

DATE: April 9, 2021

TO: Senator Craig Hickman, Chair  
Representative Mike Sylvester, Chair  
Members, Joint Standing Committee on Labor and Housing

FROM: Michael J. Colleran, Chief Deputy Executive Director and General Counsel

SUBJECT: Testimony on L.D. 1103 – An Act To Allow a 5-year Open Enrollment in the Participating Local District Retirement Program for Certain Law Enforcement Officers, Firefighters and Other Municipal Employees

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Senator Hickman, Representative Sylvester, and members of the Joint Standing Committee on Labor and Housing. My name is Michael Colleran, and I am Chief Deputy Executive Director and General Counsel for the Maine Public Employees Retirement System.

MainePERS is neither for nor against L.D. 1103. We are here to provide information and offer any assistance the Committee might need regarding this bill.

L.D. 1103 would allow all current participating local district employees who have elected not to join MainePERS to change that election. Going forward, the bill would allow similar changes of election during annual open enrollment periods during an employee's first five years of employment.

L.D. 1103 conflicts with federal law in that it allows an employee to have more than one election to join MainePERS.

The defined benefit plans administered by MainePERS receive favorable tax treatment as long as they comply with the requirements for a qualified governmental plan under the Internal Revenue Code as interpreted by the Internal Revenue Service ("IRS"). One of those requirements is that the plan not permit employees to choose between participation in the plan and receiving cash instead. This is known as a "cash-or-deferred arrangement," or "CODA." The IRS has issued several rulings about CODAs that make it clear that it is not permissible to allow an employee to have more than one opportunity to choose to join a governmental plan and have the employee's contributions not subject to federal taxation. The employee is allowed a one-time election at the time of first employment or first eligibility to join the plan, whichever is latest.

It would be possible under federal law to allow a change of election, but only if the employee contributions were paid with after-tax dollars. Currently, all employee payroll contributions to MainePERS are made with before-tax dollars. Using after-tax dollars would be more expensive to employees, and having a system where some employees pay contributions before-tax and others after-tax would increase complexity and risk of errors. There also would be implementation costs for employers and MainePERS to alter payroll systems.

L.D. 1103 also may have a negative impact on plan funding because it would permit employees to join the plan later in their career, which generally would mean at a higher compensation and a lower probability of leaving before vesting or retirement.

L.D. 1103 is directed at the Participating Local District (“PLD”) Retirement Program, which is funded by participating municipalities and other local districts and their employees. The program is not funded by the State. In recognition of this, amendments to retirement benefit statutes do not become part of the PLD plan unless adopted through rulemaking based on a recommendation of the PLD Advisory Committee. This Committee is established in statute with its voting membership evenly split between plan employers and employees.

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