

## Commission Meeting Minutes

June 11, 2025

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 10 Cabot Road, Suite 300, Medford, MA 02155) to order at 12:03 PM. Chairman Brown acknowledged the other Commissioners present at the PERAC offices: Michael Leung-Tat, James Guido, Kate Fitzpatrick, and Richard MacKinnon. Commissioner Jennifer Sullivan participated remotely. Therefore, the Chairman explained, all motions made at this meeting will be voted on by roll call vote. The Chairman also announced the meeting was being recorded. Commissioner Kathleen Fallon was not present for the meeting.

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, Actuary John Boorack, Compliance Manager John Galvin, Senior Associate General Counsel Felicia McGinniss, Associate General Counsel Christopher Windle, Administrative Assistant Rose Morrison, Auditor II Junior Yanga, and Systems Architect Anthony Tse.

PERAC Staff attending remotely: Fraud Prevention Manager Sandra King.

Guest in attendance at the PERAC offices: John Brown representing the Middlesex County Retirement Board and MACRS, and Amalia Petrosyan and Jay Mohonka from the State Auditor's Office.

Guests participating remotely: Tom Gibson representing the Belmont and Middlesex County Retirement Boards.

Commissioner Richard MacKinnon made a motion to adopt the minutes of the Commission meeting of May 14, 2025. Commissioner Guido seconded the motion, and a roll call vote was taken:

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

### **Legal Update**

Felicia McGinnis provided the Commission with an update on the Division of Administrative Law Appeals ("DALA") case of Gloucester Ret. Bd. v. PERAC, CR-22-0452 (May 30, 2025). This case resulted from two PERAC Memoranda, #11 of 2020 and #38 of 2020, concerning the types of compensation police officers and firefighters should use to meet the "Under \$5,000 Rule" of G.L. c. 32, § 4(1)(o) when purchasing prior service under G.L. c. 32, § 4(2)(b). Previously, Section 4(2)(b) service purchases were not thought to be governed by the "Under \$5,000 Rule" of Section 4(1)(o). However, the Supreme Judicial Court, in *Plymouth Ret. Bd. v. CRAB & PERAC*, 483 Mass. 600 (2019) ("*Gomes*"), held that the \$5,000 rule in G.L. c. 32, § 4(1)(o) applies to purchases of creditable service under Section 4(2)(b).

As a result of this determination, PERAC issued Memoranda #11 of 2020 and #38 of 2020 to all retirement boards to address questions that had arisen after the *Gomes* decision. One such question was whether retirement boards should include detail pay in the \$5,000 threshold under Section

4(1)(o), which PERAC answered as YES. The Gloucester Retirement Board appealed PERAC's determination as it argued only "regular compensation" can be used for purposes of the "Under \$5,000 Rule" and detail pay is not regular compensation. DALA found that PERAC's explanation of why detail pay should be included for purposes of the "Under \$5,000 rule" for service purchases under Section 4(2)(b) was "simple and persuasive" and "conform[ed] to the statute's intent." DALA agreed with PERAC that to limit Section 4(1)(o) to only including "regular compensation" payments as part of the \$5,000 calculation would effectively eliminate the ability to purchase service under Section 4(2)(b) as that service would never be considered regular compensation, a result that the Legislature could not have intended. Ms. McGinniss informed the Commission that the Board has appealed this decision to the Contributory Retirement Appeal Board ("CRAB").

Ms. McGinniss also provided the Commission with an update on the DALA case of MWRA v. PERAC, CR-23-0486 (May 30, 2025) concerning whether G.L. c. 32, § 5(3)(b) requires that the total unpaid leave of absence be less than one year to be includable in the three- or five-year calculation for a retirement benefit. While calculating an Option D benefit pursuant to G.L. c. 32, § 12(2)(d), the MWRA requested clarification from PERAC as to whether it should only use a portion of a member's unpaid leave of absence, that totaled more than one year, in the retirement allowance calculation. PERAC opined that the entire period of the last leave of absence, not just the portion in excess of one year, was barred by G.L. c. 32, § 5(3)(b) as the language clearly provided "*...any such leave or period of absence not in excess of 1 year for which such member is not allowed creditable service....*" MWRA appealed the determination.

DALA found that both PERAC's and the MWRA's interpretation of G.L. c. 32, § 5(3)(b) was reasonable given the language of the statute. DALA held that "[w]hen a statute is susceptible to multiple ordinary meanings, the proper construction is the one that 'most appropriately suits [the statute's] intent and purpose.'" DALA concluded that the purpose of Section 5(3)(b) was to provide protection to members who are on unpaid leaves of absence and that this purpose was advanced better by the MWRA's interpretation. As such, DALA held that for unpaid leaves of absence that are greater than one year, Section 5(3)(b) allows the retirement boards to include the first year of that leave as part of the calculation of the retirement allowance. PERAC has appealed this decision to CRAB.

Ms. McGinniss then provided the Commission with an update on the CRAB case of Gloucester Ret. Bd. v. PERAC, CR-21-217 (May 28, 2025) concerning whether PERAC Opinion letters are appealable determinations. In August 2020 the Gloucester Retirement Board requested an opinion from PERAC on whether certain payments received for police officers in Gloucester were regular compensation. PERAC responded that the payments were regular compensation, and the Board appealed. DALA dismissed the case and found that PERAC's opinion letters were not appealable because there was no "aggrieved" party as the issue was raised by a retirement board and not on behalf of any specific members. DALA concluded that, in general, PERAC's advisory opinions are not appealable because they "are theoretical and non-final."

CRAB upheld DALA's dismissal of the case for lack of jurisdiction given that none of the officers in question had yet retired, and so no party was aggrieved in PERAC's determination. CRAB found that the DALA decision was supported by Court cases and CRAB/DALA decisions that had previously determined that PERAC opinion letters are not appealable decisions. PERAC and the Board have 30 days to file an appeal of the decision in Superior Court, but Ms. McGinniss indicated that PERAC would not be filing an appeal.

Judith Corrigan provided the Commission with an update on the DALA case of Christopher Gallagher v. Bristol County Ret. Sys. & PERAC, CR-22-0599 (May 30, 2025), which concerned whether the anti-spiking provision of G.L. c. 32, § 5(2)(a) applied to Mr. Gallagher's retirement allowance calculation. In the last five years preceding retirement, Mr. Gallagher twice had a difference of over 100% in his annual rate of compensation. PERAC determined that the anti-spiking statute applied to Mr. Gallagher, and he appealed that determination arguing that it did not apply to him and it violated "his core reasonable expectations" in the retirement system as set out in G.L. c. 32, § 25(5). DALA found that the provisions of Section 5(2)(a) were properly applied to his retirement allowance calculation as he had increases in two consecutive years that were over 100% and so his retirement allowance should be adjusted downward. DALA also found that CRAB has determined that certain alterations in a member's expectations might be allowed as part of a reasonable effort to ensure the continued successful operation of the pension system, as was the case with the anti-spiking amendments. Ms. Corrigan informed the Commission that Mr. Gallagher had not yet filed an appeal, but has until June 13, 2025 to do so.

### **Legislative Update**

Patrick Charles reported that the Joint Committee on Public Service held a meeting on May 28, 2025. Both Mr. Charles and Bill Keefe testified at the hearing on H2853 and S1788 An Act Relative to PTSD and Accidental Disability which was filed by Representative Gordon and Senator Brady at the request of the Commission. He also reported that on May 22, 2025, the Senate passed its version of the Fiscal Year 2026 budget. The Senate included the wages definition language that was included in the Governor and House budgets. Therefore, this matter will not be subject to conference committee. Also included in the budget is the 3% COLA for State and Teachers', though the House and Senate differ on how capital gains will be used to make the appropriation. Not included was the amendment for the Retirement Plus option and the continued MTRS membership for employees who go from MTRS to the State Department of Education.

Mr. Charles reported that the House and Senate named the members of the conference committee to reconcile the FY26 Budget. House members are Chairman Aaron Michlewitz, Representatives Ann-Margaret Ferrante and Todd Smola and Senate members Chairman Michael Rodrigues and Senators Joanne Comerford and Patrick O'Connor.

Mr. Charles noted that the Massachusetts Department of Revenue ("DOR") reported May revenue of \$2.629 billion, an increase of \$183 million or 7.5% compared to actual collections last May and \$139 billion or 5.6% above the monthly benchmark.

FY2025 collections to date have totaled approximately \$39.148, which is \$2.843 billion or 7.8% more than actual collections in the same period of FY2024, and \$2.040 billion or 5.5% above the year-to-date benchmark.

### **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Fall River and Hampshire County Retirement System Audits and the State Retirement Board Follow-up Audit. Ms. Shea explained that the Fall River Audit had two findings relating to retirement calculation errors and stale checks on Cash Reconciliations. The Hampshire County Audit had no findings. Ms. Shea reported that the State Retirement Board Follow-up Audit indicated that the two findings have been

resolved with dramatic improvements in first payments to new retirees, refunds to members and transfers out to other boards. Ms. Shea further discussed the status of other board audits as outlined in the Audit Tracking Log.

Ms. Shea reported that interviews are taking place for possible candidates to join the Audit Unit at the beginning of the new fiscal year.

### **Compliance Update**

Mr. Galvin reported that to date 99% of active board members have filed their SFI. There are three active boards who have filed their SFI and we are working with those members to ensure they remain compliant.

John Galvin reported that PRIM's return for April was 0.41%. The calendar year to date return through April 30 was 0.55%. The fund balance as of April 30 was \$110.2 billion.

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

Mr. Keefe went over the staff activities that have occurred since the last Commission meeting of May 14, 2025. He introduced Rose Morrison who recently celebrated her 40<sup>th</sup> anniversary of employment at the agency. He also noted that Ms. Morrison coordinated volunteers at PERAC to plant flags at the Boston Common for Memorial Day. He also introduced Junior Yanga who recently obtained his master's degree at UMass Boston in Accounting. He further noted that PERAC staff met with representatives of the State Retirement Board regarding the development of their new online portal. He also mentioned that Part One of Chapter 32 and Federal Taxation training was conducted by PERAC's Tax Counsel Ice Miller. He further stated that he and Patrick Charles participated in a veteran's buyback webinar for PFFM.

Mr. Keefe reported that several PERAC employees attended and presented at the Spring MACRS Conference held in Hyannis, MA. He indicated that the conference was well attended and an excellent program.

Mr. Keefe reported on the various topics and discussions that were presented at the NCPERS Conference held in Denver, CO. He indicated that discussions ranged from artificial intelligence to full funding.

Mr. Keefe noted that included in the Commission packet is Memorandum #14/2025 regarding the enhanced violent attack statute. He noted that PERAC had to change all their forms for both retirement boards use and the medical community's use. He indicated that we recently approved an application pertaining to this new act.

Mr. Keefe noted that the Commission typically does not meet in the month of August and noted the scheduled Commission meeting for December takes place at the same time as the Fall MACRS Conference in Springfield. He asked the Commission to consider changing the December meeting from December 10, 2025, to December 17, 2025.

Commissioner Fitzpatrick made a motion to cancel the August 13, 2025 Commission meeting and change the December 10, 2025 Commission meeting to December 17, 2025. Commissioner MacKinnon seconded the motion, and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Michael Leung-Tat YES, Kate Fitzpatrick YES, James Guido YES, and Richard MacKinnon YES. The motion was adopted. Commissioner Jennifer Sullivan did not appear to be online at this time and so had no recorded vote.

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

Chairman Philip Brown YES, Commissioners Michael Leung-Tat YES, Kate Fitzpatrick YES, James Guido YES, and Richard MacKinnon YES, and the motion was adopted. Commissioner Jennifer Sullivan did not appear to be online at this time and so had no recorded vote. The meeting was adjourned at 1:00 PM.

#### **Commission Meeting Documents**

Commission Agenda for the meeting of June 11, 2025

Commission Minutes dated May 14, 2025

#### **Legal Update**

Gloucester Ret. Bd v. PERAC, CR-22-0452

MWRA v. PERAC, CR-23-0486

Gloucester Ret. Bd. v. PERAC, CR-21-217

Christopher Gallagher v. Bristol County Retirement System and Public Employee Retirement Administration Commission, CR-22-0599

#### **Legislative Update**

Memorandum regarding Legislative updates

Letter to Chairs of Public Service regarding support of H2853 and S.1788 – An Act Relative to PTSD and Accidental Disability

#### **Audit Update**

Fall River Retirement System Audit

Hampshire County Retirement System Audit

State Retirement Board Follow-Up Audit

Audit Tracking Report

#### **Compliance Update**

Memorandum regarding Compliance updates

Mass PRIM PRIT Fund Performance Summer as of April 30, 2025

Mass PRIM Board Quarterly Update – First Quarter 2025

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

Staff Activities Memorandum

PERAC Pension News No. 68

PERAC's 2024 Investment Report

PERAC Memorandum #15/2025 – *Violent Act Injury Disability – Updated Forms*  
PERAC Policy 99-001 – Letters regarding PERAC's approved FY2026 Budget

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission