

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

840 CMR 1.00: PROTECTION OF INTERESTS OF RETIREMENT SYSTEM MEMBERS AND THEIR BENEFICIARIES

Section

- 1.01: Board Members' Duty
- 1.02: Liability for Breach of Fiduciary Duty
- 1.03: Prohibition Against Certain Persons Holding Certain Positions
- 1.04: Investment

840 CMR 1.00, to protect the interests of retirement system members and their beneficiaries, is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 1.00 protects the interests of retirement system members and their beneficiaries.

1.01: Board Members' Duty

A board member shall discharge all of his/her duties solely in the interest of members and their beneficiaries, and

- (1) For the exclusive purpose of:
 - (a) providing benefits to members and their beneficiaries; and
 - (b) defraying reasonable expenses of administering the system.
- (2) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.
- (3) By diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- 4) In accordance with the Massachusetts General Laws, the rules and regulations promulgated by the Commission, and rules and regulations adopted by the Board and approved by the Commission.

1.02: Liability For Breach of Fiduciary Duty

- (1) Failure to comply with the fiduciary standard set forth in M.G.L. c. 32, § 23 and in 840 CMR 1.01 may subject the fiduciary to personal liability for any losses to the system resulting from such failure.
- (2) If a fiduciary knowingly participates in or knowingly conceals an act or omission of a co-fiduciary which is a breach of fiduciary duty the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.
- (3) If, by failing to comply with his/her fiduciary duty, a fiduciary enables a co-fiduciary to breach his/her fiduciary duty, the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.
- (4) If a fiduciary has knowledge of a breach of fiduciary duty by a co-fiduciary and the fiduciary fails to make reasonable efforts under the circumstances to remedy the breach of fiduciary duty, the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.

1.03: Prohibition Against Certain Persons Holding Certain Positions

No individual who has been convicted of robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of state or federal law defined in Section 102(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in Section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of Section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of Chapter 63 of Title 18, United States Code, a violation of Section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18 United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes, or a crime in which any of the foregoing is an element or has been found by the Commission or any court to have violated his/her fiduciary duty or has been found by the Ethics Commission or any court to have violated M.G.L. c. 268A, shall serve or be permitted to serve:

- (1) As a member, administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or representative in any capacity of a board.
- (2) As a consultant, manager or provider of goods or services to a board.
- (3) In any capacity that involves decision making authority or custody or control of the monies, funds, assets or property of any system.

1.04: Investment

Members of a board which has received an exemption pursuant to 840 CMR 19.00 and has delegated investment discretion for assets to a qualified investment manager or is participating in or purchasing shares of the PRIT Fund shall not be liable for the acts or omissions of the qualified investment manager or of the PRIM Board, provided the selection and retention of such investment manager or of the PRIM Board is consistent with the members' fiduciary duty.

REGULATORY AUTHORITY

840 CMR 1.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.