

October 15, 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 Public Employee Retirement Administration Commission for consideration during the 2023-2024 legislative session.

- 1. AN ACT RELATIVE TO PENSION FORFEITURE**
- 2. AN ACT RELATIVE TO THE RECOVERY OF OVERTURNINGS**
- 3. AN ACT RELATIVE TO MODIFICATIONS OF RETIREMENT ALLOWANCES**
- 4. AN ACT RELATIVE TO ACCIDENTAL DISABILITY AND GROUP 1 EMOTIONAL DISTRESS**
- 5. AN ACT PROVIDING FOR STATEMENT OF FINANCIAL INTERESTS FLEXIBILITY**
- 6. AN ACT TO PROVIDE FOR PAYMENT OF CREDITABLE SERVICE**
- 7. AN ACT CLARIFYING THE CHAPTER 32 DEFINITION OF WAGES**

Below are the Commission's legislative bill drafts for filing in the 2023-2024 legislative session. Please feel free to contact me should you have any questions about the content of these bills or need any additional information. Thank you for your assistance.

Sincerely,

John W. Parsons, Esq.
Executive Director

PERAC's 2023-2024 bill texts:

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 2020 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. Section 10 of chapter 32 of the general laws, as appearing in the 2020 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 whom the member had contact with as part of his or her official duties.

(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) 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; provided further that, any decision by a board to entirely forfeit a member's benefit shall be consistent with the recommendation of the prosecuting attorney or their office; 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 intentionally concealed from or intentionally misreported to the commonwealth, or any political subdivision, district or authority of the commonwealth. If a member intentionally concealed compensation from or intentionally 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 superior court in which a member was convicted, or in Suffolk Superior Court, or in the Massachusetts Superior Court covering the geographic area in which a member resides. 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. If a member has been found to have misappropriated funds or property of their employer, 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.

END

An Act relative to the recovery of overearnings.

Paragraph (c) of Section 91 of chapter 32 of the general laws, as appearing in the 2020 Official edition, is hereby amended in line 120 by adding:

In the event that any excess is not recovered by the appropriate treasurer or other person responsible for the payment of the compensation, the retirement board of which the member is a retiree may recover an amount equal to the overearnings, but in no event shall such amount exceed the amount of the retirement allowance paid in the year in which the overearnings occurred.

END

An Act relative to modifications of retirement allowances.

Subdivision (3) of Section 8 of Chapter 32 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking in line 130 subdivision (3) and inserting in its place:

(3) Modifications of retirement allowances. If as a result of such medical report by a regional medical panel, as a result of the submission of earnings information under section ninety-one A, or as the result of the completion of a rehabilitation program as provided for under subdivision (1), or under subdivision (5) of section twenty-one, the commission finds that such retired member is engaged in gainful occupation and has excess earnings, for three or more consecutive years, which result in the repayment of his or her entire retirement allowance pursuant to section 91A, said member's retirement allowance shall be modified prospectively.

When a determination is made that a retirement allowance shall be modified, the retiree and the appropriate Retirement Board will be notified, and the retiree will be given the opportunity to be heard by the Commission or its designee. When the determination is final, the retiree and the appropriate Retirement Board will be advised. The retiree may appeal the Commission's determination to the Contributory Retirement Appeal Board pursuant to section 16. Such modification shall remain in effect, for at least one year, unless such medical report finds that the mental or physical condition of such member has deteriorated. If the annual rate of his earnings should later be changed, the yearly amount of his pension shall be further modified by reinstating, increasing, reducing, or suspending it, as the case may be.

The applicable Retirement Board may pay over to a health insurance carrier that portion of the allowance to maintain the disability retiree's health insurance coverage. A retiree whose allowance is modified pursuant to this process will continue to be considered as a disability retiree for purposes of chapter 32A, chapter 32B, chapter 34B, and section 100B of chapter 41.

The public employee retirement administration commission shall, subject to the provisions of section fifty of chapter seven, promulgate regulations establishing, and providing a system for annually adjusting for inflation and such other equitable factors as the commission deems relevant, the fair amount of outside income that may be earned by a member retired pursuant to section six or seven, and shall promulgate regulations for the determination of the potential earnings of any such retired member based upon such member's functional capacity, age, education, and experience.

END

An Act relative to accidental disability and group 1 emotional distress.

Paragraph (a) of subdivision (3) of section 7 of chapter 32 of the general laws, as appearing in the 2020 official edition, is hereby amended in line 182 by adding:

Members or beneficiaries filing for benefits under this section or section nine solely on the basis of an emotional disability, may use the official records of his department to establish proof of an injury sustained or a hazard undergone.

END

An Act providing for statement of financial interests flexibility.

SECTION 1. Section 20C of chapter 32 of the general laws, as appearing in the 2020 official edition, is hereby amended in line 78 by inserting after the words “section 16.”, the following: “A board member may petition the commission for a waiver of their removal from the board and their exclusion from future board service due to extenuating circumstances, provided that the member files their statement of financial interest by a date set by the commission.”

SECTION 2. This act shall take effect upon its passage.

END

An Act to provide for payment of creditable service.

Paragraph (b) of subdivision (1) of section 4 of chapter 32 of the general laws, as appearing in the 2020 official edition, is hereby amended in line 15 by inserting after “provided,;”:

that 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; provided further,

END

An Act clarifying the Chapter 32 definition of wages.

Section 1 of Chapter 32 of the general laws, as appearing in the 2020 official edition, is hereby amended in line 605 by inserting after the word “employer”:

, including any accrued sick, personal or vacation leave except when paid as a supplement to the receipt of weekly workers’ compensation benefits pursuant to section 69 of chapter 152;

END OF PERAC RECOMMENDATIONS