

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1855

S.P. 744

In Senate, March 14, 1996

**An Act to Limit the Liability of Employers for the Costs of Early Retirement Incentives.**

(EMERGENCY)

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Reported by the Minority of the Committee on Labor pursuant to Resolve 1995, chapter 39 and printed under Joint Rule 2.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

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,** early retirement by state employees and teachers  
results in costs to the Maine State Retirement System that are  
significantly higher than the costs of retirement at normal  
retirement age; and

10           **Whereas,** those increased costs result from the earlier  
cessation of payment to the retirement system of employer and  
employee contributions toward retirement and the increased period  
over which the retirement system must pay retirement benefits to  
early retirees and their beneficiaries; and

16           **Whereas,** when the rate of early retirement exceeds the  
actuarially assumed rate, there is an increase in the unfunded  
liability of the retirement system; and

20           **Whereas,** it is the policy of the State, as embodied in  
current law, to discourage employers from offering early  
retirement incentives to state employees and teachers, thereby  
controlling the increase in unfunded liability, by requiring that  
employers pay the additional costs of early retirement incentives  
to the retirement system; and

26           **Whereas,** it is immediately necessary in order to limit  
increases in the unfunded liability due to early retirement  
incentives to define terms and clarify procedures for  
implementing current law; and

32           **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,

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

40           **Sec. 1. 5 MRSA §12004-G, sub-§26-C** is enacted to read:

42	<u>26-C.</u>	<u>Early</u>	<u>Expenses</u>	<u>5 MRSA</u>
	<u>Labor</u>	<u>Retirement</u>	<u>Only for</u>	<u>§17159</u>
44		<u>Incentives</u>	<u>Certain</u>	
		<u>Review Panel</u>	<u>Members</u>	

46           **Sec. 2. 5 MRSA §17154, sub-§10,** as amended by PL 1995, c. 462,  
48 Pt. A, §14, is repealed and the following enacted in its place:

2 10. Payment of additional actuarial costs incurred by the  
3 retirement system due to early retirement incentives.  
4 Notwithstanding the other provisions of this section, additional  
5 actuarial and reasonable administrative costs that result from  
6 the early retirement of a member offered a retirement incentive  
7 by an employer must be paid by the employer that offered and  
8 provided the incentive pursuant to section 17159. For purposes  
9 of this subsection, "early retirement" has the same meaning as in  
10 section 17159, subsection 1.

11 **Sec. 3. 5 MRSA §17159** is enacted to read:

12 **§17159. Early retirement incentive costs**

13 When an employee retires prior to normal retirement age and  
14 receives from the employer any significant monetary or  
15 nonmonetary payment or award in connection with the employee's  
16 retirement, the employer must, prior to the effective date of the  
17 employee's retirement, demonstrate that the payment or award is  
18 not a retirement incentive or pay the additional actuarial and  
19 reasonable administrative costs of the employee's early  
20 retirement.

21 **1. Definitions.** As used in this section, unless the  
22 context otherwise indicates, the following terms have the  
23 following meanings.

24 A. "Early retirement" means retirement before normal  
25 retirement age with a reduced retirement benefit as provided  
26 by section 17852, subsection 3 or 3-A, subsection 4,  
27 paragraph C or C-1 or subsection 10, paragraph C or C-1;  
28 section 17857, subsection 3-A; section 18452, subsection 3;  
29 or section 18462, subsection 3.

30 B. "Employer" means, in the case of a member who is a state  
31 employee, the department of State Government by which the  
32 member was last employed prior to retirement; in the case of  
33 a member who is a teacher, the local school administrative  
34 unit by which the member was last employed prior to  
35 retirement; and in the case of a member who is an employee  
36 of a participating local district, the district by which the  
37 member was last employed prior to retirement.

38 **2. Criteria for identifying an early retirement incentive.**  
39 A payment or award in connection with retirement is an incentive  
40 for early retirement for which the employer offering the  
41 incentive is responsible for the additional costs pursuant to  
42 section 17154, subsection 10 if all the criteria established in  
43 this subsection are met:

2 A. The payment or award is intended to induce the member's  
3 early retirement;

4 B. The payment or award is a one-time, time-limited or  
5 occasional offer outside the employer's regular benefit  
6 program;

8 C. The payment or award is not part of a longevity-based  
9 employee retention program; and

10 D. The payment or award is not made pursuant to a  
11 collective bargaining agreement for the initial term of that  
12 agreement if that agreement is executed or ratified in its  
13 final form by final vote of at least one of the parties to  
14 the agreement prior to March 15, 1996.

16 **3. Employer provides information.** If a member retires  
17 prior to normal retirement age and receives a significant  
18 monetary or nonmonetary payment or award in connection with the  
19 retirement, prior to the effective date of the member's  
20 retirement or, if a payment or award that was not known or  
21 anticipated prior to retirement is given after retirement, within  
22 7 business days of the date upon which the payment or award is  
23 given, the employer must provide the following information to the  
24 retirement system:

26 A. Documents demonstrating that any of the criteria  
27 established in subsection 2 is not met. By way of example  
28 and not limitation, such documents include collective  
29 bargaining agreements, whether principal agreements, side  
30 agreements or memoranda of agreement or understanding;  
31 records of official actions by the employer; relevant rules  
32 or policies of the employer; records of prior or  
33 contemporaneous relevant retirements of employees of the  
34 employer; notices, memoranda or other communications from  
35 the employer to employees regarding retirement; and  
36 correspondence between the employer and an employee,  
37 employees or employee representatives concerning retirement;  
38 and

40 B. Certification on a form provided by the retirement  
41 system and signed by the employer, or the responsible  
42 officer of the employer on the employer's behalf, that the  
43 payment or award does not meet the criteria established in  
44 subsection 2 and is not an action or practice causing or  
45 encouraging early retirement.

48 **4. Early Retirement Incentives Review Panel.** The Early  
49 Retirement Incentives Review Panel as established in section  
50 12004-G, subsection 26-C and referred to in this section as the  
51 "panel" is responsible for determining whether any payments or

2 awards made in connection with member retirement satisfy the  
3 criteria for early retirement incentives established in  
4 subsection 2.

6 A. The panel consists of the Commissioner of Administrative  
7 and Financial Services or the commissioner's designee who  
8 has authority to act on behalf of the commissioner and 3  
9 members appointed by the Governor. One member represents  
10 school administrators; one member represents teachers; and  
11 one member is either of the 2 trustees of the board who are  
12 appointed by the Governor and qualified in the fields of  
13 investments, accounting, banking and insurance or as  
14 actuaries. Members shall elect a chair annually.

16 B. The term of office is 3 years or until a successor is  
17 appointed and qualified.

18 C. Members serve without compensation, except that the  
19 members representing school administrators and teachers may  
20 be reimbursed for expenses incurred in the performance of  
21 their duties.

22 D. The executive director shall provide staff assistance to  
23 the panel and is responsible to collect, hold and distribute  
24 to review panel members, prior to panel meetings, documents  
25 and certifications submitted by employers, to schedule  
26 meetings, record panel actions, send determinations to  
27 employers and carry out related functions on the panel's  
28 behalf.

30 E. The panel shall meet at least quarterly, unless there  
31 are no matters then requiring determination or  
32 reconsideration, and may meet more often.

34 F. The panel may continue in existence after July 1, 1999  
35 only if the Legislature, on review, determines that the  
36 panel should continue.

38 G. The review panel may adopt rules in accordance with the  
39 Maine Administrative Procedure Act necessary to implement  
40 this section. Rules adopted pursuant to this section are  
41 routine technical rules as defined in chapter 375,  
42 subchapter II-A.

44 H. Annually, by January 15, the board shall issue a report  
45 to the joint standing committee of the Legislature having  
46 jurisdiction over retirement matters on early retirement  
47 incentives, including, but not limited to, trends in average  
48 retirement age and use of incentives to induce early  
49 retirement.

2           **5. Panel determinations.** The employer has the burden of  
3 demonstrating that a payment or award in connection with  
4 retirement does not meet one or more of the criteria of  
5 subsection 2. The review panel is responsible for determining  
6 whether the documents and certification submitted by an employer  
7 satisfy the requirements of subsection 3 and whether the  
8 documentation provided by the employer satisfies the employer's  
9 burden with respect to subsection 2.

10  
11 The panel shall make its determination based on documentation in  
12 its possession. If the panel finds that the employer has  
13 satisfied the requirements of subsection 3 and has demonstrated  
14 that any one of the criteria of subsection 2 is not met, it shall  
15 issue a determination that the payment in connection with  
16 retirement is not an early retirement incentive. When the panel  
17 can not make both of those findings, it shall issue a  
18 determination that the payment or award in connection with  
19 retirement is an early retirement incentive.

20  
21 Except as otherwise provided, the panel is not required to issue  
22 determinations on hypothetical or proposed actions or practices.

23  
24           **6. Panel decision.** At least 3 members must be present for  
25 the review panel to conduct business. The review panel's  
26 determination must be made by majority vote of the members  
27 present. If the members' votes are evenly divided, the  
28 additional actuarial and reasonable administrative costs  
29 associated with the early retirement in question must be shared  
30 equally between the employer and the State. In all cases, the  
31 panel shall issue a written determination specifying the basis  
32 for the determination.

33  
34           **7. Reconsideration; final decision.** An employer receiving  
35 a determination that makes it liable for the full actuarial and  
36 reasonable administrative costs or for an equal share of these  
37 costs may request the panel to reconsider the determination. A  
38 reconsideration request must be received by the executive  
39 director within 30 days of an employer's receipt of the review  
40 panel's determination. If the employer provides, with the  
41 reconsideration request, additional documentation or a written  
42 statement of the reasons it believes the determination to be  
43 incorrect, the panel shall reconsider its determination.  
44 Otherwise, the panel may, but is not required to, reconsider its  
45 determination. The review panel's determination is final upon  
46 expiration of the 30-day period following the employer's receipt  
47 of the initial decision when no request for reconsideration is  
48 made, or 30 days after the employer's receipt of the panel's  
49 decision not to reconsider its determination, or 30 days after  
50 the employer's receipt of the panel's decision on

2 reconsideration. There is no further review from that  
3 determination available from the panel.

4 8. Calculation and payment of costs resulting from early  
5 retirement incentives. The additional actuarial and reasonable  
6 administrative costs that result from the early retirement of a  
7 member who has received an early retirement incentive after March  
8 15, 1996 must be calculated by the panel and paid to the  
9 retirement system by the employer as provided in rules adopted by  
10 the panel. Notwithstanding subsection 4, paragraph G, rules  
11 adopted pursuant to this subsection are major substantive rules  
12 as defined in chapter 375, subchapter II-A.

#### 14 **Sec. 4. Implementation.**

16 **1. Appointment of review panel members.** Appointments to  
17 the Early Retirement Incentives Review Panel established in the  
18 Maine Revised Statutes, Title 5, section 12004-G, subsection 26-C  
19 must be made within 30 days of the effective date of this Act.

20 **2. Other payments in connection with retirement since July**  
21 **1, 1993.** The Early Retirement Incentives Review Panel shall  
22 review those other payments made in connection with retirement  
23 between July 1, 1993 and the effective date of this Act and issue  
24 an advisory determination on whether those payments would meet  
25 the criteria for early retirement incentives established in this  
26 Act if they were offered after the effective date of this Act.

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

#### 32 **FISCAL NOTE**

34 As long as this bill becomes effective by March 15, 1996,  
35 absolving 8 school administrative units of certain early  
36 retirement incentive costs will not result in an increase in the  
37 unfunded liability of the Maine State Retirement System. The  
38 forgiveness of these contributions to the system, however, will  
39 result in the loss of an experience gain to the Maine State  
40 Retirement System and may increase future General Fund  
41 appropriation requests for the employer contributions for  
42 teachers if this impact is not offset by the net effect of other  
43 experience gains and losses.

44 If the bill becomes effective after March 15, 1996, pursuant  
45 to the Constitution of Maine, Article IX, Section 18-A,  
46 prohibiting the creation of this type of unfunded liability, a  
47 General Fund appropriation to the Maine State Retirement System  
48 of \$1,931,383 in fiscal year 1995-96 will be required. If a  
49 review of other retirement payments determines that any amounts  
50 of those payments resulted from early retirement incentives



2 offered by school administrative units between July 1, 1993 and  
March 15, 1996, additional General Fund appropriations will be  
4 required.

6 The Maine State Retirement System will incur some minor  
additional costs to provide assistance to the Early Retirement  
8 Incentives Review Panel. These costs can be absorbed within the  
system's existing budgeted resources.

## 10 STATEMENT OF FACT

12 This bill is reported by the minority of the Joint Standing  
14 Committee on Labor pursuant to Resolve 1995, chapter 39. Like  
the majority report, this bill clarifies implementation of  
16 current law regarding payment of the actuarial and administrative  
costs of early retirement incentives offered by school  
18 administrative units to teachers. This bill differs from the  
bill reported by the majority of the committee in that it:

20 1. Makes operation of the current law requiring employers  
22 to pay the additional actuarial and administrative costs of early  
retirement incentives prospective from March 15, 1996;

24 2. Absolves school administrative units of any obligation  
26 for the costs of early retirement occurring before March 15,  
1996; and

28 3. Delegates authority to establish the method of  
30 calculation and payment of the costs of early retirement to the  
Early Retirement Incentives Review Panel, established in the  
32 bill, through adoption of major substantive rules.

34 This bill is an emergency in order to take effect before the  
end of the moratorium relieving employers of the obligation to  
36 pay the costs of early retirement incentives enacted last year.  
The moratorium expires March 15, 1996. If this bill is not  
38 enacted before that date, according to the Attorney General's  
office, all school units that made payments in connection with  
40 early retirement may be liable for the actuarial and  
administrative costs resulting from those retirements. This bill  
42 limits the obligation to pay to school units that offered early  
retirement incentives after March 15, 1996.