

**Study Commission
March 12, 2012
Minutes of the Meeting**

A Study Commission meeting was held in Room 313 of the State House, 82 Smith Street, Providence, Rhode Island on Monday, March 12, 2012.

At 1:05 pm, Rosemary Booth Gallogly, Director of Revenue and Chairperson of the Commission called the meeting to order.

Commission members present included Rosemary Booth Gallogly, Jean Bouchard, Paul Doughty, Allan Fung, Dennis Hoyle, J. Michael Lenihan, Richard Licht, Joseph Polisena, Steven St. Pierre, Melissa Malone representing Gina Raimondo, John Simmons and Angel Taveras.

Members absent: Bruce Keiser and Antonio Pires

Others present included: Frank J. Karpinski, Executive Director of the Employees' Retirement System of Rhode Island, Susanne Greschner, Chief of the Division of Municipal Finance and members of the public.

Agenda Item # 1 – Approval of Minutes from February 27, 2012

Chairperson Booth Gallogly referred to the agenda for the meeting and, as such, stated that the first order of business was approval of the minutes from the Study Commission meeting held on February 27, 2012. She asked if the Commission members had any corrections, adjustments or additions to the draft minutes. There were none. Mayor Polisena from the Town of Johnston made a motion to accept the minutes as written. The motion was seconded by Mayor Fung from the City of Cranston. The motion passed all in favor.

Agenda Item # 2a – Statutory process for entry into the Municipal Employees' Retirement Systems of Rhode Island (MERS)

Chairperson Booth Gallogly stated that the topic for today's meeting was to discuss how interested communities could make the transition from locally-administered pension plans into MERS. To assist the Commission in understanding this process the Chair invited Frank J. Karpinski, Executive Director of the Employees' Retirement System of Rhode Island, to present to the Commission. His presentation entitled, **Municipal Employees' Retirement System of Rhode Island: The Process and Procedure for Becoming a Participating Employer in MERS**, is available on [the Division of Municipal Finance's website](#).

Mr. Karpinski first discussed how MERS is administered including the make up of the Retirement Board, their authority and duties as well as how the Experience Studies and Actuarial Valuations are conducted for MERS. Mayor Angel Taveras from the City of Providence inquired as to how often Experience Studies are conducted for the MERS plans and if the assumptions were tested. Mr. Karpinski replied that the valuations are generally performed every three years, however, this time

period was recently extended in light of the recent changes in Other Post Employment Benefits OPEB in order to allow the FTE and payroll data to settle. Furthermore, he explained that a six (6) year look back period is generally utilized, however, since the state has used the same actuary for several years it uses a longer look back period. Mr. Karpinski noted that one actuarial firm performs independent experience studies on all 105 plans in MERS using the same tested assumptions for all. J. Michael Lenihan asked if MERS was subject to the Administrative Procedures Act. Mr. Karpinski indicated that it was.

In addition, Mr. Karpinski explained that the MERS investment portfolio is managed by the State Investment Commission (SIC) which is a full-time, in-house nine (9) member staff. The SIC also employs professional investment advisors and consultants to assist in investment and market analysis. Richard Licht, Director of Administration, asked if the SIC looks at each of the plans individually and factors in the number of retirees, etc. for investment purposes. Mr. Karpinski replied that MERS is looked at as a whole utilizing one strategy for all plans for investment purposes.

Chairperson Booth Gallogly inquired if municipalities participating in MERS had to hire their own medical examiners for determination of disability. Mr. Karpinski replied that there is a five (5) member subcommittee which conducts the disability determination process for members of participating municipalities. Therefore, participating municipalities would not have to hire their own.

Next, Mr. Karpinski reviewed how any municipality, housing authority, fire, water, sewer or regional school district or public building authority could become a participating employer in MERS. The procedure is established by Rhode Island General Law § 45-21-4. Any municipality or group wishing to join MERS must receive the passage of an ordinance or resolution by its governing body. If approval to join is made by the governing body, then all active employees of the locally-administered pension plan must be offered the opportunity to join MERS though no member is required to join MERS. If a municipality decides to offer MERS only to a subset of employees, such as is the case in Johnston which is in the process of creating a MERS plan only for new hires of the police department, then that would require General Assembly approval, which the town has received. An employee is defined as any regular and permanent employee or officer of any municipality who works a minimum of twenty (20) hours per week performing duties that is devoted to the service of the municipality. MERS membership exclusions include casual or seasonal workers, anyone who is receiving a pension from a participating MERS municipality or anyone who is contributing to a pension or retirement system of a participating municipality in MERS. Further exclusions include any city or town council, school committee member or other local elected officials who are elected for the first time after June 30, 2012 (other than elected officials who are compensated for devoting thirty-five (35) or more hours per week).

At the time when a municipality switches from a locally-administered plan to MERS, eligible members have a one time opportunity to elect whether or not to join MERS. If they choose to join MERS then they are granted prior service credit for past service in the participating municipality. In addition, an eligible member may be able to buy up to five (5) years of “non-participating municipal time” from a non-MERS community at full actuarial value.

Once a municipality’s pension plan has been switched to MERS all new hires will be required to join MERS. Director Licht inquired about what would happen to plan assets for members who elect not to join MERS but rather remain in the locally-administered plan. Mr. Karpinski indicated that, over time, costs would get higher in the old, locally-administered plan. In addition, municipalities would have to

continue to administer and hopefully fund their locally-administered plans for members who elect not to join MERS, as well as fund their new MERS plans.

Mayor Fung inquired about the level of benefits in the MERS plan. Specifically, he wondered if a municipality was to join MERS is it true that their plans' benefits could not exceed the benefits of MERS? In addition, he questioned if future administrations could change the level of benefits of its MERS plans to be more generous. Mr. Karpinski indicated that, currently, there are a couple of police and fire MERS plans which have benefits which differ from the MERS benefits set in statute. However, approval of those plans did, and any future alterations to plans to offer more generous benefits than MERS would, require legislative approval.

Mr. Karpinski indicated that employers considering joining MERS should provide the Employees' Retirement System of RI with their resolution or ordinance by April 1st of a given year. Then, the employer should determine which eligible members would likely join MERS by September. Next, the employer should request an actuarial analysis study to determine employer costs by October. This process may take 4-6 weeks to complete and is paid by the prospective employer.

It should be noted that each plan is run and financed independently; therefore the assets of one employer will not be used to satisfy the obligations of another. An administrative fee is charged to each of the plans in MERS.

Mr. Karpinski stated that the General Treasurer's office pays benefits to members based on what is in statute, not what is in an individual plan's provisions. Mayor Fung inquired, what happens if there is a lawsuit by a MERS member regarding what is paid out? He also asked if the state would indemnify a city or town who was sued due to an administration of benefits error. Mr. Karpinski replied that if a mistake is made it would most likely be remedied by the Administrative Procedures Act. If it is not resolved there, then the case could go on to the Supreme Court but he noted that it is unlikely to go that far.

Melissa Malone from the General Treasurer's Office (representing Gina Raimondo) asked for clarification on how plans will be administered as of July and who actually pays for the administrative costs – the state or the trust. Mr. Karpinski responded that as of July 1st, the benefit structure will all be the same. Administrative costs will be paid by the municipality for each plan plus an administrative fee and that the MERS Trust will be paying disability.

John Simmons, executive director for the Rhode Island Public Expenditure Council, asked Mr. Karpinski if there has been any analysis done on moving current employees versus new employees over to MERS and, if so, could that analysis be shared with the Commission. Mr. Karpinski responded that one had been done several years ago for police and he would look into whether the report could be shared.

The question was raised about the withholding of state aid in the event that an employer does not contribute its full annual required contribution (ARC) to its MERS plan and Mr. Karpinski responded that all state aid with the exception of education aid could be withheld for these purposes.

Mr. Simmons asked about the methodology used for validating employers' contributions. Mr. Karpinski replied that when a new employer joins MERS they verify employee earnings for the year prior to joining by reviewing payrolls. In addition, in the new cycle ERSRI will begin performing

audits on some the city and towns' contributions. Chairperson Booth Gallogly stated that if a city or town does not contribute or overstates one person's salary it hurts that individual plan only, not the other city and town plans in the fund.

Chairperson Booth Gallogly noted that due to current law, retirees are not eligible to join MERS. She added that she thinks the Commission should begin a conversation about how ERSRI could provide flexibility on this matter without making it too difficult to administer. Perhaps a MERS II is the answer? Mr. Karpinski responded that the hurdle would be figuring out where the money would come from to pay the retirees especially if new hires are not brought in. Ms. Malone echoed Mr. Karpinski's comments by adding that she is not sure how a plan can be structured to have retirees entered into MERS with no payments and limited state aid to withhold as the plan would eventually exhaust its assets. Director Licht stated that it would have to be restructured which could create a lot of potential inequities.

Chairperson Booth Gallogly mentioned that it may be advantageous for communities to join MERS. For example, if a community has 18 years left in their amortization schedule and if they joined MERS they could reamortize to 30 years and lower their ARC. Mr. Karpinski replied that this could be true but it would depend on which members were rolled over into MERS. If there were many members that were close to retirement, this might not be the case.

Acting Auditor General Dennis Hoyle asked how many plans approach and join MERS each year and if they don't join what are the reasons why. Mr. Karpinski replied that in the last 3-5 years no new plans have joined MERS. Prior to that, approximately five new plans a year joined. He believes the main reasons for deciding not to join MERS have to do with the cost or benefit structures.

Agenda Item # 2a – Options for Transition to MERS

Next on the agenda, Chairperson Booth Gallogly introduced attachment B (see addendum) which contains issues to consider in an effort to make it easier for communities which would like to join MERS. She read through the attachment and asked for feedback from the Commission.

Jean Bouchard, President of Local 1651 of Council 94 of the American Federation of State County and Municipal Employees, commented that she believes the Commission should review all the different plans to view the different variables such as contract agreements, etc.

Paul Doughty, President of the Providence Firefighters' Union Local 799, questioned how a municipal bankruptcy would affect people in MERS. Mr. Karpinski responded that it would have to be analyzed as ERSRI has not been presented with that yet. Director Licht added, in a bankruptcy the plan's assets are assets of the trust, not the municipality and should not be touchable by a receiver because they are not city assets. He was concerned that if you put some members into MERS but not others then you are protecting only some members in a bankruptcy. Chairperson Booth Gallogly noted that in the case of Central Falls, the MERS members were not impacted by the receiver but by the General Assembly. Mr. Simmons wondered if the benefit structure of a plan in the MERS system can be altered by bankruptcy.

Ms. Malone noted that what was striking to her from the conversation was that in many locally-administered plans, retirees have no representation which is why the fiduciary training discussion from the last meeting is so important.

Mayor Fung asked if Mr. Karpinski was aware of any city or town liquidating assets. Mr. Karpinski responded that North Kingstown did this. Mr. Simmons questioned why liquidation would be required if it is a transferrable product. For example, if a plan has marketable assets why would liquidation be necessary especially because liquidation is an expensive proposition? Chairperson Booth Gallogly responded that the transfer of assets from one plan to another, rather than liquidation, is something that the Commission should consider if more municipalities seem interested in joining MERS so municipalities can avoid having to sell assets in a down market.

Director Licht mentioned that the requirement that MERS plans fund their ARC 100% would make it difficult for some municipalities that have not been funding their ARC in the past to join MERS. Chairperson Booth Gallogly added that perhaps there could be a phase in plan similar to the MAST program that was proposed by the Governor last year, with twenty percent increments over five years. Director Licht followed up by saying that while a phase in of funding the ARC may be helpful for some communities it cannot be looked at in a vacuum. For example, the city of Providence has been funding the ARC at or close to 100%, however, due to the benefit structure its plans are still unsustainable. The discussion on this matter concluded due to time constraints.

Agenda Item # 3 – Public Comments

Due to time constraints, the meeting adjourned without public comment.

Agenda Item # 4 – Adjourn

Mr. Simmons made a motion to adjourn that was seconded by Director Licht. The meeting adjourned at 2:59 PM.

Rosemary Booth Gallogly
Chairperson

3/26/12
Date

PSC/jb