

MEMORANDUM

TO: All Retirement Board Members

FROM: Joseph E. Connarton, Executive Director

RE: Statement of Financial Interests (SFI) Reminder

DATE: April 3, 2012

As you know, Chapter 176 of the Acts of 2011 requires that retirement board members file a SFI annually with the Public Employee Retirement Administration Commission (PERAC). Under the law those submissions are not subject to release under the public records law and, as noted below, PERAC has taken comprehensive action to ensure the confidentiality of that information.

The SFI's for 2011 are due at PERAC on or before May 1, 2012. The Commission would like to thank those who have already filed their statements and remind those who have not done so that the May 1 filing date is approaching.

PERAC has listened to concerns from retirement board members regarding this matter and we have also fielded a number of technical questions related to the filing. At its meeting of March 26, 2012 the Commission unanimously adopted the following Security Protocols relative to the SFI's:

- “(1) Filings shall be processed by administrative staff who, upon opening a letter containing such a Statement, shall set it aside securely and provide it to the Compliance Counsel or Compliance Officer;
- (2) The Compliance Counsel or Compliance Officer shall process the Statement by (a) instructing administrative staff to date and time stamp it; (b) insuring that a stamped copy is mailed to the filer; (c) instructing administrative staff to record that the member has submitted his or her Statement; and (d) filing the Statement in the secured location designated for these Statements;
- (3) The Statements shall not be scanned, copied (with the exception of making a copy to stamp and return to the filer) or electronically recorded in any manner, provided, however, that an electronic record shall be kept which records whether or not the member has filed a Statement; no information other than the member's name and a mark designating whether or not a Statement has been filed shall be contained in such electronic record;



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- (4) The only staff at PERAC who shall have access to the Statements are the Compliance Officer and the Compliance Counsel, provided, that in the event an issue arises as to whether or not further action under the statute is required the PERAC General Counsel and Executive Director may also have access;
- (5) Commissioners may have access to the Statements upon a request to the Chairman; in the event that a Commissioner accesses a Statement(s) he or she shall review the filing(s) in the presence of the Compliance Officer or the Compliance Counsel; the member(s) whose Statements are accessed by a Commissioner shall be notified that such access has taken place; in this context under no circumstances is a copy of a Statement to be made;
- (6) Notwithstanding Item #5 in the event an issue arises as to further action under the statute, Commissioners may have access to the Statement(s) that form the basis of that potential action. The member(s) whose Statement(s) is accessed by the Commission shall be notified that such access has taken place."

In addition, the Commission adopted the approach set forth below for the initial review of the filings:

"The Compliance Officer and the Compliance Counsel shall determine whether or not PERAC has recorded the receipt of a Statement of Financial Interests from a retirement board member and report their determination to the Commission at its June meeting. That report shall not delineate the identities of the individual retirement board members who have or have not filed but shall state the totals of those who have filed and those for whom PERAC has no record of filing. On or before July 15th the Compliance Officer shall, by certified mail, notify any retirement board member for whom PERAC has no record of filing. On or before August 1st the Compliance Officer or Compliance Counsel shall make an effort to communicate by telephone with each such retirement board member to counsel and assist the member in completing his/her form. Prior to the September meeting of the Commission the Compliance Officer, Compliance Counsel, General Counsel and Executive Director shall review the status of the members who have not filed a Statement of Financial Interests and prepare recommendations to be made to the Commission at the September meeting.

The Compliance Officer and Compliance Counsel shall, as soon as practicable after May 1, conduct a cursory review of the submissions received for the sole purpose of assessing whether or not inadvertent, ministerial errors have been made in completing the Form (for example, failure to answer a question without assertion of privilege or explanation, failure to sign, etc.). In the event that such an error has taken place the retirement board member who has filed the Form shall be notified and provided an opportunity to address the issue(s). The 30 day filing provision noted in the statute shall **not** apply to this communication."

The statute states that "Failure of a reporting person to file a statement of financial interests within 30 days of receipt of the notice in writing from the commission which states in detail the deficiency and the penalties for failure to file a statement of financial interests or the filing of an incomplete statement of financial interests after a receipt of a notice shall result in the removal of

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the reporting person from the board and the reporting person shall not serve on a retirement board under this chapter...”

The phrase “...the filing of an incomplete statement...” provides the Commission with maximum discretion to determine whether or not a statement is “incomplete”. In doing so the Commission will assess the response in light of the intent of the legislation and, in general, will presume the response meets the statutory requirement. We understand there has been confusion relative to the Instructions as well as some aspects of the SFI. As a result, an SFI which does not provide or provides incomplete information regarding “Gross Income” with respect to Question #4 or which provides incomplete information with respect to Question #10, will not form the basis of action by the Commission pursuant to Section 20C. Also, please note that in responding to Question #12, information need only be provided if the creditor is a person having a direct interest in a matter before the retirement board of which you are a member.

The Commission would also like to take this opportunity to emphasize that on page 16 of the SFI there is a box for the retirement board member to state those questions to which he or she has declined to answer in whole or in part based on the assertion that the information is privileged by law. PERAC suggests that such privileges may go beyond those that are traditionally thought of as applicable (spousal privilege, priest/penitent privilege etc.) and would include information that is made confidential under statute (home addresses of public safety personnel).

Concerns have also been expressed regarding the need to identify the names of dependent children residing in the filer’s household. Because other questions related to reporting information about “Immediate Family” require the reporting of relevant information pertaining to “any dependent children residing in the reporting person’s household”, the Commission will not base action under Section 20C on the completeness of a filing that does not state the names of such children but otherwise includes required information.

Chapter 176 of the Acts of 2011 represents a challenge to the public pension community and we hope that you will continue to work with us in the implementation of this new and difficult statute.