

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND SPECIAL SESSION-1991

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Legislative Document

No. 1987

H.P. 1405

House of Representatives, December 18, 1991

Reported by Representative JALBERT for the Joint Standing Committee on Aging, Retirement and Veterans pursuant to Joint Order H.P. 1403.

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

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act Related to Membership in the Maine State Retirement System  
for Part-time, Seasonal and Temporary Employees.**

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(EMERGENCY)



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

4  
Whereas, regulations issued by the Internal Revenue Service  
6 require changes in Maine's retirement system laws before January  
1, 1991 in order to avoid state and employee payments into the  
8 United States Social Security System; and

10  
Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
12 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
14 safety; now, therefore,

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

18 **Sec. 1. 5 MRSA §17001, sub-§1, as amended by PL 1987, c. 739,**  
§§1 and 48, is further amended to read:

20  
1. **Accumulated contributions.** "Accumulated contributions"  
22 means the sum of all the amounts contributed by the member or  
picked up by the employer from the compensation of a member and  
24 credited to the member's individual account in the Members'  
Contribution Fund, plus regular interest on the member's account,  
26 as provided in subchapter IV, article 2, except that, for a  
member with less than 10 years of creditable service, if the  
28 amounts contributed by the member or picked up by the employer do  
not equal 7.5% of the member's compensation for service as a  
30 part-time, seasonal or temporary employee for service rendered  
after December 31, 1991, "accumulated contributions" includes as  
32 much of the employer's contribution in the Retirement Allowance  
Fund as is needed to reach 7.5% of the member's compensation for  
34 service as a part-time, seasonal or temporary employee.

36 **Sec. 2. 5 MRSA §17001, sub-§13, ¶E** is enacted to read:

38 E. "Earnable compensation" of a part-time, seasonal or  
temporary employee is the sum of amounts computed under  
40 paragraphs A, B, C and D adjusted to reflect the wages or  
salary that the member would have been paid if the member  
42 had been employed, at the member's rate of pay, for the  
number of days or hours that a permanent full-time employee  
44 of the same employer would have been employed.

46 **Sec. 3. 5 MRSA §17001, sub-§26-A** is enacted to read:

48 26-A. Part-time, seasonal or temporary employee.  
"Part-time, seasonal or temporary employee" means an employee

2 whose employment position is part-time, seasonal or temporary as  
3 defined in 26 CFR Part 31.

4 **Sec. 4. 5 MRSA §17001, sub-§43** is enacted to read:

6 43. 26 CFR Part 31. "26 CFR Part 31" means 26 Code of  
7 Federal Regulations, Part 31, as amended effective July 1, 1991,  
8 or as hereafter amended.

10 **Sec. 5. 5 MRSA §17156**, as amended by PL 1989, c. 95, §1, is  
11 further amended to read:

12 **§17156. Rate of interest**

14  
15 The board shall, from time to time, by order, set the rate  
16 of regular interest at a percent rate compounded periodically  
17 determined by the board to be equitable, both to members and to  
18 the taxpayers of the State, provided that the interest credited  
19 to a member with less than 10 years of creditable service on  
20 contributions related to compensation for service rendered as a  
21 part-time, seasonal or temporary employee after December 31, 1991  
22 must at least equal the yield of a 10-year United States treasury  
23 bond on the last business day of the previous calendar year  
24 reduced by administrative expenses.

26 **Sec. 6. 5 MRSA §17653**, as enacted by PL 1985, c. 801, §§5 and  
27 7, is repealed and the following enacted in its place:

28 **§17653. Denial of membership rights**

30  
31 1. Board of trustees. The board may deny membership to any  
32 class of employees whose compensation is set on any basis other  
33 than a per annum basis and that is not required by 26 CFR Part 31  
34 to be covered by a public employee retirement system or the  
35 United States Social Security System.

36  
37 2. Maine Technical College System. The Maine Technical  
38 College System may deny membership to adjunct faculty members and  
39 part-time, seasonal or temporary employees.

40  
41 **Sec. 7. 5 MRSA §17705, sub-§2, ¶B**, as enacted by PL 1987, c.  
42 256, §6, is amended to read:

44 B. No interest may be added to the member's account for any  
45 period beyond the 5th anniversary of the date of the  
46 member's termination of service, except that interest on  
47 accumulated contributions related to a member's compensation  
48 for service rendered as a part-time, seasonal or temporary  
49 employee after December 31, 1991 must be added as required  
50 by 26 CFR Part 31.

2           **Sec. 8. 5 MRSA §17705, sub-§2, ¶¶D and E**, as amended by PL  
1987, c. 739, §§18 and 48, are further amended to read:

4  
6           D. Only Except when inclusion of a portion of employer  
contributions is required by paragraph F, only accumulated  
8           contributions made by a particular member or picked up by  
the employer may be refunded to that member under this  
10           section.

12           E. The member must have properly applied for a refund of  
accumulated contributions, provided except that rules  
14           ~~adepted-by-the-board-may-provide-for~~ the retirement system  
may make an automatic refund of contributions if the member  
16           has not properly applied for a refund and the amount of  
accumulated contributions is less than \$650. In the case of  
18           a part-time, seasonal or temporary employee the \$650  
limitation does not apply.

20           **Sec. 9. 5 MRSA §17705, sub-§2, ¶F** is enacted to read:

22           F. The amount of the refund of accumulated contributions  
related to a member's compensation for service rendered as a  
24           part-time, seasonal or temporary employee after December 31,  
1991 must be at least equal to 7.5% of the member's  
26           compensation for that service plus interest as provided by  
section 17156. The right to a refund under this paragraph  
28           is nonforfeitable until the member has accrued 10 years of  
creditable service but does not constitute a right to a  
30           retirement benefit.

32           **Sec. 10. 5 MRSA §17953, sub-§1**, as amended by PL 1991, c. 469,  
§2, is further amended to read:

34           **1. Refund of contributions.** The amount of the qualifying  
36           member's accumulated contributions, as determined under section  
17705, is paid:

38           A. To the qualifying member's designated beneficiary, if  
40           any;

42           B. If the qualifying member is not survived by a designated  
beneficiary, to the first listed of the following relatives  
44           alive at the qualifying member's death:

46                   (1) Surviving spouse;

48                   (2) Child or children, regardless of age, sharing  
equally among themselves; or

50

(3) The older parent; or

C. To the qualifying member's estate.

**Sec. 11. 5 MRSA §18201, sub-§3**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

**3. Exempt employees.** The local district shall designate in its approval any class of employees, ~~otherwise provided for by local pension provisions, who are~~ that the district determines to be exempt from this Part.

**Sec. 12. 5 MRSA §18251, sub-§1**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

**1. Compulsory membership.** Membership is compulsory for all employees entering the service of a participating local district after the date of establishment for the participating local district, ~~but not for employees exempted under~~ except as otherwise provided by subsection 2; under section 18201, subsection 3; or under section 18252; or section 18256.

**Sec. 13. 5 MRSA §18256**, as enacted by PL 1985, c. 801, §§5 and 7, is repealed and the following enacted in its place:

**§18256. Denial of membership rights**

**1. Board of trustees.** The board may deny membership to any class of employees whose compensation is set on any basis other than a per annum basis and that is not required by 26 CFR Part 31 to be covered by a public employee retirement system or United States Social Security System.

**2. Local district.** A participating local district may deny membership to part-time, seasonal and temporary employees to the extent and in the manner provided by board rules.

**Sec. 14. 5 MRSA §18306, sub-§2, ¶B**, as enacted by PL 1987, c. 256, §25, is amended to read:

B. No interest may be added to the member's account for any period beyond the 5th anniversary of the date of the member's termination of service, except that interest on accumulated contributions related to a member's compensation for service rendered as a part-time, seasonal or temporary employee after December 31, 1991 must be added as required by 26 CFR Part 31.

**Sec. 15. 5 MRSA §18306, sub-§2, ¶¶D and E**, as amended by PL 1987, c. 739, §§36 and 48, are further amended to read:

2 D. Only Except when inclusion of a portion of employer  
4 contributions is required by paragraph F, only accumulated  
6 contributions made by a particular member or picked up by  
the employer may be refunded to that member under this  
section.

8 E. The member must have properly applied for a refund of  
10 accumulated contributions, provided except that rules  
12 adopted by the board may provide for the retirement system  
14 may make an automatic refund of contributions if the member  
has not properly applied for a refund and the amount of  
accumulated contributions is less than \$650. In the case of  
a part-time, seasonal or temporary employee the \$650  
limitation does not apply.

16 **Sec. 16. 5 MRSA §18306, sub-§2, ¶F** is enacted to read:

18 F. The amount of the refund of accumulated contributions  
20 related to a member's compensation for service rendered as a  
22 part-time, seasonal or temporary employee after December 31,  
24 1991 must be at least equal to 7.5% of the member's  
26 compensation for such service plus interest as provided by  
section 17156. The right to a refund under this paragraph  
is nonforfeitable until the member has accrued 10 years of  
creditable service but does not constitute a right to a  
retirement benefit.

28 **Sec. 17. 5 MRSA §18553, sub-§1,** as amended by PL 1991, c. 469,  
30 §5, is further amended to read:

32 **I. Refund of contributions.** The amount of the qualifying  
34 member's accumulated contributions, as determined under section  
18306, is paid:

36 A. To the qualifying member's designated beneficiary, if  
38 any;

40 B. If the qualifying member is not survived by a designated  
42 beneficiary, to the first listed of the following relatives,  
44 if any are alive at the qualifying member's death:

46 (1) Surviving spouse;

48 (2) Child or children, regardless of age, sharing  
equally among themselves; and

(3) The older parent; or

50 C. To the qualifying member's estate.

2           **Sec. 18. Repeal.** If the Executive Director of the Maine State  
4 Retirement System certifies that 26 Code of Federal Regulations,  
6 Part 31 is amended in a way that the retirement laws in effect on  
8 December 15, 1991 related to part-time, seasonal or temporary  
10 employees comply with federal law without requiring the State to  
12 contribute to the United States Social Security System for those  
employees, the sections of this Act that amend those laws are  
repealed. The Maine State Retirement System shall immediately  
notify the joint standing committee of the Legislature having  
jurisdiction over aging, retirement and veterans matters if that  
certification is made.

14           **Sec. 19. Review.** The Joint Standing Committee on Aging,  
16 Retirement and Veterans shall, by March 15, 1992, review changes  
18 made in the retirement laws in this Act and any changes made in  
20 federal requirements related to retirement coverage of part-time,  
seasonal or temporary employees and may report out legislation to  
make any changes it recommends in those laws.

22           **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect December 31, 1991.

24

#### FISCAL NOTE

26

28           This bill will require future additional General Fund  
30 appropriations and Highway Fund allocations estimated at  
32 approximately \$260,000 and \$14,000 annually. Other Fund  
34 allocations may also require future adjustments. The total  
estimated annual increase in employer contributions by the State  
is approximately \$300,000. These amounts may be subject to  
change based on changes in federal regulations and subsequent  
legislative action.

36

38           The Maine State Retirement System will also incur additional  
40 administrative costs of \$150,000 in fiscal year 1991-92 and  
\$50,000 annual costs in subsequent years. These additional  
administrative costs may also increase future employer  
contributions.

42

#### STATEMENT OF FACT

44

46           This bill is in response to an amendment to the Federal  
48 Social Security Law and an Internal Revenue Service (IRS)  
50 regulation (26 Code of Federal Regulations, Part 31) that require  
that all public employees who are not members of an  
employer-sponsored retirement plan be covered by social  
security. The federal law and IRS regulation contain particular



2 provisions that deal with part-time, seasonal and temporary  
4 employees and, in determining how to treat part-time, seasonal  
6 and temporary employees for purposes of retirement and social  
8 security, public employers have several options. For example,  
10 they may exclude all part-time, seasonal and temporary employees  
12 from their employer-sponsored retirement plans. They may exclude  
14 from their plans all part-time, seasonal and temporary employees  
16 who have not vested. They may exclude all part-time, seasonal  
18 and temporary employees hired after a certain date. Employees  
20 who are excluded under any of these 3 options are covered by  
22 social security and both the employer and the employee pay social  
24 security taxes on the employees' wages.

26 Another option of employers is to include part-time,  
28 seasonal and temporary employees in their employer-sponsored  
30 plans. If the public employer chooses this option, the  
32 retirement plan must meet certain requirements related to  
34 vesting, minimum benefits and computation of earnable  
36 compensation. If the employer's plan does not meet these  
38 requirements, the employer and the part-time, seasonal and  
40 temporary employees are subject to social security taxes even  
42 though they also make contributions to the employer-sponsored  
44 plan.

46 This bill amends the Maine State Retirement System laws to  
48 meet the requirements of the federal law and the IRS regulation  
for part-time, seasonal and temporary employee participation. A  
Maine State Retirement System member who terminates with less  
than 10 years of creditable service is entitled to a refund  
equivalent to 7.5% of compensation earned as a part-time,  
seasonal or temporary employee, plus interest to the date of the  
distribution of the refund at the rate required by the IRS.  
Part-time, seasonal and temporary employees with more than 10  
years of creditable service are vested in a retirement benefit  
like all other employees. The earnable compensation of  
part-time, seasonal and temporary employees is adjusted to comply  
with the requirement of the IRS regulation that either  
compensation or time, but not both, may be prorated when their  
retirement benefits are calculated.

46 Under this bill, participating local districts have the  
48 option to include or not include their part-time, seasonal or  
temporary employees in the Maine State Retirement System. This  
bill also allows the Maine Technical College System to enroll  
adjunct faculty and part-time, seasonal or temporary employees in  
the United States Social Security System instead of the Maine  
State Retirement System.

This bill provides that if federal regulations are amended  
to permit the current treatment of part-time, seasonal and  
temporary employees these changes are repealed.

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