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Testimony in Support of Senate Bill 641
State Retirement and Pension Systems – Fiduciary Insurance
Senate Budget and Taxation Committee
February 18, 2021
9:00 A.M.

Anne Gawthrop
Director of Legislative Affairs
State Retirement Agency

The Board of Trustees for the State Retirement and Pension System wishes to express its support for Senate Bill 641, State Retirement and Pension Systems – Fiduciary Insurance. Senate Bill 641 is legislation sponsored by the Joint Committee on Pensions at the request of the Board.

Provisions of the State Personnel and Pensions Article of the Annotated Code of Maryland, require the State to purchase a bond for each System fiduciary in accordance with Title 9, Subtitle 17 of the State Government Article, which establishes a committee on bonding of State officers and employees, and provides for the State Treasurer to purchase bonds required by law and any additional bonds specified by the committee. Specifically, § 21-210 of the State Personnel and Pensions Article provides that a System fiduciary "may not exercise custody or control of System assets" unless bonded. Although the statute does not specify the type of bond that must be provided, analysis contained in the bill file for the legislation in 1977 suggested that the legislature intended that the State provide a fidelity bond similar to the bond required for plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA § 412, a fidelity bond must protect a plan against losses by reason of fraud or dishonesty, which encompasses all risks of loss that might arise through dishonest or fraudulent acts in the handling of funds, and generally includes larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts.
To address the statutory bond requirement, the State Treasurer's Office has purchased a $1 million employee theft policy for the System, covering direct loss or damage to money, securities, or other property caused by theft or forgery committed by a State Retirement Agency (Agency) employee or member of the Board of Trustees, whether identified or not, acting alone or in collusion with other parties. The policy also covers losses due to computer fraud.

The Agency and State Treasurer's Office recently undertook a review of the bonding provisions and evaluated the availability of fidelity bonds through the Treasurer's insurance broker. On review, it did not appear that the fidelity bonds available in the marketplace would afford effective protection to the System, as these bonds covered assets held by plans subject to ERISA, while governmental plans such as the System are exempt from ERISA's requirements. Additionally, an informal query of peer plans did not reveal any other governmental plan overseen by a board of trustees that is subject to a statutory bond requirement for its fiduciaries.

To address this issue, Senate Bill 641 amends provisions of the State Personnel and Pensions Article to provide that the State may satisfy the requirement to purchase a bond through the purchase of an insurance policy for the System. Additionally, the bill provides that the State Treasurer, in consultation with the Board of Trustees, shall determine the type and amount of coverage under the policy.

We appreciate being given this opportunity to express our support to the Committee and would request a favorable report on Senate Bill 641.