

Commission Meeting Minutes

September14, 2022

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:07 AM. Chairman Brown acknowledged the other Commissioners participating: Commissioners Kathy Fallon, Kate Fitzpatrick, Michael Leung-Tat, Jennifer Sullivan, Richard MacKinnon and James Guido. The Chairman announced the meeting was being recorded. Commissioner Sullivan participated remotely. Therefore, all motions made at this meeting will be voted on by roll call vote.

PERAC staff in attendance: Executive Director John Parsons, Deputy Executive Director Caroline Carcia, General Counsel Judith Corrigan, Assistant Deputy Director Kenneth Hill, Assistant Deputy Director Bill Keefe, Actuary John Boorack, Compliance Director Tom O'Donnell, Compliance Analyst John Galvin, Senior Associate General Counsel Patrick Charles, Associate General Counsel Felicia McGinniss, Fraud Prevention Manager Sandra King, Associate General Counsel Katie Bensel, Director of Audits Caryn Shea, Project Manager Tony Tse and Communications Director Natacha Dunker.

Guests in attendance: Nick Favorito, Brendan McGough, and Angela Olszewski representing the State Retirement Board, Tom Gibson, representing the Middlesex County and Belmont Retirement Systems, Christine Weir representing the Boston Retirement Board, Erika Glaster representing the Teachers' Retirement Board, Patrick Brock representing the Hampshire County Retirement Board, Tom Shea, Mark Gould, Karen Martin and Karl Schmaelzle representing the Hampden County Retirement Board.

Commissioner Guido made a motion to adopt the July 13, 2022 Commission meeting minutes. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners Kathy Fallon YES, Kate Fitzpatrick YES, Michael Leung-Tat YES, Richard MacKinnon YES, Jennifer Sullivan YES, and James Guido YES and the minutes were unanimously adopted.

Legislative Sub-Committee Meeting Update

Legislative Sub-Committee Chair Fitzpatrick reported that the Legislative Sub-Committee met earlier this morning and stated that the Sub-Committee would like the full Commission to vote on its 2023-2024 proposals. She asked Mr. Keefe to update the Commission on the proposals.

Mr. Keefe suggested that the Commission re-file seven of the eight bills that were filed last session and he explained each of the bills filed in 2021-2022 which included:

- H10 An Act relative to pension forfeiture
- H5051 An Act relative to veterans' buyback (filed as H11)
- H12 An Act relative to the recovery of overearnings
- H14 An Act relative to modifications of retirement allowances
- H15 An Act relative to accidental disability and Group 1 emotional distress
- H16 An Act to protect gender pay equity

One bill we do not recommend refiling was H13 An Act Relative to Wages, which became a different, reworked bill as a result of the *Vernava* decision and legislation.

Mr. Keefe further explained the two new bills we recommend filing. The first bill deals with the situation where a governmental unit who had never accepted the provisions of Chapter 32 but eventually accepts them, the unit's employees becoming members of a Chapter 32 retirement system. This bill would require that such people pay for past service, which is not the case now. The second bill alters the wages bill that PERAC has filed in the past. This deals with the *Vernava* case tying regular compensation to providing a service as it relates to vacation, sick, and personal time. The new language adds vacation, sick and personal time to the definition of wages, except when being received concurrently with Workers' Compensation or benefits.

Mr. Keefe added that we are recommending the veterans' buyback bill and gender pay equity bills be filed in both the House and Senate by members of the chamber. We believe they will get more attention and momentum if filed by legislators.

Commissioner Fitzpatrick made a motion to accept all of the proposed legislative initiatives and to file them with the Legislature. Commissioner Leung-Tat seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Legislative Sub-Committee Chair Fitzpatrick reported that the Legislative Sub-Committee met earlier this morning to review Proposed Draft Regulations 840 CMR 3.00 & 13.00 relating to the IRS Tax Codes.

Commissioner Fitzpatrick made a motion to allow PERAC staff to proceed with the regulation process as it relates to 840 CMR 3.00 and 840 CMR 13.00. Commissioner MacKinnon seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Actuarial Update

Mr. Boorack discussed the final January 1, 2022 State Retirement Board Actuarial Valuation results. Mr. Boorack reported that the Investment return assumption remains the same as last year at 7.0%. He indicated that there was a loss on the actuarial liability of approximately \$15 million, (0.031% of total actuarial liability), as well as a gain on investments of approximately \$2.91 billion. He indicated that the overall gain was approximately \$2.89 billion. He explained that the Funded Ratio is higher due to the increase in market value. Discussion followed whether the 7.0% assumption rate remains a good rate due to the current market returns. The 7.0% rate is good as it is a long-term assumption.

Commissioner Guido made a motion to approve the January 1, 2022 State Retirement Board Actuarial Valuation Report. Commissioner MacKinnon seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Legal Update

Patrick Charles provided the Commission with an update on the case of *Minuteman Regional Vocational Technical School District Retirement Board ("Minuteman") v PERAC*, CR 17-285. Mr. Charles reported that CRAB issued a decision in this case affirming the Division of Administrative Law Appeals ("DALA") decision which found PERAC was correct determining that Minuteman could not waive repayment of an incorrect COLA payment made back in March 2013. The Board has until September 30, 2022 to file an appeal with the Superior Court. Mr. Charles, who is the PERAC designee of CRAB, made clear that he has had no active involvement in this case for several years.

Judith Corrigan provided the Commission with an update on the case of *Simone v. Methuen Retirement Board ("the Board") & PERAC*, (Lawrence District Court, Docket No, 2018CV413). Ms. Corrigan reported that this case involved a pension forfeiture, which is required by G.L. c. 32, § 15(4) when a public employee commits a crime related to his or her office or position. In this case, Ms. Simone stole funds while serving as treasurer of the Methuen Custodial Association. She wrote 39 checks to herself on the Association's bank account to fund a substance abuse habit, and only returned the funds to the account after her arrest on a drug related charge was publicized. She was eventually tried for one count of larceny over \$250.00 and was found guilty. Ms. Simone applied for both a termination and a superannuation retirement. The Board denied her termination retirement allowance request, but granted the superannuation allowance on the grounds that her crime was unrelated to her position. PERAC reviewed the calculation and rejected it because she had committed a crime related to her office or position. The Board then forfeited her pension. Ms. Simone appealed this decision to the District Court. While the District Court agreed with PERAC that the crime was related to her position and so the pension forfeiture statute was in play, the Court halted the pension forfeiture, finding it was an excessive fine, which is not permitted by the 8th Amendment to the United States Constitution. PERAC has decided not to appeal this decision.

Kenneth Hill provided the Commission with an update on the case of *Joseph O'Leary v. CRAB & Others* 490 Mass. 480 (8/11/2022), ("*O'Leary*"). This matter concerns the question of whether payments in lieu of taking vacation time should be considered regular compensation. The Supreme Judicial Court ("SJC") determined that such payments should not be considered regular compensation and further addressed the issue of retroactively recouping funds from those who have already retired who participated in such vacation buyback plans. The SJC determined that its ruling should be applied retroactively. However, one week before the SJC SJC decision, Governor Charlie Baker signed Chapter 147 of the Acts of 2022 into law which provides that those who have already retired with such vacation buyback payments will not have their retirement allowances disturbed. PERAC has issued Memorandum No. 23 of 2022 which provides the retirement boards with guidance on this matter.

Patrick Charles reported on the status of the Electronic Signature Regulations, 840 CMR 28.00. Mr. Charles indicated that PERAC has completed the regulation process and PERAC will be filing these regulations with the Secretary of State on September 16, 2022 upon approval by the Commission. He reminded the Commission that the retirement boards will need to adopt supplemental regulations in order to use electronic signatures under 840 CMR 28.00.

Commissioner Leung-Tat made a motion to approve and forward PERAC's Final Version of Regulation 840 CMR 28.00 to the Secretary of State for publication. Commissioner Fitzpatrick seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Legislative Update

Mr. Keefe reported on Chapter 147 of the Acts of 2022 which was signed into law by Governor Charlie Baker which includes language that those who have already retired with vacation buyback payments included in their retirement allowances will not be disturbed. He then updated the Commission on the status of the Veterans buyback bill and the SFI Flexibility Bill, H. 4839. Mr. Keefe also updated the Commission on amendments made by the Governor relating to the 5% COLA for locals, and amendments made to increase the PRIM Board membership. Also, included in the budget, Section 182, an additional payment of \$100M to the Pension Liability Fund was directed to be made on September 1, 2022 as well as \$100M to the State Retiree Benefits Trust Fund on a prescribed schedule approved by the Comptroller, Treasurer and Administration and Finance. Mr. Keefe also reported that the Open Meeting Law waiver has been extended to March 31, 2023. Mr. Keefe then reported on various primary election results.

Mr. Keefe reported that DOR reported ending FY22 with \$41.1 Billion in revenue, \$3.4 Billion or 9.1% higher than benchmark.

Audit Update

Ms. Shea reported that since the last Commission meeting, PERAC has released Dukes County, Gloucester, Hampden County, Newburyport, and PRIM audits. She then explained the findings in each of the audits. Ms. Shea further explained that the Hampden County audit will be discussed further in the Executive Director's Report as this audit was the result of the Temporary Order that was issued to that board. Ms. Shea discussed the various stages of audits as outlined in the Audit Tracking Log provided in the packets. Ms. Shea further explained that the Audit staff continues to review the Annual Statements submitted by retirement boards and indicated that PERAC is close to hiring two new auditors to replace vacant positions in the Audit Unit.

Compliance Update

Mr. Galvin reported that PRIM's return for July was 3.21% with a calendar year to date through July 31 at -7.38%. The fund balance was \$95 billion as of July 31. Mr. Galvin also reported that all active and inactive members have filed their SFI forms. Mr. Galvin reported on Cyber Insurance challenges which have increased over the past several years by 100% per year. In 2022,

cyber security insurance prices increased by 79% from 2021. Mr. Galvin also reported on course updates and procurement approvals.

Executive Director's Report

Mr. Parsons discussed numerous staff activities since the last Commission meeting which are highlighted in the meeting materials.

Mr. Parsons reported that the Braintree Retirement Board voted to re-nominate the 5th member of the Board, David DelGallo. He explained that the Commission, in accordance with G.L. c. 32, § 20(4)(c), needs to ratify the vote.

Commissioner MacKinnon made a motion to ratify the vote taken by the Braintree Retirement Board and re-appoint Mr. David DelGallo as its fifth member. Commissioner Fitzpatrick seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Mr. Parsons discussed the recent Hampden County Retirement System (HCRS) Audit for the period of January 1, 2018 – December 31, 2020 which was conducted due to the previous audit performed which resulted in a Temporary Order of that system. The Temporary Order was placed on the HCRS on March 23, 2021. Since this date, HCRS has been open, transparent, and cooperative with the changes and recommendations which PERAC staff has directed the board to conduct. HCRS continues to make progress. Mr. Parsons indicated that the Hampden County Board will still continue to update PERAC on a monthly basis, but recommends that the Temporary Order be lifted.

Commissioner MacKinnon made a motion to remove the Temporary Order currently in effect for the Hampden County Retirement System. Commissioner Guido seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Mr. Parsons provided an update on the recent Administrator's Training that was held in Northampton on August 24, 2022. He further updated the Commission that the Emerging Issues Forum will be held on September 15, 2022 at Holy Cross. Additionally, Mr. Parsons indicated that MACRS Fall Conference and NCPERS – Public Safety Conferences are coming up if any member of the Commission is interested in attending.

Commissioner MacKinnon made a motion to approve Commission attendance at the Fall MACRS Conference held in Springfield, MA and the NCPERS Public Safety Conference held in Nashville, TN in accordance with PERAC Policy #97/002. Commissioner Leung-Tat seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Leung-Tat YES, Kathy Fallon YES, Kate Fitzpatrick YES, James Guido YES, Richard McKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Mr. Parsons reported to the Commission that PERAC's 2021 Annual Report has been distributed to interested parties and is available on PERAC's website.

Commissioner MacKinnon made a motion to adjourn the meeting. Commissioner Sullivan seconded the motion and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners Kathy Fallon YES, Kate Fitzpatrick YES, Michael Leung-Tat YES, James Guido YES, Richard MacKinnon YES, and Jennifer Sullivan YES. The motion was unanimously adopted. The meeting was adjourned at 12:22 PM.

Commission Meeting Documents

Commission Agenda for the meeting of September 14, 2022
Commission Minutes dated July 13, 2022

Legislative Sub-Committee Meeting

2023-2024 – Legislative Proposals Summary Memorandum
2023-2024 – Legislative Language
Proposed Draft Regulations 840 CMR 3.00 & 13.00

Actuarial Update

State Retirement System Valuation as of 1/1/22

Legal Update

Minuteman Regional Vocational Technical School District Retirement Board ("Minuteman") v PERAC, CR 17-285

Simone v. Methuen Retirement Board & PERAC (Lawrence District Court, Docket No. 2018CV413)

Joseph O'Leary v. CRAB & others, 490 Mass. 480 (8/11/2022),
Regulations 840 CMR 28.00

Legislative Update

Memorandum regarding Legislative updates

Audit Update

Dukes County Retirement System Audit Report
Gloucester Retirement System Audit Report
Hampden County Retirement System Audit Report
Newburyport Retirement System Audit

PRIM Audit Report
Audit Tracking Report

Compliance Update

Memorandum regarding Compliance updates

Article: Written by National Council on Teacher's Retirement (NCTR) regarding "Cyber Insurance Challenges Increase"

Executive Director's Report

Staff Activities

Braintree Retirement Board Letter– Re-nominate 5th Member Request

Hampden County Retirement Board's Temporary Order Notice

NCPERS – Public Safety Conference Registration Materials

Approved:



Philip Y. Brown, Chairman
Public Employee Retirement
Administration Commission