

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

S.P. 485 - L.D. 1524

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

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

**Sec. 1. 5 MRSA §17057, sub-§4**, as corrected by RR 2009, c. 2, §3, is amended to read:

**4. Investment activity information.** Disclosure of private market investment activity of the retirement system, ~~pursuant to the innovation finance program~~, is governed by this subsection.

A. Documentary material, data or information in the possession of the retirement system that consists of trade secrets or commercial or financial information that relates to ~~the investments~~ actual or potential private market investments of the retirement system ~~pursuant to the innovation finance program under Title 10, section 4026-T~~ is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3 if, in the sole discretion of the retirement system, the disclosure of the material, data or information may:

- (1) Impair the retirement system's ability to obtain such material, data or information in the future; ~~or~~
- (2) Cause substantial harm to the competitive position of the retirement system or of the person or entity from whom the information was obtained; or
- (3) Result in the potential violation of state and federal laws and regulations relating to insider trading.

B. The following information concerning any ~~venture capital~~ fund in which the retirement system is invested ~~pursuant to the innovation finance program under Title 10, section 4026-T~~ is not exempt from disclosure:

- (1) The retirement system's total commitment to the ~~venture capital~~ fund;
- (2) The date of the commitment to the ~~venture capital~~ fund;
- (3) Contributions and distributions made to or received from ~~an innovation finance program~~ the fund;

- (4) The market value of the investment;
- (5) The name of the ~~venture capital~~ fund; and
- (6) The interim internal rate of return of the ~~venture capital~~ fund.

C. For purposes of this subsection, "private market investment" means:

- (1) Direct investments in land, timber, mineral rights, private company equity or private company debt;
- (2) Indirect investments in limited partnerships, limited liability corporations or other entities that may invest in the investments described in subparagraph (1);
- (3) Investments in unregistered securities or funds offered under exemptions provided in Section 144(A) of the Securities Act of 1933, as amended, or Section 3(c)1 or 3(c)7 of the Investment Company Act of 1940, as amended; or
- (4) Investments or potential investments of the retirement system pursuant to the state innovation finance program authorized under Title 10, section 1026-T.

**Sec. 2. 5 MRSA §17057, sub-§§5 and 6** are enacted to read:

**5. Personnel records of Maine Public Employees Retirement System staff.** The following records are confidential and not open to public inspection and are not public records as defined in Title 1, section 402, subsection 3:

A. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the retirement system for use in the examination or evaluation of applicants for positions as retirement system employees, are confidential.

- (1) Notwithstanding any confidentiality provision to the contrary, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.
- (2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.
- (3) This paragraph does not preclude a union representative from access to personnel records, consistent with paragraph D, that may be necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open to public inspection;

B. Personal information. Records containing the following information are confidential, except that the records may be examined by the employee to whom they relate when the examination is permitted or required by law:

- (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references submitted in confidence;
- (3) Information pertaining to the creditworthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;
- (5) Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status and sexual orientation; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and
- (6) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written decision, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days.

This paragraph does not preclude a union representative from having access to personnel records that are necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open for public inspection;

C. Other information to which access by the general public is prohibited by law; and

D. Certain information for grievance and other proceedings. The retirement system may release specific information designated confidential by this paragraph to be used in negotiations, mediation, fact finding, arbitration, grievance proceedings and other

proceedings in which the retirement system is a party. For the purpose of this paragraph, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

**6. Treatment of confidential information.** Confidential information provided under subsection 5 is governed by the following.

A. Only the information that is necessary and directly related to the proceeding may be released.

B. The proceeding for which the confidential information is provided must be private and not open to the public if possible. If the proceeding is open to the public, the confidential information may not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information.

C. The retirement system may use this confidential information in proceedings and provide copies to an employee organization if that organization is a party to the proceedings and the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the retirement system are not open to public inspection and are not public records.

**Sec. 3. 5 MRSA §17652, sub-§1**, as amended by PL 2009, c. 474, §15, is further amended to read:

**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 initial 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. 4. 5 MRSA §17652, sub-§3**, as amended by PL 2009, c. 474, §15, is further amended to read:

**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 initial 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. 5. 5 MRSA §17652, sub-§4**, as amended by PL 2009, c. 474, §15, is further amended to read:

**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 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 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 has identified and designated the funds necessary to pay for the cost of that person's joining the program. A person must make an election at the time of initial 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. 6. 5 MRSA §17652, sub-§6**, as amended by PL 2009, c. 474, §15, is further amended to read:

**6. Substitute teachers.** Notwithstanding section 17651, membership in the State Employee and Teacher Retirement Program is optional for substitute teachers. A person must make an election at the time of initial 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. 7. 5 MRSA §17705-A, sub-§1**, as amended by PL 2007, c. 491, §112, is further amended to read:

**1. Conditions for refund.** If the service of any member has terminated, except by death or by retirement under this Part, ~~or if an optional member withdraws from a retirement program of the Maine Public Employees Retirement System,~~ the member must be paid the amount of the member's accumulated contributions under the following conditions:

- A. The member must have properly applied for a refund of accumulated contributions;
- B. Payment must be made after termination of service and not less than 22 days nor more than 60 days after receipt of the application and receipt of the last payroll upon which the name of the member appears;
- C. An application for refund is void if the member filing the application returns to membership in any retirement program administered by the retirement system before issuance of the payment;
- D. Except when inclusion of a portion of employer contributions is required by paragraph E, only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this subsection; and
- E. 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.

**Sec. 8. 5 MRSA §17706-A, sub-§1**, as amended by PL 2009, c. 474, §20, 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 for a member who has not reached normal retirement age may not exceed \$1,000.

**Sec. 9. 5 MRSA §17952, first ¶**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

A qualifying member may designate a beneficiary to receive benefits upon the qualifying member's death by filing a written designation of beneficiary with the executive director. The last designation of any beneficiary revokes all previous designations. In order to be in effect, the written designation must be received by the retirement system office or be postmarked before the qualifying member's death.

**Sec. 10. 5 MRSA §18058, sub-§1**, as amended by PL 2009, c. 474, §24, is further amended to read:

**1. Employees insured.** ~~All employees~~ Each employee shall complete an application for insurance coverage within 31 days of becoming eligible. Each employee who completes an application and is found eligible for basic insurance under this subchapter ~~are automatically~~ is insured for the ~~amounts~~ amount 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~~ the employee elects coverage within 31 days of the employee's first becoming eligible and elects coverage in addition to basic, that additional coverage 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~~ the employee does not elect coverage within 31 days of the employee's first becoming eligible, the employee may subsequently apply for supplemental and dependent insurance coverage but must produce evidence of insurability at the employee's own expense and in accordance with the requirements of the insurance underwriter.

**Sec. 11. 5 MRSA §18058, sub-§2, ¶D,** as enacted by PL 2007, c. 17, §1 and affected by §3, is repealed.

**Sec. 12. 5 MRSA §18058, sub-§5** is enacted to read:

**5. Employee on leave of absence.** Insurance coverage for an employee on an authorized leave of absence is governed as follows.

- A. An employee who, during a period of an unpaid leave of absence, continues to pay premiums due for the period of the leave continues to be covered. Coverage for an employee who, during the period of the leave, does not pay the premiums due ceases at the end of the period covered by the last premium paid.
- B. Notwithstanding paragraph A, an 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. 13. 5 MRSA §18251, sub-§3,** as amended by PL 2009, c. 474, §28, 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 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 subsection, the election is irrevocable with respect to all subsequent employment with the same employer when membership in the program is not mandatory.

**Sec. 14. 5 MRSA §18252, first ¶**, as amended by PL 2009, c. 474, §31, 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.

**Sec. 15. 5 MRSA §18252-A, sub-§1, ¶A**, as amended by PL 2009, c. 474, §32, is further 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 initial 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.

**Sec. 16. 5 MRSA §18253, sub-§2**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

**2. Purchase of previously rendered creditable service.** A Notwithstanding any law to the contrary, a member of a participating local district who has served in any participating local district or in any local district, and who did not make an election to

decline membership while employed with that district, may purchase, by mutual agreement between the participating local district and the person concerned, service credit for the service previously rendered, upon proper certification that:

- A. The service had been rendered; and
- B. The current employer will assume the liability incurred by the granting of the service credit for the previous time served.

**Sec. 17. 5 MRSA §18253, sub-§3,** as amended by PL 2007, c. 491, §202, is further amended to read:

**3. Former employee.** Notwithstanding anything to the contrary, a participating local district may grant service credit for creditable service to any former employee who is currently a member of the Participating Local District Retirement Program, as long as the former employee did not make an election to decline membership while employed with that district. The entire actuarial cost of granting the service credit must be fully funded by the district granting the service credit.

**Sec. 18. 5 MRSA §18306-A, sub-§1,** as amended by PL 2007, c. 491, §218 and c. 695, Pt. A, §9, is further amended to read:

**1. Conditions for refund.** If the service of any member has terminated, except by death or by retirement under this Part, ~~or if an optional member withdraws from the Participating Local District Retirement Program,~~ or if an employee of a district that withdraws from participation under section 18203 wishes to have accumulated contributions refunded, the member or employee must be paid the amount of the member's accumulated contributions under the following conditions:

- A. The member must have properly applied for a refund of accumulated contributions;
- B. Payment must be made after termination of service and not less than 22 days nor more than 60 days after receipt of the application and receipt of the last payroll upon which the name of the member appears;
- C. An application for refund is void if the member filing the application returns to membership in any retirement program administered by the retirement system before issuance of the payment;
- D. Except when inclusion of a portion of employer contributions is required by paragraph E, only accumulated contributions made by the member or picked up by the employer may be refunded to that member under this section; and
- E. 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.

**Sec. 19. 5 MRSA §18307-A, sub-§1,** as amended by PL 2009, c. 474, §40, 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 for a member who has not reached normal retirement age may not exceed \$1,000.

**Sec. 20. 5 MRSA §18552, first ¶,** as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

A qualifying member may designate a beneficiary to receive benefits upon the qualifying member's death by filing a written designation of beneficiary with the executive director. The last designation of any beneficiary revokes all previous designations. In order to be in effect, the written designation must be received by the retirement system office or be postmarked before the qualifying member's death.

**Sec. 21. 5 MRSA §18658, sub-§1,** as amended by PL 1993, c. 386, §5, is further amended to read:

**1. Employees insured.** ~~All employees~~ Each employee shall complete an application for insurance coverage within 31 days of becoming eligible. Each employee who completes an application and is found eligible for basic insurance under this subchapter ~~are automatically~~ is insured for the ~~amounts~~ amount 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~~ the employee elects coverage within 31 days of the employee's first becoming eligible, any and elects coverage in

addition to basic, that additional coverage 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~~ the employee does not elect coverage within 31 days of the employee's first becoming eligible, the employee may subsequently apply for ~~supplemental and dependent~~ insurance coverage but must produce evidence of insurability at the employee's own expense and in accordance with the requirements of the insurance underwriter.

**Sec. 22. 5 MRSA §18658, sub-§2, ¶D,** as enacted by PL 2007, c. 17, §2 and affected by §3, is repealed.

**Sec. 23. 5 MRSA §18658, sub-§5** is enacted to read:

**5. Employee on leave of absence.** Insurance coverage for an employee on an authorized leave of absence is governed as follows.

A. An employee who, during a period of an unpaid leave of absence, continues to pay premiums due for the period of the leave continues to be covered. Coverage for an employee who, during the period of the leave, does not pay the premiums due ceases at the end of the period covered by the last premium paid.

B. Notwithstanding paragraph A, an 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.

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor