

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1458

S.P. 466

In Senate, May 6, 1993

An Act to Clarify the Role and Purpose of the Maine State Retirement System.

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27. Reference to the Committee on Aging, Retirement and Veterans suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TITCOMB of Cumberland.

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

4
6 Whereas, the Maine State Retirement System was created as a
trust and a service organization to receive employment-based
contributions to be invested for the purpose of providing
8 retirement, disability and death benefits to state employees,
teachers and employees of participating local districts; and

10
12 Whereas, the type and level of these benefits and the
criteria and conditions of eligibility for benefits are
determined by the Legislature, or in the case of participating
14 local districts by the governing body of each district, and not
by the Maine State Retirement System or its board of trustees; and

16
18 Whereas, the board of trustees and the Maine State
Retirement System are responsible as fiduciaries for the trust
funds and as administrators for the management of the system's
20 funds and for the equitable and efficient administration of the
benefit programs created by the Legislature, including the
22 provision of adequate information and assistance to State
Government, to school administrative units and to participating
24 local districts and for the provision of adequate information and
counseling to individual members; and

26
28 Whereas, the Maine State Retirement System is increasingly
put into the position of deciding and enforcing decisions related
to benefit type and level and eligibility for benefits and
30 related recordkeeping and reporting, a position that is
incompatible with the system's role as a service organization,
32 its fiduciary role, and its administrative responsibilities,
including particularly its responsibilities to inform, educate
34 and assist members and the entities for whom they work; and

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

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

44 **Sec. 1. 5 MRSA §247 is enacted to read:**

46 **§247. Maine State Retirement System audits**

48 **1. Unit established.** The Employee Benefits Audit Unit is
established in the Department of Audit. Auditors in the unit
50 must be familiar with laws, rules and policies governing the

2 Maine State Retirement System, the Maine Judicial Retirement
4 System and the Maine Legislative Retirement System and the
6 procedures and programs of these systems.

8 2. Periodic audits. The Employee Benefits Audit Unit shall
10 perform periodic audits of state departments and agencies, school
12 administrative units and participating local districts, as
14 defined in Part 20, that have employees who are members of the
16 Maine Judicial Retirement System, the Maine Legislative
18 Retirement System or the Maine State Retirement System or who
20 otherwise participate in the programs administered by these
22 systems, for the purpose of ensuring compliance with relevant
24 laws, rules and policies. The Executive Director of the Maine
26 State Retirement System shall establish the time frames for and
28 scope of periodic audits in consultation with the State Auditor.

30 3. Special audits. The Employee Benefits Audit Unit shall
32 perform special audits when information becomes available
34 warranting immediate review. Special audits may be initiated by
36 the State Auditor and must be initiated by the State Auditor when
38 requested by the Executive Director of the Maine State Retirement
40 System, on the schedule and of the scope as requested by the
42 executive director.

44 4. Reports. Immediately following the completion of each
46 audit, the State Auditor must submit to the Executive Director of
48 the Maine State Retirement System a report of the findings and
50 conclusions of the audit.

52 5. Funding. The Department of Audit shall charge to the
54 Maine State Retirement System an hourly rate for work performed
56 under this section by the Employee Benefits Audit Unit. The rate
58 must be based on salaries and fringe benefits for auditors in the
60 Employee Benefits Audit Unit and for related clerical staff.
62 Expenses related to work performed by auditors under this section
64 are charged to the Maine State Retirement System.

66 Sec. 2. 5 MRSA §17101, sub-§1, as enacted by PL 1985, c. 801,
68 §§5 and 7, is amended to read:

70 1. Purpose. There is established a retirement system,
72 under the supervision of the board, for the purpose of providing
74 retirement allowances and other benefits under this Part for
76 employees. The system is established as a trust for the benefit
78 of its members, recipients of benefits and of the State's
80 taxpayers in that the retirement income and other benefits it
82 provides represent members' deferred receipt of compensation
84 earned by employment by which members provide for their own
86 financial support in retirement and other benefits associated
88 with employment. The system must be operated in the role of a

2 service organization with responsibility to inform, educate,
4 advise and assist members, recipients of benefits and employers
6 as to their respective responsibilities and rights and with
8 responsibility to promote and protect their equitable and
10 consistent treatment.

12 Sec. 3. 5 MRSA §17103, sub-§9, ¶B, as enacted by PL 1985, c.
14 801, §§5 and 7, is amended to read:

16 B. The When determined necessary by the retirement system
18 or directed by the legislative committee, the report shall
20 also on each amendment must include a separate evaluation of
22 each-amendment by the actuary.

24 Sec. 4. 5 MRSA §17105, sub-§2, ¶C is enacted to read:

26 C. The executive director, with the approval of the board,
28 may delegate the duties and powers given to the executive
30 director by this Part to employees of the retirement system.

32 Sec. 5. 5 MRSA §17105, sub-§5 is enacted to read:

34 5. Reporting and other communication; simplification,
36 assistance and enforcement. The executive director shall:

38 A. Review the retirement system's payroll and other
40 reporting requirements for the purpose of identifying and
42 implementing changes that would simplify reporting methods
44 or require less frequent filing of reports, provided that a
46 change may not impair the completeness and accuracy of the
48 records necessary for the retirement system's operations or
50 compromise the integrity of the retirement system's funds or
operations;

B. Establish a communications unit to fully implement the
retirement system's responsibilities to inform, educate,
advise and assist employers whose employees are members of
the retirement system and to help ensure that the retirement
system's members are adequately informed as to its programs
and policies. The unit must be established immediately
following the effective date of this subsection and must be
fully implemented over a time period that in the judgment of
the executive director carries out the retirement system's
responsibilities in an efficient and cost-effective manner;
and

C. Establish, subject to approval by the board of trustees,
a schedule of administrative fees, penalties and interest
intended to:

2 (1) Ensure compliance with payroll and other reporting
4 requirements including, but not limited to, the timely
 filing of reports and the accuracy of reports and of
 back-up records of the employer;

6 (2) Deter actions or omissions by the employer that
8 impair the retirement system's ability to process
10 accurately and in a timely manner membership and
 retirement applications, requests for refunds, group
12 life insurance premium payments and claims and to
 conduct its other functions; and

14 (3) Deter actions or omissions by the employer that
 impede or delay the retirement system's efforts to
16 resolve issues related to these matters.

18 For purposes of this subsection, "employer" means a department or
 agency of State Government, a school administrative unit or a
20 participating local district.

22 **Sec. 6. 5 MRSA §17154, sub-§9**, as enacted by PL 1991, c. 857,
 §1, is amended to read:

24 **9. Improper application of statutes.** Notwithstanding the
26 other provisions of this section, additional actuarial and
 administrative costs resulting from omissions or
28 misrepresentations by an employer as to a member's earnings,
 service or service credits or from improper application of
30 retirement system statutes or rules regarding earnings, service
 or service credits must be charged to and paid by the employer
32 that omitted information, provided misinformation or improperly
 applied the statutes or rules, unless the omission,
34 misrepresentation or improper application results from erroneous
 information provided by the retirement system. The employer is
36 liable for amounts not recovered from the retiree and for costs
 incurred by the retirement system in resolving problems caused by
38 the employer's actions and in addition may be subject to
 administrative fees, penalties and interest under section 17105,
40 subsection 5. For purposes of this subsection, "employer" means
 any department of State Government, school administrative unit or
42 participating local district.

44 **Sec. 7. 5 MRSA §17751, sub-§2**, as enacted by PL 1985, c. 801,
 §§5 and 7, is repealed.

46 **Sec. 8. 5 MRSA §17859** is enacted to read:

48 §17859. Payment of benefits based on estimate

50 When final payroll information or other information
 necessary for the final calculation of a retirement benefit is

2 not available to the retirement system at the time the benefit is
3 to become effective, the retirement system may pay a benefit
4 amount that is calculated on the basis of the retirement system's
5 estimate of the benefit to which the member is entitled according
6 to information then in the retirement system's hands. Following
7 receipt and verification of final payroll information and other
8 information necessary for the final calculation of the benefit,
9 the retirement system shall make any required adjustments in the
10 benefit amount as estimated, retroactively when necessary, and
11 after that date pay to the member the benefit as finally
12 calculated. The executive director shall establish policies and
13 procedures for the implementation of this section.

14 Sec. 9. 5 MRSA §18351, sub-§2, as enacted by PL 1985, c. 801,
15 §§5 and 7, is repealed.

16 Sec. 10. 5 MRSA §18463 is enacted to read:

17 **§18463. Payment of benefits based on estimate**

18
19 When final payroll information or other information
20 necessary for the calculation of a retirement benefit is not
21 available to the retirement system at the time the benefit is to
22 become effective, the retirement system may pay a benefit amount
23 that is calculated on the basis of the retirement system's
24 estimate of the benefit to which the member is entitled according
25 to information then in the retirement system's hands. The
26 retirement system shall issue the first estimated benefit payment
27 not later than the 2nd benefit payroll cycle following the
28 effective date of the member's retirement. Following receipt and
29 verification of final payroll information and other information
30 necessary for the final calculation of the benefit, the
31 retirement system shall make any required adjustments in the
32 benefit amount as estimated, retroactively when necessary, and
33 after that date pay to the member the benefit as finally
34 calculated. The executive director shall establish policies and
35 procedures for the implementation of this section.

36
37
38 Sec. 11. Transition; positions. On the effective date of this
39 Act:

40
41
42 1. Two Auditor I positions and one Auditor III position
43 must be transferred from the Maine State Retirement System to the
44 Department of Audit; and

45
46 2. Two professional positions and one clerical position are
47 established at the Maine State Retirement System to implement the
48 system's responsibilities to inform, educate, advise and assist
49 employers whose employees are members of the system.
50

2 In accordance with the Maine Revised Statutes, Title 5,
3 section 17105, subsection 5, the Executive Director of the Maine
4 State Retirement System may establish additional positions for
the purposes set out in this Act.

6 **Emergency clause.** In view of the emergency cited in the
7 preamble, this Act takes effect when approved.
8

10 **STATEMENT OF FACT**

12
13 This bill clarifies that the Maine State Retirement System
14 is a trust and a service organization with fiduciary and
15 service-based responsibilities to members and their employers.
16 The bill recognizes that monitoring and enforcement activities
17 are incompatible with the system's role. To more clearly
18 delineate this role, the bill transfers the system's audit
19 functions, by which employers' compliance with retirement system
20 rules and policies is monitored and enforced, to the Department
21 of Audit. It directs the system to develop the capability to
22 fully inform, educate and assist employers and members in
23 retirement-related matters. It directs the Executive Director of
24 the Maine State Retirement System to simplify payroll and
25 reporting requirements without compromising the integrity of the
26 system. To ensure reliability and timeliness of employers'
27 payroll and other reports, it requires the establishment of a
28 schedule of fees, interest and penalties related to failure to
29 provide accurate and complete information and failure to provide
30 information necessary in a timely manner.

32 To address the problem of delay in issuance of initial
33 benefit payments, the bill allows the system to begin to pay
34 retirement benefits on the basis of estimated benefits, with
35 subsequent correction on receipt of final payroll and other
36 necessary information.

38 In order to provide for greater efficiency in administrative
39 operations and decision-making, the bill provides that the
40 executive director, with approval of the Board of Trustees of the
41 Maine State Retirement System, may delegate the executive
42 director's duties to other retirement system staff.

44 The bill revises the current statutory requirement that the
45 system's actuary prepare an evaluation of each legislative
46 document. Instead of requiring an actuarial evaluation, with its
47 attendant cost, of every legislative document, this bill provides
48 for an actuary's report when considered necessary by the
49 retirement system or by the proper legislative committee.
50