



City of Cambridge

44-
Calendar Item #1

IN CITY COUNCIL

~~June 10, 1996~~
June 24, 1996

COUNCILLOR DUEHAY

WHEREAS: The Massachusetts Legislature is currently considering H.6064, "An Act to Reform the Disability Retirement System;" and

WHEREAS: H.6064 is a crucial step in bringing a much-needed fundamental and comprehensive reform to the state's disability system for public employees; now therefore be it

RESOLVED: That the City Council go on record urging the Legislature to enact and the Governor to sign H.6064; and be it further

RESOLVED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to **House Speaker Finneran, Senate President Birmingham, the Cambridge legislative delegation and Governor Weld** on behalf of the entire City Council.

In City Council June 24, 1996
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
City Clerk



City of Cambridge

44.

IN CITY COUNCIL

June 10, 1996

COUNCILLOR DUEHAY

WHEREAS: The Massachusetts Legislature is currently considering H.6064, "An Act to Reform the Disability Retirement System;" and

WHEREAS: H.6064 is a crucial step in bringing a much-needed fundamental and comprehensive reform to the state's disability system for public employees; now therefore be it

RESOLVED: That the City Council go on record urging the Legislature to enact and the Governor to sign H.6064; and be it further

RESOLVED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to **House Speaker Finneran, Senate President Birmingham, the Cambridge legislative delegation and Governor Weld** on behalf of the entire City Council.

CHARTER RIGHT WAS EXERCISED BY COUNCILLOR TOOMEY.

C. Duesky

Whereas: The Massachusetts Legislature is currently considering H. 6064, an Act to Reform the Disability Retirement System; and

Whereas: H. 6064 is a crucial step in bringing a much-needed ~~Act~~ fundamental and comprehensive reform to the state's disability system for public employees; now therefore be it

Resolved: That the CC go on recording ~~supporting~~ ~~our~~ ~~passage~~ of urging the Legislature to enact and the Governor to sign H. 6064; and be it further

Resolved: SEC to ^{the Speaker Fineman, Senate President Birmingham} Cambridge legislative delegation and Governor Weld in behalf of the entire CC

Ch. Pt by TT
Calandra



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 10, 1996

LD

To The Honorable, The City Council:

Enclosed is a report in response to a City Council order of May 20, 1996 regarding the State Pension system.

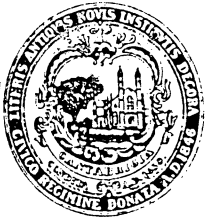
I recommend that the City Council endorse the recommendations of the Massachusetts Municipal Association by a Late Order this evening in order to communicate the Cambridge City Council support of H6064 to the Legislature in a timely fashion.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment

CR by Cit.




CITY OF CAMBRIDGE
795 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139-2319
TEL. 617-349-4332
FAX. 617-349-4312

PERSONNEL DEPARTMENT
MICHAEL P. GARDNER
Director

MEMO

To: Robert W. Healy
City Manager

From: Michael P. Gardner 
Personnel Director

Subject: Council Order #028, dated 5/20/96 RE: Analyze the Defects in the State's Disability System

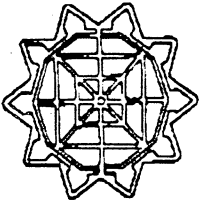
Date: June 10, 1996

Attached you will find a copy of the correspondence sent from the Massachusetts Municipal Association to the Senate and House Chairs of the Joint Public Service Committee of the Great and General Court concerning reform of the state's disability pension system. Also attached is a copy of the Press Release that accompanied the correspondence.

The MMA supports, with modifications, the essential provisions of H. 6064, an Act to Reform the Disability Retirement System, a bill recently filed by Governor William Weld.

Our office was consulted by the MMA concerning the appropriate response to the Governor's bill and the suggestions we made were incorporated into the text of the MMA position. The letter succinctly outlines many of the most important weaknesses in the current disability system. The letter also describes appropriate corrective measures.

Our office recommends and encourages your support and that of the City Council for the position adopted by the MMA.



**Massachusetts
Municipal
Association**

Sixty Temple Place

Boston, Massachusetts 02111

(800) 882-1498

(617) 426-7272 FAX (617) 695-1314

June 5, 1996

The Honorable Joan Menard, House Chair
The Honorable Marian Walsh, Senate Chair
Joint Committee on Public Service
State House
Boston, Massachusetts 02133

Dear Representative Menard, Senator Walsh, and members of the Committee,

The Massachusetts Municipal Association strongly supports H. 6064, An Act to Reform the Disability Retirement System. The disability pension system for municipal employees is broken and desperately needs to be fixed. It is only in the public sector that injuries on the job are treated as retirement matters, and that the potential earnings capacity of employees injured on the job are not recognized. The Public Employee Retirement Administration has made significant reductions in the runaway abuses of the pension system that the state was experiencing in the early 1980's. However, PERA has only been able to do so much given state laws and limited resources.

H. 6064 is a crucial step in bringing a much-needed fundamental and comprehensive reform to the state's disability system for public employees. The most important and essential provisions of H. 6064 are:

Definition of Disability. Chapter 32, the state law governing retirement and pensions for local government employees, defines disability as "incapacitated for further duty." This allows many individuals to receive disability benefits if they cannot perform every function of the job they were employed to do. Changing the definition to "unable to perform the essential duties of the job" would have the effect of reserving permanent and total disability benefits to the truly disabled, and would recognize that partially disabled individuals have some earnings capacity, and are capable of productive employment.

Partial Disability Provision. As the *Boston Globe* spotlight report demonstrated, many former municipal employees who are receiving disability pensions are able to perform other jobs. Creating a partial disability system would dramatically reduce the number of total disabilities granted each year, and would more appropriately compensate individuals according to their disability. The concept of partial disability is standard in the private sector and for non-public safety employees as well, through the traditional workers' compensation system. Partial disability provisions should apply to all municipal and state employees, in order to provide a more balanced system that compensates employees for

their injuries. Totally and permanently disabled individuals would continue to receive full disability pensions, while those who are partially disabled would receive a portion of a full disability based on their earnings potential.

Along with the creation of a partial disability, there certainly needs to be some reform of the Injured-on-Duty law (IOD), Section 111F of MGL Chapter 41, the separate compensation program for injured public safety employees. Under the injured-on-duty law, there is no incentive for permanently injured employees to retire, since the IOD benefits are much higher than retirement benefits. Employees out under IOD receive full wages, tax free, while employees with disability retirement benefits receive 72% of their wages. One major reason why the IOD statute should be changed is that the introduction of a partial disability benefit, where individuals would receive less than 72% of their pay, would create even more resistance to leaving IOD to receive a reduced pension. The MMA believes that reform of the injured-on-duty law is also necessary to remove incentives in state law that encourage systemic abuse. The current system gives incentives to stay out longer because it provides a de facto pay raise when employees go out under Section 111F. There is no other provision in state law that provides for such an increase in net pay for any other class of employees.

Retirement Boards. The MMA supports the provisions in H. 6064 that do the following: remove the determination to return to work from retirement boards to the PERA commissioner; remove retirement boards' discretion regarding pension forfeitures for employees convicted of misappropriating funds of their employer; removes the requirement that retirement boards hold hearings to find that employee terminations are justified before the terminations are effective; and allow the PERA commissioner to initiate pension forfeiture proceedings examinations. Retirement boards should not be making decisions on disability pensions for municipal employees. In many communities, employees' colleagues serve on retirement boards, and are involved in decisions as to whether their co-workers and friends are disabled, whether they were terminated appropriately, and whether pensions should be forfeited. This situation creates a potential conflict of interest, and provides an opening for abuse. Disability pension determinations should be put in the hands of an expert review board that is accountable for its decisions.

Mandatory Rehabilitation. Chapter 32 permits, but does not require, physical and vocational rehabilitation. The *Boston Globe* reported that very few disability retirees take advantage of this provision. H. 6064 would require mandatory rehabilitation after employees have been awarded disability retirement. The MMA supports a requirement that disability retirements be granted only after individuals have participated in physical and vocational rehabilitation programs. Rehabilitation to return employees to their job or another job should be the first step in the process. The potential for further employment should be thoroughly pursued before the employees are determined to be unemployable, and granted permanent disability retirement.

Return to Work. The MMA is opposed to the provision that gives disability retirees an absolute right to return to their former job within a two year period post retirement. A mandatory return to work requirement would restrict municipal employers and could create unnecessary costs for local governments. The creation of a partial disability provision, and the mandatory rehabilitation prior to an award of a permanent disability would significantly reduce the number of employees receiving permanent disabilities, and we expect that this would reduce the number of totally disabled individuals eligible to return to work. In many cases, employers fill the positions vacated by the employees out on disability, and there may not be any other positions open. It would be an undue burden for municipalities to be forced to accommodate returning retirees by terminating more recently-hired employees. It may also be difficult to fill a position through provisional appointments. In addition, the

MMA supports refresher training courses for retirees before they return to their jobs. In the case of public safety employees, it would be in the best interest of returning employees' safety, the safety of their peers, and the community to require that they complete the training academy, if they have been out for over a certain period.

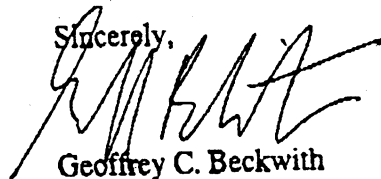
Under current state law, the Massachusetts disability retirement system does not work. As the *Boston Globe* spotlight report indicates, in too many instances the system has been reduced to a game. A game that allows for abuse by offering financial rewards to those who are not permanently and totally disabled, and makes no notable attempt to get the employees back to work when appropriate.

This situation is unfair to everyone - including other employees, local governments, and taxpayers. It is unfair to other municipal employees because scarce resources have to be used to pay for this costly state-mandated disability pension system. Hardworking municipal employees who have observed abuses in the system can only be negatively impacted through increasing frustration and declining morale. Taxpayers are paying costly benefits to people who are clearly not totally and permanently disabled. Cities and towns have been forced to use scarce public resources to pay benefits to individuals who are not disabled. Finally, it is unfair to the disabled who are not offered the kind of vocational and physical rehabilitation services that would help return them to productive work and professional opportunities.

Comprehensive reform, beginning with the enactment of H. 6064, is a top priority for municipal government. Such action is in the best interest of public employees, local governments, and the taxpayers of Massachusetts. We ask the Committee to favorably act on H. 6064, and to work for its quick passage.

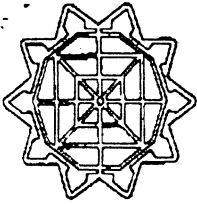
Thank you for your attention and action on this important matter. Please do not hesitate to contact me, David Baier or Marie Johnson at any time if you have any questions or comments.

Sincerely,



Geoffrey C. Beckwith
Executive Director

GCB/mj.db



**Massachusetts
Municipal
Association**

Sixty Temple Place (800) 882-1498
Boston, Massachusetts 02111 (617) 426-7272 FAX (617) 695-1314

June 5, 1996

FOR IMMEDIATE RELEASE

FOR MORE INFORMATION, CONTACT: Patricia Mikes @ 617-426-7272

**MUNICIPAL LEADERS CALL FOR SWEEPING REFORM OF
DISABILITY PENSION SYSTEM**

BOSTON, MA -- Municipal officials from across Massachusetts joined forces today at the State House to call for swift legislative action to reform the state's disability pension system.

"Comprehensive reform of the state's disability retirement system is long overdue, and immediate action is necessary to end abuses that have needlessly cost cities and towns millions of dollars," said Geoffrey C. Beckwith, the Executive Director of the Massachusetts Municipal Association (MMA), the private nonprofit organization that provides advocacy, research and education services to the state's cities and towns.

Local officials were at the State House to testify in support of H. 6064, An Act to Reform the Disability Retirement System, legislation filed by Governor William Weld that was the subject of a public hearing before the Legislature's Committee on Public Service. The legislation addresses many of the key issues that would make the Massachusetts public employee disability pension law less susceptible to fraud and abuse, according to municipal leaders.

"What we have now is a disgrace," said Somerville Mayor Michael Capuano. "By inviting abuse, the current system is unfair to hardworking public employees, unfair to those who are legitimately injured on the job, and unfair to the taxpayers." Mayor Capuano said that the Legislature must act because state law prevents municipal officials from implementing changes at the local level. "Our hands have been tied for too long, and we need action now," he said.

Burlington Town Administrator David Owen, the Chair of the MMA's Policy Committee on Personnel and Labor Relations, endorsed H. 6064 as "an important first step that can get us on track to finally achieve lasting reform that will save money and invest our scarce resources where they belong: to providing rehabilitation services and back to work options for employees injured on the job, and reserving total disability pension benefits to those who are truly disabled."

"The system is at a crisis point," said Leominster Mayor Dean Mazarella. "Taxpayers are demanding immediate action to close the loopholes that have been stretched wide open by some who have sought to abuse the system. This high-profile waste erodes public confidence in government, and makes it even more difficult to deliver basic services," he said.

- more -

The MMA cited the following provisions in H. 6064 that would bring immediate relief: establishing a more flexible definition of a permanent disability under the law; establishing a partial disability benefit, ending the current all-or-nothing standard that provides permanent total disability benefits to workers who are otherwise able to perform other jobs; light duty and physical and vocational rehabilitation programs designed to return employees to their jobs whenever possible; and suspending or eliminating benefits to disability retirees incarcerated for certain crimes.

In addition to calling for the immediate passage of H. 6064, the MMA and local officials also called on the Public Service Committee to reform the state's Injured-on-Duty (IOD) law, section 111F of Chapter 41, the separate compensation program for public safety employees. According to the MMA, there is no incentive for permanently injured employees currently on IOD leave to retire, since the IOD benefits are much higher than retirement benefits. Employees out under IOD receive full wages, tax free, while employees with disability retirement benefits receive 72% of their wages. "The MMA believes that reform of the injured-on-duty law is also necessary in order to remove incentives in state law that encourage systemic abuse," said MMA Executive Director Beckwith in testimony submitted to the Committee. "The current IOD system provides incentives for abuse because IOD leave actually provides a de facto pay raise - there is no other provision in state law that provides such an invitation for abuse, even when compared with the problems inherent in the current disability retirement system."

Beckwith concluded the press conference by stressing the issue's priority status for municipal government. "Swift legislative action on H. 6064 is in the best interest of public employees, local and state government, and the taxpayers of Massachusetts," he said.

Other leaders supporting efforts to reform the disability retirement system, and attending the State House event in support of H. 6064, included Leominster Mayor Dean Mazarella, North Andover Town Manager Robert Halpin, Holbrook Executive Secretary James Boudreau, Boston Retirement Board Executive Director Michael Travaglini, Boston's Risk Management Coordinator Linda Fraley, and Massachusetts Taxpayers Foundation President Michael Widmer.

The Commonwealth of Massachusetts



WILLIAM F. WELD
GOVERNOR
MARGO PAUL CELLUCCI
LIEUTENANT GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 727-3800

May 24, 1996

To the Honorable Senate and House of Representatives:

We are submitting today for your consideration a bill entitled "An Act to Reform the Disability Retirement System." This legislation contains a number of initiatives intended to curb abuses in the state disability retirement system.

Our bill includes the following proposals:

- As a threshold matter, the definition of permanent disability is changed from "incapacitated for further duty" to "unable to perform the essential functions of the job." This is a more flexible definition better reflecting the realities of today's workplace.
- A partial disability pension is established where a previously disabled employee is able to return to some type of work, but due to the disability, the employee has a reduced earnings capacity.
- A light duty option is proposed for retirees able to return to work, but unable to return to their former position. Earnings from light duty will offset pension payments, reducing, or in some cases, eliminating a disability pension.
- A back to work requirement is proposed so that a retiree who receives medical clearance within two years must be returned to his or her former position. The department head veto under current law is eliminated.
- This bill emphasizes the value of physical and vocational rehabilitation by mandating that those on disability submit to examinations and participate in rehabilitation programs if deemed appropriate. Failure to appear at an examination or participate in a rehabilitation program without good cause will result in pension forfeiture.

- In addition to tightening up existing sanctions for those who misappropriate funds or commit other crimes against their employer, our bill contains two new provisions regarding forfeiture of benefits for criminal conduct. First, any retiree who is incarcerated has his benefits suspended during the period of incarceration. Second, for any retiree who is convicted of a felony, the pension is revoked.

Passage of this bill will keep undeserving individuals off the disability rolls while ensuring that those legitimately injured receive meaningful rehabilitation and the opportunity to return to the workforce.

We urge your prompt and favorable consideration of this legislation.

Respectfully submitted,

W. Wamf. Weld

William F. Weld
Governor

Geo Paul Cellucci

Geo Paul Cellucci
Lieutenant Governor

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Six.

AN ACT TO REFORM THE DISABILITY RETIREMENT SYSTEM.

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

1 SECTION 1. Section 50 of chapter 7 of the General Laws, as
2 appearing in the 1994 Official Edition, is hereby amended by
3 striking out, in lines 8 to 13, the words "subject to the approval of
4 the general court; provided, that if the general court takes no final
5 action relative to such rules and regulations within forty-five days
6 of the date said such rules and regulations are filed with the clerks
7 of the house of representatives and the senate, the general court
8 not having prorogued within said forty-five days, such rules and
9 regulations shall be deemed to be approved".

1 SECTION 2. Said section 50 of said chapter 7, as so appearing,
2 is hereby further amended by striking out lines 92 through 102
3 inclusive.

1 SECTION 3. Section 39 of chapter 31 of the General Laws, as
2 appearing in the 1994 Official Edition, is hereby amended by
3 striking out, in lines 29 and 30, the words "by the retirement
4 board, as defined in section one of chapter thirty-two,".

1 SECTION 4. Subdivision (2) of section 5 of chapter 32 of the
2 General Laws, as appearing in the 1994 Official Edition, is hereby
3 amended by adding, after the word "section" in line 196, the
4 following words:— or upon attaining the age of sixty-five in the
5 case of a member retired pursuant to section seven.

1 SECTION 5. Section 6 of chapter 32, as so appearing, is hereby
2 amended by striking out, in lines 36 and 37, the words "is
3 mentally or physically incapacitated for further duty, that such

4

HOUSE — No. 6064

[May

4 incapacity is likely to be permanent" and inserting in place thereof
5 the following words:— is unable to perform the essential duties of
6 his or her job, that such inability is likely to be permanent.

1 SECTION 6. Section 7 of chapter 32, as so appearing, is hereby
2 further amended by striking out, in lines 4 and 5, the words "who
3 becomes totally and permanently incapacitated for further duty"
4 and inserting in place thereof the following words:— who is
5 unable to perform the essential duties of his or her job and that
6 such inability is likely to be permanent.

1 SECTION 7. Subdivision (2) of said section 7 of said chap-
2 ter 32, as so appearing, is hereby further amended by adding after
3 paragraph (c) the following new paragraph:—

4 (d) Upon attaining the age of sixty-five, the retirement
5 allowance of any member who has retired pursuant to this section
6 shall cease and the member shall receive a retirement allowance
7 pursuant to section five. Said member shall receive creditable
8 service for the period during which the member received a retire-
9 ment allowance pursuant to this section.

1 SECTION 8. Chapter 32 of the General Laws is hereby
2 amended by striking section 8 and inserting in place thereof the
3 following new sections:—

4 Section 8. (a) The board shall require any member retired for
5 disability under the provisions of section six or seven to submit to
6 a mental or physical examination, pursuant to paragraph (b), at
7 least once a year during the first two years following retirement
8 and at least once every two years thereafter or upon written
9 request by any such member. The examination required pursuant
10 to this section shall, at a minimum, determine the scope of the
11 member's physical capabilities in light of the disability and deter-
12 mine the types of vocational or physical rehabilitation necessary
13 to enable the member to perform the essential duties of his job or
14 to enable the member to perform the essential duties of any other
15 job given the member's condition. If such member shall fail to
16 appear at any such required examination without good cause,
17 all his rights in and to the retirement allowance provided for in
18 section six or seven shall be revoked.

19 (b) For the purposes of mental or physical examinations under
20 this section and sections eight A, eight B, and eight C, the com-
21 missioner may appoint either a single physician or a three member
22 regional panel to examine the retired member. No such examina-
23 tion shall take place after the member has attained the age of
24 sixty-five.

25 Section 8A. If within two years of the date that a member is
26 retired under section six or seven or after the completion of the
27 two annual re-examinations required under section eight,
28 whichever is later, the single physician or the regional medical
29 panel determines that the retired member is able to perform the
30 essential duties of the position from which he retired, notwith-
31 standing any general or special law to the contrary or the provi-
32 sions of any collective bargaining agreement or any existing or
33 past personnel practices, said member shall be returned to said
34 position. If within said two years the position has been filled, the
35 employee occupying the position shall either be terminated or
36 bumped in accordance with the provisions of any applicable col-
37 lective bargaining agreement and the provisions of chapter thirty-
38 one. If after two years but earlier than five years of the date that a
39 member is retired under section six or seven, the single physician
40 or the regional medical panel determines that the retired member
41 is able to perform the essential duties of the position from which
42 he retired, notwithstanding any general or special law to the con-
43 trary or the provisions of any collective bargaining agreement or
44 any existing or past personnel practices, said member shall be
45 returned to said position, provided the position is vacant. If the
46 position has been filled, the member shall be granted a preference
47 for the next available position for which he is qualified. All rights
48 of the member in and to the retirement allowance provided for in
49 section six or seven shall cease as of the date on which the
50 member returns to work. Upon return to work, the member shall
51 be reinstated in the system with all the rights said member had at
52 the time of retirement and shall receive creditable service for any
53 period during which he was retired. In the event the member is
54 granted a retirement pursuant to section seven within five years of
55 his return to work which is based on the condition or an aggrava-
56 tion of the condition for which the member had previously been
57 retired, the benefit paid shall not exceed the benefit paid to the
58 member prior to his or her return to work.

59 Section 8B. (a) If after consideration of the report of the
60 medical panel or the single physician or the results of a rehabilita-
61 tion program or other relevant information, the commissioner
62 finds that a member retired under section six or seven is able to
63 perform the essential duties of any type of employment, then the
64 yearly amount of the member's retirement allowance shall be
65 adjusted to a partial disability pension or revoked as follows.
66 The amount of the partial disability pension shall be equal to
67 the member's annual permanent disability retirement allowance
68 minus the pension adjustment. For purposes of this section, the
69 pension adjustment is defined as seventy-two percent of the
70 amount of annual potential earnings determined pursuant to this
71 section. If the annual rate of the member's pension adjustment is
72 greater than his or her retirement allowance, then the member's
73 retirement allowance shall be revoked. Upon issuance of a partial
74 disability determination, the commissioner shall order the board to
75 immediately reduce the member's pension to a partial disability
76 pension. The commissioner shall determine the potential earnings
77 of any such retired member based upon such member's physical
78 and mental capacity, age, education, experience, actual outside
79 earnings and other factors.
80 (b) Upon a determination by the commissioner of partial dis-
81 ability pursuant to paragraph (a), and notwithstanding any general
82 or special law to the contrary or the provisions of any collective
83 bargaining agreement or past or present personnel practices, the
84 governmental unit, for which the member was employed at the
85 date of retirement, shall hire said member for any position within
86 the governmental unit for which said member meets the required
87 job qualifications. If no vacancy exists for which said member
88 meets the job qualifications, the member shall be granted a pre-
89 ference for the next available position for which he is qualified.
90 The commissioner, in consultation with the department of
91 personnel administration, shall promulgate regulations to specify
92 the terms and conditions of the employment preference in this
93 section and in section eight A. Upon return to work, the member
94 shall be reinstated in the system with all the rights he had at the
95 time of retirement and shall receive creditable service for any
96 period during which he was retired; provided, however, that the
97 maximum number of years credited shall not exceed five years.

98 Upon return to work, the member's disability pension payable
99 under paragraph (a) shall be reduced by any amount that the mem-
100 ber's regular compensation, net of federal and state income taxes,
101 exceeds the pension adjustment determined in paragraph (a). In
102 the event the member is granted a retirement pursuant to section
103 seven within five years of his return to work which is based on the
104 condition or an aggravation of the condition for which he had pre-
105 viously been retired, the benefit paid shall not exceed the benefit
106 paid to the member prior to his return to work.

107 Section 8C. The commissioner shall require every member
108 retired under the provisions of section six or seven to participate
109 in an evaluation to determine whether such member would benefit
110 from a medical or vocational rehabilitation program. If said
111 member fails to appear at a scheduled evaluation without good
112 cause, all rights of the member in and to the pension provided for
113 in section six or seven shall immediately cease. If following the
114 evaluation the commissioner determines that such retired member
115 may benefit from such a rehabilitation program and that such a
116 program is cost effective the commissioner shall notify the retired
117 member and schedule such rehabilitation program. If the retired
118 member fails to complete the program without good cause, said
119 member's rights in and to the pension provided for in section six
120 and seven shall immediately cease.

1 SECTION 9. Subdivision (1) of section 15 of said chapter 32,
2 as so appearing, is hereby amended by striking out, in lines 14
3 and 15, the words "except upon such terms and conditions as the
4 board may determine".

1 SECTION 10. Subdivision (2) of said section 15 of said chap-
2 ter 32, as so appearing, is hereby further amended by inserting, in
3 line 17, after the word "board" the following words:— by the
4 commissioner.

1 SECTION 11. Subdivision (3) of said section 15 of said chap-
2 ter 32, as so appearing, is hereby further amended by striking out,
3 in lines 37 and 38, the words "unless and until full restitution for
4 any such misappropriation has been made except upon such terms
5 and conditions as the board may determine".

1 SECTION 12. Said section 15 of said chapter 32, as so
2 appearing, is hereby further amended by adding at the end thereof
3 the following subdivisions:—

4 (5) Suspension of pension while incarcerated. — In the event
5 that a member who is receiving a retirement allowance pursuant to
6 section six or section seven is incarcerated in a federal, state or
7 county prison, house of correction or other correctional institute,
8 payment of the member's retirement allowance shall be suspended
9 irrevocably during the period of incarceration or confinement.

10 (6) Forfeiture of pension upon conviction of felony — In the
11 event that a member receiving a retirement allowance pursuant to
12 section six or seven is convicted of a felony, payment of said
13 retirement allowance shall immediately cease and the member
14 shall receive no further retirement allowance under section six or
15 seven nor shall any beneficiary be entitled to receive any benefits
16 on account of such member pursuant to section six or seven.

1 SECTION 13. Section 16 of said chapter 32, as so appearing, is
2 hereby further amended by striking out subdivision (3) in lines 44
3 through 59 inclusive and by renumbering subdivision (4) and (5).

1 SECTION 14. Subdivision (5) of section 20 of said chapter 32,
2 as so appearing, is hereby amended by adding at the end thereof
3 the following new paragraph:—

4 (1) In no event shall the service of any person as an appointed or
5 elected member on a board created pursuant to this section exceed
6 six years, nor shall any combination of years as an appointed or
7 elected member exceed six years.

1 SECTION 15. Chapter 32 of the General Laws is amended by
2 striking section 91A and inserting in place thereof the following
3 new section:—

4 Section 91A. (a) Every person pensioned or retired under any
5 provision of this chapter shall in each year on or before April fif-
6 teenth subscribe under the penalties of perjury and file with the
7 commissioner a statement, in such form as the commissioner shall
8 prescribe, certifying the full amount of his earnings during the
9 preceding year. Such pensioned or retired person shall annually
10 submit to the commissioner all pertinent W-2 forms, 1099 forms,

11 other requested tax forms and proof of income, and any other doc-
12 umentation requested by the commissioner. Said forms and infor-
13 mation shall be submitted on or before April fifteenth of each
14 year. If such pensioned or retired person fails to submit such state-
15 ment or such forms, the member's rights in and to the retirement
16 allowance provided for in section six and seven shall cease and
17 shall in no event be reinstated. If such earnings exceed an amount
18 which when added to the member's retirement allowance is
19 greater than seventy-two percent of the amount of regular com-
20 pensation which would have been payable to such member if such
21 member had continued in service in the grade held by him at the
22 time he was retired, said member shall refund the portion of his
23 retirement allowance for such preceding year equal to such excess
24 and until such refund is made, his pension or retirement allowance
25 shall be held as security therefor.

26 (b) There shall be a wage reporting system and computer match
27 file, which shall be operated in accordance with the provisions of
28 this section. On not less than an annual basis, the commissioner
29 shall provide to the department of revenue such information as
30 may be agreed upon pursuant to the terms of an interagency
31 agreement, to be executed forthwith, between the department of
32 revenue and the division of public employee retirement adminis-
33 tration. The department of revenue shall compare its data with
34 data furnished to it by the commissioner, so as to determine if per-
35 sons retired or pensioned are in compliance with this chapter. The
36 department of revenue shall notify the commissioner of its deter-
37 mination.

38 (c) The division of public employee retirement administration
39 is hereby deemed to be an agency required to have access to
40 criminal record offender information pursuant to clause (b) of sec-
41 tion one hundred and seventy-two of chapter six. On at least an
42 annual basis, the commissioner shall compare lists of all those
43 receiving retirement allowances pursuant to sections six and seven
44 with the information obtained pursuant to clause (b) of section
45 one hundred and seventy-two of chapter six. In the event said
46 comparison gives the commissioner reason to believe that action
47 should be taken, the commissioner shall initiate proceedings
48 pursuant to section fifteen.

1 SECTION 16. Section ninety-one B of chapter thirty-two of the
2 General Laws is hereby repealed.

1 SECTION 17. Section 25 of chapter 268A of the General Laws,
2 as appearing in the 1994 Official Edition, is hereby amended by
3 striking out, in lines 27 and 28, the words "but all contributions
4 paid by him into a retirement fund, if any, shall be returned to
5 him".

1 SECTION 18. The provisions of this act shall become effective
2 on date of passage.

AN ACT TO REFORM THE DISABILITY RETIREMENT SYSTEM

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Chapter 7, § 50 to delete the authority of the Legislature under current law to approve rules and regulations promulgated by PERA.

SECTION 2. Amends Chapter 7, § 50 to delete procedural process whereby PERA's regulations are approved by the Legislature.

SECTION 3. Amends Chapter 31, § 39 by eliminating provision in the civil service law which provides that if a disabled employee is subsequently capable of employment that the determination to return the employee to work is to be made by the retirement board. The legislation eliminates the role of the boards in returning employees to work.

SECTION 4. Amends Chapter 32, § 5 to transfer retirees from disability retirement to regular retirement upon reaching the age of 65.

SECTION 5. Amends Chapter 32, § 6, the provision governing ordinary disabilities, to change the definition of permanent disability. This section ties the definition to the ability to perform "essential duties" of a job rather than all duties as the definition under current law has been construed by the courts.

SECTION 6. Amends Chapter 32, § 7, the provision governing accidental disabilities, to change the definition of permanent disability. The intent is the same as SECTION 5, above.

SECTION 7. Amends Chapter 32, § 7 to provide that a retiree on accidental disability is transferred to a regular pension upon reaching the age of 65.

SECTION 8. Amends Chapter 32, § 8 which currently sets forth the procedure for reexamination of members, restoration of members to active service, and modifications of retirement allowance. The bill creates four new sections described below:

Section E. Requires disability retirees to submit to mental or physical examinations at least once per year during the first two years following retirement and at least once every two years thereafter. The annual examination requirement in the first two years is required because pursuant to Section 8A below, there is a two year window during which the retiree's job is held open. If the retiree fails to appear at an examination without good cause, the pension is forfeited. This section also permits examination by a single physician which in many cases will be more cost

effective. Under current law, an examination is not mandatory and there is no forfeiture provision.

Section 8 A. Requires that if within two years of retirement the retiree receives medical clearance to return to the same position from which he retired, the employer must take him back. Therefore, any position filled by an employer due to the incumbent retiring on a disability is filled provisionally for two years. If the position is filled and the retiree returns, the provisional employee is either bumped in accordance with applicable civil service law and his collective bargaining agreement or is terminated. If within five years (but after two years) of retirement, the retiree receives medical clearance to return to the same position from which he retired, the employer must provide an employment preference. This section also provides that if a retiree who returns to work retires on an accidental disability within five years, the amount of the disability will not exceed the amount of his prior disability pension. Under current law, the department head retains a veto over taking back disability retirees.

Section 8 B. This section creates a partial disability benefit and a light duty option. The partial disability, similar to the concept under workers' compensation law, is based on reduced earnings capacity. After consideration of medical reports or the results of a rehabilitation program or other information, the Commissioner may find that a member who is retired on disability is able to engage in some type of employment. If so, the full pension is reduced to a partial disability pension by subtracting 72% of the amount of potential earnings from the full pension.

This section also provides a light duty option for a retiree who receives medical clearance to return to work in a position other than the one from which he retired. If no vacancy exists in the governmental unit where the retiree was formerly employed for which the retiree meets the job qualifications, the retiree is granted a preference for the next available position. The partial disability pension paid to the retiree who returns to light duty is reduced if actual earnings exceed potential earnings upon which the partial disability pension is based.

Section 8 C. This section requires disability retirees to participate in an evaluation to determine whether the retiree would benefit from a medical or vocational rehabilitation program. Participation in the program is mandatory. If the retiree fails to participate without good cause, the pension is forfeited. Under current law, the evaluation is mandatory, but participation in the rehabilitation program is not mandatory and there is no forfeiture provision.

SECTION 9. Amends Chapter 32, § 15 to remove retirement board's discretion regarding a pension forfeiture for an employee convicted of misappropriating funds of his employer.

SECTION 10. Amends Chapter 32, § 15 to allow the commissioner to initiate pension forfeiture proceedings.

SECTION 11. Amends Chapter 32, § 15 to remove the provision allowing beneficiaries to receive benefits if a retiree convicted of misappropriating funds makes restitution.

SECTION 12. Amends Chapter 32, § 15 to add new provisions to: (1) suspend a pension if a retiree is incarcerated, and (2) provide for a forfeiture of the pension when a retiree is convicted of a felony offense.

SECTION 13. Amends Chapter 32, § 16 to eliminate the requirement for local boards to hold a hearing to find that employee terminations are justified before the termination is effective.

SECTION 14. Amends Chapter 32, § 20 to create a six year term limit for elected or appointed local retirement board members. Current law has no limit.

SECTION 15. Amends Chapter 32, § 91A. Under current law, retirees are required to file sworn statements with the retirement boards certifying as to amounts of earnings during the preceding year. This section requires that the sworn statements be filed with the Commissioner and that if the statements are not filed the pension is revoked.

The definition of allowed outside earnings under current law is an amount which when added to the pension does not exceed the current salary for the position from which the retiree retired plus \$5,000. This section reduces the amount of allowable outside earnings to an amount which when added to the pension does not exceed 72% of the current salary of the position the pensioner held at time of retirement.

This section also establishes a wage reporting system and computer match system between PERA and DOR. Under current law, there is a computer match system, but the information is forwarded by the Commissioner to the retirement boards and responsibility for taking any action is vested with the retirement boards. This section also gives PERA the status of an agency entitled to information under CORI so that pension records can be matched with criminal records to determine whether any forfeitures or suspensions are appropriate.

SECTION 16. Repeals Chapter 32, § 91B, which is now consolidated in the revised section 91A.

SECTION 17. Amends Chapter 268A, § 25 by striking the provision in current law which allows a member suspended under Chapter 268A for misconduct in office to have returned to him all contributions made to the retirement fund.

SECTION 18. Act is effective upon passage.

I:\tm\perasec



City of Cambridge

44.

IN CITY COUNCIL

June 10, 1996

COUNCILLOR DUEHAY

WHEREAS: The Massachusetts Legislature is currently considering H.6064, "An Act to Reform the Disability Retirement System;" and

WHEREAS: H.6064 is a crucial step in bringing a much-needed fundamental and comprehensive reform to the state's disability system for public employees; now therefore be it

RESOLVED: That the City Council go on record urging the Legislature to enact and the Governor to sign H.6064; and be it further

RESOLVED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to **House Speaker Finneran, Senate President Birmingham, the Cambridge legislative delegation and Governor Weld** on behalf of the entire City Council.

CHARTER RIGHT WAS EXERCISED BY COUNCILLOR TOOMEY.

Consent Order #44

Cal. 1
S-334

Councilor Duehay re: Urge the
Legislature to enact and the
Governor to sign H.6064, "An
Act to Reform the Disability
Retirement System.

In City Council June 10, 1996

CHARTER RIGHT WAS EXERCISED BY
COUNCILOR TOOMEY.

6/24

Order Adopted