

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

A. Except as provided in paragraph A-1, whenever there is a percentage ~~change~~ increase in the Consumer Price Index from July 1st to June 30th, the board shall automatically make an equal percentage increase ~~or decrease~~ in retirement benefits, beginning in September, up to a maximum annual increase ~~or decrease~~ of 4%.

Sec. 4. 5 MRSA §17806, sub-§1, ¶A-1, as enacted by PL 2009, c. 433, §4, is amended to read:

A-1. If there is a percentage decrease in the Consumer Price Index from July 1st to June 30th, the board ~~as provided in paragraph A~~ shall set the percentage change at 0% for that September. The adjustment for the following year must be set based on the actuarially compounded Consumer Price Index for both years in a cost-neutral manner. If the Consumer Price Index in the subsequent year or years is not sufficient to allow for the adjustment to be cost-neutral for the 2 years, then the adjustment needed for cost-neutrality must continue to be applied to following years until such time as the cost-neutrality requirement is met.

Sec. 5. 5 MRSA §18407, sub-§4, ¶A, as amended by PL 2009, c. 433, §5, is further amended to read:

A. Except as provided in paragraph A-1, whenever there is a percentage ~~change~~ increase in the Consumer Price Index from July 1st to June 30th, the board shall automatically make an equal percentage increase ~~or decrease~~ in retirement benefits, beginning in September, up to a maximum annual increase ~~or decrease~~ of 4%.

Sec. 6. 5 MRSA §18407, sub-§4, ¶A-1, as enacted by PL 2009, c. 433, §6, is amended to read:

A-1. If there is a percentage decrease in the Consumer Price Index from July 1st to June 30th, the board ~~as provided in paragraph A~~ shall set the percentage change at 0% for that September. The adjustment for the following year must be set based on the actuarially compounded Consumer Price Index for both years in a cost-neutral manner. If the Consumer Price Index in the subsequent year or years is not sufficient to allow for the adjustment to be cost-neutral for the 2 years, then the adjustment needed for cost-neutrality must continue to be applied to following years until such time as the cost-neutrality requirement is met.

See title page for effective date.

**CHAPTER 474
H.P. 1120 - L.D. 1582**

**An Act To Bring the Laws of
the Maine Public Employees
Retirement System into
Compliance with the Federal
Internal Revenue Code**

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

Sec. 1. 3 MRSA §701, sub-§10-A is enacted to read:

10-A. Internal Revenue Code. "Internal Revenue Code" or "Code" means the United States Internal Revenue Code of 1986, as amended.

Sec. 2. 3 MRSA §702, first ¶, as amended by PL 2007, c. 491, §5, is further amended to read:

There is established the Legislative Retirement Program as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation.

Sec. 3. 3 MRSA §705 is enacted to read:

§705. Internal Revenue Code compliance

The Legislative Retirement Program established in this chapter is subject to the following requirements.

1. Vesting. In compliance with the Code, Section 401(a)(7), a member is 100% vested in the member's contribution account at all times.

2. Use of forfeitures of benefits. In compliance with the Code, Section 401(a)(8), any forfeitures of benefits by members or former members may not be used to pay benefit increases, but must be used to reduce unfunded liabilities.

3. Benefits. In compliance with the Code, Section 401(a)(9), benefits must be paid in accordance with a good faith interpretation of the requirements of the Code, Section 401(a)(9) and the regulations in effect under that section as applicable to a governmental plan within the meaning of the Code, Section 414(d).

4. Application of annual compensation limits. In compliance with the Code, Section 401(a)(17), applicable annual compensation limits must be applied for purposes of determining benefits or contributions due to the Maine Public Employees Retirement System.

5. Rollovers. In compliance with the Code, Section 401(a)(31), a member may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution

paid directly to an eligible retirement plan specified by the member in a direct rollover.

6. Qualified military service. Effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service are governed by the Code, Section 414(u) and the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and, effective January 1, 2007, the Code, Section 401(a)(37).

7. Additional requirements. In compliance with the Code, Section 415, the member contributions paid to and retirement benefits paid from the Legislative Retirement Program must be limited to the extent necessary to conform to the requirements of the Code, Section 415 for a qualified pension plan.

8. Compliance with Section 503(b). Effective July 1, 1989, the board of trustees may not engage in a transaction prohibited by the Code, Section 503(b).

9. Rules. The board of trustees shall adopt rules necessary to maintain the qualified pension plan tax status of the Legislative Retirement Program under the Internal Revenue Code as required for governmental defined benefit plans defined in the Code, Section 414(d). Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 3 MRSA §801, sub-§1-A, as amended by PL 2007, c. 491, §18, is further amended to read:

1-A. Waiver provision. Any Legislator may petition the presiding officer for a waiver from the membership provisions of subsection 1 if it can be demonstrated that membership in the Legislative Retirement Program will create or exacerbate a Legislator's federal income tax liability due to the ownership of another retirement plan. The Office of the Executive Director of the Legislative Council shall provide assistance as requested by the Legislator or presiding officer. The presiding officer shall respond to the Legislator's petition within 30 days and shall provide copies of the decision to the Executive Director of the Legislative Council and the Executive Director of the Maine Public Employees Retirement System. A granted waiver of membership constitutes a one-time irrevocable election with respect to all subsequent employment with the same employer when membership in the Legislative Retirement Program is not mandatory.

Sec. 5. 3 MRSA §805-B, sub-§1, as enacted by PL 2007, c. 137, §4, is amended to read:

1. Conditions for refund. The retirement system may make an automatic refund of contributions to a member who has not properly applied for a refund as provided in section 805-A and who has terminated service, except by death or by retirement under this chapter, and who has not met the minimum creditable service requirement for eligibility to receive a service

retirement benefit at the applicable age under the following conditions:

- A. The member account in the retirement system has been inactive for 3 or more years;
- B. Only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this subsection; and
- C. A member who receives an automatic refund under this subsection may, within 30 days of the issuance of the refund, return the full refunded amount to the retirement system. Upon receipt, the retirement system shall restore the accumulated contributions to the member's credit.

Pursuant to the Code, Section 401(a)(31)(B), the amount of an automatic refund under this section may not exceed \$1,000.

Sec. 6. 4 MRSA §1201, sub-§11-A is enacted to read:

11-A. Internal Revenue Code. "Internal Revenue Code" or "Code" means the United States Internal Revenue Code of 1986, as amended.

Sec. 7. 4 MRSA §1202, first ¶, as amended by PL 2007, c. 491, §34, is further amended to read:

There is established the Judicial Retirement Program as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation.

Sec. 8. 4 MRSA §1205 is enacted to read:

§1205. Internal Revenue Code compliance

The Judicial Retirement Program established in this chapter is subject to the following requirements.

1. Vesting. In compliance with the Code, Section 401(a)(7), a member is 100% vested in the member's contribution account at all times.

2. Use of forfeitures of benefits. In compliance with the Code, Section 401(a)(8), any forfeitures of benefits by members or former members may not be used to pay benefit increases, but must be used to reduce unfunded liabilities.

3. Benefits. In compliance with the Code, Section 401(a)(9), benefits must be paid in accordance with a good faith interpretation of the requirements of the Code, Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of the Code, Section 414(d).

4. Application of annual compensation limits. In compliance with the Code, Section 401(a)(17), applicable annual compensation limits must be applied for purposes of determining benefits or contributions

due to the Maine Public Employees Retirement System.

5. Rollovers. In compliance with the Code, Section 401(a)(31), a member may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover.

6. Qualified military service. Effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service are governed by the Code, Section 414(u) and the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and, effective January 1, 2007, the Code, Section 401(a)(37).

7. Additional requirements. In compliance with the Code, Section 415, the member contributions paid to and retirement benefits paid from the Judicial Retirement Program must be limited to the extent necessary to conform to the requirements of the Code, Section 415 for a qualified pension plan.

8. Compliance with Section 503(b). Effective July 1, 1989, the board of trustees may not engage in a transaction prohibited by the Code, Section 503(b).

9. Rules. The board of trustees shall adopt rules necessary to maintain the qualified pension plan tax status of the Judicial Retirement Program under the Internal Revenue Code as required for governmental defined benefit plans defined in the Code, Section 414(d). Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. 4 MRSA §1305-B, sub-§1, as enacted by PL 2007, c. 137, §8, is amended to read:

1. Conditions for refund. The retirement system may make an automatic refund of contributions to a member who has not properly applied for a refund as provided in section 1305-A and who has terminated service, except by death or by retirement under this chapter, and who has not met the minimum creditable service requirement for eligibility to receive a service retirement benefit at the applicable age under the following conditions:

- A. The member account in the retirement system has been inactive for 3 or more years;
- B. Only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this subsection; and
- C. A member who receives an automatic refund under this subsection may, within 30 days of the issuance of the refund, return the full refunded amount to the retirement system. Upon receipt, the retirement system shall restore the accumulated contributions to the member's credit.

Pursuant to the Code, Section 401(a)(31)(B), the amount of an automatic refund under this section may not exceed \$1,000.

Sec. 10. 4 MRSA §1306, sub-§2, as amended by PL 2007, c. 491, §48, is further amended to read:

2. Payment. The amount that a member who makes the election permitted in subsection 1 must pay is the amount equal to the employee contribution that person would have made on wages that would have been paid to that person on the days off without pay during the 2002-03 fiscal year as described in section 1201, subsection 3, plus interest at the same rate as that required for payment of back contributions pursuant to Title 5, section 17704, subsection 3 a rate, to be set by the board, not to exceed regular interest by 5 or more percentage points. Interest must be computed beginning at the end of the year when those contributions or pick-up contributions would have been made to the date of payment. If the member elects to make the payment, the Maine Public Employees Retirement System shall withhold the required amount from the member's first retirement benefit check.

Sec. 11. 5 MRSA §17001, sub-§18-A is enacted to read:

18-A. Internal Revenue Code. "Internal Revenue Code" or "Code" means the United States Internal Revenue Code of 1986, as amended.

Sec. 12. 5 MRSA §17054-A is enacted to read:

§17054-A. Responsibilities of employers and the retirement system

Employers are responsible for providing procedures by which employees for whom membership in the retirement system is optional make a membership election, for maintaining all records relevant to the election process and an individual employee's election and for informing the retirement system as to employee elections in accordance with procedures established by the executive director. The retirement system is responsible to ensure that its records accurately reflect the information provided by the employer. With respect to matters related to participation and membership in the retirement system other than those specified in this section, the retirement system and the board retain responsibility and authority according to applicable retirement system law and rules as to the employer and the employees to whom this Part applies, including the authority to make final administrative decisions.

Sec. 13. 5 MRSA §17602, first ¶, as enacted by PL 2007, c. 491, §93, is amended to read:

There is established the State Employee and Teacher Retirement Program as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such

other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation.

Sec. 14. 5 MRSA §17603 is enacted to read:

§17603. Internal Revenue Code qualified plan compliance

The State Employee and Teacher Retirement Program established in this chapter is subject to the following requirements.

1. Vesting. In compliance with the Code, Section 401(a)(7), a member is 100% vested in the member's contribution account at all times.

2. Use of forfeitures of benefits. In compliance with the Code, Section 401(a)(8), any forfeitures of benefits by members or former members may not be used to pay benefit increases, but must be used to reduce unfunded liabilities.

3. Benefits. In compliance with the Code, Section 401(a)(9), benefits must be paid in accordance with a good faith interpretation of the requirements of the Code, Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of the Code, Section 414(d).

4. Application of annual compensation limits. In compliance with the Code, Section 401(a)(17), applicable annual compensation limits must be applied for purposes of determining benefits or contributions due to the retirement system.

5. Rollovers. In compliance with the Code, Section 401(a)(31), a member may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover.

6. Qualified military service. Effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service are governed by the Code, Section 414(u) and the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and, effective January 1, 2007, the Code, Section 401(a)(37).

7. Additional requirements. In compliance with the Code, Section 415, the member contributions paid to and retirement benefits paid from the State Employee and Teacher Retirement Program must be limited to the extent necessary to conform to the requirements of the Code, Section 415 for a qualified pension plan.

8. Compliance with Section 503(b). Effective July 1, 1989, the board may not engage in a transaction prohibited by the Code, Section 503(b).

9. Rules. The board shall adopt rules necessary to maintain the qualified pension plan tax status of the State Employee and Teacher Retirement Program under the Internal Revenue Code as required for governmental defined benefit plans defined in the Code, Section 414(d). Rules adopted under this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. 15. 5 MRSA §17652, as amended by PL 2007, c. 491, §95, is further amended to read:

§17652. Optional membership

1. Elected and appointed officials. Membership in the State Employee and Teacher Retirement Program is optional for elected officials or officials appointed for a fixed term. A person must make an election at the time of hire whether to be a member of the program. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

2. Delayed election of membership. A person, including a substitute teacher, who elects not to join the State Employee and Teacher Retirement Program at the beginning of that person's employment may at any time apply for and be admitted to membership.

~~A. 1. A person who joins the State Employee and Teacher Retirement Program under this subsection may purchase service credit for the period during which the person served as an elected official or official appointed for a fixed term or was employed as a substitute teacher but was not a member of the program.~~

~~B. Membership service credit for persons joining the State Employee and Teacher Retirement Program under this subsection begins as of the effective date of first contributions or pick-up contributions to the program.~~

~~C. This subsection applies to any member who begins membership after December 31, 1985.~~

2-A. Reentry. A person whose membership is optional and who becomes a member after having previously withdrawn from the State Employee and Teacher Retirement Program may purchase service credit for the time served in eligible service as follows. If qualified under both paragraphs A and B, the person may purchase time under both paragraphs.

~~A. If the person withdrew accumulated contributions at the time of withdrawal, the person may repurchase that prior service credit by repaying those contributions pursuant to section 17703.~~

~~B. For the purchase of time for which the person was not a member, the person must pay the amount set forth in section 17704 A.~~

3. Certain employees of the Maine Community College System. Notwithstanding section 17651, membership in the State Employee and Teacher Retirement Program is optional for employees of the Maine Community College System who are eligible to participate in a retirement plan pursuant to Title 20-A, section 12722. A person must make an election at the time of hire whether to be a member of the program. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

4. Limitation on election to join State Employee and Teacher Retirement Program. Notwithstanding any other law, confidential employees of the Maine Community College System who are not represented in a collective bargaining unit may join ~~or re-join~~ the State Employee and Teacher Retirement Program under this section only upon the written authorization of the Board of Trustees of the Maine Community College System. The board of trustees shall authorize the person to join ~~or rejoin~~ the State Employee and Teacher Retirement Program when the Maine Community College System Office or other Maine Community College System entity that employs the individual seeking to join ~~or rejoin~~ has identified and designated the funds necessary to pay for the cost of that person's joining ~~or rejoining~~ the program. A person must make an election at the time of hire whether to be a member of the program. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

5. Certain members of the Maine National Guard. A member of the Maine National Guard who is not governed by section 17651 and who is on active state service for more than 5 consecutive days pursuant to Title 37-B may elect to be a member of the State Employee and Teacher Retirement Program. A member of the Maine National Guard on active state service pursuant to Title 37-B who does not elect to participate in the State Employee and Teacher Retirement Program or is not eligible to participate in the State Employee and Teacher Retirement Program shall participate in the United States Social Security System. Once a member of the Maine National Guard makes an election under this subsection, that election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory. A member of the Maine National Guard on active state service pursuant to Title 37-B may participate in the tax-deferred arrangement of chapter 67.

6. Substitute teachers. Notwithstanding section 17651, membership in the State Employee and Teacher Retirement Program is optional for substitute teachers. ~~The right of a substitute teacher to rejoin the~~

~~program is limited to 2 occurrences. A person must make an election at the time of hire whether to be a member of the program. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.~~

Sec. 16. 5 MRSA §17704, as amended by PL 2007, c. 491, §109, is repealed.

Sec. 17. 5 MRSA §17704-A, as amended by PL 2007, c. 491, §§110 and 111, is repealed.

Sec. 18. 5 MRSA §17704-B, sub-§2, as amended by PL 2009, c. 213, Pt. SSS, §2, is further amended to read:

2. Payment. The amount that a member who makes the election permitted in subsection 1 must pay is the amount equal to the employee contribution that member would have made on compensation that would have been paid to that member on the days off without pay or for days worked for which the level of pay is reduced as the result of the freezing of merit pay and longevity pay during fiscal year 2002-03, 2009-10 or 2010-11, or a combination thereof, as provided in section 17001, subsection 4, paragraph A, plus interest ~~at the same rate as that required for payment of back contributions pursuant to section 17704, subsection 3 a rate, to be set by the board, not to exceed regular interest by 5 or more percentage points. Interest must be computed beginning at the end of the year when those contributions or pick-up contributions would have been made to the date of payment.~~ If the member elects to make the payment, the retirement system shall withhold the required amount from the member's first retirement benefit check.

Sec. 19. 5 MRSA §17704-C is enacted to read:

§17704-C. Continued eligibility to purchase back time

A member whose membership date is prior to August 1, 2010 and who was eligible to purchase service credit under former section 17704 or 17704-A prior to August 1, 2010, retains eligibility to purchase that service credit under the conditions of those sections as in effect prior to repeal.

Sec. 20. 5 MRSA §17706-A, sub-§1, as amended by PL 2007, c. 491, §113, is further amended to read:

1. Conditions for refund. The retirement system may make an automatic refund of contributions to a member who has not properly applied for a refund as provided in section 17705-A and who has terminated service, except by death or by retirement under this Part, or who as an optional member has withdrawn from a retirement program of the Maine Public Employees Retirement System, and who has not met the

minimum creditable service requirement for eligibility to receive a service retirement benefit at the applicable age under the following conditions:

- A. The member account has been inactive for 3 or more years;
- B. Except when inclusion of a portion of employer contributions is required by this subsection, only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this subsection;
- C. The amount of the refund of accumulated contributions related to a member's compensation for service rendered as a part-time, seasonal or temporary employee after December 31, 1991 must be at least equal to 7.5% of the member's compensation for that service plus interest as provided by section 17156; and
- D. A member who receives an automatic refund under this subsection may, within 30 days of the issuance of the refund, return the full refunded amount to the retirement system. Upon receipt, the retirement system shall restore the accumulated contributions to the member's credit.

Pursuant to the Code, Section 401(a)(31)(B), the amount of an automatic refund under this section may not exceed \$1,000.

Sec. 21. 5 MRSA §17707, sub-§4, ¶C, as amended by PL 2007, c. 491, §114, is further amended to read:

- C. If an employee who has not contributed during the employee's CETA employment or who has withdrawn the employee's contributions later elects, under section 17761, to purchase the employee's CETA time for past creditable service, the employee shall pay to the applicable retirement program of the Maine Public Employees Retirement System an amount equal to the employee's contributions, plus interest, as provided under section 17704 at a rate, to be set by the board, not to exceed regular interest by 5 or more percentage points. Interest must be computed beginning at the end of the year when those contributions or pick-up contributions would have been made to the date of payment.

Sec. 22. 5 MRSA §17753, as amended by PL 1995, c. 180, §4, is further amended to read:

§17753. Service credit for back contributions

Upon complete payment of the back contributions under section ~~17704 or 17704-A~~ 17704-C, the member must 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 ~~17704 or 17704-A~~ 17704-C, the member

must be granted service credit on a pro rata basis in accordance with rules adopted by the board.

Sec. 23. 5 MRSA §17758, as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

Sec. 24. 5 MRSA §18058, sub-§1, as amended by PL 2009, c. 236, §1, is further amended to read:

1. Employees automatically insured. ~~Except as provided in Title 20-A, section 12722, subsection 8, paragraph D, all~~ All employees eligible for basic insurance under this subchapter are automatically insured for the amounts of basic coverage applicable under this subchapter, beginning on the first day of the month following one month of employment after the employee becomes eligible. Each employee shall complete an application for insurance coverage within 31 days of becoming eligible.

- A. The employee shall indicate the types of coverage elected.
- B. If an application is completed in a timely manner, any coverage in addition to basic becomes effective on the first day of the month following one month of employment after the employee becomes eligible.

C. If an application is not completed within 31 days of the employee's first becoming eligible, the employee may subsequently apply for supplemental and dependent insurance but must produce evidence of insurability at the employee's own expense and in accordance with the requirements of the insurance underwriter.

Sec. 25. 5 MRSA §18058, sub-§2, as amended by PL 2009, c. 236, §2, is further amended to read:

2. Employees not wanting to be insured. ~~Except as provided in Title 20-A, section 12722, subsection 8, paragraph D, any~~ Any employee not wanting to be insured under this subchapter, at the time the employee first becomes eligible, shall, on the application form, give written notice to the employee's employing officer and to the retirement system that the employee does not want to be insured.

- A. If after being insured, the employee wishes to cancel or reduce coverage, written notice must be given by the employee to the employee's employing officer and to the retirement system.
- B. The employee's insurance coverage must cease or be reduced at the end of the month in which the notice is received by the employing office.
- C. Any employee who does not want to be insured or who cancels insurance coverage may subsequently apply for insurance, but must produce evidence of insurability at the employee's

own expense and in accordance with the requirements of the insurance underwriter.

D. Any employee who, during a period of unpaid military leave of absence, does not continue coverage while on unpaid military leave must be reinstated to the levels of coverage in effect immediately prior to the unpaid military leave. A request for reinstatement by the employee must be made within 31 days of the employee's return to work following unpaid military leave. An employee who wants to be reinstated and who does not apply for reinstatement within 31 days of the employee's return to work from unpaid military leave must produce evidence of insurability at the employee's own expense and in accordance with the requirements of the insurance underwriter.

Sec. 26. 5 MRSA §18200, first ¶, as enacted by PL 2007, c. 491, §181, is amended to read:

There is established the Participating Local District Retirement Program as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation.

Sec. 27. 5 MRSA §18205 is enacted to read:

§18205. Internal Revenue Code qualified plan compliance

The Participating Local District Retirement Program established in this chapter is subject to the following requirements.

1. Vesting. In compliance with the Code, Section 401(a)(7), a member is 100% vested in the member's contribution account at all times.

2. Use of forfeitures of benefits. In compliance with the Code, Section 401(a)(8), any forfeitures of benefits by members or former members may not be used to pay benefit increases, but must be used to reduce unfunded liabilities.

3. Benefits. In compliance with the Code, Section 401(a)(9), benefits must be paid in accordance with a good faith interpretation of the requirements of the Code, Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of the Code, Section 414(d).

4. Application of annual compensation limits. In compliance with the Code, Section 401(a)(17), applicable annual compensation limits must be applied for purposes of determining benefits or contributions due to the retirement system.

5. Rollovers. In compliance with the Code, Section 401(a)(31), a member may elect, at the time and in the manner prescribed by the board, to have any

portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover.

6. Qualified military service. Effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service are governed by the Code, Section 414(u) and the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and, effective January 1, 2007, the Code, Section 401(a)(37).

7. Additional requirements. In compliance with the Code, Section 415, the member contributions paid to and retirement benefits paid from the Participating Local District Retirement Program must be limited to the extent necessary to conform to the requirements of the Code, Section 415 for a qualified pension plan.

8. Compliance with Section 503(b). Effective July 1, 1989, the board may not engage in a transaction prohibited by the Code, Section 503(b).

9. Rules. The board shall adopt rules necessary to maintain the qualified pension plan tax status of the Participating Local District Retirement Program under the Internal Revenue Code as required for governmental defined benefit plans defined in the Code, Section 414(d). Rules adopted under this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. 28. 5 MRSA §18251, sub-§3, as amended by PL 2007, c. 491, §188, is further amended to read:

3. Optional membership. Membership in the Participating Local District Retirement Program is optional for the following employees of a participating local district:

A. A person in the service of a participating local district on the date of establishment for that participating local district. Once such a person joins the Participating Local District Retirement Program, membership ceases to be optional for that person under this paragraph;

B. An elected official or an official appointed for a fixed term. Special provisions apply to certain officials as follows:

(1) Membership of trustees of a water district is governed by Title 35-A, section 6410, subsection 8;

(2) Membership of trustees of a sanitary district is governed by Title 38, section 1104; and

(3) Membership of trustees of a sewer district is governed by Title 38, section 1252;

C. A chief administrative officer of a participating local district, whether appointed for a fixed term or appointed with tenure; and

D. A person whose membership is optional under section 18252, 18252-A or 18801.

A person must make an election at the time of hire, or on the date of first eligibility to participate, whichever occurs earlier, whether to be a member of the program. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

Sec. 29. 5 MRSA §18251, sub-§4, as amended by PL 2007, c. 491, §189, is repealed.

Sec. 30. 5 MRSA §18251, sub-§5, as amended by PL 2007, c. 491, §190, is repealed.

Sec. 31. 5 MRSA §18252, as repealed and replaced by PL 2009, c. 415, Pt. A, §5, is amended to read:

§18252. Membership in districts with Social Security coverage

A person who is or would be covered by the United States Social Security Act as a result of employment by a participating local district with Social Security coverage may elect to ~~join, not to join, to cease contributions to or to withdraw from~~ be a member in the Participating Local District Retirement Program ~~under the following conditions. A person must make an election at the time of hire or on the date of first eligibility to participate, whichever occurs earlier, whether to be a member of the program. Once an election is made under this section, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.~~

~~**1. Membership.** An employee may join the Participating Local District Retirement Program at the beginning of employment or at any time after beginning employment, as long as that person is still an employee of the participating local district and the district continues to be a participating local district.~~

~~A. Purchase of service credit for the period during which the person was not a member of the Participating Local District Retirement Program is governed by section 18305-A.~~

~~**2. Employee who is participating member.** A person who is a participating member of the Participating Local District Retirement Program may elect to cease contributions to that program and, at that person's discretion, may withdraw accumulated contributions in accordance with section 18306-A.~~

~~**3. Person who has previously ceased contributions.** A person who has previously elected to cease contributions to the Participating Local District Retirement Program, whether or not accumulated contributions have been withdrawn, may choose to rejoin that program at any time under the following conditions.~~

~~**B.** The employer must still be a participating local district allowing new membership in the Participating Local District Retirement Program.~~

~~**C.** Purchase of service credit for the period during which the person was not a member of the Participating Local District Retirement Program is governed by section 18305-A. Repayment of withdrawn accumulated contributions is governed by section 18304.~~

~~**5. Limit on right to rejoin.** The right of a person to rejoin under subsection 3 is limited to 2 occurrences.~~

6. Restoration to service. If any person who is the recipient of a service retirement benefit is covered by the United States Social Security Act upon being restored to service, continuation of that person's benefit is governed by the following.

A. The person may elect to have the service retirement benefit continued during the period of time the person is restored to service and the person may not accumulate any additional service credits.

B. The person may elect to have the service retirement benefit terminated, again become a member of the Participating Local District Retirement Program and begin contributing at the current rate.

(1) The person is entitled to accumulate additional service credits during the period of time the person is restored to service.

(2) When the person again retires, the person is entitled to receive benefits computed on the person's entire creditable service and in accordance with the law in effect at the time.

C. Upon being restored to service, the person must elect to have benefits either continued or terminated. If written notification of the person's election is not received by the executive director within 60 days of restoration to service, the person is deemed to have elected the provisions of paragraph A. The election, regardless of how it is made, is irrevocable during the period of restoration to service.

Sec. 32. 5 MRSA §18252-A, sub-§1, ¶A, as repealed and replaced by PL 2009, c. 415, Pt. A, §6, is amended to read:

A. A person 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 must elect at the time of hiring or

rehiring whether to be a member under the Participating Local District Retirement Program or to be covered under a plan provided by the employer under section 18252-B. Once an election is made under this paragraph, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

(1) ~~If the person elects to be a member under the Participating Local District Retirement Program, the election is effective as of the date of hire or rehire.~~

~~(a) A person who elects to be a member of the Participating Local District Retirement Program may later elect to be covered under a plan provided by the employer under section 18252-B. The person who so elects may, at that person's discretion, withdraw accumulated contributions in accordance with section 18306-A.~~

~~(b) A person 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 Participating Local District Retirement Program, unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer contribution to both that program and the plan provided by the employer under section 18252-B.~~

~~(c) A person who elects under division (b) to again become a member of the Participating Local District Retirement Program may, in accordance with section 18305-A, purchase service credit for the period during which the person elected not to be a member of that program. The person 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) A person who, having elected to again become a member under the Participating Local District Retirement Program under division (c), later elects again not to be a member may not thereafter become a member under that program while employed by the same participating local district.~~

(2) A person who elects to be covered under a plan provided by the employer under sec-

~~tion 18252-B may later elect to become a member under the Participating Local District Retirement Program.~~

~~(a) Membership service credit for a person joining the Participating Local District Retirement Program under this subparagraph begins as of the effective date of first contributions or pick up contributions to that program following that person's election under this subparagraph.~~

~~(b) A person who joins the Participating Local District Retirement Program under this subparagraph may, in accordance with section 18305-A, purchase service credit for the period during which the person elected not to be a member of that program.~~

~~(c) A person who, having elected to become a member under the Participating Local District Retirement Program under this subparagraph, later elects again not to be a member may, at the employee's discretion, withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under that program while employed by the same participating local district.~~

Sec. 33. 5 MRSA §18252-A, sub-§1, ¶B, as repealed and replaced by PL 2009, c. 415, Pt. A, §6, is amended to read:

B. An employee of the participating local district who is a member under the Participating Local District Retirement Program on the date on which the employer provides a plan under section 18252-B may elect to remain a member under that program or to become covered under a plan provided by the employer under section 18252-B. A person must make an election within 90 days of the date on which the employer provides a plan under section 18252-B. Once an election is made under this paragraph, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

(1) If that person 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 Participating Local District Retirement Program by that person. A person who elects not to remain a member may, at that person's discretion, withdraw accumulated contributions in accordance with section 18306-A.

~~(2) A person who elects not to remain a member under the Participating Local District Retirement Program may later elect to again become a member.~~

~~(a) Membership service credit for a person who elects to again become a member under the Participating Local District Retirement Program under this subparagraph begins as of the effective date of the first contributions or pick up contributions to that program following that person's election under this subparagraph.~~

~~(b) A person who rejoins the Participating Local District Retirement Program under this subparagraph may, in accordance with section 18305-A, purchase service credit for the period during which that person elected not to be a member of that program. The person 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 Participating Local District Retirement Program and the plan provided by the employer under section 18252-B.~~

~~(c) A person who, having elected to again become a member under the Participating Local District Retirement Program under this subparagraph, later elects again not to be a member may, at that person's discretion, withdraw accumulated contributions in accordance with section 18306-A and may not thereafter become a member under that program while employed by the same participating local district.~~

Sec. 34. 5 MRSA §18252-B, sub-§6, ¶C, as amended by PL 2007, c. 491, §198, is repealed.

Sec. 35. 5 MRSA §18254, sub-§1, as amended by PL 2007, c. 491, §204, is further amended to read:

1. Employee eligible to withdraw accumulated contributions. An employee of the district whose membership in the Participating Local District Retirement Program was compulsory under section 18251 must make an election to remain a member under that program or to withdraw accumulated contributions within 90 days of the effective date of the employer withdrawal from the program under section 18203, subsection 2. An employee who withdraws elects to withdraw accumulated contributions under this subsection may not be a member of the Participating Lo-

cal District Retirement Program program as an employee of that district. Once an election is made under this subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory if the employer later resumes participation in the program pursuant to section 18254-A.

Sec. 36. 5 MRSA §18254, sub-§5, as enacted by PL 2001, c. 181, §10, is amended to read:

5. Conditions under which withdrawn participating local district is no longer participating local district. A participating local district that has no former employees eligible for retirement benefits under subsection 3 and no former employees covered under subsection 4 is no longer a participating local district when:

A. The participating local district's status as a participating local district is based solely on the existence of a former employee or employees who are retirees receiving retirement benefits or on the existence of current or potential beneficiaries of such retirees who are receiving or potentially entitled to receive benefits; and

B. The district satisfies fully all liabilities as measured by the retirement system for those to whom paragraph A applies:

(1) In accordance with state and federal law; and

(2) According to standards and procedures approved by the board as determined by the board to protect the interests of current and potential benefit recipients and any other affected or potentially affected person or entity. Such procedures may include, but are not limited to, the establishment by purchase or otherwise of an annuity or annuities as a means of satisfying the district's liabilities.

Having satisfied its liabilities in compliance with this subsection, a district is no longer a participating local district, and once the retirement plan is terminated in accordance with federal law, the retirement system must return to it any assets in the district's retirement system account exceeding the amount necessary to comply. Satisfaction of district liabilities pursuant to this subsection bars any future claim by any person against the retirement system for liability to or responsibility for any retiree, beneficiary or the district, and a retiree, beneficiary or the district is not thereafter subject to this Part.

Sec. 37. 5 MRSA §18305, as amended by PL 2007, c. 491, §§214 and 215, is repealed.

Sec. 38. 5 MRSA §18305-A, as amended by PL 2007, c. 491, §§216 and 217, is repealed.

Sec. 39. 5 MRSA §18305-B is enacted to read:

§18305-B. Continued eligibility to purchase service credit

A member whose membership date is prior to August 1, 2010, and who was eligible to purchase service credit under former section 18305 or 18305-A prior to August 1, 2010, retains eligibility to purchase that service credit under the conditions of those sections as in effect prior to repeal.

Sec. 40. 5 MRSA §18307-A, sub-§1, as amended by PL 2007, c. 491, §219, is further amended to read:

1. Conditions for refund. The retirement system may make an automatic refund of contributions to a member who has not properly applied for a refund as provided in section 18306-A and who has terminated service, except by death or by retirement under this Part, or who as an optional member has withdrawn from a retirement program of the Maine Public Employees Retirement System, and who has not met the minimum creditable service requirement for eligibility to receive a service retirement benefit at the applicable age under the following conditions:

- A. The member account has been inactive for 3 or more years;
- B. Except when inclusion of a portion of employer contributions is required by this subsection, only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this subsection;
- C. The amount of the refund of accumulated contributions related to a member's compensation for service rendered as a part-time, seasonal or temporary employee after December 31, 1991 must be at least equal to 7.5% of the member's compensation for that service plus interest as provided by section 17156; and
- D. A member who receives an automatic refund under this subsection may, within 30 days of the issuance of the refund, return the full refunded amount to the retirement system. Upon receipt, the retirement system shall restore the accumulated contributions to the member's credit.

Pursuant to the Code, Section 401(a)(31)(B), the amount of an automatic refund under this subsection may not exceed \$1,000.

Sec. 41. 5 MRSA §18308, sub-§4, ¶C, as amended by PL 2007, c. 491, §220, is further amended to read:

- C. If an employee who has not contributed during the employee's CETA employment or who has withdrawn the employee's contributions later elects, under section 18361, to purchase the em-

ployee's CETA time for past creditable service, the employee shall pay to the applicable retirement program of the Maine Public Employees Retirement System an amount equal to the employee's contributions, plus interest, ~~as provided under section 18305~~ at a rate, to be set by the board, not to exceed regular interest by 5 or more percentage points. Interest must be computed beginning at the end of the year when those contributions or pick-up contributions would have been made to the date of payment.

Sec. 42. 5 MRSA §18353, as repealed and replaced by PL 1989, c. 95, §11, is amended to read:

§18353. Service credit for back contributions

Upon complete payment of the back contributions under section ~~18305~~ 18305-B, the member ~~shall~~ must 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 ~~18305~~ 18305-B, the member ~~shall~~ must be granted service credit on a pro rata basis in accordance with rules adopted by the board.

Sec. 43. 5 MRSA §18358, sub-§2, as amended by PL 2007, c. 491, §229, is repealed and the following enacted in its place:

2. Optional members joining the Participating Local District Retirement Program. A person who joins the Participating Local District Retirement Program under section 18251, 18252 or 18252-A begins to accrue membership service credit on the effective date of first contributions or pick-up contributions to the program.

Sec. 44. 5 MRSA §18801, first ¶, as amended by PL 1993, c. 250, §3, is repealed and the following enacted in its place:

There is established the Participating Local District Consolidated Retirement Plan as a governmental qualified defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as are applicable, which has the powers and privileges of a corporation. The purpose of the Participating Local District Consolidated Retirement Plan is to provide retirement allowances and other benefits under this chapter for employees of participating local districts. The board shall establish by rule the plan provisions of the Participating Local District Consolidated Retirement Plan in accordance with section 18804.

Sec. 45. 20-A MRSA §12722, sub-§2, as enacted by PL 1997, c. 763, §4 and affected by §7 and amended by PL 2007, c. 58, §3, is repealed and the following enacted in its place:

2. Election periods. An eligible person is considered to be a participant in the defined contribution

plan offered by the board of trustees unless that person makes a one-time irrevocable election to participate in the Maine Public Employees Retirement System. The election must be made in writing no later than 30 days after the date of hire in an eligible position, and notice of the election must be filed with the administrative officer of the employing institution. The employing institution shall notify the Maine Public Employees Retirement System of the election in accordance with procedures established by the Executive Director of the Maine Public Employees Retirement System. Participation in the Maine Public Employees Retirement System pursuant to an election under this subsection is effective as of the date of hire, and the system shall remit all required contributions to the Maine Public Employees Retirement System retroactively to the date of hire.

Sec. 46. 20-A MRSA §12722, sub-§3, as amended by PL 2007, c. 58, §3 and c. 137, §25, is repealed.

Sec. 47. 20-A MRSA §12722, sub-§8, as amended by PL 2009, c. 236, §3, is repealed.

See title page for effective date.

CHAPTER 475

S.P. 624 - L.D. 1659

An Act To Enhance the Small Enterprise Growth Fund

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

Sec. 1. 10 MRSA §382, sub-§3, as enacted by PL 1995, c. 699, §3, is amended to read:

3. Program. "Program" means the Small Enterprise Growth Program, which encompasses the Small Enterprise Growth Fund and any side fund created by the board.

Sec. 2. 10 MRSA §382, sub-§3-A is enacted to read:

3-A. Program funds. "Program funds" means the Small Enterprise Growth Fund and any side funds created by the board.

Sec. 3. 10 MRSA §382, sub-§5 is enacted to read:

5. Side fund. "Side fund" means a fund other than the Small Enterprise Growth Fund administered by the board that is invested as determined by the board.

Sec. 4. 10 MRSA §383, as enacted by PL 1995, c. 699, §3, is amended to read:

§383. Program funds established

1. Creation of fund. There is established the Small Enterprise Growth Fund, which is a revolving fund used to provide funding for disbursements to qualifying small businesses in the State seeking to pursue an eligible project. The fund must be deposited with and maintained and administered by the Finance Authority of Maine and consists of appropriations provided for that purpose, interest accrued on the fund balance, funds received by the board to be applied to the fund, all funds remaining in the Pine Tree Partnership Fund and any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services. The fund is a nonlapsing fund.

1-A. Creation of side funds. The board may create one or more side funds for placement of certain funds received by the board. A side fund may be structured as a revolving fund in addition to the Small Enterprise Growth Fund or as a fund in which the investor will have funds drawn and returned over an agreed time period.

2. Administrative expenses. Costs and expenses of maintaining and servicing ~~the fund~~ program funds and administering the Small Enterprise Growth Program established by this chapter may be paid out of amounts in the ~~fund~~ program funds.

3. Management fees. The board may charge and accept management fees for management of money placed in program funds other than money placed directly by the State.

4. Agreements. The board may enter into an agreement or contract with a 3rd party for investment in a side fund. The board may allocate ownership in a side fund through the agreement. The board may also repay money received and return profits according to terms in the agreement. The board may create a formula or terms for the sharing of profits on a side fund in the agreement.

5. Profits. The profits on a side fund retained by the board must be contributed to the fund.

See title page for effective date.

CHAPTER 476

H.P. 1208 - L.D. 1707

An Act To Clarify the Application of Certain Statutory Requirements to Foreclosures

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until