

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

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1989

375, print registration forms and other related administrative costs.

Sec. 3. Effective date. This Act shall take effect on January 1, 1990.

Effective January 1, 1990.

CHAPTER 550

H.P. 656 - L.D. 890

An Act to Amend the Definition of Teacher in the Laws Relating to the Maine State Retirement System

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the principal purpose of this legislation is to clarify the rights of certain employees of school administrative units relative to membership in the Maine State Retirement System as "teachers"; and

Whereas, most new employees of school administrative units begin employment before the expiration of the 90-day period; and

Whereas, it is in the best interest of employees and school administrative units to have employees enrolled in their benefit programs from the time of initial employment; and

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

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

Sec. 1. 5 MRSA §17001, sub-§29-A is enacted to read:

29-A. Professional employee. "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual or mechanical work;

B. Involving the consistent exercise of discretion and judgment;

C. Of such a character that the product or result of the work cannot be standardized in relation to a given time period; and

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a

prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

Sec. 2. 5 MRSA §17001, sub-§42, as amended by PL 1985, c. 808, §§1 and 2, is repealed and the following enacted in its place:

42. Teacher. "Teacher" means:

A. Any employee of a public school who fills any position which the Department of Educational and Cultural Services requires be filled by a person who holds the appropriate certification or license required for that position and:

(1) Holds appropriate certification from the Department of Educational and Cultural Services; or

(2) Holds an appropriate license issued to a professional employee by a licensing agency of the State;

B. Any employee of a public school who fills any position not included in paragraph A, the principal function of which is to introduce new learning to students;

C. Any employee of a public school on June 30, 1989, in a position not included in paragraph A or B which was included in the definition of teacher in effect on June 30, 1989, as long as:

(1) The employee does not terminate employment; or

(2) The employee terminates employment and returns to employment in a position in the same classification within 2 years of the date of termination.

Regardless of any subsequent employment history, any employee of a public school in a position which was included in the definition of teacher in effect on June 30, 1989, is entitled to creditable service as a teacher for all service in that position on or before that date;

D. Any employee of a public school in a position not included in paragraph A, B or C who was a member of the retirement system as a teacher on August 1, 1988, as long as:

(1) The employee does not terminate employment; or

(2) The employee terminates employment and returns to employment in a position in

the same classification within 2 years of the date of termination;

E. Any former employee of a public school in a position not included in paragraph A, B or C who was a member of the retirement system as a teacher before August 1, 1988, provided that the former employee returns to employment in a position in the same classification before July 1, 1991; or

F. For service before July 1, 1989, any employee of a public school in a position which was included in the definition of teacher before July 1, 1989.

Sec. 3. Transfer of membership and creditable service.

Each employee of a public school employed in a position included in the definition of teacher as defined in the Maine Revised Statutes, Title 5, section 17001, shall become a teacher member of the Maine State Retirement System as of July 1, 1989, unless, being eligible to do so, that person exercises one of the following options.

1. Any employee in a public school whose membership in the Maine State Retirement System is subject to transfer from that of a participating local district member to that of a teacher member as a result of this Act shall have the option of remaining a participating local district member.

2. Any employee in a public school whose employment by that school is covered by the United States Social Security Act who would become a teacher member of the retirement system as a result of this Act shall have the option of declining membership in the retirement system.

These options must be exercised by written notification received by the Executive Director of the Maine State Retirement System before January 1, 1990, upon which date the options expire.

Any employee of a public school whose membership in the Maine State Retirement System is subject to transfer from that of a participating local district member to that of a teacher member as a result of this Act, who does not exercise option 1 or 2, shall have the option of becoming a teacher member as of July 1, 1989, and retaining creditable service before that date as participating local district service credit. This option must be exercised by written notification received by the executive director of the retirement system before January 1, 1990, when the options expire.

The provisions of the Maine Revised Statutes, Title 5, sections 17656 and 18253 notwithstanding, the creditable service and earnable compensation, as a participating local district member, of any employee of a public school whose membership in the Maine State Retirement System is transferred from that of a participating local district member to that of a teacher member shall be included with that member's creditable service and earnable compensation as a teacher member; except that, if the member is required by this Act to make additional contributions, the creditable service and earnable compensation shall not be transferred

until after the required additional contributions have been made and the accumulated contributions transferred to that member's account as a teacher member. To the extent appropriate, the granting of additional service credits based upon additional contributions shall be subject to the Maine Revised Statutes, Title 5, section 18353, and applicable rules of the Board of Trustees of the Maine State Retirement System.

Any employee of a public school employed in a position included in the definition of teacher as amended by this Act, who does not have service credit for the period of employment in that position before July 1, 1989, as a participating local district employee and who does not exercise option 2 is entitled to service credit for the period of time upon payment of contributions as required by section 4 of this Act. Granting of this service credit shall be subject to Title 5, section 17753.

Sec. 4. Members contributions.

The contributions in the account of any employee of a public school whose membership in the Maine State Retirement System is subject to transfer from that of a participating local district member to that of a teacher member as a result of this Act, shall be transferred to that member's account as a teacher as of July 1, 1989, unless the member exercises one of the options provided by section 3 of this Act prior to January 1, 1990.

Any employee of a public school whose contribution rate as a participating local district member is less than the contribution rate of teacher members, shall, before that member's contributions are transferred, make such additional contributions as are needed to increase the accumulated contributions to an amount equal to the amount that that member's accumulated contributions would have been had the member contributed at the same rate that teacher members contributed during the period when the member was a participating local district member. To the extent appropriate, the payment of additional contributions shall be subject to the Maine Revised Statutes, Title 5, section 18305 and applicable rules of the board of trustees.

Any employee of a public school employed in a position included in the definition of teacher as amended by this Act, who does not have service credit for the period of employment in that position before July 1, 1989, as a participating local district employee and who does not exercise option 2 in the first paragraph of section 3 of this Act, may elect to pay into the Members' Contribution Fund an amount equal to the contributions that member would have paid had the member been a teacher member during the entire period of employment in that position when that person was not a member. Payments shall be made in accordance with Title 5, section 17704 and any applicable rules of the board of trustees.

Sec. 5. Employers contributions.

The provisions of the Maine Revised Statutes, Title 5, sections 17656 and 18253 notwithstanding, whenever the membership and creditable service of an employee of a

public school is transferred from that of a participating local district member to that of a teacher member as provided by section 3 of this Act, the funds transferred in accordance with Title 5, section 18253, subsection 1, paragraph C shall be augmented by an amount that is sufficient to fund the benefit, based upon the member's previous creditable service, granted in accordance with section 3 of this Act.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
EDUCATIONAL AND CULTURAL SERVICES, DEPARTMENT OF		
Teachers' Retirement		
All Other	\$8,000	\$8,480

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1989.

Effective July 1, 1989.

CHAPTER 551

H.P. 272 - L.D. 384

An Act to Provide Start-up Funds for School-based Child Care

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

Sec. 1. 20-A MRSA §6654 is enacted to read:

§6654. School-based child care grants

The department is authorized to make grants to school administrative units to assist the units in establishing school-based child care services. Each grant shall provide funds for 2 years and expenditure of grant money shall be considered expenditure of local funds in computing the unit's educational program costs in chapter 606. The department shall have full authority to administer the grant program.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
EDUCATIONAL AND CULTURAL SERVICES, DEPARTMENT OF		
School-based Child Care		
All Other	\$100,000	\$200,000

Provides funds to assist school units in establishing school-based child care programs. Liability of the State will be limited to funds appropriated by the Legislature for this purpose.

Funds appropriated for fiscal year 1989-90 shall not lapse but shall be carried forward to be used for the purposes of this provision until June 30, 1991.

See title page for effective date.

CHAPTER 552

S.P. 316 - L.D. 821

An Act Providing for the 1989 Amendments Pertaining to the Finance Authority of Maine Act

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

Sec. 1. 10 MRSA §351, sub-§3, as enacted by PL 1985, c. 468, §2, is amended to read:

3. Qualifying small business. "Qualifying small business" means a business employing 30 or fewer employees and having a net worth which shall have the meaning accorded to it under generally accepted accounting principles, with such exclusions as the board may establish by rule, not exceeding \$250,000.

Sec. 2. 10 MRSA §355, as enacted by PL 1985, c. 468, §2, is amended to read:

§355. Grants

The board may enter into matching grant agreements with any qualifying small business. No grant may be given to any one qualifying small business in excess of \$5,000 \$15,000 in any year. Grants shall be awarded upon the condition that an amount equal to or in excess of the amount of the grant will be dedicated by the business receiving the grant. In awarding grants under this chapter, the board shall give preference to qualifying small businesses which employ 20 or fewer employees. The board may accept a royalty or equity interest in a product or entity in connection with a grant, which rights shall lapse to the State upon repeal of this chapter.

Sec. 3. 10 MRSA §357, as enacted by PL 1985, c. 468, §2, is repealed.

Sec. 4. 10 MRSA §963-A, sub-§§24-A and 49-D are enacted to read:

24-A. Interest rate swap agreement. "Interest rate swap agreement" means a financial agreement as defined by the Finance Authority of Maine by rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

49-D. Swap counterparty. "Swap counterparty" means a person who is a party to an interest rate swap agreement.