

## Dual Members Under Chapter 32: A Play in Four Acts



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## Introduction (1)

- **Act One:** Old School (1946)
  - Chapter 658 of the Acts of 1945 (which established a single pension system with an effective date of January 1, 1946)
- **Act Two:** New School (2010)
  - Chapter 21 of the Acts of 2009
- **Act Three:** Newer School (2014)
  - Chapter 165 of the Acts of 2014

## Introduction (2)

- **Reprise:** Everything Old is New Again
- **Act Four:** Recent Updates and Special Provisions for Dual Members

## Act One: 1946

- Chapter 658 of the Acts of 1945.
- How to calculate retirement allowances for dual members.
- Stood test of time.
- Some manipulation of the systems possible.
- Section 3(7)(d).

## G.L. c. 32, Section 3(7)(d)

- In pertinent part:
  - (d) If any person who is a member of two or more systems terminates his service in one governmental unit other than by retirement but continues in service in one or more other governmental units, his membership in the system pertaining to the former governmental unit shall thereupon be transferred to the system of the governmental unit to which he is devoting the major portion of his employment and the provisions of subdivision (8) of this section shall be applicable....

## Section 3(7)(d): In a Nutshell (1)

- Susan is a member of Retirement Systems A & B simultaneously.
- She leaves System A, but continues on in service in System B.
- Her funds and creditable service are transferred to System B.
- She then retires from System B.
- PERAC will assign System A its Section 3(8)(c) liability.



## Section 3(7)(d): In a Nutshell (2)

- Susan will not be able to get creditable service for more than one calendar year.
- If she worked at System A and System B for the same five year period, no more than five years creditable service will be awarded.
- What's in it for Susan?
  - She can combine her regular compensation for her three-year final average.
- What could possibly go wrong?

# The Possibility of Manipulation

- Before Chapter 21 of the Acts of 2009, it was possible:
  - For a person to have two full time jobs in the last 3 years of service.
  - To call in sick frequently for one job while attending to the other.
  - Not illegal, but certainly a problem.
- Chapter 21 of the Acts of 2009 to the rescue!



## Act Two: Chapter 21 of the Acts of 2009

- The original Section 5(2)(e):
  - (e) A person who has been a member of 2 or more systems and who, on or after January 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.

# The Original Section 5(2)(e): In a Nutshell

- Triggering mechanism for its application:
  - A member of 2 or more systems,
  - Who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently.
- Some people excluded from application of Section 5(2)(e).

## Members Excluded from Application of Section 5(2)(e)

- “...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.”
- So, if you already had 10 years in each system as of January 1, 2010, your pension would still be calculated via Section 3(7)(d).

# An Imperfect Rescue

- Questions and issues arose, among them:
  - What about service in a position for which the salary was set at less than \$5000 per year?
  - What about the mandatory language of Section 3(7)(d)?
  - The big one: People training successors in their old positions just to be nice, inadvertently triggering Section 5(2)(e).
- Chapter 165 of the Acts of 2014 to the rescue!

## Act Three: Chapter 165 of the Acts of 2014

- A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units **concurrently for greater than 60 days 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 **or to any position whose annual regular compensation was less than \$5,000. Paragraph (d) of subdivision (7) of section 3 shall not apply if this paragraph applies. Upon retirement a member shall be considered a dual member if the member satisfies this paragraph. This paragraph shall only apply to the 5 years of creditable service immediately preceding a member's superannuation retirement under this section. This paragraph shall not apply to section 6.** (Emphases supplied)

## 2014 Amendments: In a Nutshell (1)

- See PERAC Memo #29 of 2014.
- Overlapping periods in two systems shall not be considered dual membership if less than 60 days.
- A member shall not be considered a dual member if one of the positions is compensated at less than \$5,000 per year.
- Applies only to the 5 years of creditable service immediately preceding retirement.



## 2014 Amendments: In a Nutshell (2)

- Dual member provision only applies to members who retire under superannuation from both systems.
- Dual member provision **does not apply** to disability retirements.
  - *Hannon v. Essex Reg. RB, Gloucester RB, & PERAC*, CR-20-0303 (DALA Apr. 19, 2014, pending CRAB appeal).
- Explicitly prevents the Section 3(7)(d) transfer from occurring.

# Reprise: Everything Old is New Again!

- All dual members will either retire under 1946's Section 3(7)(d) or 2014's Section 5(2)(e).
- Upon retirement, an analysis must be undertaken to see if Section 5(2)(e) applies.
- If Section 5(2)(e) does not apply, Section 3(7)(d) will.
  - Section 3(7)(d) transfers will occur throughout a member's career.
- If Section 5(2)(e) does apply, then transfers must occur to provide for the separate retirement from each system.

## If Section 5(2)(e) Applies

- Calculated as if the member is retiring solely from each system.
- Each system shall pay the allowance attributable to membership in that system.
- Must retire simultaneously from each system.
- Only required to have ten years of service in one of the two systems.
- Minimum allowance in Section 13 is N/A.

## Act Four: Special Provisions Only for Dual Members (1)

### ■ Post-Retirement Earnings

- When calculating post-retirement earnings capacities, you should use the salaries from **both** positions as well as **both** retirement allowances in the calculation.

### ■ Option Selection

- Dual members can select different options in each system upon retirement.
  - *Revere Ret. Bd. v. PERAC*, CR-21-0159 (Nov. 3, 2023).

## Act Four: Special Provisions Only for Dual Members (2)

### ■ Withdrawal of Accumulated Deductions

- A dual member can receive a refund from one system and remain a member of the second system.
- Section 47 of Chapter 133 of the Acts of 1992 allows a member who was a member of more than one retirement system concurrently to seek a refund from the system in which he contributed the lesser amount when they terminate service with said system, even while maintaining service in the other system.
  - See PERA Memo #21 of 1992.

## Dual Member Quiz 1

- Peter has been an elected official in Quabbin since January 4, 2010. He chose to become a member of the system upon taking office, and his yearly stipend is \$6,500. He then became an inspector of weights in Prestonsburg on July 10, 2017. He has worked continuously at both jobs since these dates. In 2025, he comes into the Prestonsburg Retirement Board office, loudly demanding to retire with “his 3 highest years.”
  - a. He can't retire, because he doesn't have 10 years in Prestonsburg.
  - b. He can retire, because he has 10 years in Quabbin, but must use a 5-year average because his start date is after April 2, 2012.
  - c. He can retire, but must retire from Quabbin and Prestonsburg simultaneously using a 3-year average in Quabbin and a 5-year average in Prestonsburg.
  - d. He can retire, but must retire from Quabbin and Prestonsburg simultaneously using a 3-year average.



## Dual Member Quiz 2

- **Petunia has worked for the Paintsville Housing Authority from 2002 to 2025. She also worked for the Magoffin County Housing Authority for two years from 2011 to 2013. Petunia wants to retire in 2025 and combine the service from both systems under Section 3(7)(d). Can she do it?**
  - a. No, since she worked for the PHA and the MCHA concurrently and had a salary fixed at greater than \$5,000 annually in both positions.
  - b. No, because she worked for MCHA before 2014.
  - c. No, she must retire separately from each as she received regular compensation concurrently after January 1, 2010.
  - d. Yes, since the concurrent service did not occur in the last five years of creditable service immediately preceding retirement.

## Dual Member Quiz 3

- Hortense worked for Pike County for many years, beginning in 1997. Starting in 2012, she also works for Martin County concurrently. She decides to leave Pike County and only work in Martin County in 2013. Her Pikeville funds are not transferred to Martin County per a directive from PERAC. In 2020, she slips and falls on the job and retires for ADR from Martin County in early 2021. She now wants to retire for superannuation from Pikeville. Is this acceptable?
  - a. Yes, because she received regular compensation from both systems on or after January 1, 2010.
  - b. Yes, since she must be retired separately from each system, it doesn't matter if she goes out for two different kinds of retirement.
  - c. No, because Section 5(2)(e) only applies to superannuation retirements.
  - d. No, because if you are going to retire separately from two systems, you have to do it on the same day.

## Conclusion

- Chapter 32 has provisions which cover service in multiple systems.
- This can be complicated, and the statute and the facts of each individual case will determine both how an individual is to be retired, and which system will bear financial responsibility for certain parts of his or her service.



## QUESTIONS?

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