

MAINE STATE LEGISLATURE

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No. 2150

H.P. 1530

House of Representatives, January 15, 2008

An Act To Clarify Retirement Programs for Participating Local Districts

(EMERGENCY)

Submitted by the Maine Public Employees Retirement System pursuant to Joint Rule 204.
Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLARK of Millinocket.
Cosponsored by Representatives: DRISCOLL of Westbrook, HASKELL of Portland,
JACKSON of Allagash, THOMAS of Ripley, TUTTLE of Sanford, Senators: DOW of
Lincoln, SULLIVAN of York.

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

3 **Whereas,** planning for consolidation of educational and other service delivery at the
4 local and regional level may affect retirement programs for employees; and

5 **Whereas,** local districts have asked for more than one opportunity per year to join
6 the Maine Public Employees Retirement System; and

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

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

12 **Sec. 1. 5 MRSA §18252,** as amended by PL 2007, c. 137, §17, is further amended
13 to read:

14 **§18252. Membership in districts with Social Security coverage**

15 A person who is or would be covered by the United States Social Security Act as a
16 result of employment by a participating local district ~~having a so-called "~~ with Social
17 Security ~~Section 218-agreement"~~ coverage may elect to join, not to join, to cease
18 contributions to or to withdraw from the retirement system under the following
19 conditions.

20 **1. Membership.** ~~A new~~ An employee may join the retirement system at the
21 beginning of employment or ~~on any anniversary of the beginning of~~ at any time after
22 beginning employment, so long as that person is still an employee of the participating
23 local district and the district continues to be a participating local district.

24 A. Purchase of service credit for the period during which the person was not a
25 member of the retirement system is governed by section 18305-A.

26 **2. Employee who is participating member.** A person who is a participating
27 member of the retirement system may elect to cease contributions to the system and, at
28 that person's discretion, may withdraw accumulated contributions in accordance with
29 section 18306-A.

30 **3. Person who has previously ceased contributions.** A person who has previously
31 elected to cease contributions to the retirement system, whether or not accumulated
32 contributions have been withdrawn, may choose to rejoin the system at any time under
33 the following conditions.

34 B. The employer must still be a participating local district allowing new
35 membership in the retirement system.

1 C. Purchase of service credit for the period during which the person was not a
2 member of the retirement system is governed by section 18305-A. Repayment of
3 withdrawn accumulated contributions is governed by section 18304.

4 **5. Limit on right to rejoin.** The right of a person to rejoin under subsection 3 is
5 limited to 2 occurrences.

6 **6. Restoration to service.** If any person who is the recipient of a service retirement
7 benefit is covered by the United States Social Security Act upon being restored to service,
8 continuation of that person's benefit is governed by the following.

9 A. The person may elect to have the service retirement benefit continued during the
10 period of time the person is restored to service and the person may not accumulate
11 any additional service credits.

12 B. The person may elect to have the service retirement benefit terminated, again
13 become a member of the retirement system and begin contributing at the current rate.

14 (1) The person is entitled to accumulate additional service credits during the
15 period of time the person is restored to service.

16 (2) When the person again retires, the person is entitled to receive benefits
17 computed on the person's entire creditable service and in accordance with the law
18 in effect at the time.

19 C. Upon being restored to service, the person must elect to have benefits either
20 continued or terminated. If written notification of the person's election is not
21 received by the executive director within 60 days of restoration to service, the person
22 is deemed to have elected the provisions of paragraph A. The election, regardless of
23 how it is made, is irrevocable during the period of restoration to services.

24 **Sec. 2. 5 MRSA §18252-A**, as amended by PL 2007, c. 137, §§18 and 19, is
25 further amended to read:

26 **§18252-A. Membership in district without Social Security coverage and with plan**
27 **provided by the employer under section 18252-B**

28 **1. Membership.** An employee of a participating local district that does not have a
29 ~~so-called "Social Security Section 218 agreement"~~ coverage and that has a plan provided
30 by the employer under section 18252-B may elect to be a member under the retirement
31 system or to be covered under the plan provided by the employer in accordance with the
32 following.

33 A. A person hired by a participating local district, or rehired following a break in
34 service, after the date on which the employer provides a plan under section 18252-B
35 must elect at the time of hiring or rehiring whether to be a member under the
36 retirement system or to be covered under a plan provided by the employer under
37 section 18252-B.

38 (1) If the person elects to be a member under the retirement system, the election
39 is effective as of the date of hire or rehire.

1 (a) A person who elects to be a member of the retirement system may later
2 elect to be covered under a plan provided by the employer under section
3 18252-B. The person who so elects may, at that person's discretion,
4 withdraw accumulated contributions in accordance with section 18306-A.

5 (b) A person who elects under division (a) to be covered under a plan
6 provided by the employer under section 18252-B may later elect to again
7 become a member under the retirement system, unless to so elect would have
8 the effect of requiring the employer, without the employer's agreement, to
9 make an employer contribution to both the retirement system and the plan
10 provided by the employer under section 18252-B.

11 (c) A person who elects under division (b) to again become a member of the
12 retirement system may, in accordance with section 18305-A, purchase
13 service credit for the period during which the person elected not to be a
14 member of the retirement system. The person may, in accordance with
15 section 18304, repay contributions withdrawn under division (a) and may, as
16 permitted under other relevant retirement system law, rule and policy, repay
17 other refunded contributions.

18 (d) A person who, having elected to again become a member under the
19 retirement system under division (c), later elects again not to be a member
20 may not thereafter become a member under the retirement system while
21 employed by the same participating local district.

22 (2) A person who elects to be covered under a plan provided by the employer
23 under section 18252-B may later elect to become a member under the retirement
24 system.

25 (a) Membership service credit for a person joining the retirement system
26 under this subparagraph begins as of the effective date of first contributions
27 or pick-up contributions to the retirement system following that person's
28 election under this subparagraph.

29 (b) A person who joins the retirement system under this subparagraph may,
30 in accordance with section 18305-A, purchase service credit for the period
31 during which the person elected not to be a member of the retirement system.

32 (c) A person who, having elected to become a member under the retirement
33 system under this subparagraph, later elects again not to be a member may, at
34 the employee's discretion, withdraw accumulated contributions in accordance
35 with applicable requirements of law and rule and retirement system
36 procedures and may not thereafter become a member under the retirement
37 system while employed by the same participating local district.

38 B. An employee of the participating local district who is a member under the
39 retirement system on the date on which the employer provides a plan under section
40 18252-B may elect to remain a member under the retirement system or to become
41 covered under a plan provided by the employer under section 18252-B.

42 (1) If that person elects not to remain a member, the election is effective as of
43 the first day of the month in which no contributions or pick-up contributions are

1 made to the retirement system by that person. A person who elects not to remain
2 a member may, at that person's discretion, withdraw accumulated contributions in
3 accordance with section 18306-A.

4 (2) A person who elects not to remain a member under the retirement system
5 may later elect to again become a member.

6 (a) Membership service credit for a person who elects to again become a
7 member under the retirement system under this subparagraph begins as of the
8 effective date of the first contributions or pick-up contributions to the
9 retirement system following that person's election under this subparagraph.

10 (b) A person who rejoins the retirement system under this subparagraph
11 may, in accordance with section 18305-A, purchase service credit for the
12 period during which that person elected not to be a member of the retirement
13 system. The person may, in accordance with section 18304, repay
14 contributions refunded under subparagraph (1), unless to so elect would have
15 the effect of requiring the employer, without the employer's agreement, to
16 make an employer contribution to both the retirement system and the plan
17 provided by the employer under section 18252-B.

18 (c) A person who, having elected to again become a member under the
19 retirement system under this subparagraph, later elects again not to be a
20 member may, at that person's discretion, withdraw accumulated contributions
21 in accordance with section 18306-A and may not thereafter become a
22 member under the retirement system while employed by the same
23 participating local district.

24 D. If the participating local district does not have a plan provided under section
25 18252-B, the employees do not have the elections provided under paragraphs A and
26 B.

27 **2. District employer responsibilities.** Responsibilities of the participating local
28 district employer are as follows.

29 A. The participating local district employer is responsible for ensuring that the plan
30 provided by the employer under section 18252-B meets the requirements of that
31 section.

32 B. The participating local district employer is responsible for providing employees
33 with information as to membership under the retirement system and as to coverage
34 under the plan provided by the employer under section 18252-B to assist the
35 employee in making election decisions. The retirement system shall provide the
36 employer with information as to the retirement system.

37 C. The participating local district employer is responsible for providing procedures
38 by which employees make elections under this section, for maintaining all records
39 relevant to the election process and each employee's elections, for informing the
40 retirement system as to employee elections in accordance with procedures established
41 by the executive director and for making all administrative decisions, including the
42 final administrative decision, in any dispute related to an employee's elections or
43 administrative decision, in any dispute related to an employee's elections or to any

1 issue as to the plan provided by the employer under section 18252-B. Neither the
2 retirement system nor the system's board of trustees has responsibility or jurisdiction
3 to make the final administrative decision with respect to any of these matters. The
4 retirement system is responsible only to ensure that its records accurately reflect the
5 information provided by the employer, the employer's decision as to any of these
6 matters, and the legally cognizable outcome of any dispute related to any of these
7 matters.

8 D. With respect to matters related to participation and membership other than those
9 specified in paragraph C, the retirement system and the board retain responsibility
10 and authority according to applicable retirement system law and rules as to the
11 participating local districts and their employees to whom this section applies,
12 including the authority to make final administrative decisions.

13 **3. Exclusions.** This section does not apply to employees of participating local
14 districts:

- 15 A. Who are employed in part-time, seasonal or temporary positions;
16 B. Whose membership in the retirement system is optional under section 18252,
17 section 18801, subsection 1 or section 18251, subsection 3, paragraph A, B or C;
18 C. For whom membership in the retirement system is denied under section 18256;
19 or
20 D. Who are excluded from membership under section 18201, subsection 3.

21 **Sec. 3. 5 MRSA §18804, sub-§4,** as enacted by PL 1989, c. 811, §3, is amended
22 to read:

23 **4. Date participation begins.** The retirement system establishes the schedule for
24 enrolling participating local districts and for the effective date of establishment of a
25 participating local district. The date when the participation of the employees of a
26 participating local district begins is ~~the first day of July following the date the contract is~~
27 signed as of the date of first contributions or pick-up contributions to the retirement
28 system. ~~This date is considered the date of establishment for a participating local district~~
29 ~~under section 17101, subsection 3.~~

30 **Emergency clause.** In view of the emergency cited in the preamble, this
31 legislation takes effect when approved.

32 SUMMARY

33 This bill makes consistent the standards for optional retirement system membership
34 for employees of participating local districts that also have Social Security or another
35 Internal Revenue Service-qualified plan. It eliminates the once per year option for a local
36 district to join the Maine system. These changes are proposed in anticipation of school
37 district consolidation and other local and regional consolidation efforts and to promote
38 choice of retirement plans for employers and employees.