statute, of one full day of service for each day beyond the five years on which the call firefighter actually performed duties.<sup>16</sup> The Town of Westminster did not adopt this local option. In 1995, the Legislature passed a local option, codified at G.L. c. 32, § 4(2)(b½), which, if adopted, entitled call firefighters to full-time credit under § 4(2)(b) regardless of whether they later became permanent members of their department.<sup>17</sup> The Town of

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<sup>16</sup> The amendment added the following, in pertinent part, to § 4(2)(b):

For a . . . call fire fighter retiring from a governmental unit accepting the provisions of this sentence, the board shall credit, in addition to the five years of credit allowed pursuant to the preceding sentence, as one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a . . . call fire fighter was assigned to and actually performed duty as a . . . call fire fighter; provided, however, that such service as a . . . call fire fighter shall be credited only if such fire fighter was later appointed as a permanent member of the fire department . . . .

St. 1988, c. 172 (approved July 25, 1988).

<sup>17</sup> This amendment stated in pertinent part:

In any city, town, or fire district, which accepts the provisions of this paragraph, service as a . . . call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the

Westminster also did not adopt this local option (which, in any event, would not have affected MacAloney, who became a permanent member of his department).

*The parties' positions.* The parties, in general, do not dispute the portion of MacAloney's creditable service that is attributable to his various part-time positions with the town from June 26, 1967 through December 31, 1977,<sup>18</sup> other than as a call firefighter. Nor do they dispute the creditable service arising from MacAloney's position as full-time Fire Chief from July 1, 1998 to the present time.<sup>19</sup> Thus, the primary issue is how to calculate that portion of MacAloney's creditable service arising from his call firefighting from June 26, 1967 through June 30, 1998.

MacAloney requests that he receive five years' full-time credit for his call firefighter service under the "five-year" rule of G.L. c. 32, § 4(2)(b) (June 26, 1967 through June 25, 1972). In addition, MacAloney requests that he receive creditable service under the appropriate local rule of the retirement board, now the WRRB, for the remaining years that he worked as a call firefighter (June 26, 1972 through June 30, 1998).

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appointment of said . . . call firefighter as a permanent member  
of the fire department . . . .

St. 1995, c. 171, § 1 (approved Oct. 19, 1995).

<sup>18</sup> The parties have stipulated that the last year in which MacAloney held such a position was 1977. See DALA decision at 25.

<sup>19</sup> The record does not show MacAloney's retirement status. The parties calculated creditable service through December 31, 2011.

The WRRB argues that the “five-year rule” pursuant to G.L. c. 32, § 4(2)(b) applies only to call firefighters whose departments are covered by the civil service laws and so is not applicable to MacAloney. Under the WRRB’s local rules, the WRRB requests that MacAloney receive credit pursuant to Board Rule 4 for his service from June 26, 1967 through December 31, 1983, and receive credit pursuant to the WRRB’s four-month regulation for his service from January 1, 1984 through June 30, 1998.<sup>20</sup>

PERAC argues, similarly to MacAloney, that MacAloney may receive credit for his call firefighting service under both the “five-year” rule and, for the period of time following his initial five years, under the WRRB’s local rules. Thus, under PERAC’s calculations, MacAloney would receive five years of call-firefighter service from June 26, 1967<sup>21</sup> through June 25, 1972. From January 1, 1973<sup>22</sup> through December 31, 1983, PERAC would apply

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<sup>20</sup> Although the “four-month” regulation did not take effect until December 28, 1984, the parties appear to agree that it supplanted Board Rule 4 for the entire calendar year of 1984.

<sup>21</sup> PERAC’s chart begins on June 27, 1967 rather than June 26, 1967. (Appendix to PERAC memorandum dated Nov. 14, 2011). This may be a typographical error; the disparity in any event does not alter PERAC’s calculations or our conclusions.

<sup>22</sup> PERAC applied one-half year of call firefighter creditable service to calendar year 1972 and applied another half year of creditable service from MacAloney’s regular, non-call-firefighter, part-time work in calendar year 1972, so that the total credit for 1972 was one year. *See* G.L. c. 32, § 4(1)(a) (members may receive no more than one year of creditable service in any calendar year). Thus, there was no need to consider whether MacAloney was entitled to any further credit for his call firefighter service during the remainder of calendar year 1972, as he had already earned a full year’s credit for that year.

Board Rule 4. Starting on January 1, 1984 through June 30, 1998, PERAC agrees with the WRRB that the “four-month” regulation should apply.

1. *Preemption of WRRB local rules by the “five-year” rule under G.L. c. 32, § 4(2)(b).* We conclude that rules of local retirement boards concerning creditable service for call firefighters, including those of the WRRB, were not categorically preempted by the 1964-1966 enactment of the “five-year rule” for call firefighters who later become permanent members of their department under G.L. c. 32, § 4(2)(b). For clarity, we begin with the situation presented here, where the member’s town has adopted neither of the local options under the 1988 and 1995 amendments to § 4(2)(b). In such a case, the statute provides call firefighters only full-time credit of up to five years, and only where the call firefighter later becomes a permanent member of his department. We refer to the latter provision, as amended through 1995, as the “five-year rule.” Under this “five-year rule,” local regulations that relate only to circumstances not addressed by the legislation – such as periods of time beyond the five years, or credit for call firefighters who never become permanent firefighters in their town – are not preempted.

In considering whether a statute preempts local – or in this case retirement board – regulations, we consider whether the statute contains an express prohibition against local rules, whether the local rules frustrate the legislative purpose, and whether the legislation so completely occupies the

area that no room is left for local regulation.<sup>23</sup> Certainly, no language in G.L. c. 32, § 4(2)(b)'s "five-year" rule expressly states that retirement boards are prohibited from adopting local rules providing creditable service in situations other than those addressed by the statute. To the contrary, § 4(2)(b) begins by providing that "[t]he board shall fix and determine how much service in any calendar year is equivalent to a year of service" and that "the board, under appropriate rules . . . [as approved by the actuary], shall fix and determine" the amount of credit to apply for part-time and similar service. Where the clause containing the "five-year" rule modifies this provision, it restricts retirement boards' power to regulate only to the extent specifically addressed by the "five-year" rule.<sup>24</sup>

Nor can we conclude that local retirement board rules providing creditable service to call firefighters in addition to, or in different circumstances from, § 4(2)(b)'s "five-year" rule "would somehow frustrate the purpose of the statute so as to warrant an inference that the Legislature intended to preempt the subject."<sup>25</sup> The legislative intent of the original "five-year" rule, as enacted in March of 1964, appears to have been to ensure

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<sup>23</sup> See *Fafard v. Conservation Comm'n of Barnstable*, 432 Mass. 194, 200-204 (2000).

<sup>24</sup> We do not imply that retirement boards may issue regulations that alter the provisions of the retirement law, G.L. c. 32. Here the WRRB and its predecessor board had power to regulate by the explicit authority given under G.L. c. 32, § 4(2)(b). In most areas of retirement law, however, c. 32 controls and boards have no power to adopt rules that alter or extend the law's provisions.

<sup>25</sup> *Id.*

that certain part-time public safety employees – at that point just “reserve” police officers and firefighters – received more than actual service rendered in light of the hazardous nature of their work and the time during which they may be available for work but not actually called out. The full-time credit for less than full-time work, however, was limited to five years. Similarly, when call firefighters were added in July of 1964 (with the additional requirement that, to receive credit under the “five-year” rule, they must become permanent members of their department), the same result appears to have been intended – that these persons performing hazardous duties and making themselves available for such duties when not actually called should receive more than actual service rendered, again with the full-time credit for less than full-time work limited to five years. Where these amendments evince an intent to provide greater creditable service to certain call firefighters and other part-time public safety personnel, we see no frustration of that purpose in allowing retirement boards to adopt or retain local rules that govern creditable service for employees to whom the “five-year” rule does not apply, or that govern periods of time beyond that covered by the “five-year” rule.

Finally, it cannot be suggested that the “five-year” rule preempted all local regulation because it “deal[t] comprehensively with the subject” of creditable service for part-time public safety officers.<sup>26</sup> The rule by its terms applies only to call firefighters who become permanent, and only applies to

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<sup>26</sup> See *Boston Police Patrolmen’s Ass’n v. City of Boston*, 367 Mass. 368, 372 (1975).

the first five years of their service. Other public safety officers are also only covered by the rule for the first five years of their service. The rule is set forth in two phrases within a sentence addressing several separate issues relating to retirement boards' determination of credit for part-time employees. The two phrases allocated to this rule are hardly "comprehensive legislation" such as the Education Reform Act's "radical[] restructur[ing of] the funding of public education across the Commonwealth," which was held to have preempted an earlier funding scheme set out in special legislation.<sup>27</sup> Under none of these tests can we conclude that the "five-year" rule preempts local board regulations that apply in other circumstances.

2. *The Colo decision.* In reaching this conclusion, we are aware that the opposite result was "assume[d], for purposes of this case at least," as to the version of § 4(2)(b) as amended through 1964, by the Appeals Court in dictum in *Colo v. Contributory Retirement Appeal Bd.*, 37 Mass. App. Ct. 185, 187-188 (1994). The reasoning behind the Appeals Court's assumption in *Colo* is not persuasive here for several reasons. First, the Court did not address whether the "five-year" rule preempted local regulation; instead, the Court concluded that the limitation to five years for "such credited service"

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<sup>27</sup> See *Town of Dartmouth v. Greater New Bedford Reg'l Vocational Technical High School Dist.*, 461 Mass. 366, 375-376 (2012) (former school funding process under special act preempted by Education Reform Act); cf. *St. George Greek Orthodox Cathedral of Western Massachusetts v. Fire Dep't of Springfield*, 462 Mass. 120, 133 & n. 13 (2012) (where State Building Code explicitly allowed certain fire protection devices, local ordinance prohibiting them was preempted).

(under the 1964 amendments) referred not to the five years of service, but to *any* service. We note that, in reaching this assumption, the Court placed reliance on, and gave deference to, the then-positions of both the Contributory Retirement Appeal Board and PERA. Both we and PERA's successor PERAC, now faced with a case that directly presents this issue and having carefully reviewed the matter, agree that the phrase "such credited service" refers, as is normally the case, to its immediate antecedent: the crediting of service as full-time service.<sup>28</sup>

Moreover, the assumption in *Colo* rested only upon analysis of § 4(2)(b)'s "five-year" rule as amended through 1964. The statute as amended through 1966 uses somewhat different language. The amended version, "full-time service not to exceed a maximum of five years," makes it clearer that the five-year limitation applies only to *full-time* service, and not to *any* service. Thus, local retirement board rules concerning creditable service for call firefighters beyond the five years or in circumstances where the call firefighter does not later become a permanent member of his department are not preempted by the language of the "five-year" rule at issue here.<sup>29</sup>

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<sup>28</sup> See, e.g., *Herrick v. Essex Reg'l Retirement Bd.*, 77 Mass. App. Ct. 645, 671-672 (2010) (phrase "without moral turpitude" in forfeiture provisions of G.L. c. 32, § 10(1) referred only to its last antecedent, removal or discharge from office).

<sup>29</sup> Our conclusion does not conflict with the holding in *Samson v. Hampden County Retirement Bd.*, CR-95-060 (DALA Oct. 7, 1996; CRAB May 10, 1996), which held that the petitioner was not eligible for call firefighter service credit under G.L. c. 32, § 4(2)(b) because he never became a permanent member of his department. No retirement board rule providing additional

3. *Application of the local options enacted in 1988 and 1995.* Our conclusion as to the lack of blanket preemption of retirement board regulations by the provisions of the “five-year” rule for call firefighters is not altered by the enactment of the two local option provisions in 1988 and 1995. The 1988 provision allows municipalities (and districts) – but not retirement boards – to elect to provide a full day’s credit for any day on which a call firefighter, who is a member of the retirement system, actually worked beyond five years, if the call firefighter later became a permanent employee of his department. The 1988 local option thus regulates the circumstances where the municipality has adopted the provision, where the call firefighter has become permanent, and where he or she worked longer than five years as a call firefighter. It allows a municipality to require the retirement board to provide such additional credit, and it defines the credit to be provided in the circumstances addressed. However, essentially for the reasons described above, the 1988 local option does not preempt retirement boards from applying their own rules in circumstances not addressed by the legislation – such as where the municipality has not adopted the local option, or where the call firefighter never becomes a permanent member of his or her department.

The 1995 local option allows municipalities (and districts) to elect to provide both the “five-year” credit and the additional “full-day” credit to all call firefighters regardless of whether they later become permanent members

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credit was at issue or discussed, and the question of preemption of local rules was not presented.

of their department. Where a municipality has adopted both the 1988 and the 1995 local options, they will govern the awarding of creditable service to call firefighters under nearly every circumstance.<sup>30</sup> They do not, however, apply where the municipality has not adopted them. Thus, and for the reasons addressed above, we do not find preemption where, as here, the local options have not been adopted.<sup>31</sup>

4. *The “five-year” rule is not limited to departments subject to the civil service laws.* We reject the argument of the WRRB that the wording of the 1966 amendment to the “five-year” rule indicated a legislative intent to repeal this provision’s application to non-civil-service fire departments. No party has argued that, as originally enacted in 1964 and 1965, the “five-year” rule was limited to departments subject to the civil service laws. Thus, in order to accept this argument, we would have to conclude that, barely two years after its enactment and expansion to include call firefighters and “permanent intermittent” police officers, the provision was narrowed to

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<sup>30</sup> We do not address the circumstance where a call firefighter became a member of his retirement system before the effective date of the 1995 legislation and expected to receive greater creditable service under the retirement board’s rules than that available to him under the 1995 legislation. *See generally Opinion of the Justices*, 364 Mass. 847, 860-867 (1973) (retirement system members generally protected in the “core” of their reasonable expectations, although reasonable changes may be justified by supervening circumstances).

<sup>31</sup> In light of the foregoing, we need not reach the issue of whether any reduction of MacAloney’s retirement rights by the 1988 and 1995 amendments would be inapplicable to MacAloney by intruding on his “core” expectations as to his benefits at the time he entered the system in 1974. *See Opinion of the Justices*, 364 Mass. at 862.

exclude all 240 municipalities not covered by civil service laws – the majority of the 351 cities and towns in Massachusetts.<sup>32</sup> Further, we would have to accept that the Legislature accomplished this significant change not by explicitly excluding non-civil-service municipalities, but by inference from the use of the words “on his respective list” in describing when call firefighters are available for duty.<sup>33</sup>

We see nothing in the plain words of the 1966 amendment, nor in the Legislature’s evident intent, to support the WRRB’s argument. Starting in 1974 or earlier, MacAloney was a call firefighter listed on the Westminster Fire Department roster.<sup>34</sup> There is no material difference between being on a department’s “roster” and being on its “list” – indeed, “roster” is a synonym for “list.”<sup>35</sup> The evident purpose of the 1966 amendment was to clarify that “service as a” call firefighter (or other listed position) did not necessarily require actual performance of call firefighting duties, as long as the member was eligible and available for such duties. That, for civil service departments, the “respective list” is the actual list from which reserve/intermittent firefighters are called for duty – and not the civil service

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<sup>32</sup> See Finding 7.

<sup>33</sup> See *EMC Corp. v. Commissioner of Revenue*, 433 Mass. 568, 578 (2001) (“It is not to be lightly supposed that radical changes in the law were intended where not plainly expressed.”) (citations omitted).

<sup>34</sup> Ex. 27.

<sup>35</sup> See Webster's Third New Int'l Dictionary 1526 (1961).

list used to create the reserve list<sup>36</sup> – in no way suggests that a call firefighter roster cannot also be a “list” under § 4(2)(b).

5. *The five-year credit under G.L. c. 32, § 4(2)(b) is subject to the retirement law’s provisions requiring make-up payments to purchase prior, non-membership service.* We conclude that make-up payments are required for MacAloney to purchase prior, non-membership service for his part-time call firefighter work under the provisions of G.L. c. 32, § 4(2)(b), as well as for his other prior, non-membership part-time work under the WRRB’s local rules. Whether or not such payments are due is governed by the applicable provisions of G.L. c. 32, § 4(1)(b)-(s), § 3(3)-(8), and § 4(2)(c). In particular, §§ 3(5) and 4(2)(c) require make-up payments for purchase of prior, non-membership service where an employee’s governmental unit is covered by a retirement system, but the employee was not eligible to join the system.<sup>37</sup> Sections 3(2)(c) and 3(3) require make-up payments for purchase of such prior service where the employee was eligible for membership, but did not join.

In their supplemental briefs on this issue, the parties all agree with the DALA magistrate that, if MacAloney is entitled to credit under the “five-

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<sup>36</sup> See *Arena v. Natick Retirement Bd.*, CR-03-586 (DALA 2004).

<sup>37</sup> We need not decide whether the phrase “or was so excluded from membership” in the fourth phrase of § 3(5) refers to persons seeking creditable service for prior work in the same governmental unit who were excluded from membership for any reason, or whether the phrase is instead limited to those who were excluded based on legal rules that have since been changed to allow membership. Section 4(2)(c) applies in any event as it provides for purchase of prior part-time service in the same governmental unit without regard to the original reason for ineligibility.

year” rule under § 4(2)(b), such credit must be provided without requiring make-up payments. They arrive at this conclusion because § 4(2)(b) contains no language providing for such payments, whereas various other provisions, notably most of those within §§ 4(1)(b)-(s), 4(3), and 3(3)-(8), do condition the award of creditable service on specific payments into the retirement system. The error in this reasoning is that, unlike these other sections, which set out the requirements for awarding creditable service in a multiplicity of circumstances involving *prior service*, § 4(2)(b) addresses *both membership service and prior service*. It provides the rules for how creditable service is to be calculated for part-time and similar work regardless of whether the calculations relate to credit for the employee’s work as a member, for which he has already made payments through payroll deductions, or whether they relate to credit for his prior service:

(b) The board, subject to rules and regulations promulgated by the commission, shall fix and determine how much service in any calendar year is equivalent to a year of service. In all cases involving part-time . . . employment or service . . . , the board, under appropriate rules and regulations which shall be subject to the approval of the actuary, *shall fix and determine the amount of creditable prior service, if any*, and the amount of *credit for membership service* of any such employee who becomes a member . . . .

*Id.* (in pertinent part, emphasis added). The subsequent clauses are all provisos to this directive, limiting the board’s discretion for calculating credit for part-time work in the cases of seasonal employees and certain police officers and firefighters. Thus, when the provisos go on to state:

provided, that in the case of any such employee whose work is found by the board to be seasonal in its nature, the board shall credit as the equivalent of one year of service, actual full-time service of not less than seven months during any one calendar year; provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a . . . call fire fighter was on his respective list and was eligible for assignment to duty . . .[.]

*id.* (in pertinent part), they are instructing the retirement board as to the formulas to apply in calculating creditable service in the cases of certain seasonal, police, and fire employees. These provisos do not purport to address the rules for when or how prior creditable service may be awarded — they simply provide the method for calculation of service based on part-time and similar work. Thus, it is not significant that the Legislature did not reiterate in this section the specific rules for make-up payments in the various circumstances when prior service may be credited (e.g., prior non-membership service where the employee was eligible to join and prior non-membership service where the employee was not eligible to join). Indeed, to do so in this section, which also covers membership credit, would have been confusing.<sup>38</sup>

6. *Calculation of MacAloney's creditable service for his work as a call firefighter.* Based on the foregoing, we calculate MacAloney's creditable

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<sup>38</sup> We note that, in cases where the call firefighter was a member of his retirement system during the time covered by the five-year credit under § 4(2)(b), no make-up payments would be required because the member already would have contributed to the annuity fund via payroll deductions. That the amount of these payments may bear little relation to the amount of creditable service accorded under the “five-year” rule does not change this result.

service for his call firefighting duties as set out below. To the amounts below must be added any creditable service for other part-time work that is not call firefighting service, subject to the restriction of no more than one year of total creditable service within each calendar year:<sup>39</sup> Before crediting MacAloney with his prior, non-membership service, the WRRB shall require MacAloney to provide make-up payments under the applicable provisions of G.L. c. 32, §§ 3(2)(c), 3(3), 3(5), and 4(2)(c).<sup>40</sup>

*June 26, 1967 through December 31, 1971:* 4.5 years' creditable service for call firefighting pursuant to G.L. c. 32, § 4(2)(b).

*January 1, 1972 through December 31, 1972:* 0.5 years' creditable service for call firefighting pursuant to G.L. c. 32, § 4(2)(b).

*January 1, 1973 through December 31, 1977:* 5 months' creditable service for call firefighting pursuant to WRRB former Rule 4.

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<sup>39</sup> G.L. c. 32, § 4(1)(a). We interpret the WRRB's 1984 "four-month" regulation to apply only to those years in which "earnings are \$225 per year or more." We apply the former WRRB Rule 4 to MacAloney for the period of time prior to the year in which the "four-month" regulation was adopted, limiting the "four-month" regulation to prospective application, noting that the parties appear to agree with this principle. We also apply the former WRRB Rule 4 to any period in which MacAloney would otherwise not receive any credit, so as not to apply a rule less favorable than that which was applicable to him at the time he joined the retirement system. *Cf. Opinion of the Justices*, 364 Mass. at 862.

<sup>40</sup> We note that MacAloney became eligible for membership after calendar year 1970 based on his call firefighting service, for which he was paid \$205 in 1970, more than the \$200 required for membership under WRRB former Rule 3, as approved by PERA. Thus, starting in 1971, MacAloney's purchase of prior non-membership service falls under G.L. c. 32, §§ 3(2)(c) and 3(3). We also note that the first membership deduction was made from MacAloney's pay on April 16, 1974.

*January 1, 1978 through December 31, 1997:* 1 month of creditable service for call firefighting per year pursuant to WRRB former Rule 4 for every calendar year in which MacAloney's pay for call firefighting was less than \$225 and 4 months' creditable service for call firefighting per year pursuant to WRRB's regulation for every calendar year in which MacAloney's pay for call firefighting was \$225 or more.

*January 1, 1998 through June 30, 1998:* 1 month of creditable service for call firefighting if MacAloney's pay for call firefighting during that period was less than \$225 and 4 months' creditable service for call firefighting if his pay for call firefighting during that period was \$225 or more.

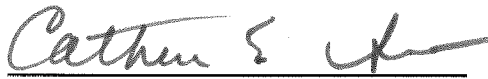
*Conclusion.* The decision of the DALA magistrate is vacated and the case is remanded to the Worcester Regional Retirement Board, which shall calculate MacAloney's creditable service for call firefighting as described above, in addition to his other creditable service. Before crediting MacAloney for prior non-membership service, the WRRB shall require MacAloney to provide make-up payments pursuant to G.L. c. 32, §§ 3(3), 3(5), and 4(2)(c), to the extent such payments have not already been made. If there is a balance remaining from MacAloney's previous payments, it shall be refunded to him.<sup>41</sup>

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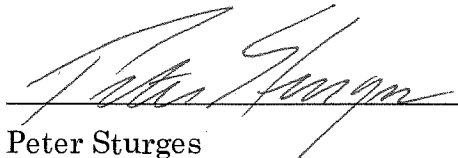
<sup>41</sup> We note that MacAloney has requested a ruling on whether, if he is entitled to a refund from the WRRS, he is also entitled to interest and, if so, at what rate. We do not reach this question because it was not considered by the DALA magistrate, has not been briefed, and may not arise. *See generally Hollstein v. Contributory Retirement Appeal Bd.*, 47 Mass. App. Ct. 109, 111-

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL  
BOARD



Catherine E. Sullivan  
Assistant Attorney General  
Chair  
Attorney General's Appointee



Peter Sturges  
Governor's Appointee



Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: June 21, 2013

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112 (1999) (no interest against Commonwealth or municipality where not specifically provided by statute); *Reavey v. Teachers' Retirement Bd.*, No. CR-97-1851 (CRAB Aug. 3, 1999) (same).



**THE COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD  
OFFICE OF THE ATTORNEY GENERAL  
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November 18, 2016

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**Re: George Grimes v. Malden Retirement Bd. and PERAC, CR-15-5**

Dear Counsel:

Enclosed please find the Decision of the Contributory Retirement Appeal Board. Any party aggrieved by the Decision may, within thirty (30) days of receipt of this notice and the enclosed decision, appeal to the Superior Court in accordance with the provisions of Massachusetts General Laws, Chapter 30A, § 14.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine E. Sullivan / db /".

Catherine E. Sullivan  
Assistant Attorney General, Chair  
(617) 963-2822

Enclosure, CES/db  
cc: Edward McGrath, Esq. (DALA/original)

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**GEORGE GRIMES,**

**Petitioner-Appellee**

**v.**

**MALDEN RETIREMENT BOARD AND PUBLIC EMPLOYEE RETIREMENT  
ADMINISTRATION COMMISSION,<sup>1</sup>**

**Respondents-Appellants.**

**CR-15-5**

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**DECISION<sup>2</sup>**

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Respondent Malden Retirement Board (MRB) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), reversing the MRB's denial of creditable service to petitioner George Grimes under G.L. c. 32, § 4(2)(b) for time during which he was a reserve police officer, but received no regular compensation. The MRB also challenges the assumed annual rates of compensation adopted by the magistrate and by the respondent Public Employee Retirement Administration Commission (PERAC)

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<sup>1</sup> The Public Employee Retirement Administration Commission (PERAC) was joined as a necessary party before the Division of Administrative Law Appeals. PERAC supports the position of the petitioner; it is designated a Respondent-Appellant for convenience.

<sup>2</sup> We note that we issue a decision in a related case today, *Gomes v. Plymouth Retirement Bd.*, CR-14-127 (officer may purchase creditable service based on actual compensation).

for purposes of calculating Grimes' payment for the purchase of this prior service. The magistrate considered the case based on the parties' written submissions pursuant to 801 C.M.R. 1.01(7)(g)(3). The DALA decision is dated August 14, 2015. The MRB filed a timely appeal to us.

We adopt as our own the DALA magistrate's Findings of Fact 1-12. We affirm the magistrate's conclusion that Grimes is entitled to purchase up to five years' creditable service under G.L. c. 32, § 4(2)(b), but reverse both the magistrate's and PERAC's adoption of an assumed rate of compensation. We conclude that, although both rates appear fair and bear a reasonable relation to the benefit provided by call and reserve officers and firefighters, in the absence of a legislative directive that an assumed rate be adopted, it is beyond both our powers and those of PERAC to adopt an assumed rate of compensation.

As to the process for purchase of prior non-membership service under G.L. c. 32, § 4(2)(c), where the member received no regular compensation for the prior service, the creditable service must be provided at no cost. This is because the formula provided by the Legislature requires payment of the applicable percentage of regular compensation, which results in a cost of zero where no regular compensation has been earned. While we agree with both PERAC and the DALA magistrate that imposition of an assumed rate of compensation results in a more equitable and sound process for such purchases, we are constrained to follow the statutory mandate and leave to the Legislature to consider whether to adopt an assumed rate of compensation.

*Background*

Grimes retired on January 2, 2015 as a lieutenant in the Malden Police Department. Prior to his retirement, Grimes applied to purchase one year and one month of creditable service based on his time as a reserve police officer before he was appointed a full-time member of the police department, based on G.L. c. 32, § 4(2)(b), which allows full-time credit for up to five years of time spent on a reserve list. During his time on the reserve list, Grimes was never called to perform any duties for which regular compensation was paid, so he received no regular compensation resulting from that service.<sup>3</sup>

On December 8, 2014, the executive director of PERAC sent a letter to the chairman of the MRB, noting that he had received complaints from police officers and firefighters in Malden, including the petitioner in this case, George Grimes, that the MRB was not processing applications to purchase creditable service for time spent on the reserve list. The PERAC executive director informed the MRB that Grimes was entitled to purchase “up to [five] years of reserve time regardless of whether or not [he] actually performed services while on that list.”<sup>4</sup>

On December 23, 2014, Grimes wrote to the MRB noting his belief that the MRB had denied his request to purchase his reserve time and requesting a written ruling from which he could appeal.<sup>5</sup>

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<sup>3</sup> Exhibit 1; Findings of Fact 1, 2.

<sup>4</sup> Ex. 5; Finding 8.

<sup>5</sup> Ex. 6; Finding 9.

On December 29, 2014, counsel for the MRB responded to Grimes, stating that the position of the MRB was that, for members who did not perform any duties while on their reserve list, the MRB would accept payment for the purchase of such prior service based on PERAC's assumed annual rate of compensation of \$3,000, but would not grant any creditable service until an administrative or judicial decision was rendered upholding PERAC's position concerning the purchase of such service. Grimes was provided his right of appeal, which he exercised on January 7, 2015. The following day he submitted his application for superannuation retirement.<sup>6</sup>

#### *Discussion*

1. *"Five-year" credit for reserve officers who did not perform any actual duties.* We have no difficulty in concluding that up to five years of service as a reserve police officer must be credited as full-time service, regardless of whether the reserve officer was called to perform work. The applicable wording of G.L. c. 32, § 4(2)(b) makes this clear:

... and provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter *was on his respective list and was eligible for assignment to duty* subsequent to his appointment; . . . .

*Id.* (in pertinent part, emphasis added). That the Legislature provided for creditable service for merely being on a list and eligible for assignment leaves no

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<sup>6</sup> Exs. 1, 2, 7; Findings 10, 11, 12.

doubt that *actual* performance of duties is not required.<sup>7</sup> Grimes is entitled to this credit.

2. *Payment for the purchase of prior service as a reserve officer.* As we have held previously,<sup>8</sup> the language quoted above cannot properly be read to waive payment for all purchases of prior service involving reserve, permanent-intermittent, or call police officers or firefighters. Unlike section 4(1), which lists numerous types of service that may (or may not) be counted or purchased as creditable service,<sup>9</sup> section 4(2)(b) addresses *only* how to calculate the creditable service of part-time and similar employees. Thus, the absence of explicit

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<sup>7</sup> That the Legislature also so viewed this provision is suggested by its enactment in 1988 of a local option within § 4(2)(b) that allows additional credit on a day-for-day basis for time reserve officers and others were assigned to a list “and *actually performed duty*.” St. 1988, c. 172 (approved July 25, 1988, emphasis added).

<sup>8</sup> See *MacAloney v. Worcester Regional Retirement System*, CR-11-19 (CRAB June 21, 2013) (fire chief with previous actual duty as call firefighter entitled to five-year credit, but must purchase the portion of his service that occurred prior to becoming a member).

<sup>9</sup> *E.g.*, G.L. c. 32, §§ 4(1)(a) (service as member, deductions); 4(1)(b) (service prior to date system operational, free); 4(1)(c) (unpaid leave over one month, no credit); 4(1)(d) (service prior to public takeover, free); 4(1)(e) (if previously eligible, must pay); 4(1)(f) (teacher out of state, must pay under § 3); 4(1)(f) (teacher non-public school before 1973, must pay under § 3); 4(1)(g $\frac{1}{2}$ ) (teacher maternity leave prior to 1975, must pay by 2001); 4(1)(g $\frac{3}{4}$ ) (teacher maternity leave prior to 1975, current retiree); 4(1)(h) (veteran leave of absence, free); 4(1)(h) (veteran active duty, must pay); 4(1)(h $\frac{1}{2}$ ) (teacher vocational service, must pay); 4(1)(i) (bank liquidation service, must pay); 4(1)(j) (pre-1946 service, deductions); 4(1)(k) (State Department service, must pay); 4(1)(l) (pre-1988 department of education, federal funds, must pay); 4(1)(l $\frac{1}{2}$ ) (same, 1988 and later); 4(1)(l $\frac{3}{4}$ ) (educational collaborative, must pay); 4(1)(m) (workers’ compensation total incapacity, no deductions under §14); 4(1)(n) (pre-1988 Veterans’ Employment Service, must pay); 4(1)(n $\frac{1}{2}$ ) (same, 1988 and later); 4(1)(o) (no credit after July 1, 2009 if salary under \$5,000); 4(1)(p) (teacher non-public school, state financing, must pay); 4(1)(q) (leave to command veteran organization, must pay); 4(1)(q) (judge who did not vest, must pay); 4(1)(r) (Peace Corps, must pay); 4(1)(s) (contract employee, must pay).

language in section 4(2)(b) regarding payment for the purchase of prior service does not create an inference that prior service may be credited without payment.<sup>10</sup> Section 4(2)(b) states that retirement boards, subject to approval by the actuary, may “fix and determine how much service in any calendar year is equivalent to a year of service.” In particular, for “part-time, provisional, temporary, temporary provisional, seasonal or intermittent” employees, the section allows retirement boards to “fix and determine the amount of creditable prior service, if any, and the amount of credit for membership service of any such employee who becomes a member . . . .”<sup>11</sup>

Section 4(2)(b), however, goes on to impose two limitations on the power of retirement boards to set rules concerning credit for part-time work. The first limitation requires that boards credit seasonal employees with one year of full-time service if the employee works full-time for at least seven months:

provided, that in the case of any such employee whose work is found by the board to be seasonal in its nature, the board shall credit as the equivalent of one year of service, actual full-time service of not less than seven months during any one calendar year . . . .

*Id.* (in pertinent part). The second limitation is that quoted above, which requires boards to credit reserve and permanent-intermittent police officers and

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<sup>10</sup> *Contrast Lawrence Retirement Bd. v. Contributory Retirement Appeal Bd.*, 87 Mass. App. Ct. 1124 at \*1-2 (2015) (Rule 1:28 unpublished decision) (upholding CRAB’s determination that, because most of the subsections of G.L. c. 32, § 4(1) expressly require payment for purchase of prior service, the several subsections within § 4(1) that do not must be read as allowing credit without payment).

<sup>11</sup> *Id.*

firefighters, as well as call firefighters, with up to five years of full-time service for every year in which they were on their list and available for work.

Because section 4(2)(b) is concerned with translating part-time and similar employment into creditable service, and because it applies not only to *prior* creditable service but also to the calculation of membership service for *current* employees, it does not explicitly address the payment for a purchase of prior service. This is in contrast to many of the provisions in the previous section, G.L. c. 32, § 4(1), which apply specifically to credit for prior non-membership service, and which are subject to explicit conditions of payment, such as that “[n]o credit shall be allowed until the member has paid into the Annuity Savings Fund . . . makeup payments of an amount equal to that which would have been withheld as regular deductions for the service . . .”<sup>12</sup> In section 4(2)(b), however, which sets rules for crediting part-time employment, it would make no sense to include an explicit condition concerning payment for purchase of such credit, since the provision applies equally to current employees who have already paid for their service credit via payroll deductions. Instead, payment for the purchase of prior part-time service is addressed in section 4(2)(c):

(c) In the case of any . . . member . . . , the board may allow credit . . . for any previous period of part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service . . . ; provided, that . . . he pays into the annuity savings fund of the system . . . make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation had he been eligible for membership and been

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<sup>12</sup> See, e.g., G.L. c. 32, § 4(1)(s) (contract service).

a member of such system during such previous period, together with buyback interest.

*Id.* (in pertinent part).<sup>13</sup>

For these reasons, we do not view the absence of an explicit payment provision in section 4(2)(b) as suggesting that prior part-time service must be credited without the payment required by section 4(2)(c). Indeed, if that were the case, it would apply not only to the five-year credit for being on a police or firefighter list, but also to seasonal employment of seven months or longer and, arguably, to any part-time or similar employment. Moreover, to provide such credit without cost only to those who purchase their service after the fact would have the anomalous effect of creating a disincentive to membership, since members would still be required to pay for their service via payroll deductions pursuant to G.L. c. 32, § 22(1)(b). Hence, as we held in the *MacAloney* case,<sup>14</sup> section 4(2)(b) does not, by virtue of omitting language requiring payment for prior non-membership service, provide that such credit must be provided without payment.

3. *Payment for the purchase of prior service as a reserve officer where no duties were performed.* We now come to Grimes' situation. As we have said, Grimes received no regular compensation as a result of being on the Malden Police Department's reserve officer list for one year and one month.

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<sup>13</sup> Other sections in the retirement law also provide for purchase of prior service and may also apply to purchase of part-time service. *E.g.*, G.L. c. 32, §§ 3(2)(c), 3(3), 3(5).

<sup>14</sup> *MacAloney v. Worcester Regional Retirement System*, CR-11-19 (CRAB June 21, 2013).

Nevertheless, also as we have said, he is entitled to full-time credit for that service under the plain words of G.L. c. 32, § 4(2)(b). Normally, Grimes would be required to purchase his prior service under § 4(2)(c). The Legislature, however, has not provided any method of calculating a payment for such prior service other than the formula quoted above, requiring him to “pay[] into the annuity savings fund . . . make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation had he been eligible for membership and been a member . . . , together with buyback interest.”<sup>15</sup> As we have said, application of that formula to Grimes results in a payment cost of zero – had Grimes been admitted to membership in the MRB prior to the time when he was on the reserve list, and had he then remained on the list without being called for duty and without receiving compensation, no deductions would have been made for his unpaid service.

We agree with the evident views of PERAC, the DALA magistrate, and the MRB that the provision of service credit at no cost to those who did not actually perform any duties while on a reserve list, while requiring payment for those who did perform duties, is not the most equitable result. Such a system is not entirely illogical, however, because those who are required to pay, whether via retirement deductions or make-up payments, have received compensation for their service, whereas those who are not required to pay have received none. Moreover, no matter how much (or how little) members are charged for purchase of such prior

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<sup>15</sup> G.L. c. 32, § 4(2)(c) (in pertinent part).

service, there will always be inequity when full years of service credit are being provided for part-time work – which may range from a few hours to nearly full-time. In particular, reserve officers who are already members of their retirement system, and who perform actual duties, potentially may pay widely varying amounts for the same service credit, according to the number of hours they worked. Their payments will depend solely on their compensation and the deduction percentage in effect for them – the rules for purchase of prior service credit will not apply. Thus, while the result in cases such as Grimes' may not be entirely equitable, it is not so illogical as to require deviation from the plain words of the statute.<sup>16</sup>

Although for these reasons we cannot uphold the use of an assumed minimum annual rate of regular compensation, we do not view the amounts chosen by either PERAC or the DALA magistrate as unreasonable. An assumed annual compensation of \$3,000 per year, as PERAC has adopted,<sup>17</sup> is a fair approximation of the value of being on a reserve or similar list, trained and ready to be called to serve if needed. Moreover, PERAC's reference to G.L. c. 32, § 85H, which provides for a minimum municipal pension of \$3,000 per year, is a

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<sup>16</sup> See *Herrick v. Essex Reg'l Retirement Bd.*, 77 Mass. App. Ct. 645, 649 (2010) (if a statute omits to provide for an eventuality, an agency or court may not supply it, even if such an addition would be consistent with perceived statutory objectives); *Commonwealth v. Ventura*, 465 Mass. 202, 212-213 (2013) (same). Contrast *Commonwealth v. Parent*, 465 Mass. 395, 409-410 (2103) (statutory exemption inferred where to do otherwise would render meaningless exemptions that allow parents to provide alcohol to their children).

<sup>17</sup> See Exs. 3-4, PERAC Memorandum #33/2013 (Nov. 20, 2013) (assumed annual salary of \$3,000 for buy-back under § 4(2)(b) where no actual pay); PERAC Memorandum #19/2014 (May 30, 2014) (same).

reasonable analogy to an amount of nominal compensation, despite the obvious difference that it is a pension rather than a salary. Thus, it is not the amount chosen by PERAC that we cannot uphold, but the adoption of any assumed compensation rate in the absence of a legislative directive.<sup>18</sup> Similarly, an assumed annual rate of compensation of \$5,000, as adopted by the DALA magistrate, based on the 2009 amendment to G.L. c. 32, § 4(1)(o), making \$5,000 the minimal annual compensation for entitlement to creditable service, would also provide a reasonable approximation of the value of being on a reserve list. As stated above, however, we cannot uphold either of these methods of calculating the payment required for purchase of prior part-time non-membership service under § 4(2)(b) because the Legislature has not so provided. Similar legislation, enacted in 1971 for certain elected officials serving without pay and in 1998 for library trustees serving without pay, provided an assumed annual rate of compensation of \$2,500.<sup>19</sup> Those provisions were repealed in 2009 and replaced by the current version of G.L. c. 32, § 4(1)(o), limiting creditable service to positions for which the annual compensation is \$5,000 or more.<sup>20</sup> We consider it up to the Legislature to determine whether to provide an assumed

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<sup>18</sup> See *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-140 (1944) (agency's informal or interpretive rules are accorded weight to the extent that the interpretation has "power to persuade"); *Rent Control Bd. v. Cambridge Tower Co.*, 394 Mass. 809, 814 (1985) (same).

<sup>19</sup> G.L. c. 32, §§ 4(1)(o), 4(1)(o½) (as in effect prior to St. 2009, c. 21, § 25).

<sup>20</sup> St. 2009, c. 21, § 25 (effective July 1, 2009). We do not address the effect of § 4(1)(o) on the five-year credit provided by § 4(2)(b), as the parties have not addressed the issue. Although our record does not provide the years of Grimes' reserve service, they appear to have occurred prior to July 1, 2009.

annual rate of compensation for the purchase of prior service while on a reserve or similar list.<sup>21</sup>

4. *Obligation to comply with PERAC directives.* The Supreme Judicial Court has upheld the power of PERAC to issue memoranda to the retirement systems in the Commonwealth, in order to interpret and “fill in gaps” in the retirement law. *See Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, 441 Mass. 78, 83-84 (2004) (upholding PERAC memorandum relating to the definition of “earned income” for purposes of excess earnings while on accidental disability retirement).<sup>22</sup> PERAC’s power to do so arises from its “broad statutory authority to oversee the public employee retirement system” in the Commonwealth, *id.* at 84, as well as from its statutory duty to provide “training and legal and technical assistance to retirement boards.” G.L. c. 7, § 50(f). Additionally, PERAC has the power under G.L. c. 32, § 21(4) to “approve any by-laws, rules, regulations, prescribed forms or determinations of any board” in order to effectuate the purposes of the retirement law, which includes the power to disapprove or reverse determinations made by local retirement boards. *See Boston Retirement Bd.* at 84. PERAC’s enabling legislation states that it “shall

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<sup>21</sup> Legislative consideration of § 4(2)(b) would also provide an opportunity to clarify whether the Legislature intended that the five-year credit for reserve and similar service by police and firefighters on or after July 1, 2009 be subject to the \$5,000 limit provided in § 4(1)(o).

<sup>22</sup> *Accord Barnstable County Retirement Bd., v. Contributory Retirement Appeal Bd.*, 43 Mass. App. Ct. 341, 347 (1997) (PERAC’s predecessor agency, PERA, had power to issue memorandum requiring boards to use particular accounting method); *cf. Plymouth County Retirement Ass’n v. Commissioner of Public Employee Retirement*, 410 Mass. 307, 312 (1991) (PERA given “broad grant of review authority”).

have general responsibility for the efficient administration of the public employee retirement system.” G.L. c. 32, § 50.

For these reasons, we agree with the DALA magistrate, and with the positions of Grimes and PERAC, that the memoranda issued by PERAC to the retirement boards are binding on the boards. Thus, it was error for the MRB to refuse to provide Grimes with his creditable service pending appeal. Retirement boards must follow PERAC’s directives because of the statutory grant of power to PERAC to issue such directives in order to ensure that the more than one hundred retirement systems in the Commonwealth operate efficiently and apply uniform rules and policies. It would be wholly impractical to require PERAC to interpret and administer the retirement law solely by issuing individual rulings regarding individual retirement board determinations. If a retirement board disagrees with the interpretation of the retirement law adopted in a PERAC memorandum as applied to a particular case, it may request a ruling from PERAC, which would be appealable by an aggrieved party under G.L. c. 32, § 16(4). On appeal to DALA, to CRAB, or to the courts, the position taken in a PERAC memorandum will be considered an “interpretive” rule, entitled to persuasive weight under the standard of *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), but not having the force of law of a statute or regulation.<sup>23</sup>

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<sup>23</sup> See *Niles v. Boston Rent Control Adm’r*, 6 Mass. App. Ct. 135, 149 (1978) (inconsistent interpretation of rent control rule not entitled to *Skidmore* deference); *Rivera v. H.B. Smith Co.*, 27 Mass. App. Ct. 1130, 1131 (1989) (informal rule relating to delivery of workers’ compensation checks fulfilled requirements for *Skidmore* deference); cf. *Massachusetts Teachers’ Retirement*

CR-15-5

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*Conclusion.*

We affirm the DALA magistrate's decision that the MRB must provide Grimes with full-time creditable service for the time he served as an uncompensated reserve police officer. We vacate the magistrate's order that Grimes must purchase that time based on an assumed annual rate of compensation. The MRB must provide such credit without charge based on the provisions of G.L. c. 32, § 4(2)(c).

SO ORDERED.

## CONTRIBUTORY RETIREMENT APPEAL BOARD



Catherine E. Sullivan  
Assistant Attorney General  
Chair  
Attorney General's Appointee

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Russell W. Gilfus  
Governor's Appointee

Did Not Participate  
Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: November 18, 2016

*Conclusion.*

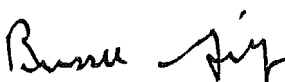
We affirm the DALA magistrate's decision that the MRB must provide Grimes with full-time creditable service for the time he served as an uncompensated reserve police officer. We vacate the magistrate's order that Grimes must purchase that time based on an assumed annual rate of compensation. The MRB must provide such credit without charge based on the provisions of G.L. c. 32, § 4(2)(c).

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Catherine E. Sullivan  
Assistant Attorney General  
Chair  
Attorney General's Appointee



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Russell W. Gilfus  
Governor's Appointee

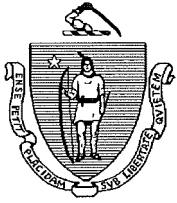
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Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: November 18, 2016

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*Bd. v. Contributory Retirement Appeal Bd.*, 466 Mass. 292, 297 (2013) (properly promulgated regulations have the force of law).



**THE COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD  
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October 23, 2017

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**Re: Bonnie Jette v. Norfolk County Retirement Bd., CR-14-720**

Dear Counsel:

Enclosed please find the Decision of the Contributory Retirement Appeal Board. Any party aggrieved by the Decision may, within thirty (30) days of receipt of this notice and the enclosed decision, appeal to the Superior Court in accordance with the provisions of Massachusetts General Laws, Chapter 30A, § 14.

Very truly yours,

*Catherine E. Sullivan (d/s)*

Catherine E. Sullivan  
Assistant Attorney General, Chair  
(617) 963-2822

Enclosure, CES/db  
cc: Edward McGrath, Esq. (DALA/original)

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**BONNIE JETTE,  
Petitioner-Appellant**

**v.**

**NORFOLK COUNTY RETIREMENT BOARD,  
Respondent-Appellee.**

**CR-14-720**

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**DECISION**

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Petitioner Bonnie Jette appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision of the respondent, Norfolk County Retirement Board (NCRB), denying Jette's request to purchase creditable service for prior part-time work outside the Norfolk County Retirement System (NCRS). The magistrate considered the case pursuant to 801 C.M.R. 1.01(10)(c), based on the parties' written submissions and marked eight exhibits. The DALA decision is dated December 11, 2015. Jette filed a timely appeal to us.

We adopt the DALA magistrate's Findings of Fact 1-24 as our own. We reverse the DALA decision.

*Background.* Jette worked as a part-time librarian for the Town of Attleborough for eighteen years at sixteen hours per week. As a less than half-

time employee, Jette was not eligible to join, and did not join, the Attleborough Retirement System. Since December 26, 2013, Jette has been a full-time librarian for the Town of Canton and a member of the NCRB.<sup>1</sup>

In 2014, Jette asked the NCRB to allow her to purchase creditable service for her prior part-time work in the Town of Attleborough.<sup>2</sup> The NCRB has a supplemental regulation, approved by the Public Employee Retirement Administration Commission (PERAC), which states:

A member shall be allowed to buy back time which they [sic] earned during their [sic] status as a less than half time employee and ineligible for membership, provided that creditable service shall be granted based on actual service rendered.<sup>3</sup>

The NCRB, however, forwarded Jette's request to the Attleborough Retirement Board, which responded that it would not "accept liability" for the purchase because Jette had not been eligible for membership.<sup>4</sup> Apparently making the assumption that Jette's request was based on G.L. c. 32, §3(5) (fourth phrase) (purchase of prior service in a different retirement system where had right to membership), the NCRB denied Jette's request.<sup>5</sup>

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<sup>1</sup> Findings of Fact 1-4.

<sup>2</sup> The parties have stipulated that Jette made this request. No written request appears in our record. Finding 5.

<sup>3</sup> November 25, 1985 Supplemental Regulation, Ex. 3; Finding 9. Our record does not contain a written record of PERAC's approval; however the parties agree that the regulation was approved, and the copy in our record is from PERAC's website.

<sup>4</sup> Finding 6; Ex. 6.

<sup>5</sup> Finding 7; Ex. 5.

Jette's attorney then wrote the NCRB. He pointed out that the NCRB had a supplemental regulation allowing such purchases, and clarified that Jette was basing her request on the supplemental regulation. As to the issue of liability, he also pointed out that Jette's purchase would include payment of "buyback" interest.<sup>6</sup>

The NCRB nevertheless denied Jette's application. The board's letter explained that Jette was not a "temporary, provisional, or substitute" employee, suggesting that the board assumed Jette was relying on G.L. c. 32, § 3(5) (seventh phrase) (credit for prior "temporary, provisional, or substitute" service in a different governmental unit). The board also noted its longstanding practice of denying such purchases, but stated it would be "address[ing] the fact that its long standing practice and the November 1985 supplemental regulation . . . are not consistent."<sup>7</sup>

*Discussion.* There can be no question that, based on its plain words, the NCRB supplemental regulation gives Jette the right to purchase her prior service for the Town of Attleborough. She meets each requirement set forth in NCRB's rule: she is a member of the Norfolk County Retirement System, her prior employment was less than half-time, and she was ineligible for membership. The regulation does not contain the words, employee "in a governmental unit within

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<sup>6</sup> Ex. 3; Findings 8-9.

<sup>7</sup> Ex. 1; Findings 10-11. In a later memorandum to the DALA magistrate, the NCRB explained that, upon further review, it had concluded that its practice was consistent with the rule because the rule could be construed to limit such purchases to service within the NCRB. Ex. B.

the Norfolk County Retirement System,” and we cannot infer or administratively adopt language that goes beyond the words of the regulation and materially changes its meaning.<sup>8</sup>

We do not accept the NCRB’s argument that to read the regulation as we do requires adding words such as employee “in a governmental unit within the NCRS or within any other retirement system.” We agree that such wording would yield the same meaning as the existing regulation. But the status of being a less than half-time employee and ineligible for membership must necessarily occur within a governmental unit that pertains to a retirement system. If the regulation imposes no restriction as to which governmental unit or system must have been the locus of the prior service, then the regulation need not specify which are included. The same is true of the term “member” – there is no need to specify “member of the Norfolk County Retirement System” because only such a member may purchase service.<sup>9</sup> Additionally, in another published supplemental regulation of the NCRB, the board explicitly refers to “member units of the

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<sup>8</sup> See *Carmel Credit Union v. Bondeson*, 55 Mass. App. Ct. 557, 560 (2002) (“Courts interpret a statute in accordance with its plain words [and] may not add words to a statute that the Legislature did not put there.”); *Commonwealth v. Gillis*, 448 Mass. 354, 363 (2007) (court cannot “add language to a statute” in order to achieve its perceived objectives).

<sup>9</sup> The suggestion that, since one must be a “member” of the NCRS to purchase service, “membership” must also mean membership within the NCRS is also not logical. “Membership” as used in this context can refer only to the *prior* service – which the regulation does not restrict.

Norfolk County Retirement System.”<sup>10</sup> This provides some indication that the NRCB “knew how” to utilize limiting language.<sup>11</sup>

There is nothing illogical or impractical about applying the supplemental regulation as written.<sup>12</sup> As the NCRB points out, other retirement systems have also adopted rules allowing purchase of prior service in governmental units outside their own systems, where the member previously was ineligible for membership.<sup>13</sup> And NCRB’s regulation does not apply only to members like Jette, who were previously employed in a permanent part-time position – members with prior “temporary, provisional, or substitute” positions outside the NCRB who were ineligible for membership would also fall within this regulation if their hours were less than half-time. Such persons have a statutory right to purchase prior service under G.L. c. 32, § 3(5) (seventh phrase).<sup>14</sup> And, although

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<sup>10</sup> See Ex. 4 (August 23, 2005 supplemental regulation limiting sharing of members’ personal data to governmental units within the NCRS). We note that Ex. 4 contains a supplemental regulation dated Sept. 28, 2008 that has since been held invalid, see *Retirement Bd. of Stoneham v. Contributory Retirement Appeal Bd.*, 476 Mass. 130, 140 (2016), and that should be amended.

<sup>11</sup> See *Limoliner v. Dattco, Inc.*, 475 Mass. 420, 425 (2016) (where some consumer protection regulations explicitly applied only to non-commercial transactions, the absence of such a limitation elsewhere was assumed to be purposeful).

<sup>12</sup> Cf. *Martha's Vineyard Land Bank Comm'n v. Board of Assessors of West Tisbury*, 62 Mass. App. Ct. 25, 27–28 (2004) (statute’s clear and unambiguous language must be followed unless doing so would lead to an “absurd result”) (citations omitted).

<sup>13</sup> E.g., 807 C.M.R. 3.03(1) (Mass. Teachers’ Retirement System).

<sup>14</sup> See *Tremblay v. Leominster Retirement Bd.*, CR-07-685 (CRAB May 19, 2011) (right to purchase substitute service under G.L. c. 32, § 3(5) even where no supplemental regulation is in place).

the parties agree that the NCRB will incur liability,<sup>15</sup> and the NCRB argues that the payment of “buyback” interest will not fully cover its costs, the NCRB is free to amend or repeal its rule prospectively if it wishes to limit such purchases to those with prior part-time service in a governmental unit within the NCRS. Even if it did so, however, it would still incur liability for service purchases based on part-time work within the NCRS.

We do not accept the NCRB’s argument that principles of deference require us to adopt the NCRB’s interpretation of its supplemental regulation. Most obviously, since the plain words of the NCRB’s rule are clear, no amount of deference can serve to alter its meaning.<sup>16</sup> But the degree of deference owed a local or municipal board’s interpretation of its own rules is not clear.<sup>17</sup> Where a local retirement board is not a state agency subject to the state Administrative

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<sup>15</sup> We do not reach the issue of liability, which is not before us.

<sup>16</sup> See *O’Brien v. Contributory Retirement Appeal Bd.*, 27 Mass. App. Ct. 1124, 1126 (1989) (no deference due to Teachers’ Retirement Board and CRAB’s interpretation of TRB rule that was inconsistent with rule’s plain words); *United States Gypsum Co. v. Executive Office of Env’tl. Affairs*, 69 Mass. App. Ct. 243, 249 (2007) (no deference due Mass. Office of Coastal Zone Management where regulation “unambiguously bar[red] the agency’s approach”) (citations omitted).

<sup>17</sup> The Massachusetts courts have not squarely addressed the degree of deference due a local retirement board’s interpretation of its own rules. Local health and zoning boards receive deference in issuing and applying their regulations, see *Ryo Cigar Ass’n v. Boston Public Health Comm’n*, 79 Mass. App. Ct. 822, 827 (2011); *Wendy’s Old Fashioned Hamburgers, Inc. v. Board of Appeal*, 454 Mass. 354, 381-382 (2009). Local retirement board regulations, however, do not receive deference when challenged on appeal to the Contributory Retirement Appeal Board and the courts. See *Retirement Bd. of Stoneham v. Contributory Retirement Appeal Bd.*, 476 Mass. 130, 134 (2016). This is in contrast to the state and teachers’ retirement systems, whose regulations are formally promulgated, have the force of law, and are entitled to deference. See *Massachusetts Teachers’ Retirement Sys. v. Contributory Retirement Appeal Bd.*, 466 Mass. 292, 297 (2013).

Procedures Act, G.L. c. 30A, its supplemental regulations are not promulgated with the same degree of formality as those of an agency, with publication and a period of notice and comment.<sup>18</sup> Local retirement board rules are voted on at a public meeting, sent to PERAC for approval, and once approved, published on PERAC's website.<sup>19</sup> At least one commentator has suggested that, where a local rule is issued with some formality, but less than full promulgation, some weight should be accorded the local board's interpretation, but not the substantial deference owed a state agency or a municipal agency that follows formal promulgation procedures.<sup>20</sup> We need not resolve this issue here since, even if we were to accord substantial deference to the NCRB's interpretation of its supplemental regulation, we would still be bound by the regulation's plain words.<sup>21</sup>

We also agree with the DALA magistrate that the NCRB has not shown consistent application of its supplemental regulation. The NCRB submitted

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<sup>18</sup> See G.L. c. 30A, § 3.

<sup>19</sup> See 840 C.M.R. 14.02(1), (2); G.L. c. 32, §§ 20(5)(b), 21(4); Ex. 4.

<sup>20</sup> See generally Nestor M. Davidson, *Localist Administrative Law*, 126 Yale L.J. 564, 573 614-615 (2017) (suggesting courts wrongly fail to give great deference to highly expert and formally operating municipal agencies such as New York City's public health department, whereas courts should give lesser deference to local boards that operate with less formality); cf. *Board of Educ. v. School Comm.*, 16 Mass. App. Ct. 508, 516-517 (1983) (absence of formal promulgation, publication, or circulation considered in assessing weight due agency policy).

<sup>21</sup> See *O'Brien v. Contributory Retirement Appeal Bd.*, 27 Mass. App. Ct. at 1126 (plain words overcame TRB interpretation of rule); cf. *Crawford v. City of Cambridge*, 25 Mass. App. Ct. 47, 49 (1987) (to accept city's interpretation of parking regulation contrary to its plain words would require "supine abnegation, if not stultification").

documentation indicating that six members were denied the opportunity to purchase prior creditable service because they had not been “eligible for membership” in other retirement systems, which would not “accept liability.”<sup>22</sup> This does not show any interpretation, or consideration, of the supplemental regulation. Moreover, the examples use the same language that was used initially to reject Jette’s request,<sup>23</sup> and it appears from the NRCB’s subsequent correspondence with Jette that its original denial in her case was not based on the supplemental regulation.<sup>24</sup> Where an agency’s interpretation of a statute or regulation has not been consistent, it is not entitled to deference.<sup>25</sup>

Neither party has questioned the NCRB’s authority to adopt its supplemental regulation, and we agree that it had such power. The retirement law gives local retirement boards the power to “adopt by-laws and make rules and regulations consistent with law, which shall be subject to approval [by PERAC].”<sup>26</sup> Boards have broad authority to determine eligibility for membership

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<sup>22</sup> Findings 13-18; Ex. 7. The NCRB also filed correspondence showing it allowed creditable service purchases for five other members, but as the magistrate found, no explanation was included. Findings 20-24; Ex. 8.

<sup>23</sup> Ex. 5.

<sup>24</sup> Ex. 5; *see* Ex. 1, suggesting that the NCRB was initially concerned that its practice was “inconsistent” with the regulation.

<sup>25</sup> *See Morin v. Commissioner of Dep’t of Pub. Welfare*, 16 Mass. App. 20, 24 (1983) (Department of Public Welfare’s interpretation of when a child was “temporarily absent” for purposes of continuing benefits entitled to “no weight” where not consistently followed). NRCB’s denial of requests to purchase service for temporary or substitute positions (Ex. 7), which should have been allowed under G.L. c. 32, § 3(5), also suggests it was not closely examining applicable statutes and regulations.

<sup>26</sup> G.L. c. 32, § 20(5)(b); 20(3)(b).

of part-time and similar employees,<sup>27</sup> and to adopt rules, subject to PERAC's approval, to "fix and determine the amount of creditable prior service, if any, and the amount of credit for membership service of any such employee who becomes a member."<sup>28</sup> PERAC regulations also authorize purchase of prior, non-membership service, based on rules approved by PERAC.<sup>29</sup> Although we agree that Jette does not fall within the provisions of G.L. c. 32, § 3(5) (seventh phrase) or G.L. c. 32, § 4(2)(c),<sup>30</sup> nothing in these provisions suggests that the Legislature

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<sup>27</sup> G.L. c. 32, § 3(2)(d) provides in pertinent part, "In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official, the board shall have and exercise full jurisdiction to determine such employee's eligibility for membership . . . ."

<sup>28</sup> G.L. c. 32, § 4(2)(b); *see Colo v. Contributory Retirement Appeal Bd.*, 37 Mass. App. Ct. 185, 190-191 (1994) (§ 4(2)(b) gave local retirement board authority to grant credit for part-time service).

<sup>29</sup> 840 CMR 15.02(2) provides:

Upon submission of documentation satisfactory to the retirement board, a member will be allowed to purchase creditable service for periods of non-membership employment. The amount of creditable service that may be purchased shall be determined by the retirement board in a manner consistent with the retirement board's supplementary regulations that have been approved by the Commission pursuant to 840 CMR 14.00. The member may purchase less than all non-membership service available for purchase; provided, however, that in such event the member must purchase the most recent time first.

<sup>30</sup> Although the language of G.L. c. 32, § 4(2)(c) is not entirely clear, we do not disturb our prior decisions interpreting § 4(2)(c) as applying only where a member wishes to purchase prior creditable service for part-time and similar work within the same retirement system. *See Santos v. Massachusetts Teachers' Retirement Sys.*, CR-04-70 (CRAB Mar. 6, 2006) (member may not purchase prior part-time service in different retirement system under § 4(2)(c); findings indicate no rules were in place); *cf. Tremblay v. Leominster Retirement Bd.*, CR-07-685 (CRAB May 19, 2011) (right to purchase substitute service for part-time work in same retirement system under § 4(2)(c) only where regulations in place).

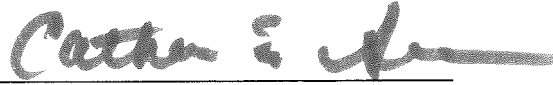
intended to prohibit retirement boards from adopting additional rules for purchase of prior part-time service, as approved by PERAC.

The NCRB's supplemental regulation, allowing purchase of prior service where the member worked less than half-time and was ineligible for membership, is consistent with the overall scheme of the retirement law, G.L. c. 32. The law is intended to provide retirement benefits for public employees within the Commonwealth based on their years of service, age, and compensation. It furthers this goal for a retirement board to have authority, subject to various specific provisions, to adopt regulations that allow purchase of prior part-time and similar service under those conditions that the retirement board believes best serve its members. A board may decide it is appropriate to allow purchase of prior part-time service in order to give members full benefit for their years in public service. Especially in cases like Jette's, where a member may have spent the bulk of her career working part-time, it is an important component of the law that retirement boards have discretion to adopt regulations allowing such purchases. That such regulations are voluntary allows boards to decline to adopt them, or to impose restrictions, based on the individual circumstances and needs of the system and its members.

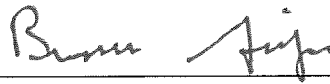
*Conclusion.* The DALA decision is reversed. Jette is entitled to purchase creditable service from the Norfolk County Retirement System for her prior part-time employment with the Town of Attleborough.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



Catherine E. Sullivan  
Assistant Attorney General  
Chair  
Attorney General's Appointee



Russell W. Gilfus  
Governor's Appointee

Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: Oct. 23, 2017

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Governor's Appointee

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**DNP [DID NOT PARTICIPATE]**  
Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: \_\_\_\_\_

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BEING A CORRECTED RE-ISSUE  
WITH AN  
INTRODUCTION, SUPPLEMENT, AND BIBLIOGRAPHY  
OF

## A NEW ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES

FOUNDED MAINLY ON THE MATERIALS COLLECTED BY

*The Philological Society*

VOLUME V  
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1514 BARCLAY Cyl. & Uplondyshin. (Percy Soc.) 12 But  
suche as were fayre, and of theyr stature ryght As wyse and

such time that provision might be taken to  
ge & costs should be borne. 1489 Caxton  
1494 xviii. 101 But if thou putte a prouysyon  
rtly, thou shalt, are three dayes be passed, see thy  
ed wythin the cyte. 1523 LD. BERNERS *Proas*. I.  
s season the kynge of Englande made great prou-  
vision into France. 1538 STARKY *England*. IV. 111  
uysson for the second brethene, by the ordyn  
uld be had. 1622 *Knatchbull MSS.* (Hist. MSS.  
209) If there were not a present surrendry made,  
must take provision of arms. 1666 FRANKLIN *Ess.*  
II. 238 The more public provisions were made  
200, the less they provided for themselves. 1833  
TINIAU *Vanderput* & S. viii. 125 No provision made  
nugher's residence. 1879 Cassell's *Techn. Educ.*  
Provision should be made for the illustrations of the  
y monster diagrams.

action of God in providing for his  
s; the divine ordination and over-ruling of  
the providential dealing of the Divine  
providence; the action of Providence.

*Manbind* 188 in *Micro Plans* 8 To... yeide we  
odis prouysyon. 1483 Caxton's *Chron.* Eng. III.  
/1 In his dayes peas was over all the world through  
ysyon of the very god. 1538 STARKY *England*. III. 90  
e prouysyon of God sendyth vs seasonal weddow  
r. HAMILTON *Catech.* (1884) 13 The conservatioun  
in, protection and governaunt quiklik God hes of all  
uris. 1559 Bp. Scot in *Strype Ann. Ref.* (1709) I.  
32 If we would consider all things well, we shall  
provision of God marvellous in it.

Appointment to a see or benefice not  
ant; esp. such appointment made by the  
in derogation of the right of the regular  
: cf. PROVIDE v. 6. Also, the document  
ing such an appointment. *Obs. exc. Hist.*  
Act 25 *Edw. III*, Stat. IV. (Stat. of Provisors), Et en  
ascune Eveschiesche, Eveschee, dignite ou autre que-  
eneffice, soit reservacion, collacion, ou provision faite  
urte de Rome, en desturbance des eleccions, colla-  
presentacions [etc.]

Wyclif *Sol.* II. 11. 416 Bigynne we at eleccions  
ysyons of he pope. 1317 *Trivisia Higden* (Rolls)  
33 Pe kyng fordeide provisions [at he pope badde  
ed, and hoted þat no nian schulde bryngne suche  
ins upon payne of prisonement. 1538 FITZGER.  
Peas 142 The statute of Kyng Rycharde the  
... of prouysyon and premonition. 1612 *Davies Why*  
4, etc. (1787) 62 The Bishops of Rome... drew away  
wealth of the realm by their provisions and infinite  
ns. 1769 BLACKSTONE *Comm.* IV. viii. 107 Papal  
ns were the previous nomination to such benefices, by  
of anticipation, before they became actually void;  
afterwards indiscriminately applied to any right of  
age exerted or usurped by the pope. 1852 Hook *Ch.*  
17. 1899 *Reg. John de Grandisson* III. Pref. 5 He held  
fice ill to his provision to the Bishopric of Exeter.

something provided, prepared, or arranged in  
ce; measures taken beforehand; a prepara-  
previous arrangement; a measure provided  
a need; a precaution.

FABIAN *Chron.* I. xcix. 73 Augmentynge his Kyng-  
by knyghtly bataylles, and other worldly prouysyons.  
TARKY *England* I. i. 15 Excepte ther be joynd some  
prouysyon for theyr [the seeds] spryngyn vp and  
ulture. 1561 T. NORTON *Cabinets Inst.* I. xvii. (1634)  
se hath given us provisions and remedies. 1697  
in *Vers. Georg.* III. 497 By how much less the tender  
ss Kind, For their own Ills, can fit Provision find.  
BURN *Poor Law* 129 It will follow... that a provision  
was proper for the time, may not be now effectual.  
Hr. MARTINEAU *Ellis of Gar.* II. 33 There was no step  
nast, nor provision for a rudder. 1907 *Q. Rev.* Apr. 538  
y College is not, however, a sufficient provision for the  
tional needs of Ireland.

A supply of necessities or materials pro-  
l; a stock or store of something.

CAPGRAVE *Life St. Gilbert* (E. E. T. S.) 68 þat hei  
s and nuns) schuld not fayle of here dayly prouysion.  
LD. BERNERS *Huon* viii. 193 He... hath slayn my  
led away all my bestes & prouysyon. 1535 COVER-  
Fs. cive. 16 He called for a derth vpon the londe and  
ayed all the prouysion of bred. 1578 BOURNE *Apun-*  
3 He [ship's surgeon]... to have all such prouisions  
meets for his provision in readinesse, to the end to dresse  
ut men. 1628 Digby *Voy. Medit.* (Caunden) 59, I stayed  
to get some prouisions, as hoopes, tallow, tarre, pitch,  
bread. 1690 LOCKE *Hum. Und.* III. xi. § 27 The  
ision of Words is so scanty in respect of that infinite  
ty of Thoughts, that Men... will be forc'd often to  
be same Word, in somewhat different Senses. 1715  
i *Palindia's Archet.* (1742) I. 57 The Wood, and other  
erless Country Provisions. 1796 Morse *Amer. Geog.*  
s Here they deposit their provision of nuts and acorns.  
b. *transf.* A warrant for such a supply. *rare.*  
33 LD. BERNERS *Gold. Bk.* II. *Aurel.* (1546) Ffiv b.  
de, de the prouision, to the entente that a shyp maie lie  
n the.

*spec.* A supply of food; food supplied or pro-  
d; now chiefly pl. supplies of food, victuals,  
bles and drinkables.

e 1454, a 1533 in 6.]  
o HOLLAIX *Caunden's Brit.* (1637) 394 The English for  
of provisions were forced to breake up Siege. 1671  
ron *P. R.* II. 422 With that Both Table and Provision  
sh'd quite. 1728 JOHNSON *Idler* No. 35 p. 8 She condemns  
o live upon salt provision. 1773 *Observ. State Poor* 65 A  
od, wherein the price of provisions is exorbitant. 1839

said he should contend that it was... as a provision  
chant were victualling a ship, and did not put tea amongst  
his provisions, he would not be considered to have pro-  
visioned her.

8. Each of the clauses or divisions of a legal or  
formal statement, or such a statement itself, pro-  
viding for some particular matter; also, a clause  
in such a statement which makes an express stipu-  
lation or condition; a proviso.

Applied in English History to certain early statutes or  
ordinances. *Provisions of Oxford*, ordinances for checking  
the king's misrule, and for the reformation of the govern-  
ment, drawn up at a meeting of the barons (nicknamed the  
Mad Parliament) held at Oxford, under the leadership of Sir  
Simon de Montfort, in 1258 (38 Henry III). Among the  
chief of these provisions were that parliaments should be  
held thrice in the year, and that four knights should be chosen  
by the freeholders of each county to ascertain and lay before  
parliament all wrongs committed by the royal officers. The  
refusal of the King to abide by these Provisions led to the  
Barons' War in 1264.

1473 *Rolls of Parlt.* VI. 74/2 So alwey, that this Provi-  
sion be not available or beneficial to the persones afore-  
named. 1523 [see *Provises sb.*] (1701 *Cowell's Interpr.* s.v.,  
The Acts to restrain the exorbitant abuse of Arbitrary Power  
made in the Parliament at Oxford 1258, were called *Provi-  
siones*, being to provide against the King's Absolute Will  
and Pleasure.] 1781 T. GILBERT *Relief Poor* 14, I think  
some Provisions may be introduced into this Bill... for  
encouraging the Marriage of Persons who have been placed  
out by the Parishes as Servants or Apprentices. 1818  
COBBETT *Pol. Reg.* XXXIII. 106 The principles and the  
provisions of the Bill would have shown... precisely what we  
wanted. 1827 HALLAM *Const. Hist.* (1876) II. xi. 330 These  
provisions struck at the heart of the presbyterian party.  
1878 STUBBS *Lect. Med. & Mod. Hist.* viii. (1900) 204 The  
half-brothers of... Henry III... had been banished in conse-  
quence of their opposition to the Provisions of Oxford.

†9. A commission or percentage charged on  
mercantile transactions by an agent or factor. *rare.*  
(So *F. provision*, *Ger. provision*, in same sense.)

1589 WOTTON *Left.* (see ed. 1907 I. 228), I have... two bills  
of exchange to his factor in Stode, there to receive the like  
sum in the current money of that Countrey, without any  
manner of provision as the merchants call it, a pacted  
word for it. 1622 SCARLETT *Exchanges* 135 For Courtage  
of Exchanges, whether in drawing or remitting, usually one  
per mille is allowed for Provisions for drawing and remit-  
ting, each half per cent. *Ibid.* 170 Provision is the Reward  
the Factor receives from his Principal... for his trouble.

10. *attrib. and Comb.*, mainly in sense 7, as  
*provision-bag*, *-basket*, *-boat*, *contractor*, *-craft*,  
*-dealer*, *-depot*, *-merchant*, *-money*, *-sack*, *-trade*,  
*provision-act*, the *provident* ait; *provision-*  
*ground*, in the W. Indies, etc., ground allotted for  
the growing of food-stuffs; *provision-making*, the  
making of provision; *provision-pay*, pay in kind.

1838 J. HODGSON in J. RAINE *Mem.* (1858) II. 379 They  
were careful like the 'provision-ant. 1856 KANE *Arch.*  
*Expl.* II. xvi. 168 Our 'provision-bags were of assorted  
sizes. 1748 *Auson's Voy.* III. ix. 394 One of the principal  
thieves was... in a 'provision-boat along-side. 1800 *Hull*  
*Advertiser* 27 May 3/2 A 'provision contractor of the first  
eminence. 1849 *Giote Greece* II. xxviii. V. 45 Crews of  
the 'provision-craft and ships of burthen. 1834 *Picture of*  
*Liverpool* 73 Mr. Edward Thomas, 'provision dealer. 1766  
*Chron.* in *Ann. Reg.* 135/2 Great damage was done to the  
'provision-grounds. 1871 KINGSLEY *At Last* xvi, The  
'provision grounds' of the Negroes are very interesting.  
1564 BECON *Wks.* Gen. Pref. A v. With hospitalitie, or  
'provision making for the poore. 1858 SIMMONDS *Dict.*  
*Trade*, 'Provision-merchant, a general dealer in articles of  
food. 1692 S. SEWALL *Left-Bk.* (1886) I. 7 Some of the  
'Provision-Pay was Wheat, which I sold, for Indian Corn.  
1895 CROCKETT *Bag-Myrtle & Peat* I. ii, The latest canons  
of... retail 'provision-trade taste.

**Provision** (provi'zan), v. [f. prec. Cf. *F.*  
*provisionner* (1556 in Godef.)] *trans.* To supply  
with provisions or stores; esp. to supply with a  
stock of food. b. *intr.* (for *refl.*) To supply one-  
self with provisions; to lay in provisions.

[1805: see *PROVISIONER* *pp.* 4, 1.] 1809 A. HENRY *Trav.*  
47 Maize... is depended upon, for provisioning the canoes.  
1818 TOWN, *Provision*, to supply with provision. 1836  
*Tait's Mag.* III. 428 Tempted to laugh at the style in  
which the Wyatts have provisioned. 1851 DIXON *W. Pein*  
xxiii. (1872) 203 Every man had to be provisioned for  
the longer term. 1859 LAW *Wand. India* 101 He raised a  
regiment of horse and provisioned it.

Hence *Provisioning vbl. sb.*  
1868 HELPS *Realmah* xii. (1876) 335 The provisioning of  
the town for a protracted siege. 1869 FREEMAN *Norm.*  
*Conq.* III. xiv. 339 An excellent point for the gathering and  
provisioning of armies.

**Provisional** (provi'zənəl), a. (*sb.*) [f. *PRO-*  
*VISION sb.* + *-AL*. So *obs. F. provisionnal* (c 1485  
in Hatzl.-Darm.), mod. *F. provisionnel*.]

1. Of, belonging to, or of the nature of a temporary  
provision or arrangement; provided or adopted  
for present needs or for the time being; supply-  
ing the place of something regular, permanent, or  
final; also, accepted or used in default of some-  
thing better. *Provisional callus*: see quot. 1856.  
1601 J. WHEELER *Treat. Comm.* 41 Hee and they were

fragments. 1873 HAMERTON *Intell.* 1. 178 XI. 4 (1875) 399 200  
intellectual spirit does not regard its conclusions as being at  
any time final, but always provisional. 1893 TUCKER tr.  
*Hatschek's Amphioxus* 158 This primary caudal fin... is only  
a provisional formation.

†b. Preparatory, preliminary. *Obs.*

1619 HALFS *Gold. Rem.* II. (1673) 83 That Sessions consul-  
tatory and Provisional shall be private, but Sessions wherein  
they discuss and conclude shall be publick.

†2. Characterized by or exhibiting careful fore-  
sight; provident. *Obs. rare.*

1620 E. BLOUNT *Horr. Subs.* 523 Either from a pressing  
necessity, or a foreseeing and prouisionall carefulnes. a 1677  
HALE *Prim. Orig. Man.* 370 The Wise God that foresaw  
this Sin... was not wanting in providing a fit provisional  
Remedy against it. 1763 GOLDSM. *Misc. Wks.* (1837) II.  
505 This provisional care in every species of quadrupeds, of  
bringing forth at the fittest seasons.

†3. Of, belonging to, or done with a proviso;  
conditional. *Obs.*

1656 BLOUNT *Glossogr.*, *Provisional*,... done by way of  
*Proviso*. 1706 PHILLIPS, *Provisional*,... belonging to a  
Proviso. 1808 BENTHAM *Sc. Reform* 3 There is enough  
in it to afford an ample justification to the provisional  
acceptance your Lordship has been pleased to give to it.

4. Of or relating to provisions or supplies. *rare.*

1812 W. TAYLOR in *Monthly Mag.* XXXIII. 228 Both  
words [plenty and abundance]... are metaphorically applied to  
the provisional state of the country, to its eatable stock.  
1823 BLACKBURN *Mag.* XIV. 509 From Covent garden... we  
must take a peep at the other points of provisional concentra-  
tion about town.

B. *sb.* 1. Something that is provisional.

1895 *Westm. Gaz.* 23 Aug. 3/1 'Provisional' labels had to  
be issued while the real stamps were being engraved. The  
collector treasures a 'provisional' above most things.

†2. One for whom provision is made; one  
provided for. *Obs.*

1716 M. DAVIES *Athen.* *Brit.* II. 316 A Popish Pervert  
and a Protestant Convert are indeed two different Pro-  
visionals.

Hence **Provisionality**, provisionality.

1821 *Examiner* 821/2 Open your eyes, and you will see  
that provisionality itself is infused into all the branches of  
your system. 1891 *Harper's Mag.* Oct. 765/1 There was a  
terrible provisionality about the whole business.

**Provisionally**, *adv.* [f. prec. + *-LY*.] In  
a provisional manner; as a temporary measure.

1602 in Morison *Itin.* II. (1617) 247 We are content pro-  
visionally to warrant our proceedings in any thing you  
doe or publish in Our name. 1692 *Lond. Gaz.* No. 2729/3  
The Place... is given provisionally to the Count de Clermont,  
till the arrival of the Elector of Bavaria. 1793 BURKE *Corr.*  
(1844) IV. 149 His personal virtues... make him the fittest to  
authorize this arrangement provisionally. 1798 NEWCOMB  
*Pop. Astron.* III. ii. 266 This hydrogen is always mixed with  
another substance, provisionally called helium.

**Provisionalness**, [f. as prec. + *-NESS*.]

The quality of being provisional.

1874 MORLEY *Compromise* 168 It is no reason why [they]  
should think solely of the utility and forget the equally  
important element of its provisionality. 1891 CHRYNE  
*Bampton Lect.* p. xxviii, Our arguments must for the most  
part bear the stamp of provisionality.

**Provisionary** (provi'zənəri), a. Now *rare*.

[f. *PROVISION sb.* + *-ARY*.]

1. = PROVISIONAL a. 1.

1617 MORYSON *Itin.* II. 86 His Lordship... appointed Sir  
John Berkeley to supply his place of Provisionarie Gouver-  
neur of the Province of Connaght. 1776 GIBSON *Decl. & F.*  
xv. 1. 456 A provisionary scheme intended to last only till  
the coming of the Messiah. 1794 HERON *Inform. Powers*  
*at War* 30 A provisionary government was appointed.  
1895 MOZLEY *Univ. Sermon* III. 58 In practical life probable  
evidence only raises a provisionary belief.

†2. That foresees and provides for the future;  
provident; = PROVISIONAL a. 2. *Obs.*

1647 N. BACON *Disc. Govt. Eng.* I. lii. (1739) 93 To cast  
the government of the persons of their Wards out of the  
view of the Lords provisionary care. 1699 SHAFTESS.  
*Charac.* (1711) II. II. i. iii. 89 [Nature's] provisionary Care  
and Concern for the whole Animal. 1784 SIR J. REYNOLDS  
*Disc.* xii. (1876) 47 The provisionary methods Demosthenes  
and Cicero employed to assist their invention.

3. Of or pertaining to papal provisions: see *PRO-*  
*VISION sb.* 4.

1736 DRAKE *Eboracum* II. i. 436 The Archbishop of York...  
was by the pope's provisionary bulls translated to Canter-  
bury. 1856 Mrs. H. O. CONANT *Eng. Transl. Bible* III.  
(1881) 19 note, The sale of these provisionary grants was a  
source of large income to the Papal court.

†4. Of or pertaining to provisions or food-  
supply; = PROVISIONAL a. 4. *Obs. rare*—1.

1613-18 DANIEL *Coll. Hist. Eng.* (1626) 41 For his pro-  
visionary revenues... the Kings Tenants... payd no money at  
all; but only Victuals, Wheate, Beifes, Muttons [etc.].

5. Of, pertaining to, or of the nature of a proviso,  
a provision, or provisions (in a law, etc.).

1774 BURKE *Amer. Tax.* 8 The preamble of this law... has  
the lie direct given to it by the provisionary part of the act.

**Provisioned** (-ənd), *pp.* 1. [f. *PROVISION sb.*  
or *v.* + *-ED*.] Supplied with provisions; esp.  
furnished with a stock of food.

1805 PIERCE *Sources Mississ.* (1810) 40 We were now pro-

*t provision to, to provide against (obs.).* † *To be provision of, to have recourse to (obs.).*

132-50 *tt. Higden (Rolls) III. 321* The man imprisonede edie respice that he myghte make ordinaunce and prouision for his wife and childer. c. 1470 *HENRY Wallace III. 2* Quhillt eft for him prouisionne we may mak. 1480 *ventry Leet Bk. 435* Pe wardeyns myght .pay for their stes vnto such tyme that prouision myght be taken howe ch charge & coste should be boron. c. 1489 *CAXTON anchuryllm xxvii. 101* But yf thou putte a prouysyon erto shortly, thou shalt, are thre dayes be passed, see thy ff beseged wythin the cyte. 1523 *L.D. BERNERS Froiss. I. 1* All this season the kyng of Englande made great prouision to come into France. 1538 *STARKEY England I. iv. 111* one prouysyon for the second bretherne, by the ordur of w, also wold be had. 1622 *Buceluch MSS. (Hist. MSS. ann.) I. 239* If there were not a present surrendry made, ngland must take prouision of arms. 1766 *FRANKLIN Ess. /ks. 1840 II. 338* The more public prouisions were made r the poor, the less they provided for themselves. 1833 *tr. MARTINEAU Vanderput & S. viii. 125* No prouision made it his daughter's residence. 1879 *Cassell's Techn. Educ. V. 64/2* Prouision should be made for the illustrations of the scures by monster diagrams.

3. The action of God in providing for his reatures; the divine ordination and over-ruling of vents; the providential dealing of the Divine being; providence; the action of Providence.

c. 1450 *Mankind 188 in Macro Plays 8 To...* yelde ws vnder Godis prouysyon. 1483 *Caxton's Chron. Eng. iii. 1500* 27/1 In his dayes peas was over all the worlde thurgh be prouysyon of the very god. 1538 *STARKEY England I. iii. 90* When the prouysyon of God sendyth vs sesonabul weddru. 552 *Asr. HAMILTON Catech. (1884) 13* The conservation, rovisoun, protection and governans quhill God hes of all is creaturis. 1559 *Br. Scot in Strype Ann. Ref. (1709) I. pp. x. 32* If we would consider all things well, we shall e the provision of God marvellous in it.

4. *Ecc.* Appointment to a see or benefice not yet vacant; esp. such appointment made by the pope in derogation of the right of the regular patron; cf. *PROVIDE* v. 6. Also, the document conferring such an appointment. *Obs. exc. Hist.*

1350-1 *Act 25 Edw. III. Stat. iv. (Stat. of Provisors).* Et en cas que dascune Erceveschier, Evchesche, dignite ou autre que- que benefice, soit reservation, collacion, ou prouision faite per la courte de Rome, en desturbance des eleccions, collacions ou presentacions [etc.]

c. 1380 *Wyclif Sel. II. ks. II. 416* Bigynne we at eleccions or prouysions of he pope. 1383 *PEYVERIS Higden (Rolls) VIII. 337* Pe kyng fordeide prouisions hat be pope hadde i-granted, and hoted hat no man schulde bringe suche prouisions uppon peyne of prisonement. 1538 *Fitzherb. Just. Peas 122* The statute of Kyng Rycharde the seconde... of prouysion and preminure. 1612 *DAVIES Why Ireland, etc. (1878) 62* The Bishops of Rome draw away all the wealth of the realm by their prouisions and infinite exactions. 1769 *BLACKSTONE Comm. IV. viii. 107* Papal prouisions were the previous nomination to such benefices, by a kind of anticipation, before they became actually void; though afterwards indiscriminately applied to any right of patronage exerted or usurped by the pope. 1852 *Hook Ch. Dict. 617* 1869 *Reg. John de Grandison III. Pref. 5* He held this Office till his Provision to the Bishopric of Exeter.

5. Something provided, prepared, or arranged in advance; measures taken beforehand; a preparation, a previous arrangement; a measure provided to meet a need; a precaution.

1494 *FABYAN Chron. I. xcix. 73* Augmentynge his Kyng-dome by knyghtly bataylles, and other worldly prouysions. 1538 *STARKEY England I. 15* Excepte they be joynd some gud prouysion for theyr [the seeds] spryngyn vp and gud culture. 1561 *T. NORTON Caluist's Inst. I. xvii. (1634) 91* Hee hath given us prouisions and remedies. 1697 *Dryden Virg. Georg. III. 497* By how much less the tender helpless Kind, For their own Ills, can fit Provision find. 1764 *BURN Poor Laws 129* It will follow... that a provision which was proper for the time, may not be now effectual. 1832 *Ht. MARTINEAU Ellis of Gar. II. 33* There was no step for a mast, nor provision for a rudder. 1907 *Q. Rev. Apr. 538* Trinity College is not, however, a sufficient provision for the educational needs of Ireland.

6. A supply of necessities or materials provided; a stock or store of something.

1451 *CAPGRAVE Life St. Gilbert (E. E. T. S.) 68* pat hei [monks and nuns] schuld not fayle of here daily prouysion. c. 1533 *L.D. BERNERS Huon I. vii. 133* He... hath slayn my nien & led awaye all my bestes & prouysions. 1535 *COVRA- DALE Ps. civ. 16* He called for a deth upon the londe and destroyed all the prouysion of bred. 1598 *BOURNE Inven- tions 3* He [ship's surgeon]... to have all such prouisions as is ineete for his purpose in readinesse, to the end to dresse the hurt men. 1628 *DICAY Voy. Medit. (Camden) 59* I stayed here to gett some prouisions, as hoopes, tallow, tarre, pitch, wine, bread. 1690 *LOCKE Hum. Und. III. xi. 8* 27 The Provision of Words is so scanty in respect of that infinite Variety of Thoughts, that Men... will be forc'd often to use the same Word, in somewhat different Senses. 1715 *LEONI Palladio's Archit. (1742) I. 57* The Wood, and other numberless Country Provisions. 1796 *MOORE Amer. Gen. I. 205* Here they deposit their provision of nuts and acorns. † *b. transf.* A warrant for such a supply. *rare.* c. 1533 *L.D. BERNERS Gold. Bk. II. Aurel. (1546) Ffivb* I sende the a prouision, to the entente that a ship may be gyven the.

7. *spec.* A supply of food; food supplied or provided; now chiefly *pl.* supplies of food, victuals, eatables and drinkables. [See 1451, a. 1533 in 6.]

1610 *HOLLAND Cammen's Brit. (1637) 394* The English for want of provisions were forced to breake up Siege. 1671

*Penny Cycl. XIII. 75/1* A variety of wholesome and nutri- tious roots cultivated in [Jamaica] are called by the name of *ground provisions*; such as the yam [etc.]. 1860 *NARES Naval Cadets' Guide 68 Wet provisions.* Beef, pork, suet, viuegar, rum and lime juice... *Dry provisions.* Peas, oat- meal, chocolate, tea, flour, raisins, sugar. 1866 *Morm. Star 8 Mar.* Mr. Poland said... he should contend that tea was not 'provisions' within the meaning of the Act. Mr. Baylis said he should contend that it was. If a provisioner mer- chant were victualling a ship, and did not put tea amongst his provisions, he would not be considered to have pro- visioned her.

8. Each of the clauses or divisions of a legal or formal statement, or such a statement itself, pro- viding for some particular matter; also, a clause in such a statement which makes an express stipu- lation or condition; a proviso.

Applied in English History to certain early statutes or ordinances. *Provisions of Oxford*, ordinances for checking the king's misrule, and for the reformation of the govern- ment, drawn up at a meeting of the barons (nicknamed the Mad Parliament) held at Oxford, under the leadership of Sir Simon de Montfort, in 1258 (38 Henry III). Among the chief of these provisions were that parliaments should be held thrice in the year, and that four knights should be chosen by the freeholders of each county to ascertain and lay before parliament all wrongs committed by the royal officers. The refusal of the King to abide by these Provisions led to the Barons' War in 1264.

1473 *Rolls of Parlt. VI. 74/2* So alwey, that this Provi- sion be not available or beneficial to the persones afore- named. 1523 [see *PROVIDE* sb.]. 1701 *Cowell's Interpreter s.v.* The Acts to restrain the exorbitant abuse of Arbitrary Power made in the Parliament at Oxford 1258, were called *Provi- sions*, being to provide against the King's Absolute Will and Pleasure. 1781 *I. GILBERT Relief Poor 14* I think some Provisions may be introduced into this Bill... for encouraging the Marriage of Persons who have been placed out by the Parishes as Servants or Apprentices. 1838 *COBBETT Pol. Acc. XXXIII. 106* The principles and the provisions of the Bill would have shown... precisely what we wanted. 1847 *HALLAM Const. Hist. 1876/11. xi. 330* These provisions struck at the heart of the presbyterian party. 1878 *STRONG Lect. Met. & Mod. Hist. viii. (1900) 204* The half-brothers of Henry III... had been banished in con- sequence of their opposition to the Provisions of Oxford.

† 9. A commission or percentage charged on mercantile transactions by an agent or factor. *rare.* (So *F. provision*, *Ger. provision*, in same sense.)

1589 *WOTTON Lett. (see ed. 1907 I. 228)* I have... two bills of exchange to his factor in Stode, there to receive the like sum in the current money of that Countie, without any manner of provision as the merchant call it, a pached word for it. 1682 *SCARLETT Exchanges 135* For Courtage of Exchanges, whether in drawing or remitting, usually one *per mille* is allowed for Provisions for drawing and remitting, each half *per cent.* *Ibid.* 170 Provision is the Reward the Factor receives from his Principal... for his trouble.

10. *attrib. and Comb.*, mainly in sense 7, as *provision-bag, -basket, -boat, -contractor, -craft, -dealer, -depot, -merchant, -money, -sack, -trade; provision-art, the provident art; provision-ground, in the W. Indies, etc., ground allotted for the growing of food-stuffs; provision-making, the making of provision; provision-pay, pay in kind.*

1838 *J. HODGSON in J. RAINE Mem. (1838) II. 379* They were careful like the 'provision-art'. 1856 *KANE Arch. Expl. II. xvi. 168* Our 'provision-bags' were of assorted sizes. 1740 *Anson's Voy. III. ix. 394* One of the principal thieves was... in a 'provision-boat along-side. 1800 *Hull Advertiser 27 May 3/2* A 'provision contractor of the first eminence. 1849 *GROVE Grecian II. xxviii. V. 45* Crews of the 'provision-craft and ships of burthen. 1834 *Picture of Liverpool 73* Mr. Edward Thomas, 'provision dealer. 1766 *Chron. in Ann. Reg. 155/2* Great damage was done to the 'provision-grounds. 1871 *KINGSLEY At Last xvi.* The 'provision grounds' of the Negroes are very interesting. 1564 *Becon Wks. Gen. Pref. Av.* With hospitalitie, or 'provision making for the poore. 1858 *SIMMONDS Dict. Trade, 'Provision-merchant, a general dealer in articles of food. 1692 S. SEWALL Lett.-bk. (1886) I. 7* Some of the 'Provision-Pay was Wheat, which I sold, for Indian Corn. 1895 *CROCKETT Bag-Myrle & Peat iv. ii.* The latest canons of... retail 'provision-trade taste.

*Provision (provi'zon), v.* [*f. prec. Cf. F. provisionner (1556 in Godef.) trans.* To supply with provisions or stores; esp. to supply with a stock of food. *b. intr. (for refl.)* To supply one- self with provisions; to lay in provisions.

[1805: see *PROVISIONED* *adj.* a.] 1809 *A. HENRY Trav. 47* Maize... is depended upon, for provisioning the canoes. 1818 *Todd, Provision, to supply with provision. 1836 Tail's Mag. III. 428* Tempted to laugh at the style in which the Wyatts have provisioned. 1831 *DIXON W. Penn xiii. (1879) 203* Every man had to be provisioned for the longer term. 1859 *LARG Wand. India 101* He raised a regiment of horse and provisioned it.

Hence *Provisioning* *vb. sb.* 1868 *HELPS Realnsh xii. (1876) 335* The provisioning of the town for a protracted siege. 1869 *FREEMAN Norm. Cong. III. xiv. 339* An excellent point for the gathering and provisioning of armies.

*Provisional (provi'zonal), a. (sb.)* [*f. PROVISION sb. + -AL.* So *obs. F. provisionnal (c. 1485 in Hatz.-Darm.)*, mod. *F. provisionnel*.]

1. Of, belonging to, or of the nature of a temporary provision or arrangement; provided or adopted for present needs or for the time being; supply- ing the place of something regular, permanent, or

glad and fayne to come to a provisionall agreement. 1617 *MORVSON Itin. II. 68* Sir Arthur Sauvage... was appointed provisionall Gouverneur of the Province of Connaght. 1726 *AYLIFFE Paragon 192* The Church should not be without a provisionall Pastor. 1803 *M. CUTLER in Life, etc. (1888) II. 148* Look at the power given to the President by the pro- visional government of Louisiana. 1856 *DAVITT Surg. Vade Mecum 217* The formation of what is called a provisional callus, that is to say, a ferrule of new bone encircling both fragments. 1873 *HAMERTON Intell. Life xi. i. (1875) 399* The intellectual spirit does not regard its conclusions as being at any time final, but always provisional. 1893 *TUCKER tr. Hutschek's Amphioxus 158* This primary caudal fin... is only a provisional formation.

† *b. Preparatory, preliminary. Obs.* 1619 *HALES Gold. Rem. II. (1673) 83* That Sessions consul- tatory and Provisional shall be private, but Sessions wherein they discuss and conclude shall be publick.

† 2. Characterized by or exhibiting careful fore- sight; provident. *Obs. rare.*

1620 *E. BLOUNT Horw Shbs. 523* Either from a pressing necessity, or a foreseeing and prouisional carefulnes. a. 1677 *HALE Prim. Orig. Man. 370* The Wise God that foresaw this Sin... was not wanting in providing a fit provisional Remedy against it. 1763 *GOLDSM. Afisc. Wks. (1837) II. 505* This provisional care in every species of quadrupeds, of bringing forth at the fittest seasons.

† 3. Of, belonging to, or done with a proviso; conditional. *Obs.*

1656 *BLOUNT Glossogr., Provisional...* done by way of *Proviso.* 1706 *PHILLIPS, Provisional...* belonging to a *Proviso.* 1808 *BENTHAM Sc. Reform 3* There is enough in it to afford an ample justification to the provisional acceptance your Lordship has been pleased to give to it.

4. Of or relating to provisions or supplies. *rare.*

1812 *W. TAYLOR in Monthly Mag. XXXIII. 228* Both words [plenty and abundance]... are metaphorically applied to the provisional state of the country, to its earable stock. 1823 *Blackw. Mag. XIV. 509* From Covent garden... we must take a peep at the other points of provisional concentra- tion about town.

*B. sb. 1.* Something that is provisional.

1895 *Westm. Gaz. 23 Aug. 3/1* 'Provisional' labels had to be issued while the real stamps were being engraved. The collector treasures a 'provisional' above most things.

† 2. One for whom provision is made; one provided for. *Obs.*

1716 *M. DAVIES Athen. Brit. II. 316* A Popish Pervert and a Protestant Convert are indeed two different Provi- sionals.

Hence *Provisionality, provisionallness.*

1821 *Examiner 821/2* Open your eyes, and you will see that provisionality itself is infused into all the branches of your system. 1891 *Harper's Mag. Oct. 795/1* There was a terrible provisionality about the whole business.

*Provisionally, adv.* [*f. prec. + -LY 2.*] In a provisional manner; as a temporary measure.

1602 in *MORVSON Itin. II. (1617) 247* We are content pro- visionally to warrant your proceedings in any thing you doe or publish in Our name. 1692 *Land. Gaz. No. 27293* The Place... is given provisionally to the Count de Clermont, till the arrival of the Elector of Bavaria. 1793 *BURKE Corr. (1844) IV. 149* His personal virtues... make him the fittest to authorize this arrangement provisionally. 1878 *NEWCOMB Pop. Astron. III. ii. 266* This hydrogen is always mixed with another substance, provisionally called helium.

*Provisionalness.* [*f. as prec. + -NESS.*] The quality of being provisional.

1874 *MORLEY Compromise 168* It is no reason why [they] should think solely of the utility and forget the equally important element of its provisionallness. 1891 *CHEYNE Banpton Leet. p. xxviii.* Our arguments must for the most part bear the stamp of provisionallness.

*Provisionary (provi'zouari), a.* Now *rare*, [*f. PROVISION sb. + -ARY 1.*]

1. = *PROVISIONAL a. 1.*

1617 *MORVSON Itin. II. 86* His Lordship... appointed Sir John Berkeley to supply his place of Provisionary Gouver- neur of the Province of Connaght. 1776 *GIBSON Decl. & F. xv. I. 456* A provisionary scheme intended to last only till the coming of the Messiah. 1794 *HEGON Inform. Powers at War 30* A provisionary government was appointed. 1876 *MOZLEY Univ. Ser. III. 58* In practical life probable evidence only raises a provisionary belief.

† 2. That foresees and provides for the future; provident; = *PROVISIONAL a. 2. Obs.*

1647 *N. BACON Disc. Govt. Eng. I. lii. (1739) 93* To cast the government of the persons of their Wards out of the view of the Lords provisionary care. 1699 *SHAFTESB. Charac. (1711) II. II. i. iii. 89* [Nature's] provisionary Care and Concern for the whole Animal. 1784 *SIR J. REYNOLDS Disc. xii. (1876) 47* The provisionary methods Demosthenes and Cicero employed to assist their invention.

3. Of or pertaining to papal provisions; see *PRO- VISION sb. 4.*

1736 *DRAKE Eboracum II. i. 436* The Archbishop of York... was by the pope's provisionary bulls translated to Canter- bury. 1856 *Mrs. H. O. CONANT Eng. Transl. Bible III. (1881) 19 note.* The sale of these provisionary grants was a source of large income to the Papal courts.

† 4. Of or pertaining to provisions or food- supply; = *PROVISIONAL a. 4. Obs. rare-1.*

1613-18 *DANIEL Coll. Hist. Eng. (1620) 41* For his provisionary reuenues... the Kings Tenants... paid no money at all; but only Victuals, Wheate, Heifes, Muttons [etc.].

5. Of, pertaining to, or of the nature of a proviso, a provision, or provisions (in a law, etc.).

1774 *BURKE Amer. Tax. 8* The preamble of this law... has the lie direct given to it by the provisionary part of the act.

*Provisioned (-nd), vbl. a.* [*f. PROVISION sb.*

CERTIFICATE OF SERVICE

I, Suleyken D. Walker, Assistant Attorney General, hereby certify that on this date the within Brief of the Contributory Retirement Appeal Board will be served by electronic notice for registered counsel, and first-class mail, postage prepaid for non-registered counsel.

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