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

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

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

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

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

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

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

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

**Sec. 3. 5 MRSA §17054-A,** as enacted by PL 2009, c. 474, §12, is amended 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~~ for ensuring 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. The retirement system has the authority and responsibility to require payment by the employer of any funding due the retirement system resulting from the employer's failure, as determined in the sole discretion of the board, to fulfill the employer's responsibilities with respect to its employees and their enrollment in and benefits under the retirement system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 be a member in the Participating Local District Retirement Program. A person must make an election at the time of initial 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. The retirement system and the board have responsibility and authority for participation and membership issues or disputes according to applicable retirement system law and rules relative to the participating local districts and their employees to whom this section applies, including the authority to make final administrative decisions.

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

D. For the purposes of this subsection, an employee of the Maine Public Employees Retirement System who is a member on January 1, 1994 is considered to be reemployed with a new employer. If an employee returns to state service during the period that begins on July 1, 1995 and ends 180 days after the date upon which the initial collective bargaining agreement between the Maine Public Employees Retirement System and the collective bargaining agent that represents the employees of the system becomes effective, all funds transferred to the account of the Maine Public Employees Retirement System as the new employer on behalf of the employee from the State's account must be returned to the State's account. For the purpose of service, breaks in service and benefit accruals, the employee must be treated as if the employee had remained in state service throughout the period in question. For purposes of this paragraph, "becomes effective" means that the collective bargaining agreement has been signed and ratified by both parties ~~and approved by the Legislature as provided by section 17103, subsection 14.~~

**Sec. 15.5 MRSA §18806, sub-§1**, as amended by PL 2007, c. 491, §253, is further amended to read:

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

## SUMMARY

This bill does the following:

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

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

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

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

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

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

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