An Act To Establish the Maine Fire Protection Services Commission Length of Service Award Program

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

Sec. 1. 5 MRSA §3372 is enacted to read:

§ 3372. Maine Fire Protection Services Commission Length of Service Award Program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Accrued service award" means the total value, as of a given date, of a participant's program account.

B. "Bona fide volunteer" has the same meaning as in the United States Internal Revenue Code, Section 457 (e)(11).

C. "Eligible volunteer" means a bona fide volunteer performing qualified services in a municipal fire department if that bona fide volunteer is:

(1) A firefighter who is an active part-time or on-call member of a municipal fire department or a volunteer firefighter; or

(2) An emergency medical services' person who provides on-call, part-time or volunteer emergency medical treatment under the direction of the chief of a municipal fire department and who is duly licensed under rules and protocols established by the Emergency Medical Services' Board pursuant to Title 32, section 88.

D. "Emergency medical services' person" has the same meaning as in Title 32, section 83, subsection 12.

E. "Emergency medical treatment" has the same meaning as in Title 32, section 83, subsection 13.

F. "Fire commission" means the Maine Fire Protection Services Commission established in section 3371.

G. "Municipal fire department" has the same meaning as in Title 30-A, section 3151, subsection 1.

H. "Participant" means a person who participates in the program.

I. "Program" means the Maine Fire Protection Services Commission Length of Service Award Program established in subsection 2.

J. "Program account" means a separate account maintained for each participant reflecting applicable contributions, applicable forfeitures, investment income or loss as well as administrative and investment expenses allocated to each participant and distributions paid from the account.

K. "Program trust fund" means a trust fund established by the fire commission into which all contributions to the program are deposited.

L. "Qualified services" has the same meaning as in the United States Internal Revenue Code, Section 457 (e)(11).

M. "Volunteer firefighter" has the same meaning as in Title 30-A, section 3151, subsection 4.

2. Program established. The Maine Fire Protection Services Commission Length of Service Award Program is established.

3. Program administration. The program is administered by the fire commission. The fire commission shall contract with firms to provide administration, investment, custodial, trustee and auditing services for the program.

4. Participation eligibility. An eligible volunteer may participate in the program.

5. Participation commencement. Unless an eligible volunteer waives the right of participation pursuant to subsection 6, the eligible volunteer becomes a participant on the last day of the first calendar year during which the eligible volunteer meets the service credit requirements set forth in subsection 7 during a calendar year beginning after December 31, 2009.

6. Waiver of participation. An eligible volunteer may waive the right of the eligible volunteer to participate in the program by filing with the fire commission a written, signed and irrevocable waiver of participation that must be signed by the fire chief, as described in Title 30-A, section 3153, of a municipal fire department in which the eligible volunteer is a member.

7. Service credit. Service credit may be allowed in the program only for volunteer emergency service rendered as an eligible volunteer. The requirements to be met by an eligible volunteer to earn one year of service credit must be set forth in writing in rules adopted by the fire commission and may be amended from time to time at the discretion of the fire commission.

8. Procedure for reporting service credit. A listing of the names of all persons who were eligible volunteers during a calendar year must be prepared by each municipal fire department and submitted to the fire commission for review and approval by May 1st following the end of that calendar year. The fire commission, at its sole discretion, may audit any list prepared by a municipal fire department. Such a listing must indicate which eligible volunteers earned service credit during the calendar year and must be prepared, certified under oath by the fire chief of the municipal fire department, posted in the fire department for at least 30 days and then submitted to and received by the fire commission before May 1st. During the 30-day posting period, any eligible volunteer must be given the opportunity to dispute the service credit shown for the eligible volunteer in accordance with law. The fire chief shall indicate in writing to the fire commission that the list was posted for at least 30 days and that all disputes regarding the service credit shown on the listing as having been earned during the year have been resolved. If the listing is not received by the fire commission by May 1st, a contribution may not be credited to the program account of any eligible volunteer whose name was or should have been reported on the listing as having earned one year of service credit during the calendar year.

9. Contributions to the program. For each calendar year beginning after December 31, 2009, the program trust fund must accept contributions, if any, from the following:

A. The State;

B. A municipality;

C. A municipal fire department or a fire company or volunteer organization associated with a municipal fire department;

D. The Federal Government; or

E. A participant, after the United States Internal Revenue Code is amended and any required rules and regulations are issued by the United States Internal Revenue Service to allow defined contribution length of service award programs to be treated as deferred compensation plans under the United States Internal Revenue Code, Section 457. Before the United States Internal Revenue Code is so amended, the fire commission shall contract with a firm to offer individual retirement accounts to participants.

The annual contributions, if any, for a given calendar year must be deposited into the program trust fund before the following July 1st.

The portion of the annual contributions credited to a program account of a participant who has attained the entitlement age as described in subsection 13 and has been paid the participant's accrued service award must be determined in the same manner as the portion of the annual contributions credited to a program account of a participant who has not attained the entitlement age.

Except for the limit on the amount of the annual contributions credited to a participant's program account set forth in the United States Internal Revenue Code, Section 457, there is no other limit or restriction on the amount credited to a participant's program account for any calendar year.

10. Subaccounts. A participant's program account consists of the following subaccounts:

A. A state subaccount, which is an account of a participant reflecting applicable state contributions, forfeitures, investment income or loss as well as administrative and investment expenses allocated to the subaccount and distributions paid from the subaccount. A participant's state subaccount is subject to the vesting schedule set forth in subsection 11.

(1) For a given calendar year, the total state contribution, if any, must be allocated equally to the state subaccounts of the participants who earned one year of service credit during that calendar year.

(2) Forfeitures from a participant's state subaccount must be added to and allocated as state contributions as designated by the State in the calendar year in which the forfeitures are determined to occur pursuant to subsection 12;

B. A municipal subaccount, which is an account of a participant derived from contributions from a specific municipality to the program. This subaccount must reflect the respective contributions from that municipality along with forfeitures, investment income or loss as well as administrative and investment expenses allocated to the subaccount and distributions paid from the subaccount. A participant's municipal subaccount is subject to the vesting schedule set forth in subsection 11.

(1) For a given calendar year, the total contribution from a specific municipality, if any, must be allocated equally to the municipal subaccounts of the participants who are eligible volunteers of that municipality and who earned one year of service credit during that calendar year.

(2) Forfeitures from a participant's municipal subaccount must be added to and allocated as municipal contributions as designated by the municipality in the calendar year in which the forfeitures are determined to occur pursuant to subsection 12;

C. A municipal fire department subaccount, which is an account of a participant derived from contributions from a specific municipal fire department or a fire company or volunteer organization associated with a fire department to the program. This subaccount must reflect the respective contributions from that municipal fire department along with forfeitures, investment income or loss as well as administrative and investment expenses allocated to the subaccount and distributions paid from the subaccount. A participant's municipal fire department subaccount is subject to the vesting schedule set forth in subsection 11.

(1) For a given calendar year, the total contribution from a specific municipal fire department or a fire company or volunteer organization associated with a fire department, if any, must be allocated equally to the municipal fire department subaccounts of the participants who are eligible volunteers of that municipal fire department and who earned one year of service credit during that calendar year.

(2) Forfeitures from a participant's municipal fire department subaccount must be added to and allocated as municipal fire department contributions as designated by the municipal fire department in the calendar year in which the forfeitures are determined to occur pursuant to subsection 12;

D. A federal government subaccount, which is an account of a participant reflecting applicable federal government contributions, forfeitures, investment income or loss as well as administrative and investment expenses allocated to the subaccount and distributions from the subaccount. Unless otherwise specified in federal law, a participant's federal government subaccount is subject to the vesting schedule set forth in subsection 11.

(1) Unless otherwise specified in federal law, for a given calendar year, the total contribution from the Federal Government, if any, must be allocated equally to the federal government subaccounts of the participants who earned one year of service credit during that calendar year.

(2) Unless otherwise specified in federal law, forfeitures from a participant's federal government subaccount must be added to and allocated as federal government contributions as designated by the Federal Government in the calendar year in which the forfeitures are determined to occur pursuant to subsection 12; and

E. A participant contribution subaccount. If the United States Internal Revenue Code is amended and any required rules and regulations are issued by the United States Internal Revenue Service to allow defined contribution length of service award programs to be treated as deferred compensation programs under the United States Internal Revenue Code, Section 457, a participant may elect to make participant contributions to the program. A participant contribution subaccount must reflect the respective contributions from a participant along with investment income or loss as well as administrative and investment expenses allocated to the subaccount and distributions paid from the subaccount. A participant contribution subaccount must be 100% vested at all times.

11. Vesting schedule for a participant's accrued service award. A participant's accrued service award becomes vested as set out in this subsection.

A. If the participant has less than 5 years of service credit, the vested percentage is 0%.

B. If the participant has 5 or more years of service credit, the vested percentage is 100%.

In determining an individual participant's years of service credit for the purpose of vesting, all years of service credit earned as a participant in the program must be counted. Failure to submit the annual eligible volunteer listing to the fire commission under subsection 8 by the required date for any calendar year does not result in the forfeiture of the certified service credit reported to the fire commission for an eligible volunteer.

All calendar years, up to 5 years, ending before January 1, 2010 during which the participant was an eligible volunteer for the entire calendar year count for vesting service credit.

12. Forfeiture of a participant's accrued service award. The nonvested portion of a participant's accrued service award is permanently forfeited effective as of the December 31st of the calendar year during which the participant has not been an eligible volunteer for 36 consecutive months. Service credit earned by a participant is never forfeited.

13. Entitlement age. The entitlement age for a participant is the earlier of:

A. Sixty years of age or the person's age on the next January 1st after becoming a participant in the program if the person is 60 years of age or older; or

B. The age of a participant as of the end of the calendar year after earning 20 years of service credit.

14. Payment to participant of accrued service award. The following provisions govern the payment to a participant of an accrued service award.

A. Upon the attainment of the entitlement age as described in subsection 13, a participant must be paid the vested portion of the participant's accrued service award. A participant who attains the entitlement age while an eligible volunteer and before attaining a 100% vested status must be paid the participant's accrued service award as of December 31st of the calendar year during which the participant achieved a 100% vested status. A participant who attains the entitlement age before 60 years of age may on or before attaining the entitlement age file a written election with the fire commission to defer payment of the participant's accrued service award until attainment of 60 years of age.

B. As of the last day of the first calendar year during which a participant has no longer been an eligible volunteer for at least 36 consecutive months, the vested portion of the participant's accrued service award must be paid to the participant.

C. A participant who has been determined to be totally and permanently disabled by the Social Security Administration, any workers' compensation board, any insurance company, any state retirement system, any pension plan administrator or any other entity approved by the fire commission must be paid that participant's accrued service award as soon as administratively feasible after all documentation required by the fire commission to verify and determine total and permanent disablement is submitted to the fire commission and such disability payment is awarded by the fire commission.

D. Should a participant die before attaining the entitlement age, the participant's designated beneficiary or estate if no acceptable beneficiary designation form has been filed with the fire commission by the participant must upon application to the fire commission be paid the participant's accrued service award as soon as administratively feasible after all required documentation is submitted to the fire commission.

E. The portion of the annual contribution credited to the program account of a post-entitlement age participant must be immediately paid to the participant if the participant has achieved a 100% vested status in the program. If the post-entitlement age participant has not achieved a 100% vested status in the program, that participant's accrued service award must be paid to the participant upon the December 31st of the calendar year during which the participant achieved a 100% vested status.

15. Investment of program funds. The fire commission shall establish a program trust fund within which the funds paid into the program must be deposited. A participant shall select the investments for the amounts credited to the participant's program account from a menu of investment choices. Distributions of accrued service awards must be made from the program trust fund in accordance with the program provisions. The program trust fund must be established and maintained in accordance with applicable sections of the United States Internal Revenue Code. Subject to the review and approval by the Treasurer of State, the program trust fund investment options made available to participants must be selected by the fire commission.

16. Program audits. At the discretion of the State, either a state agency or a firm retained by the State shall audit the program at least once every 5 years.

17. Notice of changes to laws governing the program. Within 180 days after the effective date of legislation that changes the laws governing the program, a written notice and explanation of these changes must be distributed to all persons who participate or are eligible to participate in the program. Copies of this written notice and explanation must be available upon request to the fire commission to all other persons.

18. Program termination. Within 360 days after the effective date of legislation terminating the program, each program participant must be paid the participant's entire accrued service award to the date of payment in a single lump sum. Beneficiaries of deceased participants must be paid any amount owed to them under the program in the same manner within the same 360-day period.

19. Program trust fund governed by certain provisions. Until the United States Internal Revenue Code is amended to treat defined contribution length of service award programs as deferred compensation plans under the United States Internal Revenue Code, Section 457, the program trust fund must be governed by all required provisions to ensure that a participating eligible volunteer or the eligible volunteer's beneficiary is not subject to federal income taxation on an accrued service award until actual receipt of payment by the participant or the beneficiary. After the United States Internal Revenue Code is so amended, the State and the fire commission must take all required actions to ensure the program complies with the United States Internal Revenue Code, Section 457 and the related United States Internal Revenue Service regulations.

20. Rules. The fire commission shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, pertaining to the administration of the program.

SUMMARY

This bill establishes the framework for a statewide pension-type program under which "bona fide volunteers" as defined in the United States Internal Revenue Code are paid length of service awards for performing qualified services. The term "qualified services" is defined under the United States Internal Revenue Code, Section 457 (e)(11) to mean "firefighting and prevention services, emergency medical services, and ambulance services." Under the program, volunteers have a program account that would be credited with an annual contribution as of the end of each year during which the volunteer participated in a minimum required level of volunteer activities set forth by the Maine Fire Protection Services Commission. Upon the attainment of 60 years of age or after having earned 20 years of service credit before 60 years of age, a volunteer who had attained a vested status in the program by having earned 5 years of service credit would be paid the contributions credited to that volunteer's program account plus the net investment income earned on those contributions. The program account balance of a participating volunteer must be paid before 60 years of age after the volunteer ceases to perform qualified services for 36 consecutive months after attaining a vested status in the program. The program account balance of a participating volunteer is also payable before 60 years of age upon death or total and permanent disablement.

This bill authorizes the State, political subdivisions and emergency services providers within the State as well as emergency services volunteers to participate in the funding of this program. Participation in the program funding is optional for any prospective contributor and the amount contributed may vary from year to year by a contributor based on available funds. If federal funds become available for the program, the program must accept those funds as well.

Under this bill, the Maine Fire Protection Services Commission contracts with private sector firms to provide administration and investment services for the program.

Until the United States Internal Revenue Code is amended to provide that programs under which length of service awards are paid to emergency services volunteers may be treated as United States Internal Revenue Code, Section 457 plans of deferred compensation, the program in this bill must comply with the current applicable sections of the Internal Revenue Code.