

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1450

S. P. 452

In Senate, March 22, 1979

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Chapman of Sagadahoc.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish the Maine Judicial Retirement System.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 4 MRSA c. 8 is enacted to read:

CHAPTER 8

JUDICIAL PENSIONS

§ 421. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Accrued benefits.** "Accrued benefits" shall mean the benefits that a member has a right to receive after completion of at least 10 years of creditable service.

2. **Accumulated contributions.** "Accumulated contributions" shall mean the sum of all amounts credited to a member's individual account, together with interest at a rate to be determined by the board of trustees.

3. **Actuarial equivalent.** "Actuarial equivalent" shall mean a benefit of equal value when computed on the basis of current assumptions used by the actuary.

4. **Average final compensation.** "Average final compensation" shall mean the average annual rate of earned compensation of a member during any 3 years of service as a judge, not necessarily consecutive, in which the annual rate of earned compensation is highest.

5. **Board of trustees.** "Board of trustees" shall mean the board of trustees of the Maine Judicial Retirement System.

6. **Child or children.** "Child or children" shall mean any unmarried, natural born or unborn or legally adopted son or daughter of the member under 18 years of age.

7. **Consumer Price Index.** "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All items, 1967=100, as compiled by the Bureau of Labor Statistics, United States Department of Labor; or, if the index is revised or superseded, the Consumer Price Index shall be the index represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

8. **Creditable service.** "Creditable service" shall mean all service as a judge for which contributions are made.

9. **Disability retirement.** "Disability retirement" shall mean retirement of a member prior to normal retirement age, who is unable, because of failing health, to perform his duties as a judge.

10. **Early retirement.** "Early retirement" shall mean retirement prior to age 65 with 10 or more years of service.

11. **Earned compensation.** "Earned compensation" shall mean actual compensation.

12. **Employer contribution.** "Employer contribution" shall mean the percent contributed by the State on account of each member.

13. **Fiduciary.** "Fiduciary" shall mean either a bank or professional investment manager.

14. **Fund.** "Fund" shall mean the Maine Judicial Retirement Fund.

15. **Judge.** "Judge" shall mean any Justice of the Supreme Judicial and Superior Courts and any Judge of the District and Administrative Courts.

16. **Masculine pronoun.** The "masculine pronoun", wherever used, shall be nonspecific as to gender.

17. **Member.** "Member" shall mean any judge sworn in after January 1, 1980 or any judge who elects to purchase credit for prior judicial service under the provisions of section 422, except that any judge whose age at the time of appointment precludes the receipt of retirement benefits shall not be required to be a member.

18. **Normal retirement age.** "Normal retirement age" shall mean retirement at age 65 or after 15 years of service, whichever is later.

19. **Regular interest rate.** "Regular interest rate" shall mean interest at such a rate as may be set from time to time by the board of trustees.

20. **Retirement.** "Retirement" shall mean either normal retirement, early retirement or disability retirement, which shall occur prior to a judge's 71st birthday.

21. **Surviving spouse.** "Surviving spouse" shall mean a person married to the member, who survives him.

22. **Termination.** "Termination" shall mean discontinuance of service as a judge.

§ 422. name and date of establishment

There is established the Maine Judicial Retirement System. The retirement system shall cover all judges first sworn in after January 1, 1980. Judges first sworn in prior to that date are covered by the provisions of the previous retirement system. The establishment of the Maine Judicial Retirement System shall in no way affect or impair expectancies, rights, duties or obligations arising or created under the previous retirement system for judges covered under that system. Judges covered by the provisions of the previous retirement system have the right, within 6 months of January 1, 1980, to purchase credit in the Maine Judicial Retirement System for prior service as a judge. When a judge elects to become a member of the Maine Judicial Retirement System by purchasing credit in the system for prior judicial service, he foregoes all rights under the previous retirement system. Credit for prior judicial service shall be purchased by paying into the Maine Judicial Retirement Fund 6.5% of the past salary for each year or portion of a year of prior service elected to apply toward judicial retirement. Payment shall include interest at the regular interest rate plus 2% on the percentage of salary contributed pursuant to this paragraph, from the date contributions would have been due to the date actually paid.

Judges who withdraw contributions after termination of service may upon later restoration to membership, and within 6 months of the date they are sworn in, pay into the fund 6.5% of the past salary for each year or portion of a year of prior service elected to apply toward judicial retirement. These years or portions of years shall be consecutive and run from the last date of service backward. Payment shall include interest at the regular interest rate plus 2% on the percentage of salary contributed pursuant to this paragraph, from the date of withdrawal to the date payment begins.

The method of payment for prior service shall be determined by the board of trustees.

§ 423. Administration

1. Board of trustees; responsibilities. The responsibility for proper operation of the Maine Judicial Retirement System is vested in a board of trustees. The board shall formulate policies and exercise general supervision under this chapter. Administrative responsibility, including the approval of the payment of all benefits under this chapter, shall be vested in the Administrative Office of the Courts.

The board shall be appointed by the Chief Justice and shall be comprised of the following 7 members: One Supreme Judicial Court Justice; one Superior Court Justice; one judge either from the District or Administrative Courts; one retired judge; one representative from the Maine State Employees' Retirement Board; and 2 persons, one of whom shall be qualified through training or experience in the field of investments or banking and one of whom shall be qualified through training or experience in the pension aspects of accounting or insurance.

Each member of the board shall serve a term of 3 years. Of the judges initially appointed, one shall be appointed for a term of one year, one for a term of 2 years and one for a term of 3 years. The retired judge shall be appointed for a term of 3 years. Of the other 3 initial trustees, one shall be appointed for a term of one year, one for a term of 2 years and the 3rd for a term of 3 years.

2. Expenses. All actual and necessary expenses incurred by trustees through service on the board of trustees shall be reimbursed from the funds of the retirement system. Board members, except those who are receiving payments from the State in the form of a salary, shall be entitled to \$50 per diem when engaged in official retirement system duties.

3. Vote. Each trustee is entitled to one vote. Four trustees shall constitute a quorum for any business of the board.

4. Rules and regulations. Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the transaction of business and for the administration of the funds under their supervision.

5. Chairman. The board of trustees shall elect a chairman from its membership. Fiscal and secretariat services required to transact the business of the retirement system shall be provided by the Administrative Office of the Courts.

Expenses incurred in the operation of the retirement system shall be paid out of the fund. Data necessary for performing the actuarial valuation of the retirement system and for any studies made of the system shall be specified by the board of trustees, in consultation with the actuary designated under subsection 7 and shall be compiled and kept by the Administrative Office of the Courts.

6. Minutes. The board of trustees shall keep minutes of all of its proceedings. The board shall prepare a report yearly showing the fiscal transactions, assets and liabilities of the retirement system for each fiscal year. The actuary's report

on the actuarial valuation of the final condition of the system for the fiscal year shall be included in the report. The report shall be submitted to the Chief Justice no later than the December following the end of each fiscal year.

7. Actuary.

A. The board of trustees shall designate an actuary who, if an individual, shall be a Fellow of the Society of Actuaries. If the actuary is a firm of actuaries, it shall designate one of its members to perform the functions required of the actuary under this chapter and that member shall be a Fellow of the Society of Actuaries. The actuary shall be the technical advisor to the board of trustees on matters regarding the operation of the funds created by this chapter. He shall certify the amounts of the benefits payable under this chapter.

B. The actuary shall make annual valuations of the assets and liabilities of the retirement system and shall furnish a written report to the board of trustees with respect to each such valuation. Each report shall also include an analysis of the year's operations.

C. The actuary shall make such investigations as he deems necessary as to the factors which affect the cost of the benefits provided by the retirement system, for the purpose of determining the actuarial assumptions to be recommended to the board of trustees for adoption in connection with actuarial determinations required under this chapter. These investigations shall be made as frequently as the actuary deems expedient, but at least once in each 3-year period following January 1, 1980.

8. Fiduciary. The board of trustees shall employ a fiduciary or fiduciaries for investment purposes and may employ other investment counsel or expert professional or other assistance as may be necessary to aid in carrying out its functions.

The board shall have the power to enter into a contract with the bank fiduciary to carry out the investment functions of the board. Under the terms of the contract, the bank fiduciary may be authorized to have custody of all or any of the assets belonging to the retirement system and to invest and reinvest the funds of the retirement system in its discretion within the framework of the general investment policies of the board of trustees. The board of trustees shall adopt a policy that no investments are to be made which would reflect adversely on the impartiality of the Maine judiciary. The board shall receive reports of the investments, and any changes therein, at least quarterly or upon request. Fees of the fiduciary, investment counsel or expert professional shall be paid from the earnings received from investments.

9. Contracts or agreements. The board of trustees shall have the power to enter into a contract or agreement with any bank, trust company or safe deposit company for custodial care and servicing of the securities belonging to the retirement system to the extent that there may be any such securities which are not held by the bank fiduciary under subsection 8. These services shall consist of

the safekeeping of the securities, preparation of coupons for collection, the actual collection of these coupons, periodic checks of the portfolio deposited for safekeeping to determine all calls for redemption, in whole or in part, of any bonds owned by the retirement system, and any other fiscal service which is normally covered in a custodial contract or agreement. In performing services under any such contract or agreement, the contracting bank shall have all of the powers and duties prescribed for trust companies by Title 9-B, section 623.

The board of trustees is empowered to arrange for the payment of these services, either by cash payments to be charged pro rata to the income of the system, or by an agreement through which funds deposited with the bank in question serve in lieu of the cash payment, or by some combination of both methods of payment. The contracting bank shall give assurance of proper safeguards, which are usual to such contracts, and shall furnish insurance protection satisfactory to both parties.

A person or persons designated by the board of trustees, shall be empowered to withdraw or deposit securities from or with the custodian as circumstances may require, except that all withdrawals or delivery instructions shall bear the written approval of 2 other persons duly authorized by a resolution of the board of trustees.

§ 424. Finance

1. **Maine Judicial Retirement Fund.** There is created and established a fund to be known as the Maine Judicial Retirement Fund. The fund shall be composed of:

- A. Contributions from judges participating in the system;
- B. Contributions from the State; and
- C. All interest on investments and funds deposited.

2. **Trustees.** The members of the board of trustees shall be the trustees of the fund and shall be authorized to cause these funds to be invested and reinvested in accordance with the prudent man rule subject to periodic approval of the investment program by the trustees.

3. **Contributions.** Contributions from a member participating in the judicial retirement system shall be credited to his individual account. Contributions shall be deducted from the earned compensation of each member. The board of trustees shall certify to the State Controller that a judge is a member of the retirement system and the State Controller shall cause deductions to be made from the compensation of each member so certified for each and every payroll period. Contributions to the retirement system shall be deducted during a nonretired member's term of office.

4. **Employer contribution.** On account of each member there shall be paid by the State each year an amount called the employer contribution which shall be computed pursuant to section 426.

5. **Investment funds.** After allocation of funds to operate the system and to fund the reserves, funds derived from investments shall be allocated in the discretion of the board.

§ 425. **Judges' contributions**

Each member shall contribute at a rate of 6.5% of earned compensation for each year or portion of a year of service.

§ 426. **Employer contribution**

The percent of employer contribution shall be fixed on the basis of the assets and liabilities of the retirement system as set by actuarial valuation. This figure shall be determined on actuarial bases adopted by the board of trustees and shall be periodically reevaluated by the board of trustees and the designated actuary. The employer contribution rate shall be determined as the percentage of the members' compensation payable during members' periods of membership required to provide the difference between the total liabilities for retirement benefits not provided by the members' contributions and the amount of assets in the fund.

§ 427. **Return of accumulated contributions**

If the service of any member has terminated, other than by death or retirement, the member shall be paid, upon proper application to the board of trustees, the amount of his accumulated contributions, plus the regular interest rate. If payment is requested at a time when accrued benefits have been earned, return of accumulated contributions shall end further obligation on the part of the State.

§ 428. **Service retirement**

1. **Actual retirement.** Any member who reaches age 65 during his term of office and has completed at least 10 years of creditable service upon written application to the board of trustees setting forth the date on which he wishes to retire, will receive benefits upon actual retirement.

2. **Termination prior to age 65.** Any member with at least 10 years of creditable service terminating service prior to age 65 but after reaching age 55 upon written application to the board of trustees may elect either: Full accrued benefits to be paid commencing with his reaching age 65; or immediate payment of actuarially equivalent benefits.

3. **Termination prior to age 55.** Any member with at least 10 years of creditable service terminating service prior to age 55 upon written application to the board of trustees may elect either: Full accrued benefits to be paid commencing with his reaching age 65; or payment of actuarially equivalent benefits at an earlier age than 65, but not earlier than age 55.

4. Retirement prior to 71st birthday. All members shall retire prior to their 71st birthday. Members, other than those designated active retired judges, who do not retire prior to their 71st birthday, shall lose their right to retirement benefits and will be entitled to return of accumulated contributions only.

§ 429. Service retirement benefits

1. Benefits paid for life. All service retirement benefits shall be paid for life in equal biweekly installments, including any fraction of a month up to the date of death. Except for disability retirement, no member shall receive payment of full accrued benefits until age 65 or receive payment of actuarially equivalent benefits until age 55.

2. Termination with 15 years service. Any member terminating service with 15 years of creditable service shall be entitled to receive 80% of his average final compensation per year.

3. Termination with 10 but less than 15 years service. Any member terminating service with more than 10 years creditable service, but less than 15 years creditable service, shall be entitled to receive a retirement benefit of 80% of the member's average final compensation multiplied by the ratio of the actual number of years of creditable service, including any portion of years, to 15, the ratio never to exceed one.

§ 430. Disability retirement

1. Inability to perform duties. Any member of the retirement system who, while in service is unable, by reason of failing health, to perform his duties as a judge, may upon petition to or by order of the Supreme Judicial Court, and upon approval by a majority of the Justices of the Supreme Judicial Court, be retired prior to his retirement age.

2. Retirement for disability. A member retired for disability by the Supreme Judicial Court prior to normal retirement age shall receive retirement benefits at 80% of his average final compensation regardless of whether he would otherwise have been able to receive these benefits. This retirement shall terminate his judicial service.

3. Disability retirement; survivor. The surviving spouse, or, if none, the children of a judge who dies after disability retirement shall receive the same benefits as survivors of a judge who dies after retirement as set forth in section 431.

§ 431. Survivor benefits

1. Survivor benefits. All survivor benefits shall be paid in equal biweekly installments.

2. Death of a member before retirement. On the death of a member before retirement, the surviving spouse is entitled to lifetime payments based on 50% of the average final compensation of the member. If no spouse survives, or upon

the death of a surviving spouse, the member's then surviving children, as the case may be, under 18 years of age, while living, and until they respectively reach their 18th birthday, are entitled to share equally in payments based on 50% of the average final compensation of the member.

3. **Death of member after retirement.** On the death of the member after retirement, the surviving spouse is entitled to lifetime payments based on 50% of the average final compensation of the member. If no spouse survives, or upon the death of a surviving spouse, the member's then surviving children, as the case may be, under 18 years of age, while living, and until they respectively reach their 18th birthday, are entitled to share equally in payments based on 50% of the average final compensation of the member.

§ 432. **Cost-of-living adjustment for retired judges**

Retirement benefits and survivor benefits shall be adjusted automatically by the board of trustees in accordance with the percentage change in the Consumer Price Index from July 1st to June 30th of each year. The adjustment in retirement benefits shall be made up to a maximum annual increase or decrease of 4%. This adjustment shall also be applied to survivor benefits. No retirement benefit shall be decreased below the initial level of that benefit at the time a member terminates service. No survivor benefit shall be decreased below the initial level of the benefit paid the survivor upon the member's death.

§ 433. **Exemption from taxation and execution**

The right of a person to a retirement benefit, the retirement benefit itself, to the return of contributions, any survivor benefit or any other right accrued or accruing to any person under this chapter, and the money in the fund created thereby, shall be exempted from any state, county or municipal tax in the State, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable except as this chapter specifically provides.

§ 434. **Active retired justices and judges**

Justices and judges retiring under this chapter who apply for active retired justice or judge status shall be appointed and confirmed and shall be entitled to the same benefits as if the justice or judge had terminated service under the prior retirement system applicable to Justices of the Supreme Judicial Court, Justices of the Superior Court and Judges of the District and Administrative Courts respectively.

Sec. 2. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	1979-80	1980-81
JUDICIAL DEPARTMENT		
Unallocated	\$5,011	\$5,256

STATEMENT OF FACT

This bill is presented by the Judicial Council and establishes a new Maine Judicial Retirement System based on actuarial principles. The new system places judicial retirement for justices and judges first sworn in after January 1, 1980 on a sounder and fairer basis while protecting the rights of sitting justices and judges who wish to remain covered by the provisions of the existing retirement system.

The major features of the Maine Judicial Retirement System that would be created are:

1. The system is funded by money from 3 sources: An employee (judge) contribution; an employer (state) contribution; and any income from investments or interest. The system is prefunded so that moneys accumulated now will be available to pay for benefits later;

2. Each participating judge contributes 6.5% of his earned compensation each year. The employer contribution is computed for each year based on actuarial assumptions;

3. According to an actuarial study of the new system, the system is expected to cost the State less than the current judicial retirement system;

4. Retirement with full benefits is possible after 15 years of judicial service. Retirement is possible between 10 and 15 years with the retired judge receiving a percentage of full benefits;

5. Regardless of the member's age at retirement, full benefits are not paid until the judge reaches 65 years of age. Payment of actuarially reduced benefits is possible after age 55 if the member elects to receive such benefits;

6. Members who retire with full benefits receive 80% of their average final compensation;

7. A surviving spouse or children of a member receive 50% of the member's average final compensation;

8. Cost-of-living adjustments may be provided in any year based on the percentage increase or decrease in the Consumer Price Index. No retirement or survivor benefits may be increased or decreased more than 4% in any year nor decreased below the initial payment level; and

9. This bill would not in any way affect the rights of sitting justices and judges sworn in prior to January 1, 1980 in the existing Retirement System. Sitting justices and judges may elect to participate in the new Maine Judicial Retirement System by purchasing credit for prior judicial service.