



MACRS

Retirement Board Elections And Choosing the 5th Member



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MACRS 2018 SPRING CONFERENCE

Retirement Board Members

1. Ex Officio Member
2. Appointed Member
3. Elected Member
4. Elected Member
5. Board Appointed Member

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NOTES:

Board Elections: 840 CMR 7.00

- Who must follow these election regulations?
- Every board mentioned in G.L. c. 32, § 20(4).
- All city and town retirement boards, as well as:
 - Mass. Housing Finance Agency - § 20(4 ¼)
 - Mass. Port Authority - § 20(4 7/8)
 - Greater Lawrence Sanitary District - § 20(4 7/8A)
 - Blue Hills Reg. Vocational School - § 20(4 7/8B)
 - Minuteman Reg. Vocational School - § 20(4 7/8C)
 - Mass. Water Resources Authority - § 20 (4 7/8D)
- Boards not required to follow 840 CMR 7.00: State, Teachers', County, Regional

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Board Member Eligibility

- Candidates must be members in service or retirees of that retirement system.
 - Inactive members can vote, but cannot serve as an elected member of a Retirement Board.
- Unless someone was a board member prior to April 2, 2012, no employee, contractor, vendor or person receiving remuneration (other than retirement benefit or statutory stipend) from a Retirement Board is eligible to serve on a board, pursuant to § 20(4 7/8E).
- Board staff may be elected to a board other than the board for which he or she is employed (§ 20(4 7/8E)).

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NOTES:

Terms

- An elected board member's term is for not more than three years.
 - However, an elected board member serves until the qualification of his or her successor.
 - May require an elected board member to serve for longer than three years.
- In event of a vacancy, the board must hold an election within 120 days from the date of vacancy.
- Prior to the election, the board must determine and publish whether the newly elected member will serve for a new three year term or for just the remainder of the vacant term.
- In no event shall the term of the 3rd and 4th member expire in the same year as the term of the 5th.

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Election Officer

- Designate an election officer to coordinate all election activity.
 - May be a member of the board, a staff person of the retirement system, or the city or town clerk.
 - May not be a candidate in the election.
- A person who is aggrieved by a decision of the election officer may appeal to the Retirement Board.

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NOTES:

Notice of Election

- Notice shall be provided to all members, inactive members, and retirees no less than **90 days** prior to the election.
 - If less than 90 days, must send a written request for an exception to PERAC with a compelling reason.
 - If less than 60 days, PERAC will not approve and the incumbent elected member will have to serve beyond his or her term.
- Notice shall state the time, place and manner of election (polling place or by mail).
- Also must describe the nomination and election procedures:
 - If the election is to be held at a polling place, must include the procedures for voting by absentee ballot.
 - If election is to be held at a polling place, absentee ballots shall be mailed to all retirees (with return envelope). Retirees may vote in person, however.

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Method of Notice

- Notice shall be mailed to each active, inactive and retired member, or
- Notice shall be mailed to all inactive and retired members AND shall be posted in at least 3 appropriate public locations:
 - City/town hall
 - Police/fire stations
 - Libraries
- Notice may also be published in local newspaper and/or e-mailed to all active members' employee e-mail addresses.
- A copy of the election notice must be sent to PERAC.
- Electronic means of notice requires a supplemental regulation approved by PERAC not less than 120 days prior.

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NOTES:

Nominations

- Any active or retired member of a system may qualify to be a candidate in that system.
- Nomination papers must be made available at least 90 days prior to the election.
- A candidate must obtain the signatures and addresses of at least 20 active or retired members of the system.
- Completed nomination papers must be filed with the board no later than 45 days prior to the election.
- If the board determines the nomination papers do not contain sufficient signatures, the board shall declare the nomination papers invalid.
 - If all candidates fail, the nomination period shall remain open until the first Monday following the date the first candidate qualifies.

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One Candidate

- When only one candidate files nomination papers, he or she shall be declared the winner and no election needs to be held.
- He or she shall take office and serve in all respects as if elected.
- Notice of this declaration must be sent to PERAC.

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NOTES:

Simultaneous Elections

- Boards may hold simultaneous election for the two elected members if:
 - Both elected positions are vacant; and
 - The two terms are equal.
- Board shall provide two separate ballots, unless PERAC has approved a written request allowing for use of one ballot.

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Election Ballot

- If more than one candidate, the board must prepare a ballot.
- Qualified candidates shall be randomly listed.
 - The ballot may contain the office or agency where the candidate works.
- If the incumbent elected member is nominated, he or she shall have the right to be identified as “incumbent” on the ballot.
- The ballot must state the length of the term.

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NOTES:

Method of Election

- The election may be conducted totally by mail, or at a polling place.
- If a board wishes to hold election via electronic means, it must first submit a supplemental regulation to PERAC describing the process and obtain PERAC's approval at least 120 days prior to the election date.

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Election Held Exclusively By Mail

- All active, inactive and retired members of the system must be sent a ballot to their last known address.
- At least 21 days prior to election date.
- Must be accompanied with a return envelope that must include a space where the voter must sign his or her name and provide address.
 - Indicates that ballot inside is from qualified voter.
 - Board may choose to pre-stamp the return envelopes.

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NOTES:

Precautions

- Members should not sign the ballot.
- To ensure that voter cannot be identified, the board may:
 - Include a second, smaller blank inside envelope where ballot will be placed.
 - Sealed inside ballot envelope (which contains no identifying information) is then placed inside the signed outside envelope.
 - Upon receipt, outside envelope is used to verify the voter, and then separated from inside envelope.
 - On Election Day, all the inside envelopes are opened.

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Pre-Addressed Return Envelope

Member Name
 Member Address
 Member Signature: _____

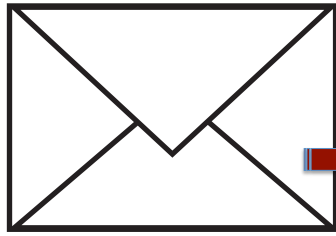


Example Retirement Board
 Town Hall
 Example, MA 11111

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NOTES:

Inside Ballot Envelope



INSIDE BALLOT ENVELOPE

THIS ENVELOPE PROTECTS THE SECRECY OF YOUR VOTE.
It will be removed from the return envelope and will be mixed with other inside ballot envelopes before it is opened. **No one will know how you voted.**

Place your completed ballot inside this envelope, seal it and place it inside the pre-addressed return envelope for mailing.

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Alternate Precautions

- Or, the size of the ballot should be such that it must be folded in order to be placed into the identifying return envelope.
 - Prevents anyone opening the ballot envelope from immediately identifying the voter.
- Envelopes should be verified when they arrive but not opened until Election Day.
- All envelopes should be opened and ballots separated before tabulation.

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NOTES:

Election at a Polling Place

- Secure a room and set up polling stations.
- Polls must be open minimum of 10 hours.
- Two individuals should be assigned to monitor the polling place at all times.
- Member/inactive/retiree must state name and address to one of the monitors in order to receive official ballot.
 - Name shall be crossed-out on list by the monitor.
 - Voter shall place completed ballot into secure box.

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Absentee Ballots

- Absentee ballots must be sent to all retirees.
- Members in service and members inactive may request an absentee ballot.
 - In writing, filed with the Board no later than 7 business days before the Election Date.
 - Compelling reason:
 - Absent during hours polling place open, or
 - Unable to cast vote for religious reasons, or
 - Unable to cast vote for medical reasons.
- Absentee ballots only to be counted if received by board no later than closing of polls.

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NOTES:

Tabulation of Ballots

- Notify all candidates in advance of time and location for tabulation.
- Permit all candidates or their representatives to be present during tabulation.
- Election officer shall designate at least two individuals to tabulate the ballots.
 - Election officer can designate self as one tabulator.
- At least one impartial witness should also be present to observe the ballot counting.

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Disqualified Ballots

- Generally, ballots disqualified if:
 - Ballot envelope contains no signature or address
 - Ballots not returned in envelope provided
 - Ballots not able to be verified as being submitted by a member in service, an inactive member or a retiree
 - Ballots of member, inactive member or retiree voting more than once
 - Ballots received after deadline
 - Ballots contain identifying data of voter
 - Ballots contain a vote for more than one candidate
 - Ballots defaced such that choice of candidate is unknown

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NOTES:

Election Results

- Board shall notify all candidates of results, in writing, within 7 days after the election.
 - Regardless of whether candidates were present during tabulation.
- Board shall make public notice of election results.
 - Website, newspaper, posting, email, etc...
- Board shall notify PERAC of election results.
- All ballots should be preserved for 60 days.
 - If the election is appealed, ballots should be preserved until the issue is resolved.

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Appeal of Election Results

- Any candidate appealing the election results - or any aspect of the election proceedings - shall file an appeal to the retirement board.

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NOTES:

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The 5th Member

- In a city or town, the 5th member shall not be an employee, a retiree, or official of the governmental unit.
- Shall be chosen by the other four retirement board members.
- Shall serve a three-year term.
- Unless someone was a board member prior to April 2, 2012, no employee, contractor, vendor or person receiving remuneration (other than retirement benefit or statutory stipend) from a retirement board is eligible to serve as the 5th member, pursuant to § 20(4 7/8E).

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NOTES:

Selection Process

- The selection of the 5th member is a duty owed to the board's members and beneficiaries.
- Every effort should be made towards an open, competitive process.
- The board should actively solicit resumes of interested candidates through a public posting/announcement.

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Selection Process *(Continued)*

- Upon receipt of resumes, the board should undertake a documented review process, and interview interested candidates.
- The process should be documented in a written policy and followed every three years, regardless of whether the incumbent 5th member is seeking re-appointment.

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NOTES:

Deadlock

- If the 5th member is not chosen by the other four members within 30 days after expiration of the term, the 5th member shall be appointed by the mayor in a city (subject to confirmation of the city council) or in a town by the board of alderman.
- A board should not abdicate its authority by simply opposing a candidate in order to force a tiebreaking selection: This is a retirement board function and every effort should be made to perform its fiduciary duty.

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Local Option

- Local option in § 20(4)(c): The board nominates a candidate and PERAC appoints the 5th member.
- If the board cannot agree on a nominee, each board member shall provide PERAC with a list of three individuals ready and willing to serve, and PERAC shall appoint the 5th member from this list.

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NOTES:

Sample Policy

Policy on Appointment of Fifth Member

- Whereas, the members of the _____ Retirement Board (hereinafter, "Board") are fiduciaries who must manage the _____ Retirement System (hereinafter, "System") in compliance with the laws of the Commonwealth and rules and regulations promulgated by the Public Employee Retirement Administration, Commission (hereinafter, "PERAC"); and
- Whereas, on September 1, 2017, PERAC issued a memorandum declaring that the selection of a fifth board member must be discharged in accordance with the Board's fiduciary duties, and that every effort should be made to discharge this responsibility in an open and competitive process; and
- Whereas, PERAC further determined that notice of a vacancy in the position of fifth board member must be posted on the System's website, and that each qualified candidate be provided with an equal opportunity to appear before the Board, and
- Whereas, the Board desires to adhere to its fiduciary and statutory responsibilities in as open and transparent process as possible;
- NOW THEREFORE, the Board adopts the following policy governing the appointment of the fifth member of the Board.

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Sample Policy *(Continued)*

1. The fifth member of the Board cannot be an employee, a retiree, or official of any member unit of the System at any time while serving as a fifth member. See, G.L. c. 32, § 20(4)(b). If a duly appointed fifth member subsequently becomes an employee, a retiree, or official of any member unit of the System, then the appointment is nullified as of the date the fifth member assumed such status.
2. No employee, contractor, vendor or person receiving remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from a person doing business with a retirement board shall be eligible to serve on a retirement board; provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which the person is employed; and provided further, this subdivision shall apply only to individuals who first become members of a retirement board on or after April 2, 2012. See, G.L. c.32, § 20 7/8E).

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NOTES:

Sample Policy *(Continued)*

3. No individual who has been convicted of robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of state or federal law defined in Section 102(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in Section 9(a)(l) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(l)), a violation of Section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of Chapter 63 of Title 18, United States Code, a violation of Section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18 United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any (felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes, or a crime in which any of the foregoing is an element or has been found by PERAC or any court to have violated his/her fiduciary duty or has been found by the Ethics Commission or any court to have violated M.G.L. c. 268A, shall be permitted to serve as a member of a retirement board. See, 840 CMR 1.03.

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Sample Policy *(Continued)*

4. At least sixty (60) days prior to the expiration of the term of office of a fifth board member, the Board shall solicit letters of interest for the position of fifth board member by posting on the System's website and the PERAC website, a notice seeking said letters of interest. Such notice shall provide that all interested candidates will be interviewed by the Board, and shall set forth the time and place for such interview.
5. If the Board does not receive any letters of interest, then the Board will repost the position of the fifth member as soon as practicable.
6. In the event that the position of the fifth member of the Board becomes vacant for any reason other than by expiration of the term of office, the Board shall immediately solicit letters of interest by posting on the System's website and the PERAC website, a notice seeking letters of interest from interested persons for the fifth member of the Board, and shall follow the process set forth above in paragraph 4.

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NOTES:

Sample Policy *(Continued)*

7. All members of the Board, other than the incumbent fifth member, must be recorded in the minutes as present and must vote in order to select the fifth member of the Board. The incumbent fifth member is precluded from voting or otherwise participating in the selection process.
8. A majority vote of a quorum of the Board, or three votes, is required for appointment. Upon appointment, the fifth member shall be duly sworn, and shall assume the office.
9. In the event the fifth member is not chosen within thirty days of the expiration of the term, or of any earlier vacancy in office, the Chairman shall promptly notify PERAC.
10. Notice of the appointment of the fifth member shall be promptly reported to the members and beneficiaries of the System, and to PERAC.
11. The fifth member shall serve without compensation, but shall be reimbursed from the expense fund of the System for any expense or loss of salary or wages which he or she may incur through service on the Board.

Adopted at Meeting of the _____ Retirement Board held on _____.

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Conclusion

- All duties and responsibilities of a retirement board, including the selection of the 5th member, must be discharged in compliance with the board member's fiduciary duties as set forth in § 23(3) and 840 CMR 1.01.
- Reminder that careful attention should be paid to election schedules to ensure that no deadlines are missed.

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NOTES:

COMMONWEALTH OF MASSACHUSETTS

Public Employee Retirement Administration Commission

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