

Commission Meeting Minutes September 11, 2014

Acting Chairman McDonough called the meeting to order at 1:15 PM. He then acknowledged the other Commissioners present: Commissioners Philip Brown, John Langan, James Machado, and Robert McCarthy. Commissioner Donald Marquis was not present.

Acting Chair McDonough asked for a moment of silence in remembrance of September 11, 2001, to remember the individuals and those family members who were affected by this day thirteen (13) years ago whose lives have changed and for those who died when our Country was under attack. A moment of silence was held.

Acting Chair McDonough announced that the Commission meeting is being tape recorded which will be noted in the minutes, that a stenographer is taking notes, and asked that everyone state their names prior to speaking.

PERAC Staff Present: Executive Director Joseph Connarton, Deputy Executive Director Joseph Martin, Deputy General Counsel/Managing Attorney Judith Corrigan, Senior Actuary James Lamenzo, Senior Associate General Counsel Ken Hill, Associate General Counsel Patrick Charles, Director of Strategic Planning Michael DeVito, Compliance Officer Thomas O'Donnell, Compliance Counsel Derek Moitoso, Chief Auditor Harold Chadwick, Director of Administrative Services Caroline Carcia, Fraud Prevention Manager Sandra King, and Senior Executive Assistant Kim Boisvert.

The following guests were welcomed: Anouk Danan from OER/HRD, Nick Favorito from the State Retirement Board, Sean Neilon from the Massachusetts Teachers' Retirement Board, Tom Gibson from the Belmont and Middlesex County Retirement Boards, Patrick Brock from the Hampshire County Retirement Board, Timothy Smyth and Padriac Lydon from the Boston Retirement Board, Denis Devine from MACRS, Beth Healy and Wendy Maeda from the Boston Globe, Russ Fiore a retiree from the Massachusetts State Police, and Alexander Loos from Doris Wong Associates.

Commissioner McCarthy made a motion to adopt the minutes of the July 10, 2014 meeting as presented. Commissioner Machado seconded the motion and the minutes were unanimously adopted.

Actuarial Update

Mr. Lamenzo stated that although the Commission has received the Massachusetts Teachers' Retirement System Draft Valuation Report in their monthly package, he would be reviewing the Draft 2014 Commonwealth Actuarial Valuation Report that was distributed today as it includes the Teachers' information. Prior to the discussion of the results of the report he discussed the possibility of decreasing the 8% investment return assumption for the 1/1/15 Valuation Report and will follow up with the Commission at a later date. Mr. Lamenzo then discussed the appropriation for the Commonwealth Valuation Report in detail.

Mr. Connarton noted that it is essential to understand that the appropriation for the Commonwealth is increasing substantially for the next three (3) fiscal years. However, due to

that increase, we are now on track to be fully funded by 2036 as this administration has made a concerted effort to address the unfunded pension liability of the pension fund.

Commissioner McDonough stated that the status of our systems stands in stark contrast of some states such as New Jersey that have cut their contributions and seen their investment level go down. He said that through the leadership of the Patrick administration, the legislature, and PERAC in addressing this issue, the commitment to the long term liabilities has been addressed and really deserves credit for taking this seriously and acting prudently.

Mr. Lamenzo stated that Massachusetts began funding only about twenty (20) years ago. Historically compared to other states, we were in the bottom quartile in the early 1990s but we have moved up and are close to the middle of the pack. He then discussed the funding progress, the 2008 investment losses, mortality assumptions, assets, liabilities, the changes due to Chapter 176 of the Acts of 2011, and the difference between the actuarial value and the market value (because of the smoothing technique). He then stated that the draft is ready to be disseminated upon the Commission's approval and his completion of a final review.

Commissioner McCarthy moved to accept and disseminate the 2014 Commonwealth and the Massachusetts Teachers' Retirement Actuarial Reports. The motion was seconded by Commissioner Machado and the motion was unanimously adopted.

Joint Investment / Legislative Sub-Committee Update

Chairman McDonough reported that the Legislative and Investment Sub-Committees held a joint meeting on August 19th to discuss 2015/2016 PERAC proposed legislation to be filed in November, Pension Obligation Bond Legislation (Plymouth County and in general) and Procurement Issues under Chapter 176.

2015/2016 Proposed Legislation

The Sub-Committee voted to focus our efforts in three areas and voted to forward these items to the full Commission with a recommendation for filing for the 2015/2016 legislative session.

The refiling of H. 15, An Act granting PERAC subpoena power for hearings conducted under Section 15(7); filing language regarding Other Post Employment Benefit (**OPEB**) Trust Fund audits. The proposed legislation is to request that an appropriation be made available to PERAC to conduct these audits, either from the general fund or adding language to the current OPEB Acts "subject to appropriation"; and it was determined that staff continue to work with the Legislature during the remainder of this session in an attempt to move the Concurrent Beneficiaries legislation, if necessary file this matter for the next session incorporating a requirement that a marriage take place for at least one year before a spouse can receive a benefit under Section 9 of Chapter 32.

The full Commission discussed the legislative items as follows:

Commissioner McCarthy wants to be clear that he is against PERAC having subpoena power as he believes this is in contradiction of what PERAC was established to do. PERAC has been

established to promulgate rules and regulations. He noted this would be the first step toward becoming a law enforcement agency which we are not so he opposes this legislation.

Questions were raised about the Concurrent Benefits and the one year rule, if this would affect any married couple if married for less than one year, a death benefit, or active QDROs. This issue refers to only those disability retirees that have died from the cause from which they retired and this is a narrow population.

Vice Chair McDonough announced he would entertain a motion that PERAC file proposed legislation regarding Other Post Employment Benefits (**OPEB**) Trust Funds. Commissioner McCarthy made a motion to refile H. 16 and add the language "subject to appropriation". Vice Chair McDonough decided to table this until the October Commission meeting.

Vice Chair McDonough announced he would entertain a motion re-filing H. 15 to allow PERAC subpoena power for hearings conducted under Section 15(7). Commissioner Brown made the motion and Commissioner Langan seconded the motion. The motion passed with Commissioner McCarthy voting in opposition and all others voting in favor.

Vice Chair McDonough stated that the Concurrent Beneficiary issue needs to be reflected upon further and suggested that this be discussed at the October Commission meeting.

Pension Obligation Bonds ("POBs")

Pension Obligation Bonds (POBs) and H. 3377 legislation authorizing Plymouth County Retirement System to issue POBs were discussed. It was suggested that the Commission or perhaps the entire pension community be provided with a refresher course on the general issue of POBs in light of recent commentary by Dr. Alicia Munnell and others. Audience members Patrick Brock and Denis Devine commented on this issue. Mr. Connarton suggested that staff prepare an analysis for the Commission to make an informed decision on the matter. This should include a better picture of what they are as well as the experience with these bonds in Massachusetts and elsewhere. It was suggested that there be a segment at the MACRS Conference in June. The Sub-Committee did not have a recommendation regarding filing legislation on this issue.

Commissioner Machado stated that he does not want this Commission to have a blanket opposition against POBs, he believes that would be unfair and would prefer that each system be reviewed on a case-by-case basis. Commissioner McCarthy agreed with Commissioner Machado's comments.

Commissioner Machado made a motion that, given the lack of information and the thirst for knowledge, the new position of the Commission should be that we have no position. Commissioner McCarthy seconded the motion and the motion was adopted.

Procurement Issues, Chapter 176 of the Acts of 2011

The experience of other states in the area of procurement and disclosure was discussed. A discussion took place in connection with the 5 year requirement and the fact that under Chapter 176 boards must conduct a search rather than merely commit to alternative investment follow on

funds. In this context it was noted that there are risks associated with failing to vet follow on funds including misleading statements, questionable valuations, changing conditions and staff as well as changes in the marketplace.

Vice Chair McDonough believes this is an issue that is worth further consideration and may bring a proposal to the October meeting that might address this issue.

Commissioner McCarthy stated that he wanted this deleted out of Chapter 176 prior to its passing. He believes this is an expense that the systems don't need and the systems will probably hire the same vendor any way.

Mr. Connarton stated that Chapter 176 was enacted for the purpose to create openness and transparency and preclude any possible issues like those that occurred in New York.

Commissioner McCarthy made a motion that this Commission file legislation to delete that section of the law. Commissioner Machado seconded the motion for the purpose of discussion.

It was suggested that staff review what the cost for a RFP would be.

Mr. Martin stated that he could do a review to come up with some sort of cost. He believes that the RFP process could seriously benefit the boards because they will have an opportunity to compare prices. He commented that it is possible that every five years may be too onerous and the Commission may want to change the timeline. Mr. Martin gave some examples of the amount of searches for several systems. Mr. Martin stated that on a case-by-case basis the searches are to be done by asset class and this does not seem to be as onerous as portrayed.

Vice Chair McDonough stated that there was a lot of thought, arguments, negotiations, and effort that went into these reform issues that were enacted with Chapter 176. He continued that the proposal to file legislation to eliminate this requirement provides no protection for people whatsoever.

Vice Chair McDonough called the question on the table and restated the motion "to eliminate the requirement that retirement systems who offer procurement or contracts for investment managers and asset classes to conduct a RFP every five years." On the question the motion failed with Commissioner McCarthy voting in the affirmative, all others voting in the negative.

Commissioner McCarthy made a motion to change the five year requirement to a ten year requirement. The motion failed for lack of a second.

Mr. Connarton stated that the PRIT fund is exempt from our oversight by statute but they do conduct searches, post opportunities in the media, and perform RFPs. We do work and partner with them when the situation arises. He stated that he wouldn't mind having the same oversight of PRIT but they have a different statutory construct and there hasn't been any language filed to provide for more oversight.

Commissioner Brown believes that this issue is worth some additional study and consideration by the staff regarding the cost benefits of searches and how often they are conducted.

Legal Update

Ms. Corrigan updated the Commission on the PERAC v. David Madden, et. al., 13-P-1587, Massachusetts Appeals Court case.

The Acting Chair notified all in attendance that General Counsel Parsons' father passed away and expressed condolences on behalf of the Commission.

Legislative Update

Mr. DeVito discussed H. 3560, the PERAC Expansion bill which remains in the Senate; H. 59, the OPEB bill which has been sent to study; H. 3377, the Plymouth County Pension Obligation Bond bill which remains in House Committee on Bills in the Third Reading; and H. 4354, the PRIM Fossil Fuel Divestment bill was passed by Senate and it is currently in the Senate Ways and Means Committee. Meanwhile, the House amended the bill to create a Study Commission to be reported by July 15, 2015 in which PERAC would have a seat.

Commissioner McCarthy inquired about the Athol bill.

Mr. DeVito stated that S. 2300 involves the dissolution of the Athol Retirement System and its members being moved into the Worcester Regional Retirement Board, passed the Senate and is now in the House Committee on Ways and Means.

Mr. Connarton reported that S. 1218, the Shift Swapping bill, has been adopted for public safety officers and does not impact Chapter 32 but does impact Chapter 150.

Audit Update

Mr. Chadwick reported that audits are currently occurring at the Attleboro, Lowell, and West Springfield Retirement Boards. He stated that the exit conferences are pending for the Methuen, New Bedford, Pittsfield, State, and Woburn Retirement Boards. Internal reviews are being conducted on the Athol, Beverly, Blue Hills, Chicopee, Peabody, Town of Plymouth, Mass Teachers', Webster and Franklin Regional Retirement Boards audit reports. He reported that he is waiting for responses from the Fall River, Minuteman Regional, and North Attleboro Retirement Boards. Mr. Chadwick told the Commission that the Plymouth County Retirement Board audit report has been posted on the PERAC Web Page since the last Commission meeting and explained the respective findings. He specifically explained the fifth audit finding regarding Monitoring 91A Compliance and Post Retirement Earnings Limitation issues which appears to be a challenge for the board and has been for several years.

Commissioner McCarthy inquired about the status of the Athol Retirement System's daily routine.

Mr. Connarton stated that the legislation will probably pass which would abolish the Athol Retirement System and the members and beneficiaries will be transferred to the Worcester Regional Retirement System. The current board members in Athol have been instructed, under their fiduciary duty, to maintain the operation of that Board. An RFP was posted to hire an administrator and the board hired a retired auditor from PERAC who lives in that area. The

vendor and beneficiary checks have been issued and distributed on a timely basis. There are five (5) members on that board. Mr. Connarton would have preferred to work out the problems with the board rather than abolish it. Once the transfer to the Worcester Regional Retirement System occurs, a final audit would be conducted. A Temporary Order has been approved by the Commission which will be issued if necessary and we are monitoring the actions of that system.

Compliance Update

Mr. O'Donnell stated that the educational credits are being earned and next month more credits will be available for attendance at the Emerging Issues Forum and the Fall MACRS Conference being held in Springfield. He stated that there are a few individuals that have extenuating circumstances which need to be dealt with. He noted that all the SFIs have been received from current members. He needs to be sure that any new board members file their SFIs within thirty (30) days of their appointments. He continued that follow up questions are occurring with the vendor disclosures that have been filed.

Executive Director's Report

Mr. Connarton reported on staff activities since the last Commission meeting. He specifically noted the meeting of August 22, 2014 consisting of 23 individuals, representing the Zhejiang Province delegation, who are interested in the possibility of creating a uniform pension system in China. The delegation had reached out seeking our expertise on how Massachusetts retirement plans operate. Mr. Connarton then reported that 347 individuals have registered for the 10th Anniversary Emerging Issues Forum which is being held in Worcester on Thursday, September 18, 2014.

Mr. Connarton reported on Policy Number 97-006 the "Election of the Seventh Member" and that the position has been posted on the website. He distributed the notice to the Trial Court, the Retired Judges Association, and has spoken to various groups. He reported that the resumes are due by September 19, 2014 and he will forward them to the full Commission to review and propose nomination(s) for the October Commission meeting.

Mr. Connarton then reported about the educational credit issue involving Mr. Philip Lemnios, Board Member of the Hull Retirement Board. Mr. Lemnios has been invited to the Commission meeting several times, however, he would like to attend another meeting and we will once again invite him to the next Commission meeting if the Commission would like.

The Commission suggested inviting Mr. Lemnios to one more meeting and to copy the Selectmen on the invitation.

Commissioner McCarthy asked for an update on the Chelsea situation.

Ms. Corrigan reported that the Chelsea Retirement Board and Mr. McLaughlin appealed our decision to District Court and to CRAB. There is confusion as to where the appeal should be filed, so they both filed in both locations. PERAC is represented by Assistant Attorney General Bryan Bertram, who filed a motion to dismiss on September 2, 2014, in the Lowell District Court case.

As to Mr. McLaughlin, the motion to dismiss is based upon the fact that neither Chelsea Retirement Board nor the Commission ever issued a "certified decision", which is required to invoke appeal rights under G.L. c. 32, Sections 16(3). As to the Chelsea Retirement Board, the motion to dismiss is based on the fact that the Board has no right of appeal to the District Court.

Commission Travel

Mr. Connarton notified the Commission about the Fall MACRS Conference being held in Springfield, MA from October 6 - 9, 2014.

Commissioner McCarthy made a motion to allow those interested Commissioners and staff to attend the Fall MACRS Conference. Commissioner Machado seconded the motion and the motion was unanimously adopted.

Mr. Connarton notified the Commission about the 2014 NCPERS Public Safety Employees Pension & Benefits Conference being held in New Orleans, LA from October 26 - 29, 2014.

Commissioner Machado made a motion to allow those interested Commissioners and staff to attend the 2014 NCPERS Public Safety Employees Pension & Benefits Conference being held in New Orleans, LA. Commissioner Brown seconded the motion and the motion was unanimously adopted.

Executive Session

It was decided that an Executive Session would not be held at this time.

Other Business

Mr. Connarton introduced Mr. Russell Fiore, a retired State Trooper, who wanted to address the Commission regarding his return to service (RTS). Mr. Connarton explained that although Mr. Fiore has passed the RTS exam, for the second time, he has not been allowed to return to service. He continued that the State Police are governed by special statute, Chapter 22C, Section 24A, giving the State Police Colonel the veto power to deny a member the right to return to service.

Mr. Fiore thanked the Commission for the opportunity to speak to them. He believes the situation that he is about to discuss would be considered fraud. He was a State Trooper from 1986 through 2001 and was forced to go out on disability. He sent himself through school, became an attorney, worked with the Attorney General's office, and started his own private practice several years ago. Since then he has passed the RTS test and was scheduled to go through the academy but was not allowed as the Colonel told him that he did not successfully pass a background investigation. He is upset that the Colonel made that decision and believes that it is in the best interest of PERAC and the retirement systems to change the law and distributed Chapter 22C, Section 24A. He stated that he has paid into the system, has collected this disability benefit for a long time, and will continue to collect this benefit for many more years. He believes that PERAC has the ability to make changes to the law through the legislature which may save communities a lot of money. He does not have the ability to file a bill. He believes that he is not disabled and continuing to pay him disability benefits amounts to fraud. He then thanked the Commission for its time.

Vice Chair McDonough believes that it is not right that we don't have any jurisdiction over the State Police disabilities.

Mr. Connarton explained the statute and that the State Police have their own standards. He met with both Colonels recently from the State Police and there was no interest in changing the statute.

Vice Chair McDonough stated that we should consider legislation that State Police should be under the same rules as everyone else at the next legislative discussion.

Commissioner Machado asked for an update on the Michael Daley case.

Mr. Moitoso reported that Mr. Daley is a retiree from the Plymouth Retirement Board and former town accountant, who started his own consulting business, and who has been the subject of 91(b). PERAC believes that Chapter 21 of the Acts of 2009 is not applicable to Mr. Daley as he retired and started his business prior to the enactment of that law. The case is presently at CRAB. PERAC's position was not upheld at DALA or CRAB. CRAB is now considering a motion for reconsideration filed by the Plymouth Retirement Board, seeking not only Mr. Daley's pension benefits but his excess earnings as well.

There was further discussion regarding different scenarios and examples, this decision could set a bad precedent, and be applied to many people in many circumstances.

Vice Chair McDonough stated the next Commission meeting is scheduled for Thursday, October 9, 2014 at noon.

Commissioner Machado made a motion to adjourn. Commissioner Brown seconded the motion, and the motion was adopted. The meeting adjourned at 3:40 PM.

Commission Meeting Documents

Commission Agenda of the meeting for September 11, 2014

Commission Minutes for July 10, 2014

Actuarial Update

Massachusetts Teachers' Retirement System Draft Valuation Report

Joint Investment / Legislative Sub-Committee Update

2015/2016 PERAC proposed legislation to be filed in November
Assorted information pertaining to Pension Obligation Bonds

Legal Update

PERAC v. David Madden, et. al., 13-P-1587, Massachusetts Appeals Court case.

Legislative Update

Monthly Legislative Agenda and bullet points outlining legislation

Audit Update

Recent PERAC Audit Findings cover sheet and the respective audit findings

Executive Director's Report

Updated Staff Activities Memo

Save the date reminder for the 10th Emerging Issues Forum

Letter to Mr. Philip Lemnios – invite to meeting

Commission Travel

Information pertaining to the 2014 Fall MACRS Meeting

Other Documents

Setting the Record Straight: Some Popular Misconceptions about Public Pensions presentation

Distributed at the Meeting

Draft 2014 Commonwealth Actuarial Valuation Report was distributed
Chapter 22C, Section 24A

Approved:



Gerald McDonough, Acting Chairman
Public Employee Retirement
Administration Commission