**Annual List of Rulemaking Activity**
**Rules Adopted January 1, 2018 to December 31, 2018**
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5*

**Agency name:** **Maine Public Employee Retirement System**
**Umbrella-Unit:** **94-411**
**Statutory authority:** 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*
**Chapter number/title:** **Ch. 803**, Participating Local District Consolidated Retirement Plan
**Filing number:** **2018-082**
**Effective date**: 5/26/2018
**Type of rule:** Routine Technical
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to further modernize the plan and improve future funding levels of the Plan.

**Basis statement:**

The Participating Local District ("PLO") Advisory Committee and MainePERS staff proposed several substantive changes to Ch. 803 to enhance the PLD Consolidated Retirement Plan's ability to protect the basic retirement benefit and improve the long term financial health of the Plan. The impetus for these changes was a decline in the Plan's funding level from 109% before the 2009 financial crisis to 86% as of the end of fiscal year 2016 following two-years of flat investment market performance.

The PLD Advisory Committee, established by 5 MRS §18802-A, is composed equally of members who represent PLD employers and employees. The Committee and staff worked for 18-months studying the Plan and various options for improvement before proposing these changes. As part of that process, the MainePERS Executive Director conducted 28 informational sessions around the State regarding the options under consideration during the fall of 2017. Notice of these sessions was provided by email to PLO employers, who were asked to share the information with their employees who are MainePERS members. Notice was provided to retiree's by mail. Information about the sessions also was posted on the MainePERS website. More than 500 employers, employees, and retirees attended these sessions. Feedback from these sessions was considered by the Committee and staff and incorporated into the final proposals.

Substantive proposals include:

Withdrawal Liability
Unused Accrued Time
Risk Sharing
Early Retirement
COLA Cap and Waiting Period
Retirees Returning to Work

In addition to these substantive changes, the amendment also makes non-substantive language corrections and deletes historic references no longer needed.

**Fiscal impact of rule:**

None.

**Annual List of Rulemaking Activity**
**Rules Adopted January 1, 2018 to December 31, 2018**
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5*

**Agency name:** **Maine Public Employee Retirement System**
**Umbrella-Unit:** **94-411**
**Statutory authority:** 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*
**Chapter number/title:** **Ch. 803**, Participating Local District Consolidated Retirement Plan
**Filing number:** **2018-188**
**Effective date**: 9/19/2018
**Type of rule:** Routine Technical
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to further modernize the plan and improve future funding levels of the Plan.

**Basis statement:**

The Participating Local District ("PLD") Advisory Committee and MainePERS staff proposed several substantive changes to Ch. 803 to enhance the PLD Consolidated Retirement Plan's ability to protect the basic retirement benefit and improve the long-term financial health of the Plan. The majority of the recommended changes were adopted by the Board of Trustees at its May 10, 2018 meeting.

The Board of Trustees did not adopt the recommended changes to the retire-rehire provisions at that time and requested the System conduct further outreach on the topic of retire-rehire for possible reconsideration at a later date. MainePERS held eleven informational meetings across the state during the month of June on the proposed changes to the retire-rehire provisions. Notice of these sessions was provided to members and rehired retirees by mail and to PLD employers and member and employer organizations by email. Information about the sessions was also posted on the MainePERS website. More than 160 employers, employees, and retirees attended these sessions. Feedback from these sessions was considered by the Committee and staff and incorporated into the final proposals noticed for a new round of rulemaking.

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on July 18, 2018. Additionally, a notice of public hearing was mailed to PLD employers for distribution to employee/members on July 26, 2018; an email with the notice and copy of the proposed amendments was sent to PLD employers on July 27, 2018. This notice included information about the public hearing as well as the deadline for written comments.

The proposed amended rule includes substantive proposals as it relates to retirees returning to work. When a retiree under the Plan returns to work in a position covered by the Plan, at the election of the employer, either: (1) contributions would be paid to the Plan for that position at a contribution rate of 5% of the person's earnable compensation; or (2) the retiree would re-enter the plan, meaning benefit payments would stop and the service credit would resume accruing. This change would not apply to retirees who already have returned to work in a covered position on October 1, 2018, until the earlier of termination of employment or June 30, 2021.

When a covered position is filled by a retiree, under the current rule the Plan loses the contributions that would be paid if the position were filled by an active member. The employer thus is not paying its full share of the Plan's UAL. If this practice were to become widespread, it could have a significant impact on plan funding. The proposal corrects this problem.

The proposed amended rule also includes two clarifying changes not related to retirees returning to work:

**Annual List of Rulemaking Activity**
**Rules Adopted January 1, 2018 to December 31, 2018**
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5*

1. **Withdrawal Liability.** The Board of Trustees adopted a recommended change to the withdrawal liability provision at its meeting on May 10, 2018. Subsequent to that meeting, MainePERS received an inquiry from a PLD employer considering withdrawal pertaining to the manner in which the liability was calculated. Specifically, a concern was raised that the methodology adopted by the Board of Trustees did not expressly give credit to the withdrawing PLD for unfunded actuarial liability payments ("UAL") made by the PLD since the last actuarial valuation had been completed. The proposed amended rule clarifies that those payments are to be considered in the calculation of the withdrawal liability.

2. **Plan Elections.** The existing provisions of the rule permit a PLD that is re-entering the Plan or that is making a change in the service retirement plan or plans by which its employees are covered to elect a plan with a lower level of benefits only for new employees. The proposed amended rule clarifies that a PLD that changes from a plan that provides a cost-of-living adjustment to a plan that does not provide a cost-of-living adjustment may likewise only do so for new employees.

A public hearing on the proposed amended rule was held on August 9, 2018, before the MainePERS Board of Trustees. Thirteen members of the public attended the hearing. Comments were made at the hearing by two individuals, one of whom represented both himself as a retiree and his PLD employer as a hiring agent. [1] The second commenter represented a PLD employer.[2] Written comments were received by one PLD employer[3] by the comment deadline of August 24, 2018.

All of the comments received concerned the retirees returning to work provision. One commenter asserted that it would be unfair to change the rules on retire/rehire after retirees had made professional and personal financial decisions based on the existing rules. The Board was asked to consider a sunset provision or some other form of grandfathering for those retirees who had made certain decisions under the existing rules. The same commenter, speaking on behalf of his PLD employer, expressed concern over the impact that the proposed change would have on the ability for employers to fill vacant positions.

One PLD employer expressed concern that the proposed language suggests that responsibility for the 5% payment must be negotiated between the employer and employee. This commenter suggested more neutral language that would permit each PLD to address this based on its particular situation.

One PLD employer proposed an alternative model for treatment of rehired retirees as it pertains to suspension or continued payment of retirement benefits. The same commenter also expressed concern that the flat 5% UAL contribution rate for rehired retirees would result in costs to employers that do not hire retirees.

The PLD Advisory Committee met on August 27, 2018, considered the comments and potential impacts of the proposed changes, and recommended that the Board adopt the proposed changes, with modifications as described below.

After considering the comments, the Board adopts the proposed changes, with the modifications recommended by the Advisory Committee, as follows: (1) PLD employers who rehire a retiree are required to communicate to MainePERS whether the person will continue to receive a retirement benefit or will terminate the benefit and re-enter the Plan. This modification allows PLD employers and employees the ability to decide the arrangement that best meets their needs without implying how they should do that. (2) The ability for a rehired retiree to re-enter the Plan is delayed until July 1, 2019. This modification allows MainePERS sufficient time to examine the potential impacts of allowing retirees to re-enter the plan and to

---

[1] Kevin Schofield, Police Chief, Town of Windham
[2] Carrie Margrave, Human Resources Director, Maine Maritime Academy
[3] John J. Jansen, Superintendent, Waterville Sewage District

ensure that adequate rules are in place to prevent costs to the plan from resulting from this practice. (3) The unfunded actuarial liability contribution that must be remitted by PLD employers on the earnable compensation of rehired retirees is changed to the greater of 5% or the equivalent of the employer and employee unfunded actuarial liability aggregate contribution rate. This modification ensures that that a PLD employer that rehires a retiree is paying its full share of the Plan's UAL. The modesty of these rates and the three-year grandfathering provision should mitigate the potential adverse consequences identified by the first commenter.

In conclusion, the Board adopts the proposed amended rule as it pertains to the withdrawal liability payment and the employer election of retirement plans provisions. The Board adopts the proposed amended rule as it pertains to retire-rehire with the modifications as outlined above. These modifications do not substantially change the amended rule as proposed.

**Fiscal impact of rule:**

None.