

DATE: March 9, 2023

TO: Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Members, Joint Standing Committee on Labor and Housing

FROM: Kathy J. Morin, Director, Actuarial and Legislative Affairs

SUBJECT: Testimony on L.D. 742 – An Act to Divest State Pensions from Companies
Boycotting Maine Lobster

Good afternoon, Senator Tipping, Representative Roeder, and members of the Joint Standing Committee on Labor and Housing. My name is Kathy Morin, and I am the Director of Actuarial and Legislative Affairs for the Maine Public Employees Retirement System.

MainePERS is testifying neither for nor against L.D. 742. We are here to provide information and offer any assistance the Committee might need regarding this bill.

L.D. 742 would require MainePERS to divest holdings from companies that boycott Maine lobster and to limit further investment in those companies. Importantly, these actions are only required to the extent they are “in accordance with sound investment criteria and consistent with fiduciary obligations.” This acknowledges that the Maine Constitution requires the MainePERS Board of Trustees to make investment decisions solely in the best financial interest of the members as pension recipients.

During the 130th Legislature, the Committee considered L.D. 99 and L.D. 319, which limited investments in the fossil fuel industry and for-profit prisons. At that time, the Committee requested guidance from the Office of the Attorney General regarding the constitutionality of the bills as drafted. At least in part based on the response from the Attorney General, the bills were amended to include the language that is also included in L.D. 742 as referenced above and enacted into law.

The enactment of L.D. 99 (PL 2021, c. 231) included a requirement that MainePERS review the extent to which its holdings included fossil fuels and to submit an annual report to the Legislature regarding progress of divestment under that law. The initial review and identification of covered holdings was an extensive process that took approximately one year to complete. The System submitted the required report on January 17, 2023, which includes information about the process undertaken, including engaging a consultant to determine the holdings and potential impact of divestment of those holdings. We recommend that Committee members refer to that report for much more in-depth information about the System’s holdings, investment policies, and general impacts of divestment. The Attorney

General's letter referenced above is included as an appendix in that report as is a separate letter from the Attorney General's Office to MainePERS regarding the divestment laws.

As with the previously enacted laws, implementing additional divestment laws would require MainePERS to expend resources on identifying investments covered by the laws and analyzing portfolio and cost impacts. Divestment would result from this process only if doing so was in the best financial interest of MainePERS' members as pension recipients. The Attorney General's Office has said regarding the similarly-worded divestment laws:

The subject statutes do not affect the Board's exercise of its fiduciary duties. And they do not require the Board to either cease investing in or divest such holdings unless sound investment criteria and fiduciary obligations require such actions. Both statutes specifically condition their directives on "accordance with sound investment criteria" and "consisten[cy] with fiduciary obligations." As such, they reiterate rather than modify the Board's fiduciary obligations as a trustee - both constitutional and statutory.

* * *

If adherence to sound investment criteria and fiduciary obligations prevents achievement of the investment and divestiture objectives of [the statutes], failure to achieve those objectives is not a violation of the directives in those statutes. In short, the Board's focus should remain on adhering to sound investment criteria and fulfilling its fiduciary obligations. However, if the Board encounters a situation where the application of sound investment criteria and its fiduciary obligations neither favors nor disfavors either of two potential investment options, the Board shall pursue the option that more closely complies with the directives.

(See Divestment Report dated January 17, 2023, Appendix D.)

We have completed some preliminary analysis to estimate current exposures to companies that appear to be covered by L.D. 742, and estimate that MainePERS has approximately \$70 million in holdings with such companies. Significantly more analysis would be necessary to confirm those potential exposures and the impacts of divesting from those holdings.

Thank you for your consideration of this testimony. I would be happy to answer your questions and will be available at your work session.