

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

3. Lobster and sea urchin licenses; limitations. The Passamaquoddy Tribe may not issue pursuant to subsection 1:

A. More than 24 commercial lobster and crab fishing licenses in calendar year 1998, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Any lobster and crab fishing license issued by the tribe after calendar year 1998 is subject to the eligibility requirements of section 6421, subsection 5; and

B. More than 24 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in accordance with section 6749-P.

4. Sea urchin and scallop handfishing and tender licenses; limitations. The Passamaquoddy Tribe may not issue a license or permit pursuant to subsection 1 or 2:

A. For the harvesting of sea urchins or scallops by hand unless the license or permit applicant meets the diver competency requirements of section 6531; and

B. For the tending of a person who fishes for or takes scallops or sea urchins by diving unless the applicant meets the safety training requirements of section 6533.

5. Notification. Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or a tribal official in accordance with section 6027.

6. License suspension. If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted of a violation for which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.

7. Enforcement. A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe who is issued a license or permit pursuant to this section must be enforced pursuant to chapter 609. A member of the Passamaquoddy Tribe who is issued a license or permit pursuant to this section must possess and exhibit that license or permit in accordance with section 6305 and must comply with the provisions of section 6306 regarding

inspections and searches by marine patrol officers for violations related to licensed or permitted activities.

8. Resident of the State defined. For the purposes of this section, "resident of the State" means a member of the Passamaquoddy Tribe who is eligible to obtain a state resident license under section 6301, subsection 1.

Sec. 2. Report. The Maine Indian Tribal-State Commission shall study any question or issue regarding the taking of marine resources by members of the Passamaquoddy Tribe and the Penobscot Nation. The commission shall report any findings and recommendations to the Joint Standing Committee on Marine Resources by December 15, 1998.

Sec. 3. Relation to "An Act to Implement the Maine Indian Claims Settlement." This Act is not an amendment to the Maine Revised Statutes, Title 30, chapter 601, An Act to Implement the Maine Indian Claims Settlement, and is not subject to ratification by the Passamaquoddy Tribe pursuant to United States Code, Title 25, Section 1725(e)(1). If a court of competent jurisdiction finds that this Act or any portion of this Act alters any provisions of Title 30, chapter 601 so as to constitute an amendment to Title 30, chapter 601, this Act or that portion of this Act, if separable, that constitutes an amendment to Title 30, chapter 601 is void.

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

Effective April 3, 1998, unless otherwise indicated.

CHAPTER 709

H.P. 1524 - L.D. 2146

An Act to Amend the Laws Concerning Participating Local Districts in the Maine State Retirement System

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

Sec. 1. 5 MRSA §18201, sub-§3-A is enacted to read:

3-A. Compliance with federal law. The local district is responsible for compliance with 26 Code of Federal Regulations, Part 31, with Section 401 of the United States Internal Revenue Code and with other relevant federal law and rules with respect to its employees, including employees to whom section 18252-A applies.

Sec. 2. 5 MRSA §18251, sub-§1, as amended by PL 1991, c. 619, §12 and affected by §18, is further amended to read:

1. Compulsory membership. Membership is compulsory for all employees entering the service of a participating local district after the date of establishment for the participating local district, except as otherwise provided by subsection 2; section 18201, subsection 3; section 18252; ~~or section 18252-A~~; section 18256; or section 18801, subsection 1, paragraph D.

Sec. 3. 5 MRSA §18252, first ¶, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

An employee who is or would be covered by the United States Social Security Act as a result of his employment by a participating local district having a so-called "Social Security Section 218 agreement" may elect to join, not to join or to withdraw from the retirement system under the following conditions.

Sec. 4. 5 MRSA §§18252-A and 18252-B are enacted to read:

§18252-A. Membership in district without Social Security Section 218 agreement coverage and with plan provided by the employer under section 18252-B

1. Membership. An employee of a participating local district that does not have a so-called "Social Security Section 218 agreement" and that has a plan provided by the employer under section 18252-B may elect to be a member under the retirement system or to be covered under the plan provided by the employer in accordance with the following.

A. An employee hired by a participating local district, or rehired following a break in service, after the date on which the employer provides a plan under section 18252-B shall elect at the time of hiring or rehiring whether to be a member under the retirement system or to be covered under a plan provided by the employer under section 18252-B.

(1) If the employee elects to be a member under the retirement system, the election is effective as of the date of hire or rehire.

(a) An employee who elects to be a member of the retirement system may later elect to be covered under a plan provided by the employer under section 18252-B. The employee who so elects shall withdraw accumulated contributions in accordance with ap-

plicable requirements of law and rule and retirement system procedures.

(b) An employee who elects under division (a) to be covered under a plan provided by the employer under section 18252-B may later elect to again become a member under the retirement system, unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer contribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) An employee who elects under division (b) to again become a member of the retirement system may not pay contributions or pick-up contributions or receive service credit for the period during which the employee elected not to be a member under the retirement system. The employee may, in accordance with section 18304, repay contributions withdrawn under division (a) and may, as permitted under other relevant retirement system law, rule and policy, repay other refunded contributions.

(d) An employee who, having elected to again become a member under the retirement system under division (c), later elects again not to be a member may not thereafter become a member under the retirement system while employed by the same participating local district.

(2) An employee who elects to be covered under a plan provided by the employer under section 18252-B may later elect to become a member under the retirement system.

(a) Membership service credit for an employee joining the retirement system under this subparagraph begins as of the effective date of first contributions or pick-up contributions to the retirement system following the employee's election under this subparagraph.

(b) An employee who joins the retirement system under this subparagraph may not pay contributions or have pick-up contributions made on or receive any service credit for the pe-

riod during which the employee elected not to be a member of the retirement system.

(c) An employee who, having elected to become a member under the retirement system under this subparagraph, later elects again not to be a member shall withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under the retirement system while employed by the same participating local district.

B. An employee of the participating local district who is a member under the retirement system on the date on which the employer provides a plan under section 18252-B may elect to remain a member under the retirement system or to become covered under a plan provided by the employer under section 18252-B.

(1) If the employee elects not to remain a member, the election is effective as of the first day of the month in which no contributions or pick-up contributions are made to the retirement system by the employee. An employee who elects not to remain a member shall withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures.

(2) An employee who elects not to remain a member under the retirement system may later elect to again become a member.

(a) Membership service credit for an employee who elects to again become a member under the retirement system under this subparagraph begins as of the effective date of the first contributions or pick-up contributions to the retirement system following the employee's election under this subparagraph.

(b) An employee who rejoins the retirement system under this subparagraph may not pay contributions or pick-up contributions or receive service credit for the period during which the employee elected not to be a member under the retirement system. The employee may, in accordance with section 18304, repay contributions refunded under subparagraph (1), unless to so elect would have the

effect of requiring the employer, without the employer's agreement, to make an employer contribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) An employee who, having elected to again become a member under the retirement system under this subparagraph, later elects again not to be a member shall withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under the retirement system while employed by the same participating local district.

C. At no time may an employee who elects not to be a member under the retirement system under paragraph A or B pay contributions or pick-up contributions or receive service credit for any time during which the employee elected not to be a member.

D. If the participating local district does not have a plan provided under section 18252-B, the employees do not have the elections provided under paragraphs A and B.

2. District employer responsibilities. Responsibilities of the participating local district employer are as follows.

A. The participating local district employer is responsible for ensuring that the plan provided by the employer under section 18252-B meets the requirements of that section.

B. The participating local district employer is responsible for providing employees with information as to membership under the retirement system and as to coverage under the plan provided by the employer under section 18252-B to assist the employee in making election decisions. The retirement system shall provide the employer with information as to the retirement system.

C. The participating local district employer is responsible for providing procedures by which employees make elections under this section, for maintaining all records relevant to the election process and each employee's elections, for informing the retirement system as to employee elections in accordance with procedures established by the executive director and for making all administrative decisions, including the final administrative decision, in any dispute related to

an employee's elections or administrative decision, in any dispute related to an employee's elections or to any issue as to the plan provided by the employer under section 18252-B. Neither the retirement system nor the system's board of trustees has responsibility or jurisdiction to make the final administrative decision with respect to any of these matters. The retirement system is responsible only to ensure that its records accurately reflect the information provided by the employer, the employer's decision as to any of these matters, and the legally cognizable outcome of any dispute related to any of these matters.

D. With respect to matters related to participation and membership other than those specified in paragraph C, the retirement system and the board retain responsibility and authority according to applicable retirement system law and rules as to the participating local districts and their employees to whom this section applies, including the authority to make final administrative decisions.

3. Exclusions. This section does not apply to employees of participating local districts who are employed in part-time, seasonal or temporary positions or to employees for whom membership in the retirement system is optional under section 18201, subsection 3; section 18251, subsection 2; section 18252; or section 18801, subsection 1, paragraph D or denied under section 18256.

§18252-B. Requirements for plan provided by district employer for employees to whom section 18252-A applies

The plan provided by the participating local district employer for employees to whom section 18252-A applies must meet the following requirements.

1. Internal Revenue Code. The plan must meet the requirements of United States Internal Revenue Code, Section 401(a) for defined contribution plans or United States Internal Revenue Code, Section 457 for deferred compensation plans, or both.

2. Employer contribution. The employer must contribute as a percentage of compensation on behalf of each employee in each pay period an amount not less than the employer would be required to pay if the employee were covered under the United State Social Security Act, not including the Medicare portion of the payment, consistent with applicable contribution limits of federal law.

3. Employee contribution. The employee must contribute as a percentage of compensation in each pay period an amount not less than the employee

would have been required to contribute had the employee been a member under the retirement system under the so-called "Regular Plan A" of the consolidated plan for participating local districts, consistent with applicable contribution limits of federal law.

4. Education. The employer must provide for employees to whom section 18252-A applies an education program that meets the requirements of federal law for such programs for the plan that the employer provides.

5. Disability benefits. For employees who become covered under the plan, the employer must provide a disability benefit program, the cost of which must be paid by the employer. At a minimum, that program must establish eligibility criteria, provide coverage for physical and mental disabilities and provide a level of benefits at least equal to 60% of the employee's annual compensation.

6. Change or termination of plan. Except with respect to current employees covered under the plan and with respect to persons receiving benefits under the plan, the employer may change or terminate the plan at any time, to the extent that change or termination is not prohibited by other law. The employer may allow current employees covered under the plan the choice to instead be covered under the changed plan.

A. Section 18252-A, subsection 1, paragraph A applies to an employee hired or rehired by the employer after the employer changes the plan.

B. If, after plan termination, the employer no longer provides a plan under this section, an employee hired or rehired after termination of the plan must be a member under the retirement system.

C. Section 18252-A, subsection 1, paragraph B applies to an employee who is a member under the retirement system at the time of the change, except that an employee who has previously exhausted the elections available under section 18252-A, subsection 1, paragraph B and who elects to be covered under the plan provided by the employer under this subsection may not later become a member under the retirement system while employed by the same participating local district.

See title page for effective date.

CHAPTER 710

H.P. 1380 - L.D. 1935

An Act Regarding Electric Utilities