

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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
1993

through the auctioning of 5 moose hunting permits.

See title page for effective date.

CHAPTER 578

S.P. 692 - L.D. 1878

An Act to Improve Methods of Dispute Resolution of the Maine Human Rights Commission

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

Sec. 1. 5 MRSA §4612, sub-§1, ¶A, as enacted by PL 1985, c. 585, §1, is amended to read:

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement may not be made public without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program.

See title page for effective date.

CHAPTER 579

H.P. 1390 - L.D. 1888

An Act to Expedite Oil Spill Response Activities

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

Sec. 1. 38 MRSA §363-D is enacted to read:

§363-D. Waiver or modification of protection and improvement laws

The commissioner or the commissioner's designee may waive or modify any of the provisions of this chapter if that waiver or modification promotes or assists any oil spill response activity conducted in accordance with the national contingency plan, a federal contingency plan, the state marine oil spill contingency plan, or as otherwise directed by the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver issued by the commissioner under this section must be in writing.

See title page for effective date.

CHAPTER 580

S.P. 698 - L.D. 1896

An Act to Correct the Implementation of Recent Changes to the Retirement Laws

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

Whereas, implementation of the recent amendments to the state retirement laws has caused confusion in at least one school district; and

Whereas, the legislative intent behind these amendments will be thwarted unless the law is corrected; and

Whereas, there is a need to make these corrections as quickly as possible to prevent injustice; 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-§13, ¶C, as repealed and replaced by PL 1993, c. 410, Pt. L, §13, is amended to read:

C. Earnable compensation does not include any increase that exceeds the prior year's earnable compensation by more than 5% or that results in a total increase of more than 10% during the 3-year period used in the calculation of average final compensation unless the cost of the additional actuarial liability arising from the excess

increase is paid by the employer as provided in section 17154. Any payment made under paragraph B, subparagraph (1) must be included in determining the amount of increase in the year in which the payment is made. This paragraph does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract executed prior to July 1, 1993 or collective bargaining agreement executed or ratified in its final form by final vote of one party to the agreement prior to July 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of the school administrative unit in effect on July 1, 1993. In addition, this paragraph does not apply to increases in compensation for state employees received during fiscal years 1993-94 and ~~fiscal year~~ 1994-95.

Sec. 2. 5 MRSA §17154, sub-§§10 and 11, as enacted by PL 1993, c. 410, Pt. L, §27, are amended to read:

10. Payment of additional actuarial costs incurred by the retirement system due to early retirement incentives. Notwithstanding the other provisions of this section, additional actuarial and reasonable administrative costs that result from the early retirement of a member offered a retirement incentive by an employer must be paid by the employer that offered and provided the incentive in a manner prescribed in rules adopted by the board. "Early retirement" means retirement before normal retirement age with a reduced retirement benefit as provided by section 17852, subsection 3 or 3-A, subsection 4, paragraph C or C-1 or subsection 10, paragraph C or C-1; section 17857, subsection 3-A; section 18452, subsection 3; or section 18462, subsection 3. For purposes of this paragraph, "employer" means, in the case of a member who is a state employee, the department of ~~state government~~ State Government by which the member was last employed prior to retirement; in the case of a member who is a teacher, the local school administrative unit by which the member was last employed prior to retirement; and in the case of a member who is an employee of a participating local district, the district by which the member was last employed prior to retirement. An early retirement incentive that is part of a collective bargaining agreement executed or ratified in its final form by final vote of one party to the agreement prior to July 1, 1993 is not subject to this subsection for the initial term of that agreement.

11. Payment of actuarial cost of excess increase in earnable compensation. Notwithstanding the other provisions of this section, the employer may pay to the retirement system the cost of the actuarial

liability resulting from any increase in earnable compensation for any year within the 3-year period used in determining average final compensation that exceeds the prior year's earnable compensation by more than 5% or, if it would result in a lesser additional actuarial liability, any increase in earnable compensation over a total increase of 10% during the 3-year period. The retirement system shall calculate the cost of the additional actuarial liability for each member when calculating the retirement benefit for that member at retirement. The cost must be paid in accordance with this subsection.

A. For state employees, the State Controller shall establish an account from which payments required by section 17001, subsection 13, paragraph C must be made. At the time any collective bargaining agreement is funded, funds must be appropriated to this account to pay for the anticipated cost of any increases over the limits established in section 17001, subsection 13, paragraph C that may result from the provisions of that agreement. When the additional actuarial liability is incurred with respect to a retiring state employee, the retirement system shall bill the State Controller for the cost and the State Controller shall transfer to the retirement system the amount billed.

B. For teachers, the cost must be paid by the school administrative unit that provides an increase over the limits established in section 17001, subsection 13, paragraph C. If the school administrative unit has agreed to pay the cost of the additional actuarial liability, the retirement system shall bill the school administrative unit for the cost, which must be paid by the school administrative unit within 60 days of its receipt of the bill. If the retirement system does not receive payment within 60 days, the system shall notify the State Controller, who shall immediately reduce the school administrative unit's general purpose aid by the amount billed plus interest applied as of the 60th day and transfer the total amount of the reduction to the retirement system. If the general purpose aid payable at the time to the school administrative unit is insufficient to pay the entire amount of the reduction, general purpose aid payable to the school administrative unit in the future must be reduced until the entire amount of the reduction, plus any additional accrued interest, has been transferred to the retirement system.

C. The retirement system shall provide information with the bill to the employer stating the basis on which the cost billed was calculated and showing the calculations. If the State Controller or school administrative unit questions the cost,

its basis or the calculations, the retirement system shall promptly respond and, if necessary, meet with the State Controller or school administrative unit to resolve any dispute.

This subsection does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract executed prior to July 1, 1993 or collective bargaining agreement executed or ratified in its final form by final vote of one party to the agreement prior to July 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of the school administrative unit in effect on July 1, 1993. In addition, this subsection does not apply to increases granted to state employees during fiscal years 1993-94 and 1994-95.

Sec. 3. Retroactivity. This Act applies retroactively to June 30, 1993.

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

Effective March 31, 1994.

CHAPTER 581

S.P. 704 - L.D. 1901

An Act to Clarify the Appropriate Acknowledgement of Religious Holidays in Maine Schools

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

Sec. 1. 20-A MRSA §4805, sub-§9 is enacted to read:

9. Religious holidays. A public school may acknowledge religious holidays by conveying a message of pluralism and freedom of belief in some manner or form that does not endorse religion. In determining whether an acknowledgement endorses religion, school officials shall consider the context in which the acknowledgement appears or occurs.

See title page for effective date.

CHAPTER 582

H.P. 1406 - L.D. 1915

An Act to Establish the Somerset County Budget Committee

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 30-A MRSA c. 3, art. 12 is enacted to read:

Article 12

Somerset County Budget Committee

§895. Committee established

There is established the Somerset County Budget Committee, referred to in this article as the "budget committee," to carry out the purposes of this article. As used in this article, "county commissioners" means the county commissioners of Somerset County.

§896. Membership

The budget committee consists of 9 voting members and 3 nonvoting members selected as follows.

1. Municipal representatives. Prior to September 15th each year, municipal officers within each commissioner district shall caucus and elect members from that district for terms as provided in paragraph A. There must be 3 members from each commissioner district, 2 of whom are municipal officers and one of whom is a municipal official as defined in section 2001. No more than one member may represent the same municipality at one time.

A. Members serve for 3-year terms, except that initially each district caucus selects one member for a one-year term, one member for a 2-year term and one member for a 3-year term. If a budget committee member ceases to be a municipal officer or official during the term of membership, that member shall resign the membership and the next district caucus shall elect a qualified municipal officer or official to fill the membership for the remainder of the unexpired term.

2. Legislative member. By September 15th each year, the Somerset County legislative delegation shall select 3 of the delegation's members to serve as nonvoting members on the budget committee.