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PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE IV. CIVIL SERVICE, RETIREMENTS AND PENSIONS

CHAPTER 32. RETIREMENT SYSTEMS AND PENSIONS

Chapter 32: Section 5. Superannuation retirement

Section 5. (1) *Conditions for Allowance.* — (a) Any member in service or any member inactive on authorized leave of absence classified in either Group 1 or Group 2 or Group 4 who has attained age fifty-five, and upon his written application on a prescribed form filed with the board and with respective employer, or upon such application by the head of his department after a hearing, if requested, as provided for in subdivision (1) of section sixteen and subject to the conditions set forth in said section and in this section shall be retired for superannuation as of a date which shall be specified in such application and which shall be subsequent to but not more than four months after filing of such application. Any member in service who has attained maximum age as defined in section 1 shall be so retired for superannuation upon attaining such age or shall be retired within 90 days after the date the system becomes operative if such maximum age was attained prior thereto or is attained within 90 days thereafter.

(b) Any member in service whose duties require the board to classify him in two groups as set forth in paragraph (2)(g) of section three and whose regular compensation is paid from two appropriations shall, on attaining the maximum age for retirement of employees in the group having the lower maximum age limit, cease to perform any duties of a member in such group. If the major portion of his regular compensation is in payment for such duties he shall be retired forthwith from service. If the major portion of his regular compensation is in payment for duties in the group having the higher maximum age limit he may continue to perform such latter duties until such maximum age, in which event no portion of his allowance shall become effective until the date of his actual retirement following the cessation of all duties.

[There are no paragraphs (c) to (f).]

(g) Notwithstanding any provision of this chapter to the contrary, any member inactive of a retirement system who is elected to office by popular vote, or who is appointed to a position for a term of years by the governor, or who is appointed to any position by the mayor of a city or by a city council or by the selectmen of a town or by a sheriff, may elect to become a member in service of the system pertaining to

the position to which he is elected or appointed; provided, that any such member inactive who is receiving a retirement allowance shall repay into the system from which he is receiving such allowance the total amount of any such allowance received from the date of his retirement to the date of his again becoming a member in service.

[There is no paragraph (h).]

(i) Notwithstanding any provisions of this chapter to the contrary, any permanent employee of the Massachusetts Turnpike Authority when its employees' retirement system becomes effective who is not eligible for membership in said system or who does not elect to be a member in service under paragraph (h) of subdivision (1) of section five may nevertheless continue in the employ of said authority without loss or suspension of rights, benefits or allowances until he has attained the maximum age for his group or for any additional period permitted under this section.

(j) Any member who was appointed while serving in the armed forces between January first, nineteen hundred and forty and July first, nineteen hundred and fifty-five or between August fifth, nineteen hundred and sixty-four, and January twenty-eighth, nineteen hundred and seventy-three, or who, during such period, was certified for appointment, but entered the military service before such appointment and was subsequently appointed from the same list after his discharge or release from military service, shall have credited as creditable service towards retirement the period beginning as of the date of his appointment or certification for appointment and ending as of the date of his discharge or release from military service; provided, however, that such creditable service shall not be construed to include service for more than four years.

[There is no paragraph (k).]

(l) Notwithstanding any provisions of this chapter to the contrary, a permanent employee of the Massachusetts Housing Finance Agency when its employees' retirement system becomes effective who is not eligible for membership in said system or who does not elect to be a member in service under paragraph (k) of subdivision (1) of section five may nevertheless continue in the employ of said agency without loss or suspension of rights, benefits or allowances until he has attained the maximum age for his group or for any additional period permitted under this section.

(m) Notwithstanding any provision of this chapter to the contrary, any member classified in Group 1 or Group 2, ~~except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten,~~ whose employment first commenced on or after January first, nineteen hundred and seventy-eight, and who has not completed ten or more years of creditable service or who, in any system having accepted the provisions of section ninety G3/4, has not completed ten or more years of creditable service before the termination of his employment, shall on the termination of his employment be entitled to a return of his accumulated deductions with interest. Such return of said accumulated deductions shall be in lieu of any superannuation retirement allowance provided under this chapter.

(2) *Amount of Allowance.* — Upon retirement under the provisions of this section a member shall receive a superannuation retirement allowance to become effective on the date of his retirement. Payments under such allowance shall be made as provided in sections twelve and thirteen.

(a) The normal yearly amount of the retirement allowance for any member classified in Group 1, Group 2 or Group 4, who has paid the full amount of regular deductions on the total amount of regular compensation, including deductions specified in subdivision (3A) of section three, and in paragraph (d) of subdivision (1) of section twenty-two, shall, subject to the limitations set forth in this section, be

based on the average annual rate of regular compensation received by such member during any period of three consecutive years of creditable service for which such rate of compensation was the highest, or on the average annual rate of regular compensation received by such member during the period or periods, whether consecutive or not, constituting his last three years of creditable service preceding retirement, whichever is the greater, and shall be computed according to the following table based on the age of such member and his number of years and full months of creditable service at the time of his retirement.

Table showing Percentage of the Amount of Average Annual Rate of Regular Compensation to be multiplied by the Number of Years of Creditable Service.

PER CENT.	AGE LAST BIRTHDAY AT DATE OF RETIREMENT.		
	Group 1.	Group 2.	Group 4.
2.5	65 or over	60 or over	55 or over
2.4	64	59	54
2.3	63	58	53
2.2	62	57	52
2.1	61	56	51
2.0	60	55	50
1.9	59	—	49
1.8	58	—	48
1.7	57	—	47
1.6	56	—	46
1.5	55	—	45

(b) Any member of Group 1 or Group 2 or Group 4, who is a veteran as defined in section one, shall receive an additional yearly retirement allowance of fifteen dollars for each year of creditable service or fraction thereof; provided, that the total amount of said additional retirement allowance shall not exceed three hundred dollars in any case.

(c) The total normal yearly amount of the retirement allowance of any member of Group 1 or Group 2 or Group 4, as determined in accordance with the provisions of this section, shall not exceed four fifths of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which such rate of compensation was the highest or on the average annual rate of regular compensation received by such member during the period or periods, whether or not

consecutive, constituting his last three years of creditable service preceding retirement, whichever is the greater.

(d) In the case of any member who has any years or fraction of years of creditable service on which he has not paid the full deductions specified in subdivision (3A) of section three and in paragraph (d) of subdivision (1) of section twenty-two, his allowance shall be computed as provided in paragraphs (a) and (c) of this subdivision, and shall then be reduced to the amount obtained by multiplying such allowance by a fraction, the numerator of which shall be the total regular deductions at retirement, and the denominator of which shall be the sum of what his regular deductions for his creditable service would have been had they been made at the rate, and subject to the maximum limits in effect for the majority of the members of the system or systems, for the periods for which he is entitled to creditable service, plus the full additional deductions specified in subdivision (3A) of section three. To the retirement allowance so obtained shall be added the amount allowed in paragraph (b) of this subdivision, the total, however, not to exceed the maximum provided for in paragraph (c) of this subdivision.

(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.

(3) *General Provisions.* — (a) If any calculation involving the use of the average annual rate of regular compensation for any three-year period is required under the provisions of sections one to twenty-eight inclusive, in the case of any member whose creditable service for such period is actually less than three years, such calculation shall be made on the basis of the average annual rate of his regular compensation applicable to that portion of such period during which such service was actually rendered.

(b) Any duly authorized leave or period of absence for which any member is allowed creditable service under the provisions of sections one to twenty-eight inclusive, and any such leave or period of absence not in excess of one year for which he is not allowed creditable service, shall be included in any three-year period for the purpose of determining the average annual rate of his regular compensation therefor to the extent such leave or period of absence falls within such three-year period, anything in such sections to the contrary notwithstanding. In determining any such average annual rate of regular compensation for any member, the rate in effect for him immediately preceding any period of his absence without compensation shall be used as the rate for such period of absence.

(c) The board may adopt appropriate rules and regulations which shall be subject to the approval of the actuary, to be used in determining the normal yearly amount of any retirement allowance in accordance with the provisions of sections one to twenty-eight inclusive on account of any member the whole or a portion of whose creditable service is on a part-time, provisional, temporary, temporary provisional, seasonal or intermittent basis, and subject to such approval may use reasonable approximations in determining the average annual rates of regular compensation in the case of any member for whom the actual rates of regular compensation are unavailable.

(d) In the event that the public employee retirement administration commission fails to approve such superannuation application within ninety days after the board forwards the calculations to the commission of said allowance, the member shall commence receiving the payment as determined by the board subject to the final determination by the commission; provided, however, that in the event such

retired member receives an amount in excess of the sum approved by the commission, then the said retired members shall refund said amount or the board may deduct said amount from any future monthly payments.

(e) The personnel administrator together with the commissioner of public health and the secretary of public safety shall establish health and physical fitness standards for employees referred to in section ninety-four, except those to whom section sixty-one A of chapter thirty-one applies. Such standards shall be established by regulations promulgated by the administrator after consultation with representatives of police, firefighter and other public safety unions, and the Massachusetts Municipal Association. Notwithstanding the provisions of this paragraph, any municipality may adopt, subject to collective bargaining, stricter health and physical fitness standards. Such standards shall be reasonably adjusted to reflect the age and experience of such employees. Such standards shall be utilized by boards to determine whether any such individuals employed after November first, nineteen hundred and ninety-six are allowed to continue in employment in accordance with the procedures established in said section sixty-one A, except that in the case of employees who are members of the Massachusetts Correction Officers Federated Union, bargaining unit 4, so-called, of the department of correction, such standards shall be utilized only with regard to individuals whose employment commenced at the department of correction on or after March 1, 1999. Such standards shall be used to determine the employee's ability to perform his duties and are not to be construed to be the same as disability standards. Said personnel administrator shall establish a program of initial and in-service medical and physical fitness examinations in which such employees shall be required to participate at regular intervals. This section shall apply in all cities, towns, districts or other governmental units which accept the provisions of section five A.

The personnel administrator shall submit said regulations to the clerks of the house of representatives and senate, who shall refer said regulations to the appropriate standing committee of the general court. Within fifteen days of said referral, said committee shall transmit in writing to the administrator its recommendations, if any, for modifications to said regulations. Within fifteen days of receipt of any such recommendations, the administrator shall resubmit said regulations to said committee together with any modifications made thereto. If the general court takes no final action relative to said regulations within forty-five days of the date on which said regulations are first referred to said committee, said regulations shall be filed with the state secretary pursuant to the provisions of section five of chapter thirty A. No such regulations shall take effect until filed with the state secretary in accordance with the provisions of this paragraph.

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

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

(4)(i) Notwithstanding the provisions of this chapter or any other general or special law to the contrary, there is hereby established an alternative superannuation retirement benefit program for members of the teachers' retirement system and teachers who are members of the State-Boston retirement system. Participation in said program shall be mandatory for all teachers hired on or after July 1, 2001. Such members shall make contributions to the teachers' retirement system or to the State-Boston retirement system at the rate of 11 per cent on all regular compensation. Any member of the teachers' retirement system or any teacher who is a member of the State-Boston retirement system before July 1, 2001 may elect to participate in the alternative superannuation retirement benefit program. Said election shall be made on or after January 1, 2001 and before July 1, 2001. Any member of a contributory retirement system who transfers into the teachers' retirement system or transfers into the State-Boston retirement system as a teacher may elect to participate in the alternative superannuation retirement benefit program; provided, that said election shall occur within 180 days of establishing membership in the teachers' retirement system or the State-Boston retirement system. The election to participate in the alternative superannuation retirement benefit program shall be irrevocable. Any member who elects to so participate shall be required to make a minimum of five years of retirement contributions at the rate of 11 per cent of regular compensation pursuant to section 22. If said member elects to retire before he has made said five years of contributions at 11 per cent, said member shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 11 per cent from his regular compensation for such five year period based on his last 12 months of regular compensation less contributions made during said member's last five years of creditable service. Any inactive member who elects to retire before he has made said five years of contributions at 11 per cent shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 11 per cent from his regular compensation for such five year period based on the last 12 months of regular compensation which would have been paid to said inactive member had said member continued in the position from which he is currently inactive less contributions made during said member's last five years of creditable service. Any schedule permitting an acceleration of contributions shall be consistent with the plan qualification requirements of the Internal Revenue Code and shall, where necessary to meet the requirements of the Internal Revenue Code, provide for an actuarial reduction of benefits by the actuary appointed by the commission in accordance with the provisions of section 21. Any member who elects to participate in the alternative superannuation retirement benefit program and pays additional contributions pursuant to this section and does not complete 30 years of creditable service shall upon termination from membership in or retirement from the system be reimbursed such additional contributions, plus regular interest, as determined by the teachers' retirement board or the State-Boston retirement board.

(ii) The normal yearly amount of the retirement allowance for an eligible employee who has completed at least 30 years of creditable service and has paid the full amount of regular deductions on the total amount of regular compensation as determined under paragraph (a) of subdivision (2), shall be based on the average annual rate of regular compensation as determined under said paragraph (a) and shall be computed according to the table contained in said paragraph (a) based on the age of such member and his number of years and full months of creditable service at the time of his retirement with the percentage of salary average in such computation to be increased by 2 per cent per year for each full year of service in excess of 24 years of creditable service. Such member shall have served for not less than 20 years as a teacher in order to be eligible to receive the benefit provided under this subdivision. For any member who retires before age 55, his age factor shall be determined in accordance with subdivision (1) of section 10. Any member who retires before completing 30 years of service shall receive a retirement allowance equal to the retirement allowance that the member would have been eligible for had he not participated in the alternative superannuation retirement benefit program.

The total normal yearly amount of the retirement allowance, as determined in accordance with this

subdivision of any employee who retires and receives an additional benefit under the alternative superannuation retirement benefit program shall not exceed four-fifths of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate of his regular compensation received during the period or periods, whether or not consecutive, constituting his last three years of creditable service preceding retirement, whichever is greater.