

## Commission Meeting Minutes

June 14, 2023

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:05 AM. Chairman Brown acknowledged the other Commissioners participating: Kate Fitzpatrick, Michael Leung-Tat, Jennifer Sullivan, and James Guido. Commissioners Leung-Tat and Sullivan participated remotely. Therefore, the Chairman explained, all motions made at this meeting will be voted on by roll call vote. The Chairman announced the meeting was being recorded. Commissioners Richard MacKinnon and Kathleen Fallon were not in attendance.

PERAC Staff in attendance: Executive Director John Parsons, Deputy Executive Director Caroline Carcia, General Counsel Judith Corrigan, Assistant Deputy Directors Ken Hill and Bill Keefe, Actuary John Boorack, Associate General Counsel Felicia McGinniss, and Project Manager Tony Tse. Communications Director Natacha Dunker, Fraud Prevention Manager Sandra King, and Deputy General Counsel Patrick Charles participated remotely.

Guests attending remotely: Tom Gibson representing Belmont and Middlesex County Retirement System.

Commissioner Guido made a motion to adopt the May 10, 2023 Commission minutes. Commissioner Sullivan seconded the motion, and a roll call vote was taken:

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

Commissioner Fitzpatrick made a motion to adopt the May 10, 2023 Administrative Sub-Committee minutes. Commissioner Guido seconded the motion, and a roll call vote was taken:

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

### **Legal Update**

Felica McGinniss updated the Commission on the case of *William Walsh v PERAC*, CR 23-0183 (May 26, 2023.) Mr. Walsh, a Boston accidental disability retiree who failed to file his annual statement of “earnings from earned income” to PERAC pursuant to G.L. c. 32, § 91A. The Boston Retirement Board (“Board”) held a hearing regarding Mr. Walsh on December 5, 2022. However, Mr. Walsh failed to appear. On January 4, 2023, the Boston hearing officer recommended the termination of Mr. Walsh’s accidental disability retirement allowance effective December 31, 2022. The January 17, 2023 letter gave Mr. Walsh 15 days in which to appeal, but he failed to file his appeal within that timeframe. When he did file his appeal with the Division of Administrative Law Appeals (“DALA”) PERAC filed a Motion to Dismiss arguing that (1) PERAC was an improper party to the appeal as it did not terminate Mr. Walsh’s benefits, and (2) DALA does not have jurisdiction over the appeal because it was filed late. After Mr. Walsh responded to this motion, DALA issued an order of Dismissal in accord with PERAC’s motion. Mr. Walsh has until

June 10, 2023 to file his Notice of Objections to the DALA Decision with the Contributory Retirement Appeals Board (“CRAB”).

Ken Hill updated the Commission on *Briley v. PERAC*, CR-20-0244 (DALA) (June 2, 2023). DALA affirmed PERAC’s non-approval of the Everett Retirement Board’s (the “Board’s”) grant of Section 100 benefits to the widow of Glen Briley (“Mr. Briley”). Mr. Briley was a police officer with the Everett Police Department who was discovered to have died in his police cruiser while on an overnight shift. An autopsy determined that the cause of his death was heart disease. Mr. Briley’s widow applied for and was granted benefits under G.L. c. 32, §§ 9 (“Accidental Death Benefit”) under the Heart Law. However, Ms. Briley also sought certain special benefits which are available to spouses of police officers who are killed as a result of an assault in accord with G.L. c. 32, § 100. She sought these benefits because Mr. Briley had participated in a training earlier on the date of his death, and she argued that the training had constituted an “assault on his person” as Section 100 requires. The Board asked PERAC to retain a doctor to perform a medical review on whether Mr. Briley’s attendance at and participation in the training would meet the statutory standards. PERAC’s appointed doctor opined that his death was most likely as a result of his heart disease and there was no evidence of an assault. The Board asked for the doctor to clarify and review his opinion. The doctor reviewed the additional materials and reiterated his original opinion. Despite the doctor’s findings, the Board voted to award benefits under Section 100. PERAC remanded the case back to the Board. Ms. Briley timely appealed PERAC’s decision to DALA. DALA concluded that Mr. Briley was not assaulted during the training class, and that the evidence failed to satisfy the requirements of Section 100. Ms. Briley has decided not to appeal to CRAB. Ms. Briley was awarded a lump sum benefit under G.L. c. 32, §100A, as well as a lump sum payment from the federal government. However, the requirements of those benefits have different standards than Chapter 32, § 100.

Judith Corrigan updated the Commission on *Diane Kidd v. State Board of Retirement* CR-21-0313 (DALA decision May 12, 2023), a case involving the Massachusetts Equal Pay Act, G.L. c. 149, § 105A (“MEPA”) and its interplay with Chapter 32 retirement allowances. Ms. Kidd was employed at the Registry of Motor Vehicles. As a result of MEPA, she received salary increases in the years preceding her retirement. Because these increases triggered the anti-spiking provisions of G.L. c. 32, § 5(2)(f), her retirement allowance was reduced as a matter of law. Ms. Kidd argued that she should not be penalized for such pay raises she received under MEPA. DALA found against her, as there is no exception in the anti-spiking law for raises occurring as a result of MEPA. In its decision, DALA recommends the Legislature address this by either amending the anti-spiking provisions or MEPA. Ms. Corrigan reminded the Commission that PERAC has previously worked to pass an amendment to the anti-spiking provision to exclude any salary increases as a result of MEPA. Both Senator Jehlen and Representative Livingstone have filed bills for this Legislative session to address this. It is not known whether Ms. Kidd filed an appeal with CRAB.

### **Legislative Update**

Bill Keefe reported that the Senate passed its budget on May 25 2023. The bill is currently with the Conference Committee to resolve differences between the two branches. Neither branch adopted an increase to the COLA base and an amendment in the Senate to allow for a 5% COLA for FY24 was not adopted. A 3% COLA for State and Teachers was approved along with the new funding schedule. Mr. Keefe also reported that several items before the Conference Committee are of interest to the retirement community. The Senate adopted a measure to allow active employees who stopped making contributions after age 70 pursuant to the now-repealed G.L. c.

32, § 90G3/4 the ability to buyback all their post age 70 service. The House budget included an additional appointment to the PRIM Board. The Governor would make the appointment to the PRIM Public Safety seat based on three nominations made by the MACRS Executive Board. Lastly, the House budget included language that would exempt the Executive Director of the Municipal Police Training Committee from post-retirement hours and earnings limits.

Mr. Keefe also informed the Commissioners about several legislative changes due to Governor's appointments and election results.

Finally, Mr. Keefe stated that May revenues totaled \$2.7 billion, \$169 million above expectations, or 6.7% above the monthly benchmark. With one month left in the Fiscal Year, tax collections are \$619 million, or 1.7% below projections.

### **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Fairhaven Audit with several findings and the Dedham, Easthampton, and Milton Retirement follow-up audit letters. Ms. Shea reported that the boards having follow-up audits have resolved any audit findings. Ms. Shea explained the status of all audits as outlined in the Audit Tracking Log included in the Commission packet. She then told the Commissioners that she and Scott Henderson presented at the MACRS Conference regarding "Accounting Entries." She then reported that Audit staff are reviewing the Annual Statements and working on the Annual Report.

### **Compliance Update**

John Galvin stated that PRIM's return for April was .68% with a fund balance as of April 30 of \$94 billion. The calendar year to date return through April 30 is 3.79%.

Mr. Galvin reported that there are 20 active board members who have still not filed their 2022 Statement of Financial Interest (SFI). He indicated that PERAC will be mailing letters shortly to remind those individuals to file and offer any assistance we can. All inactive board members, those that served on a board in 2022 but no longer serve, have filed as well.

### **Executive Director's Report**

Mr. Parsons discussed numerous staff activities since the last Commission meeting, which are highlighted in the meeting materials. He pointed out that PERAC staff attended and participated at the MACRS Conference in Hyannis, MA which had a large attendance.

Mr. Parsons pointed out that included in the Commission packet are copies of letters pertaining to the FY24 approved PERAC Budget as outlined in PERAC's Policy #99-001.

Mr. Parsons provided an update on the status of PERAC's new office space. He indicated that architectural plans are getting finalized to ensure it meets PERAC's needs and the DCAMM's standards.

Mr. Parsons also pointed out that the State Auditor's report of PERAC for the period covering July 1, 2019 through June 30, 2021 is in draft form but highlighted that no findings were reported and a final release should be issued soon.

Finally, Mr. Parsons added that an Investment Sub-Committee meeting needed to be scheduled and recommends the morning of the July 12, 2023 Commission meeting.

### **Other Business**

Chairman Brown announced that the next Commission meeting will be held on Wednesday, July 12, 2023 at 11:00 AM at PERAC offices. He further announced that there will be an Investment Sub-Committee meeting held on Wednesday, July 12, 2023 @ 9:30 AM. The Commission had a brief discussion and determined that no Commission meeting will be held in August.

Commissioner Guido made a motion to skip the August 9, 2023 Commission meeting. Commissioner Fitzpatrick seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioner James Guido, YES, Commissioners Kate Fitzpatrick YES, Commission Sullivan, YES and Michael Leung-Tat YES. Thus, the motion was unanimously adopted.

Commissioner Fitzpatrick made a motion to adjourn the meeting. Commissioner Guido seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioner James Guido, YES, Commissioners Kate Fitzpatrick YES, Commission Sullivan, YES and Michael Leung-Tat YES. Thus, the motion was unanimously adopted. The meeting was adjourned at 12:00 PM.

### **Commission Meeting Documents**

Commission Agenda for the meeting of June 14, 2023

Commission Minutes dated May 10, 2023

Administrative Sub-Committee Minutes dated May 10, 2023

### **Legal Update**

*William Walsh v. PERAC*, CR-23-0183 (DALA) (May 26, 2023)

*Briley v. PERAC*, CR-20-0244 (DALA) (June 2, 2023)

*Diane Kidd v. State Board of Retirement*, CR-21-0313 (DALA) (May 12, 2023)

### **Legislative Update**

Memorandum regarding Legislative updates

### **Audit Update**

Fairhaven Retirement System Audit Report

Dedham Retirement System Follow-up Letter

Easthampton Retirement System Follow-up Letter

Milton Retirement System Follow-up Letter

Audit Tracking Report

**Compliance Update**

Memorandum regarding Compliance updates

Pension & Investments article dated June 6, 2023, titled "BlackRock now paying for guards, home security for CEO Larry Fink"

**Executive Director's Report**

Staff Activities Memorandum

May 31, 2023 Letter from State Auditor's Office regarding Draft PERAC Audit Report.

Letters to designated parties regarding PERAC's FY24 Approved Budget.

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission