



# 127th MAINE LEGISLATURE

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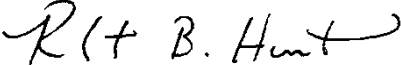
H.P. 704

House of Representatives, March 19, 2015

**An Act To Amend the Laws Pertaining to the Maine Public  
Employees Retirement System**

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Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

  
ROBERT B. HUNT  
Clerk

Presented by Representative ROTUNDO of Lewiston.

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

2 **Sec. 1. 2 MRSA §1-A, sub-§1, ¶D**, as enacted by PL 1985, c. 801, §§1 and 7, is  
3 amended to read:

4 D. Whatever adjustments are made under Title 5, ~~sections~~ section 17806 ~~and 18407~~  
5 ~~shall~~ must be applied to payments made under this section.

6 **Sec. 2. 5 MRSA §17054, sub-§3**, as amended by PL 2011, c. 606, §9, is further  
7 amended to read:

8 **3. Recovery of overpayments by the retirement system.** Any amounts due the  
9 retirement system as the result of overpayment or erroneous payment of benefits, an  
10 excess refund of contributions or overpayment or erroneous payment of life insurance  
11 benefits may be recovered from an individual's contributions, any benefits or life  
12 insurance benefits payable under this Part to the individual or the beneficiary of the  
13 individual or any combination of contributions and benefits. If the overpayment or  
14 excess refund of contributions resulted from a mistake of or incorrect information  
15 provided by an employee of the retirement system, or a mistake of the retiree or the  
16 recipient of the benefit or life insurance benefit, a penalty or interest may not be assessed  
17 by the retirement system. In all cases of recovery of overpayments through the reduction  
18 of a retirement benefit, whether with or without the assessment of interest by the  
19 retirement system, the recovery practices must be reasonable and consider the personal  
20 economic stability of the retiree in the establishment of the recovery schedule. The  
21 executive director may also take action to recover those amounts due from any amounts  
22 payable to the individual by any other state agency or by an action in a court of  
23 competent jurisdiction. Whenever the executive director makes a decision to recover any  
24 amounts under this subsection, that decision is subject to appeal under section 17451.

25 Employers are responsible for enrolling employees in the correct retirement plan. The  
26 retirement system shall provide training, education and information to assist employers in  
27 the correct enrollment of employees. If an employee is enrolled in the incorrect  
28 retirement plan by the employer through no fault of the employee, the employee may not  
29 lose any retirement benefits. The State is not responsible for the employer contribution  
30 when the employer is a school district, municipality or county and those contributions and  
31 assessed interest, if applicable, must be paid to the retirement system by the school  
32 district, municipality or county.

33 In the event of a dispute as to the proper enrollment of an employee in the correct  
34 retirement plan, the board shall make the final and determining decision;

35 **Sec. 3. 5 MRSA §17054-A**, as enacted by PL 2009, c. 474, §12, is amended to  
36 read:

37 **§17054-A. Responsibilities of employers and the retirement system**

38 Employers are responsible for providing procedures by which employees for whom  
39 membership in the retirement system is optional make a membership election, for  
40 maintaining all records relevant to the election process and an individual employee's  
41 election and for informing the retirement system as to employee elections in accordance

1 with procedures established by the executive director. The retirement system is  
2 responsible ~~to ensure~~ for ensuring that its records accurately reflect the information  
3 provided by the employer. With respect to matters related to participation and  
4 membership in the retirement system other than those specified in this section, the  
5 retirement system and the board retain responsibility and authority according to  
6 applicable retirement system law and rules as to the employer and the employees to  
7 whom this Part applies, including the authority to make final administrative decisions.  
8 The retirement system has the authority and responsibility to require payment by the  
9 employer of any funding due the retirement system resulting from the employer's failure,  
10 as determined in the sole discretion of the board, to fulfill the employer's responsibilities  
11 with respect to its employees and their enrollment in and benefits under the retirement  
12 system.

13 **Sec. 4. 5 MRSA §17102, sub-§7**, as amended by PL 2007, c. 240, Pt. U, §5, is  
14 repealed and the following enacted in its place:

15 **7. Expenses.** All administrative costs and expenses attributable to the administrative  
16 operating budget of the retirement system must be charged against the assets of the  
17 applicable fund.

18 **Sec. 5. 5 MRSA §17103, sub-§6**, as amended by PL 2009, c. 322, §2, is further  
19 amended to read:

20 **6. Rights, credits and privileges; decisions.** The board shall in all cases make the  
21 final and determining ~~administrative~~ decision in all matters affecting the rights, credits  
22 and privileges of all members, and of all employees who may become eligible to become  
23 members, of all programs of the retirement system whether in participating local districts  
24 or in the state service. The board is responsible for making decisions that are necessary  
25 to ensure the qualification of the retirement system under the Internal Revenue Code and  
26 other applicable federal laws.

27 Whenever the board finds that, because of an error or omission on the part of the  
28 employer of a member or retired member, a member or retired member is required to  
29 make a payment or payments to the retirement system, the board may waive payment of  
30 all or part of the amount due from the member or retired member. In these instances of  
31 recovery of overpayments from members of the retirement system, the retirement system  
32 is governed by section 17054, subsection 3.

33 **Sec. 6. 5 MRSA §17103, sub-§11, ¶C**, as amended by PL 1993, c. 410, Pt. L,  
34 §19, is repealed.

35 **Sec. 7. 5 MRSA §17103, sub-§14**, as enacted by PL 1993, c. 410, Pt. L, §22, is  
36 repealed.

37 **Sec. 8. 5 MRSA §17152, sub-§2**, as corrected by RR 2013, c. 2, §6, is amended  
38 to read:

39 **2. Retirement Allowance Fund.** The Retirement Allowance Fund; ~~and~~

1           **Sec. 9. 5 MRSA §17152, sub-§3**, as corrected by RR 2013, c. 2, §6, is repealed.

2           **Sec. 10. 5 MRSA c. 421, sub-c. 4, art. 4**, as amended, is repealed.

3           **Sec. 11. 5 MRSA §17451, sub-§1, ¶E** is enacted to read:

4           E. The board shall make all decisions necessary to determine applicable state law in  
5           a manner that does not jeopardize the qualification status of the retirement system  
6           under the Internal Revenue Code and other applicable federal laws.

7           **Sec. 12. 5 MRSA §18201, sub-§3-A**, as enacted by PL 1997, c. 709, §1, is  
8           amended to read:

9           **3-A. Compliance with federal law.** The local district is responsible for compliance  
10           with 26 Code of Federal Regulations, Part 31, with Section 401 of the United States  
11           Internal Revenue Code and with other relevant federal law and rules with respect to its  
12           employees, including employees to whom ~~section~~ sections 18252 and 18252-A applies  
13           apply. The board shall make a final determination regarding whether an employee is  
14           eligible to participate in the Participating Local District Retirement Program.

15           **Sec. 13. 5 MRSA §18252, first ¶**, as amended by PL 2011, c. 449, §14, is further  
16           amended to read:

17           A person who is or would be covered by the United States Social Security Act as a  
18           result of employment by a participating local district with Social Security coverage may  
19           elect to be a member in the Participating Local District Retirement Program. A person  
20           must make an election at the time of initial hire or on the date of first eligibility to  
21           participate, whichever occurs earlier, whether to be a member of the program. Once an  
22           election is made under this section, the election is irrevocable with respect to all  
23           subsequent employment with the same employer when membership in the program is not  
24           mandatory. The retirement system and the board have responsibility and authority for  
25           participation and membership issues or disputes according to applicable retirement  
26           system law and rules relative to the participating local districts and their employees to  
27           whom this section applies, including the authority to make final administrative decisions.

28           **Sec. 14. 5 MRSA §18253, sub-§1, ¶D**, as amended by PL 1995, c. 363, §1 and  
29           PL 2007, c. 58, §3, is further amended to read:

30           D. For the purposes of this subsection, an employee of the Maine Public Employees  
31           Retirement System who is a member on January 1, 1994 is considered to be  
32           reemployed with a new employer. If an employee returns to state service during the  
33           period that begins on July 1, 1995 and ends 180 days after the date upon which the  
34           initial collective bargaining agreement between the Maine Public Employees  
35           Retirement System and the collective bargaining agent that represents the employees  
36           of the system becomes effective, all funds transferred to the account of the Maine  
37           Public Employees Retirement System as the new employer on behalf of the employee  
38           from the State's account must be returned to the State's account. For the purpose of  
39           service, breaks in service and benefit accruals, the employee must be treated as if the  
40           employee had remained in state service throughout the period in question. For

1 purposes of this paragraph, "becomes effective" means that the collective bargaining  
2 agreement has been signed and ratified by both parties ~~and approved by the~~  
3 ~~Legislature as provided by section 17103, subsection 14.~~

4 **Sec. 15. 5 MRSA §18806, sub-§1**, as amended by PL 2007, c. 491, §253, is  
5 further amended to read:

6 **1. Districts with employees covered by the Social Security Act.** A participating  
7 local district with employees covered by the United States Social Security Act may  
8 provide service retirement benefits for employees not covered by a special plan that equal  
9 1% of the member's average final compensation multiplied by the number of years of  
10 membership service. ~~Members~~ The board shall establish by rule the rate at which  
11 members covered by this benefit shall contribute to the Participating Local District  
12 Retirement Program ~~at the rate of 3% of earnable compensation.~~

13 **SUMMARY**

14 This bill does the following:

15 1. It clarifies that cost-of-living adjustments for benefit recipients from the  
16 Governor's Retirement Fund are the same as those paid to benefit recipients from the  
17 State Employee and Teacher Retirement Program;

18 2. It clarifies the authority and responsibilities of the Board of Trustees of the Maine  
19 Public Employees Retirement System with respect to eligibility and membership issues  
20 that arise in the context of the Participating Local District Retirement Program. In  
21 Kennebec County v. Maine Public Employees Retirement System, 2014 ME 26  
22 (February 20, 2014), the Law Court held that the retirement system did not have the  
23 statutory authority to make final administrative decisions with respect to enrollment  
24 election matters, when the local employer's employees were not members of the Maine  
25 Public Employees Retirement System. This bill provides explicit statutory authority for  
26 the retirement system and the board to continue to make such determinations, as they had  
27 prior to the court's decision. Consistent adherence to federal law is required to ensure that  
28 the retirement plan of the Maine Public Employees Retirement System remains a  
29 qualified governmental retirement plan entitled to favorable tax treatment under the  
30 United States Internal Revenue Code of 1986, as amended;

31 3. It codifies language enacted in Public Law 2007, chapter 240, Part U, section 8 to  
32 make clear that administrative costs and expenses attributable to the administrative  
33 operating budget of the Maine Public Employees Retirement System are charged against  
34 the assets of applicable funds;

35 4. It repeals obsolete language pertaining to information included in the retirement  
36 system's annual report to the Legislature;

37 5. It removes the requirement that the Legislature approve collective bargaining  
38 agreements between the retirement system and its employees;

1           6. It amends and repeals existing laws to reflect that the retirement system no longer  
2 administers a distinct expense fund, since all administrative expenses are paid out of  
3 applicable fund assets; and

4           7. It makes the manner in which the member contribution rate is established for  
5 specific members of the Participating Local District Retirement Program consistent with  
6 how member contribution rates are established for all other members of the program.