

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 890

H.P. 656

House of Representatives, March 22, 1989

Reference to the Committee on Aging, Retirement and Veterans suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative DELLERT of Gardiner.

Cosponsored by Senator CLARK of Cumberland and Representative SMALL of Bath.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Amend the Definition of Teacher in the Laws Relating to  
the Maine State Retirement System.

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(EMERGENCY)



1           **Emergency preamble.** Whereas, Acts of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted  
3 as emergencies; and

5           Whereas, the principal purpose of this legislation is to  
6 clarify the rights of certain employees of school administrative  
7 units relative to membership in the Maine State Retirement System  
8 as "teachers"; and

9           Whereas, most new employees of school administrative units  
10 begin employment before the expiration of the 90-day period; and

11           Whereas, it is in the best interest of employees and school  
12 administrative units to have employees enrolled in their benefit  
13 programs from the time of initial employment; and

14           Whereas, in the judgment of the Legislature, these facts  
15 create an emergency within the meaning of the Constitution of  
16 Maine and require the following legislation as immediately  
17 necessary for the preservation of the public peace, health and  
18 safety; now, therefore,

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

23           **Sec. 1. 5 MRSA §17001, sub-§29-A is enacted to read:**

24           29-A. Professional employee. "Professional employee" means  
25 any employee engaged in work:

26           A. Predominantly intellectual and varied in character as  
27 opposed to routine mental, manual or mechanical work;

28           B. Involving the consistent exercise of discretion and  
29 judgment;

30           C. Of such a character that the product or result of the  
31 work cannot be standardized in relation to a given time  
32 period; and

33           D. Requiring knowledge of an advanced type in a field of  
34 science or learning customarily acquired by a prolonged  
35 course of specialized intellectual instruction and study in  
36 an institution of higher learning, as distinguished from a  
37 general academic education or from an apprenticeship or from  
38 training in the performance of routine mental, manual or  
39 physical processes.

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48           **Sec. 2. 5 MRSA §17001, sub-§42, as amended by PL 1985, c. 808,**  
49 **§§1 and 2, is repealed and the following enacted in its place:**

1           42. Teacher. "Teacher" means:

3           A. Any employee of a public school who fills any position  
5           which the Department of Educational and Cultural Services  
7           requires be filled by a person who holds the appropriate  
9           certification or license required for that position and:

11                   (1) Holds appropriate certification from the  
13                   Department of Educational and Cultural Services; or

15                   (2) Holds an appropriate license issued to a  
17                   professional employee by a licensing agency of the  
19                   State;

21           B. Any employee of a public school who fills any position  
23           not included in paragraph A, the principal function of which  
25           is to introduce new learning to students;

27           C. Any employee of a public school on June 30, 1989, in a  
29           position not included in paragraph A or B which was included  
31           in the definition of teacher in effect on June 30, 1989, as  
33           long as:

35                   (1) The employee does not terminate employment; or

37                   (2) The employee terminates employment and returns to  
39                   employment in a position in the same classification  
41                   within 2 years of the date of termination.

43           Regardless of any subsequent employment history, any  
45           employee of a public school in a position which was included  
47           in the definition of teacher in effect on June 30, 1989, is  
49           entitled to creditable service as a teacher for all service  
51           in that position on or before that date;

53           D. Any employee of a public school in a position not  
55           included in paragraph A, B or C who was a member of the  
57           retirement system as a teacher on August 1, 1988, as long as:

59                   (1) The employee does not terminate employment; or

61                   (2) The employee terminates employment and returns to  
63                   employment in a position in the same classification  
65                   within 2 years of the date of termination;

67           E. Any former employee of a public school in a position not  
69           included in paragraph A, B or C, who was a member of the  
71           retirement system as a teacher before August 1, 1988,  
73           provided that the former employee returns to employment in a  
75           position in the same classification before July 1, 1991; or

77           F. For service before July 1, 1989, any employee of a  
79           public school in a position which was included in the  
81           definition of teacher before July 1, 1989.

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3  
**Sec. 3. Transfer of membership and creditable service.**

5 Each employee of a public school employed in a position  
7 included in the definition of teacher as defined in the Maine  
9 Revised Statutes, section 17001, shall become a teacher member of  
the Maine State Retirement System as of July 1, 1989, unless,  
being eligible to do so, that person exercises one of the  
following options.

11 1. Any employee in a public school whose membership in the  
13 Maine State Retirement System is subject to transfer from that of  
15 a participating local district member to that of a teacher member  
as a result of this Act shall have the option of remaining a  
participating local district member.

17 2. Any employee in a public school whose employment by that  
19 school is covered by the United States Social Security Act who  
21 would become a teacher member of the retirement system as a  
result of this Act shall have the option of declining membership  
in the retirement system.

23 These options must be exercised by written notification  
25 received by the Executive Director of the Maine State Retirement  
System before January 1, 1990, upon which date the options expire.

27 Any employee of a public school whose membership in the  
29 Maine State Retirement System is subject to transfer from that of  
31 a participating local district member to that of a teacher member  
33 as a result of this Act, who does not exercise option 1 or 2,  
35 shall have the option of becoming a teacher member as of July 1,  
1989, and retaining creditable service before that date as  
participating local district service credit. This option must be  
exercised by written notification received by the executive  
director of the retirement system before January 1, 1990, when  
the options expire.

37 The provisions of the Maine Revised Statutes, Title 5,  
39 Sections 17656 and 18253 notwithstanding, the creditable service  
41 and earnable compensation, as a participating local district  
43 member, of any employee of a public school whose membership in  
45 the Maine State Retirement System is transferred from that of a  
47 participating local district member to that of a teacher member  
49 shall be included with that member's creditable service and  
51 earnable compensation as a teacher member; except that, if the  
member is required by this Act to make additional contributions,  
the creditable service and earnable compensation shall not be  
transferred until after the required additional contributions  
have been made and the accumulated contributions transferred to  
that member's account as a teacher member. To the extent  
appropriate, the granting of additional service credits based  
upon additional contributions shall be subject to the Maine

1 Revised Statutes, Title 5, section 18353, and applicable rules of  
the Board of Trustees of the Maine State Retirement System.

3  
4 Any employee of a public school employed in a position  
5 included in the definition of teacher as amended by this Act, who  
6 does not have service credit for the period of employment in that  
7 position before July 1, 1989, as a participating local district  
8 employee and who does not exercise option 2 is entitled to  
9 service credit for the period of time upon payment of  
10 contributions as required by section 4 of this Act. Granting of  
11 this service credit shall be subject to Title 5, section 17753.

13 **Sec. 4. Members contributions.**

15 The contributions in the account of any employee of a public  
16 school whose membership in the Maine State Retirement System is  
17 subject to transfer from that of a participating local district  
18 member to that of a teacher member as a result of this Act, shall  
19 be transferred to that member's account as a teacher as of July  
20 1, 1989, unless the member exercises one of the options provided  
21 by section 3 of this Act prior to January 1, 1990.

23 Any employee of a public school whose contribution rate as a  
24 participating local district member is less than the contribution  
25 rate of teacher members, shall, before that member's  
26 contributions are transferred, make such additional contributions  
27 as are needed to increase the accumulated contributions to an  
28 amount equal to the amount that that member's accumulated  
29 contributions would have been had the member contributed at the  
30 same rate that teacher members contributed during the period when  
31 the member was a participating local district member. To the  
32 extent appropriate, the payment of additional contributions shall  
33 be subject to the Maine Revised Statutes, Title 5, section 18305  
34 and applicable rules of the board of trustees.

35  
36 Any employee of a public school employed in a position  
37 included in the definition of teacher as amended by this Act, who  
38 does not have service credit for the period of employment in that  
39 position before July 1, 1989, as a participating local district  
40 employee and who does not exercise option 2 in the first  
41 paragraph of section 3 of this Act, may elect to pay into the  
42 Members' Contribution Fund an amount equal to the contributions  
43 that member would have paid had the member been a teacher member  
44 during the entire period of employment in that position when that  
45 person was not a member. Payments shall be made in accordance  
46 with Title 5, section 17704 and any applicable rules of the board  
47 of trustees.

49 **Sec. 5. Employers contributions.**

51 The provisions of the Maine Revised Statutes, Title 5,  
sections 17656 and 18253 notwithstanding, whenever the membership

1 and creditable service of an employee of a public school is  
2 transferred from that of a participating local district member to  
3 that of a teacher member as provided by section 3 of this Act,  
4 the funds transferred in accordance with Title 5, section 18253,  
5 subsection 1, paragraph C shall be augmented by an amount that is  
6 sufficient to fund the benefit, based upon the member's previous  
7 creditable service, granted in accordance with section 3 of this  
8 Act.

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10 **Emergency clause.** In view of the emergency cited in the  
11 preamble, this Act shall take effect when approved.

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14 **STATEMENT OF FACT**

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16 This bill replaces the definition of teacher for the purpose  
17 of membership in the Maine State Retirement System. This  
18 definition is an attempt to follow the practices of the  
19 Department of Educational and Cultural Services, that is, the  
20 bill references certification and licensing since the department  
21 requires certification for persons employed in positions such as  
22 teachers, guidance counselors and librarians and requires that  
23 persons employed in positions such as nurses, social workers and  
24 psychologists hold appropriate licenses. In addition, any person  
25 who fills a position which the department determines to have as  
26 its principal function the introduction of new learning, such as  
27 an assistant teacher or an associate teacher would also be  
28 eligible to be a member of the retirement system as a "teacher."  
29 The bill also requires that that employee must hold the required  
30 certification or license. Failure to qualify for and obtain the  
31 certification or license would make the employee ineligible to  
32 hold the position and therefore ineligible for membership in the  
33 Maine State Retirement System as a "teacher."

34  
35 The positions of school dietician and school secretary are  
36 included in the present definition of teacher, but are not  
37 included in the new definition. Persons employed in those  
38 positions on June 30, 1989, may continue membership as "teachers"  
39 provided they do not terminate or if they do terminate their  
40 employment, they must return within 2 years to employment in the  
41 same classification.

42  
43 Any former employee of a public school who was a teacher  
44 member before July 1, 1989, in a position not included in the new  
45 definition of teacher, may, if that person returns to employment  
46 in a position in the same classification as the position  
47 formerly held within 2 years, continue to be a teacher member.  
48 If that person returns to employment in a position included in  
49 the new definition of teacher, or as a state employee at any time  
50 that person may retain teacher member service credits for the  
51 previous period of employment. If any such former employee  
should again become a member as a participating local district

1 employee, rather than a teacher or state employee, the benefit  
for the 2 periods of service would be calculated separately; that  
3 is, 2 benefits would be calculated, based upon the years of  
service and the average final compensation attributable to each  
5 period of employment. If that person has withdrawn the  
contributions, they must be repaid in accordance with Title 5,  
7 section 17703 and applicable rules of the board of trustees and  
service credits will be granted in accordance with Title 5,  
9 section 17757 and applicable rules of the board of trustees.

11 The definition of "professional employee" is added in  
section 2 of this bill to make certain that the phrase, as used  
13 in the definition of teacher, is correctly interpreted.

15 Sections 4 and 5 of this bill address the problems relating  
to present employees of public schools who will be affected by  
17 the change in the definition of "teacher."  
19