

## **Commission Meeting Minutes**

**September 11, 2024**

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:03 AM. Chairman Brown acknowledged the other Commissioners present: Kate Fitzpatrick and Michael Leung-Tat. Commissioners Richard MacKinnon and Jennifer 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 Kathleen Fallon and Jay Guido were not in attendance.

PERAC Staff in attendance at the PERAC offices: Executive Director Bill Keefe, First Deputy Executive Director Caroline Carcia, Deputy Executive Director Kenneth Hill, Assistant Deputy Director Patrick Charles, General Counsel Judith Corrigan, Director of Audits Caryn Shea, Actuary John Boorack, Compliance Manager John Galvin, Senior Associate General Counsel Felicia McGinniss, and Project Manager Anthony Tse.

PERAC staff attending remotely: Communications Director Natacha Dunker and Fraud Prevention Manager Sandra King.

Guests in attendance at the PERAC offices: Tom Gibson representing the Middlesex County and Belmont Retirement Boards.

Guests attending remotely: Sean Neilon representing the Teachers Retirement System, Francesco Daniele representing PRIM, Patrick Brock representing Hampshire County Retirement Board, Kathleen Kiley-Becchetti representing Norfolk County Retirement System and MACRS, Laura Strickland representing PRIM, and Emily Gallagher.

Chairman Brown announced that today marks twenty-three years since the attack on the United States when many innocent lives were lost. He requested a moment of silence to reflect on that day and for the recent passing of Commissioner Fitzpatrick's mother Maureen as well as the recent unexpected passing of Commissioner Kathleen Fallon's husband Michael.

Commissioner Fitzpatrick made a motion to adopt the minutes of the Commission meeting of July 10, 2024. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

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

### **Legislative Sub-Committee Update**

Commissioner Fitzpatrick indicated that the Legislative Sub-Committee met earlier to discuss the staff's recommendations for the 2025-2026 legislative session.

Mr. Charles suggested that the Commission re-file seven bills that were filed last session with three bills unchanged, four bills with amendments, and file a new bill. He also indicated that these three bills were all reported favorably by the Public Service Committee. He explained the three bills to file without changes are as follows:

- H 9 An Act Relative to Pension Forfeiture

- H14 An Act to Provide for Payment of Creditable Service
- H15 An Act Clarifying the Chapter 32 Definition of Wages

Mr. Charles further discussed the amended language to the four previously filed bills as follows:

- H 12 An Act Relative to The Recovery of Overearnings (renamed **An Act Relative to Post-Retirement Earnings**)
  - The recommended change is to have the statute reflect the practice of when an additional \$15,000 of post-retirement earnings can be applied.
- H 4462 An Act Providing for Statement of Financial Interests Flexibility (amended and engrossed in the House this session)
- H 14 An Act Relative to Chapter 32 Section 8 and Modifications of Retirement Allowances (**renamed**)
  - The recommended change is to remove references to rehabilitation programs that have never been in place.
- H 15 An Act Relative to Accidental Disability and Group 1 Emotional Distress (renamed **An Act Relative to PTSD and Accidental Disability**)
  - The recommended change is to alter the notice requirements for psychological and emotional injuries beyond two years and to allow an incident report without a cited injury as part of such application.
  - As we did with veterans' buyback and gender pay equity this session, we are recommending a key legislator file this bill.

Lastly, Mr. Charles discussed filing a new bill that would repeal 3 provisions from G.L. c. 7, § 50, PERAC's enabling statute, paragraphs (i), (j) and (p). These three provisions pertain to rehabilitation services and programs that have never been utilized by PERAC.

Commissioner Fitzpatrick made a motion to accept the recommendations of the Legislative Sub-Committee to re-file bills and file a new bill for the 2025-2026 Legislative Session. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners Kate Fitzpatrick YES, Michael Leung-Tat YES, Jennifer Sullivan YES, and Richard MacKinnon YES and the motion was adopted.

### **Legislative Update**

Mr. Charles reported that PERAC has issued a memorandum to the boards, conducted a recorded webinar, and provided a questions and answers document to assist with the recent passing of the HERO Act regarding the veterans' buyback piece of that legislation. Mr. Charles indicated that all materials are available on PERAC's website.

Mr. Charles reported on the Salary Transparency Act that was signed into law on July 31, 2024 which addresses the anti-spiking provisions and the recent Dixon decision which addresses salary to be used when calculating allowable earning under G.L. c. 32, s. 91(b). Mr. Charles indicated that PERAC issued Memorandum No. 21 of 2024 to assist retirement boards on the anti-spiking provisions and Memorandum No. 22 of 2024 detailing the changes to Section 91(b).

Mr. Charles further reported that on July 31, 2024 Governor Healey signed Chapter 149 of the Acts of 2024, “An Act Relative to Disability Pensions and Critical Incident Stress Management for Violent Crimes.” This Act provides police officers, firefighters and EMTs with a 100% disability pension under Section 7 if they are disabled as the result of a “violent act injury.” He reported that the effective date of this Act is October 29, 2024 and PERAC will be issuing a Memorandum to the retirement boards relative to implementing this Act.

Mr. Charles also reported that included in the Fiscal Year 2025 budget signed on July 29, 2024 are two Special Commissions on which PERAC has a seat: the COLA Commission and the Post Retiree Work Force Task Force. Also included in the FY25 budget was the increase in the mandatory life insurance benefit from the current \$5,000 to \$10,000 as well as a 3% COLA for State and Teachers’ retirees. Lastly, included in the budget was an amendment to the return to service process. Currently, members who have previously retired for disability retirement and were later found able to return to service, were required to return to the same or similar position only with the employer from which they were retired. This new amendment will allow a member to return to the same or similar position but with a different employer, even if the employer is in a different retirement system. PERAC staff are currently developing guidance for the retirement boards, changing several forms, guides, and internal processes.

Lastly, Mr. Charles reported on DOR’s final figures for Fiscal Year 2024 in which revenue collections were 2.4% more than FY24 and above benchmark. He also indicated that DOR reported surtax collection estimates in FY24 were \$2.199 billion and estimated capital gains tax revenue collected was \$2.070 billion, which generated a total FY24 transfer of approximately \$531.8 million to the Stabilization Fund, \$29.5 million to the State Retiree Benefits Trust Fund, and \$29.5 million to the Pension Liability Fund. DOR’s July 2024 reported revenue of \$2.648 billion, \$18 million or 0.7% below actual collections a year ago, July 2023.

### **Actuarial Update**

Mr. Boorack discussed the results of the January 1, 2024 State Retirement Board Actuarial Valuation. He indicated that the Unfunded Actuarial Liability remained the same at \$14.1 billion and the Funded Ratio increased slightly from 71.3% to 72.5% since January 1, 2023. He indicated that there was a gain on the actuarial accrued liability of approximately \$196 million. He explained that the report will be updated to incorporate the new required disclosures under ASOP 4 and a draft will be available at the October Commission meeting.

### **Legal Update**

Judith Corrigan introduced the Legal Unit’s new Associate General Counsel, Christopher Windle, who started on September 9, 2024, and who previously worked at the Division of Administrative Law Appeals (“DALA”). She indicated that Chris received his Juris Doctor from Boston University School of Law, with an LLM in taxation, and a bachelor’s degree from the University of Maine.

Ms. Corrigan provided a short report on the case of John Sorrentino v. State Board of Retirement, CR-19-0118 (CRAB Aug. 30, 2024). This was a case where the member, having been waiting a long time for a decision from the Contributory Retirement Appeal Board (“CRAB”), filed a suit in District Court for a violation of due process. CRAB subsequently rendered its decision in his case finding that Mr. Sorrentino was not entitled to retirement benefits as he did not re-enter service for at least two consecutive years after terminating membership with the State Retirement System and withdrawing his deductions pursuant to G.L. c. 32, § 3(6)(e).

Ms. Corrigan reported on the case of Barranco v. CRAB & MTRS, Appeals Court No. 23-P-217 (Aug. 29, 2024). Mr. Barranco served as the Executive Director of the Merrimack Special Education Collaborative (“the Collaborative”) and Merrimack Educational Center (“MEC”). Mr. Barranco retired from the Teachers’ Retirement System and continued to work at MEC. Mr. Barranco argued that he should not be subject to the earning limitations under G.L. c. 32, § 91 because his work for MEC was for a private entity. The Appeals Court, however, upheld the decisions of DALA and CRAB, finding that while MEC was a private entity, he provided substantial services to the Collaborative, which is a public entity. As such, his work for MEC is subject to the earnings limitations of Section 91.

Ms. Corrigan reported that the Attorney General’s Office will continue representing PERAC in the McLaughlin case, which is once again at the Lowell District Court following several decisions from DALA. David Marks is the assistant attorney general representing PERAC in this case.

Ms. Corrigan reported on the case of Worcester Reg. Ret. Sys. V. Middlesex Count Ret. Sys. & PERAC, CR-23-0006 (DALA Aug. 16, 2024). DALA found that the issue of determining G.L. c. 32, § 3(8)(c) liability for service of a member was premature as the member had not yet retired. DALA concluded that at the time of retirement, PERAC’s Actuary is the one that will determine Section 3(8)(c) liability, and that the determination of future liability should not impact a member’s rights to make service purchases.

Felicia McGinniss reported on the Supreme Judicial Court (“SJC”) decision in Hartnett v. CRAB & PERAC, 494 Mass. 612 (Sept. 11, 2024) which was released just prior to Commission meeting. Ms. McGinniss recapped that this case involves the anti-spiking provisions found at G.L. c. 32, § 5(2)(a) and whether the phrase “2 consecutive years” means 2 consecutive calendar years or 2 consecutive creditable service years. The SJC determined that the phrase meant 2 consecutive calendar years, and as such, Ms. Harnett was not subject to the anti-spiking provision. Ms. McGinniss informed the Commission that PERAC would be putting out a Memorandum for retirement boards regarding this recent decision.

Ms. McGinniss then reported on the case of DiBaro v. State Ret. Bd., CR-23-0279 (DALA Aug. 16, 2024). DALA upheld PERAC and the State Retirement Board’s determination that Ms. DiBaro’s redeposit of her previously received accumulated total deductions was calculated using the incorrect interest rate pursuant to PERAC Memo #23 of 2012 and G.L. c. 32, § 3(8)(b). DALA determined that Ms. DiBaro’s refund must be recalculated pursuant to G.L. c. 32, § 20(5)(c)(2). Ms. McGinniss reported that Ms. DiBaro had filed an appeal of this decision to CRAB, but that CRAB had just sent out a Notice to Show Cause for Failure to File a Timely Appeal as Ms. DiBaro’s appeal had been filed late.

### **Audit Update**

Caryn Shea introduced both Jordan Pipes and Thomas Tracy who began work on September 9, 2024 as auditors. Ms. Shea then reported that since the last Commission meeting, PERAC has released the Springfield and Waltham Retirement Board Audits and follow-up audits of the Newburyport and Norfolk County Retirement Boards. Ms. Shea explained that both audits had no findings and in the follow-up audits most of the findings have been resolved. She reported that both Scott Henderson and she had participated in the Administrators’ Training held in August at Northampton and will again participate at the November Administrators’ Training. She reported that a new PROSPER Application is ready to deploy that will enable us to submit an Audit Engagement Letter and task list

to the boards prior to conducting the audit, allowing secure materials to be received earlier and making the preparation of audit workpapers timelier and more efficient.

### **Compliance Unit**

John Galvin reported that PRIM's return for July was 1.57%. The fund balance as of July 31, 2024 was \$107.3 billion.

Mr. Galvin reported that a Wells Notice was sent to Western Asset Management. This notice was sent from the SEC which indicates that they intend to recommend enforcement proceedings against the prospective respondent. Currently, there are three retirement boards that have investments with this manager, and we have made them aware of this notice.

He further updated the Commission on highlights from the recent PRIM Board meeting held on August 4, 2024

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

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

He discussed the proposed changes to PERAC Policy 97-002, Travel/Education changes that are included in the Commission Packet highlighting the meal reimbursement increase which is consistent with retirement board travel regulations. Commissioner Fitzpatrick made a motion to adopt the proposed changes to PERAC Policy 97-002 (Travel/Education) effective immediately. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Kate Fitzpatrick YES, Michael Leung-Tat YES, Jennifer Sullivan YES, and Richard MacKinnon YES and the motion was adopted.

Mr. Keefe reported on the several memoranda issued to the retirement boards regarding the new anti-spiking exemptions, new standards for calculating public sector post-retirement work limitations, and the veteran's buy-back changes. He reported that Mr. Charles presented a webinar on August 27, 2024 regarding the various changes relating to the veterans' buy-back provisions with over 300 people attending the webinar and over 100 questions asked. He further reported that the staff is putting together a Q&A for further guidance to the boards.

Mr. Keefe updated the Commission on PERAC's lease with Brookwood. He indicated that since the last Commission meeting, a meeting was held with Chairman Brown, himself, Caroline Carcia, and representatives of DCAMM to discuss the delays in the move, the outstanding signing of the lease, and our current situation at 5 Middlesex Ave. Mr. Keefe reported that DCAMM reached out to the current landlord about a further extension through March 2025. Ms. Carcia reported that Brookwood accepted our counteroffer on paying a one-time overage cost in the amount of \$240,560 for construction costs. To date, demolition and/or a signed lease remains pending.

Mr. Keefe reported that PERAC's Annual Emerging Issues Forum will be held Wednesday, September 18, 2024 with over 250 registered thus far. The agenda is included in the Commission materials.

### **Executive Session – Purpose 1**

Commissioner Fitzpatrick made a motion to vote that the Commission go into Executive Session to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The subject(s) of the issue at hand have been notified in writing of this meeting and have not asked that it be held in open session. The Chairman announced that the Commission will not reconvene in open session.

Commissioner Leung-Tat seconded the motion and a roll call vote was taken as follows: Chairman Philip Brown YES, Commissioners Kate Fitzpatrick YES, Michael Leung-Tat YES, Richard MacKinnon YES, and Jennifer Sullivan YES, and the motion was unanimously adopted.

Chairman Brown then announced that the next Commission meeting will be held on Wednesday, October 9, 2024 at 11:00 AM at the PERAC offices.

### **Commission Meeting Documents**

Commission Agenda for the meeting of September 11, 2024

Commission Minutes dated July 10, 2024

### **Legislative Sub-Committee Update**

Memorandum regarding legislative proposals for the 2025-2026 Legislative Session

### **Legislative Update**

Memorandum regarding Legislative updates

### **Actuarial Update**

State Actuarial Valuation Results as of 1/1/24

### **Legal Update**

Gina DiBaro v. State Ret. Bd. & PERAC, CR-23-0279

Memorandum regarding Dismissal of Case Due to Lack of an Appealable Issue – Worcester Regional Retirement System v. Middlesex County Retirement Board and Public Employee Retirement Administration Commission, CR-23-0006 (August 16, 2024)

### **Audit Update**

Springfield Retirement Board Audit

Waltham Retirement Board Audit

Newburyport Retirement Board Follow-Up Audit

Norfolk County Retirement Board Follow-Up Audit

Audit Tracking Report

### **Compliance Update**

Memorandum regarding Compliance updates

PRIM Summary of Plan Performance – As of July 31, 2024

**Executive Director's Report**

Staff Activities Memorandum

PERAC Policy 97-002 – Travel/Education Policy

PERAC Memorandum #21, 2024

PERAC Memorandum #22, 2024

PERAC Memorandum #23, 2024

Letter to Governor Maura Healey dated August 30, 2024

Emerging Issues Forum Agenda

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission