

SPECIAL COMMISSION ON PENSION FORFEITURE HOLDS FIRST MEETING

By Patrick M. Charles
Associate General Counsel

The Special Commission on Pension Forfeiture, established by Chapter 133 of the Acts of 2016, held its first meeting on October 17, 2016 at PERAC's offices in Somerville. This Special Commission was created by the Legislature in the wake of the Supreme Judicial Court's decision, in PERAC v. Bettencourt, 474 Mass. 60 (April 6, 2016), which held that a pension forfeiture is a fine for the purposes of the 8th Amendment to the United States Constitution. The SJC is the first state Supreme Court to conclude that a pension forfeiture is a fine under the 8th Amendment and to halt a forfeiture as a result.

The Special Commission includes the Treasurer or her designee, the Attorney General or her designee, the Senate and House Chairs of the Joint Committee on Public Service, appointees of the Senate President and Speaker of the House, appointees of the Senate and House Minority Leaders, the President of the Massachusetts Association of Contributory Retirement Systems or a designee, one person from the Retired State, County & Municipal Employees Association, and a representative from the Massachusetts District Attorneys' Association. Pursuant to the statute, the Special Commission is chaired by PERAC's Executive Director, Joseph E. Connarton.

The Special Commission has been tasked with reviewing the Bettencourt decision and making recommendations, including proposed amendments to section 15 of Chapter 32 of the General Laws by filing a report with the Legislature by March 1, 2017.

At the first meeting, PERAC staff briefed the Special Commission on the history of the pension forfeiture statute, the Bettencourt decision and how the ruling may currently impact pension forfeiture cases. Staff also provided a briefing on initial research conducted regarding other states' pension forfeiture statutes. After considering the information provided during and prior to the meeting, the Special Commission discussed the scope of their review and requested that PERAC staff provide additional information for the next meeting.

On the composition of the Special Commission PERAC's Executive Director Joseph Connarton noted:

The members of the Special Commission possess a wealth of experience in the Massachusetts pension system. The Special Commission fully intends to deliberate all relevant issues related to the Bettencourt decision, consider possible alternatives or changes to the current statute, and will issue a report with any legislative suggestions as the Special Commission sees fit.

The next meeting is November 16, 2016 in the Crane Conference Room, 12th floor, One Ashburton Place, Boston. All meetings of the Special Commission are open to the public. ■

12TH EMERGING ISSUES FORUM
Over 250 members, administrators and guests attend

Look inside for more details & photographs!



Pictured: Keynote speaker, Dolores Mitchell, retired GIC Executive Director & Ralph White, State Retirement Board Elected Member

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BEACON HILL UPDATE

EFFORT TO ROLL BACK PENSION REFORM FAILS

Anti-reform FY'17 Budget Outside Sections Defeated

By Michael DeVito

Director of Public Affairs

Two Budget Outside Sections in the FY'17 Conference Committee report provided one of the most hard-fought retirement-related issues of the 2015-2016 legislative session. Outside Sections 43 and 44 of the budget Conference Committee report sought to weaken pension reforms enacted in Chapter 68 of the Acts of 2007. These 2007 reform provisions were aimed at protecting the pension assets of Massachusetts' 104 retirement systems and their members.

Chapter 68 inserted Section 22(8)(c1/2) into Chapter 32 of the General Laws. That law directed PERAC to annually assess the investment performance of the retirement systems and compare that performance to the PRIT Fund's returns. Retirement Systems with a Funded Ratio below 65% and which failed to attain an investment return within 2% of the PRIT Fund return over the most recent 10 year period would, under the law, be required to permanently transfer assets to the PRIT Fund for investment management. Outside Sections 43 and 44 would have weakened these requirements.

OUTSIDE SECTION 43

This outside section would have allowed a pension system to underperform, when compared to the PRIT fund, by up to 3% thus lowering investment gain and putting further strain on the retirement system funding. This change would make it more difficult for transfers to take place for clearly underperforming systems and allow that underperformance with its concomitant erosion of retirement system assets to continue.

OUTSIDE SECTION 44

This Outside Section would have significantly weakened pension reform by



allowing a pension fund that has been found to be underperforming, meaning less than 65% funded with an investment return 2% lower than PRIT in the previous 10 years, to return to investing on its own after 5 years rather than in perpetuity, as Chapter 68 specified.

PERAC'S UNSHAKABLE OPPOSITION

PERAC strenuously opposed these Outside Sections from the outset. Weakening the safeguards put in place by Chapter 68 would embody a slippery slope toward the continual undermining of these reforms.

These Outside Sections were examples of attempts, through the legislative tactic of budget amendments, to diminish pension reform. Seemingly annually, amendments and Outside Sections appear – seeking to chip away either at general pension reform - such as the issue of retirement system investment fund performance and accountability - or at retirement board governance reforms. The governance reforms were developed, proposed and advocated by PERAC and now, after 5 years in effect, have delivered dramatically positive results in retirement board openness, transparency and continuing education.

THE PROCESS

After passing the House of Representatives,

the two Outside Sections in the House budget went to the Senate. The same amendments were also offered to the Senate budget, with the Chair of the Senate Committee on Ways and Means, the Honorable Karen E. Spilka personally speaking in opposition. They were subsequently rejected in the Senate and went to the House/Senate Conference Committee for deliberation. Outside Sections 43 and 44 were included in that final budget bill and sent to the Governor as part of the FY'17 budget Conference Committee report.

PERAC continued its strong opposition and, aided by the Massachusetts Municipal Association, vigorously opposed these Outside Sections and requested that Governor Charles Baker veto both. Governor Baker agreed with PERAC's position, vetoed both Sections and sent them back to the General Court. PERAC reinforced its strong opposition to these sections to the House leadership. PERAC requested that the House sustain the Governor's veto.

PERAC was extremely gratified that the House decided to sustain the Governor's veto and not take up the overrides, retaining the components of Chapter 68 in the statute.

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CHAPTER 176: A RETROSPECTIVE

By Michael DeVito
Director of Public Affairs

Although it has been 5 years since the Chapter 176 of the Acts of 2011 governance reforms were enacted, the process actually began many years earlier.

THE LONG PROCESS TO PASSAGE

Chapter 176 actually evolved over a 6-year period. In 2004 PERAC concluded that a transformation of the Massachusetts pension system was necessary. After extensive study and review, a slate of governance reforms was developed, approved by the Commission and brought to Beacon Hill for consideration. Legislation was filed, opposed and failed; filed, opposed and failed; and filed, opposed and failed over the course of 6 very long and challenging years.

Eventually, with the input and in partnership with the Massachusetts Association of Contributory Retirement Systems (MACRS) and the Retired State, County and Municipal Employees Association of Massachusetts (Mass Retirees), a consensus was reached. Significant changes suggested by MACRS and Mass Retirees were incorporated into the final bill. It passed and was signed into law on November 18, 2011.

IMPLEMENTATION

PERAC now had significant new responsibilities and programmatic initiatives to implement in a short time frame.

In addition to establishing governance changes for board members, Chapter 176 was also a transformative event for PERAC as an agency - evolving somewhat from an oversight agency to more of a regulatory agency. And make no mistake about it – the agency fully understood that no one likes to be regulated any more than they already are.

A new Compliance Unit with Tom O'Donnell as its Director and Derek

Moitoso as its Counsel was established to handle a good part of the management of the new functions: overseeing continuing education and reviewing the new Statements of Financial Interest and all the investment and other filings that were now required.

Chapter 176 also brought about statutory modifications. One important change was removing the blanket statutory exemption for retirement boards from the procurement requirements of Chapter 30B, Section 1 (19). The legislation required retirement board procurement under the new Chapter 32, Section 23B in 4 areas: investment, accounting, actuarial and legal.

A second modification was bringing money managers and consultants that invest system assets into more formal and comprehensive reporting of their spending related to retirement board investment accounts and related matters. This included the requirement that they disclose all payments related to retirement board investment business - no matter what the purpose.

Another modification was the filing of the annual board member Statement of Financial Interest (SFI). As Executive Director Joseph Connarton has pointed out on numerous occasions, these statements are filed not only by state legislators and other senior state executives but they are also completed by PERAC's executive staff – the Executive Director and his senior staff who report directly to him.

The SFI forms that board members are required to file are less involved than the forms filed annually by PERAC staff. In addition, while other public officials' filings are public, the SFI's filed by board members are available only to certain key staff in PERAC under strict control. This was a direct accommodation to the boards' wishes.

This new law was a clear paradigm shift to more transparency in procurement, more information about payments related to board investment of members' pension funds, and openness, generally in many aspects of board operations.

This was also reflected in a continuing education process for retirement board members that is focused, structured and required. In conjunction with MACRS and other educational providers, as approved by the Commission, board members are offered courses that develop expertise in subject areas of importance to board governance. The fiduciary responsibility of board members without question warrants ongoing maintenance of professional know-how for the board members' benefit, the benefit of the systems and their members.

REVITALIZATION - THE FUTURE OF GOVERNANCE

All of these changes occasioned revitalization - the reason why the changes embodied in Chapter 176 were sought, and ultimately legislated and implemented. It was all about bringing retirement board governance into the 21st century. After some initial growing pains, and certainly some culture-shock, the implementation, of these governance and transparency improvements has progressed wonderfully well because of the dedication of the boards. The revitalization has occurred.

And what about the future of governance? As time proceeds, responsibilities and requirements like SFI's, continuing education and investment reporting for managers will be met just as part and parcel of the normal duties and responsibilities of a board member - just another ordinary requirement of being a retirement board member in Massachusetts.

And that will be a VERY good outcome.

2016 COMMONWEALTH VALUATION STUDY

By James Lamenzo
Actuary

The Commonwealth Actuarial Valuation Report presents the results of the actuarial valuation of the pension benefits that are the obligation of the Commonwealth of Massachusetts. The 2016 report was released by PERAC on August 17, 2016. The four components of the report are the State Employees' Retirement System, the Massachusetts Teachers' Retirement System, Boston Teachers, and the Cost of Living Allowance reimbursements to local systems. Two charts from the January 1, 2016 Commonwealth Actuarial Valuation Report are presented.

The bar chart shows the unfunded actuarial liability (UAL) since 1990. The UAL represents the actuarial accrued liability less the value of plan assets. As of January 1, 2016, the actuarial liability was \$87.4 billion and the actuarial value of plan assets was \$49.5 billion.

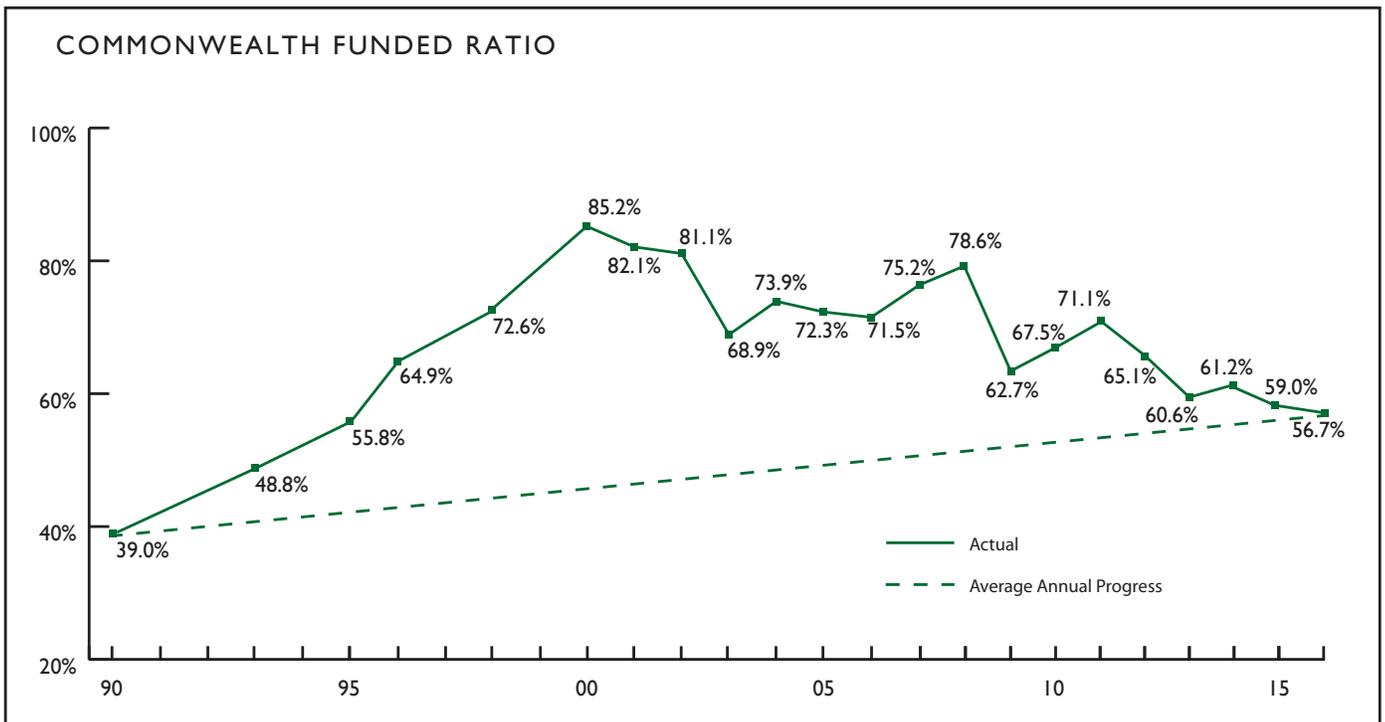
It is important to note that plan assets have grown faster than plan liabilities since 1990. As of January 1, 1990, the actuarial

accrued liability was approximately \$20.0 billion and assets of \$7.8 billion resulted in a \$12.2 billion UAL. Since 1990, the actuarial liability has grown by about 4.4 times while assets have grown by about 6.3 times.

For this reason, we believe the funded ratio represents a better measure of the Commonwealth's progress. If you draw a straight line from the 1990 funded ratio of 39.0% to the January 1, 2016 amount of 56.7%, the line is moving upward to the right. This demonstrates the funding progress to date. Although the funded ratio reached 85.2% on January 1, 2000, this was the result of average annual returns from 1985-1999 that exceeded 12.5% and attaining such a high level of funding so quickly was not expected. Over the past 16 years (2000-2015), the average annual return on assets on a market value basis is approximately 5.8%. Over a 10-year and 5-year period, the returns have been 5.9% and 7.5% respectively. The 30 year return is 9.5%.

Note that the actuarial liability (and therefore the UAL) as of January 1, 2016 increased \$2.2 billion to reflect a reduction in the investment return assumption from

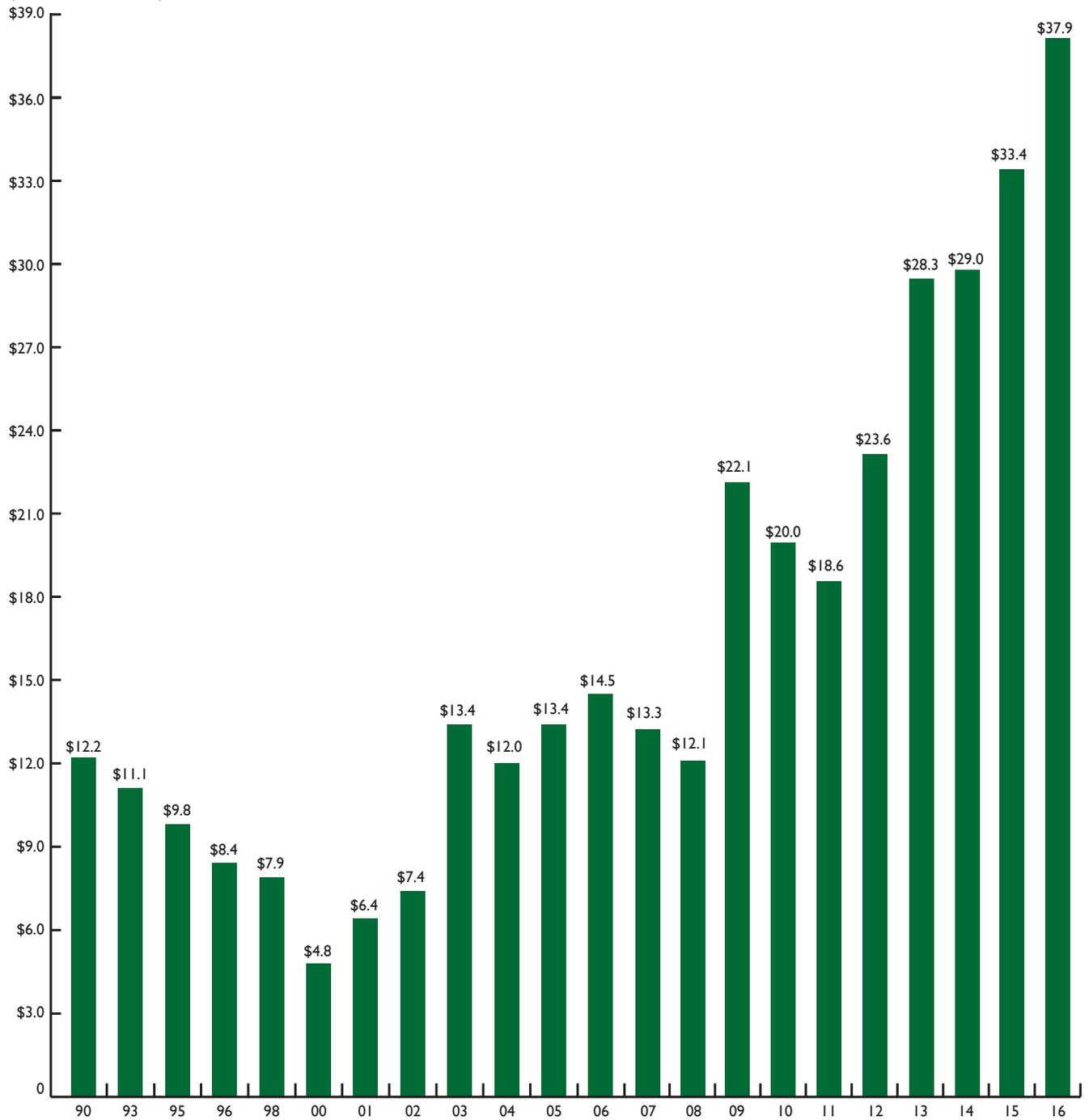
7.75% to 7.50% and \$630 million due to the adoption of an Early Retirement Incentive and the transfer of some active members from the Optional Retirement Plan to the State Retirement System. There have been a number of other plan and assumption changes in the past 7 years that have increased the Commonwealth actuarial liability. These changes include reductions in the investment return assumption from 8.25% to 8.0% as of January 1, 2013, and 8.0% to 7.75% as of January 1, 2015, annual adjustments to the mortality assumption including the adoption of a fully generated mortality assumption as of January 1, 2015, the adoption of a \$13,000 COLA base, the transfer of active members of sheriff departments in six counties to the State, and the transfer of former members of the Massachusetts Turnpike Authority Retirement System to the State. Including the changes as of January 1, 2016, the actuarial liability is approximately \$9.7 billion greater than it would have been using the 2009 basis. Therefore, on a comparable basis with the 2009 plan provisions and assumptions, the UAL on January 1, 2016 would be \$28.2 billion and the funded ratio would be 63.7%. ■



2016 COMMONWEALTH VALUATION STUDY

COMMONWEALTH UNFUNDED LIABILITY

(in billions of dollars)



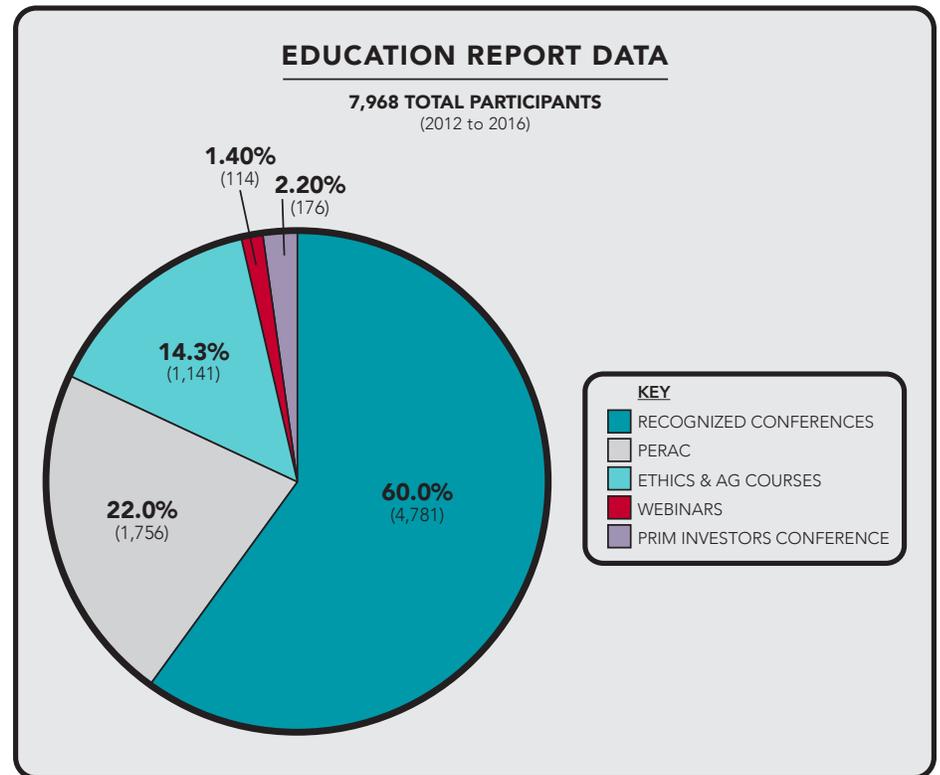
The 2016 Commonwealth Actuarial Valuation Report can be accessed on PERAC's Website at: <http://www.mass.gov/perac/docs/forms-pub/reports/valuation-reports/2016commonwealth.pdf>

PERAC EDUCATION - 5 YEARS LATER

By Thomas O'Donnell
Compliance Officer

Chapter 32 mandates that retirement board members complete training during each year of service on the retirement board. Nearing the completion of the fifth year of this program there have been almost 8,000 course completions by retirement board members. In awarding the number of credits for individual courses the Commission does not necessarily base that number on the length of the program but also considers the nature of the topic involved. Members of boards are encouraged to complete a full range of educational sessions during their term. PERAC continues to find ways to avail Members additional access to courses. Classes are offered in house at PERAC and several times per year, PERAC staff travels to venues around the state making attending classes more manageable for Members. Additionally, more events are being approved as well as webinars being added to the curriculum offerings.

The Commission is prepared to approve educational credits for a variety of events sponsored by 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. This provision of the statute has been interpreted to encompass particular programs offered by such entities. For example, an ethics class or open meeting law class offered as part of a broader conference may be eligible for

education credit. However, approval for such credit must take place well in advance of the date of the event. This will enable the Commission to analyze the program and to provide a general notice to retirement board members to maximize participation.

COURSES	2012	2013	2014	2015	YTD 2016	COMPLETIONS
Acknowledged Conferences	1255	1047	1099	664	716	4781
PERAC Sessions	458	263	435	338	262	1756
Ethics and AG Courses	140	327	268	254	152	1141
Webinars				74	40	114
PRIM Investors Conference		106		70		17
TOTALS	1853	1743	1802	1400	1170	7968

EMERGING ISSUES FORUM NOW IN ITS 12TH YEAR

By *Natacha Dunker*
Communications Director

PERAC hosted our 12th Emerging Issues Forum on September 15, 2016 at the College of the Holy Cross in Worcester, Massachusetts. Over 250 individuals attended the event and retirement board members who attended earned three hours of educational credit.

PERAC Executive Director Joseph Connarton gave the opening remarks to welcome attendees to the Forum and retired Group Insurance Commission Executive Director Dolores Mitchell provided the keynote address for the conference. After giving a brief history of her path to leading one of the largest agencies in Massachusetts, her remarks mainly centered around the rapidly increasing cost of health care, particularly with pharmaceuticals, and the GIC's efforts to rein them in. It is clear after listening to her address that Ms. Mitchell is not letting retirement slow her down.

The first presentations of the day were from Mark Abrahams of The Abrahams Group and PERAC's actuary, Jim Lamenzo with a discussion on Other Post Employment Benefits (OPEB). Mr. Abraham's presentation, *Trusting Your Trust Fund*, focused on setting up an OPEB trust and showing the potential impact of recent GASB statements on future unfunded liabilities. Jim's presentation highlighted where PERAC stands in terms of oversight of OPEB. He provided some highlights of the OPEB



More photographs, page 8

Summary Report, now available on our website, which summarizes local systems' unfunded liabilities due to OPEB.

A comprehensive overview of the disability process was also part of the morning presentations. Deputy General Counsel Judith Corrigan, Disability Manager of Medical Services, Kate Hogan and Nurse Case Manager, Patrice Looby provided a step-by-step overview of the disability application process from beginning to end, including what happens after an application has been approved. The presentations included helpful hints for ensuring cases are handled as smoothly as possible.

As part of the Disability presentation, Dr. Terence Keane, from the Veterans Administration National Center for Post Traumatic Stress Disorders (PTSD), presented *Recent Advances in Psychological Treatments for PTSD*. He discussed the approach the VA is taking to treat patients

who present with PTSD through psychological and pharmacological treatment.

To close out the day, Jim Lamenzo and PERAC Senior Actuarial Associate, John Boorack, presented *Revisiting the Pension Crisis, Looking Back and Looking Forward*. This presentation looked at how all assumptions, and specifically the investment return assumption as well as actual investment returns, have affected unfunded actuarial liabilities and funded ratios across Massachusetts. The session also stressed the need for maintaining budgets in communities.

All of the presentations are available on our website if you would like to review them again. As always, we appreciate all of the feedback we receive so that we can work on making each year better than the last. We at PERAC want to thank everyone who helped make this year's event a success!

EFFORT TO ROLL BACK PENSION REFORM FAILS

Anti-reform FY'17 Budget Outside Sections Defeated (Continued from page 2)

STRONG SUPPORT ON BEACON HILL

PERAC thanks Governor Baker and the leadership of the House, especially Speaker Robert A. DeLeo and Chairman Brian Dempsey, Senate President Stanley Rosenberg and Chair of the Senate Committee on Ways and Means, Senator Karen E. Spilka for their continued unflinching support for pension reform in all of its many aspects.

FUTURE ATTEMPTS?

PERAC has made clear in its successful opposition to initiatives by vested interests that it will be steadfast in its efforts to protect the reforms of the past – while initiating additional reforms in the future. Vested interests who seek to weaken pension reform and especially the transparency and openness in retirement board governance initiated by PERAC can expect the same

forceful, outspoken and persuasive opposition from the agency and its many supporters in the future. Massachusetts pension systems and their assets must not and will not be jeopardized. The risks to the systems and their members' assets in "turning back the clock" to a less open and transparent era are grave. ■

**IMAGES FROM
EMERGING
ISSUES
FORUM**

Thank you all for attending!



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