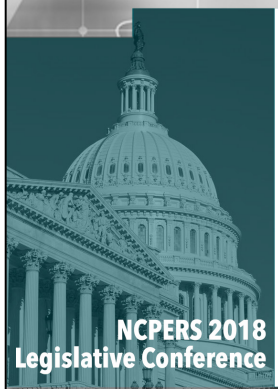




The Massachusetts Governance Model: Pension Reform and Benefit Modernization

Chapter 176, Acts of 2011



**NCPERS 2018
Legislative Conference**



Derek Moitoso | Compliance Counsel | 1/29/18
Public Employee Retirement Administration Commission (PERAC)

The Massachusetts Public Pension Systems

- ❖ The Public Employee Retirement Administration Commission (“PERAC”) is dedicated to the oversight, guidance, monitoring, and regulation of the Massachusetts Public Pension Systems (“MPPS”).
- ❖ 104 MPPS for the mutual benefit of the public employees of Massachusetts.
- ❖ The MPPS are managed by Retirement Boards.

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The Members of PERAC

- ❖ Chairman:
 - Philip Y. Brown, Esq.
- ❖ Vice Chairman:
 - The Honorable Suzanne M. Bump | Auditor of the Commonwealth
- ❖ Commission Members:
 - Kathleen M. Fallon | Practice Area Director, Public Consulting Group
 - Kate Fitzpatrick | Town Manager, Town of Needham
 - James M. Machado | Sergeant, Fall River Police Department
 - Robert B. McCarthy | President Emeritus, Professional Firefighters of MA
 - Jennifer F. Sullivan | Asst. Secretary for Capital Finance, Admin. & Finance
 - Joseph E. Connarton | Executive Director, PERAC



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NOTES:

Investing

- ❖ The 104 MPPS are comprised of approximately \$82.0 Billion as of December 31, 2017.
- ❖ Approximately \$70.0 Billion or 85.0% of the investable assets are invested in the Pension Reserves Investment Trust (“PRIT”) which is overseen by The Pension Reserves Investment Management Board (“PRIM”).

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Investing (Cont'd.)

- ❖ Approximately \$55.0 Billion belongs to the two largest retirement systems:
 - Massachusetts State Employees Retirement System
 - Massachusetts Teachers Retirement System
- ❖ Approximately \$15.0 Billion of investable assets belongs to:
 - 39 Participating Retirement Systems elect to transfer all its assets to PRIM.
 - 51 Participating Retirement Systems elect to invest some of its assets in PRIM.

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NOTES:

History of Chapter 176 of the Acts of 2011

- ❖ In 2005, PERAC created the Reform Initiatives Advisory Committee to explore initiatives to enhance PERAC's ability to carry out its Legislative mandate to oversee the MPPS.
- ❖ Beginning in 2006, for 4 consecutive 2-year Legislative sessions, formal proposed legislation was brought before the Joint Committee on Public Service.

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History of Chapter 176 of the Acts of 2011

(Cont'd.)

- ❖ The proposal was redrafted multiple times and involved extensive negotiations with several interest groups.
- ❖ In 2011, after 5 years of multiple meetings, hearings and legislative discussions "An Act Providing for Additional Pension Reform and Benefits Modernization of 2011" was finally adopted.

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NOTES:

Chapter 176 of the Acts of 2011

- ❖ Pension Modernization: Creating a More Sustainable and Affordable Public Employee Retirement Benefit System for the Future.
- ❖ The legislation contains several provisions that have strengthened pension laws, protected the defined benefit plan for public employees, and saved public funds.
- ❖ This is a far reaching pension reform that not only addresses governance but also comprehensive benefit reforms.

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Governance Provisions

- ❖ The establishment of an explicit open and competitive procurement process to be followed by boards when soliciting investment, actuarial, legal or accounting services.
- ❖ Requiring board members to file statements of financial interest.

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NOTES:

Governance Provisions (Cont'd.)

- ❖ Requiring relevant education for board members.
- ❖ All vendors annually inform PERAC and the board of any compensation arrangements to be received or to be paid for the services provided as well as disclose any conflict of interest that may exist.
- ❖ Placement Agent Policy

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Implementation of Governance Provisions

- ❖ Create PERAC Compliance Unit led by Deputy Executive Director
 - Compliance Officer
 - Compliance Counsel
 - Compliance Analyst
- ❖ Implementation of online portal for approximately 522 Retirement Board members and 1500 outside vendors.

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NOTES:



M.G.L. c. 32, § 23B Required Actions For Proper Procurement

- ❖ Notice posting
- ❖ Request for Proposal (“RFP”) issuance
- ❖ Register of bids from opening of proposals
- ❖ Written initial evaluation of proposals
- ❖ Written determination of most advantageous proposal
- ❖ Disclosures by investment vendors
- ❖ Vendor and Retirement Board member certification forms
- ❖ Actual written contract

NOTES:

Content of Notice Posting

- ❖ Notice must contain the terms and deadline for RFP bid period.
- ❖ Type of service must be on the notice.
- ❖ Evidence of minimum two week posting in a publication of interest to those who may respond: legal services in *Lawyers Weekly*, investment, accounting and actuarial services in *Pensions and Investments*, newspapers of general circulation, PERAC and Retirement Board websites, and other types of advertisements deemed appropriate by a Retirement Board.
- ❖ Notice in a publication established by the Massachusetts Secretary of State for the advertisement of such procurements, i.e. *Central Register* and *Goods & Services Bulletin*.

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Request for Proposal, RFP Document

- ❖ Specific date, location and time for receipt of advertised proposal.
- ❖ Include description of service purchase desired.
- ❖ Evaluation criteria for the basis of the contract award.
- ❖ All contractual terms and conditions.
- ❖ Notice that Retirement Board has right to cancel or reject in whole or part any or all proposals in the best interest of the retirement system.

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NOTES:

Opening of Bids

- ❖ Not required to be a public meeting but the signature of a witness or witnesses are needed. At least one witness is required to be at the opening of sealed bids.
- ❖ Written notice of any submitted modifications or revisions to filed bids.
- ❖ A register of all proposals received must be documented.
- ❖ The place, time and date proposals are opened must be documented.
- ❖ A written affidavit should be used to document the requirements for the opening of bids.

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Retirement Board Initial Evaluation

- ❖ Each proposal to be rated in written format based solely on the criteria established in RFP.
- ❖ Such written ratings should be based on some rating criteria using the standards:
 - 1) Highly Advantageous
 - 2) Advantageous
 - 3) Not Advantageous
 - 4) Or Not Acceptable (A composite or total points for each bid should be stated.)
- ❖ If such evaluation is done by consultant, each submission of review with each Retirement Board member should take place and be documented.
- ❖ Evaluation must be completed prior to interviewing process.
- ❖ No sub-committees.

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NOTES:

Interviews

- ❖ Following the initial evaluation, the Retirement Board must determine which applicants should be interviewed by the entire Retirement Board (no sub-committees).
- ❖ Number of applicants to be interviewed dependent on two factors:
 - Rankings
 - Number of Applicants
- ❖ Time to negotiate price, discuss track record, specific concerns.

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Determination of Most Advantageous Proposal

- ❖ Based on price and evaluation criteria set forth in the RFP.
- ❖ Award is to be made in writing within the time specified in the RFP. An extension of up to 45 days may be granted upon mutual agreement of Retirement Board and offeror.
- ❖ Award may be conditioned on negotiated items.
- ❖ If negotiations result in a decision not to award contract to “Most Advantageous”, the Retirement Board may negotiate with the “next Most Advantageous” vendor and should document the need for such further negotiations.
- ❖ Investment service RFP to also include certain mandatory terms and conditions.

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NOTES:

Mandatory Terms and Conditions for Investment Service Contracts

- ❖ Statement that vendor is a fiduciary of such fund.
- ❖ Statement that vendor is not to be indemnified by the retirement system.
- ❖ Vendor to submit disclosure forms to PERAC and Retirement Board detailing compensation for services.
- ❖ Disclosure by vendor to PERAC of any conflict of interest.
- ❖ Investment Service Provider terms required by Placement Agent Policy.

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PERAC's Acknowledgement

- ❖ Upon determination of the Most Advantageous Proposal, the Retirement Board must submit all RFP documents required by M.G.L. c. 32, § 23B to PERAC.
- ❖ Pursuant to M.G.L. c. 32, § 23(2)(c), PERAC acknowledges the receipt of the RFP documents.
- ❖ It is the responsibility of each Retirement Board to assure that all investments are made in a prudent and responsible manner consistent with the Retirement Board's fiduciary responsibility under M.G.L. c. 32 and in accordance with the statutory changes made by Chapter 176 of the Acts of 2011.
- ❖ In providing the acknowledgement, PERAC does not pass judgment on the fiduciary propriety of an allocation, investment or investment manager.

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NOTES:

Vendor and Retirement Board Member Certification Forms

- ❖ Any person submitting a RFP for a service contract must certify in writing, under the penalties of perjury, that the proposals were submitted in “good faith” and without collusion or fraud.
- ❖ Same requirement for each Retirement Board member to certify that proposals are submitted in “good faith” and without collusion or fraud.
- ❖ The Retirement Board member files annual forms agreeing to abide by the state conflict of interest law and attests that he or she has no relationship with any vendor doing business with any MPPS.

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Awarded Service Contracts

- ❖ No contract is valid without PERAC acknowledgement.
- ❖ Each awarded contract must be executed in writing.
- ❖ No payment for service rendered prior to execution of the contract.
- ❖ No contract shall exceed a term of seven years, including any renewal, extension or option.
- ❖ Exceptions to the seven year term are any limited investment partnership or trust.

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NOTES:

Penalties for Violations

- ❖ Any contract made in violation of M.G.L. c. 32, 23B is not a valid contract.
- ❖ Conspiring to cause a contract to be in violation warrants up to a \$2,000 fine for each violation.
- ❖ In addition, such violator will be liable for double damages to the Retirement Board.

NOTES:



Statements of Financial Interest

- ❖ Each Retirement Board member must file an annual *Retirement Board Member Statement of Financial Interest* with PERAC.
- ❖ These statements are exempt from the Public Records Law and not subject to public release.
- ❖ Employment, investments, business interests, loans, creditors, reimbursements, gifts, honoraria, and other similar items must be disclosed.

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NOTES:



Retirement Board Member Education

- ❖ Chapter 176 mandates that Retirement Board members complete training during each year of service on the Retirement Board.
- ❖ Failure to meet this mandatory requirement will prohibit the member from serving beyond the conclusion of the educational term for which the training requirement was not met.

NOTES:

Retirement Board Member Education *(Cont'd.)*

- ❖ Specifically, during each member's three year term on the Retirement Board, a member must undertake 18 hours of training with a minimum of 3 hours per calendar year and 9 hours being the maximum for any given calendar year.
- ❖ Educational credits are available for a variety of events sponsored by "...local, state, regional and national organizations recognized by the Commission as having expertise in retirement issues of importance to Retirement Board members or other entities..."

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Examples of Board Member Education

- ❖ NCPERS (TEDS) – 3 Credits
- ❖ NCPERS (PATS) – 3 Credits
- ❖ Ethics Training – 3 Credits
- ❖ Conflict of Interest Training – 3 Credits
- ❖ Open Meeting Law Training – 3 Credits
- ❖ National Pension Education Association – 3 Credits
- ❖ NCPERS Legislative Conference (DC) – 3 Credits
- ❖ PERAC Sponsored Classes – 3 credits

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NOTES:



VENDOR DISCLOSURE

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Annual Disclosures by All Vendors

- ❖ Include compensation, in whatever form, **paid** or expected to be paid, directly or indirectly, by the vendor or a related person to others in relation to the vendor's services to the Retirement Board or any other client.
- ❖ Include all compensation or other benefit **received** or expected to be received by the vendor or a related person from others in connection with the vendor's services to the Retirement Board or any other client.
- ❖ Include any **conflict of interest** the vendor may have that could reasonably be expected to impair the vendor's ability to render unbiased and objective services to the Retirement Board.

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NOTES:

Who Files Annual Disclosure Forms?

- ❖ Annual disclosure requirements must be filed by “all investment service providers”
 - managers,
 - partnerships,
 - trusts,
 - custodians,
 - consultants,
 - proxy services,
 - securities litigation services and
 - services related to the financial information (cash books, pooled fund statements, annual statements of the fund)

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Compensation Paid By the Vendor

- ❖ Vendors must disclose compensation paid in connection with the investment service being provided to the other clients in the same product or for the same service in which the Retirement Board is investing.
- ❖ In the case of a third party marketer or placement agent the vendor may make direct payment to one firm or individual and that firm or person makes payments to other parties. In this case, the vendor has made an indirect payment to a third party that must be disclosed.
- ❖ Disclosure must be made of all arrangements that result in any compensation paid to any party in connection with the services provided to the Retirement Board.

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NOTES:

Compensation Received by the Vendor

- ❖ Disclosure of management fees and other ancillary fees from the Retirement Board to the vendor in relationship to the investment.
- ❖ Disclosure must be made of all arrangements that result in any compensation received by the vendor from any party in connection with the services provided to the Retirement Board.

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Definition of Compensation

- ❖ The statute requires that "...compensation, in whatever form..." be disclosed.
- ❖ There exist many forms of compensation that may take place in relation to investment activities.
- ❖ It should be noted that the types of compensation provided in this context have evolved and new mechanisms for providing compensation have developed.

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NOTES:

Conflict of Interest

- ❖ The Securities Exchange Act of 1934 broadly prohibits misstatements or misleading omissions of material facts, and fraudulent or manipulative acts and practices, in connection with the purchase or sale of securities.
- ❖ Section 15(c) of The Securities Exchange Act prohibits a broker from effecting any transaction in or inducing or attempting to induce the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

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NOTES:



Placement Agent Policy

- ❖ PERAC has implemented the Placement Agent Policy which sets forth disclosure requirements regarding placement agents that act as a “finder, solicitor, marketer, consultant, broker or other intermediary in relation to the investment of assets of Massachusetts public pension systems.”
 - Includes any person or entity which provides proactive consultant services concerning the changing political and policy environment in New England and nationally as it relates to retirement plans.

NOTES:

Manager Responsibilities

- ❖ Each manager is responsible for providing the following information to the board and PERAC in conjunction with responding to an RFP or solicitation, commencing discussions relative to amending an agreement between the manager and the board or entering into a discussion, other than informal general discussions, that may lead to any of the above referenced actions:
 - a) a statement whether the manager or any principal, employee, agent or affiliate has compensated or agreed to compensate, directly or indirectly any person or entity to act as a placement agent in connection with investment by the Massachusetts public pension systems;
 - b) a resume for each placement agent detailing the person's education, professional designations, regulatory licenses and investment and work experience. If any such person is a current or former member of a Retirement Board, employee or consultant or immediate family of such a person that fact should be specifically noted;

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Manager Responsibilities (Cont'd.)

- c) a description of any and all compensation of any kind provided or agreed to be provided to a placement agent and/or entity acting as a placement agent in connection with investment by Massachusetts' public pension systems, including the nature, timing and value thereof;
- d) a description of the services to be performed by the placement agent and/or entity acting as a placement agent and a statement as to whether the placement agent is used by the manager with all prospective clients or only a subset of clients or only Massachusetts public pension fund clients; and

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NOTES:

Manager Responsibilities (Cont'd.)

- e) a written copy of any and all agreements between the manager and the placement agent and/or entity acting as a placement agent in connection with investment by Massachusetts' public pension systems.

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Conclusion

- ❖ Progress since Chapter 176 of the Acts of 2011 enacted:
 - **544** Procurements Acknowledged by PERAC.
 - Retirement Board members have received credit for nearly **9,000** completions of courses, conferences, webinars and on-line course offerings.
 - PERAC employees have, on average, spent about **75** hours per year teaching courses covering a variety of Retirement Board relevant topics.

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NOTES:

Questions?



❖ Contact:

- Derek M. Moitoso
Compliance Counsel
Public Employee Retirement Administration Commission
5 Middlesex Ave., Suite 304
Somerville, MA 02145
Phone: (617) 666-4446, ext. 909
Fax: (617) 628-4414
E-mail: dmmoitoso@per.state.ma.us

COMMONWEALTH OF MASSACHUSETTS

Public Employee Retirement Administration Commission

Five Middlesex Avenue, Suite 304 | Somerville, MA 02145

Phone: 617-666-4446 | Fax: 617-628-4002

TTY: 617-591-8917 | Web: www.mass.gov/perac

