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July 27, 2018

The Honorable Karen E. Spilka
Senate President
State House, Room 332
Boston, MA 02133

The Honorable Robert A. DeLeo
Speaker of the House of Representatives
State House, Room 356
Boston, MA 02133

Re: House 4821, An Act Relative to the Payment of Pensioners for Services After Retirement

Dear President Spilka and Speaker DeLeo:

I write to request that you amend House bill 4821, An Act Relative to the Payment of Pensioners for Services after Retirement, to establish a commission to evaluate the impact the provision would have on the Commonwealth. As written, H4821 would increase the number of hours a public retiree may return to work for a public employer while still receiving a public pension. Specifically, H4821 would increase the cap from 960 hours to 1,200 hours (the equivalent of 3 days a week). My Office has found that the current return-to-work allowance is susceptible to waste and abuse due to insufficient monitoring and enforcement mechanisms within the statute. Further, other states have found that public retirees who return to work reduce revenue to the public retirement systems. Increasing the cap will compound these issues.

I am also aware that the Governor returned an amendment to this language as Attachment C of his veto message. The Governor's language would increase the cap from 960 hours to 975 hours. It would also include a waiver of the hours cap for public safety personnel when a "critical shortage" exists. This is similar to the waiver currently in place for retired education personnel. While I believe a commission should study this issue before the cap is raised, the Governor's proposed increase is more reasonable than a 1,200-hour cap, which would allow public retirees to return to work almost full-time. I do not believe putting a new waiver in place without further review is appropriate.

Massachusetts law concerning return-to-work is based on the general rule that a public employee may not receive compensation from a public body after they retire.¹ The policy behind this prohibition is clear: “[p]ublicly administered and financed pension benefits are intended to support those who are retired from public service.”² Stated differently, a public pension is not meant to be an employment benefit for individuals who remain in the work force. Consequently, since at least 1913 the pension statute has limited public retirees – in one form or another – from working for a public employer while collecting a public pension.³ In 1968, state law changed to permit public retirees to return to work for up to 90 days (the equivalent of 675 hours for a 7.5 hour work day).⁴ According to media reports, the law changed because of a need to fill temporary shortages in certain public sector jobs. Since then, the cap has grown to the current limit of 960 hours.⁵ Continued expansion of this cap deviates from the public policy against post-retirement re-employment.

Existing monitoring and enforcement mechanisms in the return-to-work provision are insufficient. Enforcement of this cap is a two-step mechanism. First, public retirees are required to track and self-report the number of hours worked to their public employer.⁶ Second, the statute authorizes – but does not require – public employers and retirement boards to recover funds paid in excess of the 960 hour cap.⁷ My Office has found that enforcement often falls to the applicable retirement board. However, these retirement boards do not have the necessary tools to monitor and enforce this provision effectively.

For instance, public retirees are not required to inform their respective retirement boards when they return to public service; nor are they required to report the hours they work or salary they earn. Furthermore, retirement boards do not have monitoring tools – such as the authority to conduct a wage data match – to independently determine if someone in their retirement system has returned to work, their salary or hours worked for their public employer.

Other states have found return-to-work provisions increased costs on public retirement systems. In 2009, the Utah Legislative Auditor General found that “64 percent of re-employed retirees returned to work within the first year of retirement, many within days of retirement”⁸ Further, of all public retirees who returned, 70% returned to the very agency or department from which they retired.⁹ Finally, the study concluded that because public retirees who return to work no longer contribute to the retirement system, they reduce the number of members paying into the system – resulting in a loss of revenue to the retirement system.¹⁰

¹ G.L. c. 32, § 91(a).

² *Flanagan v. Contributory Ret. Appeal Bd.*, 51 Mass. App. Ct. 862, 868 (2001).

³ *Id.* at 865.

⁴ St. 1968, § 676.

⁵ G.L. c. 32, § 91(b).

⁶ *Id.* at § 91(c).

⁷ *Id.*

⁸ Office of the Utah Legislative Auditor General, *A Performance Audit of the Cost of Benefits for Reemployed Retirees and Part-Time Employees* at 17 (November 2009).

⁹ *Id.* at 19-20.

¹⁰ *Id.* at 11.

Similarly, in 2005, the Washington Office of the State Actuary issued a report concluding the state's return-to-work provision affected retirement behavior.¹¹ Specifically, public employees in Washington retired earlier than they otherwise would have. The early retirements created a shortfall in the retirement system because it received fewer contributions and paid out benefits sooner and for a longer duration than planned.¹² Finally, like Utah's experience, Washington faced a loss of member contributions to the retirement system.¹³

Because of concerns such as these, other states, including New Jersey and Pennsylvania, strictly limit when retirees can collect a public pension and a salary at the same time.¹⁴ Similarly, many states have implemented safeguards, such as waiting periods before retirees may return to work, or mandatory re-enrollment in the retirement system if a retiree works in excess of statutory limitations.

Moreover, in 2016 my Office conducted research into this practice and its application within a particular state agency. In general, the agency expended over \$6 million in payroll to 114 re-employed retirees who had returned to work between 2010 and 2015. These re-employed retirees also received a combined \$12 million in pension payments while employed at the agency. Specifically, the research found:

- Between 2010 and 2015, the top ten re-employed retirees at this agency earned a combined \$4.6 million in payroll and pension benefits.
- Of the 114 retirees in the sample, 95 (83%) had retired from the agency that re-employed them.
- Many of the re-employed retirees returned to work for extended periods of time, sometimes more than 16 years. For example, 43% of re-employed retirees sampled at this agency had worked at least four years as a retiree. This contradicts the notion that the return-to-work provision is necessary to enable agencies to fill temporary staffing shortages.
- The agency did not monitor salary earned or hours worked; it therefore had no proactive mechanism to ensure that re-employed retirees did not exceed the hours or earnings caps. The onus was on the employee to self-monitor and to report to the employing agency.
- At least 21 of the retirees (18%) exceeded the earnings and/or hours cap during the period reviewed. The Office could not evaluate the earnings for an additional 31 of the 114 retirees because the agency did not have the necessary records.
- The agency did not use a formal hiring process with respect to re-employing retirees. Instead, the agency operated an informal system, rehiring retirees at the request of division managers or at the retiree's request to return to work.

¹¹ Office of the Washington State Actuary, *Post Retirement Employment Program Report* at iv (2005).

¹² *Id.*

¹³ *Id.*

¹⁴ N.J. Rev. Stat. § 43:15A-57.2 (2018); 71 Pa. Cons. Stat. § 5706 (2018).

One of my Office's mandates is to review and make recommendations on legislation that may impact the prevention and detection of fraud, waste and abuse in the expenditure of public funds.¹⁵ The return-to-work provision recognizes that public bodies may benefit by having retirees return to work on a part-time basis. However, any benefit to a public body must be weighed against potential costs imposed on the Commonwealth's retirement system.

Accordingly, I ask that you amend this bill so Massachusetts – like Utah and Washington – can thoroughly evaluate the effect of the return-to-work provision on the Commonwealth and its retirement system. Additionally, the commission tasked with studying the provision should evaluate the policy justifications for increasing the cap and the impact on long-term staff succession planning within public bodies. Finally, the commission should propose enhanced monitoring and enforcement mechanisms to protect the retirement system. I believe any legislative action with the potential to impose additional costs on the Commonwealth's retirement system warrants nothing less than a comprehensive review.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Glenn A. Cunha
Inspector General

cc: The Honorable Joan B. Lovely
The Honorable Jeffrey Sánchez
The Honorable Bruce E. Tarr
The Honorable Bradley H. Jones, Jr.

¹⁵ G.L. c. 12A, § 8.