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GOVERNOR

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LIEUTENANT GOVERNOR

**ATTACHMENT D**

June 30, 2010

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, I am returning to you for amendment Section 26 of House Bill No. 4800, "An Act Making Appropriations for the Fiscal Year 2011 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements."

The first sentence of proposed section 26 requires the Division of Administrative Law Appeals to hold evidentiary hearings in all retirement cases, brought pursuant to G.L. c. 32, § 16(4). I support the purposes of this section to the extent that the requirement of an evidentiary hearing applies to disability cases and other cases in which there is a genuine issue as to any material fact.

This sentence, however, applies to all cases, even those in which there is no factual dispute. Given the Division's large backlog of retirement cases and the need to expedite processing of cases in which there is no factual dispute, I propose that the requirement of an evidentiary hearing be limited to disability cases and other cases in which there is a genuine issue of a material fact.

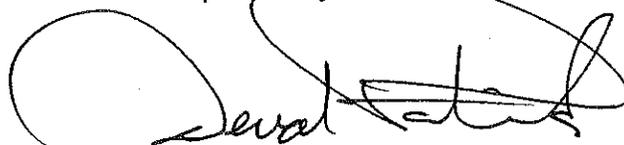
The second sentence of proposed section 26 requires that any fees charged be applied to employ magistrates. I also support the objective of this sentence, but note that the Division does not have a

retained funds account and hears more than only retirement cases. I recommend that the number of magistrates assigned to retirement cases be no less than a number proportionate to the fees generated under this section.

For these reasons, I recommend that Section 26 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 26. The second paragraph of subdivision (4) of section 16 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after the third sentence the following 4 sentences:- A hearing assigned under this section for a disability claim arising under sections 6 or 7 or for any matter in which there is a genuine issue of a material fact shall, at the election of any party involving such a claim, be subject to a full evidentiary hearing. Such claims may be subject to summary procedure only at the request of any such party. Summary procedure in such cases shall be governed by the standard rules under section 9 of chapter 30A without addition or substitution. The division may impose a reasonable administrative fee for the initiation of a claim or claims under this section, and the number of magistrates assigned to cases brought under this section shall bear at least the same proportion of the total number of magistrates employed by the division as the fees generated bear to the division's total appropriation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval" followed by a stylized surname, written over the text "Respectfully submitted,".