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Testimony Neither for Nor Against L.D. 1947
An Act to Amend the Laws Pertaining to the Maine Public Employees Retirement System

Good afternoon, Sen. Tipping, Rep. Roeder and to all the distinguished members of the Labor Committee. My name is Sue Hawes. I am from Portland. Thank you for the opportunity to testify Neither For Nor Against LD 1947.

After my husband's and my experiences with MainePERS disability retirement program since 2018, I have worked hard for and earned successes reforming and increasing transparency in the operations of the MainePERS disability program. I lament today witnessing the thwarting of the committee's oversight function by the Committee not being provided with the time and data to sufficiently review a twelve-page retirement system bill (originally sent to the Revisors office by the system's cloture date in early December 2024). The bill makes several changes without explanation of the impacts or why the change in statute is requested by the system (Secs. 11, 12, 26, 32-34, 41, 43) or whether the actuary has been consulted on proposed changes (Sec. 41).

However, my gravest concern is seeing the system moving backwards by increasing the system's discretion and decreasing transparency on the system's highly impactful processing of benefit overpayments. Through the bills Secs. 7, 27, 42, and 44, the system requests the committee remove the benefit overpayment guidance from the disability retirement laws. However, MePERS offers the committee suggested replacement language based upon its experience administering benefit overpayments. MePERS is often heard testifying that they "await guidance" from the committee. The Labor Committee applies oversight and guides MePERS by creating and amending statutes. Statutes guide rulemaking. Rulemaking supports transparency and equal treatment across retirees.

I remain acutely concerned about transparency in agency decisions, particularly as it relates to MePERS suddenly indebting a retiree by MePERS claiming the retiree has an overpayment of benefits. During my work on LD 1759 (131st), I learned of two individual disabled retirees where MePERS had claimed the system overpaid each approximately \$10,000. One of these individuals does not believe they were made to pay it back; the other reports they were made to pay it back. If true in the Courtois and McArdle cases, what were the differences leading to different overpayment decisions by MePERS staff? Who makes the decision to recoup an overpayment and in what circumstances? Under LD 1638 this session, the committee heard the experiences of disabled retirees where recoupment of overpayments due to the MePERS Social Security offset impoverishes and indebts disabled retirees.

I am concerned that Secs. 7, 27, 42, and 44 of the bill open the floodgates of runaway agency discretion and decreased transparency as to how overpayments of retirement benefits are recouped or "clawed back" by the agency leading me to ask:

1. **Which administrative processes led to disability benefit overpayments** by the agency totaling greater than \$1 million between 2015 and mid-2024? Just think for one minute the heartache and financial stress YOU would feel if you were already ill then suddenly you receive notice that you've been overpaid by MePERS and now you are indebted to MePERS for tens of thousands of dollars? How is MePERS administratively creating overpayments in the disability retirement program? What efforts has MePERS undertaken to reduce the occurrences of overpayments?
2. **How are benefit overpayments handled for regular service retirees?** At the April 10, 2025, Finance & Audit Committee meeting of the MePERS Board of Trustees, MePERS Director of Finance stated that benefit overpayments discovered during Employer Reporting reconciliations that were made to regular service retirees are NOT addressed by MePERS. I understand this to mean that the regular service retiree with a benefit overpayment continues to be overpaid, and no overpayment is recouped from the regular service retiree by the system—in other words, the exact opposite of how the system administers disability benefit overpayments.

Secs. 7, 27, 42, 44 remove the legislative guidance given to the agency directing a specific payback period when MePERS makes a claim of a disability benefit overpayment. The sections change the judicial, state emp/teacher, PLD plan and Consolidated LD Plan and REMOVE the clause that overpayments of disability benefits are recouped "during the next calendar year, the deductions to be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year for which the benefits are received..." It is good to remove this restrictive language, however it has been shown that if the retiree can find and afford an attorney familiar with MePERS, overpayments can be paid back over many years, notwithstanding the statute as it stood for many years.

The system proposes replacing that current guidance in each plan with a reference instead to the section of Ch. 421 General Provisions of the retirement system, 5 MRS §17054, "Legal process and assignment." Although I think it is good to refer to one place for overpayment guidance for all the plans for much-needed simplification of our retirement laws, the result is a vacuum leaving wide discretion for the system to decide behind the scenes who gets a free ride and who gets hammered with recoupment. Please do not simply accept the system's "just trust us" offering on overpayments in the system's bill. More information is needed about overpayments, as asked at #1 and #2 above, before informed decisions can be made on how the various types of overpayments and recoupments are handled by the system.

Furthermore, I again mention that I have found no evidence that the system is complying with the informal hearings statute before issuing a benefit overpayment decision, 5 MRS §17105-A which states, "Prior to any adverse decision rendered by retirement system staff with respect to the recoupment, suspension or termination of benefits, or assessment of penalties or interest, the affected member or retiree is entitled to an informal hearing to which the member or retiree may bring legal counsel. The retirement system shall issue a written decision; this decision is subject to the retirement system's review and appeal process pursuant to section 17451. [PL 2009, c. 322, §5 (NEW).]"

Where is the guidance to MePERS on how the system recoups overpaid benefits? Does MePERS track whether overpayments are "from a mistake of or incorrect information provided by an employee of the retirement system" pursuant to 5 MRSA §17054, sub-§3? What guides when amounts should be recouped and when they are not recouped? The Committee could amend the Annual Report to the Legislature [5 MRSA §17103 (11)] to include more useful data on benefit overpayments.

Notwithstanding the current statute stating, "recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule," testimony under LD 1638(132nd) of Mainers being impoverished by MePERS overpayment recoupment, and bankrupted in one case, demonstrated MePERS needs more specific guidance on overpayments. The committee first needs supporting data from MePERS describing existing internal controls and past agency experience of how and when benefit overpayments are administratively created and recouped by the system (see #1 and #2 above).

If the bill is passed, as is, the retirement plans will all point to this law 5 MRSA §17054 sub-§3 seen below. The existing language of §17054 sub-§3 is evidently insufficient legislative guidance for the apparent, but not yet quantified to the Committee by MePERS, many administrative conditions creating overpayments of benefits experienced by the Maine Public Employees Retirement System.

Thank you for listening to my concerns neither for nor against LD 1947. I am happy to try to answer any questions you may have.

Sec. 16. 5 MRSA §17054, sub-§3, as amended by PL 2011, c. 606, §9 and PL 2021, c. 548, §45, is further amended to read:

3. Recovery of overpayments by the retirement system. Any amounts due the retirement system as the result of overpayment or erroneous payment of benefits, an excess refund of contributions or overpayment or erroneous payment of life insurance benefits may be recovered from an individual's contributions, any benefits or life insurance benefits payable under this Part to the individual or the beneficiary of the individual or any combination of contributions and benefits. If the overpayment or excess refund of contributions resulted from a mistake of or incorrect information provided by an employee of the retirement system, or a mistake of the retiree or the recipient of the benefit or life insurance benefit, a penalty or interest may not be assessed by the retirement system. In all cases of recovery of overpayments through the reduction of a retirement benefit, whether with or without the assessment of interest by the retirement system, the recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule. The chief executive officer may also take action to recover those amounts due from any amounts payable to the individual by any other state agency or by an action in a court of competent jurisdiction. Whenever the chief executive officer makes a decision to recover any amounts under this subsection, other than by an action in a court of competent jurisdiction, that decision is subject to appeal under section 17451.