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**Testimony in Opposition of House Bill 446
Correctional Officers' Retirement System – Membership -Chaplains**

**House Appropriations Committee
February 4, 2020
1:00 P.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 House Bill 446, Correctional Officers' Retirement System – Membership – Chaplains.

House Bill 446 requires individuals serving as a Department of Public Safety and Correctional Services employee in the position of chaplain, and who are members of the Employees' Retirement System (ERS) or the Employees' Pension System (EPS) to be moved into the Correctional Officers' Retirement System (CORS) on July 1, 2020. Additionally, the bill provides that any individual hired on or after July 1, 2020 as a prison chaplain will be required to join the CORS as a condition of employment. Current ERS and EPS members serving in these positions will have until June 30, 2020 to transfer their ERS and EPS service credit into the CORS. Additionally, the bill provides that the Agency shall notify each of these individuals by January 1, 2021 of their transfer rights under this bill.

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. In January 2016, the IRS 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 to include federal correctional officers. Tax counsel for the System believes that members of the CORS, employed as correctional officers, would be found to meet this definition. However, we did want to alert the Committee to potential issues that may arise with regard to the members of the CORS who are not correctional officers, if these proposed regulations are enacted.

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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 included 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:

- 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. Additionally, while § 72(t)(10)(B) does not specifically include correctional or detention officers of state or local political subdivisions, it does include federal correction/detention officers in its definition of qualified public safety employees. Currently, members of the CORS may retire after 20 years of service, regardless of age. We believe this provision will likely satisfy the service-based safe harbor for qualified public safety employees (the CORS members employed as correctional officers) under the proposed normal service retirement age regulations.

The current class specifications for prison chaplains on the Department of Budget and Management website include examples of the work expected from these individuals. These examples include:

- access the needs of the population served according to expressed religious preference;
- develop an annual goal statement and evaluates the religious services program;
- develop and monitor a schedule of religious programming designed to meet with basic worship, religious, educational, and pastoral needs of active faith groups within security and program limitations;
- develop, monitor, and deliver worship services;
- perform sacraments and rites;
- provide pastoral counseling;
- provide instructional and personal growth opportunities directly to individuals of the chaplain's faith;
- assess the needs of individuals who request the assistance of the chaplain and responds appropriately;
- advise individuals of family death and illness and makes a recommendation about compassionate leave;
- prepare the chaplaincy services budget;
- prepare chaplaincy reports, needs assessments, program and performance evaluations, and other documents as required by regulations or as requested; and
- may serve as a member of the treatment team in assessing and treating clients

Tax counsel for the State Retirement and Pension System reviewed these examples of work for prison chaplains within the Department of Public Safety and Corrections and has expressed concern that these duties would not satisfy the definition of a qualified public safety employee under the I.R.C. § 72(t)(10)(B). Moreover, tax counsel is also concerned that providing prison chaplains with a normal retirement at any age with 20 years of service is not consistent with the normal retirement age at which other equivalent positions (other non-qualified public safety employees) customarily retire in the industry. Based on this advice, we believe that permitting prison chaplains to receive a normal retirement after accruing 20 years of service, regardless of age, would violate the I.R.S. proposed regulations addressing normal retirement age. Therefore, until the IRS provides further guidance regarding the Normal Retirement Age Regulations for Governmental Plans, adding employees to the CORS who do not meet the definition of "qualified public safety employees," will present tax qualification issues for the System because such employees would be entitled to the CORS retirement with 20 years of service, even though such retirement would violate the IRS proposed regulations.

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.