



MACRS

Board Selection Of Fifth Member



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"OK, I'm now going to read out loud every single slide to you, word for word, until you all wish you'd just die."

G.L. Chapter 32, Section 20

- “ and a fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years”

NOTES:

PERAC Memo #14 of 2009

- “shall not be an employee, a retiree or official of the governmental unit”
- “shall be chosen by the other four”
- “for a term of three years”

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PERAC Memo #14 of 2009

- Fifth member “shall not be” an employee: status must be maintained throughout the term.
- If member becomes an employee, retiree or official during the term they must resign.

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NOTES:

PERAC Memo #14 of 2009

- The board needs to ensure that all four board members (current fifth member can not participate) are available at regular or special meeting.
- Fifth member must be chosen within thirty days after the expiration of the term.

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“For a Term of Three Years”

- Mandatory, not discretionary.
- Neither PERAC nor Board has ability to waive this requirement.
- 20(4)(b) – allows elected terms “not exceeding three years, as the mayor in a city or the board of selectman in a town shall determine”.

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NOTES:

PERAC Memo #14 of 2009

- A vote of less than the other four is invalid.
- All four must vote, but majority vote is controlling.
- Notification provided to PERAC with result and evidence of proper vote.
- Current Fifth member may remain as holdover until replaced.

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Rule of Necessity – Board Vacancy

- In a situation where the Board has a vacancy due to the failure of the municipality to fill a board seat (or other unusual circumstances) then the board may proceed with the selection of the fifth member if timeframe requires the selection to be addressed.

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NOTES:

Exceptions to Chapter 32, Section 20

- Section 20(c) – local option that requires PERAC to choose the fifth member (Braintree, North Adams) from a nomination of the other four members. If there is no agreement (within 10 days), each member has five days to submit three names to PERAC, who shall choose a resident but not a current or former member or an official.

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Exceptions to Chapter 32, Section 20

- State Retirement Board – G.L. Chapter 10, S. 18
- Identical language: “a fifth member who shall not be an employee, a retiree, or official of the commonwealth and shall be chosen by the other four for a term of three years”

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NOTES:

Exceptions to Chapter 32, s. 20

- Teachers' Retirement Board – G.L. Chapter 15, Section 16.
- Teachers' Board has seven statutory members
- “the seventh member shall be chosen by the other six for a term of four years”
- Counties/Regional systems have different board composition

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PERAC Memo #28 of 2017

- Board has a fiduciary duty to appoint the fifth member in an open, competitive manner.
- The duty is owed to the members and their beneficiaries, not to the incumbent, other board members or the governmental unit
- Duty applies to all retirement boards who appoint a member

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NOTES:

PERAC Memo #28 of 2017

- No established process: open and competitive
- Elements should include:
 - Public notice/posting, such as municipal, board and/or PERAC website; newsletters, emails
 - Clear outline of agreed to process
 - Solicitation of information

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PERAC Memo #28 of 2017

- Screening/interview process
- Public vote
- Notification to PERAC

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NOTES:

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"OK, now that we all agree, let's all go back to our desks and discuss why this won't work."

NOTES:

COMMONWEALTH OF MASSACHUSETTS

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