

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1154

H.P. 819

House of Representatives, March 21, 2013

An Act To Establish the Maine Length of Service Award Program

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MAKER of Calais.
Cosponsored by Senator DUTREMBLE of York and
Representatives: BEAVERS of South Berwick, CRAY of Palmyra, JOHNSON of Greenville,
LAJOIE of Lewiston, LONG of Sherman, PEASE of Morrill, WERTS of Auburn, WOOD of
Sabattus.

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

2 **Sec. 1. 5 MRSA §3372** is enacted to read:

3 **§3372. Maine Length of Service Award Program**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Accrued service award" means the total value, as of a given date, of a
7 participant's program account.

8 B. "Board" means the Maine Length of Service Award Program Board of Trustees.

9 C. "Bona fide volunteer" has the same meaning as in the United States Internal
10 Revenue Code, Section 457(e)(11).

11 D. "Eligible volunteer" means a bona fide volunteer performing qualified services in
12 a municipal fire department if that bona fide volunteer is:

13 (1) A firefighter who is an active part-time or on-call member of a municipal fire
14 department or a volunteer firefighter; or

15 (2) An emergency medical services person who provides on-call, part-time or
16 volunteer emergency medical treatment under the direction of the chief of a
17 municipal fire department and who is duly licensed under rules and protocols
18 established by the Emergency Medical Services' Board pursuant to Title 32,
19 section 88.

20 E. "Emergency medical services person" has the same meaning as emergency
21 medical services' person has in Title 32, section 83, subsection 12.

22 F. "Emergency medical treatment" has the same meaning as in Title 32, section 83,
23 subsection 13.

24 G. "Municipal fire department" has the same meaning as in Title 30-A, section 3151,
25 subsection 1.

26 H. "Participant" means a person who participates in the program.

27 I. "Program" means the Maine Length of Service Award Program established in
28 subsection 2.

29 J. "Program account" means a separate account maintained for each participant
30 reflecting applicable contributions, applicable forfeitures, investment income or loss
31 as well as administrative and investment expenses allocated to each participant and
32 distributions paid from the account.

33 K. "Program trust fund" means a trust fund established by the board into which all
34 contributions to the program are deposited.

35 L. "Qualified services" has the same meaning as in the United States Internal
36 Revenue Code, Section 457(e)(11).

1 M. "Volunteer firefighter" has the same meaning as in Title 30-A, section 3151,
2 subsection 4.

3 **2. Program established.** The Maine Length of Service Award Program is
4 established.

5 **3. Board of trustees.** The following provisions govern the Maine Length of Service
6 Award Program Board of Trustees.

7 A. The board, as established in Title 5, section 12004-G, subsection 30-E, is
8 composed of 7 trustees, as follows:

9 (1) Four persons who are eligible volunteers, appointed by the Governor. Three
10 of the persons appointed under this subparagraph must be selected from a list of 6
11 nominees submitted by a statewide federation of firefighters;

12 (2) A chief of a municipal fire department, appointed by the Governor and
13 selected from a list of 3 nominees submitted by a statewide association of fire
14 chiefs;

15 (3) A person who is qualified through training or experience in the field of
16 investments, accounting, banking or insurance or who is an actuary, appointed by
17 the Governor; and

18 (4) A person designated by a statewide municipal association.

19 B. The board shall elect from its membership a chair.

20 C. The terms of the trustees are determined as follows.

21 (1) Each trustee serves a term of 3 years.

22 (2) A trustee continues to serve after the expiration of that trustee's term until a
23 successor is appointed and qualified, but the trustee's continuation as a trustee
24 does not change the expiration date of the trustee's term.

25 (3) The term of a trustee appointed to succeed a trustee whose term has expired
26 begins on the day after the expiration date of the 3-year term of the previous
27 trustee, regardless of the effective date of the new appointment.

28 (4) An appointment to any vacancy caused by death, resignation or ineligibility
29 is for the unexpired portion of the term.

30 D. The necessary expenses incurred by the board in the operation of the program
31 must be paid according to the purpose for which they are incurred from the assets of
32 the program trust fund.

33 E. The Attorney General or an assistant designated by the Attorney General is legal
34 advisor to the board.

35 F. The board shall keep a record of all its proceedings that:

36 (1) Must comply with the requirements of section 8056, subsection 5 and
37 sections 9059 and 9061, to the extent those laws are applicable; and

38 (2) Must be open to public inspection.

1 **4. Program administration.** The program is administered by the board. The board
2 shall contract with firms to provide administration, investment, custodial, trustee and
3 auditing services for the program.

4 **5. Participation eligibility.** An eligible volunteer may participate in the program.

5 **6. Participation commencement.** Unless an eligible volunteer waives the right of
6 participation pursuant to subsection 7, the eligible volunteer becomes a participant on the
7 last day of the first calendar year during which the eligible volunteer meets the service
8 credit requirements set forth in subsection 8 during a calendar year beginning after
9 December 31, 2013.

10 **7. Waiver of participation.** An eligible volunteer may waive the right to participate
11 in the program by filing with the board a written, signed and irrevocable waiver of
12 participation that must be signed by the fire chief, as described in Title 30-A, section
13 3153, of a municipal fire department of which the eligible volunteer is a member.

14 **8. Service credit.** Service credit may be allowed in the program only for volunteer
15 emergency service rendered as an eligible volunteer. The requirements to be met by an
16 eligible volunteer to earn one year of service credit must be set forth in rules adopted by
17 the board and may be amended from time to time at the discretion of the board.

18 **9. Procedure for reporting service credit.** A listing of the names of all persons
19 who were eligible volunteers during a calendar year must be prepared by each municipal
20 fire department and submitted to the board for review and approval by May 1st following
21 the end of that calendar year. The board, at its sole discretion, may audit any list prepared
22 by a municipal fire department. Such a listing must indicate which eligible volunteers
23 earned service credit during the calendar year and must be prepared, certified under oath
24 by the fire chief of the municipal fire department, posted in the fire department for at least
25 30 days and then submitted to and received by the board before May 1st. During the
26 30-day posting period, any eligible volunteer must be given the opportunity to dispute the
27 service credit shown for the eligible volunteer in accordance with law. The fire chief
28 shall indicate in writing to the board that the list was posted for at least 30 days and that
29 all disputes regarding the service credit shown on the listing as having been earned during
30 the year have been resolved. If the listing is not received by the board by May 1st, a
31 contribution may not be credited to the program account of any eligible volunteer whose
32 name was or should have been reported on the listing as having earned one year of
33 service credit during the calendar year.

34 **10. Contributions to the program.** For each calendar year beginning after
35 December 31, 2013, the program trust fund must accept contributions, if any, from the
36 following:

37 A. The State;

38 B. A municipality;

39 C. A municipal fire department or a fire company or volunteer organization
40 associated with a municipal fire department;

41 D. The Federal Government; and

1 E. A participant, after the United States Internal Revenue Code is amended and any
2 required rules and regulations are issued by the United States Internal Revenue
3 Service to allow defined contribution length of service award programs to be treated
4 as deferred compensation plans under the United States Internal Revenue Code,
5 Section 457. Until the United States Internal Revenue Code is so amended, the board
6 shall contract with a firm to offer individual retirement accounts to participants.

7 The annual contributions, if any, for a given calendar year must be deposited into the
8 program trust fund before the following July 1st.

9 The portion of the annual contributions credited to a program account of a participant
10 who has attained the entitlement age as described in subsection 14 and has been paid the
11 participant's accrued service award must be determined in the same manner as the portion
12 of the annual contributions credited to a program account of a participant who has not
13 attained the entitlement age.

14 Except for the limit on the amount of the annual contributions credited to a participant's
15 program account set forth in the United States Internal Revenue Code, Section 457, there
16 is no other limit or restriction on the amount credited to a participant's program account
17 for any calendar year.

18 Beginning October 1, 2014 and every October 1st thereafter, the State Controller shall
19 transfer to the program trust fund an amount, as certified by the State Tax Assessor, that
20 is equivalent to 1/2 of the sales tax imposed on the sale of consumer fireworks pursuant to
21 Title 36, section 1811 in the prior fiscal year starting on the effective date of this
22 subsection.

23 **11. Subaccounts.** A participant's program account consists of the following
24 subaccounts:

25 A. A state subaccount, which is an account of a participant reflecting applicable state
26 contributions, forfeitures, investment income or loss as well as administrative and
27 investment expenses allocated to the subaccount and distributions paid from the
28 subaccount. A participant's state subaccount is subject to the vesting schedule set
29 forth in subsection 12.

30 (1) For a given calendar year, the total state contribution, if any, must be
31 allocated equally to the state subaccounts of the participants who earned one year
32 of service credit during that calendar year.

33 (2) Forfeitures from a participant's state subaccount must be added to and
34 allocated as state contributions as designated by the State in the calendar year in
35 which the forfeitures are determined to occur pursuant to subsection 13;

36 B. A municipal subaccount, which is an account of a participant derived from
37 contributions from a specific municipality to the program. A participant's municipal
38 subaccount must reflect the respective contributions from that municipality along
39 with forfeitures, investment income or loss as well as administrative and investment
40 expenses allocated to the subaccount and distributions paid from the subaccount. A
41 participant's municipal subaccount is subject to the vesting schedule set forth in
42 subsection 12.

1 (1) For a given calendar year, the total contribution from a specific municipality,
2 if any, must be allocated equally to the municipal subaccounts of the participants
3 who are eligible volunteers of that municipality and who earned one year of
4 service credit during that calendar year.

5 (2) Forfeitures from a participant's municipal subaccount must be added to and
6 allocated as municipal contributions as designated by the municipality in the
7 calendar year in which the forfeitures are determined to occur pursuant to
8 subsection 13;

9 C. A municipal fire department subaccount, which is an account of a participant
10 derived from contributions from a specific municipal fire department or a fire
11 company or volunteer organization associated with a fire department to the program.
12 A participant's municipal fire department subaccount must reflect the respective
13 contributions from that municipal fire department or fire company or volunteer
14 organization associated with a municipal fire department along with forfeitures,
15 investment income or loss as well as administrative and investment expenses
16 allocated to the subaccount and distributions paid from the subaccount. A
17 participant's municipal fire department subaccount is subject to the vesting schedule
18 set forth in subsection 12.

19 (1) For a given calendar year, the total contribution from a specific municipal
20 fire department or a fire company or volunteer organization associated with a fire
21 department, if any, must be allocated equally to the municipal fire department
22 subaccounts of the participants who are eligible volunteers of that municipal fire
23 department or fire company or volunteer organization associated with a
24 municipal fire department and who earned one year of service credit during that
25 calendar year.

26 (2) Forfeitures from a participant's municipal fire department subaccount must
27 be added to and allocated as municipal fire department contributions as
28 designated by the municipal fire department or fire company or volunteer
29 organization associated with a municipal fire department in the calendar year in
30 which the forfeitures are determined to occur pursuant to subsection 13;

31 D. A Federal Government subaccount, which is an account of a participant reflecting
32 applicable Federal Government contributions, forfeitures, investment income or loss
33 as well as administrative and investment expenses allocated to the subaccount and
34 distributions from the subaccount. Unless otherwise specified in federal law, a
35 participant's Federal Government subaccount is subject to the vesting schedule set
36 forth in subsection 12.

37 (1) Unless otherwise specified in federal law, for a given calendar year, the total
38 contribution from the Federal Government, if any, must be allocated equally to
39 the Federal Government subaccounts of the participants who earned one year of
40 service credit during that calendar year.

41 (2) Unless otherwise specified in federal law, forfeitures from a participant's
42 Federal Government subaccount must be added to and allocated as Federal
43 Government contributions as designated by the Federal Government in the

1 calendar year in which the forfeitures are determined to occur pursuant to
2 subsection 13; and

3 E. A participant contribution subaccount. If the United States Internal Revenue
4 Code is amended and any required rules and regulations are issued by the United
5 States Internal Revenue Service to allow defined contribution length of service award
6 programs to be treated as deferred compensation plans under the United States
7 Internal Revenue Code, Section 457, a participant may elect to make participant
8 contributions to the program. A participant contribution subaccount must reflect the
9 respective contributions from a participant along with investment income or loss as
10 well as administrative and investment expenses allocated to the subaccount and
11 distributions paid from the subaccount. A participant contribution subaccount must
12 be 100% vested at all times.

13 **12. Vesting schedule for a participant's accrued service award.** A participant's
14 accrued service award becomes vested as set out in this subsection.

15 A. If the participant has less than 5 years of service credit, the vested percentage is
16 0%.

17 B. If the participant has 5 or more years of service credit, the vested percentage is
18 100%.

19 In determining an individual participant's years of service credit for the purpose of
20 vesting, all years of service credit earned as a participant in the program must be counted.
21 Failure to submit the annual eligible volunteer listing to the board under subsection 9 by
22 the required date for any calendar year does not result in the forfeiture of the certified
23 service credit reported to the board for an eligible volunteer.

24 All calendar years, up to 5 years, ending before January 1, 2014 during which the
25 participant was an eligible volunteer for the entire calendar year count for vesting service
26 credit.

27 **13. Forfeiture of a participant's accrued service award.** The nonvested portion of
28 a participant's accrued service award is permanently forfeited effective as of the
29 December 31st of the calendar year during which the participant has not been an eligible
30 volunteer for 36 consecutive months. Service credit earned by a participant is never
31 forfeited.

32 **14. Entitlement age.** The entitlement age for a participant is the earlier of:

33 A. Sixty years of age or the person's age on the next January 1st after becoming a
34 participant in the program if the person is 60 years of age or older; and

35 B. The age of a participant as of the end of the calendar year after earning 20 years
36 of service credit.

37 **15. Payment to participant of accrued service award.** The following provisions
38 govern the payment to a participant of an accrued service award.

39 A. Upon the attainment of the entitlement age as described in subsection 14, a
40 participant must be paid the vested portion of the participant's accrued service award.
41 A participant who attains the entitlement age while an eligible volunteer and before

1 attaining a 100% vested status must be paid the participant's accrued service award as
2 of December 31st of the calendar year during which the participant achieved a 100%
3 vested status. A participant who attains the entitlement age before 60 years of age
4 may on or before attaining the entitlement age file a written election with the board to
5 defer payment of the participant's accrued service award until attainment of 60 years
6 of age.

7 B. As of the last day of the first calendar year during which a participant has no
8 longer been an eligible volunteer for at least 36 consecutive months, the vested
9 portion of the participant's accrued service award must be paid to the participant.

10 C. A participant who has been determined to be totally and permanently disabled by
11 the United States Social Security Administration, any workers' compensation board,
12 any insurance company, any state retirement system, any pension plan administrator
13 or any other entity approved by the board must be paid that participant's accrued
14 service award as soon as administratively feasible after all documentation required by
15 the board to verify and determine total and permanent disablement is submitted to the
16 board and the disability payment is awarded by the board.

17 D. Should a participant die before attaining the entitlement age, the participant's
18 designated beneficiary or estate if no acceptable beneficiary designation form has
19 been filed with the board by the participant must upon application to the board be
20 paid the participant's accrued service award as soon as administratively feasible after
21 all required documentation is submitted to the board.

22 E. The portion of the annual contribution credited to the program account of a post-
23 entitlement age participant must be immediately paid to the participant if the
24 participant has achieved a 100% vested status in the program. If the post-entitlement
25 age participant has not achieved a 100% vested status in the program, that
26 participant's accrued service award must be paid to the participant upon the
27 December 31st of the calendar year during which the participant achieved a 100%
28 vested status.

29 **16. Investment of program funds.** The board shall establish a program trust fund
30 within which the funds paid into the program must be deposited. A participant shall
31 select investments for the amounts credited to the participant's program account from a
32 menu of investment options. Distributions of accrued service awards must be made from
33 the program trust fund in accordance with the program provisions. The program trust
34 fund must be established and maintained in accordance with applicable sections of the
35 United States Internal Revenue Code. Subject to review and approval by the Treasurer of
36 State, the program trust fund investment options made available to participants must be
37 selected by the board.

38 **17. Program audits.** At the discretion of the State, either a state agency or a firm
39 retained by the State shall audit the program at least once every 5 years.

40 **18. Notice of changes to laws governing the program.** Within 180 days after the
41 effective date of legislation that changes the laws governing the program, a written notice
42 and explanation of these changes must be distributed by the board to all persons who

1 participate or are eligible to participate in the program. Copies of this written notice and
2 explanation must be available upon request to the board to all other persons.

3 **19. Program termination.** Within 360 days after the effective date of legislation
4 terminating the program, each program participant must be paid the participant's entire
5 accrued service award to the date of payment in a single lump sum. Beneficiaries of
6 deceased participants must be paid any amount owed to them under the program in the
7 same manner within the same 360-day period.

8 **20. Program trust fund governed by certain provisions.** Until the United States
9 Internal Revenue Code is amended to treat defined contribution length of service award
10 programs as deferred compensation plans under the United States Internal Revenue Code,
11 Section 457, the program trust fund must be governed by all required provisions to ensure
12 that a participating eligible volunteer or the eligible volunteer's beneficiary is not subject
13 to federal income taxation on an accrued service award until actual receipt of payment by
14 the participant or the beneficiary. After the United States Internal Revenue Code is so
15 amended, the State and the board shall take all required actions to ensure the program
16 complies with the United States Internal Revenue Code, Section 457 and the related
17 United States Internal Revenue Service regulations.

18 **21. Rules.** The board shall adopt rules, which are routine technical rules pursuant to
19 Title 5, chapter 375, subchapter 2-A, pertaining to the administration of the program.

20 **Sec. 2. 5 MRSA §12004-G, sub-§30-E** is enacted to read:

21 **30-E.**

22 <u>Public Safety</u>	<u>Maine Length of</u>	<u>Expenses Only</u>	<u>5 MRSA §3372</u>
	<u>Service Award</u>		
	<u>Program Board of</u>		
25	<u>Trustees</u>		

26 **Sec. 3. 36 MRSA §1811, first ¶,** as amended by PL 2011, c. 209, §4 and affected
27 by §5, is further amended to read:

28 A tax is imposed on the value of all tangible personal property and taxable services
29 sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed
30 establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title
31 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house
32 or tourist or trailer camp; 10% on the value of rental for a period of less than one year of
33 an automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000
34 pounds rented from a person primarily engaged in the business of renting automobiles or
35 of a loaner vehicle that is provided other than to a motor vehicle dealer's service
36 customers pursuant to a manufacturer's or dealer's warranty; 10% on the value of
37 consumer fireworks, as defined in Title 8, section 221-A, subsection 1-A; 7% on the
38 value of prepared food; and 5% on the value of all other tangible personal property and
39 taxable services. Value is measured by the sale price, except as otherwise provided. The
40 value of rental for a period of less than one year of an automobile or of a pickup truck or
41 van with a gross vehicle weight of less than 26,000 pounds rented from a person

1 primarily engaged in the business of renting automobiles is the total rental charged to the
2 lessee and includes, but is not limited to, maintenance and service contracts, drop-off or
3 pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the
4 rental agreement to recover the owner's estimated costs of the charges imposed by
5 government authority for title fees, inspection fees, local excise tax and agent fees on all
6 vehicles in its rental fleet registered in the State. All fees must be disclosed when an
7 estimated quote is provided to the lessee.

8 **SUMMARY**

9 This bill establishes the framework for a statewide pension-type program under
10 which "bona fide volunteers" as defined in the United States Internal Revenue Code are
11 paid length of service awards for performing qualified services. "Qualified services" is
12 defined under the United States Internal Revenue Code, Section 457(e)(11) to mean "fire
13 fighting and prevention services, emergency medical services, and ambulance services."
14 Under the program, volunteers have a program account that would be credited with an
15 annual contribution deposited no later than the following July 1st for each year during
16 which the volunteer participated in a minimum required level of volunteer activities set
17 forth by the Maine Length of Service Award Program Board of Trustees. Upon the
18 attainment of 60 years of age or after having earned 20 years of service credit before 60
19 years of age, a volunteer who had attained a vested status in the program by having
20 earned 5 years of service credit would be paid the contributions credited to that
21 volunteer's program account plus the net investment income earned on those
22 contributions. The vested portion of the program account award of a participating
23 volunteer must be paid before 60 years of age after the volunteer ceases to perform
24 qualified services for 36 consecutive months. The program account balance of a
25 participating volunteer is also payable before 60 years of age upon death or total and
26 permanent disablement.

27 This bill authorizes the State, political subdivisions and emergency services providers
28 within the State as well as emergency services volunteers to participate in the funding of
29 this program. Participation in the program funding is optional for any prospective
30 contributor, and the amount contributed may vary from year to year by a contributor
31 based on available funds. If federal funds become available for the program, the program
32 must accept those funds as well.

33 This bill raises the sales tax on consumer fireworks from 5% to 10% and dedicates
34 the revenue from the increase to the program.

35 Under this bill, the Maine Length of Service Award Program Board of Trustees
36 contracts with private sector firms to provide administration and investment services for
37 the program.

38 Until the United States Internal Revenue Code is amended to provide that programs
39 under which length of service awards are paid to emergency services volunteers may be
40 treated as United States Internal Revenue Code, Section 457 plans of deferred
41 compensation, the program in this bill must comply with the current applicable sections
42 of the Internal Revenue Code.