ATTACHMENT D

November 10, 2022

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 253 of House Bill No. 5374, “An Act Relating to Economic Growth and Relief for the Commonwealth.”

Section 253 relates to Section 90G¾ of Chapter 32 of the General Laws, which was repealed in 2017. Prior to its repeal, the section required a member of a retirement system who wanted to continue to make contributions past the age of 70, while still employed, to affirmatively elect to do so. Upon making that election, the member would then be able to accrue credible service past the age of 70 and factor salaries earned in those years into their retirement calculation.

Section 253 would allow members to buyback their post-70 years if they did not previously elect to continue their contributions past 70. As drafted, members would be entitled to buyback those years by paying the total amount of contributions they would have made after turning 70, if they had elected to continue making payments. Before this option becomes available to members, the Massachusetts State Retirement Board (“MSRB”) must determine whether an Internal Revenue Service (“IRS”) ruling is needed to determine if this buyback jeopardizes IRS compliance for the Commonwealth’s retirement systems; it also instructs the MSRB to seek such an IRS ruling if necessary.

While there are valid reasons to give retirement system members an opportunity to revisit the decision they made a number of years ago, prior to the section’s repeal, I have three concerns.

First, since the section applies to members of all retirement systems in the Commonwealth, I believe that the Public Employees Retirement Administration Commission (“PERAC”) should be the agency that makes the determination on IRS compliance on behalf of all the systems in the Commonwealth.

Second, creditable service buyback typically requires the member purchasing the service to pay interest on the amount of the contributions they would have made. As a result, I am proposing the payments also include the actuarial assumed interest rate.

Third, as drafted the language seems to allow a member to choose the specific periods of time after they turned 70 to be bought back. To the extent it does, I am concerned that this would not comply with IRS rules and regulations. Thus, I am proposing that the option to purchase must be for all service time accrued after a member has attained the age of 70.

For these reasons, I recommend that the bill be amended by striking out Section 253 and inserting in place thereof the following section:-

SECTION 253. (a) Notwithstanding section 141 of chapter 47 of the acts of 2017, a member who made an election under section 90G¾ of chapter 32 of the General Laws prior to the enactment of section 28 of chapter 47 of the acts of 2017, may, within 60 days of any final determination under subsection (b), repeal such election and be credited with any years of service subsequent to such election; provided, however, that such member: (i) has maintained continuous service since making such election; (ii) is a member continuing in service as of the effective date of this act; and (iii) notifies their retirement system of their intention to repeal such election; provided, further, that such service shall not be credited until such member has paid into the annuity savings fund of such system, in 1 sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments, for all years of additional creditable service after the member attained the age of 70, of an amount equal to the per cent of the regular annual compensation of the member, plus actuarial assumed interest.

(b) Not later than 90 days after the effective date of this section, the public employee retirement administration commission shall determine whether an Internal Revenue Service ruling on whether subsection (a) may be implemented without impairing the compliance of retirement systems governed under chapter 32 of the General Laws with the Internal Revenue Code of 2022 is necessary.

(1) If the commission determines that such a ruling is necessary, the commission shall request such a ruling from the Internal Revenue Service and subsection (a) shall not take effect unless and until the Internal Revenue Service issues a favorable ruling that determines that the transfers described in this section will not result in non-compliance of retirement systems governed under chapter 32 of the General Laws with the Internal Revenue Code.

(2) If the commission determines that such a ruling by the Internal Revenue Service is not necessary, then subsection (a) shall take effect as of the date of that determination.

Respectfully submitted,

Charles D. Baker

 Governor