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Dale Kowacki
Executive Director

MEMORANDUM

date: June 25, 2009

to: All members, active and inactive

from: Dale Kowacki, Executive Director



Chapter 21 of the Acts of 2009 – Pension Reform

On June 16, 2009, the Governor signed legislation that makes changes to the pension law(s) of Massachusetts. Not everyone is affected by these changes but this mailing is going to all for your information. There are 26 sections of the legislation but not all have a direct impact on members so below is summary of the areas that are most directly applicable to members. A copy of the legislation is attached. Some of these changes are retroactive to July 1, 2009, some are not, and therefore it is noted when appropriate. Any sections of the new law not commented on, either do not apply, or are not significant. As with any major legislation, there will be a settling period where questions arise and answers sought and some interpretations will change, but for the most part these changes are what is "in play". Please call if you have questions.

There will be an open information session/discussion on Wednesday, July 8, 2009 from 5:00 pm to 9:00 pm in the 1st Floor Meeting Room at 278 Main Street, Greenfield. There will be short presentations at 5:00 and 7:00 with many opportunities for question and answer before, during and after. Come, ask your questions, and hear answers to other questions.

Sections 2 and 3 - Wages and Regular Compensation – The definition of "regular compensation" and "wages" were restricted further somewhat but it likely will mean very little change for any of you because most of the items listed already are not considered "wages". At this date, the Quinn bill is still included, as is longevity if it is regularly added each year. Some of the new exclusions are housing and lodging.

Section 4 – Elected Officials - Full year of Service for One Day of Work - this takes away the interpretation that an elected official would get a full year of creditable service for the calendar year even if they only served for one day in that year (i.e. January 1st).

* Some elected terms do not start right after the election. Some start on July 1st (Mayor of Greenfield), and some start (or end) when the "successor is qualified" (i.e. treasurer being bonded and setup as trustee of the bank accounts).

- Starting July 1, 2009, creditable service will start with the day they begin their term and end on the last day they serve. (i.e. May 3, 2006 to May 3, 2009 (3 years) versus January 1, 2006 to December 31, 2009 (4 years)).
- FRRS must calculate past and future creditable service based on “actual time served”.*
- **This is retroactive** to the start of their membership.
- This affects any buybacks or makeups of creditable service.
- Anyone with a retirement date of June 30, 2009 or earlier will not be affected.

Section 5 - \$5,000 and Creditable Service – Starting July 1, 2009 anyone earning less than \$5,000 will not be given creditable service.

- **This is not retroactive.** Service prior to July 1, 2009 will be preserved, but service after will be effected.
- Service that started before July 1, 2009 will be given until the end of a “specified” term (elected, appointed, or contracted), but no later than July 1, 2012.
- Positions **cannot** be combined to meet the \$5,000 limit.
 - But, once a position meets the \$5,000, the position can be included to meet the board’s regulation regarding prorated creditable service
- Membership status will change on July 1, 2009.
 - Those who are members already will be taken off retirement (no deductions) and put on OBRA or Social Security.
 - “Inactive” members will be allowed to take a refund or remain with the system.
 - New hires will not be eligible for membership.
- This does not affect buybacks or makeups for service worked prior to July 1, 2009.

Section 7 – Retirement Calculation for Dual Members of Different Systems– Establishes a different retirement formula for persons retiring from two retirement systems.

- Separate calculations based on each system; with pension payment combined and paid out by one.
- **Only applies to retirements on or after January 1, 2010.**
- Only applies if any of the concurrent service is on or after January 1, 2010.
- Exempt if vested (10 years) in each retirement system as of January 1, 2010.
- This does not apply to separate units within one retirement system.
- Applies regardless of what years are used in the retirement calculation.

Section 14 - Hold on Refund until Obligations Satisfied – This requires FRRS to contact the employer when a member is requesting a refund, and if the employee owes anything under the employee benefit plan, FRRS is required to hold the refund until the obligation is satisfied.

Chapter 21 of the Acts of 2009 – Pension Reform

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.

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: "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.

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: (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.

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: (e) A person who has been a member of 2 or more systems and who, on or after January 50 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.

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 64 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",

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 reelection".

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 reelection, or fails to become a candidate for nomination or reelection".

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 reelection, or".

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 reelection,

(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).

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 84 figure:10.

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

(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:
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.

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: 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.

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.

SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting after the word "authority", in line 84, the 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 AFLCIO

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..

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

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.

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.

Sandra A. Hanks
Board Chair

Herbert Sanderson
Board Vice Chairman

Paul Mokrzecki
Appointed Board
Member

David Gendron
Elected Board Member

Mary A. Stokarski
Elected Board Member

Dale Kowacki
Executive Director

FRANKLIN REGIONAL RETIREMENT SYSTEM
278 MAIN STREET, SUITE 311
GREENFIELD, MASSACHUSETTS 01301-3230

MEMORANDUM

date: June 25, 2009

to: All members, active and inactive

from: Dale Kowacki, Executive Director



I write to inform you of a proposal being debated on the state level that would change the retirement calculation to use "life-time earnings" instead of "average three highest years". A proposal that may impact your retirement. Currently it is with a study commission that will report to the House and Senate by September 1, 2009. Given the political will of the legislature and the governor to do something, I strongly advise that you write to them and tell them of your stance on this issue. The letter can be simple – they already know the issue – they just need to know how you want them to act.

In my June 17, 2009 letter to Alicia H. Munnell, Chairwoman, Special Commission to Study the Massachusetts Contributory Retirement System, I describe the issue and share my thoughts:

"Retirement Calculation using "Life-time Earnings":

The pension system is a fabulous vehicle for investing and returning the retirement funds of our local workforce back into the local economy. At its core, it is incredibly efficient, funding 80% of the typical retirement with funds from outside investments, and when fully funded, is less expensive for the taxpayers than social security. It also pays more to the retiree. A member retiring at 80% from a salary of \$50,000 would get a pension of \$40,000 versus a Social Security benefit capped at \$28,000.

It is my understanding that a proposal has been presented to the commission to do retirement calculations using the average salary over someone's career as a way to prevent "three-year spiking". In my opinion, this plan hits too broad at a problem that occurs only one percent of the time and no longer exists because it has already been addressed much more directly by section 7 of the Pension Reform legislation just signed into law by the Governor.

Ninety-nine percent of our people work a typical career pattern and retire after 20 to 30 years of steady income growth. These people grew into their living standard. At the same time, the system had steady funds to invest and fund their retirement, fully. To change the formula would have a detrimental effect on the standard of living for these folks. Someone who retires from a salary of \$50,000 at age 65 after 32 years would currently receive \$40,000 per year. Averaging the salary for their career would yield only \$26,000 – effectively halving their standard of living. These folks are not the problem – we have them funded, fully, because we have been investing for their retirement. Please do not change the formula."

I have shared my letter to Alicia H. Munnell with our senators and representatives (as well as the governor's people), so when you write, your letters only need to echo these sentiments.

Write to the Governor and your Senator and Representative.

The Governor:

His Excellency Deval L. Patrick
Governor of the Commonwealth of Massachusetts
Massachusetts State House, Room 360
Boston, Massachusetts 02133

MEMBERS OF THE GENERAL COURT

SENATE

HOUSE OF REPRESENTATIVES

FIRST FRANKLIN REPRESENTATIVE DISTRICT

Representative Stephen Kulik (Worthington)
Representing: Conway, Deerfield, Leverett, Montague, New Salem, Shutesbury, Sunderland, Wendell, and Whately in Franklin County.

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Representative Kulik: Rep.StephenKulik@hou.state.MA.US
Paul Dunphy: paul@stevekulik.org

SECOND FRANKLIN REPRESENTATIVE DISTRICT

Representative Christopher Donelan (Orange)
Representing: Erving, Gill, Greenfield, Orange, and Warwick in Franklin County.

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Representative Donelan:
Rep.ChristopherDonelan@hou.state.ma.us

SECOND BERKSHIRE REPRESENTATIVE DISTRICT

Representative Denis E. Guyer (Dalton)
Representing: Ashfield, Bernardston, Buckland, Colrain, Leyden, Northfield, and Shelburne in Franklin County.

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FIRST BERKSHIRE REPRESENTATIVE DISTRICT

Representative Daniel Bosley (North Adams)
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Representative Bosley: Rep.DanielBosley@hou.state.ma.us

Senator Stanley Rosenberg (Amherst)
Representing: Bernardston, Buckland, Colrain, Deerfield, Erving, Gill, Greenfield, Leverett, Leyden, Montague, New Salem, Northfield, Shelburne, Shutesbury, Sunderland, Wendell, and Whately in Franklin County.

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Senator Benjamin B. Downing (Pittsfield)
Representing: Ashfield, Charlemont, Conway, Hawley, Heath, Monroe, and Rowe in Franklin County.

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Senator Downing: Benjamin.Downing@state.ma.us
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Senator Stephen M. Brewer (Barre)
Representing: Orange and Warwick in Franklin County.

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