

GENERAL OVERVIEW OF DUTIES, RESPONSIBILITIES AND LIABILITIES AS A BOARD/STAFF MEMBER IN ADMINISTERING A CHAPTER 32 RETIREMENT PLAN

June 2010
Commonwealth of Massachusetts
Public Employee Retirement Administration Commission

Barbara Phillips, *PERAC General Counsel*
Derek Moitoso, *PERAC Associate General Counsel*



Commonwealth of Massachusetts

Public Employee Retirement Administration Commission

The Honorable Domenic J. F. Russo, *Chairman* | The Honorable A. Joseph DeNucci, *Vice Chairman*

The Honorable Paul V. Doane | James M. Machado | Donald R. Marquis

Robert B. McCarthy | Gregory R. Mennis

Joseph E. Connarton, *Executive Director*

5 Middlesex Avenue, Suite 304

Somerville, MA 02145

ph 617 666 4446 | fax 617 628 4002 | tty 617 591 8917 | web www.mass.gov/perac

CREATION OF RETIREMENT BOARDS

Retirement Boards are created by statute and the duties of the Boards are laid out in the statutes. As a creature of statute, Boards have only the authority that is given them by the legislature. Retirement Boards are directed and authorized to do many things in G.L. c. 32, see for example G.L. c. 32, §§ 20 and 23. Board Members may have many roles outside of the Retirement Board, but when they assume the role of Board Member, their duty is to the Retirement System. In performing these duties, Board Members must act for the exclusive benefit of the members and their beneficiaries, using the skill, diligence and prudence that a prudent expert would exercise.

INDEPENDENCE AND AUTONOMY OF THE RETIREMENT BOARD

A Retirement Board is independent of the municipality whose employees make up the membership of the System. The Systems have their own separate assets and liabilities and are under the jurisdiction of their own separate Board. As an independent entity, a Retirement Board is not subject to the constraints of a municipal department.

With the exception of the State Retirement Board, the Teachers' Retirement Board and the County Retirement Boards, the Board employs the Board's staff. The State Treasurer may appoint and remove State Retirement Board staff. The Teachers' Retirement Board employs the Board's Executive Director. Board employees are employed by the Executive Director, subject to the approval of the Board. County Retirement Board staff members are employed by the Board Chairman, and can be removed by a two thirds vote of the Board. Regional Retirement Board staff are employed by the Board.

Attorneys that represent a municipality are identified as providing representation to the Retirement Board, but the Board can retain a private attorney in cases in which the Board determines such representation is necessary.

PAYMENTS TO BOARD MEMBERS

Retirement Board Members are to be reimbursed from the Board's expense fund for any expense or loss of salary or wages which they may incur through service on the Board. In addition, Members of Boards for which the local option has been accepted by the applicable legislative body can be paid a stipend of \$3,000.

The Chairman of a Regional Retirement Board can be compensated in an amount to be determined by the Board.

Local options also allow for additional payments to a city auditor, town accountant or other officer having similar powers and duties treasurer, or any other person who serves in the active administration of the system. Other local options provide for payments to treasurers who serve as custodians of the Board's funds.

INDEMNIFICATION OF BOARD MEMBERS

A local option will allow a Board Member to be indemnified for damages and expenses if a civil action is brought against him or her for acts that arose in the scope of his or her official duties. The Board Member is to be defended by an attorney hired by the Board. If the Board Member is found to have breached his or her fiduciary duty, committed an act of willful dishonesty or an intentional violation of

law, they will not be indemnified for expenses and damages.

This indemnification is available by local option. As of the date of this presentation fewer than half of the Retirement Board Members are covered by this provision.

BONDING OF BOARD MEMBERS AND STAFF

All Board Members and Board staff are to be bonded in an amount sufficient to provide reasonable protection against losses due to fraud and dishonesty. Each shall be bonded for no less than 10% of the amount of the fund or \$500,000. The Commission may prescribe a bond in excess of \$500,000, provided that such bond shall not exceed 10% of the amount of the fund.

Board Members are clearly fiduciaries. Any Board staff member who exercises any discretionary authority or discretionary control respecting management of the funds of any Retirement System or exercises any authority or control respecting management or disposition of its assets is a fiduciary.

The concept of fiduciary duties will be discussed later in this presentation.

RELATIONSHIP BETWEEN BOARDS AND PERAC

The Public Employee Retirement Administration Commission (PERAC) is not a Retirement Board and does not administer a Retirement System or the funds of any retirement system. By statute (G.L. c. 7, § 50) PERAC has general responsibility for the efficient administration of the public employee retirement system, under chapter 32. The duties of PERAC include, but are not limited to

- promulgating rules and regulations governing administrative procedures, financial operations, records and reports of the retirement boards, including regulations regarding the confidentiality of employee medical records;
- approving the rules and regulations of individual retirement boards, as to conformity with law and regulations;
- performing triennial audits of Retirement Systems;
- maintaining data on retirement systems, disability benefits and the rehabilitation and reemployment of injured workers and providing statistical and other reports and information to the Governor and the General Court, and to the public;
- determining charges of the various municipal retirement systems and the county boards to participating governmental units;
- providing training and legal and technical assistance to retirement boards;
- reviewing grants of disability pensions, accidental death benefits and termination retirement allowances in accordance with the provisions of G.L. c. 32, § 21;
- coordinating rehabilitation services to disabled workers;
- developing and maintaining information on all retirement systems that the Commission deems appropriate;
- appointing and paying for regional medical panels;
- establishing a disability fraud prevention unit; and
- establishing a pension investment advisory unit to assist Boards with investment-related issues.