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Office of the Inspector General

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The Honorable Michael D. Brady, Chair
Joint Committee on Public Service
State House, Room 416-A
Boston, MA 02133

The Honorable Jerald A. Parisella, Chair
Joint Committee on Public Service
State House, Room 156
Boston, MA 02133

**Re: Post-Retirement Employment Enforcement in M.G.L. Chapter 32,
Section 91**

Dear Chairman Brady and Chairman Parisella:

I write to urge the Committee to strengthen the enforcement provisions in the return-to-work statute for public employees who retire (“public retirees”). Specifically, as part of its mandate to prevent and detect fraud, waste and abuse in public spending, the Office of the Inspector General (“Office”) highly recommends that Section 91 of Chapter 32 be updated to better protect the public’s interest and investment in the public workforce.

Currently, public retirees may work in the public sector post-retirement, subject to certain requirements, including limits on earnings and number of hours worked. However, the statute’s enforcement mechanism¹ is weak, making the Commonwealth and local jurisdictions vulnerable to fraud, waste and abuse. Public retirees who return to work for a public entity are not required to report their earnings and number of hours worked to their local retirement board. Without this information, a board may have no knowledge of a member’s public employment while simultaneously collecting a public pension. If a board suspects overearning, often it does not have the resources to investigate and seek recourse.

The Massachusetts return-to-work statute is based on the general rule that a public employee may not receive both a salary and a pension from a public body. A public pension is not meant to be an employment benefit for individuals who remain in the work force. Rather, “[p]ublicly administered and financed pension benefits are intended to support those who are

¹ G.L. c. 32, § 91(c).

retired from public service.”² Consequently, the Commonwealth places limits on public retirees who re-enter the public workforce. Currently, public retirees can work post-retirement, provided the retiree follows the conditions in the statute, including (a) 960-hour cap on hours worked per year; (b) salary limit based on their prior earnings as a public employee; and (c) obligation to track and report earning limits to their current employer. If a public retiree earns more than permitted under the statute, his current employer may recoup any excess earnings. The courts, recognizing that the pension system is truly the aggrieved party, have allowed the relevant retirement board to reduce the public retiree’s pension allowance commensurate with the over-earnings.³

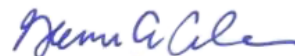
Nevertheless, the current monitoring and enforcement mechanisms for post-retirement employment are not sufficient. As stated above, public retirees are not required to report their post-retirement earnings to the local retirement board, leaving boards without the very information they need to track over-earnings. Language in House 2334, *An Act to Report Retiree Post Earnings Consistent with M.G.L. [Chapter] 32, Section 91*, would help address this concern by mandating that public retirees report the number of hours worked and earnings to both their current employer and their retirement board. The bill also places responsibility on the public retiree to certify that they are in compliance with the law.

In addition, my Office highly recommends adding new provisions that will aid local retirement boards to enforce the earning limits. For example, a public retiree, when first applying for a pension, should submit certification of the specific public employment position held at the time of retirement. Since Section 91 bases post-retirement earnings limits on “the salary that is being paid for the position from which [the individual] was retired,” certifying that information at retirement will assist boards in identifying the appropriate earning limit.

My Office strongly endorses updating this statute. Although the majority of public retirees follow the return-to-work requirements, the potential for fraud, waste and abuse is clear. Consequently, retirement boards need the tools to enforce the statute and protect the public’s investment in our public pension system.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,



Glenn A. Cunha
Inspector General

² See *Flanagan v. Contributory Retirement Appeal Bd.*, 51 Mass. App. Ct. 862, 750 N.E.2d 489 (2001).

³ See *Flanagan*, 51 Mass. App. Ct. at 862, 750 N.E.2d at 489.