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October 31, 2022

Mr. Steven T. James, House Clerk
Office of the Clerk of the House
State House, Room 145
Boston, MA 02133

Dear Mr. James:

Pursuant to the provisions of Section 33 of Chapter 30 of the General Laws, I hereby submit the attached legislative recommendations from the Massachusetts Teachers' Retirement Board for consideration during the 2023-2024 legislative session.

The attachments to this letter contain summaries of eight proposed recommendations and actual legislative drafts incorporating the recommendations. The six proposed bills are:

1. AN ACT ESTABLISHING A SPECIAL COMMISSION ON RETIREMENT CREDIT PURCHASES
2. AN ACT RELATIVE TO PENSION FORFEITURE
3. AN ACT RELATIVE TO THE INTEREST CHARGED ON REFUND BUYBACKS
4. AN ACT CLARIFYING AND NORMALIZING NON-PUBLIC SCHOOL SERVICE PURCHASES
5. AN ACT RELATIVE TO DOMESTIC RELATIONS ORDERS
6. AN ACT TO EXTEND THE OPPORTUNITY TO PURCHASE TEACHING SERVICE IN ALL TERRITORIES OF THE U.S.
7. AN ACT RELATIVE TO THE DEFINITION OF WAGES FOR RETIREMENT CALCULATIONS
8. AN ACT RELATIVE TO PARENTAL AND FAMILY LEAVE EQUITY FOR MEMBERS OF PUBLIC RETIREMENT SYSTEMS

Please feel free to contact me should you have any questions about the content of these recommendations or need any additional information. Thank you for your assistance.

Sincerely,

Erika Glaster
Executive Director

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**LEGISLATIVE RECOMMENDATIONS OF THE
MASSACHUSETTS TEACHERS' RETIREMENT BOARD
2023-2024 Legislative Session**

**1. AN ACT ESTABLISHING A SPECIAL COMMISSION ON RETIREMENT
CREDIT PURCHASES**

The purpose of this study would be to evaluate and study the costs and benefits attributable to all service purchases allowed under Chapter 32, to review the associated actuarial liabilities, to recommend appropriate cost-sharing between employee and employer, to explore whether the types of allowable service purchases can be expanded, and recommend any other changes deemed necessary to improve the long-term sustainability of the MTRS and other Massachusetts contributory retirement systems.

2. AN ACT RELATIVE TO PENSION FORFEITURE

This legislation would make substantive and technical changes to the retirement statutes regarding the forfeiture of a Massachusetts public employee retirement benefit. The legislation would: re-define the phrase "criminal offense involving violation of the laws applicable to his office or position" in the case of a member whose primary job responsibilities involve contact with children or any member of the Massachusetts Teachers' Retirement System or a teacher who is a member of the Boston Retirement System to include possession of child pornography under G.L. c. 272, § 29C, as well as other sex offenses involving children; restrict forfeitures to felony convictions; allow for an "innocent beneficiary" named as an Option C beneficiary to collect the Option C survivor benefit notwithstanding the member's forfeited benefit; continue to allow total forfeiture, but also allow retirement boards the option of a tiered reduction in pension benefits depending on the severity of the crime; and other technical changes.

**3. AN ACT RELATIVE TO THE INTEREST CHARGED ON REFUND
BUYBACKS**

This technical change would correct an oversight and bring the statute in line with other buyback provisions that require interest to be paid through the date the buyback has been completed.

4. AN ACT CLARIFYING AND NORMALIZING NON-PUBLIC SCHOOL SERVICE PURCHASES

This legislation would clarify the eligibility requirements of educators who may purchase service credit for educational services provided to Massachusetts K-12 students in a publicly-funded non-public school. Additionally, the legislation would make the cost calculation consistent with the other service purchase sections in Chapter 32.

5. AN ACT RELATIVE TO DOMESTIC RELATIONS ORDERS

This legislation would require members who file a Domestic Relations Order to file their order on a form prescribed by the retirement board.

6. AN ACT TO EXTEND THE OPPORTUNITY TO PURCHASE TEACHING SERVICE IN ALL TERRITORIES OF THE UNITED STATES

This legislation would extend the opportunity to purchase up to five years of teaching service, which is presently limited to teaching in the public schools of Puerto Rico, to include the public schools of **all** Territories of the United States.

7. AN ACT RELATIVE TO THE DEFINITION OF WAGES FOR RETIREMENT CALCULATIONS

This legislation would allow supplemental pay while on workers compensation benefits to be defined as wages for retirement calculations.

8. AN ACT RELATIVE TO PARENTAL AND FAMILY LEAVE EQUITY FOR MEMBERS OF PUBLIC RETIREMENT SYSTEMS

This legislation would extend membership rights to any member who is on an authorized leave of absence without pay for more than one year if such leave is permitted under the family and medical leave laws pertaining to his position.

AN ACT ESTABLISHING A SPECIAL COMMISSION ON RETIREMENT
CREDIT PURCHASES

SECTION 1. There shall be a special commission to evaluate and study the costs and benefits attributable to all service purchases allowed under Chapter 32. The special commission shall: review the associated actuarial liabilities; recommend appropriate cost-sharing between employee and employer; explore whether the types of allowable service purchases can be expanded to help recruit and retain public employees; and recommend any other changes deemed necessary to improve the long-term sustainability of Massachusetts contributory retirement systems.

The commission shall consist of: the chair of the public employee retirement administration commission or a designee; the chairs of the state and teachers' retirement boards, or their designees; the house and senate chairs of the joint committee on public service, who shall serve as co-chairs; 1 member of the senate who shall be appointed by the minority leader; 1 member of the house of representatives, who shall be appointed by the minority leader; the President of MACRS or her designee; a representative of the Mass. Association of School Superintendents; the Commonwealth's director of human resources or his designee; a representative of the Massachusetts Municipal Association; the Secretary of A&F or his designee; an actuary to be appointed by the Governor; a representative of a teacher's union to be appointed by the state treasurer; a representative of a state employee union to be appointed by the governor. The special commission shall make recommendations, including proposed amendments to chapter 32 of the General Laws. The special commission shall file its recommendations, including any proposed legislation, with the clerks of the Senate and House of Representatives not later than May 1, 2024.

AN ACT RELATIVE TO PENSION FORFEITURE.

SECTION 1. Paragraph (m) of subdivision 1 of section 5 of chapter 32 of the general laws, as appearing in the 2014 Official Edition, is hereby amended in line 76 by adding after the word "contrary", the following: "except as provided in section 15 of this chapter,".

SECTION 2. Subdivision 1 of section 10 of chapter 32 of the general laws, as appearing in the 2014 Official Edition, is hereby amended by striking the phrase "without moral turpitude on his part" in lines 6,9,84 and 126.

SECTION 3. Section 15 of chapter 32 of the general laws is hereby amended by striking everything after the title and inserting in place thereof the following new section 15.

Section 15.

(1) Initiation of Forfeiture Proceedings. Proceedings under this section may be initiated by the board or the commission. The board shall notify the member by certified mail when proceedings are initiated. If the member refuses the delivery of the mail, it shall be deemed to have been received. Unless otherwise agreed to by the parties, a hearing shall be held no less than ten days nor more than ninety days after the member has received notification. The board shall conduct the hearing pursuant to the provisions of 840 CMR 10.12. The board shall prepare and file with its clerk or secretary a certificate containing its findings and decision, copies of which shall be sent to the proper parties within fifteen days after completion of such hearing.

(2) Forfeiture of a retirement allowance upon conviction. Upon final conviction of a felony criminal offense involving violation of the laws applicable to a member's office or position or arising out of and in the course of their employment, a member shall be subject to the

forfeiture provisions of this section. A retirement board, upon notification of such conviction of a member, must hold a hearing to determine whether the crimes for which a member was convicted involved the laws applicable to the member's office or position or if said criminal offenses were committed while the member was in the course of his or her employment, the total value of the member's potential retirement benefits, and the amount of said benefits which shall be forfeited. For the purposes of this section, 'criminal offense involving violation of the laws applicable to a member's office or position,' shall also include, but not be limited to, in the case of a member whose primary job responsibilities involve contact with children or any member of the Massachusetts Teachers' Retirement System or a teacher who is a member of the Boston Retirement System, a conviction for knowing purchase or possession of visual material of a child depicted in sexual conduct under section 29C of chapter 272 of the general laws, or a conviction of a sex offense involving a child as defined in section 178C of chapter 6 of the general laws whom the member has contact with as part of his or her official duties, or a conviction of any other sex offense or sexually violent offense, as those terms are defined in said section 178C, in which the victim was any person under the age of 18.

(3) Forfeiture amount. Any member with ten or more years of creditable service on the date of the offense who is subject to forfeiture under the foregoing paragraph (2) shall forfeit their retirement allowance as determined by the board. A member's allowance shall be reduced by either one-third, two-thirds, to a minimum allowance or their right to an allowance shall be forfeited entirely. Such minimum allowance shall be equal to the amount a member would receive in group 1 having ten years of creditable service and at the minimum age for a group 1 employee; provided that in no event shall a member whose pension has been reduced to the minimum allowance be eligible for any retirement benefit prior to reaching the minimum age for a group 1 employee; and provided further that, except in cases of total forfeiture, a reduced retirement allowance shall not be reduced below the amount of the annual

annuity portion. Such reduced allowance shall be payable for the life of the member; provided that, if the member retires having elected option (c) the beneficiary shall receive, upon the death of the member, the option (c) survivor benefit as if forfeiture had not occurred, based on the age and actual creditable service at the time of the member's retirement, if the board determines that the beneficiary (i) had no role in the illegal conduct for which the member was convicted, (ii) did not have knowledge of the illegal conduct, and (iii) did not commit nor conspire to commit the murder or voluntary manslaughter of the member upon whom the retirement allowance is based. In the event the entire allowance is forfeited, the member shall not be entitled to receive a retirement allowance under the provisions of section one to 28, nor shall any beneficiary be entitled to receive a retirement allowance under such provisions on account of such member. Further, in the event of total forfeiture, unless otherwise prohibited by law, a member or beneficiary shall receive only a return of their accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero. Any retirement allowance received by a member up to the decision of total forfeiture by a board shall be offset against and reduce the accumulated total deductions otherwise due the member. In determining the amount of the forfeiture the board must consider and make findings of fact relative to the following factors:

- (1) the severity of the crime for which the member was convicted including the sentence imposed as well as the maximum sentence provided for by law;
- (2) the amount of monetary loss suffered by the state, municipality, political subdivision, or by any other person as a result of the crime for which the member was convicted or the financial gain realized by the member;
- (3) the degree of public trust reposed in the member by virtue of the member's office or position and the degree to which it was violated;
- (4) if the crime was part of a fraudulent scheme against the state or political subdivision, the role of the member in the fraudulent scheme;

- (5) any recommendation by the prosecuting attorney or their office to the degree of forfeiture; and
- (6) any such other factors as, in the judgment of the board, justice may require.

Any member who has had their retirement allowance forfeited entirely or has had a portion of their retirement allowance forfeited under this paragraph shall be ineligible to become a member of a different retirement system and is also prohibited from increasing their allowance from the forfeited amount except by cost of living increases granted pursuant to sections 102 and 103.

Any member who has had their retirement allowance forfeited entirely or has had a portion of their retirement allowance forfeited under this paragraph shall cease to be an active member of the retirement system and shall be ineligible for membership in any retirement system.

(4) Forfeiture for members having less than ten years of creditable service. Any member, having less than ten years of creditable service on the date the offense is committed, who upon conviction is subject to the provisions of this section shall forfeit all rights to a retirement allowance based upon any creditable service prior to and after the date of the offense and shall receive a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero. The member shall thereupon cease to be a member in the retirement system and shall be ineligible to become a member of any retirement system.

(5) Notification. If a current employer, last employer, the attorney general or a district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of the member's rights to a pension, or retirement allowance pursuant to this chapter, section 59 of chapter 30 or section

25 of chapter 268A, they shall immediately notify the retirement board and the commission of such conviction.

(6) Repayment of allowance. If a member's final conviction of an offense results in a forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the member to repay all benefits in excess of the allowable amount received after the date of the offense of which the member was convicted. Following a member's conviction and partial forfeiture, the member's retirement allowance will be reduced, upon such terms and conditions as the board may determine, until all excess payment amounts are recovered.

(7) Misreported Salary. In no event shall any member be entitled to receive a retirement allowance under this chapter, which is based upon a salary that was concealed from or knowingly misreported to the commonwealth, or any political subdivision, district or authority of the commonwealth. If a member concealed compensation from or knowingly misreported compensation to an entity to which the member was required to report the compensation, even if the reporting was not required for purposes of calculating the member's retirement allowance, the member's retirement allowance shall be based only upon the regular compensation actually reported to that entity or the amount reported to the board, whichever is lower. Unless otherwise prohibited by law, such member shall receive a return of any accumulated total deductions paid on amounts in excess of the compensation actually reported, but no interest shall be payable on the accumulated deductions returned to the member. The board shall notify the commission of any proceedings commenced pursuant to this subdivision and shall provide any and all documents relating to said proceedings upon request of the commission. Notwithstanding the waiver provisions of paragraph (a) of subdivision 3 of section 21 of chapter 32 of the general laws any calculations performed pursuant to this section will be submitted to the commission for approval.

(8) Appeal of Forfeiture. Any person who is aggrieved by a decision made pursuant to this section regarding the forfeiture of all or any portion of a member's retirement allowance under this section may, within thirty days after the certification of the decision bring a petition in the superior court. This action shall be commenced in the Massachusetts Superior Court covering the geographic area in which a member resides or was convicted, or in Suffolk Superior Court. The court shall review all legal issues under a de novo standard, but may base its determination either on the administrative record below, or may, in its discretion, request additional evidence.

(9) Restitution. In no event shall any member after final conviction of an offense involving the funds or property of any governmental unit in which or by which he is employed or was employed at the time of his retirement or termination of service, as the case may be, or of any system of which he is a member, be entitled to receive a retirement allowance or a return of his accumulated total deductions under the provisions of sections one to twenty-eight inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member, unless and until full restitution for any such misappropriation has been made. Restitution may be made using all or a portion of the total deductions of the member on account with a retirement system. If restitution is made using the accumulated total deductions of the member on account with a retirement system then the annuity portion of any retirement allowance will be reduced when a retirement allowance becomes effective or when a retirement allowance is resumed, as the case may be. The pension portion of the retirement allowance shall remain unchanged from the allowance determined using the accumulated total deductions in the member's account prior to restitution.

SECTION 4. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line 63 by striking the phrase: "or any member who is aggrieved by any action taken or decision of a board or the public employee retirement administration commission rendered with reference to his dereliction of duty as set forth in section 15,".

SECTION 5. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line 113 by adding after the word "rendered": , except decisions made or actions taken pursuant to section 15 of this chapter,.

SECTION 6. Section 105 of said chapter 32 is hereby amended by adding the following paragraph;

(d) Any member having had their retirement allowance forfeited entirely or having had any portion of their retirement allowance forfeited pursuant to section 15 of this chapter shall be ineligible for reinstatement to service under the provisions of this section.

SECTION 7. Paragraph (b) of subdivision (2) of section (8) of chapter 32 is hereby amended by inserting in line 105 after the word "compensation": ; provided, however, that any member who has had their retirement allowance forfeited entirely or had any portion of their retirement allowance forfeited pursuant to section 15 shall not become an active member of the retirement system upon reinstatement but shall contribute to the deferred compensation fund established by section 64D of chapter 29.

An Act Relative to the Interest Charged on Refund Buybacks

SECTION 1. Paragraph (c) of subdivision 6 of section 3 of Chapter 32 is hereby amended by striking out in the first sentence, the word "reemployment" and inserting in place thereof the word "repayment."

An Act Clarifying and Normalizing Non-public School Service Purchases

SECTION 1: Subdivision (1) of section 4 of Chapter 32 is hereby amended by striking out paragraph (p) and inserting in place thereof the following paragraphs:

(p) Any member of a contributory retirement system who is engaged in a teaching position and holds a license issued by the department of elementary and secondary education or is exempted from the requirement of licensure and who was previously employed as a teacher as defined in section 1 in a special education program for school aged children in a non-public school in the commonwealth, if the tuition of all pupils in said non-public school 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 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 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.

For the purposes of this section, "non-public school" shall mean an institution operated by a private entity in the Commonwealth that will lead to or award school-aged children either a high school diploma or its equivalent; service in a "non-public school" does not include activities in a residence or afterschool program.

An Act Relative to Domestic Relations Orders

SECTION 1: Section 19 of Chapter 32 is hereby amended by adding the following sentence at the end of the second paragraph: "Such assignments shall be in form as prescribed by the retirement board."

AN ACT TO EXTEND THE OPPORTUNITY TO PURCHASE TEACHING SERVICE IN ALL TERRITORIES OF THE UNITED STATES

SECTION 1. The subdivision (4) of section 3 of Chapter 32 is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:

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 any of the Territories of the United States; 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.

AN ACT RELATIVE TO THE DEFINITION OF WAGES FOR RETIREMENT
CALCULATIONS

SECTION 1. Section 1 of Chapter 32 is hereby amended by adding at the end of the definition of "wages" the following paragraph:

Notwithstanding the foregoing, wages shall also include payments made by an employer to an employee in supplementation of weekly incapacity payments under the provisions of sections sixty-nine to seventy-five inclusive of chapter one hundred fifty-two, or of sections thirty-four, thirty-four A, thirty-four B, thirty-five A, thirty-five F, thirty-six, until a retirement allowance becomes effective for him under the provisions of sections one to twenty-eight inclusive of this chapter. The extent to which these supplemental payments are considered wages shall be limited, when combined with such incapacity payments, to the amount that in the determination of the retirement board the member would have received during the applicable time period, had they not been so incapacitated.

AN ACT RELATIVE TO PARENTAL AND FAMILY LEAVE EQUITY FOR MEMBERS OF
PUBLIC RETIREMENT SYSTEMS

SECTION 1. The second sentence of clause (i) of subdivision (1) of section 3 of Chapter 32 is hereby amended by adding after the word "duty" the following words:

"or other reasons permitted under the family and medical leave laws pertaining to his position"