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To: Senator Jeanette White, Chair, Committee on Government Operations
Senator Jane Kitchel, Chair, Committee on Appropriations
Representative Sarah Copeland Hanzas, Chair, Committee on Government Operations
Representative Mary Hooper, Chair, Committee on Appropriations

From: Beth Pearce, Vermont State Treasurer
Chris Dube, Chair, Vermont Municipal Employees Retirement Board

Date: March 21, 2022

Re: S.170 – Treasurer’s Office and VMERS’ Chair Comments

Thank you again for the opportunity to review and comment on S.170 – An act relating to membership in the Municipal Employees’ Retirement System for certain county sheriff department employees. We have reviewed the bill and believe that it raises a number of issues. Moreover, it appears to be inconsistent with statute and core principles of retirement system administration.

S.170 does the following:

- Section 1 allows sheriff department employees who are in VSERS to transfer their membership to VMERS at any time in FY24.
- Section 2 amends certain VMERS definitions and includes sheriff department employees in the definition of “employee,” and sheriff departments in the definition of “employers.”
- Section 3 allows a sheriff department to enroll employees in VMERS, provided all contributions on behalf of the employee are deposited in the VMERS Fund.
- Section 4 requires a third-party study to determine the costs of transferring membership of sheriff department employees from VSERS to VMERS.

In many ways, S.170 is similar to a bill introduced in the last biennium – S.143. The Treasurer’s Office provided comments on that bill, along with supporting materials, and we include that as an appendix to this memorandum. Many of the same concerns raised by S.143 are present here as well.

For example, like S.143, S.170 appears to be redundant of existing authority insofar as sheriff departments are currently able to join VMERS, and four have already done so. In 2001, the Attorney General’s Office determined that a county sheriff’s department met the statutory criteria to join VMERS. A copy of that opinion is in the appended materials. In 2005, the Essex County Sheriff’s Department made the decision to join VMERS. This was within a few months of the July 2005 decision by Lamoille County to join VSERS. (See appended documents memorializing these decisions.) Accordingly, language authorizing county sheriff’s departments to join VMERS is not necessary.

The various sheriff departments had a choice to join VMERS or the Vermont State Employees Retirement System (VSERS). When a public employer elects to join a retirement plan, that decision is and should be irrevocable. The Legislature has required that decisions to join a particular plan are irrevocable. With respect to the VSERS statutes, 3 V.S.A. § 490 states that “[t]he agreement of any employer to contribute

on account of its employees shall be irrevocable....” The VMERS statutes have a similar provision, with 24 V.S.A. § 5053(c) providing that “[t]he vote by the legislative body of a municipality to join the Vermont Municipal Employees' Retirement System shall be irrevocable.” The Legislature made these decisions irrevocable for good reason.

The VSERS system has a larger unfunded liability when compared to VMERS. If an employer currently in the VSERS system were to be transferred into VMERS, thereby changing its assumptions, we believe that as a matter of equity, VMERS would need assume some additional cost. This would put more pressures on the other towns and cities that participate in VMERS. Retirement plans are meant to be stable, predictable, and reliable over the long term, both for the employer and employees. They are not designed to allow employers to switch membership based on current circumstances and preferences.

At the same time that S.170 is similar to the earlier S.143, S.170 is also different from its precursor in some important ways. S.143 focused on the sheriff department and its ability to join VMERS. S.170 appears to take a different approach. It appears to allow employees of sheriff departments who are in VSERS to selectively enroll their employees in VMERS. It also provides sheriff department employees in VSERS an opportunity in FY24 to enroll in VMERS, even if the sheriff department in which they work is not a member employer of VMERS.

This approach of allowing employees of a certain employer to participate in VMERS even where the employer does not elect to be in VMERS itself, is completely new to any of our systems. This is a substantial break from how the System is currently operated, where an employer first comes into the System and then employees of that employer can join as well. Given this, we are unsure at present of the full scope of concerns—both procedural and substantive—that this would raise. At minimum, significant further review of this bill is required.

Moreover, we are very concerned about the fact that the bill implements legislative changes before conducting a study to understand the costs of any transferring employees between VSERS and VMERS. S.170 would require changes in the VMERS statutes to take effect this summer, before the costs of any such changes are studied and understood. We believe that this bill will impose costs on the VMERS System, increasing its unfunded liability. We believe it is important to determine the costs and implementation issues of the change before making statutory changes effective.

Fundamentally, we believe that S.170 is unclear, is likely to raise significant implementation issues, and is likely to raise costs to municipalities who currently contract with sheriff departments for services. We have been asked by the VMERS Board to share its concerns about the bill as well. At their March meeting, the Board adopted the following motion: *The Board has reviewed S.170 and objects to it in its current form because it appears to increase costs to the municipalities and their taxpayers without providing any State employer contributions, and because of the reasons generally articulated in the Treasurer’s March 27, 2019 memorandum to legislators regarding S.143.*

Please let me know if I can be of any further assistance.