

COMMISSION APPROVES PENSION REFORM BILL

State House Hearing Held on February 16th before Public Service Committee

After several months of intense analysis, vigorous discussion, and consultation with the pension community, the Public Employee Retirement Administration Commission voted to approve a major pension reform legislative proposal at its January 25, 2006 meeting. This was the culmination of the first phase of PERAC's effort to strengthen its oversight of the 106 Massachusetts public retirement systems.

On Thursday, February 16, 2006, the Joint Committee on Public Service, chaired by Senator Patricia D. Jehlen (D-Somerville) and Representative Jay Kaufman (D-Lexington), conducted a hearing at the State House on PERAC's slate of pension reform recommendations. The hearing was well attended by members of the retirement community,

many of whom voiced their views.

Commission Panel Testifies

A delegation from PERAC that included Commission Chairman Judge Domenic J. F. Russo (ret.), Commissioner James M. Machado, and Executive Director Joseph E. Connarton spoke in support of the proposal. They emphasized that the Commission had followed a deliberative course of action in reviewing its oversight role and making its legislative recommendations. Judge Russo made it clear that the intent behind these reforms is simple: the protection of the state's 106 retirement systems.

Executive Director Connarton reviewed several troubling situations that have recently arisen, and which have consumed significant PERAC staff time.

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Public Employee Retirement Administration Commission

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Secretary
Executive Office of Administration
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- Joseph E. Connarton
Executive Director
- Michael DeVito
Editor



PERAC Executive Director Joseph E. Connarton, Chairman Domenic J. F. Russo, and Commissioner James M. Machado speak with members of the Joint Committee on Public Service, chaired by Senator Patricia D. Jehlen (D-Somerville) and Representative Jay Kaufman (D-Lexington).



COMMISSION APPROVES PENSION REFORM BILL (CONT.)



Advisory Committee members Professor Cary Coglianese, Chair Scott Harshbarger, and Alan G. Macdonald speak with members of the Joint Committee on Public Service, chaired by Senator Patricia D. Jehlen (D-Somerville) and Representative Jay Kaufman (D-Lexington).

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They include:

- Failure of one system to submit statutorily-mandated Annual Financial Statements for a significant period of time;
- Attempts by one system to provide three separate benefits to a widow;
- Controversy regarding whether contractual agreements between the locality and unions are consistent with the definition of “regular compensation” in Section 1 of Chapter 32;
- Refusal by systems to properly pay benefits to members or to reinstate a member who was on the payroll, but not officially accepted as a member of the system;
- Another system’s attempt to purchase property without proper statutory authority; and
- A large system’s loss of more than \$37 million (roughly 8%) from its investment portfolio stemming from actions in violation of PERAC regulations.

Advisory Committee Representatives Voice Their Support

At the hearing, the PERAC delegation was followed by a panel of three esteemed governance experts from PERAC’s Reform Initiatives Advisory Committee. Advisory Committee Chair Scott Harshbarger, former Massachusetts Attorney General, former President and CEO of Common Cause, and current Senior Counsel at

the Boston law firm of Proskauer Rose, outlined the clear need for reform. He noted that the Advisory Committee, who conducted their review of the existing statutory and regulatory framework at PERAC’s request, approached their assignment with open minds and without any preconceived notions about the outcome.

Chairman Harshbarger was followed by a second Committee member, Professor Cary Coglianese, Chair of the Regulatory Policy Program and Associate Professor of Public Policy at the Kennedy School of Government at Harvard University. He cautioned those present to remember that, although most of the retirement boards are conscientious, the collapse of a single system could jeopardize all 106 systems. The professor emphasized that clarification of PERAC’s enforcement authority, the disclosure and conflict-of-interest provisions, and the mandatory education requirements are essential elements in ensuring the long-term safety and viability of the systems.

The third Committee member to testify was Alan G. Macdonald, Executive Director of the Massachusetts Business Roundtable, and former Member of the Winchester Retirement Board, and a former Massachusetts Assistant Attorney General. Mr. Macdonald’s first-hand experience as a retirement board member gave added weight to his comments about

the critical importance of implementing fiduciary guidelines for retirement board members. Mr. Macdonald stressed that mandatory education for board members is essential if all of them are to shoulder their responsibilities in a professional manner.

The Public Service Committee members participated in a constructive question-and-answer session with the Advisory Committee panel. Among the topics discussed were limits on board membership, who should be “grandfathered”, and the thought process and precedents behind the proposed disclosure provisions.

Concerns Voiced

Among those who also testified were: Ralph White, representing the Massachusetts Association of Contributory Retirement Boards (MACRS); Timothy Bassett, Executive Director of the Essex Regional Retirement Board; Michael Hennessey, a retired firefighter and Methuen Retirement Board Member; Dennis Devine, Vice President of MACRS and Member of the Woburn Retirement Board; James Quirk, an attorney representing retirement boards; and William Farmer, Executive Director of the Plymouth County Retirement Board, and a Member of the Brockton Retirement Board.

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Mr. White observed that the retirement boards would need more time to review the draft legislation. He requested additional time to further discuss the bill with MACRS and the Public Service Committee. Mr. Quirk, in an extensive presentation, expressed many concerns about the bill. Mr. Bassett thanked PERAC for its efforts on the reforms and expressed concern about the procurement section of the bill, which requires retire-

ment boards to seek bids for actuarial, legal, accounting, and auditing services.

Next Steps

The Public Service Committee Chairs, Senator Jehlen and Representative Kaufman, stated that they wish to report the legislation in a timely manner. To facilitate the process, they invited PERAC and advocates from the retirement boards to participate in a joint meeting to consider language changes. The Chairs

set a timeframe of two weeks to receive, as Chairwoman Jehlen indicated, not concerns, but suggested language changes from retirement board advocates. As was the case throughout the development of the reform proposals, PERAC is most willing to discuss changes. The joint meeting is likely to take place in early March 2006.

THE HISTORY OF PERAC'S PENSION REFORM INITIATIVE

In the fall of 2004, PERAC embarked upon an examination of its nearly 8-year history of regulatory oversight of the 106 public retirement systems in Massachusetts. The Commission identified critical issue areas in its oversight functions that it felt were appropriate for a thorough and impartial review. It also examined instances where a lack of clear or more focused authority hindered the Commission's ability to carry out its statutory mission.

Initially, staff members developed discussion items for the Commissioners, who then charged the staff to further explore those topics with important constituencies from the retirement community. One such constituency was the Public Pension Advisory Group (PPAG). It is made up of retirement board administrators from around the state and acts as a sounding board for PERAC on major policy issues.

The Commission concluded that a thorough, thoughtful, and impartial examination by outside experts in the field of governance and public administration was both prudent and warranted. Executive Director Joseph E. Connarton established an Advisory Committee consisting of five governance experts from business and academia, with several possessing backgrounds in Massachusetts state government, to review the discussion items in the context of the existing statutory and regulatory framework. Chaired by former Massachusetts Attorney General Scott

Harshbarger, the Advisory Committee accepted this mission and focused on investments, enforcement, conflict of interest, board structure, and education. Their mission was to review the need for reform, assess various alternatives, and report to the Commission.

The Advisory Committee also included the following members:

Professor Cary Coglianese, Chair of the Regulatory Policy Program and Associate Professor of Public Policy, John F. Kennedy School of Government, Harvard University;

Professor Paul M. Healy, James R. Williston Professor of Business Administration, Harvard Business School, Harvard University;

Alan G. Macdonald, Executive Director of the Massachusetts Business Roundtable, a former Massachusetts Assistant Attorney General; and a former member of the Winchester Retirement Board; and

Jerrold Mitchell, Chief Investment Officer of The Boston Foundation, and former Chief Investment Officer of the Pension Reserves Investment Board (PRIM).

The Advisory Committee deliberated for nearly 6 months. They met with PPAG members and other members

of the retirement community and received valuable feedback. On May 25, 2005, the Committee presented its recommendations to the Commission who voted unanimously to accept all of them. Subsequently, in response to a request made by the Executive Board of the Massachusetts Association of Contributory Retirement Systems (MACRS), the Board, Advisory Committee members, and representatives from PERAC convened for an in-depth discussion about the recommendations.

In the fall of 2005, PERAC conducted public hearings in Worcester, Springfield, Plymouth, and Somerville as part of an extensive open comment process to fully air the Commission's reform proposals with the retirement community and the general public. Hearings were well attended, and all speakers who wished to comment or question PERAC representatives about the proposed reforms were heard. An extended period for written comments from interested parties ended in late October 2005.

Commission Members and PERAC Executive Director Address MACRS Fall Conference

Capping off the public presentation and comment phase was a major presentation by PERAC at the MACRS Fall Conference in Springfield at the invitation of MACRS President, Mr. Thomas Welch and the MACRS Executive Board.

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THE HISTORY OF PERAC'S PENSION REFORM INITIATIVE (CONT.)

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The presenters included three PERAC Commissioners: Chairman Domenic J.F. Russo, Deputy State Auditor John Parsons, and Civil Service Commissioner Donald M. Marquis. PERAC Executive Director Joseph E. Connarton and Advisory Committee Chairman Scott Harshbarger also participated. Mr. Connarton began the presentation with comments about the Commission's intent in initiating the reform process and the general importance of the reforms to the systems. He noted that Alaska recently shelved its defined benefit pension plan (Massachusetts' system is a defined benefit plan) in favor of a defined contribution plan for all new employees beginning in July 2006. He stated,

“The best safeguard for our current system is to ensure that it is run efficiently, effectively and in the most ethical manner possible. PERAC’s Reform Initiatives were developed with one goal in mind—to provide tools to better oversee the 106 systems and further ensure that, when a retiree is ready to retire, his/her benefits are there for them to enjoy. PERAC has the statutory responsibility to oversee, and you have the fiduciary responsibility to manage the assets and deliver the benefits. The better we accomplish these two central responsibilities, the less likely an Alaska-like initiative would be successful in Massachusetts. Yet, lest we forget, one or two anecdotal situations well-publicized in the media can change that situation dramatically and almost instantaneously. That’s why we must be continually in a state of dynamic change and improvement—both in our oversight and in your fiduciary management of the systems.”

Following Mr. Connarton's remarks, each of the three Commissioners spoke. They

emphasized that the reform proposals have the unanimous approval of the Commission, and that the enhanced transparency they will engender is essential to the continued sound operation of the systems.

Advisory Committee Chairman Harshbarger presented a detailed outline of the Advisory Committee's process, rationale, and outlook in developing their recommendations. He provided a detailed analysis of each recommendation and why it should be adopted. The *Reform Initiatives Advisory Committee Report* and the *Pension Reform Legislation* can be found on PERAC's Web site at: <http://www.mass.gov/perac>.

Advisory Committee Chairman Harshbarger expressed the Committee's strongly held view that board member education and adherence to best practices are essential. He stressed that PERAC's ability to take necessary enforcement action when a system violates Chapter 32 or PERAC's regulations is also essential if the agency is to effectively oversee the operations of the 106 systems.

As was evidenced at the hearings, the presentation at MACRS brought commentary from the retirement community. Some see restricting retirement board employees from serving on their own retirement board as a violation of a right, afforded under Chapter 32, to run for an office. In addition, concern was expressed that educational requirements should not become a mechanism for preventing qualified individuals from serving on retirement boards.

Meeting with Public Service Committee

On January 17, 2006, PERAC staff met with members and staff of the Joint Committee on Public Service and presented a briefing on the reform initiatives. Chairwoman Patricia Jehlen of the Senate and Chairman Jay Kaufman of the House attended, as did Representative William Greene, Representative James Eldridge,

and three key staff persons. Advisory Committee Chairman Harshbarger also participated.

Commission Approves Legislation and Hearing Held

On January 25, 2006 the Commission voted to file a bill to implement those elements of the reform recommendations that require legislative approval. In addition, the Commission approved the preparation of a Best Practices Manual for distribution to the systems as a helpful guide in their activities. A hearing on the recommendations was held by the Joint Committee on Public Service on February 16, 2006.

A Note of Thanks

The Commission, the Executive Director, and staff of PERAC thank the retirement community and members of the general public who attended the hearings, submitted comments, or otherwise participated in any of the meetings, hearings, and presentations related to the reform initiative. We sincerely appreciate all those who took time from their busy schedules to participate in this effort.

As we move forward, we remain committed to a course of action that is in the best interests of the Massachusetts public pension system generally, each of the 106 boards that comprise it, and most importantly, the employees and retirees who have dedicated their careers to public service. They have an indisputable guarantee to the benefits they have earned. It is our statutorily mandated duty and mission to ensure that the system fulfills its obligations to them. We look forward to working with the Joint Committee on Public Service and retirement community representatives as the legislative process unfolds.