

Berkshire County Retirement Board Meeting
July 30, 2025

The meeting of the Berkshire County Retirement Board was called to order at 9:00am, in the Berkshire County Retirement Office, located at 29 Dunham Mall, Pittsfield, MA. Present at the meeting were Michael Ovitt, Chairman, Mark Bashara, Elected Member, Timothy Sorrell, Elected Member and Ericka Oleson, Advisory Board member. John Boorack, PERAC Actuary, Thomas Gibson and Gerry McDonough, Legal Counsel, participated remotely.

PUBLIC COMMENT:

- 1.) Members of the public have the opportunity to address the Retirement Board.

NEW BUSINESS:

- 2.) The Board was asked to review the actuarial valuation of the Berkshire County Retirement System as of January 1, 2025

Michael Ovitt: We have John Boorack participating remotely; we received your presentation regarding the COLA base increase if we can just review that.

John Boorack: My intention was to do a brief overview, and if anyone has any questions at all during my presentation, feel free to stop and ask, and I will answer them the best I can. To begin, the results that I am going to present are based on a \$16,000 COLA base, and with this valuation, we are not recommending any assumption changes, so the assumptions and provisions are the exact same as the ones we used in the valuation 2 years ago. With that as the introduction, the actuarial accrued liability is just under \$381 million dollars. The actuarial value of assets or the smooth value of assets is just over \$381 million dollars. The difference is negative. It is about -\$439,000, and that represents the unfunded liability. Where the unfunded liability is negative, that is actually a surplus, so the system is fully funded as of January 1, 2025. The funded ratio, which is the ratio of the assets to the total liability, is 100.1%. If we compare that to where the system was 2 years ago, the unfunded liability was \$15.9 million dollars, and the funded ratio was 95.4%. With every valuation we do, we also perform an analysis known as a gain-loss analysis, and this just tells us how experience was compared to the assumptions that we used in our valuation 2 years ago. On the liability side, there was a loss, which means the system is in a worse position than we had assumed, and the loss is about \$1.8 million dollars. This is relatively small compared to the overall liability. This loss is primarily due to the pay for the continuing active members. Those are people who were active 2 years ago who are still active in this valuation. The pay for those people increased more than we had assumed.

On page 2, we talk about the gain on the assets. The Berkshire County Retirement System adopted an asset-smoothing methodology in determining its value of assets for funding purposes. The way this methodology works is market value gains and losses are not fully recognized all at once. We recognize 20% of a gain or loss each year, so that it takes 5 years to completely recognize a gain or a loss. The actuarial value is 100.2% of the market value. The actuarial value divided by the market value is 100.2%. In this ratio, it is rated at 100%. This means we have deferred investment losses that have to be recognized over the next few actuarial valuations. On an actuarial value basis, the returns over the past 2 years were 8% and 7.4%, which are greater than the 6.5% investment return assumption assumed by the board. We have a gain on the asset side. The gain is approximately \$7 million dollars, so when we look at the gain on the assets and the liabilities, overall, there was a net gain of

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about \$5.2 million dollars. Essentially, this means the system is better funded by \$5 million dollars than we had assumed.

On page 2, 3, and 4, we talk about the investment return and the mortality assumptions, and as I mentioned, we are not recommending any changes, so I am not going to go over those sections in any detail. Now I am going to be looking at the bottom of page 4 and the top of page 5. On the bottom of page 4, we talk about Chapter 176. Chapter 176 of the Acts of 2011 was the major pension reform legislation signed into law by then Governor Deval Patrick. Three primary changes were made to the Chapter 32 pension law. The first was the normal retirement age was increased by 2 years for Group 1 members, it went from 65 to 67, for Group 4 members, it went from 55 to 57. The second change was the averaging period for superannuation benefits increased from a 3-year average to a 5-year average. The third change is the early retirement reduction factors increased or, said another way, the age group factors decreased. Now, these changes are only applicable to those who become members on or after April 2, 2012.

In this valuation, there are 973 such members, and this represents 78% of the total active population of the plan. And what we do with these members is we run their liabilities with the new provisions, and we run them with the old provisions just to measure the impact that Chapter 176 has. What we found is for these 973 members, the total normal cost is about \$875,000 lower, and the actuarial liability is about \$7.8 million dollars lower using the new provisions than the old provisions. All this means is if Chapter 176 had not passed, the board's liability would be about roughly \$8 million dollars higher.

The last item I want to discuss before moving on to the funding schedules is the COLA base. As I mentioned at the beginning, the system's current COLA base is \$16,000. The board had asked us for estimates to increase that COLA base to \$17,000, and what we found is if the COLA base were increased, the total normal cost would increase by about \$51,000, and the total liability would increase just under \$2 million dollars. The liability would be \$2 million dollars higher with the \$17,000 COLA base.

If we move to Exhibit 1, which is the first exhibit after the letter, this just highlights the cost impact due to changing the COLA base. The first column on the left represents the funding position of the plan used in a \$17,000 COLA base, and the middle is using the \$16,000 COLA base. If you look about halfway down the page, we see the total normal cost is a little bit higher, and what the total normal cost represents is the cost of benefits that accrue for all members in a given year. Because we are increasing the COLA base, the members are expected to receive slightly bigger benefits in the future, so their normal cost is going to go up and the actuarial liability likewise will increase. The actuarial liability can be thought of as the accumulation of all past normal costs for members, and since the normal cost would be increasing due to the COLA base change, the liability is increasing.

If we look roughly three quarters of the way down the page, the sections titled Actuarial Value of Assets, Unfunded Actuarial Liability with the Actuarial Value and the Funded Ratio, we see if the board were to increase the COLA base to \$17,000, the unfunded liability would be about \$1.5 million dollars and the funded ratio would drop to 99.6%. The system would still be fully funded even with the increase to the \$17,000 COLA base.

Gerry McDonough joined the meeting at 9:08

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John Boorack: Now, before I move on to the funding schedules, does anyone have any questions for me.

Mark Bashara: John, I was going to ask you it sounds the way you described it that going up to the \$17,000 when I read everything, slightly reduces the excess we have, but overall, there was no recommendation that assessments of towns would go up or anything and we would still be funded 100% or 99 point whatever you said, correct?

John Boorack: Correct. We will see that when we look at the funding schedule.

Mark Bashara: There is no adverse, at this point, effect?

John Boorack: No. Because of how well the system is funded, no, there is no adverse impact on the system to increase the COLA base.

Mark Bashara: All right. Thank you.

Michael Ovitt: John, you mentioned the Acts of Ch. 176. Do you still draw that as a distinction in your assumptions? That is going on 13-14 years old. Is that impact still reflected on your actuarial valuation?

John Boorack: The impact is still there. We made a slight change to our assumptions due to the passage of 176 because eligibility for certain benefits had changed, so for example, for Group 1 members prior to April 2, 2012, they were eligible to retire at age 55 with at least 10 years of service or at any age with 20 years of service. For the same Group 1 members who started after April 2, 2012, they are eligible to retire at age 60 with 10 years of service, and there is no longer the possibility of retirement with 20 years. We did have to adjust the assumption somewhat to reflect the different eligibility for the post 04/02/12 members. With each valuation, we do account for what we call the pre and the post 04/02/12 members separately, but when we show the valuation results, we combine them. For the valuation results, you are seeing one grand total, but in the background, we are accounting for those members separately.

Michael Ovitt: Going forward year after year, that is still a notable assumption change. It seems like in 2012, the change went through and you identify the involved people. I was just curious why that is broken out with the legislation changes that are that old.

John Boorack: We still break it out because there are two tiers of membership. There is one set of rules, if you will, for the pre 04/02/12 people, and there is a different set of rules for the post 04/02/12 people. As time goes on 78% of the population is subject to the new provisions than the old provisions, so that percentage is just going to keep increasing. As the post 04/02/12 members accumulate more service, I do not want to call it savings, but the impact would be much more noticeable than it is now.

Michael Ovitt: So, we are assuming there is no assessment changes going forward, right? We are going to absorb it through our surplus.

John Boorack: The overall assessment of the plan is not going to change. What will happen is because of the methodology employed by the board where they determine the allocation based on an actuarial basis. So individual units might see a different allocation than in years past and that's just because of the characteristics of the membership and the methodology that's used, but overall, the money that the retirement board should collect would be the same.

Michael Ovitt: We are in a declining cost factor for the assessments because of our funding ratio. Sheila, is that what we did?

Sheila LaBarbera: Yes

John Boorack: Correct and we will see that in a second.

Michael Ovitt: Okay.

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John Boorack: So, the system's current funding schedule had total appropriation payments that increased 7% per year until the system became fully funded in fiscal year '25, and then at that point, we phased down the payments to only normal cost beginning in fiscal year '29. The reason PERAC recommended phasing down the level of appropriation instead of dropping immediately to the normal cost payment, was to build up a surplus for the plan to help insulate, if you will, against future actuarial losses. What we found in discussing this with other retirement systems is once the money is moved out of the pension budget; it is moved to other municipal services. It could be moved to funding OPEB liabilities. It could be used to go to the school. It could be used to build a new police station. It could be used to build a new fire station.

What we found is once that money is removed from the pension budget, it is moved elsewhere, it is very difficult to get back to the pension budget if you do have future actuarial losses that require an increase in the pension appropriation. For that reason, PERAC recommends retirement systems to fund to a level greater than 100% for the reasons mentioned. Again, this is a recommendation. It is not a requirement. Boards can tell us, no, they do not want to do that. Some boards like your board have actually used this phase-down approach. Some of our clients have. We have a couple clients who did not want to do this, but our due diligence is to make sure they are aware of the implications of doing that. The two schedules that I present to the board in this letter, alternative 1 and alternative 2, both maintain that phase-down approach. We are maintaining the FY26 appropriation because the assessment has already been sent out to the communities, and so we are phasing down to only normal cost payments in both cases, and that happens in FY29.

Alternative 1 is based on the current \$16,000 COLA base, and you'll notice in the column labeled Unfunded Actuarial Liability, the second column from the right, you see those negative numbers keep getting larger and larger, and that's the building up of the surplus that I was talking about.

Then in alternative number 2 is the same schedule but increased in the COLA base to \$17,000. Under alternative 2, you see the cost for FY26 is the same and for 2027 and 2028 are the same. The difference occurs in 2029 when the normal cost only is being paid and the normal cost is greater under the \$17,000 COLA base as I discussed earlier. You will notice in alternative 2, we are also building up a surplus, but the surplus is a little bit less because the schedule calls for roughly the same payments to reduce the unfunded liability.

Does anyone have any questions for me with regard to either of the alternatives shown?

Ericka Oleson: I know there is many variables that go into this. Are there ways to predict or do even semi-projections for a 50-year schedule where the board could say, every 7 years we'd like to look at doing \$1000 COLA increase but keeping things smooth, so that it doesn't affect the budgets or assessments that go out? Or is there just too many variables for that?

John Boorack: There is too many variables and too much time in between to project the COLA base increase like that. If I was to project a COLA base, I would maybe do it one year into the future, but I wouldn't try to look at 7 years because there's just so much that can change between now and the 7 years. Unfortunately, I think there are too many variables to try to project COLA base increases that far out into the future.

Ericka Oleson: Okay.

John Boorack: And that question brought up a good point. With these alternatives, we show payments that only go down for fiscal year 2034. It is not meant to imply that payments will

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stop in 2034. The normal cost payments will continue to be paid, but we just did not show them beyond 2034 in this particular schedule.

Ericka Oleson: Okay.

John Boorack: So, does anyone have any other questions for me?

Michael Ovitt: I do not believe so, John.

Sheila LaBarbera: If we need anything else, I will give you a call or send you an email.

John Boorack: Okay. Sounds good, Sheila.

Sheila LaBarbera: For Item 2. Did you want to make a motion for that?

Mark Bashara: Yes. I will make a motion to vote and discuss at next meeting whether or not to raise it to the \$17,000.

Sheila LaBarbera: So, you want to place the COLA base of \$17,000 on the agenda next month.

Mark Bashara: Right.

Michael Ovitt: We do not need a motion for that. We can just –

Sheila LaBarbera: Place it on the agenda.

Mark Bashara: Right.

Michael Ovitt: Sheila, between now and then, can you get us the timetable of implementation of it?

Sheila LaBarbera: I can tell you right now. If you approve the COLA base in August, then the COLA base increase request will have to go to the advisory board meeting. They usually meet in October. Then the advisory board has to go to approve it. Once it has approved, then you can, if you approve the COLA base, you should also include the date that you want it to begin. The last time we did it for the COLA, so it would be the COLA in July.

Michael Ovitt: Is that discretionary? Or is it always July or August?

Sheila LaBarbera: We have always done it for July 1 of the following year, but we could look at doing a retro if you want to do a retro.

Timothy Sorrell: Figured into our numbers.

Mark Bashara: Yes.

Michael Ovitt: I thought it was always the fiscal year.

Mark Bashara: Like the last one we did, it went into effect this first – this payment Friday –

Sheila LaBarbera: That is just the annual COLA.

Mark Bashara: No, but I mean we went from the 14 to 16.

Sheila LaBarbera: Right and that is how you did it.

Mark Bashara: Right.

Sheila LaBarbera: So, it was voted on in October or November by the advisory board, and then it was effective for July 1 of 2024.

Mark Bashara: Right. Right, okay.

John Boorack left the meeting at 9:20am

3.) The Board approved the management letter from CBIZ to perform the 2024 financial audit of the Berkshire County Retirement System.

Sheila LaBarbera: This is the management letter. Most of the audit has already been uploaded and they are working on it, but in order to complete the contract, they need a management letter. I should have given that to you last month. I forgot to put it on the agenda.

Michael Ovitt: So, can you briefly explain who CBIZ is?

Sheila LaBarbera: It is Melanson Heath.

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Ericka Oleson: They changed the name?

Sheila LaBarbera: Melanson Heath to Marcum now to CBIZ. They merged. That is probably why we need a new management letter because the old one, I believe, was with Melanson, but it is the same. It is just with CBIZ rather than Melanson.

Michael Ovitt: So, there is no change in services?

Sheila LaBarbera: No.

Mark Bashara: Just a formality.

Michael Ovitt: So, do we need a vote on that?

Sheila LaBarbera: I was going to say you could if you would like to.

Michael Ovitt: But we are already under wait with it.

Sheila LaBarbera: We are already under way. Right. We are already under way and they are looking for payment.

Timothy Sorrell: I will make a motion to approve the management letter for CBIZ to perform the 2024 financial audit of the Berkshire County Retirement System.

Mark Bashara: I will second Tim's motion.

A roll call vote was taken to approve the management letter for CBIZ as presented, the vote was unanimous.

4.) The Board reviewed the Cyber Security Manual for the Berkshire County Retirement System.

Sheila LaBarbera: The cybersecurity manual is what remains from our cybersecurity grant that we received from MIIA last year. This is the last piece of it. We have implemented all of the management and policies, if you will. I should not say policies, the programming. That would be the active management every month with Bugbusters or NOVA Computers. The cybersecurity manual mirrors what we would like to do. These are the national standards for cybersecurity policies and procedures, so that was part of our grant last year to put this together. John has it all done. He has had a legal review so, it is just for you to review and then to adopt. Because we had both Tom and John Boorack this month, I did not want to have John come and do the presentation on it. I sent it out for you to review and what I would like to do is place him on the agenda for August, so you have time to read it, questions? He will come to do the presentation in August. Then if you vote on it these would be part of the personnel policies. There is a couple of personnel policies that would probably be replaced, but it would become part of the personnel policies in the Berkshire County Retirement System. If you have questions for John, I would prefer that you review all of this with him. I do not have any issues with any of it. There is nothing here that sticks out, but I think that you need to review with him not me.

Michael Ovitt: Okay.

Sheila LaBarbera: All right. So, if you want to just make a motion to table for next month – until next month, and I will invite John to the meeting. We will do it right at 9 o'clock next month if that is okay unless you have anything else.

Timothy Sorrell: I will make the motion to table.

Ericka Oleson: I will second.

A roll call vote was taken to table the Cybersecurity Manual until August meeting, the vote was unanimous.

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5.) Legal Update: Presented by Board Counsel Thomas Gibson and Gerry McDonough
Michael Ovitt: Good morning, Gerry.

Gerry McDonough: Good morning, everyone. I do not know if there is any questions. Are there things that Tom Gibson had to report on?

Sheila LaBarbera: The only outstanding item was the Larkin remand.

Gerry McDonough: I think we should wait for Tom to talk about that.

Mendel Case

We filed an appeal at CRAB about a month ago or so. We filed all our papers and the other side, the woman who is representing Ms. Mendel actually works for the MTRS. Her attorney just reached out to me yesterday and asked for an extension until October 10 to draft her reply. She said she is just really burdened down with a lot of work at this point in time, and no matter what we say, once you ask for one extension, you will get it. I told her we would assent to that. I do not think she is aware of all the problems that are going on at CRAB right now.

CRAB has a huge backlog of cases there. The last I looked at it, which was some time last year in 2024, the backlog was such that cases were piled up for 5 years to finish a case. Which is really an incredible amount of time to get through an agency that really just looks at briefs and exhibits and just reviews what the DALA decision is. The delay is going to hurt her client. It does not really hurt us a whole lot because we do not have a lot of skin in the game. If she does prevail and if PERAC does do an assessment of the appropriate amount of reimbursement that we should make to the MTRS for her pension, I do not think it is going to affect it hugely.

Sheila LaBarbera: At this point, like you said, we are just in it for a brief and a review with CRAB, and you have already done your part, correct?

Gerry McDonough: Yes.

Sheila LaBarbera: So, I think it's worth it to just give her the extension and wait on it and who knows who will be here in 5 years, but it's not costing us anything in between and her salary is significant, at least with MTRS. Because of that, I can recalculate, so without a lot of money being expended, I think it is worth the time.

Gerry McDonough: There is that whole other issue though that in terms of – dealing with MTRS may be different than dealing with other retirement boards because the MTRS, their RetirementPlus plan that they have for teachers is what she's really looking for. She is not just looking for 3 days or something like that. She is looking for enough time that she can get and qualify for an extra year of RetirementPlus, which would affect her – I think it would affect her retirement, I think, \$2,000 a year or something like that. So, we would pay a portion of that, but does that sound right?

Sheila LaBarbera: Yes, but I think the bigger issue, Gerry, which is that she – we all know there was no pay and there's no sense to pay. If you're saying that you give somebody an appointment letter, you give them an enrollment date, and that's the date that is supposed to be set in stone, then now you can say, well, you know, maybe on June I should get – I had \$15 or whatever, having participated in the questioning from the magistrate. The question that he asked, which was kind of telling, he said, what if somebody starts on a Wednesday, and we all know it's not Wednesday. It's July 8. Then when do you have a month's worth of creditable service? On August 8.

Gerry McDonough: Right.

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Sheila LaBarbera: You do not get a whole month of service just because you started on a Wednesday. It does not bounce back to Monday. I think frankly that while money is an issue, we could spend it every day here at the retirement board going through all of that with enrollment. If our enrollment dates are not good and the appointment dates, which they tell you from the appointing office, are not good, and then what are we doing? Then you are saying that your membership date really is not set in stone because something else did come up in the future and changed it. I think for us as a county that I think it is important that we follow through and get a ruling on it.

Mark Bashara: Piggybacking off what Sheila said, this sets a bad precedent. It really does. We're having enough doors open in other areas of our pension that seem to be just going on and on, and to me, this is really important because other people come out and start picking things. There needs to be consistency and there needs to be – this is the time, period, not debatable, not well, we can argue this or that. I think we have to make a stand on this.

Sheila LaBarbera: And we know that we did have another request for that. The 15 days has passed, and as far as I know, they have not filed anything because we have not been notified of anything, but they are out there, and if they see one, then it is just going to steamroll. I dare say I find it difficult when you have an appointment letter, salary, I wish I had known a little bit more, but for that date, people that she indicated that she had worked with because they were not on the payroll and they were not paid for that period of time. We just did not know the woman that she mentions.

Gerry McDonough: there are several new hearing officers at DALA, they are younger, and it is good that we have some succession-planning going on and they have some new younger magistrates coming on. One magistrate just retired, Silverman, so that's good, I think they get a little bit full of themselves and they're looking at the law in brand-new ways and really changing certain rules and procedures and policies that we've come to expect and rely on. When we give our clients advice on a case, we look at what is existing law, what does it say, how have the administrative agencies treated that particular issue, and have there been any court opinions on it. We are very comfortable with our position with Lisa Mendel, and we agree you cannot unilaterally set your own start date ahead of the start date that the school district set for your employment. If she came in early and she did some kind of work, she should have applied for some buyback of some pre-membership service, but she did not do that. The issue that jumps out at me is the allocation of any teacher and other school employee. I'm hoping that PERAC takes into consideration RetirementPlus when they do that calculation because that really increases the pensions dramatically for the public schoolteachers, and it's not appropriate for other entities like Berkshire County or anyone else to have to pick up the tab for that, so that's all I was saying regarding that. That issue may come to light in the future going forward.

Mark Bashara: You know, Gerry, maybe there is two other law enforcement people in here other than myself, and while it might not be completely applicable, all right, the old adage was it was our job to enforce the law, not to interpret it, all right. Maybe they need to be reminded seeing that we have good proof and good evidence on our end, it is their job to enforce it and not to put their own interpretation on it.

Gerry McDonough: That is what we want to see from any fact finder or judicial body that they just enforce what the law is and what the law says and what's the plain language of the statute, but they sometimes have power, I think, gets to their head. The power they have given them responsibilities and they do not stop to think that there are other consequences to their actions. I think some of them are going a little bit overboard in being kinder to

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members, and I have seen a lot more references to other decisions and some of the more recent decisions coming out of DALA. I have seen many decisions that talk about the unfairness of a certain aspect of implementation of a policy, but fairness is not an issue for DALA. That is not what they are – or CRAB. They are not supposed to deal with that. You can get into a fairness issue if you get into superior court or go up to the appeals court or the SJC.

Mark Bashara: Well, that is why we have a legislative branch. If they have an issue, then let them go through there.

Gerry McDonough: Part of the problem though is that whenever legislators write new legislation, it opens up a Pandora's Box. Legislators are not as careful as they should be when they draft legislation, and so sometimes, you get legislation that people do not really understand. I went up to the SJC. Nobody still understands what that – it was one of those anti-spiking provisions. Nobody still understands what happened to it. All we know is that there was a provision that was snuck into the Senate version of the legislation, nobody saw it coming or knew it, and PERAC was not asked for their opinion on it. Nobody really understood what it was all about. The SJC was not happy with that so they found for the petitioner or the appellant in that case. Anyhow, so we will wait. I do not understand why more petitioners' counsels are not rioting in the streets about CRAB and how long it takes because we represent a few individuals and we know how long it takes. It is just a mess, just a complete mess. It is an embarrassment to the Commonwealth of Massachusetts that this is going on. The process that was designed initially to give speedy and fair resolution of retirement disputes has gotten out of control.

Thomas Gibson joined the meeting at 9:36am.

Michael Ovitt: For the legal update, I believe the only matter was the Larkin remand. Is there any update?

Thomas Gibson: We have 90% done, Mr. Chairman. There were some concerns that I had regarding some of the language that PERAC used in the remand. We needed to clarify with PERAC to make sure that response was going to be appropriate to their issue and had to do with the incidents that were cited by the medical panel, versus what was listed in Mr. Larkin's application, and the lack of documentation of some of those incidents. The question was, was PERAC going to rely solely on the recitation of those incidents that occurred in the medical panel report, so were they going to take a general, broader look at the application as an accumulation of events that occurred during the course of his employment. We got that issue clarified with PERAC, so I expect that we will be sending that over to Sheila sometime next week for her review, and we will have that on the board agenda for August.

Michael Ovitt: Sounds good.

PRE-EMPLOYMENT PHYSICALS

Thomas Gibson: The other couple of other issues I can just quickly talk about. Pre-employment physical examinations have become a significant issue with PERAC. That was one of the issues that I was discussing today. In the absence of a pre-employment physical examination that showed no evidence of heart disease, cancer, or respiratory issues, or a medical report after an employee commenced employment that failed to reveal any of those conditions, PERAC will not convene a medical panel to examine an applicant for disability retirement that relies upon one of those presumptions.

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It does a disservice to the members because they are not in charge of the pre-employment physical. That goes to the employer, and the employer is the one that is charged with filing it and keeping it, et cetera, et cetera, and many times, municipalities have not safeguarded those pre-employment physicals. Some of them are 20 years old or even more, so it puts the member in a difficult position to try to establish that he or she did not have, for example, high blood pressure at the time of the pre-employment physical examination when you are seeking to be retired for hypertension or heart disease. That has been an issue. It might be advantageous for the board to remind the member units that if they have pre-employment physicals, they should safeguard them. Perhaps even send a copy of them over to the retirement board so that those physicals can be placed in the member's files, in the event that they would have to rely upon them down the road. That is just an issue that is one of several hot issues that come up from time to time.

Sheila LaBarbera: We always encourage our Group 4 employees, and the ones for the police are on file at the Academy and they are held there. We have actually had a couple of disabilities with presumptions, and they actually had their physical at the Academy. We always remind employees with the police or fire and I have told them if you do not want to give it to us, that is fine, but keep it – you need to make sure – because doctors unfortunately now come and go. If they are not around, if you cannot find their practice, you cannot find the medical records anymore.

CRAB

Thomas Gibson: It does become an incident – a problem. Gerry, I understand I talked to you about the issues at CRAB with Chair Tran resigning as of June 30, so they are actively seeking to replace that individual. A very important job. There is a 5-year backlog of cases there. It is a disgrace. The public workers cannot get a timely resolution of their retirement appeals. Whether the board is correct or incorrect in their decision, the member has a right to have that matter decided one way or the other. It is doing a real disservice to our members for not having a speedy resolution of the case. The Mendel case I do not know when we can expect a resolution. I am sure you told the board about that already.

Deferred Retirement Insurance Coverage

One last thing I want to just mention quickly has to do with a case that was decided by the SJC in June. It does not have anything to do directly with retirement or Chapter 32, but it has to do with a deferred retiree who left employment as a firefighter with 10-1/2 years of service. When he turned age 55 he sought retirement, did, in fact, retire for superannuation, and then sought to have the health insurance paid for him to join the health insurance program from his municipality. They denied him that right, and he appealed and the case went way up to the SJC. The SJC, in a decision issued last June, indicated that the town does have the right to tailor their planned design to make a requirement that you have to have health insurance at the time of your separation from service in order to carry it over as a deferred retiree. In this particular case, which was a case of first impression, although I swear this case was decided years ago with the Koch v. Ludlow case, but maybe that was not a reported case of the appeals court. The SJC said that a retiree who is not enrolled in the municipality's group health insurance plan upon retirement may be lawfully excluded under a reasonable municipal regulation that would exclude that individual.

So, again, as I said, we do not get involved with that. The board is merely a pass-through for the payment of contributions as directed by the employer, but every time that Sheila or Brian

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are counseling an employee or a member or every time a board member may get a telephone call from someone looking to retire and having questions about it. It's an important issue that you have to tell them to go back to the town to find out whether or not they're going to have health insurance as a retiree because some towns have very strict regulations or policies regarding who is eligible for health insurance and who is not eligible for health insurance. Many times, someone may retire using their spouse's health insurance and then the spouse up to 3 years or so would lose that health insurance and then the member would say, well, I am a retiree and I have a right to get back on that plan. The law says, no, you do not have a right to get on that plan if the town has a regulation that prevents that. It is just something that the board should be aware of, and Sheila and Brian as well when they are counseling members.

Sheila LaBarbera: Just a quick note on the insurance. We are aware of that, and Berkshire County – none of the towns have ever adopted that regulation. Just so that you know, we had a number of towns that were very excited when that first passed because they did the math. They realized three of our larger units, one in particular, if they were to require the people leaving that were deferring their retirement to take the insurance when they left with their retirement, it would cost some of the towns over \$300,000. While all is good, even the small town of Cheshire, \$60,000 a year it would have cost them to initiate that and make them pay. Most of the towns have said, you know what, it sounds good and it looks good, but the reality of it is very expensive. All of them have contemplated it, and there's been more than a few at the end that had the accountant or the treasurer do the math and they said you know what, let's not. Some of those people never come back. They are on their spouse's insurance, they leave and they do not come back, but they found that it is very expensive and that is why they have refused to do it. I thought that was interesting because I thought most of the towns would jump at it and say you have to do it.

Thomas Gibson: Right.

Sheila LaBarbera: We know with 16 to 21% increases in health insurance, hey, if you can get it somewhere else, the town is very happy.

Michael Ovitt: So, is there a form or a certain document for the deferral of their retirement?

Sheila LaBarbera: No. What we usually do is when people come in and they are terminating employment, if they are deferring, we ask them to write a letter to the town stating that, I am deferring my retirement until 60 years old. Then if they turn 60 and take it, great, but the towns are aware and all they need to do is say if you do not have it when you leave, you cannot take it, but once they have contemplated it, they found that it is too expensive, so they have left it alone.

Michael Ovitt: I guess my next question would be is there any additional language that could go in that, a standardized language to go into a deferral letter.

Sheila LaBarbera: No, we just provide that as a suggestion. I do not actually have a formal letter or anything like that. People leave employment different ways and sometimes I do not know until they have long left or got their status changed.

Thomas Gibson: When we have meetings with the Advisory Council or with the members directly, part of the presentation is just a cautionary word to make sure that you understand what your employer's health insurance policies and programs are before you retire, so that you can make the right decision about your health insurance. The board really has no role, no active role, no authority, and no powers in administering health insurance benefits for

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retirees unlike other states where sometimes the retirement system does get involved in providing a health insurance.

Regular Compensation

Thomas Gibson: Gerry, did you talk about the definition of wages being changed, amended in the State Budget Act? Let me just talk about that quickly. There was a PERAC memo that came out on that after the SJC ruled on this Vernava case that decided that payments of supplemental sick leave and vacation made in conjunction with worker's compensation payments to an injured worker were not regular compensation. That was a sea change because since 1945 those payments had been considered regular compensation. That was several years ago back in 2017. The basis for the SJC's decision was an injured worker is not able to provide services to the employer and worker's compensation itself is not regular compensation, so the supplemental payment should not be regular compensation either. Now, that not-providing-services argument somehow found its way into some theories espoused in DALA and CRAB decisions that say, well, gee, you know, if they're not providing services, then why should an employee who is out sick for a week with the flu and get sick leave, why should that be regular compensation? Or why should someone on vacation for 2 weeks who is not providing services why should that be regular compensation? There was a danger. It was a slippery slope here that to follow the SJC's reasoning would sick and vacation payments made to active employees from being regular compensation. PERAC has filed a standalone bill. PERAC's bill, the language was incorporated into the State Budget Act, Section 26 of the State Budget Act. It was signed several months ago, 2 months ago amending the definition of wages to include – it makes it clear that any accrued sick vacation or personal time that is used during the course of employment would be considered regular comp provided the member was not also receiving worker's compensation with it. That clarifies and gives some breathing room to folks who thought that perhaps some outliers would start denying regular comp from sick leave and vacation. Not going to happen.

Paid Family Medical Leave

They also added another element to that definition, talking about paid leave under the Paid Family and Medical Leave Act. Now, the PFML, Paid Family and Medical Leave Act, that's Chapter 175M of the General Laws, it's a separate law in Massachusetts that requires employees to put aside 2% of their pay into a trust fund and then when someone needs to take that due to a family or medical leave, it's paid from a trust fund to the employee. It is not full pay, and employees can supplement that pay from sick leave and vacation. Now, for municipalities, it is a local option. Because municipalities have their own sick leave and vacation programs, almost – I am not aware of any municipality that has adopted that law, but it is mandatory for the state and for state agencies to do that for their employees, an extra 2%. I do not think it is an issue with Berkshire County. Sheila, I don't think any of your municipalities have adopted Chapter 175M of the General Laws, so we shouldn't be concerned about it, but I just wanted to mention it to the board anyway. That really would conclude my legal report unless some board members have any questions for us. Michael Ovitt: Tom, I was asked recently about any talk of COVID service. Any enhanced service for COVID?

Thomas Gibson: That is a bill, Mr. Chairman, that has been submitted every year for the past several years that would rather recognize the fact that some of our public workers were

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essential and had to go to work during COVID, and therefore, they should be provided some enhanced retirement benefit. It was actually bill that, I think, pertained to Higher Ed, state college systems, that would have provided them with some enhanced credit. Somehow, that got out to the municipalities that this was going to apply to everybody, but it does not. There is no law right now. There is nothing I am even aware of that is being seriously discussed that would provide a retirement incentive or extra creditable service or something along that nature for those folks who served during COVID-19 and during the pandemic.

Municipalities have compensated employees, but do not forget when you got that ARPA money you could not use that for salaries. You had to use it for something else.

Nevertheless, some towns have recognized that their workers – and some retirement boards have recognized that their workers came to work, provided public services, in many cases essential public services, whether it be payrolls, public safety, you name it, and did give them a bonus or whatever, but that was not regular compensation.

Michael Ovitt: Okay. Then the only other thing would be are there any changes pending for vehicle compensation?

Thomas Gibson: Not that I am aware of. If you recall from the old days, Mr. Chairman, I'm sure that when an employer gave a vehicle to one of their workers and could use that for their personal use, there was a value attached to that that PERAC said was regular compensation, and that case went all the way up to the court only to be determined that it was not regular compensation, and the boards had to jump through hoops back then to adjust retirement pensions that had been calculated on that to refund contributions. It was mostly police and fire and town managers and administrators that had the vehicles that they could use, but there has been no movement that I am aware of to make those payments or the personal value of an employer-supplied motor vehicle regular compensation.

Michael Ovitt: Okay. Thank you very much.

Thomas Gibson: Right. Did you get any notices, Sheila, of non-filers that we have to terminate their retirement allowance?

Sheila LaBarbera: I did we have three. They are all completed the only one we have left is Bartini.

Thomas Gibson: Well, you are very lucky let me tell you that. We will see you all next month, and we will have that Larkin stuff ready for the board's review and response to PERAC at that point.

Thomas Gibson and Gerry McDonough left the meeting at 9:45am

6.) Directors update: 91A Bartini, MIIA Grant Application

Sheila LaBarbera: The only item I have is I have the last piece of what we had set out to accomplish for our cybersecurity. There is one more. It is like an active penetration testing which is becoming more and more relevant now since the ransomware seems to be coming into emails and things like that. We are protected pretty well, but this is the last piece of kind of our cybersecurity, if you will. John gave me an estimate. I put it in last week. It is for \$5,800, and we have \$18 with the flex grant. We get our \$18 back. It is \$5,400, which would be for penetration testing, and then to simplify some governance risk management and compliance to automate, and it is right there in a quote. That that is all grant money. I will know in a couple of weeks if we get the grant, and we will be able to implement that last piece.

Michael Ovitt: The grant is at \$18.

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Sheila LaBarbera: No, the flex grant is \$18. That is our money. They are going to give that back to us the grant is \$5,400, and you can see the quote.

Michael Ovitt: That was here? I did not see it in the paperwork.

Sheila LaBarbera: It is the one with the attachment, Mike.

Ericka Oleson: Yes.

Sheila LaBarbera: the first page was automatic, that is just the \$18, and they are going to give us back the \$18, so it really was not much of anything, but the second page is really the detailed stuff. Utilize, access, monitor, and manage NIST CF 2.0 compliance for the Berkshire County Retirement Board.

Michael Ovitt: So, who is recommending that?

Sheila LaBarbera: IT John Charow, MIIA and the governing agency, PERAC. MIIA any agency that is involved with cybersecurity at all is recommending it. The flex grant just gives us the opportunity to get the setup done, and then as we did in the past, we got it all done and then now we pay monthly a fee.

Michael Ovitt: So, John is conducting the testing?

Sheila LaBarbera: Yes. He would do it through Bugbusters, yeah.

Michael Ovitt: Okay. Who sets the criteria for that? For the parameters of the testing?

Sheila LaBarbera: I think that is set forth in what he said was the national standards.

Michael Ovitt: Okay.

Sheila LaBarbera: I spoke to our rep at MIIA, and he feels good about it. It should not be too much of an issue. I was one of the first ones to get it in.

Michael Ovitt: In our email – I get no less than probably thirty or forty at least a month, but is everyone getting solicitations?

Mark Bashara: I get ones from, what do you call it there?

Timothy Sorrell: I get stuff from PERAC.

Mark Bashara: PitchBook?

Michael Ovitt: Other than investment companies.

Mark Bashara: There is PitchBook I think it is called or something. I never open them or look at them. I just delete them.

Sheila LaBarbera: Well, I think what is going to help is John Charow has a new program so that when the emails come through I have to mark them safe or unsafe. All of those vendors that send this stuff from Asia if I do not know who they are, unsafe, they are gone. I think that a town just got ransomware and it was through email, they were lucky they had some things in place so they had backup for their data.

Michael Ovitt: In your next conversation with him, can you give us some guidance – just get some guidance from him or maybe get it out to all of us as far as if you open something.

Obviously, if there are links involved, not to click on the links. In some cases, just opening the email exposes you to, what the term is, to look at your content or your speech and your adjectives and how you present yourself in your emails. That might be a good refresher for everyone.

Sheila LaBarbera: Yes

Michael Ovitt: Sheila, just one – there is a 91A?

Sheila LaBarbera: Bill Bartini, he finally completed his paperwork for the 91A. There is a problem with his tax forms. The tax preparer applied all of the income from the business to him. In the past, it was applied to both him and his wife. I made him aware of it the other

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day. He is going to go to the tax preparer and have that looked at, amended, I do not know what. I think that if it has amended that he is all set. If it does not, he is an over-earner again, so he is going to owe us money. We have a hearing scheduled for him in August, and so he has plenty of time to straighten that out, but again, he has to straighten it out with PERAC and not with us.

Consent Agenda Detail:

MINUTES:

a.) The Board minutes of the executive session held April 30, 2025 and the regular meeting held June 30, 2025 were signed and approved.

Minutes provided as an attachment to email

INVESTMENTS:

b.) The Board received from PRIT a statement of performance for June 2025. The PRIT Fund returned 2.46% for the month of June.

BANK STATEMENTS:

c.) The Board received the bank statements for June 2025 and budget for July 2025.

Cash Books for June were sent to Board by email.

MONTHLY WARRANTS:

d.) The Board approved payment vouchers:

07-01-25	\$152,660.65
07-02-25	\$20,616.68
07-03-25	\$27,200.53
07-04-25	\$11,477.07
07-05-25	\$1,854,790.17
07-06-25	\$6,234.07
07-07-25	\$11,373.87

REQUESTS FOR RETIREMENT:

e.) The Board approved the application for superannuation retirement from Tania Hernandez, Williamstown, Police officer. The retirement will be effective 08/06/2025.

The Board approved the application for superannuation retirement from Ann Martin, MGRSD, Paraprofessional. The retirement will be effective 08/31/2025.

The Board approved the application for superannuation retirement from Monica Wissman, Florida, Paraprofessional. The retirement will be effective 06/30/2025.

The Board approved the application for superannuation retirement from Susan Pease, CBRSD, Paraprofessional. The retirement will be effective 06/28/2025.

The Board approved the application for superannuation retirement from Suzan McCauley, BHRSD, Paraprofessional. The retirement will be effective 09/07/2025.

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The Board approved the application for superannuation retirement from Victor Scapin, Gt Barrington, Foreman. The retirement will be effective 09/12/2025.

MEMBER TRANSFERS OUT OF SYSTEM:

f.) The Board approved the notice of transfer of the account of Rebecca Hamill, a member in FRRSD to the Massachusetts Teacher's Retirement Board. The Berkshire County Retirement Board will accept 6 years and 1 month of creditable service. The amount of the transfer is \$13,652.11.

The Board approved the notice of transfer of the account of Bridget Higgins, a member in CBRSD to the Massachusetts Teacher's Retirement Board. The Berkshire County Retirement Board will accept 3 years and 2 months of creditable service. The amount of the transfer is \$6,964.57.

REQUEST FOR SERVICE BUYBACK:

g.) Shawn Flaherty, a member in MGRSD, is eligible to buy back 3 years and 5 months of prior creditable service. If Mr. Flaherty pays \$2,383.83 into the annuity savings fund by August 30, 2025, the North Adams Retirement Board will accept 3 years and 5 months of creditable service.

REQUESTS FOR REFUNDS:

h.) The Board approved the applications for refunds from the following members: (Pending approval from Dept. of Revenue- child support division)

Matthew Albert	Lee	\$3,733.56
Joshua Bellinger	Williamstown	\$11,660.17
Glorimar Colon	BCRHA	\$2,088.70
Jason Hopkins	Lee	\$85,992.41
Zachary Kellogg	CBRSD	\$19,871.96
Bridget Roy	Lenox	\$6,749.99
Kyle Suriner	CBRSD	\$5,326.32
Alice VanDeusen	SBRSD	\$2,869.54
Christine Viel	Lee	\$1,004.27
Maria Borucka-Gurdek	BHRSD	\$13,452.87
Linda Vermilyea	BHRSD	\$524.38 (Partial)
Kurt Degrenier	SBRSD	\$5709.69 (Partial)

INJURY REPORTS:

i.) There were no injuries reported for the month of July.

NEW MEMBER APPLICATIONS:

j.) The Board approved for membership in the Berkshire County Retirement System the following members:

8129	Christopher Hilchey	Williamstown	6/2/2025	Step 1 Motor Equipment Operator	1
8130	Thomas Hawley	Otis	5/21/2025	Laborer/Transfer Station Attendant	1
8131	Christopher P Prior	Dalton	6/17/2025	Officer	4
8132	Emily A Schilling	Great Barrington	7/7/2025	Assessor	1
8133	Ryan P Foley	Dalton Fire	7/1/2025	Fire Fighter	4

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8134	Alexander W Girard	Richmond	6/18/2025	Custodian	1
8135	Ronald A Sayers	Richmond	6/18/2025	Custodian for Richmond School	1
8136	Melinda S Nilson	Egremont	7/1/2025	Administrative Asst.	1
8137	Joseph A Schneider	Egremont	7/1/2025	Fire Chief	4
8138	Colby B Youndt	Lee	7/7/2025	Conservation Agent	1
8139	Mark I Cote	BCRHA	6/16/2025	Service Coordinator	1
8140	Jason M. Morin Sr.	Williamstown	7/7/2025	IT Manager	1
8141	Sheriann F. Stanton	CBRSD	8/25/2025	Paraprofessional	1
8142	Megan E Mackey	Lenox	7/1/2025	Circulation Coordinator	1
8143	Heather G Perkins	Richmond	7/15/2025	Fire Fighter/EMT	4
8144	Megan D Perry	Richmond	7/10/2025	EMT	1

PERAC APPROVALS

k.) The Board received approval from PERAC to grant a retirement allowance to Michael Lamoureux, CBRSD, as of 06/17/2025. Annual pension amount is \$18,606.00.

The Board received approval from PERAC to grant a retirement allowance to Susan Pease, CBRSD, as of 06/28/2025. Annual pension amount is \$12,817.08.

The Board received approval from PERAC to grant a retirement allowance to Linda Consolini, Lenox, as of 06/18/2025. Annual pension amount is \$17,332.92.

The Board received approval from PERAC to grant a retirement allowance to Valerie Campbell, CBRSD, as of 06/17/2025. Annual pension amount is \$14,949.00.

3(8)c REIMBURSEMENTS:

l.) The Board received a letter from PERAC ordering the Berkshire County Retirement Board through the provisions of MGL Sec 3(8)(c) to reimburse the Pittsfield Retirement Board \$6,413.73 a year toward the retirement allowance of Peter Skorput.

The Board received a letter from PERAC ordering the Berkshire County Retirement Board through the provisions of MGL Sec 3(8)(c) to reimburse the Teacher's Retirement Board \$1,072.60 a year toward the retirement allowance of Joy Kennedy.

The Board received a letter from PERAC ordering the Berkshire County Retirement Board through the provisions of MGL Sec 3(8)(c) to reimburse the Adams Retirement Board \$3,765.67 a year toward the retirement allowance of Kathleen Fletcher.

PERAC CORRESPONDENCE:

m.) The Board received from PERAC the following memorandums:

#17/ 2025	revised language benefit calculation letters
#18/2025	Cyber Attack
#19/ 2025	Updated member and beneficiary refund forms w/ tax letter
#20/ 2025	Mandatory Retirement Board Training 3 rd quarter 2025
#21/ 2025	FY26 Budget and Definition of Wages in Ch. 32
#22/ 2025	Fraud Alert
#23/ 2025	COLA Dependent allowance ADR and ADS survivors
#24/ 2025	Reinstatement to service MGL Ch. 32 sec 105

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Note: Copies of memorandums and letters given to each Board member

TRAVEL & EDUCATION APPROVALS:

n.) The Board approved the travel expense for staff to attend the New Administrators Training at the Hotel Northampton, Northampton MA., August 20, 2025.

MISCELLANEOUS CORRESPONDENCE:

o.) No misc. correspondence for July

Michael Ovitt: Okay. Any other issues on there?

Sheila LaBarbera: We did transfer \$9 million that went into our investments on the July 24th. We have been carrying some money because we were going to owe some money to the state retirement board for 3(8)c reimbursements. They have not billed us in over 2 years. We still do not have their system corrected yet.

Timothy Sorrell: They have not billed us for their 3(8)c's?

Sheila LaBarbera: There is actually a case on this so they can send us that bill 5 years from now and we have to pay it. I will just increase the redemption that month, and that will be it.

Michael Ovitt: I think we spoke briefly earlier about the refund for Kurt Degrenier?

Sheila LaBarbera: He had 10 months of full pay that he received that they took deductions on after he was collecting worker's comp; we had to give him a refund of those deductions before we can do the calculations. His calculation is with PERAC right now. I am just waiting for their approval, and it will be on payroll next month. They are working on a settlement, and once that settlement has been decided on, we will find out whether or not he is going to pay us in the lump sum for the offset or if he is going to do it monthly. We will see what he decides to do, but so far, no issues other than accounting and interest for the refund.

Michael Ovitt: Okay. As far as – okay. Anything else on the consent agenda? We can make a motion.

Ericka Oleson: I will make a motion to accept the consent agenda just correcting the date at the top to July 30th from June 25th.

Timothy Sorrell: I will second that.

Michael Ovitt: Okay. All right. Any further discussion? All in favor.

A roll call vote was taken to approve the consent agenda as presented and changing the date in the header, the vote was unanimous.

7.) Old Business: Board Bylaws- tabled

The Board is asked to appoint the 5th member of the Berkshire County Retirement Board. The term will begin July 1, 2025 and end June 30, 2030.

Michael Ovitt: The 30 days, was that from our last meeting or from the expiration of the term? The fifth member.

Sheila LaBarbera: The fifth member. The 25th was 30 days the board has. Bill Keefe called me the other day. The 30 days is expiring in 5 days. What he would like the board to do is to give me the names of the people that you want to nominate. I am going to send that to both Bill Keefe and to Judith Corrigan along with the resumes that they have submitted to the board. If you would like to do that today, I would appreciate it because I know that he is trying to organize his agenda for September.

Michael Ovitt: Right. So, we are not – you are not looking for a vote then? A revote?

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Mark Bashara: You are just looking for who we want them to consider for the fifth member.

Sheila LaBarbera: Unless you agreed on somebody.

Michael Ovitt: Is there any reconsideration of our prior votes?

Timothy Sorrell: I am still good with Smitty.

Ericka Oleson: I am still good with Smitty.

Michael Ovitt: Okay. Okay.

Mark Bashara: I am good with Beth.

Michael Ovitt: Okay. We will present our stalemate.

Timothy Sorrell: Do we need a formal vote on that? No?

Sheila LaBarbera: No, I do not think so because I think that it is a matter of consideration.—

Mark Bashara: Nothing has changed.

Sheila LaBarbera: Nothing has changed. Bill Keefe's phone call was do you have any meetings, is there anything happening? I said, no, what do you want me to do? He said we have 5 days and today is the 30th. I will put together a letter to him and to Judith, and I will send all the information in to PERAC. They are meeting on September 10th. He is going to let us know what time. The commission's meeting is at 11 a.m., but he said he would let us know because I have to let Smitty and Beth know that there is a meeting in September. They are invited to attend in person or remote.

Michael Ovitt: Is there an opportunity for board members to submit their letters to PERAC as well?

Sheila LaBarbera: Yes. You have letters too?

Michael Ovitt: No. If there was.

Sheila LaBarbera: If there was, yes. He did ask though if you have that to send it to me so I could send it to him as a packet of information so that it is not kind of all over the place.

Michael Ovitt: Okay.

Sheila LaBarbera: So, then it will just be Beth and Smitty. And I will send you an email, but I will be on vacation from August 11th to August 18th. I will send out an email for that too.

Michael Ovitt: Okay. Motion to adjourn?

Timothy Sorrell: I will make a motion.

Ericka Oleson: I will second.

A roll call vote was taken to adjourn at 10:16am, the vote was unanimous.

The next regular board meeting is scheduled for Wednesday, August 27, 2025 at 9:00am.

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RESPECTFULLY SUBMITTED:

Sheila LaBarbera, Executive Director

APPROVED BY:

Michael Ovitt, Chairman

Mark Bashara, Elected Member

Timothy Sorrell, Elected Member

Ericka Oleson, Advisory Council Member

5th Member Appointed - vacant