

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 164

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H.P. 122

House of Representatives, January 27, 2015

### An Act To Establish the Maine Length of Service Award Program

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative EVANGELOS of Friendship.  
Cosponsored by Senator DUTREMBLE of York and  
Representatives: GINZLER of Bridgton, KRUGER of Thomaston, KUMIEGA of Deer Isle,  
LAJOIE of Lewiston, MAKER of Calais, SHAW of Standish, STANLEY of Medway,  
Senator: MIRAMANT of Knox.

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" means any person who routinely provides  
21 emergency medical treatment to the sick or injured.

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 to provide paid length of service awards to eligible volunteers. The program  
5           is administered by the board as set out in this section.

6           **3. Board of trustees.** The following provisions govern the Maine Length of Service  
7           Award Program Board of Trustees, which is establish to oversee the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

36           F. The board shall keep a record of all its proceedings, which:

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

1                   (2) Must be open to public inspection.

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

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

6                   **6. Participation commencement.** Unless an eligible volunteer waives the right of  
7 participation pursuant to subsection 7, the eligible volunteer becomes a participant on the  
8 last day of the first calendar year during which the eligible volunteer meets the service  
9 credit requirements set forth in subsection 8 during a calendar year beginning after  
10 December 31, 2015.

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

15                   **8. Service credit.** Service credit may be allowed in the program only for volunteer  
16 emergency service rendered as an eligible volunteer. The requirements to be met by an  
17 eligible volunteer to earn one year of service credit must be set forth in rules adopted by  
18 the board pursuant to subsection 21 and may be amended from time to time at the  
19 discretion of the board.

20                   **9. Procedure for reporting service credit.** A municipal fire department shall  
21 submit a list of all persons who were eligible volunteers during a calendar year to the  
22 board for review and approval by May 1st following the end of that calendar year. The  
23 list must indicate which eligible volunteers earned service credit during the calendar year  
24 and must be prepared, certified under oath by the fire chief of the municipal fire  
25 department, posted in the fire department for at least 30 days and then submitted to and  
26 received by the board by May 1st. During the 30-day posting period, an eligible  
27 volunteer must be given the opportunity to dispute the service credit shown for the  
28 eligible volunteer in accordance with law. The fire chief shall indicate in writing to the  
29 board that the list was posted for at least 30 days and that all disputes regarding the  
30 service credit shown on the list as having been earned during the year have been resolved.  
31 The board, at its sole discretion, may audit a list prepared by a municipal fire department  
32 under this subsection. If the list is not received by the board by May 1st, a contribution  
33 may not be credited to the program account of any eligible volunteer whose name was or  
34 should have been reported on the list as having earned one year of service credit during  
35 the calendar year, except as provided in subsection 12.

36                   **10. Contributions to the program.** For each calendar year beginning after  
37 December 31, 2015, the program trust fund must accept contributions, if any, from the  
38 following:

39                   A. The State;

40                   B. A municipality;

1           C. A municipal fire department or a fire company or volunteer organization  
2           associated with a municipal fire department;

3           D. The Federal Government; and

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

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

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

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

21          Beginning October 1, 2016 and every October 1st thereafter, the State Controller shall  
22          transfer to the program trust fund an amount, as certified by the State Tax Assessor, that  
23          is equivalent to 1/2 of the sales tax imposed on the sale of consumer fireworks pursuant to  
24          Title 36, section 1811 in the prior fiscal year starting on the effective date of this  
25          subsection.

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

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

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

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

39               B. A municipal subaccount, which is an account of a participant derived from  
40               contributions from a specific municipality to the program. A participant's municipal  
41               subaccount must reflect the respective contributions from that municipality along  
42               with forfeitures, investment income or loss as well as administrative and investment

1 expenses allocated to the subaccount and distributions paid from the subaccount. A  
2 participant's municipal subaccount is subject to the vesting schedule set forth in  
3 subsection 12.

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

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

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

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

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

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

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

1 (2) Unless otherwise specified in federal law, forfeitures from a participant's  
2 Federal Government subaccount must be added to and allocated as Federal  
3 Government contributions as designated by the Federal Government in the  
4 calendar year in which the forfeitures are determined to occur pursuant to  
5 subsection 13; and

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

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

18 A. If the participant has less than 5 years of service credit, the vested percentage is  
19 0%.

20 B. If the participant has 5 or more years of service credit, the vested percentage is  
21 100%.

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

27 All calendar years, up to 5 years, ending before January 1, 2016 during which the  
28 participant was an eligible volunteer for the entire calendar year count for vesting service  
29 credit.

30 **13. Forfeiture of a participant's accrued service award.** The nonvested portion of  
31 a participant's accrued service award is permanently forfeited effective as of December  
32 31st of the calendar year during which the participant has not been an eligible volunteer  
33 for 36 consecutive months. Service credit earned by a participant is never forfeited.

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

35 A. Sixty-five years of age or the person's age on the next January 1st after becoming  
36 a participant in the program if the person is 65 years of age or older; and

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

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



1           A. Upon the attainment of the entitlement age as described in subsection 14, a  
2           participant must be paid the vested portion of the participant's accrued service award.  
3           A participant who attains the entitlement age while an eligible volunteer and before  
4           attaining a 100% vested status must be paid the participant's accrued service award as  
5           of December 31st of the calendar year during which the participant achieved a 100%  
6           vested status. A participant who attains the entitlement age before 65 years of age  
7           may on or before attaining the entitlement age file a written election with the board to  
8           defer payment of the participant's accrued service award until attainment of 65 years  
9           of age.

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

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

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

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

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

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

1 **18. Notice of changes to laws governing the program.** Within 180 days after the  
2 effective date of legislation that changes the laws governing the program, a written notice  
3 and explanation of these changes must be distributed by the board to all persons who  
4 participate or are eligible to participate in the program. Copies of this written notice and  
5 explanation must be available upon request to the board to all other persons.

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

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

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

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

24 **30-E.**

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

29 **Sec. 3. 36 MRSA §1811, first ¶**, as repealed and replaced by PL 2013, c. 588, Pt.  
30 E, §11, is amended to read:

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

1 tangible personal property and taxable services and products transferred electronically.  
2 Notwithstanding the other provisions of this section, from October 1, 2013 to June 30,  
3 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel, rooming  
4 house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of  
5 liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15,  
6 in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible  
7 personal property and taxable services and products transferred electronically. Value is  
8 measured by the sale price, except as otherwise provided. The value of rental for a period  
9 of less than one year of an automobile or of a pickup truck or van with a gross vehicle  
10 weight of less than 26,000 pounds rented from a person primarily engaged in the business  
11 of renting automobiles is the total rental charged to the lessee and includes, but is not  
12 limited to, maintenance and service contracts, drop-off or pick-up fees, airport  
13 surcharges, mileage fees and any separately itemized charges on the rental agreement to  
14 recover the owner's estimated costs of the charges imposed by government authority for  
15 title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet  
16 registered in the State. All fees must be disclosed when an estimated quote is provided to  
17 the lessee.

## 18 **SUMMARY**

19 This bill establishes the framework for a statewide pension-type program under  
20 which "bona fide volunteers" as defined in the United States Internal Revenue Code are  
21 paid length of service awards for performing qualified services. "Qualified services" is  
22 defined under the United States Internal Revenue Code, Section 457(e)(11) to mean "fire  
23 fighting and prevention services, emergency medical services, and ambulance services."  
24 Under the program, volunteers have a program account that would be credited with an  
25 annual contribution deposited no later than the following July 1st for each year during  
26 which the volunteer participated in a minimum required level of volunteer activities set  
27 forth by the Maine Length of Service Award Program Board of Trustees established in  
28 this bill. Upon the attainment of 65 years of age or after having earned 20 years of  
29 service credit before 65 years of age, a volunteer who had attained a vested status in the  
30 program by having earned 5 years of service credit would be paid the contributions  
31 credited to that volunteer's program account plus the net investment income earned on  
32 those contributions. The vested portion of the program account award of a participating  
33 volunteer must be paid before the volunteer reaches 65 years of age if the volunteer  
34 ceases to perform qualified services for 36 consecutive months. The program account  
35 balance of a participating volunteer is also payable before 65 years of age upon death or  
36 total and permanent disablement.

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

43 This bill raises the sales tax on consumer fireworks to 10% and dedicates the revenue  
44 from the increase to the program.

1           Under this bill, the Maine Length of Service Award Program Board of Trustees  
2 contracts with private sector firms to provide administration, investment, custodial,  
3 trustee and auditing services for the program.

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