

MEMORANDUM #31, 2011

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Attorney General's Regulations on Remote Participation, 940 CMR 29.10

DATE: November 16, 2011

The Attorney General has promulgated regulations regarding remote participation at meetings of public bodies. A copy of 940 CMR 29.10 is attached. A Retirement Board can adopt this practice as discussed below.[1](#)

A Retirement Board can vote to allow remote participation by a simple majority. This means that a simple majority of those present at a properly called public meeting can adopt the practice. The item should be clearly identified on the Board's agenda and posted with the Board's notice of its meeting. Once adopted, the practice will apply to all meetings held after the date that the Board adopts the practice. A Board can revoke the allowance of remote participation, again by a simple majority vote. Revocation of the practice will be applicable to all meetings held after the date that the practice was revoked.

In order for a Board that has adopted remote participation to allow a Board Member to participate remotely, Board Members who are participating remotely and those who are physically present must be clearly audible to each other. A quorum of the Board, including the Chairman of the Board, must be physically present at any meeting during which a Board Member participates remotely. If the Chairman of the Board is not physically present, a person authorized to chair the meeting (generally a Vice Chairman) must be physically present. Board Members participating remotely may vote and will not be deemed to be absent.

The regulations set forth permissible reasons for remote participation [see 940 CMR 29.10(5)]. The permissible reasons for remote participation are personal illness; personal disability; emergency; military service; or geographic distance. The Board Chair or the person chairing the meeting must determine that one or more of the factors makes the Board Member's physical attendance unreasonably difficult. The reason for a Member's remote participation and the determination that the absence is permissible must be stated during the meeting and reflected in the Board minutes.

The regulations also contain the procedure to be used for Board Members wishing to remotely participate. Any Board Member who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the Chair or, in the Chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting the request. At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall be recorded in the meeting minutes.

All votes taken during any meeting in which a Board Member participates remotely shall be by roll call vote. The roll call votes will be reflected in the minutes. A Board Member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the Retirement Board.

When feasible, the Chair or, in the Chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with G.L. c.30A, § 22.

The regulations provide that a public Body may adopt bylaws or policies that prohibit or further restrict the use of remote participations. If a Board adopts a more restrictive policy, it must be submitted to PERAC for review and approval pursuant to G.L. c. 32, § 21(4). Violations of 940 CMR 29.10 are investigated by the Attorney General and may be resolved by ordering the public body to temporarily or permanently discontinue its use of remote participation.

If a Retirement Board votes to allow remote participation, the vote of the Board shall be submitted to PERAC to be included in the Local Options section of PERAC's web site. If you have questions, please contact this office.

Attachment

1 940 CMR 29.01(2)(f) specifies Boards established pursuant to G.L. c. 32, § 20 and G.L. c.34B, § 19. As a result the status of remote participation for the Essex Regional Retirement Board (ERRB) is not clear. We urge the ERRB not to allow remote participation until this issue is dealt with by the Attorney General.

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