

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

December 30, 2004.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI of the Constitution of the Commonwealth, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth, I am returning to you for amendment House Bill 5092, "An Act Establishing a Sick Leave Bank for John Fitts, an Employee of the Department of Youth Services."

This bill would establish a sick leave bank for John Fitts, an employee of the Department of Youth Services ("DYS") who was injured in an automobile accident. This bill would allow DHS employees to contribute one or more sick, personal, or vacation days to a paid sick bank for use by Mr. Fitts.

This letter¹ announces a new Romney Administration policy on how individual sick bank bills will be acted upon, and I therefore begin with a brief review of the relevant factual background.

Approximately ten years ago, in part to stem the tide of individual sick bank bills, the Legislature created the State Employees Extended Illness Leave Bank ("EILB"). The EILB program allows eligible employees to donate sick, vacation, and personal time for employees experiencing extended illnesses to use under certain conditions.

Even after the establishment of a statewide EILB, however, the Legislature continued to pass individual sick bank bills. At first, these bills were enacted in truly exceptional cases, e.g., to help employees who were critically ill and who had either participated in the EILB and exhausted its maximum benefit, or had been ineligible to participate in the EILB. The scope of

¹As well as the one filed today in connection with House Bill 4794.

these individual sick leave bills, however, soon began to expand in virtually every respect. For example, recent bills have created sick banks for employees who were not terminally ill and who had elected not to participate in the state EILB (or similar program); other bills created sick banks for a healthy employee to care for a sick family member; and yet another bill created a sick bank for an employee who had not exhausted available sick, vacation, and personal time. Although each of these bills involved sympathetic circumstances, these individual sick banks further formalized the concept of sick days as an unrestricted employee benefit.

The current bill raises similar concerns.

As well as the one filed today in connection with House Bill 4794.

First, the bill allows DYS employees to contribute sick days, as well as personal and vacation days, to a special bank for Mr. Fitts. The EILB, however, already allows the donation of sick days for participating employees to use. Allowing employees to donate sick leave to individual sick banks undercuts the effectiveness of the EILB by creating competing sick banks and by discouraging eligible employees from participating in the EILB in the first place, which hurts all participating members. Furthermore, unlike the EILB, individual sick banks do not establish any conditions or limitations on the use of the leave. They also allow one employee to be treated differently from others who are similarly situated, which is unfair.

Therefore, when an individual sick bank is deemed necessary, employees should be permitted to contribute vacation and personal days, but not sick days, to the bank. This compromise carefully balances the interests of the Commonwealth and its employees with the needs of certain employees who find themselves in dire circumstances. At bottom, there simply is no compelling reason why the Commonwealth should continue to promote paid sick days as an unrestricted benefit for employees who have the opportunity to participate in the EILB, who have the ability to purchase long-term disability insurance, and who often have generous sick leave policies already in place.

Next, this bill appears to allow Mr. Fitts to take advantage of the benefit of the sick leave bank without first exhausting any available sick, vacation, leave, or comp time. Individual sick banks should be used only as a last resort and such a requirement is necessary to make sure that the bank is being used appropriately.

I therefore propose the following amendments:

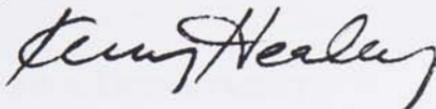
By striking out, in the second sentence, the phrase "1 or more sick, personal, or vacation days" and inserting in place thereof the phrase:—

1 or more personal or vacation days

By inserting, in the second sentence after the words "for use by John Fitts," the phrase:—

; provided, however, that Mr. Fitts exhaust any available sick time, vacation time, personal time, and comp time, before using any of the time donated to the sick bank.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kerry Healey".

KERRY HEALEY,
Acting Governor.

