

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

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

§5-204. Court appointment of guardian of minor; conditions for appointment

The court may appoint a guardian or coguardians for an unmarried minor if:

(a) All parental rights of custody have been terminated or suspended by circumstance or prior court order;

(b) Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child; or

(c) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child.

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

If a proceeding is brought under subsection (c), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent.

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor.

Sec. 2. 18-A MRSA §5-212, sub-§(d) is enacted to read:

(d) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The guardian has the burden of showing by a preponderance of the evidence that continuation of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination

of the guardianship unless there has been a substantial change of circumstances.

See title page for effective date.

CHAPTER 624

H.P. 1177 - L.D. 1609

An Act to Provide Consistent Retirement Plan Options for Game Wardens, Marine Patrol Officers, Forest Rangers and Baxter State Park Authority Rangers

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

Whereas, the Legislature has recently provided a new retirement option for game wardens, marine patrol officers and Baxter State Park Authority rangers and is now providing a similar option for forest rangers; and

Whereas, equitable treatment of forest rangers requires making this retirement option available immediately; 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 §17711, as amended by PL 1987, c. 739, §§23 and 48, is repealed and the following enacted in its place:

§17711. Forest rangers

1. Before September 1, 1984. A forest ranger in the Department of Conservation, Bureau of Forestry who was first employed in that capacity before September 1, 1984, shall contribute to the retirement system or have pick-up contributions made by the employer as follows:

A. At a rate of 7.5% of earnable compensation until the forest ranger has met the requirements for eligibility for retirement under section 17851, subsection 8; and

B. After meeting the eligibility requirements for retirement, at a rate of 6.5% of earnable compensation for the remainder of the forest ranger's employment as a forest ranger.

2. After August 31, 1984; option. A forest ranger in the Department of Conservation, Bureau of Forestry who was first employed in that capacity after August 31, 1984 and who elects the retirement option provided in section 17851, subsection 8-A shall contribute to the retirement system or have pick-up contributions made by the employer as provided in section 17852, subsection 7-A.

Sec. 2. 5 MRSA §17851, sub-§5-A, as enacted by PL 1995, c. 466, Pt. A, §2, is amended to read:

5-A. Inland Fisheries and Wildlife officers after August 31, 1984; option. A law enforcement officer in the Department of Inland Fisheries and Wildlife who was first employed in that capacity after August 31, 1984 or who, if employed in that capacity before August 31, 1984, ceased to be employed in that capacity on or before that date and who subsequently became reemployed in that capacity after that date qualifies for a service retirement benefit upon reaching 55 years of age after completing at least 25 years of creditable service in that capacity if notice of election of the option and payment of employee contributions and actuarial costs are made as provided in section 17852, subsection 5-A.

Sec. 3. 5 MRSA §17851, sub-§6-A, as enacted by PL 1995, c. 466, Pt. B, §3, is amended to read:

6-A. Marine resources officers after August 31, 1984; option. A law enforcement officer in the Department of Marine Resources who was first employed in that capacity after August 31, 1984 or who, if employed in that capacity before August 31, 1984, ceased to be employed in that capacity on or before that date and who subsequently became reemployed in that capacity after that date qualifies for a service retirement benefit upon reaching 55 years of age after completing at least 25 years of creditable service in that capacity if notice of election of the option and payment of employee contributions and actuarial costs are made as provided in section 17852, subsection 6-A.

Sec. 4. 5 MRSA §17851, sub-§8-A is enacted to read:

8-A. Forest rangers after August 31, 1984; option. A forest ranger in the Department of Conservation who was first employed in that capacity after August 31, 1984 or who, if employed in that capacity before August 31, 1984, ceased to be employed in that capacity on or before that date and who subsequently became reemployed in that capacity after that date qualifies for a service retirement benefit upon reaching 55 years of age after completing at least 25 years of creditable service in that capacity if notice of election of the option and payment of employee contributions

and actuarial costs are made as provided in section 17852, subsection 7-A.

Sec. 5. 5 MRSA §17852, sub-§5-A, as enacted by PL 1995, c. 466, Pt. A, §3, is amended to read:

5-A. Inland Fisheries and Wildlife officers after August 31, 1984; option. The retirement benefit of a person who qualifies under section 17851, subsection 5-A and who retires upon or after reaching 55 years of age is computed in accordance with subsection 1 if:

A. The person was first employed as a law enforcement officer in the Department of Inland Fisheries and Wildlife on or after November 1, 1995, elects the option provided in section 17851, subsection 5-A and pays to the retirement system an increased employee payroll contribution in an amount that equals the full actuarial cost of electing that option; or

B. The person was first employed as a law enforcement officer in the Department of Inland Fisheries and Wildlife before November 1, 1995, elects the option provided in section 17851, subsection 5-A and pays to the retirement system single or periodic payment of a lump sum or by a combination of single and periodic payments of the amount that equals the full actuarial cost of electing that option for service before that date. A person who requests calculation of the full actuarial cost, regardless of whether the person elects the option, must pay to the retirement system by single lump sum payment the reasonable administrative costs of determining the full actuarial costs. Payment of the full actuarial cost related to service on or after November 1, 1995 is made as part of the employee payroll contribution.

For the purposes of this subsection, "full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement under the option provided in section 17851, subsection 5-A and must fully fund the cost of the person's retirement prior to normal retirement age so that an additional employer contribution is not required.

A person who makes the election provided in section 17851, subsection 5-A at any time after the date on which the person is first employed as a law enforcement officer in the Department of Inland Fisheries and Wildlife must include interest at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date on which the person was first employed in that capacity to the contributions the person would have paid or had

picked up by the employer had the person elected that option at the date of first employment.

This subsection is effective November 1, 1995. Election to retire under this subsection is a one-time irrevocable election. A person who was first employed as a law enforcement officer in the Department of Inland Fisheries and Wildlife on or after November 1, 1995 must make the election no later than 90 days after the date of first employment. A person who was first employed in that capacity before November 1, 1995 must make the election no later than ~~November 1, 1996~~ January 1, 1997.

Sec. 6. 5 MRSA §17852, sub-§5-B is enacted to read:

5-B. Inland Fisheries and Wildlife officers exercising option; retirement before 55 years of age. For a person exercising the option provided in section 17851, subsection 5-A, who makes the payments required in subsection 5-A, and who retires before reaching 55 years of age, the retirement benefit is determined as follows.

A. For members with 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that:

(1) The amount arrived at under subsection 1 is reduced by applying to that amount the percentage that a life annuity due at 55 years of age bears to the life annuity due at the age of retirement; and

(2) For the purpose of making the computation under subparagraph (1), the board-approved tables of annuities in effect at the date of the member's retirement are used.

For the purpose of calculating creditable service under this subsection only, "creditable service" includes time during which a member participated in the voluntary cost-savings plan or the voluntary employee incentive program, authorized by Public Law 1989, chapter 702, Part F, section 6 and Public Law 1991, chapter 591, Part BB and chapter 780, Part VV; or 10 years of combined creditable service under this Part and Title 3, chapter 29; or creditable service available to a member that the member was eligible to purchase on June 30, 1993 and that the member does purchase in accordance with rules adopted by the board.

B. For members who do not have 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that the benefit is reduced by 6%

for each year that the person's age precedes 55 years of age.

Sec. 7. 5 MRSA §17852, sub-§6-A, as enacted by PL 1995, c. 466, Pt. B, §4, is amended to read:

6-A. Marine resources officers after August 31, 1984; option. The retirement benefit of a person qualifying under section 17851, subsection 6-A who retires upon or after reaching 55 years of age is computed in accordance with subsection 1 if:

A. The person was first employed as a law enforcement officer in the Department of Marine Resources on or after November 1, 1995, elects the option provided in section 17851, subsection 6-A and pays to the retirement system an increased employee payroll contribution in an amount that equals the full actuarial cost of electing that option; or

B. The person was first employed in that capacity before November 1, 1995, elects the option provided in section 17851, subsection 6-A and pays to the retirement system by single or periodic payment of a lump sum or by a combination of single and periodic payments the amount that equals the full actuarial cost of electing that option for service before that date. A person who requests calculation of the full actuarial cost, regardless of whether the person elects the option, must pay to the retirement system by single lump sum payment the reasonable administrative costs of determining the full actuarial costs. Payment of the full actuarial cost related to service on or after November 1, 1995 is made as part of the employee payroll contribution.

For the purpose of this subsection, "full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement under the option provided in section 17851, subsection 6-A and must fully fund the cost of the person's retirement prior to normal retirement age so that an additional employer contribution is not required.

A person who makes the election provided in section 17851, subsection 6-A at any time after the date on which the person is first employed as a law enforcement officer in the Department of Marine Resources must include interest at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date on which the person was first employed in that capacity to the contributions the person would have paid or had picked up by the employer had the person elected that option at the date of first employment.

This subsection is effective November 1, 1995. Election to retire under this subsection is a one-time irrevocable election. A person who was first employed as a law enforcement officer in the Department of Marine Resources on or after November 1, 1995 must make the election no later than 90 days after the date of first employment. A person who was first employed in that capacity before November 1, 1995 must make the election no later than November 1, 1996 January 1, 1997.

Sec. 8. 5 MRSA §17852, sub-§6-B is enacted to read:

6-B. Marine resources officers exercising option; retirement before 55 years of age. For a person exercising the option provided in section 17851, subsection 6-A, who makes the payments required in subsection 6-A and who retires before reaching 55 years of age, the retirement benefit is determined as follows.

A. For members with 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that:

(1) The amount arrived at under subsection 1 is reduced by applying to that amount the percentage that a life annuity due at 55 years of age bears to the life annuity due at the age of retirement; and

(2) For the purpose of making the computation under subparagraph (1), the board-approved tables of annuities in effect at the date of the member's retirement are used.

For the purpose of calculating creditable service under this subsection only, "creditable service" includes time during which a member participated in the voluntary cost-savings plan or the voluntary employee incentive program, authorized by Public Law 1989, chapter 702, Part F, section 6 and Public Law 1991, chapter 591, Part BB and chapter 780, Part VV; or 10 years of combined creditable service under this Part and Title 3, chapter 29; or creditable service available to a member that the member was eligible to purchase on June 30, 1993 and that the member does purchase in accordance with rules adopted by the board.

B. For members who do not have 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that the benefit is reduced by 6% for each year that the person's age precedes 55 years of age.

Sec. 9. 5 MRSA §17852, sub-§7-A is enacted to read:

7-A. Forest rangers after August 31, 1984; option. The retirement benefit of a person qualifying under section 17851, subsection 8-A who retires upon or after reaching 55 years of age is computed in accordance with subsection 1 if:

A. The person was first employed as a forest ranger in the Department of Conservation on or after May 1, 1996, elects the option provided in section 17851, subsection 8-A and pays to the retirement system an increased employee payroll contribution in an amount that equals the full actuarial cost of electing that option; or

B. The person was first employed as a forest ranger in the Department of Conservation before May 1, 1996, elects the option provided in section 17851, subsection 8-A and pays to the retirement system by single or periodic payment of a lump sum or by a combination of single and periodic payments the amount that equals the full actuarial cost of electing that option for service before that date. A person who requests calculation of the full actuarial cost, regardless of whether the person elects the option, must pay to the retirement system by single lump sum payment the reasonable administrative costs of determining the full actuarial costs. Payment of the full actuarial cost related to service on or after May 1, 1996 is made as part of the employee payroll contribution.

For the purpose of this subsection, "full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement under the option provided in section 17851, subsection 8-A and must fully fund the cost of the person's retirement prior to normal retirement age so that an additional employer contribution is not required.

A person who makes the election provided in section 17851, subsection 8-A at any time after the date on which the person is first employed as a forest ranger in the Department of Conservation must include interest at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date on which the person was first employed in that capacity to the contributions the person would have paid or had picked up by the employer had the person elected that option at the date of first employment.

This subsection is effective May 1, 1996. Election to retire under this subsection is a one-time irrevocable election. A person who was first employed as a forest ranger in the Department of Conservation on or after May 1, 1996 must make the election no later than 90

days after the date of first employment. A person who was first employed in that capacity before May 1, 1996 must make the election no later than January 1, 1997.

Sec. 10. 5 MRSA §17852, sub-§7-B is enacted to read:

7-B. Forest rangers exercising option; retirement before 55 years of age. For a person exercising the option provided in section 17851, subsection 8-A, who makes the payments required in subsection 7-A and who retires before reaching 55 years of age, the retirement benefit is determined as follows.

A. For members with 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that:

(1) The amount arrived at under subsection 1 is reduced by applying to that amount the percentage that a life annuity due at 55 years of age bears to the life annuity due at the age of retirement; and

(2) For the purpose of making the computation under subparagraph (1), the board-approved tables of annuities in effect at the date of the member's retirement are used.

For the purpose of calculating creditable service under this subsection only, "creditable service" includes time during which a member participated in the voluntary cost-savings plan or the voluntary employee incentive program, authorized by Public Law 1989, chapter 702, Part F, section 6 and Public Law 1991, chapter 591, Part BB and chapter 780, Part VV; or 10 years of combined creditable service under this Part and Title 3, chapter 29; or creditable service available to a member that the member was eligible to purchase on June 30, 1993 and that the member does purchase in accordance with rules adopted by the board.

B. For members who do not have 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that the benefit is reduced by 6% for each year that the person's age precedes 55 years of age.

Sec. 11. 5 MRSA §17852, sub-§11, as enacted by PL 1995, c. 466, Pt. C, §3, is amended to read:

11. Baxter State Park Authority rangers; option. The retirement benefit of a person who qualifies under section 17851, subsection 12 and who

retires upon or after reaching 55 years of age is computed in accordance with subsection 1 if:

A. The person was first employed as a law enforcement officer at the Baxter State Park Authority on or after November 1, 1995, elects the option provided in section 17851, subsection 12 and pays to the retirement system an increased employee payroll contribution in an amount that equals the full actuarial cost of electing that option; or

B. The person was first employed as a law enforcement officer at the Baxter State Park Authority before November 1, 1995, elects the option provided in section 17851, subsection 12 and pays to the retirement system single or periodic payment of a lump sum or by a combination of single and periodic payments of the amount that equals the full actuarial cost of electing that option for service before that date. A person who requests calculation of the full actuarial cost, regardless of whether the person elects the option, must pay to the retirement system by single lump sum payment the reasonable administrative costs of determining the full actuarial costs. Payment of the full actuarial cost related to service on or after November 1, 1995 is made as part of the employee payroll contribution.

For the purposes of this subsection, "full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement under the option provided in section 17851, subsection 12 and must fully fund the cost of the person's retirement prior to normal retirement age so that an additional employer contribution is not required.

A person who makes the election provided in section 17851, subsection 12 at any time after the date on which the person is first employed as a law enforcement officer at the Baxter State Park Authority must include interest at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date on which the person was first employed in that capacity to the contributions the person would have paid or had picked up by the employer had the person elected that option at the date of first employment.

This subsection is effective November 1, 1995. Election to retire under this subsection is a one-time irrevocable election. A person who was first employed as a law enforcement officer at the Baxter State Park Authority on or after November 1, 1995 must make the election no later than 90 days after the date of first employment. A person who was first employed in that capacity before November 1, 1995

must make the election no later than ~~November 1,~~
1996 January 1, 1997.

Sec. 12. 5 MRSA §17852, sub-§12 is enacted to read:

12. Baxter State Park Authority rangers exercising option; retirement before 55 years of age. For a person exercising the option provided in section 17851, subsection 12, who makes the payments required in subsection 11, and who retires before reaching 55 years of age, the retirement benefit is determined as follows.

A. For members with 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that:

(1) The amount arrived at under subsection 1 is reduced by applying to that amount the percentage that a life annuity due at 55 years of age bears to the life annuity due at the age of retirement; and

(2) For the purpose of making the computation under subparagraph (1), the board-approved tables of annuities in effect at the date of the member's retirement are used.

For the purpose of calculating creditable service under this subsection only, "creditable service" includes time during which a member participated in the voluntary cost-savings plan or the voluntary employee incentive program, authorized by Public Law 1989, chapter 702, Part F, section 6 and Public Law 1991, chapter 591, Part BB and chapter 780, Part VV; or 10 years of combined creditable service under this Part and Title 3, chapter 29; or creditable service available to a member that the member was eligible to purchase on June 30, 1993 and that the member does purchase in accordance with rules adopted by the board.

B. For members who do not have 10 years of creditable service on July 1, 1993, the retirement benefit is determined in accordance with subsection 1, except that the benefit is reduced by 6% for each year that the person's age precedes 55 years of age.

Sec. 13. Maine State Retirement System methodology. The Maine State Retirement System shall develop a methodology for calculating the full actuarial cost, reasonable administrative cost and interest, if applicable, to be applied when a person elects to retire under the Maine Revised Statutes, Title 5, section 17851, subsection 8-A. The retirement system shall also establish the procedure for election under that subsection.

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

Effective April 8, 1996.

CHAPTER 625

S.P. 711 - L.D. 1811

An Act to Correct Errors and Inconsistencies in the Laws of Maine

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

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; 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:

PART A

Sec. A-1. 1 MRSA §124, as amended by PL 1989, c. 700, Pt. A, §3, is further amended to read:

§124. Maine Business Women's Week

The Governor shall annually issue a proclamation setting aside the 3rd full week in October as Maine Business Women's Week. The proclamation ~~shall~~ must invite and urge the people of the State to observe the week in schools and other suitable places with appropriate ceremony and study. The Department of Education ~~and the Maine Commission for Women~~ may make appropriate information available to the people and the schools within the limits of ~~their budgets~~ its budget.

Sec. A-2. 5 MRSA §200-B, as amended by PL 1995, c. 225, §1 and repealed and replaced by c.