

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

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

Penmor Lithographers
Lewiston, Maine
2004

11. Promotion. The board shall ensure that all employees are aware of the system and the potential award amounts.

12. Discrimination prohibited. A supervisor or other person in authority may not discriminate against an employee regarding the employee's compensation terms, conditions, location or privilege of employment because the employee acting in good faith has suggested savings or efficiencies under this chapter. The remedies available under Title 26, chapter 7, subchapter 5-B apply to a person subject to any such discrimination.

Sec. 2. Effective date. This Act takes effect January 1, 2005.

Effective January 1, 2005.

CHAPTER 693

H.P. 1360 - L.D. 1836

An Act To Amend the Laws Governing Purchase of Military Time Served under the Maine State Retirement System

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

Sec. 1. 5 MRSA §17001, sub-§10, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

10. Creditable service. "Creditable service" means a person's membership service, the person's prior service and service for which credit is allowable under sections 17755 and 17756; section 17760, subsection 2 3; section 18258; sections 18355 and 18356; and section 18360, subsection 2.

Sec. 2. 5 MRSA §17713, sub-§2, as amended by PL 1993, c. 349, §16, is further amended to read:

2. Service before becoming a member. A member who qualifies under section 17760 to purchase service credit at the cost set forth in section 17760, subsection 2; 4 shall contribute to the retirement system for the period of service in the armed forces as follows:

A. ~~If the member qualifies under section 17760, subsection 2, contributions~~ Contributions must be calculated at the percentage rate required of active members during the period of time covered by the service in the armed forces applied to the member's earnable compensation during the first year as an employee after service in the

armed forces, under the following terms and conditions:

(1) If 2 or more percentage rates were in effect during the period of service in the armed forces, the highest percentage rate must be used;

(2) The minimum rate is 5%; and

(3) Interest at a rate set by the board not to exceed regular interest by 2 or more percentage points must be paid on the unpaid balance beginning January 1, 1976, or the date of attaining 15 years of creditable service, if later, to the date payment is made.

C. The payment must be made to the retirement system by a single direct payment or by annual direct payments made in accordance with section 17701, subsection 4.

Sec. 3. 5 MRSA §17760, as amended by PL 2003, c. 387, §§2 and 3, is further amended to read:

§17760. Service in the armed forces

Service credit for service in the United States Armed Forces is governed as follows. ~~Except as provided in subsection 1, paragraph B, subparagraph (1), service credit under this section is limited to 5 years.~~

1. Service after becoming a member. A member is entitled to service credit for the period of time during which the member's membership is continued under section 17655, subsection 1, under the following terms and conditions. Except as provided in paragraph B, service credit under this subsection is limited to 5 years.

A. A member who is otherwise entitled to service credit for military leave may not be deprived of these credits if the member's return to membership service is delayed beyond 90 days after the member's separation from the service in the Armed Forces of the United States, under conditions other than dishonorable, if the delay is caused by an illness or disability incurred in the service in the armed forces.

B. A member may not receive service credit for military leave beyond the end of the period of first enlistment or induction or beyond 5 years from the date of original call to active duty in the armed forces, whichever is less, unless:

(1) The member's return to active duty in the armed forces or the extension of the period of service beyond 5 years is required by some mandatory provision; and

(2) The person presents proof of the return to or extension of service satisfactory to the board.

~~2. Service before becoming a member. A member who served as a full-time active-duty member of the armed forces before becoming a member of the retirement system is entitled to service credit for the period of time he served in the armed forces, under the following terms and conditions:~~

~~A. Except as provided in paragraph G, on the date of retirement, the member must have at least 15 years of creditable service.~~

~~C. The member must have separated from the armed forces under conditions other than dishonorable.~~

~~D. Except as provided in paragraph E, the member must have begun membership before January 1, 1976.~~

~~E. Except as provided in paragraph G, a member who served in the armed forces during any federally recognized period of conflict, as defined in Title 37-B, section 504, subsection 4, paragraph A-1, subparagraph (3), is entitled to service credit under this subsection.~~

~~F. Upon complete payment of the back contributions under section 17713, the member shall be granted service credit for the period of time for which the contributions have been made. Upon making partial payment of the back contributions under section 17713, the member shall be granted service credit on a pro rata basis in accordance with rules adopted by the board.~~

~~G. A member who fails to meet one or more of the terms and conditions required under paragraphs A, D and E may purchase service credit as provided in this paragraph. The member must have at least 5 years of creditable service and, before any retirement benefit becomes effective for that member, must pay into the Members' Contribution Fund, by a single direct payment or annual direct payments to the retirement system, an amount that, together with regular interest on that amount, is the actuarial equivalent, at the effective date of the retirement benefit, of the portion of the retirement benefit based on the additional creditable service. Annual direct payments must be made in accordance with section 17701, subsection 4. Any member who purchases service credit under this paragraph who subsequently, without inclusion of the purchased service credit and prior to retirement, meets the terms and conditions of paragraphs A, D and E is entitled to purchase the service credit under section 17713, subsection 2 and to receive a refund~~

~~of the amount paid under this paragraph that exceeds the cost to purchase the service credit under section 17713.~~

3. Service before becoming member. A member who served as a full-time active-duty member of the United States Armed Forces before becoming a member and who separated from the armed forces under conditions other than dishonorable is entitled under this subsection to purchase service credit for the period of time that the member served in the armed forces by complying with the terms and conditions of this subsection and the applicable provisions of subsection 4 or 5. Service credit under this subsection is limited to 4 years.

A. A member may purchase service credit at the cost set forth in subsection 4 if the member has at least 15 years of creditable service at the time of retirement, the member makes payment as required under subsection 4 and the member:

(1) Began membership prior to January 1, 1976;

(2) Served in the United States Armed Forces during any federally recognized period of conflict; or

(3) Was awarded an Armed Forces Expeditionary Medal, a Combat Action Ribbon, a Combat Infantry Badge or any other campaign or expeditionary medal and the receipt of such a medal would allow the member to be considered "preference eligible" under 5 United States Code, Section 2108(3)(A) or 2108(3)(B). A member described in this subparagraph is entitled to purchase service credit at the cost set forth in subsection 4 only if a cost subsidy for that member's service credit has been paid to the retirement system as provided in subsection 6.

B. A member may purchase service credit at the cost set forth in subsection 5 if the member has at least 5 years of creditable service at the time of retirement and the member makes payment as required under subsection 5.

C. For purposes of this subsection, "federally recognized period of conflict" means World War I, April 6, 1917 to November 11, 1918 or to March 31, 1920 if service was in Russia; World War II, December 7, 1941 to December 31, 1946; the Korean Conflict, June 27, 1950 to January 31, 1955; the Vietnam War, August 5, 1964 to May 7, 1975 and the period beginning on February 28, 1961 and ending on May 7, 1975 in the case of a veteran who served in the Republic of Vietnam during that period; and the Persian

Gulf War, August 7, 1990 to the date that the United States Government recognizes as the end of the Persian Gulf War.

4. Members qualified for credit at subsidized cost. A member qualified under subsection 3 to purchase service credit at the cost set forth in this subsection is entitled to service credit upon payment of back contributions under section 17713, subsection 2. Upon complete payment of back contributions, the member must be granted service credit for the period of time for which payment is made. Upon making partial payment, the member must be granted service credit on a pro rata basis in accordance with rules adopted by the board.

5. Members qualified for credit at actuarial cost. A member qualified under subsection 3 to purchase service credit at the cost set forth in this subsection is entitled to service credit if the member pays into the Members' Contribution Fund an amount that, together with regular interest on that amount, is the actuarial equivalent, at the effective date of the retirement benefit, of the portion of the retirement benefit based on the additional creditable service.

A. Payment must be made before any retirement benefit becomes effective for that member.

B. Payment may be made to the retirement system by a single direct payment or by annual direct payments in accordance with section 17701, subsection 4.

C. A person who purchases service credit under this subsection and who subsequently, without inclusion of the purchased service credit and prior to retirement, becomes qualified for service credit at the cost set forth in subsection 4 is entitled to purchase the service credit under section 17713, subsection 2 and to receive a refund of the amount paid under this subsection that exceeds the cost to purchase the service credit under section 17713. A person who would have been qualified to purchase service credit under subsection 4 prior to retirement if a timely appropriation had been made under subsection 6 is entitled to a refund under this subsection even if the person becomes qualified after retirement.

6. Cost subsidy for certain award recipients; annual report. A recipient of an award described in subsection 3, paragraph A, subparagraph (3) may purchase service credit at a subsidized cost under subsection 4 only if the retirement system has received an appropriation of the difference between the actuarial cost of that member's service credit and the amount to be paid by the member under subsection 4.

A. The retirement system shall annually, by February 15th, report to the joint standing committee

of the Legislature having jurisdiction over retirement matters and the joint standing committee of the Legislature having jurisdiction over appropriations matters:

(1) The amount, if any, in the account maintained for the purposes of this subsection;

(2) The cost to subsidize the purchase of service credit under this subsection for members who applied and were determined eligible in the calendar year immediately preceding the report; and

(3) The cost to subsidize the purchase of service credit under this subsection for members who applied and were determined eligible in each of the calendar years before the immediately preceding calendar year for which full appropriations were not made.

B. In response to the report described in paragraph A, the joint standing committee of the Legislature having jurisdiction over retirement matters may report out legislation appropriating funds for all or a part of the costs set forth in the report.

C. The retirement system shall maintain a separate account for funds appropriated for the purposes of this subsection. When the account contains sufficient funds to subsidize the purchase of service credit for all members who applied and were determined to be eligible in a particular calendar year, the retirement system shall allow that group of members to make purchases. Funds in the account must be applied to the earliest calendar year for which members remain who are eligible but have not yet been able to make purchases.

Sec. 4. 5 MRSA §17851, sub-§4, ¶A, as amended by PL 1997, c. 740, §3 and affected by §6, is further amended to read:

A. Became a state police officer after July 9, 1943, but before September 16, 1984, and retires after completing 20 years of creditable service as a state police officer, which may include creditable service under section 17760, subsection 1, but may not include creditable service under section 17760, subsection 2 3; or

Sec. 5. 5 MRSA §17851, sub-§5, ¶B, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Retires after completing 20 years of creditable service in that capacity, which may include creditable service under section 17760, subsec-

tion 1, but may not include creditable service under section 17760, subsection 2 3.

Sec. 6. 5 MRSA §17851, sub-§6, ¶B, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Retires after completing 20 years of creditable service in that capacity, which may include creditable service under section 17760, subsection 1, but may not include creditable service under section 17760, subsection 2 3.

See title page for effective date.

CHAPTER 694

H.P. 1472 - L.D. 1965

An Act Regarding Penalties Assessed by the Bureau of Forestry

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

Sec. 1. 12 MRSA §8870 is enacted to read:

§8870. Penalties

1. Civil violation. A person who violates a rule adopted pursuant to section 8869, subsection 14 or a condition or term of a permit, variance or decision issued by the director or the commissioner in accordance with rules adopted pursuant to section 8869, subsection 14 commits a civil violation.

2. Penalty. Except as provided in subsection 3, the following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$100 and not more than \$1,000 may be adjudged for each day of that violation.

B. A person who violates this section after having previously been adjudicated of a violation of this section within the previous 5-year period commits a civil violation for which a fine of not less than \$1,000 but not more than \$2,000 may be adjudged for each day of that violation.

3. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum fines may be increased. The maximum fine may not exceed an amount equal to twice the economic benefit resulting from the violation. The bureau shall consider as economic benefit, without limitation, the costs avoided or the enhanced value accrued at the time of the

violation by the violator as a result of not complying with the applicable legal requirements.

4. Effective date. This section takes effect January 2, 2005.

See title page for effective date.

CHAPTER 695

H.P. 1413 - L.D. 1912

An Act To Implement Certain Recommendations of the Governor's Task Force on ATV Issues

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

Whereas, certain provisions of this legislation must take effect as soon as possible to avoid severe damage to certain ATV trails; 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. 12 MRSA §7857, sub-§26 is enacted to read:

26. Unlawful operating ATV on temporarily closed trail. A person may not operate an ATV on any section of a trail posted with a notice of temporary closure in accordance with this subsection. The notice must specify the section of trail that is closed and the period of the closure and must be conspicuously posted at each end of the closed section of the trail.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this subsection after having been adjudicated of having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

PART B

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