

Date: April 22, 2025

To: Senator Michael Tipping, Senate Chair
Representative Amy Roeder, House Chair
Members, Joint Standing Committee on Labor

From: Bill Brown, Director of Actuarial and Legislative Affairs

Subject: LD 1670, An Act to Establish the Maine Public Employees Retirement System Home Repair and Energy Upgrade Loan Program and Fund

Good afternoon Senator Tipping, Chair Roeder and the other distinguished members of the Joint Standing Committee on Labor. I am Bill Brown, Director of Actuarial and Legislative Affairs for the Maine Public Employees Retirement System (MainePERS).

MainePERS is testifying against LD 1670, An Act to Establish the Maine Public Employee Retirement System Home Repair and Energy Upgrade Loan Program and Fund, because it would direct MainePERS to reallocate trust funds from specific investments to a loan program in violation of the Maine Constitution. We also are concerned that the bill as drafted conflicts with federal plan qualification requirements and would impose unfunded liabilities on the plan, again in violation of the Maine Constitution. As always, we offer any assistance the committee may request surrounding this bill.

Article IX, Section 18, of the Maine Constitution states that "...all contributions and payments made to the (Maine Public Employees Retirement) system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes." Referred to as the "exclusive benefit" rule, this passage binds the MainePERS Board of Trustees to manage these funds in order to provide the benefits earned by and promised to members.

As drafted LD 1670 directs MainePERS to divert certain trust fund investments to provide low interest loans to members for home repairs, energy upgrades, the purchase of an electric vehicle and other similar purposes through a newly created Maine Public Employees Retirement System Home Repair and Energy Upgrade Loan Fund. Specifically the bill requires MainePERS to divest \$250 million of fossil fuel investments to fund the loan program. Because LD 1670 directs MainePERS to divest from specific investments, rather than make these decisions on the basis of sound investment criteria and fiduciary duties, it would violate Article IX, Section 18 of the Maine Constitution.

Constitutional concerns aside, certain provisions of LD 1670 are inconsistent with federal law governing what are commonly referred to as pension loans. The IRS requires that pension loans, together with any other plan loans the member might have, not exceed the greater of \$10,000 or 50% of the present value of the member's accrued benefit (capped at \$50,000) and that loans be repaid in full within 5 years. LD 1670 envisions loans of up to 100% of member's cumulative retirement system contributions, capped at \$25,000, with a repayment term of 10 years. Failure by a pension plan to comply with these IRS provisions endangers the qualified plan status of the plan and the federal tax deferral of member contributions that comes with it.

This bill would have a fiscal impact because the Constitution does not permit the creation of Unfunded Actuarial Liabilities (UAL). LD 1670 specifies an interest rate below plan earning assumptions, and all lending carries the risk of default. Awaiting guidance from this committee, we have not yet calculated these costs. The low interest rate also runs counter to plan qualification requirements, where IRS guidance states that the rate cannot be less than the rates charged by banks for similar loans.

It is also worth noting that the administration of a loan program is outside of the current scope of business for MainePERS. Developing, implementing and administering such a program would be a huge undertaking and require significant resources.

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