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To:	Committee on Labor and Housing
From:	David Gibson, Sierra Club Maine
Date:	April 8, 2021
Re:	Supplemental Testimony in Support of LD 99: **An Act To Require the State To Divest Itself of Assets Invested in the Fossil Fuel Industry**

Senator Hickman, Representative Sylvester, and members of the Committee on Labor and Housing: my name is David Gibson, and I represent Sierra Club Maine and our 22,000 supporters and members across the state. We voice our support and propose an amendment to strengthen this legislation: *LD 99 An Act To Require the State To Divest Itself of Assets Invested in the Fossil Fuel Industry.*

I am writing this in response to the MainePERS Supplemental Testimony dated 2/19/2021: https://www.mainepers.org/wp-content/uploads/pdfs/current-legislation/130th/MainePERS-LD-99-Supplemental-Labor-and-Housing-Hearing-Information-2-19-2021.pdf

Overview: The MainePERS Supplemental Testimony submitted on February 19th skims over some important details, and makes several misleading claims. Sierra Club Maine wanted to ensure that the committee is making a fully informed decision. The first part of our testimony takes a closer look at the actual financial losses that fossil fuel investments have had on the MainePERS system, utilizing the additional details provided in their testimony. The second part of our testimony discusses investment strategy, and challenges the claims made by MainePERS that divesting from fossil fuels will require a fundamental change in their investment strategy. The third part of our testimony refutes several misleading statements made by MainePERS, to clarify that:

1. Divestment does have a negative impact on fossil fuel companies, and therefore has a positive impact on climate change.
2. Environmental, Social and Corporate Governance (ESG) policy is not an adequate replacement for complete divestment from fossil fuels.
3. Investing in fossil fuel companies that claim to be transitioning to clean energy is not a sound investment policy, and is not a stand-in for actual investments in clean energy.

Next, we propose an amendment to strengthen LD 99, that would ensure complete divestment from all fossil fuel holdings. This will safeguard the MainePERS portfolio from losses across the fossil fuel sector, and follows the intent of the legislation to make sure that all fossil fuel holdings are divested. Finally, I close by reinforcing the benefit of reinvesting the divested funds into efficiency, clean energy and climate solutions, and the added benefits of doing so in Maine.

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To start, we wanted to highlight just how poorly the fossil fuel sector has performed. The supplemental testimony from MainePERS includes a table on page 5 showing 'MainePERS Energy and Utilities Sector Holdings' and their valuations as of 12-31-19 and 12-31-20. **This shows that their fossil fuel investments declined from $1,410,536,762 to $1,277,274,410 losing more than $133 million in the past year.** (Note, due to typos in the 'Total' line in their chart, I added up the underlying numbers in their table, and conducted additional analysis: https://docs.google.com/spreadsheets/d/1y82Dw0vUxTN-PMMjkO8VGW13Rc5ChTthYHtMDiwygjU/edit?usp=sharing) **The $133 million MainePERS lost on their fossil fuel investments last year would have been enough money to pay for a $215,000 solar array on every single public school in Maine.**

However, the negative impact of fossil fuels on their investment portfolio was actually far greater than that. The remainder of their investments (after subtracting out the fossil fuels) increased 9.17% from $13,980,748,457 to $15,262,811,818 in calendar year 2020. If their fossil fuel investments had been invested in the rest of the market, their $1.41 billion would have increased to $1,539,885,881, so their holdings would have gained $129 million in the past year. **Adding together the $133 million their fossil fuel investments lost and the $129 million in gains they missed out on shows the total impact of $262 million that fossil fuel investments cost the Public Employee Retirement System.** MainePERS has about 100,000 members in the retirement system, so these fossil fuel losses cost ~$2,600 per member, just within the last year.

If you make the comparison between fossil fuel investments and clean energy investments (keeping the funds invested in the same market sector), the difference is astonishing. Tesla's stock increased 743% from $83.67 to $705.67 between 12/31/19 to 12/31/20. Over the same period, SolarEdge stock increased 235% from $95.09 to $319.12, FirstSolar increased 77% from $55.96 to $98.92 and Vestas Wind increased 135% from $33.22 to $78.23. These representative clean energy companies demonstrate that MainePERS potentially could have doubled their investments last year if their $1.4 billion in fossil fuel holdings had instead been invested in clean energy. **MainePERS should have divested from fossil fuels in 2014. It is imperative that they divest now from all public and private equities that include fossil fuel holdings.**

Their supplemental testimony is noticeably lacking any discussion of the actual losses their fossil fuel portfolio has suffered, or any justification for the continued decline of these investments, which appears to violate their fiduciary responsibilities. There is no discussion of the table shown, nor of the actual historical performance of their fossil fuel investments, either over the past year or in prior years. **LD 99, including complete divestment from the fossil fuel sector, is consistent with the constitutional mandate for MainePERS to provide for the exclusive benefit of their members.**

Clearly, losing $133 million last year, and millions more in the years before, does not provide any benefit to the MainePERS members. As described in my previous testimony, the fossil fuel industry is losing market share to renewables and will be forced out of business by climate action and regulations like the Paris Climate Accord. Looking ahead, there will be no benefit provided to MainePERS members by long-term losses across the entire industry sector.

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The MainePERS testimony dated 2/19/21 implies that divesting from fossil fuels will require a change from a passive to an active investment strategy. Divestment does not require a change to 'active investing'. It requires a one-time reallocation of investments, divesting from fossil fuels and reinvesting those funds elsewhere. It appears that MainePERS has already taken the first step in this process: identifying their full $1.272 billion portfolio of fossil fuel investments. All of the public sector investments can be sold off, and the proceeds can be reapportioned to other investments. Once this one-time reallocation is made, the passive approach can be maintained, sans fossil fuels.

For the Private Market investments, additional care will be required. These investments may have additional restrictions, and the divestment may need to be spaced out over several years to avoid excess penalties. However, this does not require a substantial change to the MainePERS investment activities, it simply adds a short-term requirement that they sell off any existing fossil fuel investments and screen fossil fuels out of future investment options.

After the initial sell-off of current fossil fuel holdings, this will actually simplify the review process for new private equity investments. For every investment proposal MainePERS receives, they can start by asking, '*Does this fund make any investments in the fossil fuel industry?*' If the answer is '*Yes*', then they can decline to invest in that private equity without any further review. This will save at least 10% of the time MainePERS currently spends vetting new investments, since it appears that at least 10% of these private equity funds include fossil fuels.

It is concerning that they highlight their 'target asset allocations' as being 45% public and 45% private, when in actuality 70% of their assets are in private equities ($11.6 billion out of $16.54 billion). It appears that they are overdue for a reallocation of assets; divesting from fossil fuels can easily be incorporated as part of the normal reallocation process.

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I also want to refute a few statements made by MainePERS with no supporting evidence.

1. On page 4, they state: "Our public shareholdings are not only passively held for reasons described earlier, but divesting stocks already on the open market is costly and **has no effect on the climate**." (emphasis added)

This is plainly not true. Pension fund and independent investors divesting stocks have an impact on the actions taken by fossil fuel companies, and factor into corporate decision-making. In fact, several of the fossil fuel companies that MainePERS hold investments in have made statements in their annual reports that contradict their assertion. Exxon-Mobil's 2020 annual report (https://corporate.exxonmobil.com/-/media/Global/Files/investor-relations/annual-meeting-materials/annual-report-summaries/2020-Annual-Report.pdf) includes this statement on page 23 under 'Item 1A: Risk Factors'.

> **"Climate change and greenhouse gas restrictions.** Driven by concern over the risks of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions or production and use of oil and gas. These include adoption of cap and trade regimes, carbon taxes, trade tariffs, minimum renewable usage requirements, restrictive permitting, increased efficiency standards, and incentives or mandates for renewable energy. **Political and other actors and their agents also increasingly seek to advance climate change objectives indirectly, such as by seeking to reduce the availability of or increase the cost for, financing and investment in the oil and gas sector and taking actions intended to promote changes in business strategy for oil and gas companies. Depending on how policies are formulated and applied, they could have the potential to negatively affect investment returns, make our products more expensive or less competitive, lengthen project implementation times, and reduce demand for hydrocarbons**, as well as shift hydrocarbon demand toward relatively lower-carbon sources such as natural gas. Current and pending greenhouse gas regulations or policies may also increase our compliance costs, such as for monitoring or sequestering emissions." (emphasis added)

Stanmore Coal, an Australian coal mining company that MainePERS has made new investments in as recently as 2019 through the Taurus Mining Finance Fund, shares the sentiment. This statement is in their 2020 annual report (https://stanmorecoal.com.au/sites/default/files/2021-03/Stanmore%20Coal%20-%20Annual%20Financial%20Report%2031%20Dec%202020.pdf) on page 23, under 'Access to Capital':

> "There is no guarantee that additional funding through debt will be available, or if it is, there is no guarantee that such new funding will be on terms acceptable to the Consolidated Entity. Global credit markets have been severely constrained in the past, and the ability to obtain new funding or refinance may in the future be significantly reduced. **Increasingly, financial institutions have made public statements in relation to their unwillingness to finance certain types of coal mines and coal-fired power stations.**
>
> If the Consolidated Entity is unable to obtain sufficient funding, either due to banking and capital market conditions generally, or due to factors specific to the coal sector, the Consolidated Entity may not have sufficient cash to meet its ongoing capital requirements or the ability to expand its business." (emphasis added)

Both of these fossil fuel companies are clearly concerned about divestment. Divestment decreases the availability of capital and increases the cost of capital, which creates a very real risk for their businesses. Additionally, no one would argue that investing $1.272 billion into efficiency, clean energy, and climate solutions would have no impact on the climate. **Divesting from fossil fuels and re-investing into efficiency, clean energy and other climate solutions will very clearly have a positive impact on the climate.**

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2. In several instances throughout their testimony, including their ‘Ideas for moving forward’, MainePERS proposes using Environmental, Social and Corporate Governance (ESG) policies like corporate engagement and proxy voting as an alternative to divestment. Engagement and proxy voting is not an effective means to address climate change. Shareholder action will never convince a corporation to change their primary industry focus; you simply cannot convince a fossil fuel company to leave the fossil fuel industry. The best proof of this is found on page 2 of the MainePERS testimony:

> “For example, MainePERS voted in opposition to management and in favor of 3 shareholder proposals at Exxon Mobil regarding separating the role of CEO and Board Chair, and increasing disclosure concerning Gulf Coast risks and lobbying. **While these proposals failed**, our proxy voting and direct engagement, along with that of other institutional investors, are valuable tools for effecting change on important issues impacting the values of our investments.” (emphasis added)

Publicly traded companies have millions of different shareholders. MainePERS holds less than 0.01% of Exxon Mobil’s stock, $14.37 million out of ExxonMobil’s $239 billion market capitalization. With a total influence of less than 1 in 10,000 votes, MainePERS has no ability to influence the direction of the fossil fuel company. **Their proposal for utilizing ESG instead of divesting is a red herring, and would both have less impact on addressing climate change than divestment and expose their investment portfolio to tremendous risk.**

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3. In their oral testimony, MainePERS discussed the importance of continuing to own fossil fuel stocks because those companies are now making investments in clean energy. On page 5 of the supplemental testimony, they say, “Similarly, many fossil fuel companies counted below have significant business lines unrelated to fossil fuels, such as Shell – an energy company with growing businesses in renewables, hydrogen, and EV charging stations.”

This is a dangerous path to walk. While a handful of fossil fuel companies have made public shows of embracing clean energy, their past actions speak louder than their words. In 2002, BP tried rebranding themselves ‘BeyondPetroleum’ without making substantial changes to their core business structure. After causing the largest oil spill in world history with the Deepwater Horizon spill in 2010, they sold off most of their wind and solar assets.

(https://www.forbes.com/sites/scottcarpenter/2020/08/04/bps-new-renewables-push-redolent-of-abandoned-beyond-petroleum-rebrand/?sh=1cba8a741ceb)

However, the most important element of this alleged transition within the fossil fuel industry is the underlying toxic assets on their balance sheet. Research has shown that 80% of known fossil fuel reserves need to stay in the ground to avoid catastrophic climate change. These reserves have already been 'discovered' by the fossil fuel companies, and are listed as assets on their balance sheets. These corporations have been borrowing money (receiving investments from MainePERS and others) based on their known fossil fuel reserves. Retaining 80% of these reserves in the ground creates stranded assets for these corporations, meaning that most of their current value is actually worthless. (Overview of stranded assets: https://carbontracker.org/terms/stranded-assets/, this detailed article describes stranded assets in the fossil fuel industry: https://www.ft.com/content/95efca74-4299-11ea-a43a-c4b328d9061c) **Why would you invest in a company with billions of dollars in expected stranded assets, when you can invest in another company doing the same work without these liabilities? If MainePERS wants to invest in clean energy, they should be investing in companies that focus solely on clean energy, not ones that are making these claims in an attempt to greenwash their image.**

On page 5 of their testimony, they highlight their exposure to pipelines. "Utilities and pipelines account for 75% of our 2020 fossil fuel exposures reported in the table." The table shows that they currently hold $486 million in 'Oil & Gas Storage & Transportation' (pipelines and related infrastructure). Climate change activists, including Bill McKibben, have identified stopping pipelines as the key to preventing runaway climate change. Additionally, pipeline companies can never transition to clean energy.

Relating to climate change, pipelines are the riskiest investment, and have the greatest impact on increased fossil fuel use. Any new pipeline that is built will lock in decades of additional extraction and consumption of oil and gas. In the past few years, climate activists and indigenous peoples have successfully stopped the Keystone XL pipeline, the Atlantic Coast pipeline, and have caused the Dakota Access pipeline to be shut down and emptied pending further environmental review.
(https://www.nytimes.com/2020/07/08/climate/dakota-access-keystone-atlantic-pipelines.html)

Here in Maine, concerned citizens successfully blocked an attempt to reverse flow in the Portland-Montreal pipeline, which would have brought tar sands oil through South Portland for export. (https://en.wikipedia.org/wiki/Portland%E2%80%93Montreal_pipeline) These pipeline investments have no ability to support the clean energy transition, and negate the claims that MainePERS has made in their testimony that they're holding onto fossil fuel stocks like Shell as a way to invest in clean energy.

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Proposed Amendment to LD 99:
We'd like to propose an amendment to LD 99. As it is drafted, the bill would not require MainePERS to divest their private equities, or to divest fossil fuel companies outside of the 200 companies with the largest reserves. This would leave the majority of the MainePERS fossil fuel exposures intact.

Amending the legislation is important to protect the MainePERS members from the full breadth of exposure to current fossil fuel investment risks. This amendment requires MainePERS and the State of Maine to divest from Private Market investments ($881 million according to the MainePERS testimony) in addition to publicly traded stocks ($396 million per their testimony), and requires Maine to divest from all companies who participate in the fossil fuel industry, not only those who own reserves in the ground. Companies that participate in other aspects of the fossil fuel industry, like pipelines, refineries and power plants, pose just as much investment risk at the ones who own reserves.

Suggested amendment:

Definitions:

Fossil fuel: The term "fossil fuel" means coal, petroleum, natural gas, or any derivative of coal, petroleum, or natural gas that is used for fuel.

Fossil fuel infrastructure: The term "fossil fuel infrastructure" means oil or gas wells; oil or gas pipelines; refineries; oil, coal or gas-fired power plants; oil and gas storage tanks; fossil fuel export terminals; and any other infrastructure used exclusively for fossil fuels.

Fossil fuel company: The term "fossil fuel company" means any company that:

1. *is among the 200 publicly traded companies with the largest fossil fuel reserves. (https://www.ffisolutions.com/research-analytics-index-solutions/research-screening/the-carbon-underground-200/)*
2. *is among the 30 largest public-company owners of coal-fired power plants. (https://macroclimate.com/coal)*
3. *owns any fossil fuel infrastructure.*
4. *the core business is the exploration, extraction, refining, processing, or distribution of fossil fuels.*
5. *receives more than 50% of gross revenue from companies that fall within 1, 2, 3, or 4.*

This legislation requires divestment from all fossil fuel companies, including both publicly traded companies and private equity investments, by January 1, 2026.

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I would strongly encourage the committee to consider adding requirements relating to how the divested funds are reinvested. This creates a tremendous opportunity for MainePERS to invest in climate solutions here in Maine.

My previous testimony described how the Nevada Governor's Office of Energy offered zero-interest loans to state employees to finance efficiency improvements in their homes. By partnering with Efficiency Maine, Coastal Enterprises, or others, MainePERS could create a $100 million investment fund to offer low-interest loans to public employees for efficiency and clean energy improvements. If these loans are repaid through a payroll deduction, it is impossible for an individual to default on the loan unless they leave public employment. If these loans were only offered to public employees and existing PERS members, it should meet the constitution's 'exclusive benefit' clause.

I mentioned above how the $133 million that these fossil fuel investments lost last year could have paid for a $215,000 solar array on every school in Maine. I would encourage the committee to require MainePERS to create a $100-$200 million fund to finance the upfront cost of efficiency and clean energy improvements for public buildings. These projects have a guaranteed return on investment, but require large upfront investments. Setting a very low interest rate of 0-2% could still generate steady income for the retirement fund (far better than annual losses on fossil fuels), while making improvements to the buildings that public employees use on a daily basis.

While any remaining funds can be distributed across the rest of the portfolio, this is a prime opportunity to increase investments in efficiency and renewable energy. Both globally and here in Maine, there will be a tremendous need for insulation, air source heat pumps, solar panels, wind turbines, electric vehicles and similar solutions as we transition from fossil fuels to clean energy. This will reduce our statewide fossil fuel expenses (currently ~$4 billion annually), and recirculate much of those funds in the local economy. The global clean energy transition equates to the largest investment opportunity in a generation. Re-investing the MainePERS funds that are divested from fossil fuels into clean energy and climate solutions will position the retirement system to maximize returns, while keeping investments within the energy sector.

Making investments into projects and companies based in Maine can generate more than just a return on investment for the PERS system. It would also create local jobs, help retain billions of dollars that currently leaves the state to pay for fossil fuels, increase state and local tax revenues, and thus feed back into the PERS system through additional public employees. These local economic benefits should not be discounted.

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Thank you for your consideration, and thank you again to Representative O'Neil for bringing this important issue forward. Please vote to amend and pass LD 99.