

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Selection of Fifth Member and Board Employees

DATE: September 1, 2017

The purpose of this memorandum is to remind retirement boards of their fiduciary obligations relative to the selection of the board's Fifth member, and the hiring of board employees. This memorandum is meant to complement Memorandum #14 of 2009, which focused on the statutory requirement that the Fifth member shall be chosen by the other four members.

As you know, all duties and responsibilities of a retirement board, including the selection of the Fifth member and the hiring of board employees, must be discharged in compliance with the board member's fiduciary duties set forth in Chapter 32, section 23(3) and enumerated in PERAC Regulation 840 CMR 1.01 and provides as follows:

840 CMR 1.01 Board Member's Duty

A board member shall discharge all of his/her duties solely in the interest of members and their beneficiaries, and

- (1) For the exclusive purpose of:
 - (a) Providing benefits to members and their beneficiaries; and
 - (b) Defraying reasonable expenses of administering the system.
- (2) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.
- (3) By diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- (4) In accordance with the Massachusetts General Laws, the rules and regulations promulgated by the Commission, and rules and regulations adopted by the board and approved by the Commission.



MEMORANDUM - Page Two

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The selection of the Fifth member is a duty owed to the board's members and beneficiaries and every effort should be made towards an open, competitive process. Pursuant to this duty and G.L. Chapter 32, sections 20(4) and 23(3), the board should actively solicit resumes of interested candidates through a public posting/announcement. (The selection of the Fifth member [seventh member in the case of the Teachers' Retirement System] is outlined in different statutes for different boards; however, in each case the fiduciary obligations of the other board members remain the same.) This period should be followed by a documented review process and interviews of interested candidates. The board's process should be documented in a written policy and followed every three years, regardless of whether the incumbent Fifth member is seeking reappointment. Finally, a board should not abdicate its authority to the board of selectman, mayor or city manager by simply opposing a candidate(s) in order to force a tiebreaking selection; this is a board function and every effort should be made to perform its fiduciary duty. Only in the event that the board can't ultimately agree on a new Fifth member should the process move forward pursuant to the statute.

Similarly, board employees should be selected through an open, competitive process. Positions should be advertised and a review and interview process documented and followed. It is certainly appropriate to provide opportunities to existing staff but this should be done in the context of an open, competitive process. This process is separate and distinct from the statutory process outlined in Chapter 32, section 23B for the procurement of investment, actuarial, legal and accounting services; however, the principles of section 23B procurement are consistent with the fiduciary duty relative to the Fifth member and board employees.

We trust the foregoing is of assistance. If you have any questions concerning this matter, do not hesitate to contact this office.