

DATE: March 29, 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. 711 – An Act to Allow Certain Police Officers to Return to Participation in the Maine Public Employees Retirement System

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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. 711. We are here to provide information and offer any assistance the Committee might need regarding this bill.

L.D. 711 would allow certain law enforcement officers to rejoin a MainePERS retirement plan after having previously elected to withdraw from MainePERS. We understand that the bill is intended to address the situation of twelve officers employed by the City of Bangor. The City withdrew from MainePERS in 2001 and rejoined in 2017. The twelve officers elected to withdraw from MainePERS along with the City and took a refund of their pension contributions and interest at that time. These officers were not permitted to rejoin MainePERS in 2017 because under current law their elections in 2001 prevent them from ever rejoining while employed by the City.

L.D. 711 is directed at the Participating Local District Retirement Program, which is funded by participating municipalities and other local districts and their employees. It is not funded by the State. Pension contributions for employees who rejoin MainePERS under L.D. 711 would be paid by the employees and their employers on a prospective basis. The employees would be able to repurchase the service credit they previously had by repaying their refunds plus interest. Additionally, these employees would be able to purchase service credit for their time as employees in the same capacity since 2001 at the actuarial rate, which would be quite expensive since it covers a 20-year period. We have provided estimates of those costs to eight of the officers and can do the same for the others.

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. The employee is allowed a one-time election at the time of first employment or first eligibility to join the plan, whichever is latest.

The one-time election requirement was put into Maine law in 2009 as part of several other changes to align Maine law with federal pension law.

Because the one-time-election requirement derives from federal law, amending Maine law alone might not be sufficient. However, under the specific circumstances here, where these officers are in another plan provided by the employer that has the same employee contribution rate as the MainePERS plan, we believe that the officers may rejoin MainePERS while complying with federal law. We have been working with the sponsor and the officers on amended language for L.D. 711 to accomplish this and to make this relief available to anyone in the same circumstances. We understand that language may be offered as a committee amendment.

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