

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1856

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S.P. 745

In Senate, March 14, 1996

**An Act to Clarify the Early Retirement Incentives Law.**

(EMERGENCY)

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Reported by the Majority 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  
8 retirement age; and

10           **Whereas,** those increased costs result from the earlier  
cessation of payment to the retirement system of employer and  
12 employee contributions toward retirement and the increased period  
over which the retirement system must pay retirement benefits to  
14 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  
18 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  
22 retirement incentives to state employees and teachers, thereby  
controlling the increase in unfunded liability, by requiring that  
24 employers pay the additional costs of early retirement incentives  
to the retirement system; and

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

32           **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
34 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
36 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 <b><u>26-C.</u></b>	<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>	
46	<u>Review Panel</u>	<u>Members</u>	

48           **Sec. 2. 5 MRSA §17154, sub-§10,** as amended by PL 1995, c. 462,  
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;

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

9           D. The payment or award is not made pursuant to a  
10           collective bargaining agreement for the initial term of that  
11           agreement if that agreement is executed or ratified in its  
12           final form by final vote of at least one of the parties to  
13           the agreement prior to July 1, 1993.

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

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

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

42           4. Early Retirement Incentives Review Panel. The Early  
43           Retirement Incentives Review Panel as established in section  
44           12004-G, subsection 26-C and referred to in this section as the  
45           "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  
4 demonstrating that a payment or award in connection with  
6 retirement does not meet one or more of the criteria of  
8 subsection 2. The review panel is responsible for determining  
10 whether the documents and certification submitted by an employer  
12 satisfy the requirements of subsection 3 and whether the  
14 documentation provided by the employer satisfies the employer's  
16 burden with respect to subsection 2.

18 The panel shall make its determination based on documentation in  
20 its possession. If the panel finds that the employer has  
22 satisfied the requirements of subsection 3 and has demonstrated  
24 that any one of the criteria of subsection 2 is not met, it shall  
26 issue a determination that the payment in connection with  
28 retirement is not an early retirement incentive. When the panel  
30 can not make both of those findings, it shall issue a  
32 determination that the payment or award in connection with  
34 retirement is an early retirement incentive.

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

40           **6. Panel decision.** At least 3 members must be present for  
42 the review panel to conduct business. The review panel's  
44 determination must be made by majority vote of the members  
46 present. If the members' votes are evenly divided, the  
48 additional actuarial and reasonable administrative costs  
50 associated with the early retirement in question must be shared  
equally between the employer and the State. In all cases, the  
panel shall issue a written determination specifying the basis  
for the determination.

52           **7. Reconsideration; final decision.** An employer receiving  
54 a determination that makes it liable for the full actuarial and  
56 reasonable administrative costs or for an equal share of these  
58 costs may request the panel to reconsider the determination. A  
60 reconsideration request must be received by the executive  
62 director within 30 days of an employer's receipt of the review  
64 panel's determination. If the employer provides, with the  
66 reconsideration request, additional documentation or a written  
68 statement of the reasons it believes the determination to be  
70 incorrect, the panel shall reconsider its determination.  
Otherwise, the panel may, but is not required to, reconsider its  
determination. The review panel's determination is final upon  
expiration of the 30-day period following the employer's receipt  
of the initial decision when no request for reconsideration is  
made, or 30 days after the employer's receipt of the panel's  
decision not to reconsider its determination, or 30 days after  
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. Employer payment for costs resulting from early  
5 retirement incentives. Employer payment for costs resulting from  
6 early retirement incentives are governed by this section pursuant  
7 to section 17154, subsection 10.

8  
9  
10 A. The additional actuarial costs that result from the  
11 early retirement of a member who has received an early  
12 retirement incentive must be paid to the retirement system  
13 by the employer as provided in this paragraph.

14 (1) The retirement system shall determine the  
15 additional actuarial costs for which the employer is  
16 liable in individual situations as follows:

17  
18 (a) First, the annual retirement benefit payable  
19 to the member upon the member's early retirement  
20 date must be calculated in accordance with the  
21 governing provisions of the retirement system  
22 statutes and rules;

23  
24 (b) Second, the annual retirement benefit that  
25 would be payable to the member on a fully  
26 actuarially reduced basis must be calculated in  
27 accordance with the actuarial equivalent early  
28 retirement reduction factors prescribed by the  
29 retirement system's consulting actuary and  
30 approved by the board;

31  
32 (c) Third, the retirement benefit calculated in  
33 division (b) must be subtracted from the  
34 retirement benefit calculated in division (a); and

35  
36 (d) Fourth, a present-value factor must be  
37 applied to the amount determined in division (c)  
38 to convert the annual benefit amount to a lump sum  
39 present-value dollar amount. This amount  
40 represents the additional actuarial cost resulting  
41 from the early retirement of a member who has been  
42 offered a retirement incentive.

43  
44 (2) The retirement system shall bill the employer of  
45 retiring members who will receive or have received  
46 early retirement incentives for the additional  
47 actuarial costs as determined by the retirement system  
48 in subparagraph (1). The bill must be accompanied by a  
49 statement of the basis of the costs identified in the  
50 bill and the supporting calculations.



2           (3) All determinations of additional actuarial costs  
3           are subject to recalculation upon the actual retirement  
4           of the member and upon any subsequent recalculation of  
5           the member's early retirement benefit due to  
6           misreporting of member-specific information, error or  
7           any direction by the board to recalculate a member's  
8           benefit. Any resulting change in additional actuarial  
9           costs must be paid or refunded, as appropriate, to the  
10           employer. Any administrative costs for recalculation  
11           of additional actuarial costs that is caused by actions  
12           of the employer must be paid by the employer.

13           B. The reasonable administrative costs that result from the  
14           early retirement of a member who has received a retirement  
15           incentive must be paid to the retirement system by the  
16           employer as provided in this paragraph.

17           (1) Subject to review and approval by the board, the  
18           executive director shall establish and may revise from  
19           time to time an administrative processing fee to  
20           determine the member-specific additional actuarial  
21           costs relating to an early retirement incentive for  
22           which the employer is liable. The fee must be based on  
23           the time required for making such determinations, must  
24           be reasonable and may not be set at a level that  
25           requires the retirement system's members and employers  
26           as a whole to subsidize the cost of a determination.  
27           The fee must be paid before the retirement system  
28           determines the member-specific additional actuarial  
29           costs.

30           (2) The employer must pay any additional actual  
31           administrative costs for member-specific information at  
32           an hourly administrative cost rate for the retirement  
33           system plus the retirement system's actual costs  
34           related to actuarial and legal services. Subject to  
35           review and approval by the board, the executive  
36           director shall establish and may from time to time  
37           revise the administrative cost rate.

38           (3) The employer must be billed for any actual  
39           administrative costs beyond the processing fee. If the  
40           member is already receiving a retirement benefit or  
41           preliminary benefit when the employer is billed for  
42           administrative costs, the employer must also be charged  
43           interest as a cost and must pay interest retroactive to  
44           the member's effective date of retirement. The bill  
45           must be accompanied by a statement of the basis of the  
46           administrative costs.

50

2           C. For early retirement incentives granted between July 1,  
4           1993 and March 15, 1996, the employer must pay the amount  
6           calculated under paragraphs A and B plus interest due to the  
8           retirement system in accordance with a payment schedule not  
          to exceed 10 years. For early retirement incentives granted  
          after March 15, 1996, the employer must pay the amount  
          calculated under paragraphs A and B to the retirement system  
          within 30 days of receipt of the bill.

10           D. If the employer or the member disputes the determination  
12           that additional actuarial costs must be paid by the  
14           employer, the amount of the additional actuarial costs or  
          the amount of actual administrative costs, an appeal may be  
          brought pursuant to section 17451 and Chapter 702 of the  
          board's rules.

16           E. Interest must be charged by the retirement system and  
18           must be paid by the employer on all overdue amounts  
20           pertaining to the processing fee, additional actuarial costs  
22           and administrative costs. In addition, an employer who  
24           fails to pay is liable for penalties on a case-by-case basis  
          as recommended by the executive director and approved by the  
          board and shall pay all of the retirement system's costs  
          associated with collection of amounts overdue and  
          enforcement of the provisions of this section.

#### 26           **Sec. 4. Implementation.**

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

34           **2. Payment of costs of early retirement incentives since**  
36           **July 1, 1993.** Pursuant to the Maine Revised Statutes, Title 5,  
38           section 17154, subsection 10 as in effect between July 1, 1993  
40           and the effective date of this Act, Jay, Scarborough, York,  
42           S.A.D. 25, S.A.D. 52, S.A.D. 56, School Union 29 and School Union  
44           30 owe the Maine State Retirement System payments for the costs  
46           of early retirement incentive payments made to employees of those  
          school units since July 1, 1993, as identified in the Maine State  
          Retirement System's report to the Joint Standing Committee on  
          Labor dated February 15, 1996. The amount owed must be  
          determined and paid in accordance with this Act, except that  
          interest may not be charged for the period between June 28, 1995  
          and March 15, 1996.

48           **3. Other payments in connection with retirement since July**  
50           **1, 1993.** The Maine State Retirement System shall review payments  
          other than those identified in subsection 2 that are made in

2 connection with retirement by school administrative units between  
3 July 1, 1993 and the effective date of this Act to determine if  
4 those payments constitute an early retirement incentive offered  
5 by the employer under the Maine Revised Statutes, Title 5,  
6 section 17154, subsection 10 as in effect between July 1, 1993  
7 and the effective date of this Act. Payments determined to be  
8 early retirement incentives must have their costs determined and  
9 paid as provided in this Act.

10 The Early Retirement Incentives Review Panel shall review  
11 those other payments made in connection with retirement between  
12 July 1, 1993 and the effective date of this Act and issue an  
13 advisory determination on whether those payments would meet the  
14 criteria for early retirement incentives established in this Act  
15 if they were offered after the effective date of this Act.

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

## 20 FISCAL NOTE

22 The bill clarifies that the cost of certain early retirement  
23 incentives offered by 8 school administrative units, estimated to  
24 be approximately \$1,900,000, is the responsibility of those units  
25 and specifies the methods of calculating those costs and  
26 establishing a payment schedule.

28 The bill also provides for the review of other retirement  
29 payments and specifies a method for payment to the Maine State  
30 Retirement System by the employer, school administrative units,  
31 if those costs are also determined to have resulted from early  
32 retirement incentives.

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

## 40 STATEMENT OF FACT

42 This bill is reported by the majority of the Joint Standing  
43 Committee on Labor pursuant to Resolve 1995, chapter 39. The  
44 bill clarifies implementation of current law regarding payment of  
45 the actuarial and administrative costs of early retirement  
46 incentives offered by school administrative units to teachers  
47 since July 1, 1993. For prospective application to payments  
48 after the effective date of the legislation, the bill:

2           1. Establishes the criteria for determining whether a  
payment in connection with retirement is an early retirement  
incentive;

4

6           2. Makes the school unit responsible for demonstrating  
whether the criteria are met;

8

10           3. Creates the Early Retirement Incentives Review Panel to  
rule whether a payment constitutes an early retirement incentive;  
and

12

14           4. Describes the procedure for calculation of actuarial and  
administrative costs and payment of those costs.

16

18           With respect to payments made in connection with retirement  
between July, 1, 1993 and June 28, 1995, the bill establishes the  
responsibility of 8 school units to pay the actuarial and  
administrative costs for early retirement incentives that they  
paid to their employees.

20

22           The bill is an emergency in order to take effect before the  
end of the moratorium relieving employers of the obligation to  
pay the costs of early retirement incentives enacted last year.  
24           The moratorium expires March 15, 1996. If this bill is not  
enacted before that date, according to the Attorney General's  
26           office, all school units that made payments in connection with  
early retirement may be liable for the actuarial and  
28           administrative costs resulting from those retirements. This bill  
limits the obligation to pay to 8 school units that offered early  
30           retirement incentives.