

Investment Authority of Boards

PERAC at the request of MACRS agreed to the addition of the following text in bold:

Section 1. Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby amended by striking out sub-paragraph (b) and inserting in place thereof the following: -

(b) The board of each system shall invest and reinvest the funds of such system in the PRIT Fund pursuant to subdivision (8) of section twenty two, in the PRIT Fund by purchasing shares of said fund, as provided for in the trust agreement adopted by the PRIM Board pursuant to subdivision (2A) or as follows:-

(i) in accordance with the standards set forth in subdivision (3), provided that: -

(A) no investment of funds shall be made in stocks, securities or other obligations of any company which derives more than 15 per cent of its revenues from the sale of tobacco products.

(B) in investing such funds the board shall employ an investment manager or investment managers who shall invest the funds of the system.

(C) no funds shall be invested directly in mortgages or collateral loans.

No investment of funds shall take place until board has received from the commission an acknowledgement of receipt of the following:-

(a) certification that, in making the selection, the board has complied with the process established in section 23A;

(b) a copy of the vendor certification required under section 23A;

(c) copies of disclosure forms submitted by the selected vendor;

(d) a certification that the investment is not a prohibited investment as set forth in regulations of the commission;

(e) in the event that the board has retained a consultant, a copy of the consultant reports pertaining to the investment and the selected vendor;

(f) a copy of the board certification required under section 23A.

The commission may withhold the acknowledgement if it determines that it is in the best interest of the retirement system **provided, however, that it must so notify the board within ten days of receipt of completed documents as required by this section.**

Prior to the retention of an investment consultant the board must receive from the commission an acknowledgement of receipt of the following:-

(a) certification that, in making the selection, the board has complied with the process established in section 23A;

- (b) copy of the vendor certification required under section 23A;
- (c) copies of disclosure forms submitted by the selected consultant;
- (d) copy of the board certification required under section 23A.

Sections on Investment deleted by the Joint Committee on Public Service

(a) **Section 3.** Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby amended by striking out paragraph (g) and paragraph (h).

Section 4. Subdivision (2A) of Section 23 of the General Laws is hereby amended by striking out paragraph (h) and inserting in place thereof the following:-

(h) Subject to the approval or ratification of the PRIM Board, the executive director shall invest and reinvest such funds held by the board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that:-

- (i) no funds are to be invested directly in mortgages or in collateral loans;
- (ii) no public pension funds under this subdivision shall remain invested in the stocks, securities, or other obligations of any company which derives more than 15 per cent of its revenue from the sale of tobacco products provided, however, that if sound investment policy so requires, the PRIM board may vote to spread the sale of such stocks, securities or other obligations of such company over no more than three years, so that no less than one-third the value of said investment is sold in any one year. So long as any funds remain invested in any stocks, securities, or other obligations of any such company, the PRIM board shall annually, on or before January 31, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by the commission governing the investment of funds by the retirement boards.

Section 5. Section 23 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (5).

Certification Statements by Board Members:

PERAC at the request of MACRS agreed to the deletion of the following:

Section 8. Subdivision (3) of Section 23 of Chapter 32 of the General Laws is hereby amended by adding the following:

Each member of a retirement board established pursuant to the provisions of this chapter shall annually certify to the commission, under the pains and penalties of perjury, as to whether he or she is aware of any violation by said board or board member or any other board or board member of the standards set forth in this paragraph, chapter 268A of the general laws, the provisions of this chapter and the provisions of regulations promulgated pursuant to this chapter. In the event that a board member fails to file such certification on or before January 1 of each year he or she shall be suspended from said board as of that date. In the event that such certification is not received on or before February 1 of each year he or she shall be removed from said board and shall not be permitted to serve on a retirement board established pursuant to the provisions of this chapter.

PERAC in conjunction with MACRS agreed to insert in place of the deleted language the following:

Each member of a retirement board established pursuant to the provisions of this chapter shall upon the commencement of their term file with the commission a statement acknowledging that they are aware of and will comply with the standards set forth in chapter 268A of the general laws, the provisions of this chapter and the provisions of regulations promulgated pursuant to this chapter.

Statement of Financial Interest

PERAC at the request of MACRS agreed to the deletion of the following text in bold:

(1) the name and address of, the nature of association with, the share of equity in, if applicable, **and the amount of income if greater than one thousand dollars derived from** of each business with which he is associated;

PERAC at the request of MACRS agreed to the deletion of the following text in bold:

(3) the name and address of each creditor to whom more than one thousand dollars was owed **and the original amount, the amount outstanding, the terms of repayment, and the general nature of the security pledged for each such obligation except that the original amount and the amount outstanding need not be reported for a mortgage on the reporting person's primary residence;** provided, however, that obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debts incurred in the ordinary course of business, and any obligation to make alimony or support payments, shall not be reported; and provided, further, that such information need not be reported if the creditor is a relative of the reporting person within the third degree of consanguinity or affinity;

PERAC at the request of MACRS agreed to the deletion of the following text in bold:

(7) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven **if the creditor is a person having a direct interest in a matter before a retirement board**; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative; **and**

Board Composition

Note: PERAC has advocated and will continue to advocate for the reintroduction of the original language grandfathering all current board members while they remain on the boards.

Bold text deleted by the Joint Committee on Public Service

(4 7/8 C) No employee, contractor, vendor or any person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph **shall apply only to individuals who first become members of a retirement board on or after January 1, 2007.**

Bold text added by Joint Committee on Public Service

(4 7/8 C) No employee, contractor, vendor or any person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph shall (apply only to individuals who first become members of a retirement board on or after January 1, 2007) **take effect at the completion of the board members current term.**

Bold text deleted by Joint Committee on Public Service

Section 12. Paragraph (b) of Section 19 of Chapter 34B of the General Laws is hereby amended in line 14 by inserting the following after the word “32”:-

Provided that no employee, contractor, vendor or person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph shall **apply only to individuals who first become members of a retirement board on or after January 1, 2007.**

Bold text added by Joint Committee on Public Service

Section 12. Paragraph (b) of Section 19 of Chapter 34B of the General Laws is hereby amended in line 14 by inserting the following after the word “32”:-

Provided that no employee, contractor, vendor or person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph (shall apply only to individuals who first become members of a retirement board on or after January 1, 2007) **take effect at the completion of the board members current term.**

PERAC at the request of MACRS agreed to the deletion of the following:

Section 13. Section 24 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (2) and inserting in place thereof the following:-

(2) Any person who willfully refuses or neglects to comply with any provision of sections one to twenty-eight inclusive, or any rule or regulation established hereunder shall be punished by a fine of not more than ten thousand dollars or imprisonment for not more than two years or both.

Procurement Section

PERAC at the request of MACRS agreed to the additions in bold:

“Procurement officer”, an individual duly authorized by the retirement board to assist in a procurement.

(b) The retirement board **or its procurement officer** shall give public notice of the request for proposals **and** a reasonable time prior to the date for the opening of proposals. The notice shall:

(4) be published at least once, not less than two weeks prior to the time specified for the receipt of proposals, in a newspaper of general circulation within the area served by the retirement board and in the case of a procurement for investment, accounting, actuarial or legal services in a publication of interest to those engaged in providing such services. The retirement board **or its procurement officer** shall also place the notice in any publication established by the state secretary for the advertisement of such procurements. The retirement board **or its procurement officer** may distribute copies of the notice to prospective bidders, and may compile and maintain lists of prospective bidders to which notices may be sent.

(3) all contractual terms and conditions applicable to the procurement provided that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required services.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The retirement board **or its procurement officer** shall make copies of the request for proposals available to all persons on an equal basis.

(e) The retirement board **or its procurement officer** shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluations, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the retirement board **or its procurement officer** shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection.

(f) The retirement board **or its consultant retained pursuant to the provisions of this chapter** shall be responsible for the **initial** evaluation of the proposals. The retirement board **or its consultant retained pursuant to the provisions of this chapter** shall prepare their **initial** evaluations based solely on the criteria set forth in the request for proposals. The evaluations shall specify in writing:

3) revisions, if any, to each proposed plan for providing the required services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

In the event the initial evaluation is conducted by a consultant retained pursuant to the provisions of this chapter said consultant shall review all initial evaluations with the retirement board and provide to each member of the retirement board the initial evaluation of each proposal.

(h) In the event of a competitive process to select an investment service provider the request for proposals shall include mandatory contractual terms and conditions to be incorporated into the contract including provisions stating that the contractor is a fiduciary with respect to the funds which the contractor invests on behalf of the retirement board, provisions stating that the contractor shall not be indemnified by the retirement board, provisions requiring the contractor to annually inform the commission and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the contractor or a related person from others in connection with the contractors services to the retirement board or any other client, provisions requiring the contractor to annually disclose to the commission and the retirement board any compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the contractor or a related person to others in relation to the contractors services to the retirement board or any other client, and provisions requiring the contractor to annually disclose to the commission and the retirement board in writing

any conflict of interest the contractor may have that could reasonably be expected to impair the contractor's ability to render unbiased and objective services to the retirement board. Other mandatory contractual terms and conditions shall address investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, terms of employment and termination provisions. The retirement board shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board **or its duly designated agent, subject to the approval of the retirement board**, may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror, the retirement board **in consultation with its duly designated agent and its consultant retained pursuant to the provisions of this chapter** determines that it is in the best interests of the retirement board, the retirement board **in consultation with its consultant retained pursuant to the provisions of this chapter** may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract with such offeror. The retirement board shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The time for acceptance may be extended for up to 45 days by mutual agreement between the retirement board and the responsible and responsive offeror offering the most advantageous proposal as determined by the retirement board.

On or before January 1 of each year the contractor shall file the disclosures required herein with the board and the commission. Failure to file disclosures or the filing of inaccurate disclosures shall subject the contractor to proceedings under section 21A.

(8) Each retirement board member shall certify to the commission in writing with respect to a procurement subject to the provisions of this section, as follows:

The undersigned certifies under penalties of perjury that, **to the best of his/her knowledge and belief**, this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(b) The commission **or the retirement board** shall have authority to institute a civil action to enforce paragraph (b).

PERAC at the request of MACRS agreed to the deletion of the following:

Section 15. Section 21 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out Subsection (2) inserting in place thereof the following paragraph:-

(2) The commission may assess costs on any retirement system attributable to services provided by the commission to said retirement system in the event that the commission determines that extraordinary resources were expended in the course of supervising the applicable system. Said assessments shall be comprised of a charge for the administrative expenses of the commission and a charge for services rendered to the retirement system by the commission. Any expenses incurred under the provisions of this section in connection with the supervision of any system shall be paid by the applicable system as determined by the commission. Each retirement system shall reimburse said expenses attributable to such retirement system to the pension reserves investment trust administered by the pension reserves investment management board within ninety days of receiving an invoice from the commission.

PERAC Administrative Authority

PERAC agreed at the request of MACRS to revise the legislation by adding the language in italics.

The Committee on Public Service revised the section pertaining to PERAC acting by deleting some language and inserting other text. The text in bold represents the impact of that change:

Section 11. Section 23 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (4) and inserting in place thereof the following: -

(4) If the commission determines that a board of any retirement system has violated or neglected to comply with any provisions of this chapter, or the rules and regulations promulgated by the Commission, the Commission may determine that such system should be managed in accordance with orders of said commission. The commission is hereby authorized to appoint a committee consisting of three members, *two of whom shall be members or designees of the commission and one who shall be a member of a retirement board other than the board subject to the commission determination chosen by the commission from a list of three nominees provided by the Massachusetts Association of Contributory Retirement Systems (MACRS), to oversee any board that is responsible for the administration of any such system. Based upon the recommendation of said committee the commission shall,* direct the board to take or desist from any action in order to insure that the system is managed with reasonable care, skill, prudence and diligence. Such direction may include, but is not limited to, the following:-

transfer of assets to the PRIT Fund;
termination of contracts;
approval or denial of retirement benefits;
employment or termination of employees; and,
conduct a fiduciary audit

Appointment of board members until such time as vacancies can be filled pursuant to the provision of Chapter 32

Scheduling of elections to fill a vacancy created by the removal of a current elected member pursuant to the commission's authority under this section

Any person receiving a notice from the commission as set out above shall not have a right to appeal the receipt of such notice to the Contributory Retirement Appeal Board. Any person receiving any communication, either verbal or written, subsequent to the notice as required by this section in connection with the same matter shall not have a right to appeal the receipt of such communication to the Contributory Retirement Appeal Board. Any person aggrieved by any action taken, notice made or determination rendered by the commission in connection with this section shall have a right to appeal to the superior court, in accord with Section 16(6) of Chapter 32.

Board Member Stipend

Bold text added by the Joint Committee on Public Service

Section 14. Paragraph (a) of subdivision (6) of Section 20 of Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out lines 842 through 845 inclusive and inserting in place thereof the following: -

- (a) The elected and appointed members of any city, town, county, regional, district, or authority retirement board upon acceptance of the appropriate legislative body shall receive a stipend provided, however, that said stipend shall **not be** less than three thousands dollars per annum nor exceed seven thousand five hundred dollars per annum; provided further,

Section 15. Said subdivision, as so appearing, is hereby further amended in line 853 by striking out the words “three **thousand**” and inserting in place thereof the word “seven thousand five hundred”.

Mandatory Continuing Education

PERAC at the request of MACRS agreed to the deletion of the following:

Section 21. Section 50 of Chapter 7 of the General Laws is hereby amended by adding the following clause:-

(k) develop an educational program for retirement board members provided that participation in said program shall be mandatory and provided, further, that failure to participate shall prohibit a retirement board member from serving beyond the conclusion of the term in which the failure took place. In the event the non-complying retirement board member is an ex-officio member his or her term shall cease upon notification to the retirement board by the commission of that non-compliance.

In place of the language deleted PERAC and MACRS agreed to the following:

Section 16. Section 20 of Chapter 32 of the General Laws is hereby amended by adding the following sub-division:-

(7) In order to serve as a member of a retirement board an individual shall comply with the provisions of this subdivision.

Elected or appointed members shall be required to undertake four hours of training annually sponsored by the commission. The commission shall offer at least four opportunities during the year for board members to meet this requirement at times and places of convenience throughout the state. The commission may offer this education or may contract with other parties to provide such training. The training curriculum shall, at a minimum, include the topics of fiduciary responsibility, ethical conduct, and conflict-of-interest.

Elected or appointed members shall also be required to undertake an additional four hours training annually as prescribed by the commission provided by the Massachusetts Association of Contributory Retirement Systems or other local, state, regional and national organizations recognized by the commission as having expertise in retirement issues of importance to retirement board members or other entities, on topics acceptable as the commission may from time to time determine. The commission shall certify such organizations as appropriate for conducting such training upon application to the commission.

The commission shall provide retirement boards with a statement of completion of education form on or before December 31 of each year. The board shall provide the forms to their members. The form shall state under the pains and penalties of perjury whether or not the retirement board member has undertaken the combined eight hours of continuing education required by this sub-division. Retirement board members shall submit the completed form by January 15 of the year following.

Any retirement board member who without good cause as determined by the commission has failed to file a statement of completion of education form with PERAC by January 15 shall be notified by PERAC by February 15 of the failure to file. The commission will afford the board member 30 days to provide just cause for why he or she did not file the required form. Failure to provide acceptable justification as determined by the commission for not filing the form in a timely manner within 30 days shall result in suspension of voting rights until the form is successfully completed. The commission shall notify the retirement board of the suspension of voting rights of the board member in question and that board member shall not be entitled to vote on any matter before the retirement board.

Any retirement board member who without good cause after review by the commission has been determined to have not successfully completed the aforementioned continuing education requirements shall have his/her board voting rights suspended until he or she has successfully completed the education requirements of the previous year. The commission will afford the board member

30 days to provide good cause for why he or she did not complete the required education requirements for the previous year. Board members shall have 180 days to successfully complete the continuing education requirements for the previous year.

Failure to successfully complete the education requirements shall prohibit a retirement board member from serving beyond the conclusion of the term in which the failure took place. In the event the non-complying retirement board member is an ex-officio member his or her term shall cease upon notification to the retirement board by the commission of that non-compliance.

Each retirement board shall notify all prospective board members and board members of the requirement to complete education requirements at the time of receiving information about seeking election to a retirement board, or prior to being appointed to a retirement board.

The commission shall annually notify board members of the requirement to complete continuing education.

The requirements established by this sub-division shall become effective for calendar year 2007.

Review of Collective Bargaining agreements by Retirement Boards

Added by the Joint Committee on Public Service

Section 17. Chapter 150E section 7 is hereby amended by adding the following new subsection (e):

Any employer entering into a collective bargaining agreement with an employee organization must provide a copy of said agreement to the retirement board to which the employees covered by the agreement are members. All retirement systems must maintain files of all active collective bargaining agreements which cover the systems members. The retirement board shall review collective bargaining agreements for compliance with the provisions of chapter 32.

Section 18. Chapter 32 section 21 is hereby amended in line 15 by adding the following new sentence after the word “system”:

Each board shall maintain copies of all collective bargaining agreements which cover the systems members and shall make such agreements available to the commission for review at such time as the commission shall specify.