

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

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
1995

CHAPTER 541

S.P. 745 - L.D. 1856

An Act to Clarify the Early Retirement Incentives Law

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

Whereas, early retirement by state employees and teachers results in costs to the Maine State Retirement System that are significantly higher than the costs of retirement at normal retirement age; and

Whereas, those increased costs result from the earlier cessation of payment to the retirement system of employer and employee contributions toward retirement and the increased period over which the retirement system must pay retirement benefits to early retirees and their beneficiaries; and

Whereas, when the rate of early retirement exceeds the actuarially assumed rate, there is an increase in the unfunded liability of the retirement system; and

Whereas, it is the policy of the State, as embodied in current law, to discourage employers from offering early retirement incentives to state employees and teachers, thereby controlling the increase in unfunded liability, by requiring that employers pay the additional costs of early retirement incentives to the retirement system; and

Whereas, it is immediately necessary in order to limit increases in the unfunded liability due to early retirement incentives to define terms and clarify procedures for implementing current law; 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 §12004-G, sub-§26-C is enacted to read:

<u>26-C.</u> Labor	<u>Early Retirement Incentives Review Panel</u>	<u>Expenses Only for Certain Members</u>	<u>5 MRSA §17159</u>
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Sec. 2. 5 MRSA §17154, sub-§10, as amended by PL 1995, c. 462, Pt. A, §14, is repealed and the following enacted in its place:

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 pursuant to section 17159. For purposes of this subsection, "early retirement" has the same meaning as in section 17159, subsection 1.

Sec. 3. 5 MRSA §17159 is enacted to read:

§17159. Early retirement incentive costs

When an employee retires prior to normal retirement age and receives from the employer any significant monetary or nonmonetary payment or award in connection with the employee's retirement, the employer must, prior to the effective date of the employee's retirement, demonstrate that the payment or award is not a retirement incentive or pay the additional actuarial and reasonable administrative costs of the employee's early retirement.

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

A. "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.

B. "Employer" means, in the case of a member who is a state employee, the department of 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.

2. Criteria for identifying an early retirement incentive. A payment or award in connection with retirement is an incentive for early retirement for which the employer offering the incentive is responsible for the additional costs pursuant to section 17154, subsection 10 if all the criteria established in this subsection are met:

A. The payment or award is intended to induce the member's early retirement;

B. The payment or award is a one-time, time-limited or occasional offer outside the employer's regular benefit program;

C. The payment or award is not part of a longevity-based employee retention program; and

D. The payment or award is not made pursuant to a collective bargaining agreement for the initial term of that agreement if that agreement is executed or ratified in its final form by final vote of at least one of the parties to the agreement prior to July 1, 1993.

3. Employer provides information. If a member retires prior to normal retirement age and receives a significant monetary or nonmonetary payment or award in connection with the retirement, prior to the effective date of the member's retirement or, if a payment or award that was not known or anticipated prior to retirement is given after retirement, within 7 business days of the date upon which the payment or award is given, the employer must provide the following information to the retirement system:

A. Documents demonstrating that any of the criteria established in subsection 2 is not met. By way of example and not limitation, such documents include collective bargaining agreements, whether principal agreements, side agreements or memoranda of agreement or understanding; records of official actions by the employer; relevant rules or policies of the employer; records of prior or contemporaneous relevant retirements of employees of the employer; notices, memoranda or other communications from the employer to employees regarding retirement; and correspondence between the employer and an employee, employees or employee representatives concerning retirement; and

B. Certification on a form provided by the retirement system and signed by the employer, or the responsible officer of the employer on the employer's behalf, that the payment or award does not meet the criteria established in subsection 2 and is not an action or practice causing or encouraging early retirement.

4. Early Retirement Incentives Review Panel. The Early Retirement Incentives Review Panel as established in section 12004-G, subsection 26-C and referred to in this section as the "panel" is responsible for determining whether any payments or awards made in connection with member retirement satisfy

the criteria for early retirement incentives established in subsection 2.

A. The panel consists of the Commissioner of Administrative and Financial Services or the commissioner's designee who has authority to act on behalf of the commissioner and 3 members appointed by the Governor. One member represents school administrators; one member represents teachers; and one member is either of the 2 trustees of the board who are appointed by the Governor and qualified in the fields of investments, accounting, banking and insurance or as actuaries. Members shall elect a chair annually.

B. The term of office is 3 years or until a successor is appointed and qualified.

C. Members serve without compensation, except that the members representing school administrators and teachers may be reimbursed for expenses incurred in the performance of their duties.

D. The executive director shall provide staff assistance to the panel and is responsible to collect, hold and distribute to review panel members, prior to panel meetings, documents and certifications submitted by employers, to schedule meetings, record panel actions, send determinations to employers and carry out related functions on the panel's behalf.

E. The panel shall meet at least quarterly, unless there are no matters then requiring determination or reconsideration, and may meet more often.

F. The panel may continue in existence after July 1, 1999 only if the Legislature, on review, determines that the panel should continue.

G. The review panel may adopt rules in accordance with the Maine Administrative Procedure Act necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter II-A.

H. Annually, by January 15, the board shall issue a report to the joint standing committee of the Legislature having jurisdiction over retirement matters on early retirement incentives, including, but not limited to, trends in average retirement age and use of incentives to induce early retirement.

5. Panel determinations. The employer has the burden of demonstrating that a payment or award in connection with retirement does not meet one or more of the criteria of subsection 2. The review panel is responsible for determining whether the documents

and certification submitted by an employer satisfy the requirements of subsection 3 and whether the documentation provided by the employer satisfies the employer's burden with respect to subsection 2.

The panel shall make its determination based on documentation in its possession. If the panel finds that the employer has satisfied the requirements of subsection 3 and has demonstrated that any one of the criteria of subsection 2 is not met, it shall issue a determination that the payment in connection with retirement is not an early retirement incentive. When the panel can not make both of those findings, it shall issue a determination that the payment or award in connection with retirement is an early retirement incentive.

Except as otherwise provided, the panel is not required to issue determinations on hypothetical or proposed actions or practices.

6. Panel decision. At least 3 members must be present for the review panel to conduct business. The review panel's determination must be made by majority vote of the members present. If the members' votes are evenly divided, the additional actuarial and reasonable administrative costs associated with the early retirement in question must be shared equally between the employer and the State. In all cases, the panel shall issue a written determination specifying the basis for the determination.

7. Reconsideration; final decision. An employer receiving a determination that makes it liable for the full actuarial and reasonable administrative costs or for an equal share of these costs may request the panel to reconsider the determination. A reconsideration request must be received by the executive director within 30 days of an employer's receipt of the review panel's determination. If the employer provides, with the reconsideration request, additional documentation or a written statement of the reasons it believes the determination to be incorrect, the panel shall reconsider its determination. Otherwise, the panel may, but is not required to, reconsider its determination. The review panel's determination is final upon expiration of the 30-day period following the employer's receipt of the initial decision when no request for reconsideration is made, or 30 days after the employer's receipt of the panel's decision not to reconsider its determination, or 30 days after the employer's receipt of the panel's decision on reconsideration. There is no further review from that determination available from the panel.

8. Employer payment for costs resulting from early retirement incentives. Employer payment for costs resulting from early retirement incentives are governed by this section pursuant to section 17154, subsection 10.

A. The additional actuarial costs that result from the early retirement of a member who has received an early retirement incentive must be paid to the retirement system by the employer as provided in this paragraph.

(1) The retirement system shall determine the additional actuarial costs for which the employer is liable in individual situations as follows:

(a) First, the annual retirement benefit payable to the member upon the member's early retirement date must be calculated in accordance with the governing provisions of the retirement system statutes and rules;

(b) Second, the annual retirement benefit that would be payable to the member on a fully actuarially reduced basis must be calculated in accordance with the actuarial equivalent early retirement reduction factors prescribed by the retirement system's consulting actuary and approved by the board;

(c) Third, the retirement benefit calculated in division (b) must be subtracted from the retirement benefit calculated in division (a); and

(d) Fourth, a present-value factor must be applied to the amount determined in division (c) to convert the annual benefit amount to a lump sum present-value dollar amount. This amount represents the additional actuarial cost resulting from the early retirement of a member who has been offered a retirement incentive.

(2) The retirement system shall bill the employer of retiring members who will receive or have received early retirement incentives for the additional actuarial costs as determined by the retirement system in subparagraph (1). The bill must be accompanied by a statement of the basis of the costs identified in the bill and the supporting calculations.

(3) All determinations of additional actuarial costs are subject to recalculation upon the actual retirement of the member and upon any subsequent recalculation of the member's early retirement benefit due to misreporting of member-specific information, error or any direction by the board to recalculate a member's benefit. Any resulting change in additional actuarial costs

must be paid or refunded, as appropriate, to the employer. Any administrative costs for recalculation of additional actuarial costs that is caused by actions of the employer must be paid by the employer.

B. The reasonable administrative costs that result from the early retirement of a member who has received a retirement incentive must be paid to the retirement system by the employer as provided in this paragraph.

(1) Subject to review and approval by the board, the executive director shall establish and may revise from time to time an administrative processing fee to determine the member-specific additional actuarial costs relating to an early retirement incentive for which the employer is liable. The fee must be based on the time required for making such determinations, must be reasonable and may not be set at a level that requires the retirement system's members and employers as a whole to subsidize the cost of a determination. The fee must be paid before the retirement system determines the member-specific additional actuarial costs.

(2) The employer must pay any additional actual administrative costs for member-specific information at an hourly administrative cost rate for the retirement system plus the retirement system's actual costs related to actuarial and legal services. Subject to review and approval by the board, the executive director shall establish and may from time to time revise the administrative cost rate.

(3) The employer must be billed for any actual administrative costs beyond the processing fee. If the member is already receiving a retirement benefit or preliminary benefit when the employer is billed for administrative costs, the employer must also be charged interest as a cost and must pay interest retroactive to the member's effective date of retirement. The bill must be accompanied by a statement of the basis of the administrative costs.

C. For early retirement incentives granted between July 1, 1993 and March 15, 1996, the employer must pay the amount calculated under paragraphs A and B plus interest due to the retirement system in accordance with a payment schedule not to exceed 10 years. For early retirement incentives granted after March 15, 1996, the employer must pay the amount calculated under paragraphs A and B to the

retirement system within 30 days of receipt of the bill.

D. If the employer or the member disputes the determination that additional actuarial costs must be paid by the employer, the amount of the additional actuarial costs or the amount of actual administrative costs, an appeal may be brought pursuant to section 17451 and Chapter 702 of the board's rules.

E. Interest must be charged by the retirement system and must be paid by the employer on all overdue amounts pertaining to the processing fee, additional actuarial costs and administrative costs. In addition, an employer who fails to pay is liable for penalties on a case-by-case basis as recommended by the executive director and approved by the board and shall pay all of the retirement system's costs associated with collection of amounts overdue and enforcement of the provisions of this section.

Sec. 4. Implementation.

1. Appointment of review panel members.

Appointments to the Early Retirement Incentives Review Panel established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 26-C must be made within 30 days of the effective date of this Act.

2. Payment of costs of early retirement incentives since July 1, 1993.

Pursuant to the Maine Revised Statutes, Title 5, section 17154, subsection 10 as in effect between July 1, 1993 and the effective date of this Act, Jay, Scarborough, York, S.A.D. 25, S.A.D. 52, S.A.D. 56, School Union 29 and School Union 30 owe the Maine State Retirement System payments for the costs of early retirement incentive payments made to employees of those school units since July 1, 1993, as identified in the Maine State Retirement System's report to the Joint Standing Committee on Labor dated February 15, 1996. The amount owed must be determined and paid in accordance with this Act, except that interest may not be charged for the period between June 28, 1995 and March 15, 1996.

3. Other payments in connection with retirement since July 1, 1993.

The Maine State Retirement System shall review payments other than those identified in subsection 2 that are made in connection with retirement by school administrative units between July 1, 1993 and the effective date of this Act to determine if those payments constitute an early retirement incentive offered by the employer under the Maine Revised Statutes, Title 5, section 17154, subsection 10 as in effect between July 1, 1993 and the effective date of this Act. Payments determined to be early retirement incentives must have

their costs determined and paid as provided in this Act.

The Early Retirement Incentives Review Panel shall review those other payments made in connection with retirement between July 1, 1993 and the effective date of this Act and issue an advisory determination on whether those payments would meet the criteria for early retirement incentives established in this Act if they were offered after the effective date of this Act.

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

Effective March 14, 1996.

CHAPTER 542

H.P. 609 - L.D. 819

An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone

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. 38 MRSA §438-A, sub-§1-B is enacted to read:

1-B. Notification to landowners. This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what

location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not later than 14 days before its planning board votes to establish a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone.

B. In addition to the notice required by this Title or by rules adopted pursuant to this Title, the board shall provide written notification to landowners whose property is being considered by the board for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The board shall prepare and file with the commissioner a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The board must send notice not later than 30 days before the close of the public comment period prior to formal consideration of placement of the property in a resource protection zone by the board. Upon request of the board, the municipality for which the ordinance is being adopted shall provide the board with the names and addresses of persons entitled to notice under this subsection. Notification and filing of a certificate by the department are deemed to be notification and filing by the board for purposes of this section.

C. Any action challenging the validity of an ordinance based on failure by the board or municipality to comply with this subsection must be brought in Superior Court within 30 days after adoption or amendment of the ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive notice under this subsection, that the municipality or board failed to send notice as required, that the appellant had no knowledge of the proposed adoption or amendment of the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. This paragraph does not alter the right of a person to challenge the validity of any ordinance or map based on the fail-