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Date: January 21, 2026

To: Senator Joseph Baldacci, Senate Chair
Representative Suzanne Salisbury, House Chair
Members, Joint Standing Committee on State and Local Government

From: Bill Brown, Director of Actuarial and Legislative Affairs

Subject: LD 1383, An Act to Require State Divestment from Perpetrators of International Human Rights Violations

Good morning, Chair Baldacci, Chair Salisbury and the other distinguished members of the Joint Standing Committee on State and Local Government. I am Bill Brown, Director of Actuarial and Legislative Affairs for the Maine Public Employees Retirement System (MainePERS).

MainePERS is opposed to LD 1383, An Act to Require State Divestment from Perpetrators of International Human Rights Violations. We oppose LD 1383 because the bill, if enacted, would conflict with our duty to members and retirees under the Maine Constitution. However, we are here to provide information and to offer any assistance the committee may request regarding this bill.

MainePERS administers a \$22 billion dollar trust fund to pay retirement benefits earned by teachers and State, county, municipal, and other governmental employees, many of whom do not have Social Security coverage and rely only upon their MainePERS benefit. The money in the trust fund originated from employee contributions and contributions from hundreds of employers, along with earnings from prudent investments.

MainePERS takes very seriously the trust placed in it to invest the retirement funds of public employees. Article IX, Section 18, of the Maine Constitution establishes a fiduciary duty to hold, invest, and disburse MainePERS' pension trust funds solely in the best financial interest of the members as pension recipients. In fulfilling its fiduciary obligations, the Board of Trustees owes MainePERS' members, retirees and beneficiaries a duty of loyalty: to follow the "exclusive benefit rule" established in the Maine Constitution by acting solely in the interests of the members, retirees, and beneficiaries as recipients of retirement or related benefits. This duty obligates the Board to not use their position of trust either for personal gain or to advance other causes.

The "exclusive benefit rule" is also reflected in the federal statutes and regulations that qualify MainePERS' retirement plans for federal tax deferment. Under federal law, qualified retirement fund assets must not be "used for, or diverted to purposes other than the exclusive benefit of [the] employees or their beneficiaries." 26 U.S.C. § 401(a)(2). The "phrase 'purposes other than for the exclusive benefit of [the] employees or their beneficiaries' includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees or their beneficiaries covered by the trust." 26 C.F.R. § 1.401-2(a)(3).

LD 1383 as drafted is contrary to these constitutional and federal requirements because it would prohibit MainePERS from holding a broad range of investments to further another purpose.

The sponsor has proposed an amendment to address this problem. The amendment adds a condition that the investment restrictions apply only to the extent that they are consistent with "sound investment criteria" and "fiduciary obligations." That may remove the direct constitutional conflict; however, the Legislature and proponents of this bill should understand that the amendment would result in MainePERS continuing to make investments pursuant to the "exclusive benefit rule" and not in a restricted manner. This would not be obstructionist, but in fulfillment of our constitutional obligation.

When the fossil fuel divestment bill was before the 130th Legislature, the Attorney General advised the Labor and Housing Committee that failing to include the "fiduciary obligations" condition was unconstitutional. The Attorney General continued with a warning that while adding the condition "arguably" avoids the constitutional conflict, doing so makes the investment restrictions "essentially hollow." If the MainePERS Board is already following its fiduciary duty in investment decisions, the new statute would not result in changes. Copies of the Attorney General's letter to the Labor Committee and a follow-up letter to MainePERS from the Attorney General's Office are attached to this testimony.

An additional concern is that the proposed amendment's description of the investment restrictions is both extremely vague and overly broad. Just determining what investments are covered would require determinations of whether a company or its affiliates have been accused, whether those accusations are "credible," whether they have been made by a "credible" organization, whether support is "material," whether violations are "gross," and whether a right is "internationally recognized." It would take vast resources to make these determinations, each of which would be open to dispute because of the vagueness of the definition. With respect to breadth, although the amendment refers to "arms manufacturer that contributes to genocide," the definition does not require any connection to genocide. Thus, any company deriving more than 10% of its gross revenues from the manufacture or sale of weapons, weapon systems, ammunition, or military-grade surveillance technologies is within the scope of the restrictions, along with all of its affiliates.

Because of these concerns, we ask that you vote ought-not-to pass on LD 1383. Thank you for your consideration of this testimony. I am happy to take your questions and will be present for any work session.