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The Commonwealth of Massachusetts
OFFICE OF THE STATE TREASURER

STATE HOUSE, ROOM 227
BOSTON, MASSACHUSETTS 02133

November 29, 2021

Senator Michael Brady
Joint Committee on Public Service,
State House, Room 416-A
Boston, MA 02133

Representative Kenneth Gordon
Joint Committee on Public Service, Chair
State House, Room 156
Boston, MA 02133

RE: H.16, An Act to protect gender pay equity

By email

Dear Chair Brady & Chair Gordon:

I am writing in my capacity as Treasurer & Receiver General and as Chair of the State Retirement Board, on behalf of myself and the other four members, in support of H.16, *An Act to protect gender pay equity*, which would add an additional exception to those permissible under the current anti-spiking provisions of G.L. c.32, §5(2)(f) for members' salary increases or adjustments arising "... from actions related to chapter 149, section 105A..." (the Gender Pay Equity Act).

Enacted in 2016 (c. 177 of the Acts of 2016), the Gender Pay Equity Act seeks to eliminate wage differentials based on gender for comparable work, provides an enforcement mechanism for suspected claims, and details an employer's self-evaluation mechanism.

The second of the two anti-spiking provisions in Chapter 32, added by Chapter 176 of the Acts of 2011, requires a retirement board in determining the 3-year (or 5-year) average of regular compensation, to determine if regular compensation in any year of creditable service exceeds the average of the regular compensation of the previous two years of creditable service by more than 10%. In calculating a benefit, a board cannot use regular compensation in excess of 10% of the average of the previous two years.

Salary increases greater than 10% **are permitted** as part of a retirement calculation if an increase was due to:

- An increase in the number of hours worked
- Overtime wages (not reg. comp. but included for this purpose)
- Bona fide change in position
- Modification in salary or salary schedule negotiated for bargaining unit members of Chapter 150E
- Salary amount which is specified by law
- (For Teachers only) the performance of any service set forth in the third sentence of the first paragraph of the definition of “regular compensation”

It is likely that the policy determination to improve rates of compensation under the Gender Pay Equity Act were not considered as a potential anti-spiking exemption, where the anti-spiking provisions of Chapter 32 were enacted in 2011 several years before the Gender Pay Equity Act.

This issue has already come before the State Retirement Board. Board staff have reviewed member requests seeking to include a salary adjustment, which can arise because of the application of Chapter 149, §105A. Those requests had to be administratively denied based on the narrow list of specific exceptions in G.L. c.32, §5(2)(f). We believe that the gender pay law did not anticipate this type of occurrence and H.16 would rectify this issue.

Based on the foregoing reasons, the State Retirement Board urges favorable action be taken on H.16. If my office or the Board can be of any assistance in this matter, please do not hesitate to contact us. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deborah B. Goldberg".

Deborah B. Goldberg
Treasurer and Receiver General

cc: John Parsons, Executive Director - PERAC