116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document **No. 1896**

S.P. 698 In Senate, February 18, 1994

An Act to Correct the Implementation of Recent Changes to the Retirement Laws.

(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.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ESTY of Cumberland.
Cosponsored by Senators: BUTLAND of Cumberland, TITCOMB of Cumberland, WEBSTER of Franklin, Representatives: REED of Falmouth, VIGUE of Winslow.

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

Whereas, implementation of the recent amendments to the state retirement laws has caused confusion in at least one school district; and

Whereas, the legislative intent behind these amendments will be thwarted unless the law is corrected; and

Whereas, there is a need to make these corrections as quickly as possible to prevent injustice; and

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

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

Sec. 1. 5 MRSA §17001, sub-§13, ¶C, as repealed and replaced by PL 1993, c. 410, Pt. L, §13, is amended to read:

C. Earnable compensation does not include any increase that exceeds the prior year's earnable compensation by more than 5% or that results in a total increase of more than 10% during the 3-year period used in the calculation of average final compensation unless the cost of the additional actuarial liability arising from the excess increase is paid by the employer as provided in section 17154. Any payment made under paragraph B, subparagraph (1) must be included in determining the amount of increase in the year in which the payment is made. This paragraph does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract or collective bargaining agreement executed prior to ~~July~~ August 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of the school administrative unit in effect on ~~July~~ August 1, 1993. In addition, this paragraph does not apply to increases in compensation for state employees received during fiscal years 1993-94 and fiscal year 1994-95.

Sec. 2. 5 MRSA §17154, sub-§10, as enacted by PL 1993, c. 410, Pt. L, §27, is amended to read:

10. Payment of additional actuarial costs incurred by the retirement system due to early retirement incentives. Notwithstanding the other provisions of this section, additional actuarial and reasonable administrative costs that result from the early retirement of a member offered a retirement incentive by an employer must be paid by the employer that offered and provided the incentive in a manner prescribed in rules adopted by the board. "Early retirement" means retirement before normal retirement age with a reduced retirement benefit as provided by section 17852, subsection 3 or 3-A, subsection 4, paragraph C or C-1 or subsection 10, paragraph C or C-1; section 17857, subsection 3-A; section 18452, subsection 3; or section 18462, subsection 3. For purposes of this paragraph, "employer" means, in the case of a member who is a state employee, the department of state government by which the member was last employed prior to retirement; in the case of a member who is a teacher, the local school administrative unit by which the member was last employed prior to retirement; and in the case of a member who is an employee of a participating local district, the district by which the member was last employed prior to retirement. An early retirement incentive that is part of a collective bargaining agreement executed prior to ~~July~~ August 1, 1993 is not subject to this subsection for the initial term of that agreement.

Sec. 3. 5 MRSA §17154, sub-§11, as enacted by PL 1993, c. 410, Pt. L, §27, is amended to read:

11. Payment of actuarial cost of excess increase in earnable compensation. Notwithstanding the other provisions of this section, the employer may pay to the retirement system the cost of the actuarial liability resulting from any increase in earnable compensation for any year within the 3-year period used in determining average final compensation that exceeds the prior year's earnable compensation by more than 5% or, if it would result in a lesser additional actuarial liability, any increase in earnable compensation over a total increase of 10% during the 3-year period. The retirement system shall calculate the cost of the additional actuarial liability for each member when calculating the retirement benefit for that member at retirement. The cost must be paid in accordance with this subsection.

A. For state employees, the State Controller shall establish an account from which payments required by section 17001, subsection 13, paragraph C must be made. At the time any collective bargaining agreement is funded, funds must be appropriated to this account to pay for the anticipated cost of any increases over the limits established in section 17001, subsection 13, paragraph C that may result from the provisions of that agreement. When the additional actuarial liability is incurred with respect to a retiring state employee, the retirement system shall bill the State Controller for the cost and the State Controller shall transfer to the retirement system the amount billed.

B. For teachers, the cost must be paid by the school administrative unit that provides an increase over the limits established in section 17001, subsection 13, paragraph C. If the school administrative unit has agreed to pay the cost of the additional actuarial liability, the retirement system shall bill the school administrative unit for the cost, which must be paid by the school administrative unit within 60 days of its receipt of the bill. If the retirement system does not receive payment within 60 days, the system shall notify the State Controller, who shall immediately reduce the school administrative unit's general purpose aid by the amount billed plus interest applied as of the 60th day and transfer the total amount of the reduction to the retirement system. If the general purpose aid payable at the time to the school administrative unit is insufficient to pay the entire amount of the reduction, general purpose aid payable to the school administrative unit in the future must be reduced until the entire amount of the reduction, plus any additional accrued interest, has been transferred to the retirement system.

C. The retirement system shall provide information with the bill to the employer stating the basis on which the cost billed was calculated and showing the calculations. If the State Controller or school administrative unit questions the cost, its basis or the calculations, the retirement system shall promptly respond and, if necessary, meet with the State Controller or school administrative unit to resolve any dispute.

This subsection does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract or collective bargaining agreement executed prior to ~~July~~ August 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of the school administrative unit in effect on ~~July~~ August 1, 1993. In addition, this subsection does not apply to increases granted to state employees during fiscal years 1993-94 and 1994-95.

Sec. 4. Retroactivity. This Act applies retroactively to June 30, 1993.

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

STATEMENT OF FACT

This bill is intended to remedy an injustice by clarifying the application of recent retirement system amendments. Those amendments expressly stated that the new provisions would not apply to any collective bargaining agreement that was executed prior to July 1, 1993. In at least one school district, a new collective bargaining agreement had been negotiated and subsequently ratified by one of the parties before July 1, 1993, but was not ratified by the other party until after that date. This bill clarifies that this collective bargaining agreement is exempt from application of the new retirement system provisions by retroactively changing the transition date from July 1, 1993 to August 1, 1993.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.