

The Commission on the Commonwealth's Disability Retirement System
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Testimony by
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Disability pensions are very expensive. In 2008, the Worcester Retirement System's (WRS) average superannuated retirement benefit for retirees was \$18,576 and for accidental disability pensions, it was \$31,374, or 70% higher on average. Disability pensions accounted for almost 20% of the system's costs. This is due to the high rates at which public safety personnel retire on accidental disability pensions. As **Table 1** below indicates, as of 2008, about 50% of all retired firefighters and police officers were drawing accidental disability pensions.

Table 1: City of Worcester Retirees by Department (as of 12-31-08)¹

Department	Accidental Disability Retirees	Superannuation Retirees & Ordinary Disability	Total	% Accidental Disability
Police	139	164	303	45.9
Fire	179	159	338	53.0
DPWP	46	207	253	18.2
Housing	3	61	64	4.7
Other Departments	74	1217	1291	5.8

Table 2 shows that disability requests are approved at high rates in Worcester and in Massachusetts as a whole. And although MGL ch. 32 s. does mandate that all accidental disabilities be reevaluated to determine if an employee was inaccurately diagnosed as totally and permanently disabled, very few individuals are ordered back to work. In 2007, only four individuals in the entire Commonwealth who were receiving disability pensions were ordered back to work.²

Table 2: Accidental Disability Requests/Approvals³

System	2007	2006	2005	2004
Worcester	26/25	25/17	26/29	33/19
Springfield	28/27	17/10	21/28	33/13
Lowell	13/10	14/8	5/5	8/10
Worcester Regional Retirement Board	17/6	14/17	15/12	12/7
Boston	90/103	122/115	143/122	119/81
State	187/179	234/203	252/221	220/174
State Teachers	45/26	30/26	37/20	28/20
Total for all Retirement Boards in Massachusetts	776/676	854/706	909/768	879/678

¹ Source: WRS.

² Source: PERAC 2007 Annual Report.

³ Source: PERAC Annual Reports, 2004-7. The number of approvals sometimes is larger than the number of requests for particular years because some of the approvals were for requests submitted in previous years.

Many other cities struggle with high rates of accidental disabilities and the associated costs. Between 2005 and 2007, out of 166 Boston firefighters who retired, 123, or 74%, retired on accidental disability.⁴ “Probing Pensions,” an investigative report done by WPRI Eyewitness News in Rhode Island revealed, among other things, that as of November 2008, of Providence’s 948 police and fire retirees, 409 or 43% were out on accidental disability pensions (30% of police and 55.6% of fire).⁵ The *New York Post* has reported that almost 75% of all New York City firefighters who retired in the last five years did so on accidental disability. It should be noted, however, public safety employees elsewhere do not retire with such high rates of accidental disability pensions. **Table 3** offers a random sample of other retirement systems.

Table 3: Accidental Disability Rates in Other Systems⁶

System	Job-related or Accidental pensions/Total Pensions	%
Springfield, MO (police and fire)	110/383	28.70%
Baltimore (police and fire)	715/4,478	15.90%
Chicago (police)	349/8504	4.3%
Arizona (police and fire)	1,195/7,181	16.60%
Iowa (police and fire)	898/2798	32%
Chicago (fire)	380/2872	13.2%
Miami (police and fire)	195/1079	18%
Austin (police)	3/429	1%

The cost to the taxpayers of providing accidental disability pensions for police and fire personnel is substantially higher than for regular employees. According to the “Report of the Blue Ribbon Panel on Massachusetts Public Employees’ Pension Classification System,” issued in June 2006, whereas Group 1 employees pay for, on average, 74.1% of their retirement costs, Group 4 (public safety) only pay for about 44.9%.⁷ Other reasons include the fact that police and fire personnel are allowed to collect benefits as early as age 45 and to retire at full pension at age 55, in both cases 10 years earlier than other employees.

Recommendations for addressing the high rate of disability pensions

The state Legislature should make fitness standards for police and fire personnel a condition of continued employment, not just initial employment.

To be hired as a firefighter or police officer, a candidate must meet certain fitness standards. All applicants must pass a physical fitness test and go through pre-employment physical screening. However, once a candidate is hired, and throughout his career, he is not required to meet any fitness standards as a condition of continued employment. This should be changed: basic fitness

⁴ And, as mentioned above, 67 of these firefighters went out on higher accidental disability pensions while temporarily elevated to a higher-paying, supervisory position, prompting an investigation by Federal authorities.

⁵ Probing Pensions,” WPRI Eyewitness News, http://www.wpri.com/generic/target_12/probing.

⁶ Source: correspondence with system administrators, actuarial valuations, and annual reports. (Data from 2008)

⁷ The figures were provided to the panel by the head actuary at PERAC, and are as of January 1, 2006. These figures only reflect state employees, but state and municipal employees have the same contribution and benefit structure.

standards (regular medical examinations and fitness tests, similar to what applicants undergo when seeking initial employment) should be implemented on a regular basis or at least at the time of promotion. Meeting these standards should not be another compensation “perk” or matter of voluntary compliance, but a *requirement* for continued employment. It can be expected that those police officers and firefighters who do maintain proper fitness so as to be prepared for the rigors of their job will support the introduction of regular fitness testing. Knowing that their peers are fit will prevent them from having to undertake excessive burdens themselves.

Past attempts at strengthening fitness standards in Massachusetts have been allowed to languish and voluntary programs, such as installing fitness equipment at firehouses, have failed to curb high rates of accidental disabilities.⁸ The difficulty involved in instituting standards is that public employee unions view them as a change in the conditions of employment and therefore a matter for collective bargaining. What this means in effect is that fitness standards could only be instituted in exchange for a concession by the City regarding wages or benefits.⁹

In order to avoid the inevitable tradeoffs that would occur from bargaining collectively for fitness standards, there must be legislation at the state level. This also means there will have to be an appropriation at the state level, additional local aid to enforce these standards. Otherwise, the standards would be considered an unfunded mandate that would not be implemented, as has happened in the past. The Research Bureau recognizes the difficulty involved in calling for increased local aid for fitness standards. However, there are considerable savings to be gained in reducing the rate of accidental disabilities.

The City should be made formal party to Retirement Board hearings.

Retirement Board hearings are currently conducted more like an investigation by an independent commission than a standard legal proceeding. The Retirement Board decides if a benefit is deserved based on the information at its disposal. Although the City ultimately bears the cost of all pensions granted, an especially high cost in the case of accidental disability, it possesses no formal right to contest the proceeding or even to express its position. With the exception of the Human Resources Department, which compiles and presents the petitioner’s employment history (including medical records) to the Board, the City’s role in Retirement Board hearings is very limited. Benefits hearings should be structured more like standard legal proceedings, where both parties involved (the individual petitioning for the retirement benefit, and the City, who will have to pay for it) possess a right to state their case in front of the neutral third party, the judge or jury, or in this case the Retirement Board.

The state should set employee contribution rates by group classification, not by date of hire.

⁸ A number of reports about the Boston Fire Department have recommended instituting fitness standards. See “Boston Fire Department Independent Review Panel,” November 30, 2007, p. 8-9, and “The Challenge: Managing Diversity, Tradition, and Change,” Boston Fire Department Review Commission, January 2000, Section 6.6.4. See also Donovan Slack, “Studies of Boston Fire Department Going Unheeded,” *Boston Globe*, October 22, 2007, http://www.boston.com/news/local/massachusetts/articles/2007/10/22/studies_of_fire_dept_going_unheeded/

⁹ The issue is similar to the controversy surrounding instituting drug testing for Boston firefighters. See the Boston Municipal Research Bureau’s “Time for Drug Testing for Firefighters,” January 16, 2008, <http://www.bmrb.org/content/upload/Fire081.pdf>.

The current system of employee contributions is the result of raising contribution rates over several decades among new employees in order to fund benefits promised to current retirees. The rates have no connection to an employee's specific job or to the value of the retirement benefits he will receive. A more rational arrangement would be to link employee contribution rates to group classification. This could apply only to new employees, since current employees' contribution rates are protected as part of an employees' constitutional right to contract.¹⁰

A similar recommendation was made in the 2006 "Report of the Blue Ribbon Panel on Massachusetts Public Employees' Pension Classification System," although this report did not specify, as The Research Bureau does, that this should mean higher employee contribution rates: "Earlier ages for full pensions should be reflected in higher contribution rates. An explicit decision should be made of how those higher contribution rates should be divided between employee and employer. Thus, employee contributions should no longer be based on date of hire as under current law (p. 3)." The employer contribution rates are already, in effect, determined by group classification, because group classification determines generosity of benefits. In a defined-benefit system for public employees, the employer contributes whatever costs are not covered by the employees' contributions. If two groups of employees contribute at the same rate but one group enjoys more generous benefits than the other, as is the case with Group 1 (most public employees) and Group 4 (public safety) employees, then the employer has to contribute more for one group than another.

As noted above, a main reason for the greater expense associated with police and fire retirees is the higher rates at which they retire on accidental disability pensions. Disability pensions for firefighters and police officers function like an insurance policy. Because these occupations are sometimes hazardous and physically demanding, provision must be made for the occurrence of job-related injuries. However, the entire pension system is designed like a health insurance policy: lower-risk employees subsidize higher-risk ones. In other words, police officers and firefighters pay the same "premium" of 9% plus 2% over \$30,000 as janitors, office workers, and city councilmen, despite the much higher rates of disability of public safety personnel. The disability system should resemble the auto insurance industry: higher risk drivers (teenagers, drivers with a bad record) pay higher premiums.

The state should maintain a separate, statewide retirement system for employees in hazardous occupations.

It is common practice in many other states to maintain separate systems for hazardous and non-hazardous occupations. This has the advantage of making transparent the greater costliness of retirement benefits for hazardous employees. In Massachusetts, the greater costliness of providing retirement benefits to police and fire personnel is in fact masked by their being, on both the municipal and state level, part of the same system as other employees. Transferring all hazardous-occupation employees would not only make clearer the greater burden on taxpayer money for providing pensions to hazardous occupations employees, but might provide a disincentive to disability abuse. If new public safety employees have to pay higher rates which

¹⁰ In 1973, the Massachusetts Supreme Judicial Court ruled that employee contribution rates could only be raised for new employees. (*Opinion of the Justices*, 364 Mass. 847 (1973).) See also Karen Steffen, "State Employee Pension Plans," *Pensions in the Public Sector*, pp. 41-65.

would increase with increases of the high number of accidental disability pensions, these employees might have the incentive to police one another to ensure that abuses were minimized.

The state should reform the cancer presumption law.

According to the International Association of Fire Fighters, 27 states have cancer presumption laws for firefighters.¹¹ These laws come in two varieties: about half list specific cancers which, if they have been contracted, are presumed to be related to firefighting. The other half are non-specific, but presume any cancer is related to firefighting if an individual can show he has been exposed to a known carcinogen. Of the ones that do list specific cancers, not all include those listed in Massachusetts’ law. Alaska, Arizona, Maryland, Virginia and Washington do not include liver cancer. Arizona, Virginia, and Maryland do not presume a correlation between kidney cancer and firefighting. And of course, the 23 states that don’t have a cancer presumption law don’t recognize any correlation. **There is no reason why medical evidence should differ from one state to the next. An exhaustive review of the medical evidence linking firefighting and cancer should be done to examine the validity of this presumption. This law should be based on medical evidence, not politics.**

A recent survey of 32 previous studies of the link between firefighting and certain types of cancer may be found in “Cancer risk among firefighters: a review and meta-analysis of 32 studies,” published in the *Journal of Occupational and Environmental Medicine*. The results are included in **Table 4**. Based on the best evidence available to them, the researchers determined that only three types of cancer are “probably” linked to firefighting: multiple myeloma, non-Hodgkin’s lymphoma, and prostate cancer.

If this is the case, then the Massachusetts law should be reformed so as to eliminate the presumption that the kinds of cancer that have no demonstrated link to the professional activities of firefighters are job-related.

Table 4: Cancers in MGL ch. 32 s. 94B

Type of Cancer	Correlation with firefighting
Bladder	Unlikely
Brain and Other Nervous System	Possible
Colon & Rectum	Possible
Esophagus	Unlikely
Kidney	Unlikely
Larynx	Unlikely
Leukemia	Possible
Liver & Bile Duct	Unlikely
Lung	Unlikely
Melanoma of the Skin	Possible
Multiple Myeloma	Probable
Non-Hodgkin’s Lymphoma	Probable
Oral Cavity and Pharynx	Possible
Pancreas	Unlikely
Prostate	Probable
Stomach	Possible

¹¹ <http://www.iaff.org/hs/phi/disease/cancer.asp>.