

## MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Section 54 of Chapter 46 of the Acts of 2015

DATE: August 11, 2015

The Public Employee Retirement Administration Commission (PERAC) has provided retirement boards with memoranda that focused on the procurement guidelines of Chapter 176 of the Acts of 2011. This memorandum addresses a recent change in the procurement requirements.

### Statutory Language

The statutory language in Section 23B applies to "...every retirement board contract for the procurement of investment, actuarial, legal and accounting services." It is important to note that, although this law requires the retirement board to adhere to the specific process of that section for contracts related to the listed services, under Chapter 32, Section 23(3) board members, as fiduciaries, must meet the standard of a prudent expert in taking all actions related to procurement and contracting for services. Thus, in contracts for procurement for other services such as software, investigation, and medical services, retirement board members must meet the fiduciary standard of an open and competitive process.

Section 54 of Chapter 46 of the Acts of 2015 reads as follows:

Section 23B of said chapter 32, as so appearing, is hereby amended by striking out, in lines 246 and 249, the figure "5" and inserting in place thereof, in each instance, the following figure:- 7.

Effective immediately, Section 23B of Chapter 32 requires that "...all contracts shall be in writing and the retirement board shall make no payment for a service rendered prior to the execution of a contract" and also requires that "...a retirement board shall not award a contract for a term exceeding seven years, including any renewal, extension, or option...". All other provisions of Chapter 23B as adopted in Chapter 176 of the Acts of 2011 remain in effect.

### Contract Review

An initial review of the contracts that the retirement board presently has in force with vendors will enable a determination to be made as to the change in law and its impact on existing relationships.

### Existing Written Contracts - Term 5 Years or Fewer

An existing written contract with a term of five years or fewer may remain in effect until the end of its term at which point Section 54 will apply. For example, two years ago the retirement board



MEMORANDUM – Page 2

TO: All Retirement Boards  
FROM: Joseph E. Connarton, Executive Director  
RE: Section 54 of Chapter 46 of the Acts of 2015  
DATE: August 11, 2015

executed a written contract with a vendor for a five year term. That contract is not affected by the change in law, however, at the conclusion of the five year term (three years) the change in law may be followed. In this context, the provisions of Section 23B pertaining to extension, options and renewal of contracts do apply, and the contract cannot be extended beyond the seven year term regardless of when it was entered into. The term “extension” applies to amendments to the contract that increase the total number of years resulting in a period longer than a seven year term and, thus, any such amendment is not consistent with the statute. In other words, an existing contract of five years or less could be extended two or more years but not beyond seven total years, inclusive of extensions, options, etc.

### **Trusts, Commingled Funds or Mutual Funds**

In some circumstances the structure of investment vehicles may be a trust, commingled fund or mutual fund which allows for regular commitment and liquidation of the investment. The underlying documents establishing the structure will be open - ended as to term. In order to meet the seven year maximum requirement under Section 23B, the retirement board should, as part of the motion authorizing the investment, include language stating that the commitment to the entity is for a maximum period of seven years. In addressing existing relationships such a motion should be adopted as soon as possible.

### **Termination of a Contract**

The term of years set forth in statute does not preclude the retirement board from entering into a contract that allows either party to terminate the contract prior to the term ending. The seven year provision is a maximum length and it does not prevent the parties from negotiating termination provisions within that time frame.

### **Maximum Term of a Contract**

The law provides that the maximum term for a contract is seven years. Thus, prior to the conclusion of that period, a search must be completed under Section 23B regardless of the level of satisfaction the retirement board may have with the services provided by the vendor.

### **PRIM**

A question has been raised relative to the applicability of Section 23B to retirement board relationships with the Pension Reserves Investment Trust Fund (PRIT). Investment in PRIT by a retirement board is specifically authorized by Chapter 32, Section 23. As a result, there is no prerequisite for a retirement board to invest in PRIT and Section 23B does not apply to investment by retirement boards in the PRIT Fund.

As noted, PERAC recognizes the complexities of the law and, although this memorandum does not necessarily address all the issues pertaining to procurement and contracts embodied therein, we hope that this will assist retirement boards and vendors during this transition period.

Thank you for your continued cooperation in this regard.