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**Testimony in Opposition to Senate Bill 700
Law Enforcement Officers' Pension System - Membership - 9-1-1 Specialists
Senate Budget and Tax Committee
February 22, 2024
8:30 A.M.**

**Anne Gawthrop
Director of Legislative Affairs
State Retirement Agency**

The Board of Trustees for the State Retirement and Pension System (System) wishes to express its opposition to Senate Bill 700, Law Enforcement Officers' Pension System - Membership - 9-1-1 Specialists.

Senate Bill 700 allows 9-1-1 specialists employed by a participating governmental unit to participate in the Law Enforcement Officers' Pension System (LEOPS) if their employer joins the LEOPS. Additionally, the 9-1-1 specialist must be certified by the Maryland Police Training Standards Commission as a law enforcement officer.

Currently, individuals serving as 9-1-1 specialists participate in the Employees' Pension System (EPS), if their employer participates in the EPS as a participating governmental unit. Eligibility for retirement in the EPS is either age 62 with five years of service if the member commenced service in the EPS prior to July 1, 2011, or age 65 with 10 years of service if the member commenced service in the EPS on or after July 1, 2011. Eligibility for retirement in the LEOPS is age 50 with five years of service if the member commenced service in the LEOPS prior to July 1, 2011, or age 50 with 10 years of service if the member commenced service in the LEOPS on or after July 1, 2011. Additionally, a member of LEOPS may also be eligible to retire after accruing 25 years of service, regardless of age or when the member was enrolled in the LEOPS.

The technical definition for "normal retirement age" as provided for by the Internal Revenue Service (IRS) states that it is the age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. The IRS has issued proposed regulations that address the definition of normal service retirement age for qualified governmental pension plans, specifically addressing normal retirement age for public safety officers.

The IRS proposed regulations provide that a normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable, and a normal retirement age lower than age 65 represents the age at which employees customarily retire in the industry. Additionally, the proposed regulations include several sets of safe harbors which would allow for a normal service retirement age lower than age 65, with specific safe harbors for qualified public safety employees. For these employees, the proposed safe harbors are:

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- age 50;
- combined age and years of service totaling 70 or more; or
- any age with 20 years of service.

Section 72(t)(10)(B) of the Internal Revenue Code defines a qualified public safety employee as any employee of a state or political subdivision of a state who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such state or political subdivision.

In the absence of final regulations, governmental plans must continue to comply with pre-ERISA vesting requirements. Under those rules, the normal retirement age is ordinarily age 65, and a plan may specify a lower age only if this lower age would be an age which employees customarily retire in the particular industry.

Senate Bill 700 is a reintroduction of Senate Bill 822 from the 2022 legislative session. At that time, tax counsel for the System reviewed the definition of a 9-1-1 specialist under §1-301(n) of the Public Safety Article, which includes language stating that a 9-1-1 specialist's duties include:

- receiving and processing 9-1-1 requests for emergency services;
- other support functions directly related to 9-1-1 requests for emergency services; or
- dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency.

After reviewing this definition, the System's tax counsel expressed concern that these duties would not satisfy the definition of a qualified public safety employee under I.R.C. § 72(t)(10)(B). Additionally, there was a concern that providing 9-1-1 specialists a normal retirement at age 50 or after accruing 25 years of service, regardless of age, is not consistent with the normal retirement age at which other equivalent positions (other non-qualified public safety employees) customarily retire in the industry. The System's tax counsel also reviewed the provision included in the 2022 legislation that provided that a 9-1-1 specialist eligible to participate in LEOPS must be certified by the Maryland Police Training Standards Commission as a law enforcement officer. The Agency was advised that law enforcement officer certification, alone, would not be sufficient to meet the definition of a qualified public safety employee under I.R.C. § 72(t)(10)(B). To meet this definition, the individual would have to actually be performing the duties of a law enforcement officer. The System's tax counsel has reviewed Senate Bill 700 and reported that their 2022 advice remains unchanged.

Based on this advice, we believe that permitting 9-1-1 specialists to receive a normal retirement after reaching age 50 or after accruing 25 years of service, regardless of age, would violate the I.R.S. proposed regulations addressing normal retirement age. Therefore, adding 9-1-1 specialists who do not meet the definition of "qualified public safety employees," will present tax qualification issues for the System.

We appreciate being given the opportunity to raise these issues with the Committee and stand ready to provide any further information or services the Committee might request regarding Senate Bill 700.