

# MAINE STATE LEGISLATURE

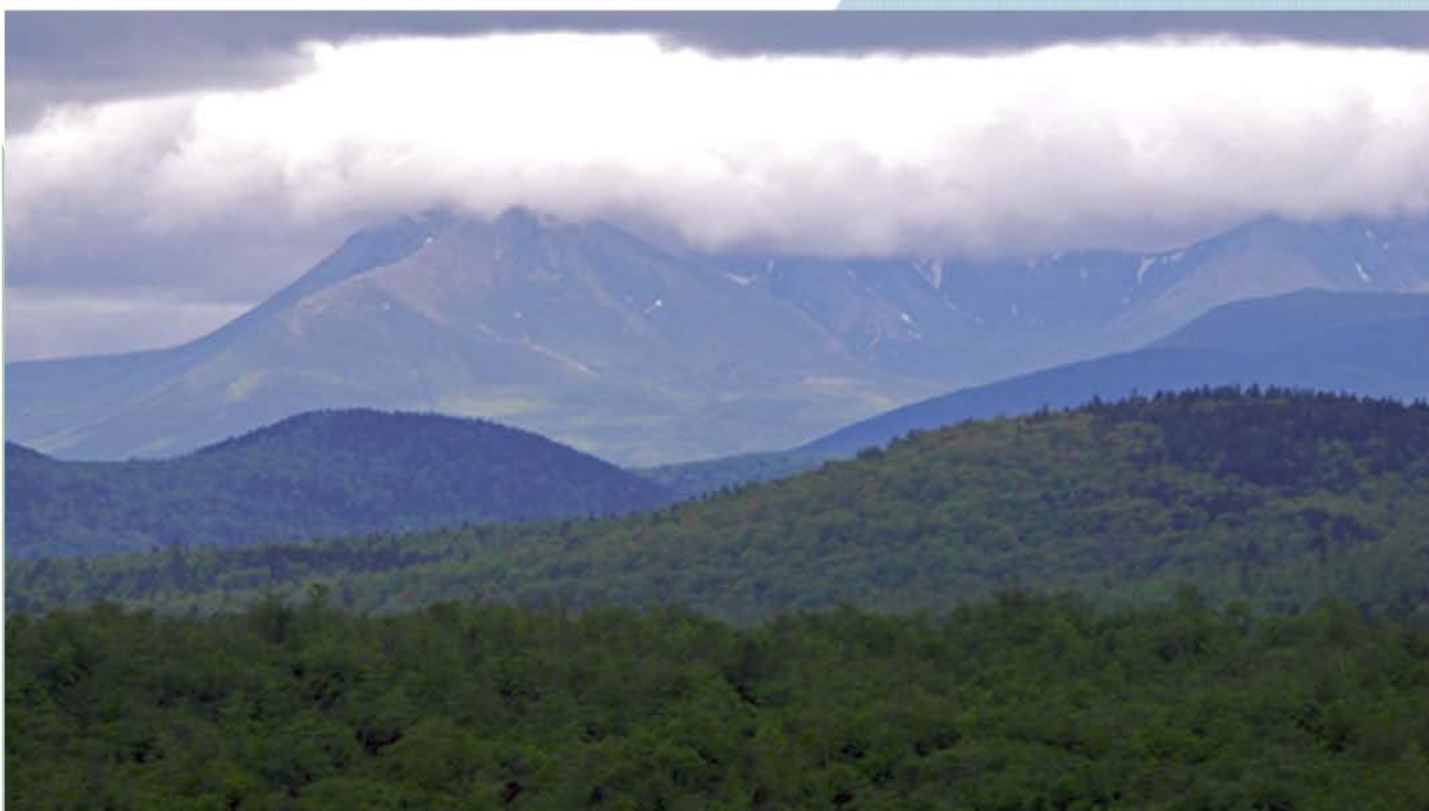
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**New State/Teacher Retirement Plan Report to  
the Legislature**

**New State/Teacher Plan 2**



**Proposed Legislation and Implementation Plan**

**May 6, 2013**



Sandra J. Matheson, *Executive Director*  
John C. Milazzo, *General Counsel and  
Chief Deputy Executive Director*

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May 6, 2013

Senator Dawn Hill, Chair  
Representative Margaret R. Rotundo, Chair  
126<sup>th</sup> Joint Standing Committee on Appropriations and Financial Affairs  
5 State House Station  
Augusta, ME 04333-0005

RE: P.L. 2011, c. 657 – Report for Retirement Plan Implementation

Dear Senator Hill and Representative Rotundo:

The Maine Public Employees Retirement System (MainePERS) provides the attached report that supplements the legislation submitted on January 15, 2013 required by Public Law 2011, chapter 657, Part J section 1 to implement the combination defined benefit and defined contribution retirement plan selected pursuant to Public Law 2011, chapter 380, Part U, section 1 and described in the "New Pension Plan Design and Implementation Plan" report dated March 2012.

The attached report describes how the selected plan design works to build a reliable retirement income stream for employees who would be enrolled in it. As requested by the Legislature, the report also includes sample scenarios to make the annual funding of this plan more feasible, the cost impacts for employers and employees, and implementation cost estimates.

We indicated in our January 15, 2013 letter accompanying the requested implementing legislative language that we would also address two challenges to a new plan; Internal Revenue Service approval of the supplemental plan and how to begin participation in Social Security from the current position of non-participation. These are addressed in-depth in this report.

Please feel free to contact us at any time concerning this report and the proposed legislation submitted in January.

Sincerely,

A handwritten signature in black ink that reads "Sandra J. Matheson".

Sandra J. Matheson  
Executive Director

Attachment

cc: Members, 126<sup>th</sup> Joint Standing Committee on Appropriations and Financial Affairs  
NPP Working Group Members  
MainePERS Board of Trustees  
Maureen Dawson, Committee Financial Analyst  
OFPR Analysts  
Holly Mullen, Committee Clerk

# New State/Teacher Plan 2

REPORT TO THE LEGISLATURE OF THE STATE OF MAINE

May 6, 2013

Prepared by: Maine Public Employees Retirement System

## State/Teacher Plan 2 Report to the Legislature

### Acknowledgements

This report was created with the support of a professional team of consultants and advisors who helped expand the conceptual Plan 2 framework selected by the 2011 Working Group in order to submit the Summary Plan and Plan Documents submitted to the 126<sup>th</sup> Legislature on January 15, 2013 as required by Public Law 2011, chapter 657, Part J, section 1.

These same consultants and advisors were invaluable in evaluating the ability of Plan 2 to provide members who could be placed into this plan with a secure retirement. Their efforts are reflected throughout this document. MainePERS appreciates the services, consultation, or advice of the following individuals in developing the proposed legislation and this report:

Mary Beth Braitman, Esq., Ice Miller, LLP

Rich Hudson, FSA, MAAA, Cheiron, Inc.

Gene Kalwarski, FSA, MAAA, Cheiron, Inc.

Christopher Mann, AAG, MainePERS Board Counsel

Andrew Sawyer, Chief Investment Officer, MainePERS

John Milazzo, Chief Deputy Executive Director and General Counsel, MainePERS

Kathy Morin, Manager, Actuarial and Legislative Affairs, MainePERS

Joseph A. Tomlinson, FSA, CFP, Tomlinson Financial Planning, LLC

The Working Group provided a significant amount of time and review of the Plan 2 framework in 2011. Their participation was invaluable in assessing the plan design's impact on employees' ability to create an income in later life and on employers who pay for part of this benefit and who use retirement plans to recruit and retain employees:

Terry Brann, State Controller, Dept. of Administrative and Financial Services

Steve Butterfield, Director of Information Services, Maine State Employees Association

Sue Campbell, President, Maine School Board Association

Dale Douglass, Executive Director, Maine School Management Association (Retired)

Jon Kosinski, Government Relations, Maine Education Association

Terry McCabe, Associate Executive Director, Maine School Management Association (Retired)

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Joyce Oreskovich, Director, Human Resources, Dept. of Administrative and Financial Services

Chris Quint, Executive Director, Maine State Employees Association

Jennifer Smith, Legislative Coordinator, Dept. of Administrative and Financial Services

Rob Walker, Executive Director, Maine Education Association

Sandra Matheson, Working Group Chair, Executive Director, MainePERS



Sandra J. Matheson  
Executive Director, MainePERS

## State/Teacher Plan 2 Report to the Legislature

### Table of Contents

|  |    |
|--|----|
| Executive Summary  | 1  |
| Legislative Direction                                    | 4  |
| Documentation Meeting the Legislative Direction          | 4  |
| 1. New Retirement Plan History and Overview              | 5  |
| 2. Proposed Plan 2 Benefit and Cost Structure            | 8  |
| 2.1 Plan 2 Benefit Structure                             | 9  |
| 2.3 Comparison to State/Teacher Plan Benefit             | 17 |
| 2.4 State/Teacher and Plan 2 Cost                        | 18 |
| 2.5 Cost of Administration                               | 33 |
| 3. Investment Alternatives                               | 35 |
| 3.1 Investing the Defined Benefit Plan Assets            | 35 |
| 3.2 Investing the Defined Contribution Plan Assets       | 36 |
| 4. Stakeholder Considerations                            | 38 |
| 4.1 State/Teacher Plan Members and Retirees              | 38 |
| 4.2 Employers  | 39 |
| 4.3 Addressing Cost Concerns                             | 39 |
| 5. Outreach and Education Plan                           | 40 |
| 6. Internal Revenue Service Considerations               | 41 |
| 6.1 Plan Qualification                                   | 41 |
| 6.2 Entering Social Security                             | 41 |
| Attachment 1 – Original Working Group Members            | 44 |
| Attachment 2 – IRS Federal State Reference Guide Excerpt | 45 |
| Attachment 3 – 125th Legislature PL 2011, c.380, Part U  | 47 |
| Attachment 4 – Pensions & Investments Article            | 49 |
| Attachment 5 – Open and Closed Plan Costs                | 53 |

## Executive Summary

The 125<sup>th</sup> Legislature of the State of Maine appointed a Working Group in 2011 to develop a plan to close the current State Employee and Teacher Retirement Program (State/Teacher or current Plan) to new hires and replace it with a retirement benefit plan supplemental to Social Security for state employees and teachers hired on or after July 1, 2015. The current State State/Teacher Plan is an Internal Revenue Service qualified replacement defined benefit plan under which members do not participate in Social Security.

The new design, or Plan 2, is based on 2011 legislative direction requiring the supplemental plan to:

- Attract new state employees and teachers and meet employer recruitment needs and employee needs for retirement benefit portability and retirement security;
- Be competitive with retirement benefit plans provided by similar employers that contribute to their employee's retirement security in addition to Social Security;
- Limit the State's long-term cost exposure to 2% of employee gross payroll and limit the employee's exposure to loss of retirement security;
- Provide the State with the ability to make additional retirement plan contributions in any given biennium without increasing the 2% long-term contribution ceiling;
- Ensure that employees and employers share plan administrative costs; and
- Provide financial information to assist employees in understanding how to preserve their living standards.

The Working Group consisted of representatives from the Department of Administrative and Financial Services (DAFS), Maine State Employees Association (MSEA), Maine School Management Association (MSMA), Maine Education Association (MEA), and the Maine Public Employees Retirement System (MainePERS).

The Working Group selected a hybrid defined benefit/defined contribution (DB/DC) supplemental plan because it meets the Legislative requirements and is designed to mitigate the major risks associated with historical pension or retirement savings plans, including investment risk for both the employer and the employee through lower return targets, funding rate volatility risk (limitations on investment risk), inflation and longevity risk (offering options that help create lifetime income streams). The design provides:

- A total payment, when added to Social Security payments, that is approximately equivalent to the benefit employees receive under the current State/Teacher Plan;
- An optional limited choice 457(b) deferred compensation plan provides the opportunity to save additional amounts toward essential later-life income and additional amounts toward aspirational or lifestyle goals;
- The goal of a more secure income stream because it assumes a lower earnings goal of 5% and uses a lower risk investment portfolio than many plans;

Plan 2 builds on a base of Social Security payments to provide a reliable income stream in later-life that will meet employee's essential living needs for housing, household expenses and healthcare needs. Plan 2 consists of 2 components, plus an optional deferred compensation plan.

**Defined Benefit Component – Adjustable Pension Plan**

Employees meeting age and service requirements in Plan 2 receive a defined, or fixed, benefit (DB). This design is called the Adjustable Pension Plan (APP) which provides a floor benefit accrual rate of 1% of career average earnings plus a potential share of investment gains (using a lower risk investment portfolio). This is a newly developed defined benefit model designed to provide lower risk and predictable lifelong income in later life. This design was created to mitigate and share risk (primarily investment gains and losses) between the employee and employer. Special situation benefits such as subsidized disability and death are not included in the APP. The Plan 2 design generally relies on Social Security to provide these benefits.

Employers contribute approximately 1% to this plan component, and employees contribute approximately 4.65% tax-deferred contributions. A final fixed amount will be determined when all plan provisions are finalized after any legislative changes are made to the design for additional benefit provisions not currently included.

**Defined Contribution Component – 401(a)**

The defined contribution (DC) component is a 1% employer contribution to individual employee accounts in a 401(a) plan. This account, if converted to an annuity and in combination with Social Security and the APP, creates a benefit that in the aggregate approximates the benefit received from the current State/Teacher Plan depending on income level. The investments target a 5% return to reduce the risk of significant volatility.

The 401(a) plan design provides the opportunity for the employer to increase or decrease its contribution. This design is intended to create a later life income stream and therefore has none of the contribution or withdrawal flexibility of 457(b) plans.

**Optional Deferred Compensation Plan – 457(b)**

The optional 457(b) plan, provided separately from Plan 2, provides employees the opportunity to save tax-deferred contributions to reach a floor income stream that meets their essential later-life income needs. It also provides the opportunity to save and plan for their individual aspirational or lifestyle goals beyond their essential needs.

The 457(b) plan is designed with limited investment, low-fee options. Research has demonstrated that most people are not investment experts, and that a wide array of investment choices can be confusing and overwhelming, potentially creates higher fees, and is not necessarily as productive in building a secure and viable later-life income stream as once thought. Recent federal legislation has targeted fee disclosure so participants have a better understanding of their actual returns.

Employees will be encouraged to retain the balances in both the defined contribution and deferred compensation plans for later-life income by leaving the balances in the two plans or rolling them over to another qualified plan rather than withdrawing the balance at termination or retirement.

Employees will also be encouraged to purchase an annuity with the combined balance at the point where they create their later-life income stream.



### How Plan 2 Compares to the State/Teacher Plan

Plan 2, in combination with Social Security, is designed to provide a benefit that is approximately equivalent to the benefit an employee would earn under the State/Teacher Plan. It differs significantly from the State/Teacher Plan in that the APP DB benefit is based on career average earnings, with no accommodation for special situations such as disability and limited provisions for pre-retirement death.

Plan 2 relies on Social Security, which is not provided with the State/Teacher Plan, as the source for special situations such as death and disability benefits as well as cost-of-living adjustments. Plan 2 provides the opportunity for each individual to self-fund a cost-of-living increase by selecting an annuity with a COLA provision in their APP DB benefit and/or DC plan benefits, while the State/Teacher Plan provides a cost-of-living adjustment after the basic benefit has been determined.

Plan 2 does not include provisions for special plans, but refers these plans for further legislative discussion.

### Plan 2 Cost

Plan 2 total costs are higher than State/Teacher Plan costs. The difference in cost between Plan 2 and the State/Teacher Plan occurs for four primary reasons:

- Parts of total Plan 2 costs are **higher** than State/Teacher Plan costs because:
  - Employees in the State/Teacher Plan can spend up to five years earning no benefit if they never vest, or earn five years credit. Employees in Plan 2 earn Social Security benefits on their first day of work forward. Social Security is a payroll tax, while contributions to the State/Teacher Plan for employees who never vest remain with the trust fund and vested employees;
  - Plan 2 was specifically designed to mitigate risk with a lower rate of return on fund assets, which in turn increases contribution costs.
- Parts of total Plan 2 costs are **lower** than State/Teacher Plan because:
  - The APP DB component in Plan 2 is more modest than the State/Teacher Plan because it is supplemental to, not in lieu of, Social Security;
  - Plan 2 is specifically designed to mitigate risk and avoid an unfunded liability.

Plan 2 has a total employer and employee cost of 19.05% of payroll. The employer portion of 8.2% consists of 6.2% for Social Security, 1% for the employer 401(a), and 1% for the APP defined benefit. The employee portion of 10.85% consists of 6.2% for Social Security and 4.65% for the APP defined benefit. Employees may contribute additional amounts to an optional 457(b) deferred compensation plan.

State/Teacher Plan normal costs are 3.55% for employers and 7.65% for employees. In addition, the State of Maine pays approximately 13% of payroll to amortize the State/Teacher Plan unfunded actuarial liability (UAL). The 1995 portion of that liability is scheduled to be fully amortized by 2028.

## Legislative Direction

### Public Law 2011, chapter 657, Part J, section 1

**Sec. J-1. Development of proposed legislation for new retirement benefit plan for state employees and teachers.** The Maine Public Employees Retirement System, referred to in this section as "the system," shall develop proposed legislation to implement the combination defined benefit and defined contribution retirement plan selected pursuant to Public Law 2011, chapter 380, Part U, and described in the "New Pension Plan Design and Implementation Plan" report dated March 2012 that was submitted to the Joint Standing Committee on Appropriations and Financial Affairs in accordance with Public Law 2011, chapter 380, Part U, section 2. The system may request assistance from the Legislative Council in drafting the legislation. No later than January 15, 2013, the system shall submit the proposed legislation to the joint standing committee of the Legislature having jurisdiction over state employee and teacher retirement matters. After receipt and review of the suggested legislation, the joint standing committee of the Legislature having jurisdiction over state employee and teacher retirement matters may submit a bill to the First Regular Session of the 126th Legislature to implement a new retirement plan.

**Sec. J-2. Additional supporting work.** Upon submission of the proposed legislation pursuant to section 1, the Maine Public Employees Retirement System, at the request of the joint standing committee of the Legislature having jurisdiction over state employee and teacher retirement matters, shall present sufficient details concerning each component of the proposed combination defined benefit and defined contribution retirement plan as necessary to build a benefit and cost structure, evaluate investment alternatives, implement a program for outreach to members, provide an estimate of associated administrative costs, evaluate legal considerations, including the form of plan documents, and address other policy considerations including costs.

**Sec. J-3. Working group assistance.** In order to provide assistance in preparing the proposed legislation pursuant to section 1 and the supporting details pursuant to section 2, the Executive Director of the Maine Public Employees Retirement System may convene a working group composed of the members of the working group that was established pursuant to Public Law 2011, chapter 380, Part U.

### Documentation Meeting the Legislative Direction

MainePERS submitted brief implementing language accompanied by a summary plan document and plan document that contain the detailed provisions of Plan 2. This approach reduces ongoing administrative and legislative costs because plan provisions are contained in one location rather than throughout state statute as is the State/Teacher Plan. (See enclosed "Maine Public Employees Retirement System Adjustable Pension Plan" and "Summary of New Plan Provisions.")

## 1. New Retirement Plan History and Overview

The 125<sup>th</sup> Legislature of the State of Maine appointed a Working Group in 2011 to develop a plan to close the current State Employee and Teacher Retirement Program (State/Teacher or current Plan) to new hires and replace it with a retirement benefit plan supplemental to Social Security for state employees and teachers hired on or after July 1, 2015. (See Attachment 1) The current State State/Teacher Plan is an Internal Revenue Service qualified replacement defined benefit plan under which members do not participate in Social Security.<sup>1</sup> (See Attachment 2 for history of public plans that do not participate in Social Security)

For purposes of differentiating this supplemental plan from the current State/Teacher Plan, this new design will be referred to as Plan 2 throughout the remainder of this document.

### Background on the Development of the Plan 2 Framework

The legislation (See Attachment 3) creating the Working Group required that the new plan supplemental to Social Security be designed to:

- Attract new state employees and teachers and meet employer recruitment needs and employee needs for retirement benefit portability and retirement security;
- Be competitive with retirement benefit plans provided by similar employers that contribute to their employee's retirement security in addition to Social Security;
- Limit the State's long-term cost exposure to 2% of employee gross payroll and limit the employee's exposure to loss of retirement security;
- Provide the State with the ability to make additional retirement plan contributions in any given biennium without increasing the 2% long-term contribution ceiling;
- Ensure that employees and employers share plan administrative costs; and
- Provide financial information to assist employees in understanding how to preserve their living standards.

The Working Group consisted of representatives from the Department of Administrative and Financial Services (DAFS), Maine State Employees Association (MSEA), Maine School Management Association (MSMA), Maine Education Association (MEA), and the Maine Public Employees Retirement System (MainePERS).

The legislative requirements and the current economic environment combined to create a Working Group goal-driven framework for plan selection in order to effectively meet the needs of both employees and employers. The Working Group assessed the needs of current Maine state and teacher employers and future employees in the context of the current and forecasted economic environment. The Working Group found no data that would indicate that the needs of the state and teacher employee population were different than the retirement planning challenges of the rest of the country.

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<sup>1</sup> See New Pension Plan Design and Implementation Plan Report to the 125<sup>th</sup> Legislature First Regular Session, March 2012 for information regarding qualified replacement plans.

The Working Group determined that the selected plan design should meet the following jointly agreed upon principles upon which a retirement plan should be based:

- Vested employees should receive an aggregate benefit, using Social Security and the retirement benefit created by the supplemental plan, that is similar to what they would receive under the current State/Teacher Plan;
- Any defined contribution component of a supplemental plan should offer employees the opportunity and further encourage them to make additional contributions to create a 75-80% of final pay replacement income stream in retirement;
- Employee contribution levels to any defined contribution component should be structured to encourage building a reliable income stream in retirement (rather than building savings or a “nest egg” ) in ways that are most affordable to employees;
- The plan design should share risk between the employer and employee, specifically addressing or mitigating as much as possible the major risks associated with retirement plans, including investment, funding rate volatility, inflation, longevity, disability, pre-retirement death, and termination risks.

#### SUPPLEMENTAL PLAN SELECTION – COMBINATION DB/DC

Members of the Working Group selected a hybrid defined benefit/defined contribution (DB/DC) plan because it meets both the Legislative requirements and the Working Group’s stated principles for a retirement plan. Working Group members did not necessarily endorse Plan 2, but reserved the ability to express opinions on behalf of the members they represent when the Legislature takes comments. Their comments are included in Chapter 4, Stakeholder Considerations.

#### Reasons for Plan 2 Selection

The Working Group selected the combination DB/DC supplemental retirement plan to meet the requirements and intent of the law, and its selection criteria and to assist and encourage employees in building a secure later life because:<sup>2</sup>

- Vested employees will receive, on average, a benefit level from Social Security, the defined benefit (DB) component of the supplemental plan, and the employer contribution to the defined contribution (DC) component similar to what they would receive under the State/Teacher Plan;<sup>3</sup>
- The supplemental plan, combined with Social Security, offers employees the opportunity to create a replacement income stream for essential household expenses (housing, personal, and healthcare) in later life;

**Important Note:** We refer to the phase of life which has been “retirement” as “**later life.**” This concept or similar concepts are beginning to appear in literature reflecting a changing demographic trend where many people are or are planning to work longer.

<sup>2</sup> Employee Benefits Research Institute August 2012 • Vol. 33, No. 8 “Is Working to 70 Really the Answer for Retirement Income Adequacy?”

<sup>3</sup> Social Security is means weighted toward lower income earners, while the State/Teacher Plan is not. The result is that it is not possible to create an equivalent benefit for all members.

## State/Teacher Plan 2 Report to the Legislature – Plan 2 History and Overview

- Employee contribution levels have been structured to encourage building a reliable income stream by sharing the employer contribution between both the DB and the DC;
- The defined contribution component is structured to encourage employees to save additional amounts toward an approximately 75% replacement income stream through automatic enrollment and automatic employer contributions;
- The plan is designed to mitigate the major risks associated with historical pension or retirement savings plans, including investment risk for both the employer and the employee through lower return targets, funding rate volatility risk (limitations on investment risk), inflation and longevity risk (offering options that help create lifetime income streams), coordination of disability with Social Security, provisions for limited pre-retirement death benefits, and limiting termination risks by encouraging employees to leave their funds in the plan throughout retirement or roll their funds over into other tax-advantaged plans.

## 2. Proposed Plan 2 Benefit and Cost Structure

Traditional “retirement” has undergone a profound transformation in the last ten years. For most people, “retirement” is no longer a clearly defined phase of life where individuals quit working and pursue leisure activities. This change has occurred for three primary reasons:<sup>4</sup>

- Improved health and increased lifespans have increased older workers desire to continue working in some fashion, i.e. in their same work, in a new career, or part-time;
- Many individuals must continue to work to pay for their health care costs;
- The 2009 recession and lingering effects have made continuing to work past their planned retirement age a necessity for more and more people.

The phase of life which has been retirement can be viewed as changing to planning for the “later life” needs of personal fulfillment, income, and health care. Plan 2 focuses on and is designed to assist employees with the income needs of the phase of later-life.

As the later-life income requirements for employees become decreasingly predictable, the need for guidelines to save for these future demands during a person’s income producing years remains. The Plan 2 design uses the following guidelines to assist both long-term employees with a full career in the Plan and shorter-term employees working for multiple employers in building a later-life income that does not run out:

- Each individual should participate in plans that are *viable* and *secure*, providing income streams in later life that act as insurance against extreme market volatility and/or outliving personal savings;
- Employers and employees together should contribute an average of 22% - 25% of base compensation to adequately fund retirement benefits. Employees with short working careers (less than 35 years) need to contribute more;
- Each employee should create a secure and predictable lifelong income stream for their essential housing, personal (including food), and health care needs;
- Each individual should save and account for aspirational or lifestyle goals separately;
- Benefits should be portable across employers through an accumulation of defined benefits and/or defined contribution plans that can be consolidated through rollovers and converted to annuities;
- Investment choices should be lower risk for essential needs, and limited in complexity and number for aspirational or lifestyle goals.

The proposed Plan 2 design incorporates the following concepts to assist employees in meeting these guidelines:

- It builds on participation in Social Security which provides 12.4% of the 22% - 25% savings goal, 6.2% from the employee and 6.2% from the employer;

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<sup>4</sup> Vanguard - <https://personal.vanguard.com/us/insights/article/working-longer-04172012> “The good news (really!) about working longer”

- The mandatory employer and employee Plan 2 defined benefit and defined contribution components provide 6.6% contributions toward the 22% - 25% savings goal, 4.65% from the employee and 2% from the employer;
- An optional limited choice, 457(b) deferred compensation plan provides the opportunity to save additional amounts toward essential later-life income and additional amounts toward aspirational or lifestyle goals;
- Plan 2 is designed to provide a more secure income stream because it assumes a lower earnings goal of 5% and uses a lower risk investment portfolio than many plans;
- Plan 2 coordinates eligibility age for benefits with traditional retirement ages to enable people to make the determination to continue working, change careers, or other work/life balance choices.

*Special Plans: Plan 2 does not include any provisions for the special plans that are currently included in the State/Teacher Plan. Special plans are created for the special needs of specific groups, such as public safety officers. Changes to these plans require discussion and possibly a different set of Working Group participants to make recommendations to the Legislature.*

## 2.1 Plan 2 Benefit Structure

Employees enrolled in the proposed Plan 2 will participate in Social Security. The Social Security benefit is the foundation of the total benefit members will build in the proposed Plan 2. This differs from the State/Teacher Plan in which employees do not participate in Social Security.

Plan 2 has a defined benefit (DB) and a defined contribution (DC) component. It has been designed to:

- Provide a total payment, when added to Social Security payments, that is approximately equivalent to the benefit employees receive under the current State/Teacher Plan;
- Provide employees with the opportunity to make additional contributions to a defined contribution plan to create a later-life income stream that covers their essential living expenses;
- Minimize the investment risk and share that risk between the employee and employer.

### Defined Benefit Component – Adjustable Pension Plan

Employees meeting age and service requirements in Plan 2 receive a defined, or fixed, benefit (DB). This design is called the Adjustable Pension Plan (APP) which provides a floor benefit accrual rate of 1% of career average earnings plus a potential share of investment gains (using a lower risk investment portfolio). This is a newly developed defined benefit model designed to provide lower risk and predictable lifelong income in later life. This design was created to mitigate and share risk (primarily investment gains and losses) between the employee and employer. Special situation

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

benefits such as subsidized disability and death are not included in the APP.<sup>5</sup> The Plan 2 design generally relies on Social Security to provide these benefits.<sup>6</sup>

Employers contribute approximately 1% to this plan component, and employees contribute approximately 4.65% tax-deferred contributions. A final fixed amount will be determined when all plan provisions are finalized after any legislative changes are made to the design for additional benefit provisions not currently included.

### Defined Contribution Component – 401(a)

The defined contribution (DC) component is a 1% employer contribution to individual employee accounts in a 401(a) plan. This account, if converted to an annuity and in combination with Social Security and the APP, creates a benefit that approximates the benefit received from the current State/Teacher Plan depending on income level and years of service. The investments target a 5% return using a lower risk investment portfolio.

The 401(a) plan design provides the opportunity for the employer to increase or decrease its contribution. This design is intended to create a later life income stream and therefore has none of the contribution or withdrawal flexibility of 457(b) plans.

The use of a 401(a) plan for the employer contributions was chosen because it automatically creates a later life savings for every employee without requiring any employee action. It becomes a form of additional compensation which is not available for withdrawal while employed, but is available for rollover to another qualified retirement plan at termination.

Employee contributions to the 401(a) plan component have not been included in the Plan 2 design, although they are allowed under restricted circumstances. That is, the Plan 2 design could be altered to include a one-time irrevocable choice at time of hire to contribute a percentage of salary. That choice would remain in effect for the employee's entire career with that employer. Employees could not withdraw their contributions until they terminate employment. Research indicates that mandatory employee contributions to defined contribution plans are more effective than voluntary contributions in building later life income adequacy.<sup>7</sup>

### Optional Deferred Compensation Plan – 457(b)

The optional 457(b) plan, provided separately from Plan 2, provides employees the opportunity to save tax-deferred contributions to reach a floor income stream that meets their essential later-life income needs. It also provides the opportunity to save and plan for their individual aspirational or lifestyle goals beyond their essential needs.<sup>8</sup>

The 457(b) plan is designed with limited investment, low-fee options.<sup>9</sup> Research has demonstrated that most people are not investment experts, and that a wide array of investment choices is

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<sup>5</sup> A death benefit provision for members having reached an early retirement age is the exception.

<sup>6</sup> Social Security Disability may be reduced in the future – [http://articles.washingtonpost.com/2012-05-30/politics/35456380\\_1\\_disability-program-disability-benefits-disability-trust-fund](http://articles.washingtonpost.com/2012-05-30/politics/35456380_1_disability-program-disability-benefits-disability-trust-fund), "Social Security disability trust fund projected to run out of cash by 2016"

<sup>7</sup> New York Times, Ghilarducci - [http://www.nytimes.com/2012/07/22/opinion/sunday/our-ridiculous-approach-to-retirement.html?\\_r=0](http://www.nytimes.com/2012/07/22/opinion/sunday/our-ridiculous-approach-to-retirement.html?_r=0)

<sup>8</sup> Farrell Dolan - <http://piwalkercommunications.com/wp-content/uploads/2010/02/Market-Facts.pdf>

<sup>9</sup> Fees may initially be higher and will decrease with increased participation and money in the fund.



## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

confusing and overwhelming, potentially creates higher fees, and is not necessarily as productive in building a secure and viable later-life income stream as once thought.<sup>10</sup> Recent federal action has targeted fee disclosure so participants have a better understanding of their actual returns.<sup>11</sup>

Employees will be encouraged to retain the balances in both the defined contribution and deferred compensation plans for later-life income by leaving the balances in the two plans or rolling them over to another qualified plan rather than withdrawing the balance at termination or retirement.<sup>12</sup>

Employees will also be encouraged to purchase an annuity with the combined balance at the point where they create their later-life income stream.

### How Plan 2 Compares to the State/Teacher Plan

Plan 2, in combination with Social Security, is designed to provide a benefit that is approximately equivalent to the benefit an employee would earn under the State/Teacher Plan. It differs significantly from the State/Teacher Plan in that the APP DB benefit is based on career average earnings, with no accommodation for special situations such as disability and limited provisions for pre-retirement death.

Plan 2 relies on Social Security, which is not provided with the State/Teacher Plan, as the source for special situations such as death and disability benefits as well as cost-of-living adjustments. Plan 2 provides the opportunity for each individual to self-fund a cost-of-living increase by selecting an annuity with a COLA provision in their APP DB benefit and/or DC plan benefits, while the State/Teacher Plan provides a cost-of-living adjustment after the basic benefit has been determined.

Table 2.1.1 compares the benefit components, excluding Special Plans.

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<sup>10</sup> Business Insider - <http://e.businessinsider.com/public/1261891> "The Average Person is Absolutely Horrible At Investing"

<sup>11</sup> Department of Labor - <http://www.dol.gov/ebsa/newsroom/fsparticipantfeerule.html>, "Final Rule to Improve Transparency of Fees and Expenses to Workers in 401(k)-Type Retirement Plans"

<sup>12</sup> Retirement is the term used to formalize the date at which the member begins drawing a benefit from the Plan.

Table 2.1.1 – Comparison of Plan 2 and State/Teacher Plan Elements

| Plan Element                            | Plan 2 Components                                    |                             |                      | State/Teacher Plan                          |
|---|--|-----------------------------|----------------------|---|
|   | DB [APP]   | DC [401(a)]                 | Social Security      |   |
| Normal Retirement Age (NRA)             | 65   | 65                          | Varies by age        | 65  |
| Vesting                                 | 5  | 3                           | 10                   | 5   |
| Vesting if working at NRA               | 3  | 3                           |                      | 1   |
| Normal Retirement Benefit Multiplier    | 1% + investment gains                                | Assets fair market value    | Based on a schedule  | 2%  |
| Normal Retirement Benefit Base          | Career average salary                                | N/A                         | Means weighted       | Average high 3 years' salary                |
| Early Retirement Age                    | 60 + 5 years of service                              | 60 + 3 years of service     | 62                   | Any age with 25 years' service              |
| Early Retirement Reduction Factor (ERF) | 6%   | N/A                         | Based on a schedule  | 6% (2.25%)*                                 |
| Subsidized Disability benefits          | No   | No                          | Yes, if qualified    | Yes, if qualified                           |
| Line of Duty Disability                 | No   | No                          | Yes, if qualified    | Yes, if qualified                           |
| Death Benefit                           | Yes  | Immediate Vesting           | Yes                  | Yes   |
| Form of Payment                         | Straight life payout with joint and survivor options | Lump sum or annuity options | Monthly fixed amount | Straight life payout or lump sum withdrawal |
| Cost-of-Living Adjustment               | Optional self-funded                                 | Optional self-funded        | Yes                  | Yes   |

\*The approximate "2-1/4%" ERF applies to those members who had at least ten years of service on July 1, 1993, and are covered under the age 60 retirement plan. All other members are subject to the 6% ERF.

### Open combination DB/DC plan issues

The APP DB component is in the approval process as a qualified tax-deferred plan. While it has not yet received formal Internal Revenue Service (IRS) approval, the determination letter process would be used to resolve issues with the IRS. Presently a number of plan sponsors are in the process of implementing this plan design and submitting applications to the IRS. (See attachment 4)

Other issues beyond the control of the Working Group are the future of Social Security benefit levels and the determination of what is a reasonable amount for varying individuals to save for later life.<sup>13</sup>

<sup>13</sup> Social Security Disability may be reduced in the future - [http://articles.washingtonpost.com/2012-05-30/politics/35456380\\_1\\_disability-program-disability-benefits-disability-trust-fund](http://articles.washingtonpost.com/2012-05-30/politics/35456380_1_disability-program-disability-benefits-disability-trust-fund), "Social Security disability trust fund projected to run out of cash by 2016"

Plan 2 was designed based on factors as they are known today. It can, but does not currently, include provisions for Special Plans.2.2 How Proposed Plan 2 Helps Members Create Later-Life Income.

Plan 2 is designed to help meet the later-life income needs for consistent and reliable income for both long-term public employees and employees whose careers include work in both the private and public sectors. Plan 2 recognizes that careers increasingly involve working for more than one employer, having more than one career, and working longer and/or phasing into later life through part-time work.<sup>14</sup>

**Important Note:** Retirement is evolving for many people, especially younger workers.

This report addresses traditional retirement as “later-life income needs” to recognize each individual will have unique work patterns.

Plan 2 helps employees prepare for later-life income needs in five different ways:

1. By enrolling employees in Social Security, which provides portability and a defined benefit source of inflation-adjusted lifetime monthly income
2. By providing a defined benefit (DB) career-average Adjustable Pension Plan (APP) with a floor accrual rate of 1% of pay plus a share of investment gains – an additional source of lifetime monthly benefit income
3. By providing a 401(a) defined contribution (DC) plan component consisting of employer contributions of 1% of pay and low-cost, limited choice investment options to accumulate later life savings
4. By providing access to an optional 457(b) deferred compensation (DC) plan with low-cost, limited choice diversified investment options to accumulate tax-deferred savings – an opportunity to increase lifetime monthly benefit income to a level that comfortably meets essential household and living expenses in later life, or to fund optional lifestyle goals
5. By providing low-cost, easy-access options for converting all or a portion of their DC plans to annuities or secure lifetime income

### The Primary Goal – to Provide Essential Living Expenses in Later Life

The Plan 2 design recognizes that planning for income in later life without being able to accurately predict exactly how much income will be needed is overwhelming for most people.<sup>15</sup> Plan 2

<sup>14</sup> Bureau of Labor Statistics, “Employee Tenure in 2012”  
[http://www.bls.gov/opub/ted/2012/ted\\_20120920.htm](http://www.bls.gov/opub/ted/2012/ted_20120920.htm)

New York Times, “Number of those working past 65 is at a record high”  
[http://www.nytimes.com/2012/05/19/business/economy/number-of-those-working-past-65-is-at-a-record-high.html?\\_r=0](http://www.nytimes.com/2012/05/19/business/economy/number-of-those-working-past-65-is-at-a-record-high.html?_r=0)

<sup>15</sup> Time Business and Money, “How Much Should You Save for Retirement” -  
<http://business.time.com/2012/12/05/how-much-should-you-save-for-retirement/>

simplifies planning for later-life income by separating the preparation for essential living income from saving for aspirational or lifestyle goals.

Replacement income ratios (how much of your current income is needed in retirement) are used to generalize how a retirement plan meets later-life income needs. However, these do not necessarily work for all individuals because there is significant variation in circumstances. For example, essential housing costs for one person may be substantially less or more than for another person. Married couples may require a replacement ratio of 75%, while single individuals may only need 55%. For purposes of demonstrating how Plan 2 meets general later-life income needs, examples are provided based on a target replacement ratio of 75%, although studies have shown adequate replacement ratios may be 65% or lower.<sup>16</sup> These differences and a reduced income need occur because of:

- Elimination of work-related personal expenses
- Elimination of need to continue to save for non-working years
- Lower income tax rates and the elimination of FICA deductions
- Favorable tax treatment of Social Security
- Working income may be higher than retirement income needs

Essential needs income should be secure and viable, with limited risk. This is a departure from many target date fund philosophies which may invest in higher risk assets in a person's early life and decrease that risk toward later life. Plan 2 is designed to build and deliver later-life income throughout an individual's work life in a lower-risk approach. This means investing contributions over time in lower risk assets, and in delivering the income in monthly lifetime payments rather than a lump sum which could run out during a person's lifetime.

Plan 2 builds essential needs income by using the base benefits (Social Security, the APP DB, and 401(a) DC plan) and optional contributions to a 457(b) plan. One of the investment options, Essential Needs, is specifically designed for employees to build out their essential later-life income.

*Lifestyle goals* such as travel or recreation are also important. The Lifestyle option in the 457(b) plan is provided for those who are able to set aside money for "extras" in later life. Employees with working incomes higher than their essential needs income may not need to contribute as much to the Essential Needs choice in the optional 457(b) plan, and instead may wish to contribute to the Lifestyle investment option to save for their aspirational goals. The Lifestyle option may be more suitable to taking more risk earlier in life based on the individual's risk tolerance. The 457(b) plan is designed to offer withdrawal in either annuities or lump sums.

**Important Note:** *Plan 2 is designed to primarily cover essential income needs - housing, food, personal expenses and healthcare not covered by insurance - by providing at least 75% of the essential income needed during full-time working years.*

<sup>16</sup> Scholz and Seshardri, Michigan Retirement Research Center – "What Replacement Rates Should Households Use" <http://www.mrrc.isr.umich.edu/publications/briefs/pdf/rb214.pdf>.

**Generating Later Life Income – 3 Examples**

Table 2.2.1 shows how Plan 2 could work for employees whose careers vary in length and include a mix of public and private employment. These examples include three career spans of 30, 40 and 50 years to demonstrate how a later-life income that meets essential household needs can be built. All of the examples assume 3.5% annual increases for inflation and promotion for both public and private employment. Members are assumed to begin to draw their benefit at age 65 for the 30- and 40-year working periods and age 70 for the 50-year working period.

Projected comparative outcomes are shown with all DC components converted to annuities at the end of the working years. These examples assume a DC plan is provided for private sector employment, and that the employee contributes to the optional DC Plan during their state employment tenure (as described in the footnotes to the chart). Each career span is shown for:

- The full working period in state employment
- The first half of the working period in state employment, and the second half in private employment
- The first half in private employment followed by the second half in state employment.

**Table 2.2.1**  
**Plan 2 Likely Replacement Ratios**  
**for Differing Career Length and Public/Private Employment**

| Working Period*       | APP DB Replacement Ratio** | DC Replacement Ratio*** | Other Employment Replacement Ratio | Social Security Replacement Ratio | Total Income Replacement Ratio**** |
|-----------------------|----------------------------|-------------------------|------------------------------------|-----------------------------------|------------------------------------|
| <b>30 years State</b> | 13%                        | 10%                     | 0%                                 | 43%                               | 66%                                |
| 15 State/15 private   | 5%                         | 5%                      | 9%                                 | 43%                               | 62%                                |
| 15 private/15 State   | 8%                         | 4%                      | 11%                                | 43%                               | 66%                                |
| <b>40 years State</b> | 15%                        | 14%                     | 0%                                 | 49%                               | 78%                                |
| 20 State/20 private   | 5%                         | 8%                      | 12%                                | 49%                               | 74%                                |
| 20 private/20 State   | 10%                        | 6%                      | 17%                                | 49%                               | 82%                                |
| <b>50 years State</b> | 19%                        | 17%                     | 0%                                 | 80%                               | 116%                               |
| 25 State/25 private   | 6%                         | 10%                     | 17%                                | 80%                               | 113%                               |
| 25 private/25 State   | 14%                        | 7%                      | 24%                                | 80%                               | 125%                               |

\*The 30 and 40 year working period examples assume a \$30,000 entry salary, a 3.75% employee plus 1% employer contribution to the Plan 2 DC component, and a combined 10% combined employee/employer contribution to a DC plan in private sector employment

The 50 year working period example assumes a \$20,000 entry salary, a 2.75% employee plus 1% employer contribution to the Plan 2 DC component, and a combined 9% employee/employer contribution to a DC plan in private sector employment

\*\*All three examples assume a 4.6% employee contribution to the Plan 2 APP DB component

\*\*\* Assumes a 5% expected return

\*\*\*\*All categories of later life income are translated to COLA annuities (like Social Security)

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

Table 2.2.1 demonstrates what most individuals know intuitively – working longer creates better preparation for non-working years. The 30-year working period shows replacement ratios falling below the 75% target, reflecting the shorter-than-typical working period. 40-year working periods fit well with the 75% target. The 50-year working period shows that working until age 70 maximizes Social Security delay credits, whereas retiring at 65 (two years before Social Security Full Retirement Age) creates a reduction in benefits. Overall there is about a 40% increase in Social Security for beginning to draw a benefit at age 70 versus 65.<sup>17</sup>

Table 2.2.1 also demonstrates that replacement ratios are affected by the timing of employment in a defined benefit plan, in this case the APP. Ending working life in a DB plan creates a higher overall replacement ratio because the benefit is based on earnings which are generally higher later in work life. Defined benefits earned in early work life are not only lower because the work is generally entry level, but in the APP DB plan they are not adjusted for inflation for the period between leaving employment and drawing the benefit.<sup>18</sup>

The likelihood that these replacement ratios will approximate those actually experienced by members is higher in Plan 2 than in a single DC supplemental plan because the APP provides a defined benefit, i.e., it doesn't fluctuate with market performance below the floor benefit.

### Turning Defined Contribution Balances into Lifetime Income – A Sound Idea

The strength of DB plans is that they provide a predictable lifetime monthly income for later life. This advantage is reinforced when the benefit is inflation adjusted through cost-of-living adjustments (COLAs).

Historically, DC plans have focused on building nest eggs and make a lump-sum available at termination of employment rather than on the amount of income an individual wants in retirement. Some research predicts this form of later-life asset is less likely to last throughout life because it is more difficult for individuals to accurately draw it down.<sup>19</sup> This disadvantage is overcome when individuals transfer their later-life wealth into annuity programs that convert the nest egg into a predictable income stream.

Predictable later-life income streams are provided in Plan 2 by both the APP and Social Security because they are both defined benefits. This predictability is stronger in Plan 2 than in the State/Teacher Plan because Social Security is not reduced by the Government Pension Offset (GPO) and the Windfall Elimination Provisions (WEP).<sup>20</sup> Plan 2 encourages members to self-fund an APP COLA by taking a lower initial benefit and receiving inflation adjusted benefits throughout their life to help create a consistent standard of living.

Plan 2 also encourages members to create later life income streams by encouraging the conversion of their employer funded DC plan and/or their optional DC plan savings into lifetime annuities in one of four ways:

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<sup>17</sup> These estimates are based on current Social Security rules and will change if there is future change in Social Security retirement age or benefits.

<sup>18</sup> This same concept also applies to the current State/Teacher Plan.

<sup>19</sup> [https://www.wellsfargo.com/press/2012/20121023\\_MiddleClassRetirementSurvey](https://www.wellsfargo.com/press/2012/20121023_MiddleClassRetirementSurvey)

<sup>20</sup> The GPO and WEP reduce Social Security benefits of individuals, or their surviving spouses, who receive a benefit from a public pension plan such as the State/Teacher Plan that is provided in lieu of Social Security Participation.

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

- Investing in an annuity provided by the Plan
- Taking funds out of the Plan and investing in private market annuities (assistance will be set up to simplify this process)
- Taking funds from savings as scheduled withdrawals
- Taking funds from savings as needed

Which option a member chooses will likely reflect their personal circumstances. Educational assistance at periodic life stages of each member's work life can include comparing expected later-life essential living expenses with sources of income such as Social Security, and the APP DB component of Plan 2, and any other defined benefits they may have accumulated. To the extent that expenses exceed the income sources, the member will be encouraged as they near the end of their work life to consider an annuity purchase to help fill the gap as well as keeping savings on hand for unanticipated spending needs.

### 2.3 Comparison to State/Teacher Plan Benefit

Table 2.3.1 compares the income replacement ratio of the State/Teacher Plan to the income replacement ratio of Plan 2 under the same scenarios used to evaluate Plan 2 in Table 2.2.1.

Table 2.3.1  
State/Teacher Plan Likely Replacement Ratios  
for Differing Career Length and Public/Private Employment

| Working Period*     | State / Teacher Replacement Ratio | Maine DC Replacement Ratio | Other Employment Replacement Ratio** | Social Security Gross Replacement Ratio | WEP Offset to Social Security Replacement Ratio | Total ST Replacement Ratio*** (and Plan 2 Replacement Ratio) |
|---------------------|-----------------------------------|----------------------------|--------------------------------------|---|---|--|
| 30 years State      | 58%                               | 10%                        | 0%                                   | 0%                                      | 0%  | 68% (66%)  |
| 15 State/15 private | 17%                               | 5%                         | 9%                                   | 24%                                     | -9%   | 46% (62%)  |
| 15 private/15 State | 29%                               | 4%                         | 11%                                  | 24%                                     | -10%  | 58% (66%)  |
| 40 years State      | 77%                               | 14%                        | 0%                                   | 0%                                      | 0%  | 91% (78%)  |
| 20 State/20 private | 19%                               | 8%                         | 12%                                  | 28%                                     | -9%   | 58% (74%)  |
| 20 private/20 State | 39%                               | 6%                         | 17%                                  | 31%                                     | -9%   | 84% (82%)  |
| 50 years State      | 97%                               | 17%                        | 0%                                   | 0%                                      | 0%  | 114% (116%)  |
| 25 State/25 private | 20%                               | 10%                        | 17%                                  | 34%                                     | -6%   | 75% (113%)   |
| 25 private/25 State | 48%                               | 7%                         | 24%                                  | 40%                                     | -6%   | 113% (125%)  |

\*The 30 and 40 year working periods examples assume a \$30,000 entry salary, the same total DC contributions while in state or teaching employment as in Table 2.2.1, and a 10% DC savings in other employment

The 50 year working period example assumes a \$20,000 entry salary, the same total DC contributions while in state or teaching employment as in Table 2.2.1, and a 9% DC savings in other employment

\*\* Assumes a 5% expected return

\*\*\*All categories of later-life income translated to COLA annuities (like Social Security)

Table 2.2.3 indicates the State/Teacher Plan is more likely to create a higher income replacement when a member spends their full career in state employment or teaching. For mixed careers, replacement ratios are heavily influenced by whether the state employment occurs early or late in the working period. Because State/Teacher pensions are based on final average salary, those who finish their careers in state employment fare better. Overall, Plan 2 replacement ratios are much less affected by career mix than under the State/Teacher plan.

Social Security enables the proposed Plan 2 to start with a federally backed inflation-adjusted, lifetime income base that is portable for workers who change jobs. It also eliminates the confusion and frustration with the GPO and WEP. Plan 2 also provides members with lifetime income in addition to Social Security with the APP DB and the employer's portion of the 401(a) DC plan, but leaves the option of a full conversion to a monthly income stream up to the member's decision to purchase an annuity with their optional 457(b) deferred compensation plan balance.

The State/Teacher Plan has the advantage of providing a predictable lifetime benefit. It also has the advantage that the benefit is relatively easy for the member to calculate throughout their work life. The Social Security GPO and WEP offsets, however, make it very difficult to predict the Social Security benefit the member may receive because it varies based on each individual's circumstances.

**Important Note:** *The current State/Teacher plan provides a solid foundation of retirement income for long-service employees. It is less effective for members with shorter careers in state employment, in particular those who work in both the public and private sectors when the WEP is applied to their Social Security benefit.*

## 2.4 State/Teacher and Plan 2 Cost

Plan costs can be viewed from two perspectives. The first is how much does each plan cost per participant. The second is how much do each of the three component plans cost in total.

Later-life benefit plans are part of an employee's total compensation, and should be considered in that context. The cost analysis contained in this section will address only total Plan 2 cost. An analysis of total compensation is outside the scope of this report. We also do not compare the cost of Plan 2 to other employer based plans because the differences in compensation and plan design make comparison across employers unreliable.

**It is important to note that the proposed Plan 2 does not address the special plans contained in the State/Teacher Plan.** Special plans meet the needs of specific groups of employees such as public safety personnel. Special plans are generally more costly and are outside the scope of this report.

### Plan Cost Comparison per Participant

Individual employees are primarily interested in how much Plan 2 costs per participant. This is the amount deducted from their pay which provides them cost information when comparing to other plans.



## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

Table 2.4.1 compares the cost for a \$10,000 increment of salary of an individual member of Plan 2 to those of the State/Teacher Plan. The following example demonstrates how the cost per participant can be calculated for varying salary levels:

**Example:** An employee in Plan 2 earning \$50,000 would incur benefit costs of \$50,000 (x) 10.85% = \$5,425, or 5 (x) \$1,085. The employer would similarly incur benefit costs for this employee of \$50,000 (x) 8.20% = \$4,100, or 5 (x) \$820. Total employer and employee benefit costs would be \$50,000 (x) 19.05% = \$9,525.

An employee in the State/Teacher Plan earning \$50,000 would incur costs of \$50,000 (x) 7.65% = \$3,825 or 5 (x) \$765. The employer would similarly incur normal costs for the employee of \$50,000 (x) 3.55% = \$1,775 or 5 (x) \$355. The Unfunded Actuarial Liability (UAL) cost varies over time and is listed separately.

Employees in both plans will incur the costs of any additional voluntary contributions to their (457)(b) plan.

**Table 2.4.1**  
Comparison of Plan 2, State/Teacher Plan, and Equivalent Provisions for 2015

| Cost Per \$10k Salary          | Plan 2                | State/Teacher         |
|--------------------------------|-----------------------|-----------------------|
| <b>Employee Cost</b>           | <b>\$1,085</b>        | <b>\$ 765</b>         |
| Social Security                | \$ 620                | \$ -0-                |
| Defined Benefit                | \$ 465                | \$ 765                |
| Defined Contribution           | Optional              | Optional              |
| <b>Employer Cost</b>           | <b>\$ 820</b>         | <b>\$ 355</b>         |
| Social Security                | \$ 620                | \$ -0-                |
| Defined Benefit                | \$ 100                | \$ 355                |
| Defined Contribution           | \$ 100                | \$ -0-                |
| <b>Total Normal Cost</b>       | <b><u>\$1,905</u></b> | <b><u>\$1,120</u></b> |
| UAL <sup>21</sup> Amortization |                       | \$ 1,294              |
| <b>Total Cost</b>              |                       | <b>\$2,414</b>        |

\* Total State/Teacher Plan equivalent costs assume all employees earn a benefit from their first day of work similar to Social Security, a 5% investment return, and no Special Plans, death or disability benefits, or COLA added to the final benefit.

<sup>21</sup> Unfunded actuarial liability amortization for the State/Teacher Plan as of 6/30/2012. The UAL is amortized using a level-dollar method, or the same amount each year. If the State/Teacher Plan is closed, the amount being amortized doesn't change, but the percentage of payroll increases as the amount of payroll in the Plan decreases. Using the percentage of payroll at 6/30/12 provides the most representative comparison between the two plans.

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

The difference in cost between Plan 2 and the State/Teacher Plan occurs for four primary reasons:

- Parts of total Plan 2 costs are **higher** than State/Teacher Plan costs because:
  - Employees in the State/Teacher Plan can spend up to five years earning no benefit if they never vest, or earn five years credit. Employees in Plan 2 earn Social Security benefits on their first day of work forward. Social Security is a payroll tax, while contributions to the State/Teacher Plan for employees who never vest remain with the trust fund and vested employees;
  - Plan 2 was specifically designed to mitigate risk with a lower rate of return on fund assets, which in turn increases contribution costs.
- Parts of total Plan 2 costs are **lower** than State/Teacher Plan because:
  - The APP DB component in Plan 2 is more modest than the State/Teacher Plan because it is supplemental to, not in lieu of, Social Security;
  - Plan 2 is specifically designed to mitigate risk and avoid an unfunded liability.

### Total Projected State/Teacher and Plan 2 Costs

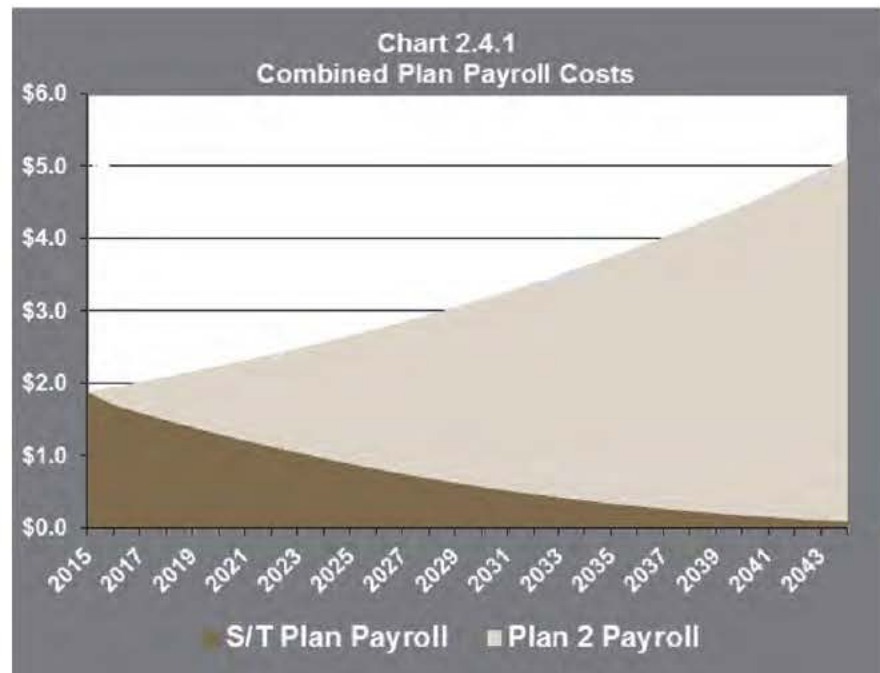
Employers are primarily interested in the total employer cost of the plan for which they must budget and pay for each year.

#### Employer Cost Analysis by Plan Entrants

Total projected payroll determines projected State/Teacher Plan and Plan 2 costs. Chart 2.4.1, demonstrates how the payroll of participants in the closed State/Teacher Plan decreases as payroll of proposed Plan 2 increases with new hires each year. The costs of each plan will generally follow the same graphic pattern.

The normal cost of Plan 2 and the State/Teacher Plan are applied to the total payroll of employees in each plan. Plan 2 has a normal cost of 2%

plus 6.2% Social Security. The State/Teacher Plan has a normal cost of approximately 3.55%. In addition to this cost, the State/Teacher Plan has a 1995 UAL that must be amortized, or paid off, by 2028. The State/Teacher Plan can accumulate additional UAL amounts as a result of experience losses each year after 1995, each of which must be amortized, or paid off, over a 10 year period. These amounts do not affect the UAL to be amortized by 2028.



## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

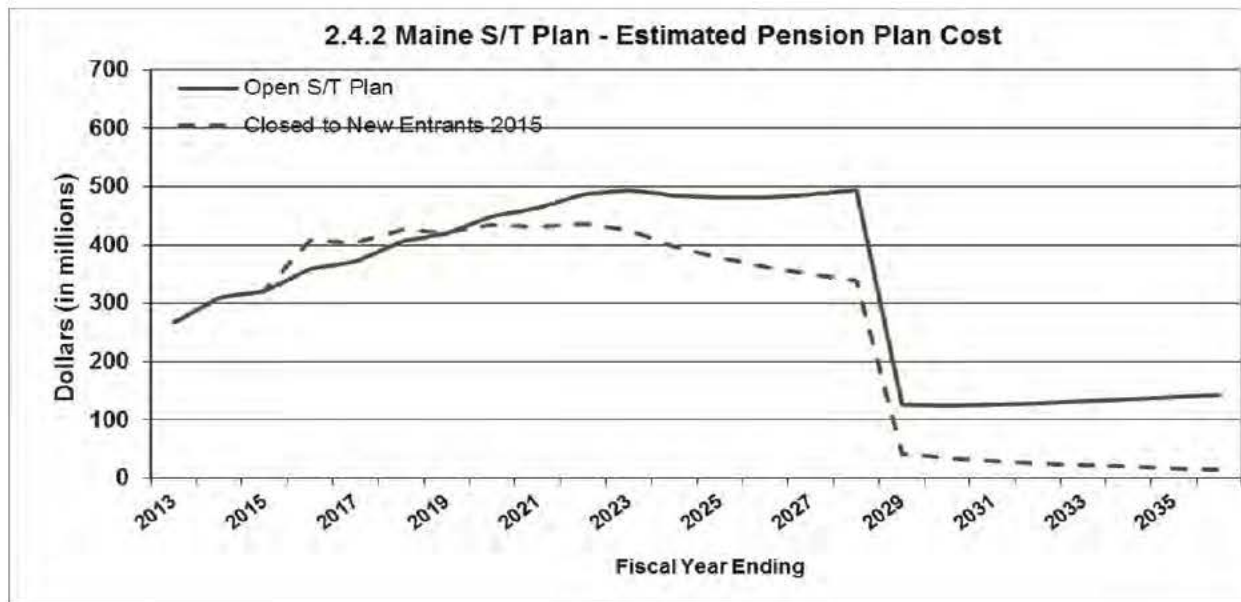
Plan 2 employer costs do not vary significantly as a percent of payroll. The plan is designed to cost approximately 8.2% over time; 6.2% for Social Security (unless this is changed by the federal government) and approximately 2% for the employer portion of Plan 2. The Plan was designed specifically to limit potential unfunded liabilities while still providing employees with a defined benefit.

The following charts demonstrate the difference in long-term costs for:

1. Keeping the current State/Teacher Plan open to new employees but with different terms for the UAL amortization
2. Closing the current State/Teacher Plan to new employees in 2015 but with different terms for the UAL amortization
3. Opening Plan 2 for new employees on July 1, 2015
4. The combined costs of 2 and 3

Each chart also includes a comparison to the State/Teacher Plan as currently constructed with no new terms for UAL and experience loss amortization. The data supporting each of the following charts can be found in Attachment 5. The summary of the long-term costs through 2043 for each option are located beneath each chart.

Chart 2.4.2 demonstrates the costs for the State/Teacher Plan only with closure to new entrants on July 1, 2015 and without closure. The costs follow a similar pattern, but are lower if the Plan is closed to new entrants because the Plan population diminishes to zero over time.



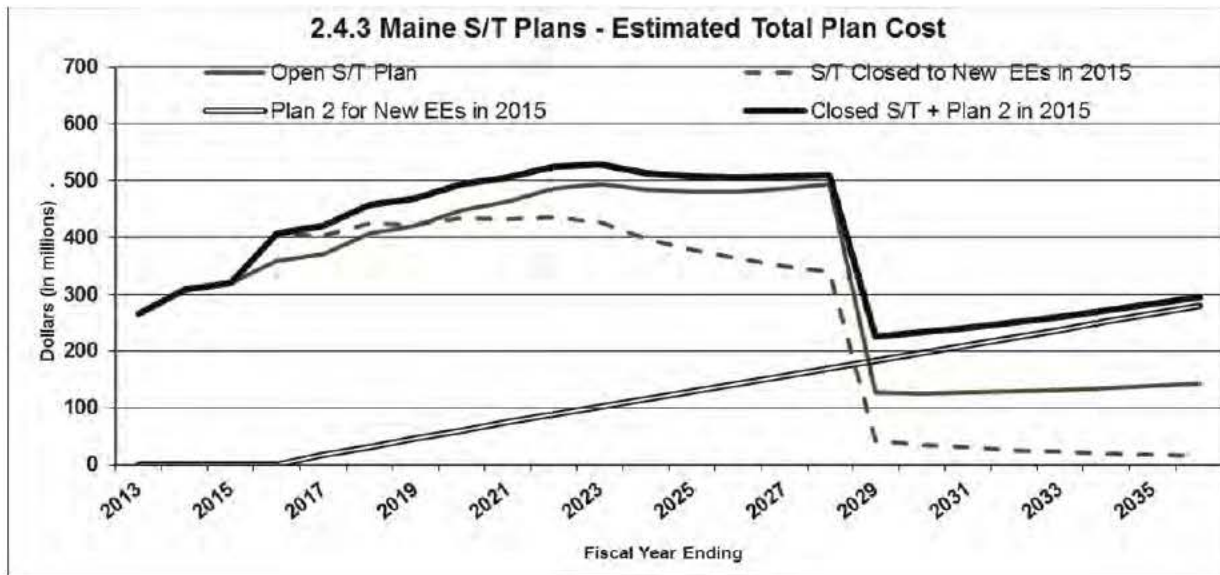
|  |          |
|--|----------|
| Total projected open S/T Plan costs through 2043                   | \$8,970m |
| Total projected closed to new entrants S/T Plan costs through 2043 | \$6,382m |

Chart 2.4.3 introduces the cost of Plan 2 for new employees on July 1, 2015 and the combined cost of Plan 2 and the State/Teacher Plan closed to new employees on the same date.

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

The cost of Plan 2 will consistently increase by 3 ½% per year in all examples because it is based on 8.2% of projected payroll intended to have little employer variation due to a more conservative investment mix and upside investment gain sharing with employees. Plan 2 consists of a fixed 1% of payroll for the DC component, and an approximate 1% of payroll contribution for the APP DB component in addition to a fixed 6.2% of payroll for Social Security. The APP DB component may vary slightly above or below a 1% employer contribution over time, but is designed to stay at approximately the 1% level. The 5% return investment structure is further designed to limit the development of an employer UAL in the event of a severe market downturn similar to the one that occurred in 2008. Although the possibility of an employer UAL exists, it will be dramatically lower than under the current State/Teacher Plan, possibly in the range of a 1%-4% amortization in comparison to a 14-20% for the State/Teacher Plan.

Following the elimination of the 1995 UAL in 2028, total combined costs for the closed State/Teacher Plan and the new Plan 2 may be higher than the State/Teacher Plan costs if it is not closed because Plan 2 has a higher normal cost – 8.2% compared to an estimated 3.55% for the State/Teacher Plan.



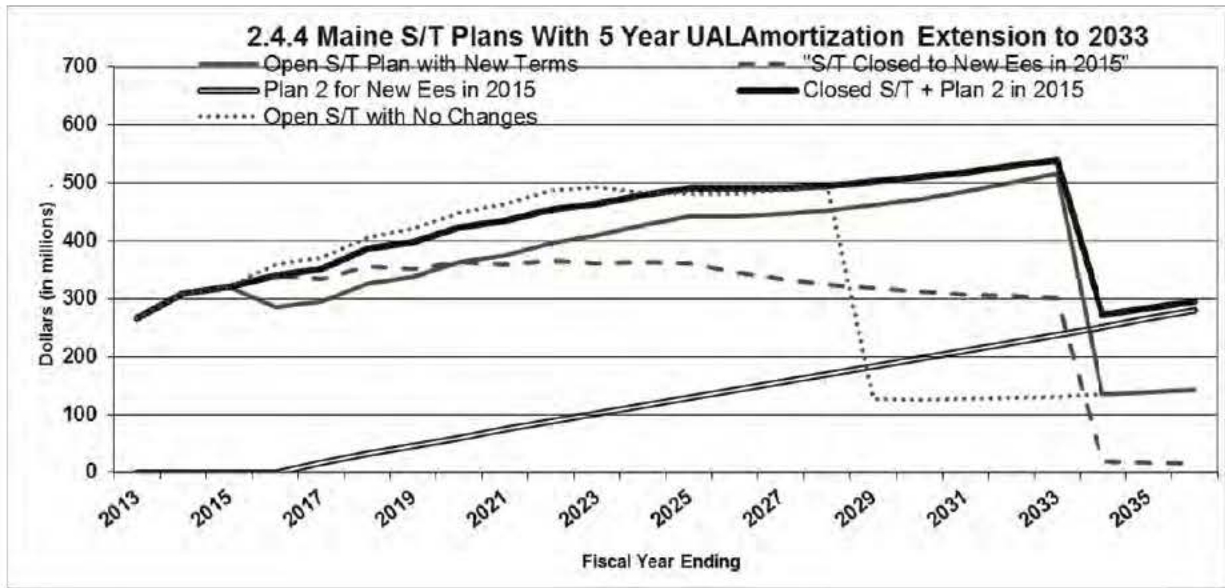
|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043            | \$8,970m         |
| Total projected closed S/T Plan costs through 2043          | \$6,382m         |
| Total projected Plan 2 costs for new employees through 2043 | <u>\$5,354m</u>  |
| Total projected closed S/T + Plan 2 costs through 2043      | <u>\$11,736m</u> |

The remaining graphs included in this section demonstrate how these costs can be impacted by changing the following constitutional provisions in varying degrees:

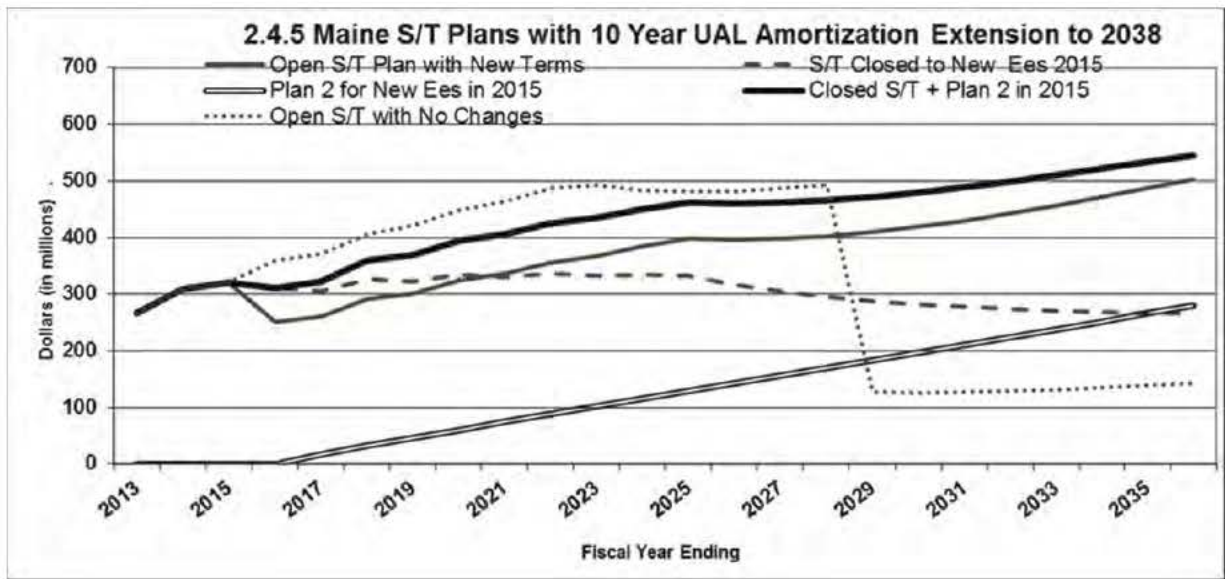
- The 1995 UAL amortization pay-off at 2028
- The 10 year amortization for experience (generally investment) gains and losses

Charts 2.4.4, 2.4.5 and 2.4.6 demonstrate the cost impact on the four scenarios if the 1995 UAL amortization is extended by 5, 10, and 15 years beyond 2028, but the 10 year experience amortization remains.

State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

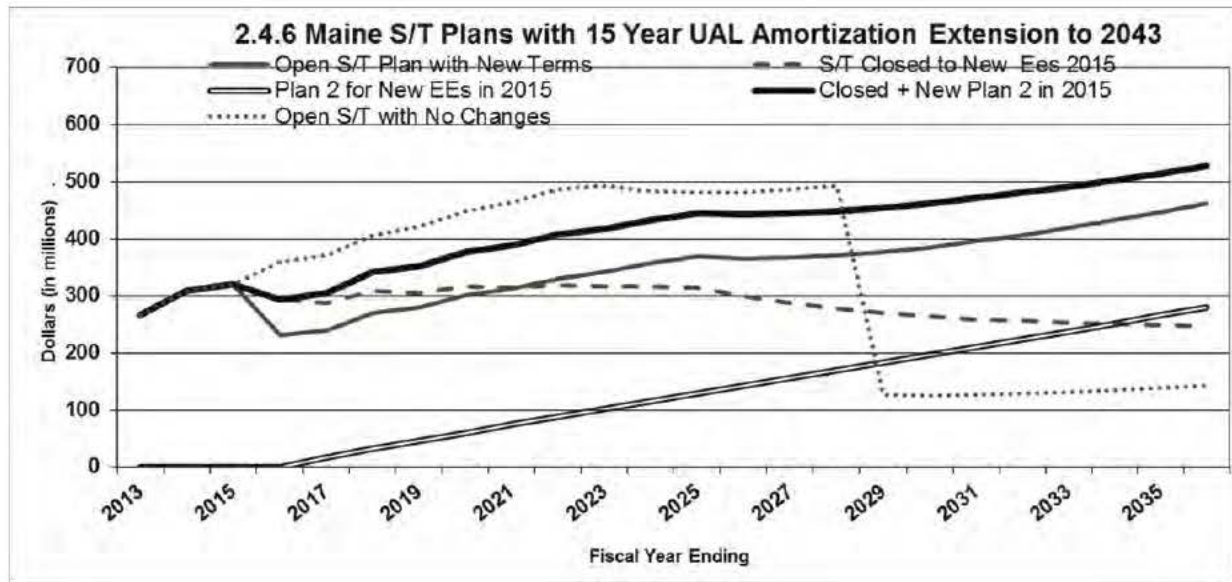


|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change           | \$8,970m         |
| Total projected open S/T Plan costs through 2043 with 2033 UAL date       | \$9,885m         |
| Total projected closed S/T Plan costs through 2043 with 2033 UAL date     | \$7,120m         |
| Total projected Plan 2 costs for new employees through 2043               | <u>\$5,354m</u>  |
| Total projected closed S/T with 2033 UAL date + Plan 2 costs through 2043 | <u>\$12,475m</u> |



|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change           | \$8,970m         |
| Total projected open S/T Plan costs through 2043 with 2038 UAL date       | \$10,881m        |
| Total projected closed S/T Plan costs through 2043 with 2038 UAL date     | \$7,843m         |
| Total projected Plan 2 costs for new employees through 2043               | <u>\$5,354m</u>  |
| Total projected closed S/T with 2038 UAL date + Plan 2 costs through 2043 | <u>\$13,197m</u> |

New State/Teacher Plan 2 5/6/2013



|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change           | \$8,970m         |
| Total projected open S/T Plan costs through 2043 with 2038 UAL date       | \$12,066m        |
| Total projected closed S/T Plan costs through 2043 with 2038 UAL date     | \$8,618m         |
| Total projected Plan 2 costs for new employees through 2043               | <u>\$5,354m</u>  |
| Total projected closed S/T with 2038 UAL date + Plan 2 costs through 2043 | <u>\$13,972m</u> |

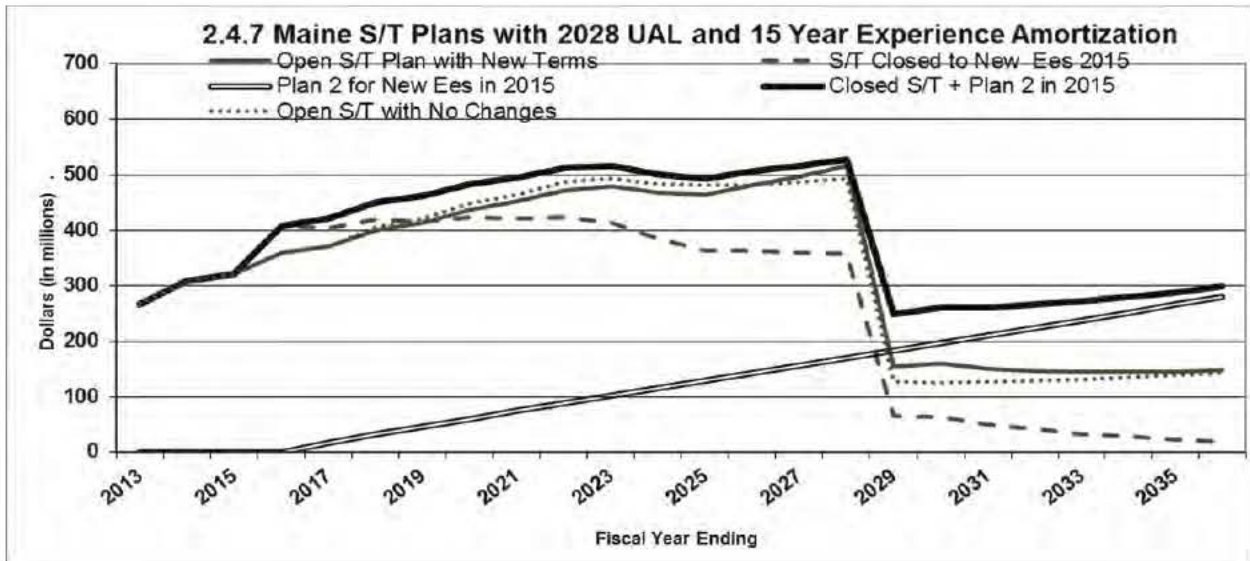
Extending the 1995 UAL amortization payoff beyond 2028 in all three scenarios decreases total costs in the earlier years, making the annual costs of the combined closed State/Teacher and new Plan 2 less costly on an annual basis through 2028, but more costly on an annual basis after 2028 until the 1995 UAL is fully amortized. Total cost for all years is higher than if the UAL is fully amortized by 2028.

These three scenarios also demonstrate the cost difference created by extending the UAL amortization payoff date if the State/Teacher Plan remains the only plan and Plan 2 is not implemented. Similarly, the annual costs are reduced by extending the payoff period while the total costs of the payoff increase. This is a similar principle to extending a mortgage payoff date.

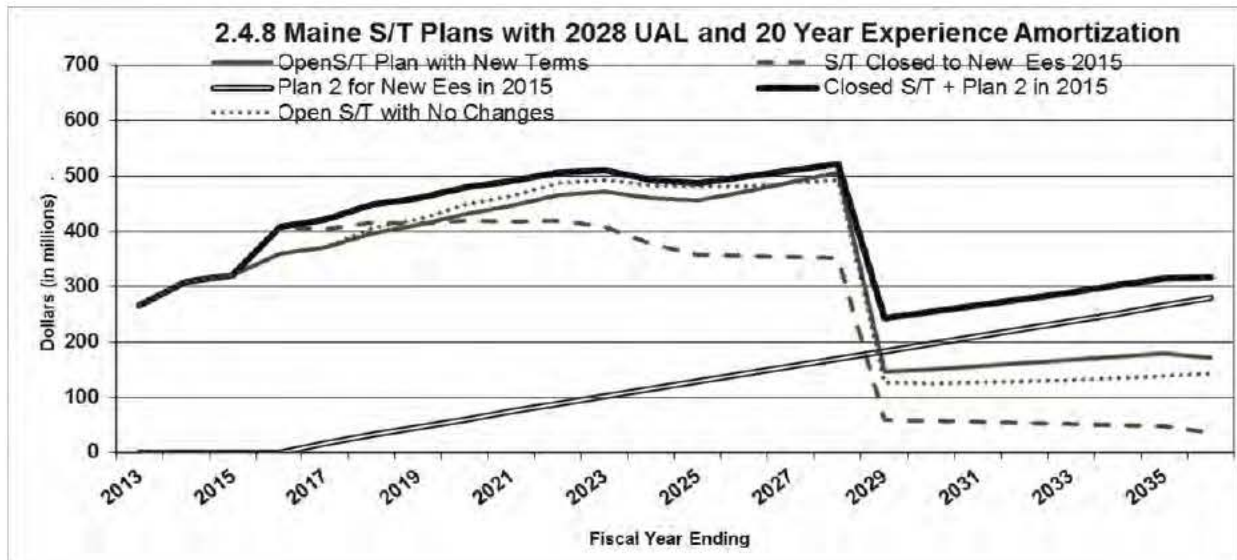
Charts 2.4.7 and 2.4.8 demonstrate the cost impacts of leaving the 1995 UAL amortization payoff date of 2028 unchanged but extending the 10-year amortization for annual experience (investment) gains and losses to 15 and 20 years.

Extending the amortization period for experience gains and losses in these scenarios demonstrate the same patterns, but has little impact on lowering costs in the early years for two reasons:

- We use our expected earnings and benefit payout assumptions. We do not estimate gains or losses other than those that have already occurred but not yet been recognized under our asset smoothing technique.
- The UAL amortization accounts for the majority of the State/Teacher Plan costs



|  |                  |
|--|------------------|
| Total projected open S/T Plan costs through 2043 with no change                  | \$8,970m         |
| Total projected open S/T Plan costs with 2028 UAL date and 15 yr exp amort       | \$9,053m         |
| Total projected closed S/T Plan costs with 2028 UAL date and 15 yr exp amort     | \$6,453m         |
| Total projected Plan 2 costs for new employees through 2043                      | <u>\$5,354m</u>  |
| Total projected closed S/T with 2028 UAL date and 15 yr exp amort + Plan 2 costs | <u>\$11,807m</u> |

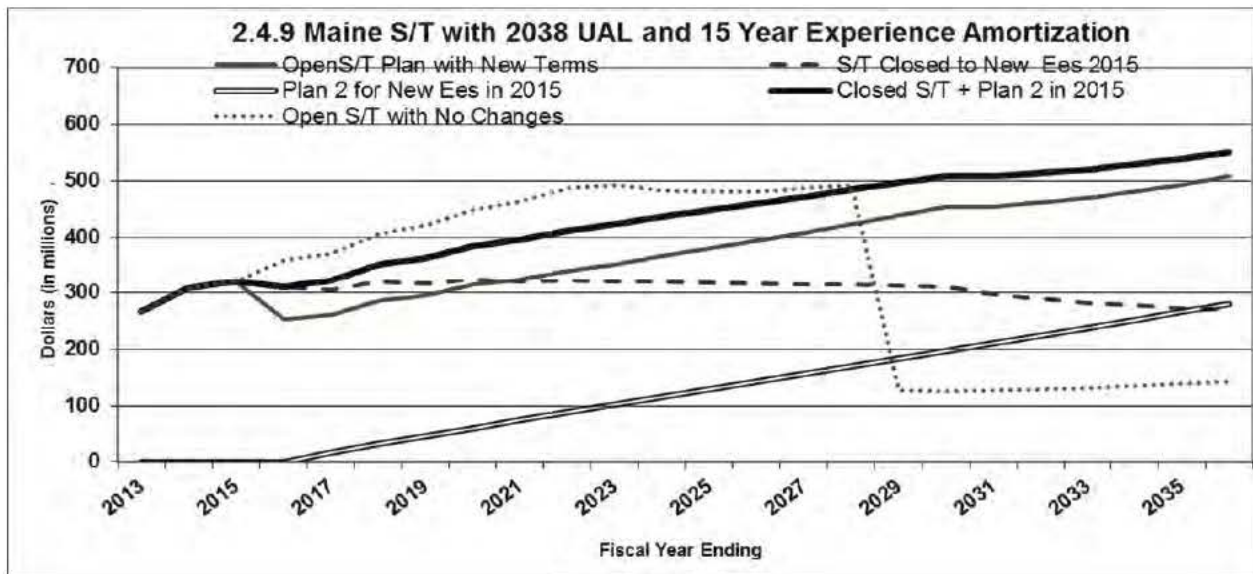


|  |                  |
|--|------------------|
| Total projected open S/T Plan costs through 2043 with no change                  | \$8,970m         |
| Total projected open S/T Plan costs with 2028 UAL date and 20 yr exp amort       | \$9,149m         |
| Total projected closed S/T Plan costs with 2028 UAL date and 20 yr exp amort     | \$6,529m         |
| Total projected Plan 2 costs for new employees through 2043                      | <u>\$5,354m</u>  |
| Total projected closed S/T with 2028 UAL date and 20 yr exp amort + Plan 2 costs | <u>\$11,883m</u> |

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

If both provisions are changed simultaneously, costs are lowered below the State/Teacher Plan costs if it is not closed to new entrants in the early years because of the greater impact of extending the 1995 UAL amortization payoff of 2028. Similarly, this extension increases the total payoff costs because costs are higher in the years in which the amortization has been extended.

Chart 2.4.9 demonstrates the cost impact of extending both the 1995 UAL amortization payoff and the experience gains or loss amortization.



|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change                     | \$8,970m         |
| Total projected open S/T Plan costs with 2038 UAL date and 15 yr exp amortization   | \$10,964m        |
| Total projected closed S/T Plan costs with 2038 UAL date and 15 yr exp amortization | \$7,915m         |
| Total projected Plan 2 costs for new employees through 2043                         | <u>\$5,354m</u>  |
| Total projected closed S/T with 2038 UAL date and 15 yr exp amort + Plan 2 costs    | <u>\$13,269m</u> |

We also show an alternative method about which we receive stakeholder inquiries, but we strongly advise that it is not suitable for plans closed to new entrants. It is a rolling amortization method where the remaining UAL is amortized by a fixed number of years each year. For example, in year one, the UAL amortization is amortized over a 25 year period. The next year, the remaining UAL is again amortized over a 25 year period. This method results in a UAL that always has a 25 year amortization schedule even as it gets smaller.

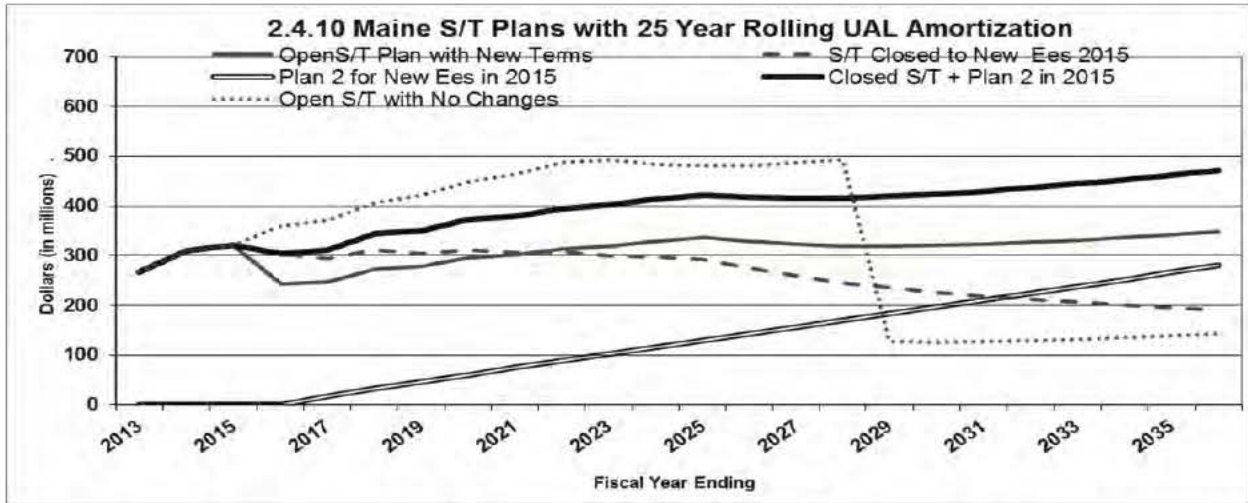
Chart 2.4.10 demonstrates the cost impact of implementing a 25 year rolling amortization method for the 1995 UAL payoff but leaving the 10 year experience gains and losses amortization in place. Chart 2.4.11 demonstrates the cost impact of implementing a 25 year rolling amortization method for both the 1995 UAL payoff and for annual experience gains and losses.

Both scenarios decrease cost in the early years because the amortization period is extended, and increase the overall cost of retiring the UAL.

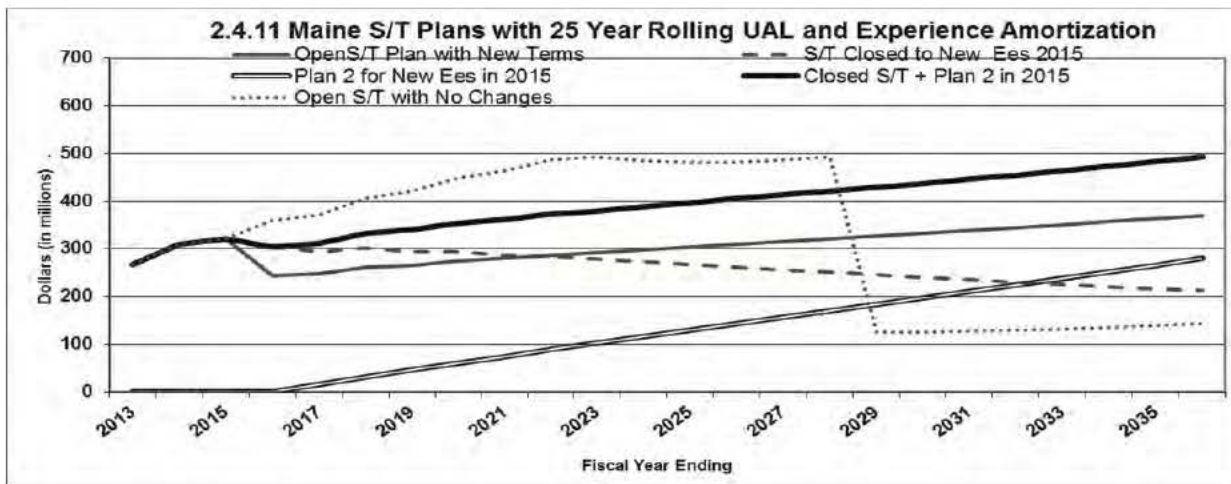


State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

Accounting and actuarial standards change over time, and both have been changing in response to the scrutiny of defined benefit pension plans. The rolling amortization method is still acceptable, but decreasingly so in the actuarial community, in particular for a closed plan where it could lead to insolvency issues.<sup>22</sup>



|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change             | \$8,970m         |
| Total projected open S/T Plan costs with 25 year rolling UAL amortization   | \$10,074m        |
| Total projected closed S/T Plan costs with 25 year rolling UAL amortization | \$7,615m         |
| Total projected Plan 2 costs for new employees through 2043                 | <u>\$5,354m</u>  |
| Total projected closed S/T with 25 year rolling amortization + Plan 2 costs | <u>\$12,969m</u> |



|   |                  |
|---|------------------|
| Total projected open S/T Plan costs through 2043 with no change                   | \$8,970m         |
| Total projected open S/T Plan costs with 25 year rolling total UAL amortization   | \$10,169m        |
| Total projected closed S/T Plan costs with 25 year rolling total UAL amortization | \$7,742m         |
| Total projected Plan 2 costs for new employees through 2043                       | <u>\$5,354m</u>  |
| Total projected closed S/T with 25 year total rolling amortization + Plan 2 costs | <u>\$13,096m</u> |

<sup>22</sup> The new GASB standards effective in 2015 will not allow rolling amortization for accounting purposes for either open or closed plans.

State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

The comparative costs for the preceding scenarios are as follows:

Table 2.4.2 Maine S/T Long-term Cost Comparison through 2043 for Scenarios in Charts 2.4.4 -2.4.11

| Projected Costs in millions for                | 2.4.4 – Extend 1995 UAL amortization to 2033 | 2.4.5 – Extend 1995 UAL amortization to 2038 | 2.4.6 – Extend 1995 UAL amortization to 2043 | 2.4.7 – Maintain 2028 amortization with 15 year experience amortization | 2.4.7 – Maintain 2028 amortization with 20 year experience amortization | 2.4.9 – Extend 1995 UAL amortization to 2038 with 15 year experience amortization | 2.4.10 – Change 1995 UAL amortization to rolling 25 with 10 year experience amortization | 2.4.11 – Change 1995 UAL and experience amortization to rolling 25 |
|--|--|--|--|---|---|---|--|--|
| Open S/T Plan with no change                   | \$8,970                                      | \$8,970                                      | \$8,970                                      | \$8,970   | \$8,970   | \$8,970   | \$8,970  | \$8,970  |
| Open S/T Plan with change                      | \$9,885                                      | \$10,881                                     | \$12,066                                     | \$9,053   | \$9,149   | \$10,964  | \$10,074   | \$10,169   |
| S/T Plan closed to new members                 | \$7,121                                      | \$7,843                                      | \$8,618                                      | \$6,453   | \$6,529   | \$7,915   | \$7,615  | \$7,742  |
| Plan 2 costs for new employees starting 7/1/15 | \$5,354                                      | \$5,354                                      | \$5,354                                      | \$5,354   | \$5,354   | \$5,354   | \$5,354  | \$5,354  |
| Closed S/T + Plan 2                            | \$12,475                                     | \$13,198                                     | \$13,972                                     | \$11,807  | \$11,883  | \$13,269  | \$12,969   | \$13,096   |

Table 2.4.3

Maine S/T Average Annual Cost Comparison through 2028 for Scenarios in Charts 2.4.4 -2.4.11

| Projected Costs in millions for                | 2.4.4 – Extend 1995 UAL amortization to 2033 | 2.4.5 – Extend 1995 UAL amortization to 2038 | 2.4.6 – Extend 1995 UAL amortization to 2043 | 2.4.7 – Maintain 2028 amortization with 15 year experience amortization | 2.4.8 – Maintain 2028 amortization with 20 year experience amortization | 2.4.9 – Extend 1995 UAL amortization to 2038 with 15 year experience amortization | 2.4.10 – Change 1995 UAL amortization to rolling 25 with 10 year experience amortization | 2.4.11 – Change 1995 UAL and experience amortization to rolling 25 |
|--|--|--|--|---|---|---|--|--|
| Open S/T Plan with no change                   | \$423  | \$423  | \$423  | \$423   | \$423   | \$423   | \$423  | \$423  |
| Open S/T Plan with change                      | \$368  | \$335  | \$315  | \$419   | \$414   | \$331   | \$300  | \$287  |
| Closed S/T Plan with change                    | \$341  | \$318  | \$304  | \$378   | \$375   | \$314   | \$294  | \$284  |
| Plan 2 costs for new employees starting 7/1/15 | \$71   | \$71   | \$71   | \$71  | \$71  | \$71  | \$71   | \$71   |
| Closed S/T + Plan 2                            | \$412  | \$389  | \$375  | \$449   | \$446   | \$385   | \$365  | \$355  |

New State/Teacher Plan 2 5/6/2013

These scenarios are based on the on costs through 2043, the longest amortization period example. The costs will change for different terms or amortization period scenarios. Based on these amortization examples, however, the following information and ratios may be helpful to compare each scenario:

**Table 2.4.4**  
**Comparison Analysis for Costs through 2028**  
**for Scenarios in Charts 2.4.4 -2.4.11**

| Projected Costs in millions for   | 2.4.4 – Extend 1995 UAL amortization to 2033 | 2.4.5 – Extend 1995 UAL amortization to 2038 | 2.4.6 – Extend 1995 UAL amortization to 2043 | 2.4.7 – Maintain 2028 amortization with 15 year experience amortization | 2.4.8 – Maintain 2028 amortization with 20 year experience amortization | 2.4.9 – Extend 1995 UAL amortization to 2038 with 15 year experience amortization | 2.4.10 – Change 1995 UAL amortization to rolling 25 with 10 year experience amortization | 2.4.11 – Change 1995 UAL and experience amortization to rolling 25 |
|---|--|--|--|---|---|---|--|--|
| Open S/T thru 2028  | \$6,770                                      | \$6,770                                      | \$6,770                                      | \$6,770   | \$6,770   | \$6,770   | \$6,770  | \$6,770  |
| Closed S/T + Plan 2 thru 2028   | \$6,597                                      | \$6,218                                      | \$5,993                                      | \$7,189   | \$7,133   | \$6,163   | \$5,841  | \$5,676  |
| % of closed S/T + Plan 2 to open S/T Plan with no change thru 2028 S/T cost reduction | 3%   | 8%   | 11%  | (6%)  | (5%)  | 9%  | 14%  | 16%  |
| % of closed S/T + Plan 2 to open S/T Plan with no change thru 2043                    | 139%   | 147%   | 156%   | 132%  | 132%  | 148%  | 145%   | 146%   |

The percentage of closed State/Teacher Plan + Plan 2 costs through 2028 to costs of continuing the State/Teacher Plan with no change through the same time period demonstrates the percentage of short-term cost savings that could occur if the terms of the amortization period could be altered.

The percentage of closed State/Teacher Plan + Plan 2 costs to costs of continuing the State/Teacher with no change through 2043 demonstrates the relative increase between sample amortization methods.

**Using Pension Obligation Bonds to Pay-off the 6-30-2012 UAL**

An alternative method that has been used to fund a pension plan is to issue pension obligation bonds (POBs). If pension obligation bonds were used to retire the current UAL, proceeds from the issuance and sale of the bonds would be deposited into the pension trust fund. The State would pay the on-going normal costs of the State/Teacher Plan and any future experience losses amortized over a ten-year period consistent with constitutional requirements.

Pension obligation bonds have been used successfully by some governments and unsuccessfully by others. Successful use of these bonds has occurred where the government maintains full funding of

the plan through normal cost contributions, investment returns adequate to meet the earnings assumption, and funding of any unfunded liabilities occurring after the bond issuance.

Situations in which pension obligation bonds have been unsuccessful generally occur when the bond proceeds are invested in a way that results in a loss of those proceeds, creating a new UAL which needs to be funded in addition to the bond payments.

Successful use of pension obligation bonds is more likely if the investment risk can be lowered, in turn allowing a lower projected rate of return on trust assets and an investment strategy to achieve that lower rate of return. Using a lower projected rate of return will lower the expected volatility of the fund’s assets which will in turn lower the magnitude of investment shortfall below or gain above the actuarially expected return. The following table estimates the necessary bond proceeds and payments at varying earnings assumptions in the current interest rate environment.<sup>23</sup>

**Table 2.4.4**  
**Comparison of Estimated UAL and Pension Obligation Bond Payments**  
**for Varying Discount Rates with the Same Earnings Assumptions\***

|                           | 7.25%  | 6.5%   | 6.0%   | 5.5%   |
|---------------------------|--------|--------|--------|--------|
| Estimated UAL             | \$2.7b | \$3.8b | \$4.8b | \$5.9b |
| POB Issuance              | \$2.7b | \$3.8b | \$4.8b | \$5.9b |
| Annual POB Payments       |        |        |        |        |
| 10 Year Bonds             | \$307m | \$432m | \$546m | \$671m |
| 15 Year Bonds             | \$230m | \$323m | \$408m | \$502m |
| 30 Year Bonds             | \$161m | \$227m | \$287m | \$352m |
| 2013 S/T Plan UAL Payment | \$346m |        |        |        |

\* Based on US Muni Taxable AA Curve on 4/5/2013.

The following information is an excerpt from the *“MainePERS Report to the Legislature on Pension Cost”* presented to the Maine State Legislature in April, 2011.

***“What are Pension Obligation Bonds?”***

*A POB is a debt instrument of a government entity, backed by tax revenues, and issued to fund the payment of its obligation to a pension plan. In order for the employer to achieve long-term budgetary relief, the interest rate paid on the bonds needs to be less than the rate of return earned on proceeds placed in the pension plan.*

*Prior to the Tax Reform Act of 1986 (“TRA”), state governments could issue bonds on a tax exempt basis and turn around and invest the proceeds in higher-yielding taxable securities through the pension fund (a non-taxable entity) and “lock-in” a greater rate of return for the life of the bond. The ability of government entities to engage in this “interest rate arbitrage” was eliminated by the TRA by elimination of the tax exemption for POBs. However, the use of POBs entails the use of “financial risk arbitrage”, where in order to achieve a positive return*

<sup>23</sup> Investing in a higher risk portfolio, depending on market conditions, can increase the probability of short-term losses creating the situation in which a government would create a new UAL and remain obligated to pay the bond proceeds.

*on its overall investment, the issuer needs to invest in securities, which are generally riskier investments than bonds.*

*Achieving an overall positive return may be possible because: 1) pension funds generally may invest in a much broader range of investments than the state or local governments, and the size and diversity of the pension fund's portfolio allows for a higher risk profile than the state or local government could prudently sustain with its own investments; and 2) the actual investment performance of most pension systems (at least in most years) has historically exceeded the assumed investment return rate.*

*Contributing bond proceeds to the pension fund may result in reduced UAL or reduced normal annual contributions, or both.*

*Some commentators have argued that the use of POBs is better than the alternatives facing plan sponsors: 1) raising employer contribution rates; 2) raising employee contribution rates; 3) reducing benefits; or 4) betting that gains on pension fund investments will substantially exceed the assumed rate of investment return. On the other hand, the issuer of a POB needs to recognize that it is assuming the additional risks of market volatility and investment losses.*

#### **Considerations**

- *There are several types of POBs. State Treasurer and Attorney General Advice are required before determining the feasibility and legality of POBs.*
- *State and local governments have had varying levels of success with POBs. Several local governments in Maine successfully funded their pension obligation in the last decade with POBs.*
- *Notable POB failures have also occurred, where market volatility and investment losses were greater than expected.*
- *POBs can be issued on a biennial basis as needed for pension costs, for part of the UAL, or for all of the UAL.*

#### **Understanding the Cost Impact to the State/Teacher Plan of Issuing POBs**

*The direct cost impact depends upon the type of bond used, the amount and length of the issuance, and the interest rate required at the time of issuance. The indirect cost impact depends upon investment returns on bond proceeds paid to MainePERS and whether or not reduced contributions would be required in the future due to market gains or additional contributions would be required to cover market losses.*

*Table II.3.A.1 demonstrates the sample cost of 30 year fixed, level debt service POBs for \$4.3 billion, or the amount of the UAL at 6/30/2010, and \$287 million, the difference in total pension costs from FY2010-2011 to FY2012-2013. This data was obtained through the Maine State Office of the Treasurer, and prepared by Public Financial Management, Inc.*

State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

**Impact to Members**

There is generally no impact to members. If the pension fund becomes overfunded due to a combination of POB proceeds and market gains, the potential exists to provide members with new benefits based on a funding level at a point in time.”

| <b>Table 2.4.5 - Sample State/Teacher Plan<br/>30 Year, Fixed, Level Debt Service POB Scenarios</b>   |                                       |                                       |
|---|---------------------------------------|---------------------------------------|
|   | <b>Scenario 1 –<br/>\$4.3 billion</b> | <b>Scenario 2 –<br/>\$287 million</b> |
| Dated Date  | 04/01/2011                            | 04/01/2011                            |
| Delivery Date   | 04/01/2011                            | 04/01/2011                            |
| First Coupon  | 12/01/2009                            | 12/01/2009                            |
| Last Maturity   | 06/01/2041                            | 06/01/2041                            |
| Arbitrage Yield   | 6.660916%                             | 6.660916%                             |
| True Interest Cost (TIC)  | 6.728686%                             | 6.728686%                             |
| Net Interest Cost (NIC)   | 6.713073%                             | 6.713072%                             |
| All-in TIC  | 6.729818%                             | 6.745671%                             |
| Average Coupon  | 6.678360%                             | 6.678360%                             |
| Average Life (years)  | 20.165                                | 20.165                                |
| Duration of Issue (yrs)   | 10.692                                | 10.692                                |
| Par Amount  | \$4,300,000,000                       | 287,000,000                           |
| Bond Proceeds   | \$4,300,000,000                       | 287,000,000                           |
| Total Interest  | \$5,790,879,191                       | 386,509,949                           |
| Net Interest  | \$5,820,979,191                       | 388,518,949                           |
| Total Debt Service  | \$10,090,879,191                      | 673,509,949                           |
| Maximum Annual Debt Service   | \$334,781,213                         | 22,347,608                            |
| Average Annual Debt Service   | 334,504,283                           | 22,326,297                            |
| Underwriter's Fees (per \$1,000)  |                                       |                                       |
| Average Takedown  |                                       |                                       |
| Other Fee   | 7.000000                              | 7.000000                              |
| Total Underwriter's Discount  | 7.000000                              | 7.000000                              |
| Bid Price   | 99.300000                             | 99.300000                             |
| <i>Consideration of pension obligation bonds requires opinion and consultation from the Maine State Office of the Treasurer.</i>  |                                       |                                       |
| <i>This data was obtained through the Maine State Office of the Treasurer, and prepared by Public Financial Management, Inc. Attachment 7 includes expanded schedules for each sample POB issuance.</i> |                                       |                                       |
| <i>This table was included in the April 2011 "MainePERS Report to the Legislature on Pension Costs".</i>  |                                       |                                       |

## 2.5 Cost of Administration

Implementing Plan 2 would create administrative costs in three areas:

1. Implementation and plan readiness
2. Administrative Operations
3. Education and Outreach

Costs in this section are rough estimates to give an idea of the types and magnitude of costs associated with implementing a new plan. More precise cost estimates can be created during and following policy discussions which change any of the proposed provisions or the implementation date.

### Implementation and Plan Readiness One-time Costs

This section estimates costs that would be incurred leading up to the actual implementation date:

**IRS Approval** – legal, actuarial and other costs addressing IRS approval and “reversing” the exemption from Social Security

\$200,000

**Project Management** – salary and benefit cost of a project manager to oversee the two-year implementation process

\$250,000

**Information Technology** – development costs to program the existing MainePERS system to administer the APP DB component. This programming could be planned to occur simultaneously with a planned upgrade of the MainePERS system, dramatically reducing the costs

Estimate - \$5m +

**Defined Contribution Third Party Administration (TPA) Proposal and Bid Process** – costs to develop request for proposals, analyze, and award TPA contract for both the 401(a) DC and 457(b) deferred compensation plans

\$10,000

**Investment Manager Selection for Defined Contribution** – costs to develop request for proposals, analyze, and award defined contribution investment management contract

No additional cost

**Pre-Implementation Outreach** – costs to develop and create materials, web media, and web training to educate employers and the initial groups of new employees about Plan 2

\$100,000

### Administrative Operations Annual Costs

This section estimates the routine annual costs of managing employee records, benefit estimates, and employer reporting that are in addition to MainePERS annual operating costs.

## State/Teacher Plan 2 Report to the Legislature – Benefit and Cost Structure

**Employee Records and Benefit Estimates** – costs of providing the same services as are provided for the State/Teacher Plan for 1 FTE and additional management oversight. Plan 2 would not require material additional staffing because the workload will be absorbed by the same staffing levels as it grows and the State/Teacher Plan winds down.

\$100,000

**Employer Reporting** - costs of providing the same services as are provided for the State/Teacher Plan for 1 FTE and additional management oversight. Plan 2 would not require material additional staffing because the workload will be absorbed by the same staffing levels as it grows and the State/Teacher Plan winds down.

\$100,000

**Legal** – costs of ongoing legal reviews, continuing plan approvals, and other legal matters relating specifically to Plan 2

\$25,000

**Actuarial** – costs of actuarial reviews, valuations, Comprehensive Annual Financial Report assistance and other routine actuarial matters

\$75,000

### Education and Outreach

This section estimates the routine annual costs of providing increased outreach and education to employees on how to prepare for retirement. The program goal is primarily outreach, including reminders throughout an employee's tenure based on key life milestones. The education and outreach does not include financial planning. The education and outreach program will be primarily web-based and paper materials, with some group outreach and employer interface. The costs include 2 FTEs to manage the program, oversee the web services, develop materials and interface with employers.

2 FTEs \$150,000

Materials and Web Management - \$150,000



### 3. Investment Alternatives

Under the Plan 2 retirement benefit structure, all new employees will have an employer-funded 401(a) DC plan for which they must choose an investment option. In addition, new employees and existing employees under the State/Teacher Plan have the opportunity to make voluntary tax-deferred contributions to currently existing 457(b) and 403(b) plans.

This proposal includes a provision to develop a new 457(b) plan with investment options consistent with the employer-funded 401(a) DC plan to make it easier for employees to plan their later-life income streams.

#### 3.1 Investing the Defined Benefit Plan Assets

Employer and employee Adjustable Pension Plan (APP) DB contributions will be invested in the MainePERS co-invested trust fund. The co-invested trust fund allows for assets to be jointly invested to achieve economies of scale, but accounted for separately in order to protect the unique purpose of the assets. In other words, the assets and earnings of the Plan 2 APP DB component can only be used to pay Plan 2 APP DB benefits. The APP DB component will be a separate plan.

The investment strategy for Plan 2 APP DB component assets is a reduced risk portfolio with expected long-term earnings of 5%. A reduced risk portfolio mix is part of the Plan 2 design to create a predictable later-life income stream, which is designed to reduce employer rate contribution volatility.

MainePERS sets the asset allocation of the current State/Teacher Plan assets in accordance with a risk-based approach to reduce employer contribution rate volatility for the State of Maine. MainePERS would use this same risk framework for the Plan 2 APP DB component, but with a lower long-term expected rate of return to further reduce employer expected contribution volatility.

Potential employer contribution rate volatility corresponds with the risk and return choices for retirement fund assets. The lower risk and return choice for Plan 2 significantly reduces the potential for employer rates to vary from the desired long-term 1% of payroll in a normal market environment. While a catastrophic market drop similar to the broad-based market correction experienced from November 2007 until February 2009 is not likely. If it were to happen, contribution rates would have to increase. Based on our analysis, a typical investment fund with a 7.5% to 8.0% target return would have seen a market value decline between 40 and 50%. On the other hand the proposed portfolio with an expected return of 5.0% would have experienced a loss in that same period between 15 and 20%. The data suggests that a lower target return and risk strategy will reduce the potential for a severe impairment to assets with a resulting contribution increase.

The Plan 2 return objective of 5.0% is expected to have a moderate degree of volatility around the target return. Given the nature of investment markets the range of return outcome in any single year is broad. Ninety-five percent of the time in any given year, the expected return will fall between -10% and +20%. Over longer periods of time the range of outcomes broadens, but the likelihood of achieving the expected 5% return increases and the probability of losing money declines.

### 3.2 Investing the Defined Contribution Plan Assets

Employees will have specific investment choices in both the employer-funded 401(a) DC and the optional 457(b) deferred compensation plans. Plan 2 proposes the following limited set of options in both plans:

- Money Market Fund
- Essential Needs Fund
- Lifestyle Aspirations Fund

Proposed investment choices are significantly limited in comparison to most defined contribution plans for two primary reasons:

- These options match the design of Plan 2
- Data demonstrates that individual investors earn substantially less than the average of the asset classes in which they invest;<sup>24</sup>

Many defined contribution plans seem to offer a variety of investment options to meet the perceived needs and desires of their participants. It is our belief, based on anecdotal review of member data, that the Pareto Rule governs the number of investment options: a small minority of members drives an investment option menu that is more complex than the vast majority of members desire or can manage.<sup>25</sup> Couple this with the spectacular market gains of the 1990's and the idea that people know best what to do with their money, and the broad variety of investment options in most defined contribution plans appears to make sense.

However, actual data dispels the notion that people know best what to do with their money. It appears that individual investors listen to their emotions when investing in both strong and weak markets. The result is that individual investors as a group earn at most the same, and often less, than individual investors who do not frequently trade.<sup>26</sup> A recent analysis by BlackRock indicates why:

*Volatility is often the catalyst for poor decisions at inopportune times. Amidst difficult financial times, emotional instincts often drive investors to take actions that make no rational sense, but make perfect emotional sense. Psychological factors such as fear often translate into poor timing of buys and sells. Though portfolio managers expend enormous efforts making investment decisions, investors often give up these extra percentage points in poorly timed decisions. As a result, the average investor underperformed most asset classes over the past 20 years. Investors even underperformed inflation by 0.5%.<sup>27</sup>*

We believe this behavioral principle extends beyond individual stock investment decisions to employee decisions to change the percentages allocated among their defined contribution fund choices.

<sup>24</sup> <http://www.businessinsider.com/chart-average-investor-returns-2012-12#ixzz2JIMfTi2i>

<sup>25</sup> <http://www.investopedia.com/terms/p/paretoprinciple.asp> - "A principle, named after economist Vilfredo Pareto, that specifies an unequal relationship between inputs and outputs. The principle states that, for many phenomena, 20% of invested input is responsible for 80% of the results obtained. Put another way, 80% of consequences stem from 20% of the causes. Also referred to as the "Pareto rule" or the "80/20 rule".

<sup>26</sup> "Trading is Hazardous to Your Wealth: The Common Stock Investment Performance of the Individual Investor", Barber and ODean, *The Journal of Finance*, Vol. LV, No. 2, April 2000

<sup>27</sup> <http://www.businessinsider.com/chart-average-investor-returns-2012-12#ixzz2JIMfTi2i>

Presumably this behavioral principle is the reason for the growth in offerings of target date funds that automatically change the investment risk and make-up of the portfolio based on the date a person plans to begin to draw-down their later-life income. Anecdotal observations exist that demonstrates that the principle of diversification has a strong hold on individuals because they will continue to diversify by spreading their money among several retirement date funds, often negating the strength of the concept.

#### Reasons for Three Plan Choices for Defined Contribution Plans

Investment choices for Plan 2 are limited to three options because Plan 2 is designed to create a reliable income stream in later life for essential living needs of housing, food, personal and healthcare expenses. It is not intended to be a one-stop financial planning tool for all employees with varying lifestyles and income levels.

- The first option, the Money Market Fund, is offered because some employees desire very low investment risk and a stable cash equivalent return.
- The second choice, the Essential Needs Fund, is offered to help employees build a reliable later-life income stream with reduced risk for their essential needs. The targeted long-term rate of return on this fund is 5% per year. This is the same expected return as the APP DB component described earlier.
- The third option, the Lifestyle Aspirations Fund, is designed to provide an opportunity for employees who believe they have accumulated assets that are sufficient to cover their essential needs to save for goals unique to their lifestyle such as vacations or other luxury goods or activities. This fund is designed to be more speculative with both a higher expected return and higher expected risk. Participants interested in growing wealth above their essential needs but unwilling to assume a higher chance of loss of capital may want to consider the Essential Needs Fund or the Money Market Fund for their aspirational needs.

The Essential Needs Fund will be the default option and will be designed to generally satisfy the requirements of the Pension Protection Act of 2007.

## 4. Stakeholder Considerations

Stakeholders have questions about the proposed Plan 2 that they wish to be addressed by this report and the Legislature. The following information was created in response to questions that have been raised to MainePERS. There may be additional questions which arise in legislative hearings which can be addressed at that time.

### 4.1 State/Teacher Plan Members and Retirees

Retirees and current members who will receive a benefit under the State/Teacher Plan question whether the adoption of a new plan will cause the Legislature to reduce State/Teacher Plan benefits in the future. This report cannot answer this question, but can provide relevant cost information which can be used in the discussion.

The following points about the transition to a new plan create the basis for the questions raised by or for members and retirees:

- **Higher total cost** – Excluding the UAL, the 8.2% Plan 2 annual employer cost is higher than the approximately 3.55% State/Teacher Plan annual cost. Members and retirees have raised the question of whether their benefits will be reduced to fund the higher cost plan, or the employee contribution rate of 7.65% will be raised to reduce the employer's 3.55% normal cost.

*Note: A limitation on contribution increases occur because employees can only be required to fund their own plan. It is not permissible to require employees to pay for part of a plan in which they do not participate. The Plan 2 Adjustable Pension Plan (APP) DB component is a separate plan.*

- **Higher normal cost** – Members and retirees are concerned that the absence of unvested member turnover will increase plan costs, causing the legislature to lower costs by reducing benefits or increasing employee contribution rates.

*Note: Reduction of the unvested population does not increase the plan costs in a closed plan because the lack of turnover has already been factored into the rates of remaining active population. The same standard noted above regarding contribution increases applies.*

The current cost projections can be lowered on an annual basis in the early years by changing amortization schedules, although this results in higher long-term costs. Charts 2.4.2 through 2.4.11 demonstrate the costs of closing the State/Teacher Plan under various scenarios ranging from no change in the 2028 amortization payoff date for the 1995 UAL to extending that date through a constitutional amendment to 2033, 2038, or 2043 and similarly changing the experience gain or loss amortization.

Each of these charts demonstrates that the total costs of the State/Teacher Plan eventually go down over time. Because actuarial factors anticipate turnover, an aging workforce with higher salaries, and a decreasing plan size, the probability of significantly deviating from this predicted pattern is not high. The type of event that could change the slope of the line would be another catastrophic market decline such as 2008.

Level dollar amortization is the preferred method for closing the State/Teacher Plan and is used in Charts 2.4.2 through 2.4.9. The rolling amortization method is still acceptable, but decreasingly so in the actuarial community, in particular for a closed plan where it could lead to insolvency issues. Charts 2.4.10 and 2.4.11 demonstrates the costs of changing to a rolling amortization method.

## 4.2 Employers

Employers of members in this plan are the State of Maine and Regional School Units. The concerns of each group are related, but different.

Currently, the State of Maine funds the full normal and UAL cost of the State/Teacher Plan even though the State is not the actual employer for teachers. State employees are approximately 40% of the total covered lives while teachers make up the remaining approximate 60%. The State of Maine remits the annual payment calculated by MainePERS directly to MainePERS for both groups of employees.

Entering Social Security by adopting Plan 2 necessarily changes this payment pattern. Actual employers are required to report and remit Social Security wages and payments for their employees to the Internal Revenue Service. In order to maintain the current funding arrangement to maintain no cost to Regional School Districts, the State would have to reimburse the Regional School Districts for their costs paid to Social Security. The State would also need to decide whether it would fund the 2% of payroll cost of the supplemental Plan 2 in a manner similar to how it has funded the State/Teacher Plan, i.e. the State would need to decide if it would also fund teacher costs.

Both the State and Regional School Districts are concerned that the 8.2% cost of Social Security with Plan 2 are higher than the approximately 3.55% normal cost of the State/Teacher Plan. In addition, sixteen years remain in which to pay off the original 1995 UAL. Both the State and Regional School Units are concerned that adding an additional 4.7% (8.2% - 3.55%) of payroll cost for each new employee will be too costly under current budget projections.

The Regional School Districts are further concerned that reimbursement arrangements can be changed at any time, leaving them with up to 8.2% of new costs for new employees. Further, the State has introduced a bill in the 2013 Legislative session transferring a net of ½ of the current normal cost of the State/Teacher Plan to the Regional School Units. Bearing the burden of these potential additional costs is a significant concern to the Regional School Units.

## 4.3 Addressing Cost Concerns

Section 2.4 addresses the cost scenarios and impacts associated with closing the State/Teacher Plan to new entrants and enrolling new employees in Plan 2 and Social Security as of July 1, 2015.

Total costs for the State/Teacher Plan can be reduced in the short-term by extending the amortization schedules, making the costs of closing the plan more feasible. This requires a constitutional amendment which is a significant undertaking. The charts in Section 2.4 demonstrate some sample scenarios which might be used.

## 5. Outreach and Education Plan

Financial education has received a great deal of attention over the last decade as Americans increasingly realize they are not financially able to retire at 55, 60, or 65.<sup>28</sup> Financial literacy programs which focus on the ability to understand how money works have proliferated during the same period.

Education and outreach to Plan 2 and State/Teacher Plan members will be developed around the following principles when the plan design is finalized:

- Understanding essential living expenses in later life;
- Creating a financially literate workforce by focusing on education at milestones throughout employee's careers, not just at retirement;
- Preparing a lower-risk retirement portfolio throughout the employee's career for essential living expenses in later life;
- Preparing a risk-preference portfolio throughout the employee's career for aspirational goals.

The outreach and education program will be developed with MainePERS resources for the following reasons:

- MainePERS can create a financial literacy component by incorporating resources from multiple sources that have developed programs that may be consistent with preparing for essential needs in later life;
- MainePERS has no financial reward in the three retirement savings options included in the Plan 2 401(a) DC or optional 457(b) deferred compensation plans;<sup>29</sup>
- MainePERS success is based on limiting the risk in the Plan 2 Adjustable Pension Plan (APP) DB component and preparing employees to fund their own later-life income needs with the assistance of the State/Teacher Plan and Plan 2, i.e., MainePERS' incentive is to assist employees with a sound later-life income stream with little or no dependency on additional state resources;
- Plan 2 is a simple, straightforward plan that does not aim to satisfy the same broad audience that most commercial vendors must provide, which makes it more suitable for a tailored education.

In order to meet these principles, MainePERS will not include financial education and literacy in any third-party administration bids. If there are cost-effective third-party education and outreach programs, MainePERS would bid these out separate from both third-party administration and fund management.

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<sup>28</sup> Forbes - <http://www.forbes.com/sites/halahtourvalaj/2012/10/23/more-americans-say-80-is-the-new-retirement-age/>. "More Americans Say 80 is the New Retirement Age"

<sup>29</sup> Financial Advisor - <http://www.fa-mag.com/news/401-k-providers-accused-of-misleading-participants-about-rollovers-13843.html> "401(k) Providers Accused of Misleading Participants about Rollovers"

## 6. Internal Revenue Service Considerations

State and local public employee retirement plans are governed, in general, by state law. There are certain federal provisions, however, with which state and local retirement plans are required to comply. This section of the report explores the two most significant areas that affect the implementation of Plan 2.

### 6.1 Plan Qualification

All retirement plans are required to satisfy qualification rules of the Internal Revenue Service (IRS) in order to provide tax-deferral advantages for employees. The current State/Teacher Plan and all other plans MainePERS administers were updated in 2009 and subsequently received re-qualification from the IRS for being in compliance with required law and regulations.

Plan 2 will need to receive IRS approval in order for employee contributions to be eligible for tax deferral from federal income taxes in the same manner as the State/Teacher Plan. MainePERS and its pension counsel and actuarial consultants would prepare the plan qualification documents, submit them to the IRS, and work with the IRS to receive final qualification for the plan.

The Plan 2 DB APP component is a relatively new plan design created in response to issues surrounding some defined benefit plans today. The IRS is familiar with the design, and other private and public sector employers are in the process of adopting it and starting on the qualification process, but a similar design has not yet received qualification.

Neither MainePERS pension counsel nor actuarial consultant see substantive issues with this plan design which would prohibit qualification. However, any provisions in any plan which do not fit the standard defined benefit plan mold inherently create a potentially longer time period in which to receive IRS approval and resolve any IRS questions.

### 6.2 Entering Social Security

Social Security taxes were first collected in 1937. The funding mechanism for the Social Security program was officially established in the Internal Revenue Code as the Federal Insurance Contributions Act (FICA). Under the original Social Security Act of 1935, state and local government employees were excluded from Social Security coverage because of unresolved legal questions regarding the Federal government's authority to tax state and local governments. Beginning in 1951, states were allowed to enter into voluntary agreements with the Federal government to provide Social Security coverage to public employees. These arrangements are called "Section 218 Agreements" because they are authorized by Section 218 of the Social Security Act.

#### State/Teacher Plan Current Social Security Status

State employees and teachers who participate in a Maine retirement system are currently not covered by Social Security. A government employee is excluded from Social Security coverage if he or she is (1) a member of a qualified replacement plan, and (2) not in a position that is covered by a Section 218 Agreement for that government.

## State/Teacher Plan 2 Report to the Legislature – Internal Revenue Service Considerations

The following are true for members of the State/Teacher Plan who are, therefore, excluded from Social Security:

- The State/Teacher Plan is a "qualified replacement plan" with respect to all current members.
- The State's Section 218 Agreement excludes members of the State/Teacher Plan from Social Security coverage.

### Obtaining Social Security Coverage for New Hires

In order for new State and local employees to be covered by Social Security, one of the above circumstances for current State/Teacher Plan members must cease to apply to the new hires. In other words, either (1) Plan 2 provided to new hires must not be a "qualified replacement plan" with respect to any new hires; or (2) the new hires must provide service in a position that becomes covered by the State's Section 218 Agreement (which generally, but not necessarily, must occur by referendum).

The purpose of this Section is to discuss these two separate "routes" to Social Security coverage, including the comparative advantages and disadvantages of each.

#### Route 1: Plan 2 Does not Satisfy the Requirements of a Qualified Replacement Plan

Plan 2 includes a defined benefit plan with defined contribution components and Social Security coverage. As currently configured, the Plan 2 design could trigger mandatory Social Security for all new hires at any time the accrual rate and other benefit features do not satisfy the requirements of a qualified replacement plan. The following considerations demonstrate the potential serious challenges to this uncertain route into entering Social Security.

#### Considerations Regarding this Route of Entry to Social Security

Mandatory social security coverage is always tied to the level of benefit provided to employees under the State-sponsored plan. Increasing Plan 2 benefits in the future could automatically trigger a loss of social security coverage for affected employees which would be very difficult and complicated for both employees and employers. Any contemplated future change in benefit design would have to take into account the potential impact to Social Security coverage:

Benefits designs that use variable benefit rates based on years of service or other factors, such as the APP, require careful consideration under the Social Security rules to determine whether the plan is a qualified replacement plan with respect to all members. Otherwise, a particular benefit design could result in members falling into and out of Social Security coverage over the course of their state employment.

#### Route 2: Cover New Employees' Positions under the State's 218 Agreement

When an employee group is covered by a Section 218 Agreement, that group will have Social Security coverage via the Agreement regardless of whether any or all of the employees in the group are eligible to participate in a State-sponsored retirement plan, and regardless of whether such plan is a "qualified replacement plan."



**Considerations Regarding this Route of Entry to Social Security**

The State cannot modify its Section 218 Agreement unless it conducts a single referendum for members of Plan 2 and the majority of members vote in favor of Social Security coverage. The State and the Social Security Administration would have to agree on the terms of a referendum and conduct it.

- Following a favorable referendum, the State's 218 Agreement would have to be modified with respect to employers with employees voting in the referendum. Thereafter, the State's 218 Agreement will be modified via an identification modification that adds employers who hire new employees after the 90-day referendum notice.
- Once a Section 218 Agreement is modified to include a particular group of positions, those positions will always be covered by Social Security in the future, regardless of the level of pension benefits provided to the employees in such positions.
- When employees are covered by Social Security through a Section 218 Agreement, there is not an ongoing concern that a change to benefit plan designs will affect the Social Security coverage status of the employees. The State is able to increase or decrease benefits without jeopardizing the Social Security coverage that employees expect.

## **Attachment 1 – Original Working Group Members**

Sandy Matheson, Working Group Chair, Executive Director, MainePERS

Terry Brann, State Controller, Dept. of Administrative and Financial Services

Steve Butterfield, Director of Information Services, Maine State Employees Association

Sue Campbell, President, Maine School Board Association

Dale Douglass, Executive Director, Maine School Management Association (Retired)

Jon Kosinski, Government Relations, Maine Education Association

Terry McCabe, Associate Executive Director, Maine School Management Association (Retired)

H. Sawin Millett, Jr., Commissioner, Dept. of Administrative and Financial Services

Joyce Oreskovich, Director, Human Resources, Dept. of Administrative and Financial Services

Chris Quint, Executive Director, Maine State Employees Association

Jennifer Smith, Legislative Coordinator, Dept. of Administrative and Financial Services

Rob Walker, Executive Director, Maine Education Association

## **Attachment 2 – IRS Federal State Reference Guide Excerpt**

### **Chapter 1 – Social Security and government Employers – Historical Overview**

#### **Social Security and Government Employers**

Federal tax requirements generally apply on the same basis to public employers as they do to private employers. However, there are some differences (in employment taxes) arising from the unique history of laws governing social security and Medicare coverage for state and local government employees. Special provisions apply to the application of these taxes as well as certain withholding requirements.

#### **Historical Overview**

Social security taxes were first collected in 1937. The funding mechanism for the social security program was officially established in the Internal Revenue Code as the Federal Insurance Contributions Act (FICA). Under the original Social Security Act of 1935, state and local government employees were excluded from social security coverage because of unresolved legal questions regarding the Federal government’s authority to tax state and local governments. Beginning in 1951, states were allowed to enter into voluntary agreements with the Federal government to provide social security coverage to public employees. These arrangements are called “Section 218 Agreements” because they are authorized by Section 218 of the Social Security Act. Since 1987, the IRS is responsible for collecting these taxes from (local) governmental employers.

All 50 states, Puerto Rico, the Virgin Islands, and approximately 60 interstate instrumentalities have Section 218 Agreements with SSA, providing varying degrees of coverage for employees in the state. Most state employees participate in social security; major exceptions include state employees of Alaska, Colorado, Louisiana, Maine, Massachusetts, Nevada and Ohio.

The largest proportion of uncovered government employees work at the local level. The majority of uncovered local government public employees are police officers, firefighters and teachers. Approximately one-fourth of the nation’s public employees are not covered by social security.

The following chart includes the major historical developments since state and local employees first became eligible for social security coverage in 1951.

**Key Dates**

|                  |   |
|------------------|---|
| January 1, 1951  | Beginning this date, states could voluntarily elect social security coverage for public employees not covered under a public retirement system by entering into a Section 218 Agreement with SSA.   |
| January 1, 1955  | Beginning this date, states could extend social security coverage to employees (other than police officers and firefighters) covered under a public retirement system.  |
| July 1, 1966     | Beginning this date, employees covered for social security under a Section 218 Agreement are automatically covered for Medicare.  |
| April 20, 1983   | Beginning this date, coverage under a Section 218 Agreement cannot be terminated unless the governmental entity is legally dissolved.   |
| April 1, 1986    | State and local government employees hired on or after this date, not already covered, are mandatorily covered for Medicare, unless specifically excluded by law. For state and local government employees hired before April 1, 1986, Medicare coverage may be elected under a Section 218 Agreement.  |
| January 1, 1987  | Beginning this date, state Social Security Administrators were no longer responsible for collecting social security contributions from public employers or for verifying and depositing the taxes owed by public employers. After 1986, public employers pay Federal Insurance Contributions Act (FICA) taxes directly to the Internal Revenue Service (IRS) in the same manner as do private employers.  |
| July 2, 1991     | Beginning this date, most state and local government employees became subject to mandatory social security and Medicare coverage, unless they are (1) members of a public retirement system, or (2) covered under a Section 218 Agreement.  |
| August 15, 1994  | The Social Security Independence and Program Improvements Act of 1994 established the SSA as an independent agency, effective March 31, 1995. This Act also increased the FICA exclusion amount for election workers from \$100 to any amount less than the threshold amount mandated by law in a calendar year. (To verify the current year amount, see the SSA website.) States were authorized to amend their Section 218 Agreements to increase the FICA exclusion amount for election workers to a statutorily mandated threshold. The Act also amended Section 218 of the Act to allow all states the option to extend social security and Medicare coverage to police officers and firefighters who participate in a public retirement system. (Under previous law, only 23 states were specifically authorized to do so.) |
| October 21, 1998 | Public Law 105-277 provided a 3-month period for states to modify their Section 218 Agreements to exclude from coverage services performed by students. This provision was effective July 1, 2000, for states that exercised the option to take this exclusion.   |
| March 2, 2004    | Social Security Protection Act of 2004 (Public Law 108-203) enacted, requiring public employers to disclose to public employees hired after December 31, 2004, that they are earning retirement benefits not covered by social security, and closing the Government Pension Offset loophole effective April 1, 2004.  |

New State/Teacher Plan 2 5/6/2003

## Attachment 3 – 125th Legislature PL 2011, c.380, Part U

**Sec. U-1. Design of new retirement benefit plan for state employees and teachers; working group established.** A working group, referred to in this Part as "the working group," is established to develop an implementation plan designed to close the current defined benefit retirement plan for all state employees and teachers and replace it with a retirement benefit plan, referred to in this Part as "the plan," that is supplemental to Social Security and applies to all state employees and teachers who are first hired after June 30, 2015 with no prior creditable service. The working group must be staffed within the existing resources of the Maine Public Employees Retirement System and the Department of Administrative and Financial Services.

**1. Definitions.** For purposes of this Part, the following terms have the following meanings.

- A. "State employee" has the same meaning as in the Maine Revised Statutes, Title 5, section 17001, subsection 40.
- B. "Teacher" has the same meaning as in the Maine Revised Statutes, Title 5, section 17001, subsection 42.

**2. Working group membership.** The working group consists of:

- A. The Executive Director of the Maine Public Employees Retirement System, who serves as the chair of the working group;
- B. The Commissioner of Administrative and Financial Services, or a designee of the commissioner;
- C. A member appointed by the chair of the working group nominated by the Maine Education Association;
- D. A member appointed by the chair of the working group nominated by the Maine School Management Association; and
- E. A member appointed by the chair of the working group nominated by the Maine State Employees Association.

**3. New retirement plan.** The working group shall design a retirement plan to supplement Social Security for state employees and teachers in accordance with this subsection.

- A. Every member of the plan must contribute to both Social Security and Medicare, and the employer of each member must contribute the employer's share of Social Security and Medicare.
- B. Each active member of the plan must be entitled to participate in a supplemental retirement plan.
- C. The supplemental retirement plan must be designed to:
  - (1) Attract new state employees and teachers and meet employer recruitment needs and employee needs for retirement benefit portability and retirement security;
  - (2) Be competitive with retirement benefit plans provided by similar employers that contribute to their employees' retirement security in addition to Social Security;
  - (3) Limit the State's long-term cost exposure to 2% of employee gross payroll and the employee's exposure to loss of retirement security;
  - (4) Provide the State with the ability to make additional retirement plan contributions in any given biennium without increasing the 2% long-term contribution ceiling;

- (5) Ensure that employees and employers share plan administrative costs; and
- (6) Provide financial information to assist employees in understanding how to preserve their living standards.

**4. Duties.** The working group shall consult, as needed, with experts in the retirement and investment field and shall:

- A. Determine the financial impact on the State and other public employers over time of closing the current retirement plan to new entrants and offering a new retirement plan consisting of Social Security and a supplemental retirement plan;
- B. Develop an implementation date that creates the most predictable and affordable transition from the current plan to the new plan;
- C. Identify and develop any modifications that can be made to the existing plan before it is closed to make the cost of the plan more predictable and affordable and to improve the ability of public employers to attract new employees while transitioning to the new plan; and
- D. Study the impact of options for amending the Constitution of Maine to change the 10-year period required for amortization of experience losses and the requirement that all unfunded liabilities be eliminated by 2028.

**Sec. U-2. Report.** The working group shall submit a report on the design of the plan under section 1, together with any necessary implementing legislation, to the Joint Standing Committee on Appropriations and Financial Affairs by January 1, 2012. After receipt and review of the report, the joint standing committee may report out a bill to the Second Regular Session of the 125<sup>th</sup> Legislature.

## Attachment 4 – Pensions & Investments Article

Adjustable pension plan design begins to gain converts

Benefits can shrink or grow depending on performance

By [Kevin Olsen](#) | April 29, 2013

A new pension plan design that allows employers to drastically reduce their risk while still providing lifetime income to participants is gaining support as an alternative to moving employees into a defined contribution plans.

The adjustable pension plan was conceived by executives at Cheiron Inc., originally for multiemployer plans and adapted for single-employer plans by Richard Hudson, principal consulting actuary at Cheiron in New York. Its key difference from a traditional DB plan is that the benefit received each year is adjusted from an original multiplier based on the previous year's investment performance.

The plan design shares the investment risk between employees and employers while providing more retirement income security than a typical defined contribution plan.

Earlier this month, Consumers Union, Yonkers, N.Y., reached a collective bargaining agreement with the Newspaper Guild of New York to create an adjustable pension plan that will replace the standard DB plan for guild members. The existing plan had about \$42 million in assets as of Dec. 31, 2011, according to the company's most recent Form 5500 filing. That plan will be frozen on May 31, and contributions to the adjustable plan will start June 1.

Consumers Union, publisher of Consumer Reports, is the second single-employer plan to switch to the adjustable plan. Last November, The New York Times became the first with its \$280 million plan for employees who belong to the newspaper guild.

The very first adopter of the adjustable plan was the Greater Boston Hospitality Employers Local 26 Trust Funds. The multiemployer plan adopted the new design on Jan. 1, 2012, moving from a 401(k) to a pension plan to provide more retirement security, according to a document on the union's website. Under its plan, participants will receive either a guaranteed floor benefit or the adjustable benefit tied to investment performance, whichever is greater. (The 401(k) plan, which had \$35 million as of June 30 according to its latest 5500 filing, is still open, but there no longer is an employer contribution.)

The first APP was developed by Cheiron executives working with David Blitzstein, special assistant for multiemployer funds at the United Food and Commercial Workers International Union; Skip Halpern, president of Gallagher Fiduciary Advisors LLC; and Barry Slevin, president of law firm Slevin & Hart PC.

### 6% contribution

Under the Consumers Union plan, the employer will contribute a fixed 6% of salaries plus \$100,000 each year. The New York Times will contribute about \$9.5 million to its plan this year and a similar amount after that based on a formula.

“It will vastly reduce risk and volatility for the company and still provide a lifetime payment and PBGC insurance,” said William O’Meara, president of The Newspaper Guild of New York. “We’re hoping that this becomes a national model for others to adopt. There is some upside potential and very little downside for employees” compared with participant risks in a defined contribution plan.

However, both plans still need approval from the Internal Revenue Service - by July 31, 2014, for The New York Times and March 15, 2015, for Consumers Union. If the plans do not receive approval by those dates, the APP will revert to a new DC plan.

An official at the Pension Benefit Guaranty Corp., who declined to be named, said the new adjustable plan sounds like a “great idea.” But the plan won’t be covered by the agency unless the IRS says it is a tax-qualified plan. If that designation is granted, it will be treated like any other DB plan, the official said.

An IRS spokesman did not respond to requests for interviews. However, Mr. Hudson said he has met with IRS and Treasury Department officials and did not think it would be a problem receiving approval.

Sources said the plan design makes sense for employers with union pension plans because they have collective bargaining rights, which can often prevent, or slow, a move to DC plans.

#### Interest from Maine

Still, the state of Maine is considering the APP for employees and teachers participating in the \$11.5 billion Maine Public Employees’ Retirement System, Augusta. Cheiron is Maine’s actuary.

Maine employees are exempt from Social Security and the Legislature created a task force two years ago to design a supplemental plan for new employees who would also receive Social Security for the first time. The result was a hybrid within a hybrid — half adjustable pension plan and half DC plan.

“Maine would become the first state to enter Social Security from a non-Social Security position,” said Sandy Matheson, executive director of Maine PERS.

The task force has drafted legislation to create the new plan and is awaiting a bill sponsor. Ms. Matheson said it is unlikely the proposal will be picked up during the current legislative session.

“The Legislature had very specific criteria for us to work with,” specifically long-term cost exposure of 2% of salaries, and the task force “agreed on the principles we wanted to see in the plan,” Ms. Matheson said. One percent each would go to the DB and DC components, with a 6.2% contribution to Social Security, equaling a total 8.2% employer contribution.

The state contributes 3.67% of payroll to the state employees and teachers plan in addition to unfunded actuarially liability cost, which equals 11.59% and is expected to increase to 13.43% for the next two years.

The task force wanted to provide new hires with benefits as close as possible to the traditional pension plan, Ms. Matheson said.



Cheiron's Mr. Hudson said a plan needs to immunize retiree liabilities, instead of “letting it ride” on a 60% equity/40% fixed-income portfolio that does not take into account how much of a plan's liabilities are tied up with retirees. There should only be risk in the active group, he added.

### Risk transfer

When moving to a DC plan from a DB plan, all the risk is transferred to the employee, Mr. Hudson said.

“Plans increase the risk first and then pass it on to employees. So we said we can do that without increasing the risk,” Mr. Hudson said. “If you can't handle the risk you have, how would (participants) be able to take on more risk on their own?”

Under the APP there is a cut in benefits, Mr. Hudson acknowledged, but much less than with a move to a DC plan — and there is guaranteed retirement income.

“It might be a lower benefit than the traditional defined benefit plan, but at least it's secure,” said the person from the PBGC. The official added that the adjustable plan is more cost controlled than a traditional DB plan and not as dependent on big contributions.

What differentiates the adjustable plan from a cash balance plan is that the cash balance plan benefit is determined by a benchmark such as 10-year Treasuries; the adjustable plan's benefit depends on actual investment performance of the plan.

Bruce Cadenhead, chief actuary for U.S. retirement at [Mercer LLC](#) in New York, said the adjustable pension plan is similar to the variably annuity plan design that has been around for decades but differs in that the employer still bears investment risk.

“I think it's something we're beginning to see more discussion about,” Mr. Cadenhead said. “I think (this type of plan) is promising because one of the biggest risks is more people becoming retirement ready that will outlive their money, and this design addresses all those concerns.”

The APP has an emphasis on low volatility and uses a lower discount rate. Mr. Hudson said the goal is get down to around a 6% return target with a standard deviation of about 5.5% to 6%.

### 'Essential principles'

The important part of the APP is that it includes all the “essential principles” for a new pension plan design such as employer contributions, pooled assets that are professionally invested and lifetime income, said Karen Ferguson, director of the Pension Rights Center, Washington. The PRC is in favor of any DB plan designs that address those principles, she added.

“It significantly reduces the risk to employers and employees,” Ms. Ferguson said. “If the plan doesn't do well, then (participants) won't get a better benefit.”

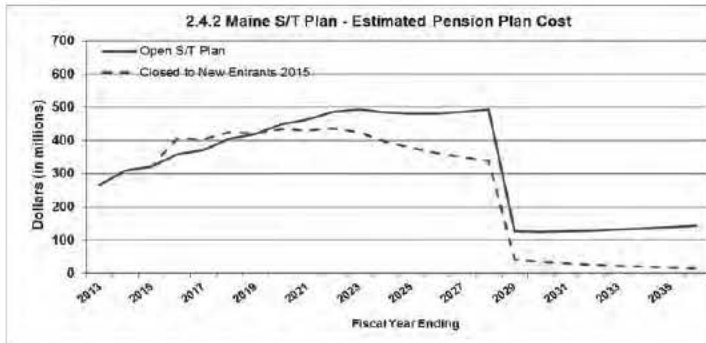
The adjustable plan idea probably is most appealing to unions because it helps to have bargaining power for better pension plans, Ms. Ferguson said. And unlike other alternative plan designs, the adjustable pension plan does not need legislative approval.

"It's so logical and makes so much sense," Mr. Hudson said. "When people ask why isn't everyone doing this, I just say, "I don't know.'"

<http://www.pionline.com/article/20130429/PRINTSUB/304299981>

## Attachment 5 – Open and Closed Plan Costs

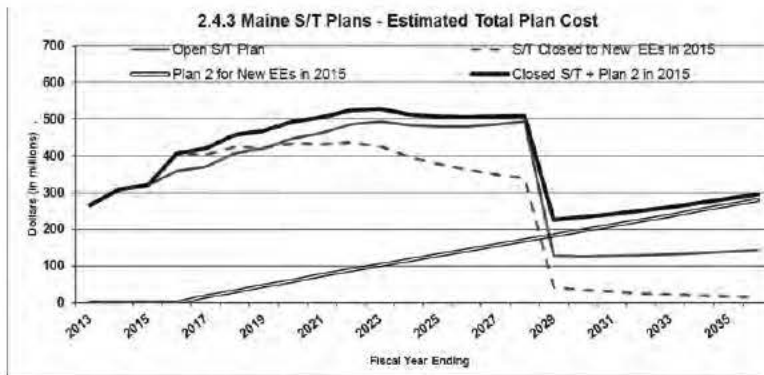
Chart 2.4.2 – Maine S/T Plan Estimated Total Cost through 2043



Maine S/T Plan Estimated Total Cost (in millions)

| FYE          | Open             | Closed           |
|--------------|------------------|------------------|
| 2013         | \$266.8          | \$266.8          |
| 2014         | 309.4            | 309.4            |
| 2015         | 320.3            | 320.3            |
| 2016         | 358.6            | 407.9            |
| 2017         | 371.2            | 403.7            |
| 2018         | 406.4            | 425.2            |
| 2019         | 420.7            | 422.1            |
| 2020         | 448.0            | 433.7            |
| 2021         | 463.7            | 431.2            |
| 2022         | 486.5            | 436.5            |
| 2023         | 493.4            | 425.6            |
| 2024         | 484.1            | 397.5            |
| 2025         | 480.4            | 377.8            |
| 2026         | 481.0            | 362.1            |
| 2027         | 486.1            | 349.6            |
| 2028         | 493.4            | 339.0            |
| 2029         | 126.6            | 41.8             |
| 2030         | 125.8            | 35.2             |
| 2031         | 127.0            | 30.3             |
| 2032         | 128.8            | 26.0             |
| 2033         | 131.7            | 22.7             |
| 2034         | 134.9            | 19.8             |
| 2035         | 138.8            | 17.4             |
| 2036         | 143.0            | 15.3             |
| 2037         | 147.6            | 13.4             |
| 2038         | 152.4            | 11.7             |
| 2039         | 157.5            | 10.3             |
| 2040         | 162.8            | 9.0              |
| 2041         | 168.4            | 7.8              |
| 2042         | 174.2            | 6.7              |
| 2043         | 180.2            | 5.7              |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$6,381.5</b> |

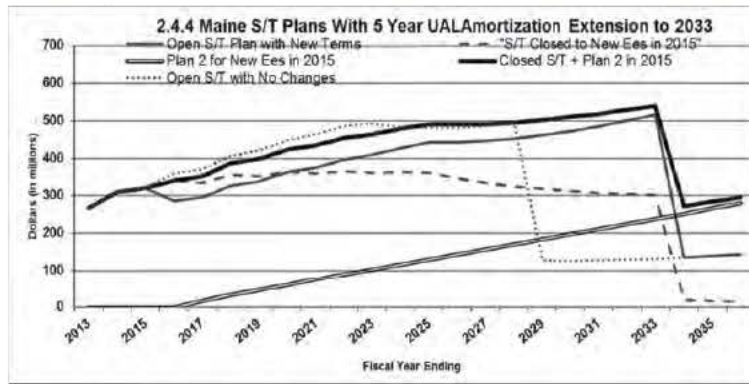
**Chart 2.4.3 – Maine S/T Plans – Estimated Total Plan Cost through 2043**



**S/T Plans Projected Cost through 2043 (in millions)**

| FYE          | Open             | Closed           | Plan 2           | Both              |
|--------------|------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 407.9            | 0.0              | 407.9             |
| 2017         | 371.2            | 403.7            | 16.7             | 420.4             |
| 2018         | 406.4            | 425.2            | 31.8             | 457.0             |
| 2019         | 420.7            | 422.1            | 46.3             | 468.4             |
| 2020         | 448.0            | 433.7            | 60.6             | 494.3             |
| 2021         | 463.7            | 431.2            | 74.5             | 505.7             |
| 2022         | 486.5            | 436.5            | 88.4             | 524.9             |
| 2023         | 493.4            | 425.6            | 102.1            | 527.7             |
| 2024         | 484.1            | 397.5            | 115.9            | 513.4             |
| 2025         | 480.4            | 377.8            | 129.5            | 507.3             |
| 2026         | 481.0            | 362.1            | 143.2            | 505.3             |
| 2027         | 486.1            | 349.6            | 156.8            | 506.4             |
| 2028         | 493.4            | 339.0            | 170.3            | 509.3             |
| 2029         | 126.6            | 41.8             | 183.8            | 225.6             |
| 2030         | 125.8            | 35.2             | 197.3            | 232.5             |
| 2031         | 127.0            | 30.3             | 210.9            | 241.2             |
| 2032         | 128.8            | 26.0             | 224.5            | 250.5             |
| 2033         | 131.7            | 22.7             | 238.2            | 260.9             |
| 2034         | 134.9            | 19.8             | 252.0            | 271.8             |
| 2035         | 138.8            | 17.4             | 265.8            | 283.2             |
| 2036         | 143.0            | 15.3             | 279.8            | 295.1             |
| 2037         | 147.6            | 13.4             | 294.0            | 307.4             |
| 2038         | 152.4            | 11.7             | 308.3            | 320.0             |
| 2039         | 157.5            | 10.3             | 322.8            | 333.1             |
| 2040         | 162.8            | 9.0              | 337.5            | 346.5             |
| 2041         | 168.4            | 7.8              | 352.5            | 360.3             |
| 2042         | 174.2            | 6.7              | 367.6            | 374.3             |
| 2043         | 180.2            | 5.7              | 383.0            | 388.7             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$6,381.5</b> | <b>\$5,354.2</b> | <b>\$11,735.7</b> |

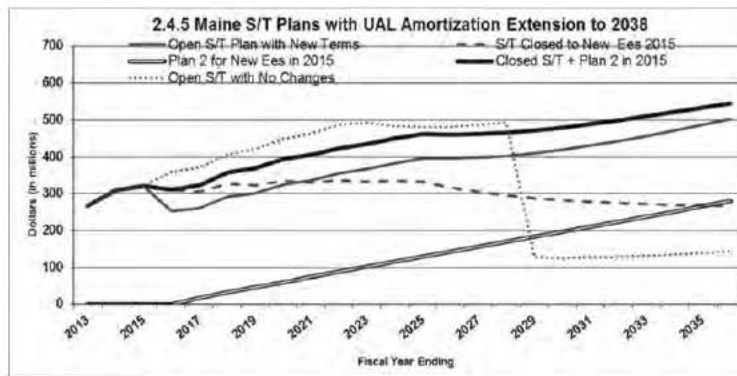
**Chart 2.4.4 – Maine S/T Plan – 5 Year UAL Extension Scenario**



**S/T Plans 1995 UAL to 2033 Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change    | Closed           | Plan 2           | Both              |
|--------------|------------------|------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8          | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4            | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3            | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 284.8            | 339.1            | 0.0              | 339.1             |
| 2017         | 371.2            | 294.7            | 334.5            | 16.7             | 351.2             |
| 2018         | 406.4            | 327.3            | 355.6            | 31.8             | 387.4             |
| 2019         | 420.7            | 338.7            | 352.2            | 46.3             | 398.5             |
| 2020         | 448.0            | 363.2            | 363.4            | 60.6             | 424.0             |
| 2021         | 463.7            | 375.9            | 360.4            | 74.5             | 434.9             |
| 2022         | 486.5            | 395.7            | 365.2            | 88.4             | 453.6             |
| 2023         | 493.4            | 409.5            | 362.6            | 102.1            | 464.7             |
| 2024         | 484.1            | 427.3            | 364.1            | 115.9            | 480.0             |
| 2025         | 480.4            | 442.2            | 361.7            | 129.5            | 491.2             |
| 2026         | 481.0            | 441.5            | 346.6            | 143.2            | 489.8             |
| 2027         | 486.1            | 445.2            | 334.7            | 156.8            | 491.5             |
| 2028         | 493.4            | 451.1            | 324.7            | 170.3            | 495.0             |
| 2029         | 126.6            | 460.7            | 317.7            | 183.8            | 501.5             |
| 2030         | 125.8            | 471.6            | 311.7            | 197.3            | 509.0             |
| 2031         | 127.0            | 484.9            | 307.6            | 210.9            | 518.5             |
| 2032         | 128.8            | 499.2            | 304.0            | 224.5            | 528.5             |
| 2033         | 131.7            | 515.1            | 301.4            | 238.2            | 539.6             |
| 2034         | 134.9            | 134.9            | 19.8             | 252.0            | 271.8             |
| 2035         | 138.8            | 138.8            | 17.4             | 265.8            | 283.2             |
| 2036         | 143.0            | 143.0            | 15.3             | 279.8            | 295.1             |
| 2037         | 147.6            | 147.6            | 13.4             | 294.0            | 307.4             |
| 2038         | 152.4            | 152.4            | 11.7             | 308.3            | 320.0             |
| 2039         | 157.5            | 157.5            | 10.3             | 322.8            | 333.1             |
| 2040         | 162.8            | 162.8            | 9.0              | 337.5            | 346.5             |
| 2041         | 168.4            | 168.4            | 7.8              | 352.5            | 360.3             |
| 2042         | 174.2            | 174.2            | 6.7              | 367.6            | 374.3             |
| 2043         | 180.2            | 180.2            | 5.7              | 383.0            | 388.7             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$9,884.9</b> | <b>\$7,120.8</b> | <b>\$5,354.2</b> | <b>\$12,475.0</b> |

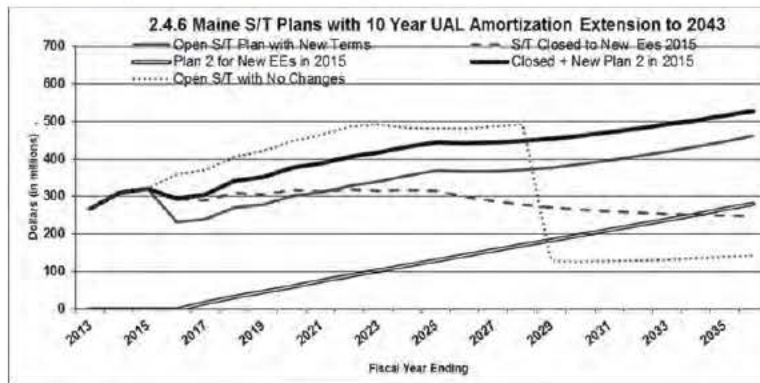
**Chart 2.4.5 – Maine S/T Plans – 10 year UAL Extension Scenario**



**S/T Plans 1995 UAL to 2038 Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change     | Closed           | Plan 2           | Both              |
|--------------|------------------|-------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8           | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4             | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3             | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 251.9             | 310.4            | 0.0              | 310.4             |
| 2017         | 371.2            | 260.7             | 305.7            | 16.7             | 322.4             |
| 2018         | 406.4            | 292.1             | 326.7            | 31.8             | 358.5             |
| 2019         | 420.7            | 302.3             | 323.2            | 46.3             | 369.5             |
| 2020         | 448.0            | 325.5             | 334.3            | 60.6             | 394.9             |
| 2021         | 463.7            | 336.9             | 331.3            | 74.5             | 405.8             |
| 2022         | 486.5            | 355.3             | 336.0            | 88.4             | 424.4             |
| 2023         | 493.4            | 367.8             | 333.3            | 102.1            | 435.4             |
| 2024         | 484.1            | 384.0             | 334.7            | 115.9            | 450.6             |
| 2025         | 480.4            | 397.5             | 332.3            | 129.5            | 461.8             |
| 2026         | 481.0            | 395.2             | 317.1            | 143.2            | 460.3             |
| 2027         | 486.1            | 397.3             | 305.0            | 156.8            | 461.8             |
| 2028         | 493.4            | 401.5             | 295.0            | 170.3            | 465.3             |
| 2029         | 126.6            | 409.3             | 287.9            | 183.8            | 471.7             |
| 2030         | 125.8            | 418.5             | 281.8            | 197.3            | 479.1             |
| 2031         | 127.0            | 429.9             | 277.6            | 210.9            | 488.5             |
| 2032         | 128.8            | 442.3             | 273.9            | 224.5            | 498.4             |
| 2033         | 131.7            | 456.1             | 271.2            | 238.2            | 509.4             |
| 2034         | 134.9            | 470.7             | 268.9            | 252.0            | 520.9             |
| 2035         | 138.8            | 486.4             | 267.2            | 265.8            | 533.0             |
| 2036         | 143.0            | 502.7             | 265.7            | 279.8            | 545.5             |
| 2037         | 147.6            | 519.9             | 264.6            | 294.0            | 558.6             |
| 2038         | 152.4            | 537.7             | 263.6            | 308.3            | 571.9             |
| 2039         | 157.5            | 157.5             | 10.3             | 322.8            | 333.1             |
| 2040         | 162.8            | 162.8             | 9.0              | 337.5            | 346.5             |
| 2041         | 168.4            | 168.4             | 7.8              | 352.5            | 360.3             |
| 2042         | 174.2            | 174.2             | 6.7              | 367.6            | 374.3             |
| 2043         | 180.2            | 180.2             | 5.7              | 383.0            | 388.7             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$10,881.1</b> | <b>\$7,843.4</b> | <b>\$5,354.2</b> | <b>\$13,197.6</b> |

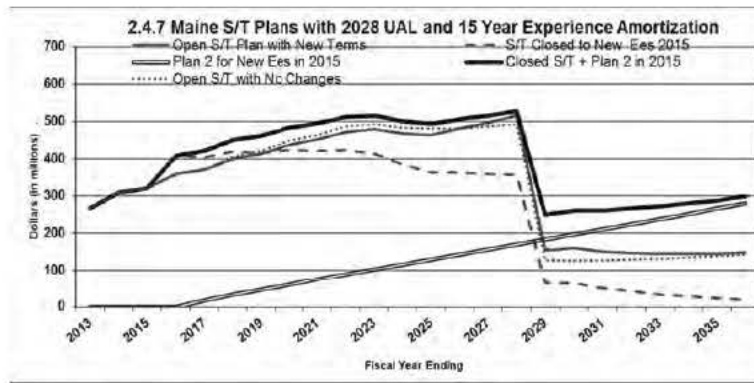
**Chart 2.4.6 – Maine S/T Plans – 15 year UAL Extension Scenario**



**S/T Plans 1995 UAL to 2043 Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change     | Closed           | Plan 2           | Both              |
|--------------|------------------|-------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8           | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4             | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3             | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 231.3             | 293.4            | 0.0              | 293.4             |
| 2017         | 371.2            | 239.4             | 288.7            | 16.7             | 305.4             |
| 2018         | 406.4            | 270.0             | 309.6            | 31.8             | 341.4             |
| 2019         | 420.7            | 279.5             | 306.1            | 46.3             | 352.4             |
| 2020         | 448.0            | 301.9             | 317.2            | 60.6             | 377.8             |
| 2021         | 463.7            | 312.4             | 314.1            | 74.5             | 388.6             |
| 2022         | 486.5            | 330.0             | 318.8            | 88.4             | 407.2             |
| 2023         | 493.4            | 341.5             | 316.1            | 102.1            | 418.2             |
| 2024         | 484.1            | 356.9             | 317.4            | 115.9            | 433.3             |
| 2025         | 480.4            | 369.4             | 314.9            | 129.5            | 444.4             |
| 2026         | 481.0            | 366.1             | 299.6            | 143.2            | 442.8             |
| 2027         | 486.1            | 367.2             | 287.5            | 156.8            | 444.3             |
| 2028         | 493.4            | 370.3             | 277.4            | 170.3            | 447.7             |
| 2029         | 126.6            | 377.1             | 270.3            | 183.8            | 454.1             |
| 2030         | 125.8            | 385.1             | 264.1            | 197.3            | 461.4             |
| 2031         | 127.0            | 395.4             | 259.8            | 210.9            | 470.7             |
| 2032         | 128.8            | 406.6             | 256.1            | 224.5            | 480.6             |
| 2033         | 131.7            | 419.2             | 253.3            | 238.2            | 491.5             |
| 2034         | 134.9            | 432.5             | 250.9            | 252.0            | 502.9             |
| 2035         | 138.8            | 446.8             | 249.2            | 265.8            | 515.0             |
| 2036         | 143.0            | 461.7             | 247.6            | 279.8            | 527.4             |
| 2037         | 147.6            | 477.4             | 246.4            | 294.0            | 540.4             |
| 2038         | 152.4            | 493.8             | 245.3            | 308.3            | 553.6             |
| 2039         | 157.5            | 510.8             | 244.5            | 322.8            | 567.3             |
| 2040         | 162.8            | 528.6             | 243.9            | 337.5            | 581.4             |
| 2041         | 168.4            | 546.9             | 243.4            | 352.5            | 595.9             |
| 2042         | 174.2            | 566.0             | 243.1            | 367.6            | 610.7             |
| 2043         | 180.2            | 585.7             | 242.9            | 383.0            | 625.9             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$12,066.0</b> | <b>\$8,618.1</b> | <b>\$5,354.2</b> | <b>\$13,972.3</b> |

**Chart 2.4.7 – Maine S/T Plans – 2028 with 15 year experience amortization**

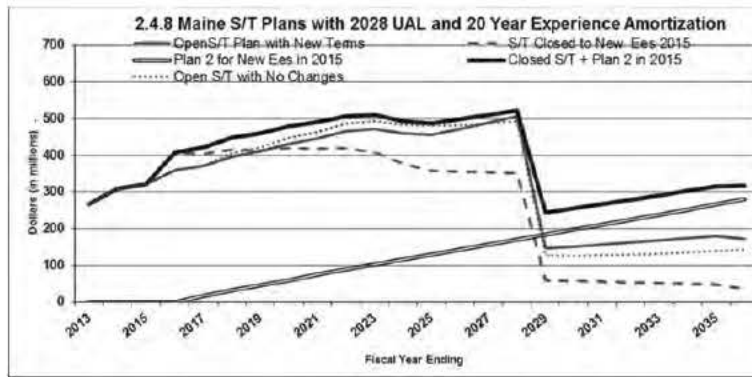


**S/T Plans 2028 UAL and 15 Yr Exp Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change    | Closed           | Plan 2           | Both              |
|--------------|------------------|------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8          | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4            | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3            | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 358.6            | 407.9            | 0.0              | 407.9             |
| 2017         | 371.2            | 371.2            | 403.7            | 16.7             | 420.4             |
| 2018         | 406.4            | 400.0            | 419.2            | 31.8             | 451.0             |
| 2019         | 420.7            | 414.0            | 416.1            | 46.3             | 462.4             |
| 2020         | 448.0            | 436.7            | 423.5            | 60.6             | 484.1             |
| 2021         | 463.7            | 452.0            | 421.0            | 74.5             | 495.5             |
| 2022         | 486.5            | 472.1            | 423.9            | 88.4             | 512.3             |
| 2023         | 493.4            | 478.4            | 413.0            | 102.1            | 515.1             |
| 2024         | 484.1            | 467.4            | 383.7            | 115.9            | 499.6             |
| 2025         | 480.4            | 463.1            | 364.0            | 129.5            | 493.5             |
| 2026         | 481.0            | 480.4            | 362.6            | 143.2            | 505.8             |
| 2027         | 486.1            | 497.2            | 360.0            | 156.8            | 516.8             |
| 2028         | 493.4            | 515.2            | 358.2            | 170.3            | 528.5             |
| 2029         | 126.6            | 155.3            | 66.2             | 183.8            | 250.0             |
| 2030         | 125.8            | 161.1            | 64.4             | 197.3            | 261.7             |
| 2031         | 127.0            | 151.3            | 50.7             | 210.9            | 261.6             |
| 2032         | 128.8            | 147.2            | 41.6             | 224.5            | 266.1             |
| 2033         | 131.7            | 144.1            | 33.3             | 238.2            | 271.5             |
| 2034         | 134.9            | 144.3            | 27.8             | 252.0            | 279.8             |
| 2035         | 138.8            | 145.2            | 22.8             | 265.8            | 288.6             |
| 2036         | 143.0            | 147.8            | 19.4             | 279.8            | 299.2             |
| 2037         | 147.6            | 150.8            | 16.2             | 294.0            | 310.2             |
| 2038         | 152.4            | 154.8            | 13.8             | 308.3            | 322.1             |
| 2039         | 157.5            | 159.1            | 11.7             | 322.8            | 334.5             |
| 2040         | 162.8            | 164.1            | 10.0             | 337.5            | 347.5             |
| 2041         | 168.4            | 169.2            | 8.5              | 352.5            | 361.0             |
| 2042         | 174.2            | 174.8            | 7.2              | 367.6            | 374.8             |
| 2043         | 180.2            | 180.7            | 6.1              | 383.0            | 389.1             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$9,052.6</b> | <b>\$6,453.0</b> | <b>\$5,354.2</b> | <b>\$11,807.2</b> |



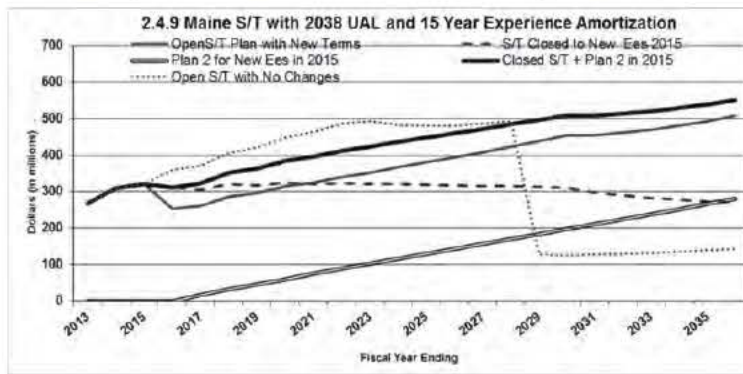
**Chart 2.4.8 – Maine S/T Plans – 2028 with 20 year experience amortization**



**S/T Plans 2028 UAL and 20 Yr Exp Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change    | Closed           | Plan 2           | Both              |
|--------------|------------------|------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8          | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4            | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3            | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 358.6            | 407.9            | 0.0              | 407.9             |
| 2017         | 371.2            | 371.2            | 403.7            | 16.7             | 420.4             |
| 2018         | 406.4            | 396.9            | 416.4            | 31.8             | 448.2             |
| 2019         | 420.7            | 410.8            | 413.4            | 46.3             | 459.7             |
| 2020         | 448.0            | 431.5            | 419.0            | 60.6             | 479.6             |
| 2021         | 463.7            | 446.6            | 416.5            | 74.5             | 491.0             |
| 2022         | 486.5            | 465.5            | 418.5            | 88.4             | 506.9             |
| 2023         | 493.4            | 471.7            | 407.5            | 102.1            | 509.6             |
| 2024         | 484.1            | 459.8            | 377.7            | 115.9            | 493.6             |
| 2025         | 480.4            | 455.3            | 358.0            | 129.5            | 487.5             |
| 2026         | 481.0            | 472.1            | 356.4            | 143.2            | 499.6             |
| 2027         | 486.1            | 488.6            | 353.8            | 156.8            | 510.6             |
| 2028         | 493.4            | 506.2            | 351.9            | 170.3            | 522.2             |
| 2029         | 126.6            | 146.0            | 59.9             | 183.8            | 243.7             |
| 2030         | 125.8            | 151.3            | 57.9             | 197.3            | 255.2             |
| 2031         | 127.0            | 156.6            | 55.8             | 210.9            | 266.7             |
| 2032         | 128.8            | 162.2            | 54.0             | 224.5            | 278.5             |
| 2033         | 131.7            | 167.9            | 52.1             | 238.2            | 290.3             |
| 2034         | 134.9            | 173.8            | 50.4             | 252.0            | 302.4             |
| 2035         | 138.8            | 179.9            | 48.8             | 265.8            | 314.6             |
| 2036         | 143.0            | 171.4            | 37.3             | 279.8            | 317.1             |
| 2037         | 147.6            | 168.4            | 29.6             | 294.0            | 323.6             |
| 2038         | 152.4            | 166.8            | 23.0             | 308.3            | 331.3             |
| 2039         | 157.5            | 168.1            | 18.6             | 322.8            | 341.4             |
| 2040         | 162.8            | 170.2            | 14.7             | 337.5            | 352.2             |
| 2041         | 168.4            | 173.8            | 12.0             | 352.5            | 364.5             |
| 2042         | 174.2            | 178.0            | 9.6              | 367.6            | 377.2             |
| 2043         | 180.2            | 183.0            | 7.9              | 383.0            | 390.9             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$9,148.7</b> | <b>\$6,528.8</b> | <b>\$5,354.2</b> | <b>\$11,883.0</b> |

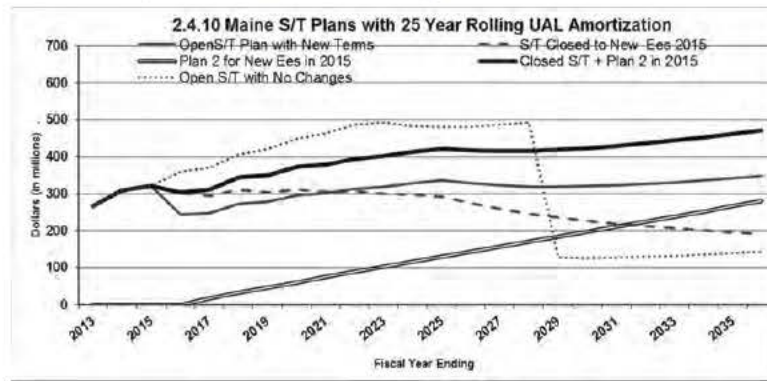
**Chart 2.4.9 – Maine S/T Plans – 2038 with 20 year experience amortization**



**S/T Plans 2038 UAL and 20 Yr Exp Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change     | Closed           | Plan 2           | Both              |
|--------------|------------------|-------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8           | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4             | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3             | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 251.9             | 310.4            | 0.0              | 310.4             |
| 2017         | 371.2            | 260.7             | 305.7            | 16.7             | 322.4             |
| 2018         | 406.4            | 285.6             | 320.7            | 31.8             | 352.5             |
| 2019         | 420.7            | 295.6             | 317.2            | 46.3             | 363.5             |
| 2020         | 448.0            | 314.3             | 324.1            | 60.6             | 384.7             |
| 2021         | 463.7            | 325.3             | 321.1            | 74.5             | 395.6             |
| 2022         | 486.5            | 340.9             | 323.5            | 88.4             | 411.9             |
| 2023         | 493.4            | 352.8             | 320.8            | 102.1            | 422.9             |
| 2024         | 484.1            | 367.3             | 320.9            | 115.9            | 436.8             |
| 2025         | 480.4            | 380.2             | 318.5            | 129.5            | 448.0             |
| 2026         | 481.0            | 394.6             | 317.6            | 143.2            | 460.8             |
| 2027         | 486.1            | 408.4             | 315.4            | 156.8            | 472.2             |
| 2028         | 493.4            | 423.3             | 314.2            | 170.3            | 484.5             |
| 2029         | 126.6            | 438.1             | 312.4            | 183.8            | 496.2             |
| 2030         | 125.8            | 453.7             | 311.0            | 197.3            | 508.3             |
| 2031         | 127.0            | 454.2             | 297.9            | 210.9            | 508.8             |
| 2032         | 128.8            | 460.6             | 289.4            | 224.5            | 513.9             |
| 2033         | 131.7            | 468.6             | 281.7            | 238.2            | 519.9             |
| 2034         | 134.9            | 480.1             | 276.9            | 252.0            | 528.9             |
| 2035         | 138.8            | 492.7             | 272.6            | 265.8            | 538.4             |
| 2036         | 143.0            | 507.5             | 269.8            | 279.8            | 549.6             |
| 2037         | 147.6            | 523.1             | 267.3            | 294.0            | 561.3             |
| 2038         | 152.4            | 540.2             | 265.7            | 308.3            | 574.0             |
| 2039         | 157.5            | 159.1             | 11.7             | 322.8            | 334.5             |
| 2040         | 162.8            | 164.1             | 10.0             | 337.5            | 347.5             |
| 2041         | 168.4            | 169.2             | 8.5              | 352.5            | 361.0             |
| 2042         | 174.2            | 174.8             | 7.2              | 367.6            | 374.8             |
| 2043         | 180.2            | 180.7             | 6.1              | 383.0            | 389.1             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$10,964.1</b> | <b>\$7,914.8</b> | <b>\$5,354.2</b> | <b>\$13,269.0</b> |

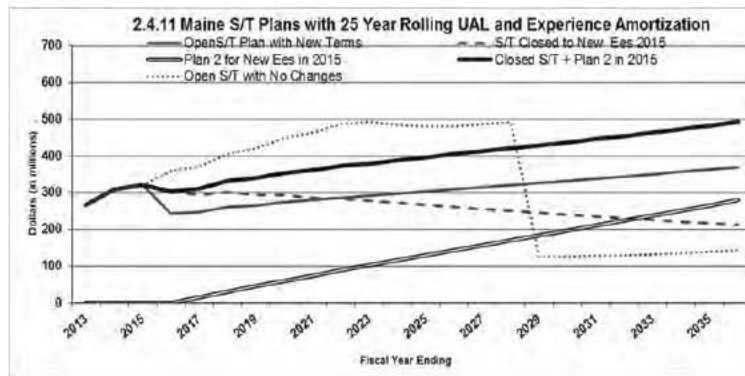
**Chart 2.4.10 – Maine S/T Plans – Rolling 25 for 1995 UAL**



**S/T Plans Rolling 25 for 1995 UAL Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change     | Closed           | Plan 2           | Both              |
|--------------|------------------|-------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8           | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4             | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3             | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 242.6             | 302.6            | 0.0              | 302.6             |
| 2017         | 371.2            | 246.6             | 294.2            | 16.7             | 310.9             |
| 2018         | 406.4            | 273.0             | 311.6            | 31.8             | 343.4             |
| 2019         | 420.7            | 278.0             | 304.5            | 46.3             | 350.8             |
| 2020         | 448.0            | 295.7             | 312.1            | 60.6             | 372.7             |
| 2021         | 463.7            | 301.4             | 305.5            | 74.5             | 380.0             |
| 2022         | 486.5            | 313.9             | 306.8            | 88.4             | 395.2             |
| 2023         | 493.4            | 320.2             | 300.7            | 102.1            | 402.8             |
| 2024         | 484.1            | 330.0             | 298.6            | 115.9            | 414.5             |
| 2025         | 480.4            | 336.7             | 292.8            | 129.5            | 422.3             |
| 2026         | 481.0            | 327.5             | 274.3            | 143.2            | 417.5             |
| 2027         | 486.1            | 322.3             | 258.9            | 156.8            | 415.7             |
| 2028         | 493.4            | 318.9             | 245.5            | 170.3            | 415.8             |
| 2029         | 126.6            | 318.9             | 235.2            | 183.8            | 419.0             |
| 2030         | 125.8            | 319.9             | 225.9            | 197.3            | 423.2             |
| 2031         | 127.0            | 322.8             | 218.4            | 210.9            | 429.3             |
| 2032         | 128.8            | 326.3             | 211.5            | 224.5            | 436.0             |
| 2033         | 131.7            | 330.9             | 205.6            | 238.2            | 443.8             |
| 2034         | 134.9            | 335.9             | 200.2            | 252.0            | 452.2             |
| 2035         | 138.8            | 341.6             | 195.3            | 265.8            | 461.1             |
| 2036         | 143.0            | 347.6             | 190.7            | 279.8            | 470.5             |
| 2037         | 147.6            | 353.9             | 186.5            | 294.0            | 480.5             |
| 2038         | 152.4            | 360.6             | 182.4            | 308.3            | 490.7             |
| 2039         | 157.5            | 367.5             | 178.7            | 322.8            | 501.5             |
| 2040         | 162.8            | 374.7             | 175.1            | 337.5            | 512.6             |
| 2041         | 168.4            | 382.2             | 171.6            | 352.5            | 524.1             |
| 2042         | 174.2            | 389.9             | 168.3            | 367.6            | 535.9             |
| 2043         | 180.2            | 397.8             | 165.2            | 383.0            | 548.2             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$10,073.8</b> | <b>\$7,615.2</b> | <b>\$5,354.2</b> | <b>\$12,969.4</b> |

**Chart 2.4.11 – Maine S/T Plans – Rolling 25 for all including experience**



**S/T Plans Rolling 25 Projected Cost (in millions)**

| FYE          | Open No Change   | Open w/Change     | Closed           | Plan 2           | Both              |
|--------------|------------------|-------------------|------------------|------------------|-------------------|
| 2013         | \$266.8          | \$266.8           | \$266.8          | \$0.0            | \$266.8           |
| 2014         | 309.4            | 309.4             | 309.4            | 0.0              | 309.4             |
| 2015         | 320.3            | 320.3             | 320.3            | 0.0              | 320.3             |
| 2016         | 358.6            | 242.6             | 302.6            | 0.0              | 302.6             |
| 2017         | 371.2            | 246.6             | 294.2            | 16.7             | 310.9             |
| 2018         | 406.4            | 261.2             | 301.0            | 31.8             | 332.8             |
| 2019         | 420.7            | 265.5             | 293.7            | 46.3             | 340.0             |
| 2020         | 448.0            | 275.0             | 293.9            | 60.6             | 354.5             |
| 2021         | 463.7            | 279.6             | 287.1            | 74.5             | 361.6             |
| 2022         | 486.5            | 286.9             | 284.1            | 88.4             | 372.5             |
| 2023         | 493.4            | 291.7             | 277.6            | 102.1            | 379.7             |
| 2024         | 484.1            | 298.0             | 273.1            | 115.9            | 389.0             |
| 2025         | 480.4            | 303.1             | 266.9            | 129.5            | 396.4             |
| 2026         | 481.0            | 309.0             | 261.9            | 143.2            | 405.1             |
| 2027         | 486.1            | 314.4             | 256.1            | 156.8            | 412.9             |
| 2028         | 493.4            | 320.2             | 250.9            | 170.3            | 421.2             |
| 2029         | 126.6            | 325.9             | 245.4            | 183.8            | 429.2             |
| 2030         | 125.8            | 331.8             | 240.4            | 197.3            | 437.7             |
| 2031         | 127.0            | 337.8             | 235.2            | 210.9            | 446.1             |
| 2032         | 128.8            | 344.0             | 230.4            | 224.5            | 454.9             |
| 2033         | 131.7            | 350.3             | 225.6            | 238.2            | 463.8             |
| 2034         | 134.9            | 356.8             | 221.0            | 252.0            | 473.0             |
| 2035         | 138.8            | 363.4             | 216.5            | 265.8            | 482.3             |
| 2036         | 143.0            | 370.2             | 212.2            | 279.8            | 492.0             |
| 2037         | 147.6            | 377.2             | 208.0            | 294.0            | 502.0             |
| 2038         | 152.4            | 384.4             | 203.9            | 308.3            | 512.2             |
| 2039         | 157.5            | 391.7             | 200.0            | 322.8            | 522.8             |
| 2040         | 162.8            | 399.3             | 196.2            | 337.5            | 533.7             |
| 2041         | 168.4            | 407.1             | 192.5            | 352.5            | 545.0             |
| 2042         | 174.2            | 415.1             | 189.0            | 367.6            | 556.6             |
| 2043         | 180.2            | 423.3             | 185.6            | 383.0            | 568.6             |
| <b>Total</b> | <b>\$8,969.7</b> | <b>\$10,168.6</b> | <b>\$7,741.5</b> | <b>\$5,354.2</b> | <b>\$13,095.7</b> |



## SUMMARY OF NEW PLAN PROVISIONS

Membership All state employees and teachers hired on or after July 1, 2015.

### DEFINED BENEFIT COMPONENT

Contribution Employee = approximately 4.65%.

Employer = approximately 1%.

Normal Retirement Age Member's Social Security unreduced retirement age less 2 years (not less than 65).

Normal Retirement Service Requirement 12 quarters of Social Security coverage.

Normal Retirement Benefit Greater of Aggregate Floor Benefit or Adjustable Benefit:

- Annual Floor Benefit = 1% of base salary for the year.
- Aggregate Floor Benefit = sum of annual Floor Benefits for each year.
- Adjustable Benefit = number of member's units x unit value (at time of benefit commencement). The number of units credited to the member each year is based on salary. The value of each unit can vary based on plan earnings.

Early Retirement Age 5 years prior to Normal Retirement Age.

Early Retirement Service Requirement 20 quarters of Social Security coverage.

Early Retirement Benefit Same as Normal Retirement Benefit, but reduced actuarially for commencement before Normal Retirement Date.

Late Retirement Age Any time post Normal Retirement Age.

Late Retirement Service Requirement 12 quarters of Social Security.

**January 15, 2013**

## SUMMARY OF NEW PLAN PROVISIONS

### Late Retirement Benefit

Same as Normal Retirement Benefit, but based on greater of aggregate Floor Benefit or Adjustable Benefit as of actual retirement date.

### Deferred Retirement Benefit

Payable if member terminates prior to Early Retirement Date with 20 quarters of Social Security coverage. Payable at Normal Retirement Age or reduced at Early Retirement Age. **Note:** Can elect to withdraw employee contributions at termination and forfeit any additional benefit.

### Forms of Benefit Payment

- Life of member only (normal form).
- Joint and 50% survivor lifetime payment.
- Joint and 100% survivor lifetime payment.

Member can "purchase" 1%, 2%, or 3% COLA under any one of these benefit forms. **Note:** all optional forms will be reduced to be actuarially equivalent to normal form.

### Active Employee Death Benefits

Pre Normal Retirement Date

Return of employee contributions.

Post Normal Retirement Date

Greater of 50% Survivor Annuity to spouse or a refund of member contributions.

### Disability

Must have 20 quarters of coverage and Social Security disability award. Then eligible for monthly benefit calculated as Normal Retirement Benefit, but actuarially reduced for payment earlier than Normal Retirement Age.

### Reemployment

Pre Normal Retirement Date

Current 30-day rule applies, benefit suspended if reemployed for more than 90 days, employee and employer must begin making contributions. When re-retire, have benefit equal to benefit at first retirement **plus** new benefit based solely on benefit (if any) earned during reemployment.

**SUMMARY OF NEW PLAN PROVISIONS**

|                             |   |
|-----------------------------|---|
| Post Normal Retirement Date | Retiree cannot return to work prior to date of retirement, no suspension of benefits, no new employer or employee contributions, and no new benefit accruals. |
|-----------------------------|---|

**SOCIAL SECURITY COMPONENT**

|                                      |   |
|--------------------------------------|---|
| <u>Contributions</u>                 | Employee and employer would pay FICA taxes.   |
| <u>Benefits</u>                      | According to Social Security laws, retirement ages all as set by Social Security law. |
| <u>Death and Disability Benefits</u> |   |
| Benefits                             | According to Social Security law.   |

**DEFINED CONTRIBUTION COMPONENT**

|                      |   |
|----------------------|---|
| <u>Contributions</u> | Employer (to 401(a)) = 1%.<br><br>Employee (to 457) = as employee elects, subject to IRS limits.                      |
| <u>Vesting</u>       | 100% full and immediate vesting.  |
| <u>Benefits</u>      | Based on account balance. Will have annuity purchase available to create lifetime payment stream if member so elects. |





**MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**ADJUSTABLE PENSION PLAN**

Established \_\_\_\_\_, 2013

**TABLE OF CONTENTS**

|  | <u>Page</u> |
|--|-------------|
| ARTICLE I. PURPOSE OF PLAN .....   | 1           |
| ARTICLE II. DEFINITIONS .....  | 1           |
| Section 2.01. "Active Member" .....  | 1           |
| Section 2.02. "Actuarial Equivalent" or "Actuarial Equivalence" .....                        | 1           |
| Section 2.03. "Actuarial Present Value" .....  | 1           |
| Section 2.04. "Actuary" .....  | 2           |
| Section 2.05. "Adjustable Benefit" .....   | 2           |
| Section 2.06. "Alternate Payee" .....  | 2           |
| Section 2.07. "Applicable Form" .....  | 2           |
| Section 2.08. "Base Salary" .....  | 2           |
| Section 2.09. "Beneficiary" .....  | 3           |
| Section 2.10. "Benefit" .....  | 4           |
| Section 2.11. "Board" .....  | 4           |
| Section 2.12. "Code" .....   | 4           |
| Section 2.13. "Code Section 415(d) Cost of Living Adjustment" .....                          | 4           |
| Section 2.14. "Disability" or "Disabled" .....   | 4           |
| Section 2.15. "Disability Retirement" and "Disability Retirement Benefit" .....              | 5           |
| Section 2.16. "Disability Retirement Date" .....   | 5           |
| Section 2.17. "Disabilitant," "Disability Benefit Recipient" or "Disability Recipient" ..... | 5           |
| Section 2.18. "Domestic Relations Order" .....   | 5           |
| Section 2.19. "Early Retirement Age" .....   | 5           |
| Section 2.20. "Early Retirement Benefit" .....   | 5           |
| Section 2.21. "Early Retirement Date" .....  | 6           |
| Section 2.22. "Effective Date" .....   | 6           |
| Section 2.23. "Eligible Employee" .....  | 6           |
| Section 2.24. "Employee" .....   | 6           |
| Section 2.25. "Employer" .....   | 6           |
| Section 2.26. "Executive Director" .....   | 7           |
| Section 2.27. "Floor Benefit" .....  | 7           |
| Section 2.28. "FMLA" .....   | 7           |
| Section 2.29. "Inactive Member" .....  | 7           |
| Section 2.30. "Internal Revenue Code" .....  | 7           |
| Section 2.31. "Late Retirement Benefit" .....  | 7           |
| Section 2.32. "Late Retirement Date" .....   | 7           |
| Section 2.33. "Market Value" .....   | 7           |
| Section 2.34. "Member" .....   | 7           |
| Section 2.35. "Military Service" .....   | 8           |
| Section 2.36. "Normal Retirement Age" .....  | 8           |
| Section 2.37. "Normal Retirement Benefit" .....  | 8           |
| Section 2.38. "Normal Retirement Date" .....   | 8           |

|                      |  |    |
|----------------------|--|----|
| <b>Section 2.39.</b> | "Pick-Up Contributions" .....  | 8  |
| <b>Section 2.40.</b> | "Plan Year" .....  | 8  |
| <b>Section 2.41.</b> | "Public School" .....  | 8  |
| <b>Section 2.42.</b> | "Qualified Domestic Relations Order" .....   | 9  |
| <b>Section 2.43.</b> | "Quarters of Coverage" .....   | 9  |
| <b>Section 2.44.</b> | "Retiree" .....  | 10 |
| <b>Section 2.45.</b> | "Retirement" .....   | 10 |
| <b>Section 2.46.</b> | "Retirement Allowance" or "Retirement Benefit" .....   | 10 |
| <b>Section 2.47.</b> | "Retirement Date" .....  | 10 |
| <b>Section 2.48.</b> | "Retirement System" .....  | 10 |
| <b>Section 2.49.</b> | "Spouse" .....   | 10 |
| <b>Section 2.50.</b> | "State Employee" .....   | 10 |
| <b>Section 2.51.</b> | "Surviving Spouse" .....   | 11 |
| <b>Section 2.52.</b> | "Teacher" .....  | 11 |
| <b>Section 2.51.</b> | "Termination," "Terminate Employment," "Termination of<br>Employment," or "Terminated" ..... | 12 |
| <b>Section 2.53.</b> | "26 CFR Part 31" .....   | 12 |
| <b>Section 2.54.</b> | "Unit," "Units," and "Unit Value" .....  | 12 |
| <b>Section 2.55.</b> | "Vested" .....   | 13 |
| <b>ARTICLE III.</b>  | <b>MEMBERSHIP</b> .....  | 13 |
| <b>Section 3.01.</b> | Membership .....   | 13 |
| <b>Section 3.02.</b> | Continued Membership .....   | 13 |
| <b>ARTICLE IV.</b>   | <b>CONTRIBUTIONS</b> .....   | 13 |
| <b>Section 4.01.</b> | Employer Contributions .....   | 13 |
| <b>Section 4.02.</b> | Mandatory Member Contributions .....   | 14 |
| <b>Section 4.03.</b> | Continued Contributions During Leave of Absence .....  | 14 |
| <b>Section 4.04.</b> | Back Contributions for Leaves of Absence .....   | 14 |
| <b>ARTICLE V.</b>    | <b>QUARTERS OF COVERAGE AND LEAVES</b> .....   | 14 |
| <b>Section 5.01.</b> | Quarters of Coverage .....   | 14 |
| <b>Section 5.02.</b> | USERRA Military Quarters of Coverage .....   | 15 |
| <b>Section 5.03.</b> | Member Leaves of Absence .....   | 15 |
| <b>ARTICLE VI.</b>   | <b>BENEFITS</b> .....  | 16 |
| <b>Section 6.01.</b> | Normal Retirement Benefit .....  | 16 |
| <b>Section 6.02.</b> | "Units" .....  | 17 |
| <b>Section 6.03.</b> | "Return on Plan Assets" .....  | 18 |
| <b>Section 6.04.</b> | Early Retirement Benefit .....   | 19 |
| <b>Section 6.05.</b> | Late Retirement Benefit .....  | 20 |
| <b>Section 6.06.</b> | Disability Benefit .....   | 20 |
| <b>Section 6.07.</b> | Return to Employment Before Normal Retirement Date .....                                     | 23 |

|                       |   |           |
|-----------------------|---|-----------|
| <b>Section 6.08.</b>  | Return to Employment On and After Normal Retirement Date.....                       | 24        |
| <b>Section 6.09.</b>  | 30-Day Rule – Suspension of Benefits .....  | 24        |
| <b>Section 6.10.</b>  | Recovery from Disability. ....  | 25        |
| <b>ARTICLE VII.</b>   | <b>TERMINATION BEFORE RETIREMENT; VESTING .....</b>                                 | <b>26</b> |
| <b>Section 7.01.</b>  | Vesting Requirement for Deferred Retirement Benefit .....                           | 26        |
| <b>Section 7.02.</b>  | Vesting at Normal Retirement Age .....  | 26        |
| <b>Section 7.03.</b>  | Withdrawal of Member Contributions. ....  | 26        |
| <b>Section 7.04.</b>  | Forfeitures .....   | 27        |
| <b>ARTICLE VIII.</b>  | <b>FORMS OF RETIREMENT INCOME .....</b>   | <b>27</b> |
| <b>Section 8.01.</b>  | Standard Benefit Payment Form; Other Payment Options .....                          | 27        |
| <b>Section 8.02.</b>  | Description of Benefit Forms. ....  | 28        |
| <b>Section 8.03.</b>  | Cancellation of Election .....  | 30        |
| <b>Section 8.04.</b>  | Rules for Small Benefits. ....  | 30        |
| <b>Section 8.05.</b>  | Compliance with Internal Revenue Section 401(a)(9).....                             | 30        |
| <b>ARTICLE IX.</b>    | <b>DEATH BENEFITS.....</b>  | <b>31</b> |
| <b>Section 9.01.</b>  | Death in Service Pre-Commencement of Retirement Benefit –<br>Vested Member .....    | 31        |
| <b>Section 9.02.</b>  | Death in Service Pre-Commencement of Retirement Benefit-Non-<br>vested Member ..... | 31        |
| <b>Section 9.03.</b>  | Death Post-Commencement of Retirement Benefit .....                                 | 32        |
| <b>ARTICLE X.</b>     | <b>LIMITATIONS ON BENEFITS.....</b>   | <b>32</b> |
| <b>Section 10.01.</b> | Effective Date.....   | 32        |
| <b>Section 10.02.</b> | Limitation on Annual Benefit. ....  | 32        |
| <b>Section 10.03.</b> | Limitation on Annual Additions. ....  | 37        |
| <b>Section 10.04.</b> | Interpretation of this Article.....   | 40        |
| <b>ARTICLE XI.</b>    | <b>UNIFORMED SERVICES EMPLOYMENT AND<br/>REEMPLOYMENT ACT ("USERRA") .....</b>      | <b>40</b> |
| <b>ARTICLE XII.</b>   | <b>DISTRIBUTION AND ROLLOVER RULES .....</b>  | <b>41</b> |
| <b>Section 12.01.</b> | Distribution Rules Imposed by Federal Law.....                                      | 41        |
| <b>Section 12.02.</b> | Rollover of Distributions.....  | 44        |
| <b>Section 12.03.</b> | Acceptance of Eligible Rollover Distributions .....                                 | 45        |
| <b>ARTICLE XIII.</b>  | <b>CLAIMS AND LITIGATION .....</b>  | <b>45</b> |
| <b>Section 13.01.</b> | Disputes .....  | 45        |

|                       |  |    |
|-----------------------|--|----|
| ARTICLE XIV.          | AMENDMENT AND TERMINATION .....  | 46 |
| ARTICLE XV.           | NON-ALIENATION OF BENEFITS.....  | 46 |
| ARTICLE XVI.          | QUALIFIED DOMESTIC RELATIONS ORDERS [DISCUSS<br>CURRENT QDRO's] .....                | 48 |
| <b>Section 16.01.</b> | Determination by Executive Director .....  | 48 |
| <b>Section 16.02.</b> | No Jurisdiction Over Retirement System.....  | 48 |
| <b>Section 16.03.</b> | Benefits and Withdrawal of Contributions.....  | 49 |
| <b>Section 16.04.</b> | Requirements.....  | 49 |
| <b>Section 16.05.</b> | Additional Criteria.....   | 50 |
| <b>Section 16.06.</b> | Determination.....   | 51 |
| <b>Section 16.07.</b> | Interim Accounting .....   | 52 |
| <b>Section 16.08.</b> | Payment of Segregated Amounts .....  | 52 |
| <b>Section 16.09.</b> | Payments if Determined Not Qualified or if No Determination<br>Within 18 Months..... | 52 |
| <b>Section 16.10.</b> | Determination After 18 Months .....  | 52 |
| <b>Section 16.11.</b> | No Liability .....   | 53 |
| <b>Section 16.12.</b> | Information Provided to Spouse.....  | 53 |
| <b>Section 16.13.</b> | Rules.....   | 53 |
| <b>Section 16.14.</b> | Application .....  | 53 |
| ARTICLE XVII.         | INFORMATION NOT PUBLIC RECORD .....  | 53 |
| <b>Section 17.01.</b> | Medical Information.....   | 53 |
| <b>Section 17.02.</b> | Home Contact Information.....  | 54 |
| ARTICLE XVIII.        | INFORMATION FOR ADMINISTRATIVE OR JUDICIAL<br>PROCEEDINGS .....                      | 60 |
| ARTICLE XIX.          | MISCELLANEOUS.....   | 60 |
| <b>Section 19.01.</b> | Construction. ....   | 60 |
| <b>Section 19.02.</b> | Non-Diversion.....   | 62 |
| <b>Section 19.03.</b> | Legally Incompetent; Power of Attorney .....   | 62 |
| <b>Section 19.04.</b> | Non-Discrimination.....  | 63 |
| <b>Section 19.05.</b> | Limitation of Liability; Legal Actions. ....   | 63 |
| <b>Section 19.06.</b> | Claims.....  | 64 |
| <b>Section 19.07.</b> | Errors in Benefits. ....   | 64 |
| <b>Section 19.08.</b> | Notice .....   | 65 |
| <b>Section 19.09.</b> | Change of Address .....  | 65 |
| <b>Section 19.10.</b> | Right of Recovery .....  | 65 |
| <b>Section 19.11.</b> | Evidence of Action.....  | 66 |
| <b>Section 19.12.</b> | Reliance.....  | 66 |
| <b>Section 19.13.</b> | Entire Plan.....   | 66 |

**ARTICLE I.**

**PURPOSE OF PLAN**

The Maine Adjustable Pension Plan ("APP" or "Plan") is hereby established effective \_\_\_\_\_, \_\_\_\_\_. The Plan is a governmental qualified defined benefit plan under Internal Revenue Code Sections 401(a) and 414(d) and 414(k).

**ARTICLE II.**

**DEFINITIONS**

This Article covers all generally applicable definitions used in this Plan. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows, unless a different meaning is plainly required by the content:

**Section 2.01. "Active Member"** means any person included in the Plan under Article III, who is earning covered service quarters who has not become an Inactive Member.

**Section 2.02. "Actuarial Equivalent" or "Actuarial Equivalence"** means a benefit of equivalent actuarial value determined using an interest rate of 5.5% and the RP 2000 Combined Healthy mortality table with an equal weighting of male and female, unless a different basis for actuarial equivalence is set forth in the specific Plan provision.

**Section 2.03. "Actuarial Present Value"** unless otherwise specific in the Plan, means a benefit determined by using the applicable mortality table, the applicable interest rate as of the look-back month, and the applicable stability period, where:

(a) the applicable mortality table is the mortality table prescribed in the Secretary of the Treasury under Code § 417(e)(3)(B) in effect on the first day of the applicable stability period;

(b) the look-back month is the October immediately preceding the beginning of a calendar year;

(c) the applicable interest rate is the interest rate pursuant to Code § 417(e)(3)(C) for the applicable stability period, determined as of October in the previous calendar year; and

(d) the applicable stability period is the calendar year in which the Annuity Starting Date for the distribution occurs.

**Section 2.04. "Actuary"** means the individual or the organization designated by the Board to be the technical advisor to the Board.

**Section 2.05. "Adjustable Benefit"** means the benefit described in Section 6.01(a)(2).

**Section 2.06. "Alternate Payee"** means a spouse, former spouse, child or other dependent of a Member or Retiree who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the benefits payable by the Retirement System with respect to that Member or Retiree.

**Section 2.07. "Applicable Form"** means the appropriate form or forms as designated and furnished by the Retirement System to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Retirement System may, but is not required to, prescribe an oral, electronic, or telephonic form in lieu of or in addition to a written form in compliance with Treas. Reg. § 1.401(a)-21.

**Section 2.08. "Base Salary"** means for a calendar year, the base salary earned by the Member and paid by the Employer in that calendar year subject to the following inclusions, exclusions and limitations.

- (a) Base salary includes:
- (1) Workers' compensation benefits,
  - (2) Amounts constituting spousal maintenance paid from the Member's salary,



(3) Any money withheld from a Member's salary to be paid by the employer to a third party under a tax sheltered annuity contract (pursuant to Code Section 403(b)) or a deferred compensation plan (pursuant to Code Section 457(b)) for the future benefit of an employee,

(4) Any money withheld from a Member's salary pursuant to the employer's Code Section 125 plan or 132(f)(4) program to be redirected for permissible benefits under such plan, and

(5) Pick-up contributions.

(b) Base salary does not include:

(1) Payment for any unused accumulated or accrued sick leave or payment for any unused vacation leave,

(2) Any other payment that is not compensation for actual services rendered or that is not paid at the time the actual services are rendered, and

(3) Any other payments made to the employee that are not part of Base Salary.

For any calendar year beginning after December 31, 2001, the Base Salary of a Member for any year taken into account under the Plan shall not exceed Two Hundred Thousand Dollars (\$200,000) (as increased by the cost of living adjustment for the year, pursuant to Code Section 401(a)(17)(B)). The cost of living adjustment for a calendar year applies to Base Salary for the determination period that begins within such a calendar year.

**Section 2.09. "Beneficiary"** means a person or persons designated by a Member to receive a benefit from the Plan. In the event no Beneficiary is named or none survive the Member, the Member's estate shall be the beneficiary. Designation of a Beneficiary may be

changed by the Member in writing on the Applicable Form(s) provided for that purpose at any time prior to Retirement. Any new designation, timely filed with the Retirement System, of a Beneficiary invalidates, supersedes, and revokes any prior designation. Only the last such designation, on file with the Retirement System prior to Retirement, shall have effect.

**Section 2.10. "Benefit"** means any payment made, or required to be made, pursuant to the provisions of the Plan to a Member or Member or Disability Recipient or beneficiary under the Plan.

**Section 2.11. "Board"** means the Board of Trustees of the Maine Public Employees Retirement System, established by law and under the provisions of the Plan to administer the Plan.

**Section 2.12. "Code"** means the Internal Revenue Code of 1986, as applicable to governmental plans, as amended from time to time, and the Internal Revenue Code of 1954, as of September 2, 1974, as applicable to governmental plans.

**Section 2.13. "Code Section 415(d) Cost of Living Adjustment"** means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 415(d) for any applicable year.

**Section 2.14. "Disability" or "Disabled"** means a Member who has received a Social Security Disability award, provided that the following conditions are satisfied:

(a) Such disability commenced on a specified date during the period of the Member's employment with the Employer, as evidenced by a SSA disability award submitted with the Member's disability retirement application, reflecting a disability onset date on or before the Member's termination date.

(b) In no event will the disability commencement date be earlier than the latest disability onset date alleged by the Member in his SSA disability application(s).

**Section 2.15. "Disability Retirement" and "Disability Retirement Benefit"** means the Plan benefit paid to a Member in accordance with Section 6.06.

**Section 2.16. "Disability Retirement Date"** means the first day of the calendar month in which a Member becomes entitled to receive a disability insurance benefit under the Federal Social Security Act, as amended. However, in no event will the Disability Retirement Date be earlier than one (1) calendar month following the date of the Member's Termination of Employment as a result of Disability.

**Section 2.17. "Disabilitant," Disability Benefit Recipient" or "Disability Recipient"** means a Member who is receiving disability benefits, but who is not earning Quarters of Coverage under the plan.

**Section 2.18. "Domestic Relations Order"** means a judgment, decree or order, issued by a court of competent jurisdiction, including approval of a property settlement agreement, that:

(a) Relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent, as that term is defined in federal tax law, of an Active or Inactive Member; and

(b) Is made pursuant to a domestic relations law of this State or another state.

**Section 2.19. "Early Retirement Age"** for a Member hereunder shall be the date that is five years prior to the Member's Normal Retirement Age.

**Section 2.20. "Early Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.04.

**Section 2.21. "Early Retirement Date"** for a Member hereunder shall be the first day of the month coinciding with or next following the latest of the Member's attainment of the Early Retirement Age and prior to the Member attaining Normal Retirement Age, completion of five years of Quarters of Coverage (20 Quarters of Coverage), and a complete Termination of Employment. In order to commence benefits following the attainment of Early Retirement Age, the Member must cease working for the Employer and any participating employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the same with the Retirement System.

**Section 2.22. "Effective Date"** means January 1, 2015.

**Section 2.23. "Eligible Employee"** means an Employee eligible to be covered under the Plan.

**Section 2.24. "Employee"** means a state employee, including any person serving during any probationary period required under the Civil Service Law and rules of the Civil Service Appeals Board, or a teacher. However, notwithstanding any other provision of the Plan to the contrary, the term "Employee" does not include: (a) an individual who is a nonresident alien and who receives no earned income (within the meaning of Code Section 911(d)(2)) from their employer which constitutes income from sources within the United States within the meaning of Code Section 861(a)(3); (b) a leased employee; or (c) any person treated in good faith by their employer as an independent contractor, regardless of whether such person is later determined to be an employee for tax purposes.

**Section 2.25. "Employer"** means: the State of Maine or a public school as defined by 5 M. R. S. § 17001(30) participating in the Plan.

**Section 2.26. "Executive Director"** means the executive director of the Maine Public Employees Retirement System.

**Section 2.27. "Floor Benefit"** means the benefit described in Section 6.01(a)(1).

**Section 2.28. "FMLA"** means the Family and Medical Leave Act of 1993, as amended from time to time.

**Section 2.29. "Inactive Member"** means any person who was an Active Member in this Plan, but has separated from Service, become Disabled, Retired, or has died, who has a remaining interest in the Plan.

**Section 2.30. "Internal Revenue Code"** means, the United States Internal Revenue Code of 1986, as amended.

**Section 2.31. "Late Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.05.

**Section 2.32. "Late Retirement Date"** means the first day of the month coinciding with or next following the day the Member qualifies for a Late Retirement Benefit as of which the Member Retires. In order to commence benefits following the attainment of Late Retirement Age, the Member must cease working for the Employer and any participating employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the same with the Retirement System.

**Section 2.33. "Market Value"** means the current or most recently quoted price for a security or aggregation of securities.

**Section 2.34. "Member"** means any person who is an Active or Inactive Member of the Plan.

**Section 2.35. "Military Service"** means service performed while on active duty in the Armed Forces of the United States and for which the Member was granted an honorable discharge.

**Section 2.36. "Normal Retirement Age"** means the age upon which the Member is eligible to commence an unreduced Social Security Benefit, less two years, but in any event not less than age 65.

**Section 2.37. "Normal Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.01.

**Section 2.38. "Normal Retirement Date"** is the first day of the month coinciding with or next following the latest of the Member's attainment of Normal Retirement Age, so long as the Member has 12 Quarters of Coverage, and has Terminated Employment. In order to commence benefits following the attainment of Normal Retirement Age, the Member must cease working for the Employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the form(s) with and in the manner prescribed by the Retirement System.

**Section 2.39. "Pick-Up Contributions"** means Member contributions to the Retirement System which are assumed and paid by the Employer through a reduction of a Member's salary for services rendered, in accordance with Code Section 414(h), in lieu of employee contributions.

**Section 2.40. "Plan Year"** means a year beginning July 1 and ending on June 30, which is also the Plan's fiscal year.

**Section 2.41. "Public School"** means as follows:

(a) "Public School" includes:

(1) Any public school conducted within the State under the authority and supervision of a duly elected board of education, superintending school committee or school directors; and

(2) Any school which received any direct state aid in 1950 and municipal tuition funds amounting to at least the amount of that state aid during 1950.

(b) "Public School" does not include:

(1) Maine Wesleyan Seminary and College, commonly known as Kents Hill School, as of September 23, 1971;

(2) Bridgton Academy, as of September 1, 1979;

(3) Gould Academy, as of September 1, 1979;

(4) North Yarmouth Academy, as of September 1, 1979; and

(5) Public charter schools, as authorized by Title 20-A, chapter 112.

**Section 2.42. "Qualified Domestic Relations Order"** means a domestic relations order that:

(a) Creates or recognizes the right of an Alternate Payee, or assigns to an Alternate Payee the right, to receive all or a portion of the benefits payable with respect to an Active or Inactive Member or Disability Recipient under the Plan;

(b) Directs the Retirement System to disburse benefits to the Alternate Payee; and

(c) Meets the requirements of section 16.04 of Article XVI of the Plan.

**Section 2.43. "Quarters of Coverage"** is the basic measure for determining whether a Member has earned credit under the Plan. One Quarter of Coverage is credited to a Member upon attainment of one Quarter of Coverage under Social Security. No more than four quarters may be earned in one calendar year.

**Section 2.44. "Retiree"** refers to any Member who has Terminated Employment with the Employer and who is receiving a retirement benefit provided under the Plan. Such Retiree is no longer deemed a Member under the Plan.

**Section 2.45. "Retirement"** means the receipt of Plan benefits, other than Disability Benefits, by a Member of the Plan on or after attainment of the Member's Early Retirement Date or Normal Retirement Date following a bona fide termination of employment.

**Section 2.46. "Retirement Allowance" or "Retirement Benefit"** means the retirement payments to which a Member, or Alternate Payee, is or may be entitled to as provided by the provisions of the Plan.

**Section 2.47. "Retirement Date"** means the first day of the month that the Member's Retirement Benefit becomes payable.

**Section 2.48. "Retirement System"** means the Maine Public Employees Retirement System.

**Section 2.49. "Spouse"** means a person who, as of the date of the Member's or Member's death, as applicable, is lawfully joined with the Member or Member or Disability Recipient in a marriage which is recognized under the laws of the State of Maine.

**Section 2.50. "State Employee"** means any regular classified or unclassified officer or employee in a department of the State of Maine; any employee of the Maine Community College System except those who make the election provided under Title 20-A, section 12722; any employee of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf except as provided in Title 20-A, section 7407, subsection 3-A; any employee of the Maine Military Authority; any employee of the Northern New England Passenger Rail Authority; any employee of the Maine Port Authority; any employee of the



Efficiency Maine Trust who on June 30, 2009 is an employee of the Public Utilities Commission energy efficiency or renewable energy programs who elects to remain a state employee; any employee of the Efficiency Maine Trust who accepts employment with the Efficiency Maine Trust prior to July 1, 2010 who was a state employee immediately prior to accepting such employment who elects to remain a state employee; and any employee transferred from the Division of Higher Education Services to the Finance Authority of Maine who elects to be treated as a state employee.

**Section 2.51. "Surviving Spouse"** means the Spouse alive at the time of the death of the Member or Member.

**Section 2.52. "Teacher"** means:

(a) Any employee of a public school who fills any position that the Department of Education requires be filled by a person who holds the appropriate certification or license required for that position and:

(1) Holds appropriate certification from the Department of Education, including an employee whose duties include, in addition to those for which certification is required, either the setup, maintenance or upgrading of a school computer system the use of which is to assist in the introduction of new learning to students or providing school faculty orientation and training related to use of the computer system for educational purposes; or

(2) Holds an appropriate license issued to a professional employee by a licensing agency of the State;

(b) Any employee of a public school who fills any position not included in paragraph (a), the principal function of which is to introduce new learning to students, except that a coach

who is employed by a public school and who is not otherwise covered by the definition of teacher as defined in this subsection or an employee who is employed in adult education as defined in Title 20-A, section 8601-A, subsection 1 and who is not otherwise covered by the definition of teacher defined in this subsection may not be considered a teacher for purposes of the Plan;

**Section 2.51. "Termination," "Terminate Employment," "Termination of Employment," or "Terminated"** means a severance of employment with the Employer, including Retirement, Disability Retirement, resignation or discharge, lapse of recall rights after layoff, death, or vacation of office by an elected or appointed Member. Provided however, that Termination shall not include: (i) absence from active employment which is not treated by the Employer as a Termination of Employment; (ii) absence due to military service to the extent required under USERRA and Code Section 414(u)(8)(A), (iii) absence due to leave which qualifies as family or medical leave under the FMLA, to the extent required under the FMLA. Unless otherwise required by law or unless the terms of the leave otherwise specify, if an Employee on an authorized leave of absence fails to return to active employment upon expiration of the leave of absence, the Employee will be considered Terminated as of the date immediately preceding the approved leave period.

**Section 2.53. "26 CFR Part 31"** means 26 Code of Federal Regulations, Part 31, as amended effective July 1, 1991, or as hereafter amended.

**Section 2.54. "Unit," "Units," and "Unit Value"** all have the meanings as set forth in Section 6.02.

**Section 2.55. "Vested"** means the Member or beneficiary has a non-forfeitable right to a benefit under the Plan. A Member must have a minimum of 20 Quarters of Coverage in order to become Vested under the Plan.

### **ARTICLE III.**

#### **MEMBERSHIP**

**Section 3.01. Membership.** All Employees hired or rehired on or after July 1, 2015, become members of the Plan as a condition of their employment.

**Section 3.02. Continued Membership.** The membership of the following Members is considered to have continued during the period of the employee's service in the Armed Forces of the United States:

A. Any Member entering a class of service in the Armed Forces of the United States, if the Member does not withdraw accumulated contributions; or

B. Any Member who enlists in or is inducted or drafted into the service of the Armed Forces of the United States, if the member does not withdraw accumulated contributions.

### **ARTICLE IV.**

#### **CONTRIBUTIONS**

**Section 4.01. Employer Contributions.** The Employer shall make contributions to fund the Plan. The amount of these contributions shall be based upon the actuarial assumptions adopted by the Board, the benefits provided in the Plan, actuarial valuation results, and such other factors as the Board shall deem appropriate to assure proper funding of the Plan, after taking into account the mandatory Member contributions. Contributions by the Employer shall be applied as necessary to assure the payment of benefits to Members, Retirees, Disability Recipients and Beneficiaries.

**Section 4.02. Mandatory Member Contributions.** Active Members will be required to make contributions to fund the Plan. The amount of these contributions shall be based upon actuarial assumptions adopted by the Board, the benefits provided in the Plan, actuarial valuation results, and such other factors as the Board shall deem appropriate to assure proper funding of the Plan, after taking into account the contributions. The initial amount of Member contributions shall be 4.65% of Base Salary. The Employer shall pick up and pay through salary reduction Member contributions in accordance with Code Section 414(h)(2) as follows:

(1) The contributions designated as Member contributions shall be paid by the Employer by making salary reductions on a pre-tax basis from the Member's Base Salary.

(2) No Member shall be given any option to receive these amounts directly instead of having them paid to the Plan.

**Section 4.03. Continued Contributions During Leave of Absence.** Subject to the applicable limits of Code Section 415, if the terms of an authorized leave of absence permit the Member to continue accumulating benefits during said leave of absence, the Member shall be required to continue making Member contributions in the same amount and at the same rate as immediately prior to the commencement of the leave of absence.

**Section 4.04. Back Contributions for Leaves of Absence.** See Article V.

## **ARTICLE V.**

### **QUARTERS OF COVERAGE AND LEAVES**

**Section 5.01. Quarters of Coverage.** Quarters of Coverage means all quarters earned during periods of employment when the employee was covered by Social Security and the Plan and contributions were made to the Retirement System. No more than four Quarters of Coverage may be earned in one calendar year.

**Section 5.02. USERRA Military Quarters of Coverage.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and Quarters of Coverage with respect to qualified military service shall be provided in accordance with Code Section 414(u). Code Section 414(u) provides that: (i) individuals reemployed under the Uniform Services Employment and Reemployment Rights Act of 1994 ("USERRA") must be treated as not having incurred a break in Service because of qualified military service, (ii) periods of qualified military service must be counted for vesting and benefit accruals (if the Employee makes up the required contribution), (iii) make-up of contributions up to the maximum the individual could have made if continuously employed must be allowed during the period beginning on reemployment and lasting for the lesser of three (3) times the period of qualified military service or five (5) years, (iv) any accrued benefits contingent on make-up of contributions must be made by the Employer, (v) earnings are not required to be credited unless and until after the employee contributes make-up contributions, (vi) allocations of forfeitures to the individual's account are not required during qualified military service, (vii) make-up contributions are based on compensation the individual would have received during the period of qualified military service (if not reasonably certain, compensation for the 12 month period (or, if shorter, the period of employment) immediately preceding qualified military service can be used), and (viii) make-up contributions are subject to the limitations of Code Sections 402(g), 415, and 404(a) for the year to which the contribution relates, not the calendar year in which contribution is made.

**Section 5.03. Member Leaves of Absence.**

(a) USERRA, FMLA Leave. Notwithstanding any provision of this Plan to the contrary, if any period of absence is required to be counted under USERRA, the FMLA or any other applicable federal or state law for the purpose of computing the Quarters of Coverage

earned, and the amount of any benefit payable under the Plan, then said period of absence shall be counted toward Quarters of Coverage in accordance with and subject to the requirements of such law, provided that the required contributions are made to the Retirement System.

(b) Other Leaves of Absence. Unless otherwise required by law or unless the terms of the leave otherwise specify, an authorized leave of absence granted to a Member will be counted for the purpose of computing Quarters of Coverage earned, and benefits payable under the Plan, and for purposes of meeting the Plan's minimum 20 Quarters of Coverage for vesting, provided that the required contributions are made to the Retirement System. However, if the Member does not return to active employment upon expiration of the authorized leave period, then subsection (c) shall apply.

(c) Failure to Return to Service. Unless otherwise required by law or unless the terms of the leave otherwise specify, if a Member does not return to active employment with the Employer upon expiration of a leave of absence, the Member's interest under the Plan, if any, including the Member's Quarters of Coverage for the purpose of computing the amount of any benefit payable under the Plan, and for purposes of meeting the Plan's minimum Quarters of Coverage requirements for vesting, and any minimum Quarters of Coverage requirements for Retirement or death benefit eligibility, will be limited to those Quarters of Coverage accrued as of the date immediately preceding the approved leave period.

## **ARTICLE VI.**

### **BENEFITS**

#### **Section 6.01. Normal Retirement Benefit.**

(a) Each Member who attains his Normal Retirement Age shall be eligible for a monthly benefit hereunder beginning on his Normal Retirement Date or, if later, the date the

Member properly completes the Applicable Form(s). The benefit ends with the payment made in the month of the Member's death. The monthly benefit amount payable in Form A, described in Section 8.02(a), will be the greater of the Floor Benefit or the Adjustable Benefit, as defined below, divided by 12.

(1) A Member's **Floor Benefit** is equal to the sum of the Floor Benefits earned in each calendar year by the Member. The Floor Benefit for a calendar year in which the Member earns a year of service (four Quarters of Coverage) is 1% of the Member's Base Salary earned in that calendar year.

(2) A Member's **Adjustable Benefit** is equal to the number of the Member's Units multiplied by the Unit Value. The Unit Value will be the value as of the end of the calendar year immediately preceding the calendar year in which the Member Terminates Employment.

(b) Retroactive payment of more than 60 days of Normal Retirement Benefits back to the later of the Member's Normal Retirement Date or date of Termination is not permitted.

**Section 6.02. "Units"** means the following:

(a) The Units credited to a Member for each Plan Year are equal to the Floor Benefit earned during the Plan Year divided by the Unit Value. For this purpose, the Unit Value shall be the Unit Value as of the beginning of the Plan Year.

(b) The Unit Value as of the beginning of a Plan Year is equal to the Unit Value as of the end of the immediately preceding Plan Year.

(c) The Unit Value as of the end of a Plan Year is equal to the Unit Value as of the beginning of that Plan Year plus or minus an additional amount equal to the percentage by which the Return On Plan Assets for the Plan Year exceeds or is less than 5% multiplied by the Unit

Value as of the last day of the preceding Plan Year, except that the excess percentage shall not be more than 5%. For example, if the Unit Value as of the beginning of the Plan Year equals \$40 and the return on plan assets is 15%, the Unit Value as of the end of the Plan Year equals \$42 (\$40 times (15% minus 5%, not greater than 5%)). For purposes of this paragraph the Unit Value as of the beginning of the first Plan Year is \$10.

**Section 6.03. "Return on Plan Assets"** means the Investment Return (as defined in this section) divided by the Return Base (as defined in this section) where:

(a) For purposes of subsection (b), "Assets" shall refer to the fair market value of assets in the Plan on the measurement date reduced by the value of retiree liability measured using the yield curve (as published by the Internal Revenue Service for plans that made an election under Code Section 430(h)(2)(D)(ii)) in effect on the measurement date and the Plan's mortality table used to determine Actuarial Equivalence;

(b) The Investment Return is equal to the fair market value of Assets as of the end of the Plan Year less the fair market value of Assets as of the beginning of the Plan Year; less contributions received by the Plan during the Plan Year, plus administrative expenses, plus lump sum distributions made during the Plan Year, and plus the value of monthly annuity benefits for Members who began receiving payments during the Plan Year valued using the assumptions set forth in (a) above at the time payments first began; and

(c) The Return Base is equal to the fair market value of Assets as of the beginning of the Plan Year reduced by adjusted administrative expenses made during each month of the Plan Year, reduced by adjusted lump sums paid during the Plan Year, reduced by adjusted value of monthly annuity benefits for Members who began receiving payments during the Plan Year valued using the assumptions set forth in (a) above at the time disbursements first began during



each month of the Plan Year, and increased by the adjusted contributions received in each month of the Plan Year.

The adjusted disbursements and adjusted contributions for a month are the disbursements or contributions for the month multiplied by a fraction:

(1) The numerator of which is the number of whole months from the end of the month in which the disbursement or contributions was made or received until the end of the Plan Year; and

(2) The denominator of which is 12.

**Section 6.04. Early Retirement Benefit.**

(a) Each Member who attains his Early Retirement Age shall be eligible for a monthly benefit hereunder as of his Early Retirement Date or later, upon properly completing the Applicable Form(s). The Benefit ends with the payment made in the month following the Member's month of death. The monthly benefit amount will be the greater of the Floor Benefit or the Unit Benefit, as defined in Section 6.01, divided by 12, and adjusted actuarially for commencement before the Member's Normal Retirement Date.

(b) A Member who is otherwise eligible for an Early Retirement Benefit may apply for and receive an Early Retirement Benefit while a Disability Benefit determination is pending. Upon a determination that the Member is entitled to receive a Disability Benefit, the Member's Benefit will be changed to a Disability Benefit (if greater), retroactive to the Disability Retirement Date. However, no change in the form of benefit payment or designation of the Beneficiary may be made, and no Beneficiary may be named if one had not been previously named.

(c) Retroactive payment or more than 60 days of Early Retirement Benefits back to the later of the Member's Early Retirement Date or date of Termination is not permitted.

**Section 6.05. Late Retirement Benefit.**

(a) A Member may retire from the active Service of the Employer on the first day of any month after his Normal Retirement Date, in which case the Member shall receive a Late Retirement Benefit. The Late Retirement Benefit shall be calculated in the same manner as the Normal Retirement Benefit, based on the Member's Floor Benefit or Adjustable Benefit as of the Member's actual termination date.

(b) Retroactive payment of more than 60 days of Late Retirement Benefits back to the later of the Member's Late Retirement Date or date of Termination is not permitted.

**Section 6.06. Disability Benefit.**

(a) A Member who becomes Disabled after completion of five (5) or more years of Quarters of Coverage (20 Quarters of Coverage), and prior to attainment of Normal Retirement Age, and is otherwise entitled to receive a Disability Retirement Benefit, shall receive such benefit in accordance with and subject to the requirements of this Section. The Disability Retirement Benefit shall be calculated in the same manner as the Early Retirement Benefit, including any applicable actuarial reductions. Provided the following four requirements are satisfied, Disability Retirement Benefit payments shall be payable as of and may be paid retroactively to the Member's Disability Retirement Date, and shall continue to be payable each month thereafter during the Member's Disability.

(1) Disability Retirement Application Must Be Filed Within 1 Year After Termination. No later than one (1) year after the Member's Termination of Employment due to Disability, the Member must complete and submit a disability retirement

application form to the Retirement System (regardless of whether the Member has yet received an SSA disability award.

(2) Application for Disability Award Must Be Filed Within 1 Year. Within one year after the Member's Termination of employment due to Disability, the Member must file an application for a federal SSA disability award and within said one (1) year period the Member must provide to the Retirement System documentation deemed sufficient to establish that the Member has filed such application. Such documentation may include a copy of such application, a copy of the Disability award or determination received in response to such application, or an affidavit completed by the Member (on the Applicable Form provided for such purpose) in which the Member affirms that he or she has filed such application.

(3) Disability Award Must Be Submitted Within 1 Year of Termination, or if Later, Within 6 Months After Date of Award. Except as otherwise provided below, the Member must submit the SSA disability award, reflecting a Disability onset date on or before the Member's Termination date, to the Retirement System within one (1) year after the Member's Termination of employment due to Disability or within six (6) months after the date of such award or determination, whichever is later.

(4) Special Rule in Case of Disability Award on Subsequent SSA, Disability Application. In the event that a Member complies with the requirements of the Plan concerning filing a retirement application and filing an application for a SSA disability award and the Member's application for a SSA disability award is finally denied, the Member must make a subsequent application for a SSA disability award within six (6) months following such denial. The Member must allege in the subsequent SSA

application a disability onset date that is on or before the Member's Termination date, and where the Member is subsequently granted a SSA disability award, the Member must within six (6) months after the date of such award or determination, or if later, one (1) year after the Member's Termination of employment, submit documentation which the Retirement System deems sufficient to establish that:

(i) Within six (6) months after the SSA's denial of the Member's initial application for a disability award, the Member filed a subsequent application for a SSA disability award in accordance with this Subsection; and

(ii) The Member's SSA disability award reflects a disability onset date on or before the Member's Termination date; or, the Member's SSA disability award reflects a disability onset date that immediately follows the date of denial of the Member's prior SSA disability application (due to application of SSA res judicata rules) but the Member's actual Disability onset date was on or before the Member's Termination date.

(b) If the Member is otherwise eligible to receive a Disability Retirement Benefit and except as otherwise permitted in the Plan with respect to payment of Disability Retirement Benefits retroactive to the Member's Disability Retirement Date, Disability Retirement Benefits shall be payable as of the first day of the month following or coinciding with the date of acceptance of the Member's completed disability retirement application form by the Retirement System, provided such application includes: (1) an SSA disability award reflecting a disability onset date on or before the Member's Termination date; or (2) where the Member has received a SSA disability award in response to a subsequent SSA disability application as provided herein, documentation which the Retirement System deems sufficient to establish that the disability

onset date reflected in the SSA disability award immediately follows the date of denial of the Member's prior SSA disability application (due to application of SSA res judicata rules) and that the Member's actual Disability onset date was on or before the Member's Termination date. In no event shall Disability Retirement Benefits be payable before the Member's Disability Retirement Date.

(c) Under no circumstances shall any Member be entitled at one time to more than one type of retirement benefit granted under the Plan.

(d) No interest shall be paid on any retroactive payment of Disability benefits.

**Section 6.07. Return to Employment Before Normal Retirement Date.**

(a) General Rule. Unless otherwise provided in this Section, if a Retiree returns to Service as an Employee with an Employer at any time before the Retiree's Normal Retirement Age, but after at least 30 days after the Member's Benefit commenced, any monthly benefit shall be suspended as of the date of said return to Service, and the provision of this Section apply.

(b) Re-Computation of Benefit in Case of Suspension. In any case where the payment of a Retiree's benefit shall have been suspended under this Section, the benefit payable on his re-retirement shall be the benefit computed in accordance with this Article at the time of his first retirement, plus any new benefit earned during the period of his re-retirement. In no event shall the resulting benefit be less than the benefit payable at the time of his previous benefit commencement. A Retiree who is reemployed as an Eligible Employee shall not be authorized to change his form of benefit payment on his subsequent re-retirement, or to change his Beneficiary, or to name a Beneficiary if one had not been previously named. For the purposes of this Section, any such Member's benefit earned subsequent to his reemployment by

the Employer as an Eligible Employee shall be calculated from his date of reemployment to the date of his subsequent termination as an Eligible Employee.

(c) Death in Service After Reemployment. If a Retiree returns to Service with an Employer as an Employee and he dies during the period of his reemployment and before re-retirement, then his Beneficiary, if any, shall be entitled to any benefit payable to his Beneficiary under the form of benefit originally selected by the Retiree.

**Section 6.08. Return to Employment On and After Normal Retirement Date.**

(a) General Rule. Unless otherwise provided in this Section, if a Retiree returns to Service as an Employee with an Employer at any time on and after the Retiree's Normal Retirement Age, but after at least 30 days after the Member's Benefit commenced, the Member's benefit shall not be suspended as of the date of said return to Service, and the provisions of this Section apply.

(b) Recompilation. In any case where the Retiree returns under this Section, the retiree will not accrue any new benefits under the Plan, because of the Retiree's in-retirement-pay status.

**Section 6.09. 30-Day Rule – Suspension of Benefits.** If any Retiree returns within the first 30 days after the Member's Benefit commenced, the provisions of this Section apply, rather than the provisions of Section 6.07 or 6.08. In this case, the Retiree's benefit will be immediately suspended as of said return to Service. The benefit payable on the Member's re-retirement shall be computed in accordance with this Article on the basis of his Quarters of Coverage, Floor Benefit, and Adjustable Benefit, at the time of his subsequent re-retirement. The Retiree must reapply for the benefit and complete all Applicable Forms as though he had not previously retired. The Member's benefits shall be recomputed.

**Section 6.10. Recovery from Disability.**

(a) Any Disability Retirement Benefit payable under the Plan to any Disability Recipient shall be suspended as of the first day of the month coinciding with or following the date his Disability ceases. A Disability Recipient's Disability shall be considered to have ceased upon the date as of which the SSA determines that the Recipient is no longer Disabled. The Recipient shall be required to notify the Retirement System within sixty (60) days after the Recipient receives notice that the SSA has determined that the Recipient is no longer Disabled.

(b) Conditioned Receipt of Disability. The Retirement System shall have the right to require the Disability Recipient to prove at any time, as a condition for continued receipt of Disability benefits under the Plan, the continuing receipt of disability insurance benefits under the Federal Social Security Act, as amended.

(c) Suspension of Disability Retirement. In any case where the payment of a Recipient's Disability Benefit is suspended, the period of absence from employment due to such Disability shall be treated as a leave of absence without pay, except that such period of absence shall not be counted as Quarters of Coverage. Any Member who retired or is a Disability Recipient and who dies or who has been or shall be subsequently declared ineligible for a Disability Retirement Benefit because of the cessation of said Disability shall have a right to any benefit afforded under any other provision of this Plan to which he or his Beneficiary might otherwise be entitled. In such case, any Disability Retirement payments made prior to the date as of which his Disability ceases or as of which it is declared to no longer exist shall be retained by the Retiree and disregarded in computing any other benefit payable under the Plan.

**ARTICLE VII.**

**TERMINATION BEFORE RETIREMENT; VESTING**

**Section 7.01. Vesting Requirement for Deferred Retirement Benefit.** A Member whose employment is terminated for any reason other than death, disability or Retirement shall be entitled to a Vested benefit only if the Member has 20 Quarters of Coverage. Payment of such Vested retirement benefit shall commence on the last day of the month in which his Normal Retirement Date occurs, if the Member so elects by properly filing an application for retirement benefits with the Retirement System, and shall be payable on the last day of each month thereafter during his lifetime, unless the Member elects an optional form of benefit payment under Article VIII. The amount of such monthly retirement benefit shall be computed in the manner prescribed for Normal Retirement in Article VI, as applicable.

**Section 7.02. Vesting at Normal Retirement Age.** Notwithstanding any other provision of the Plan to the contrary, if a Member has satisfied the requirements for Normal Retirement Date as of the date of his Termination, the Member shall be Vested in his Normal Retirement Benefit.

**Section 7.03. Withdrawal of Member Contributions.**

(a) If a non-vested Member's employment is terminated for any reason, he may request a withdrawal of his Member Contributions plus interest to the date of distribution at the only year treasury bill rate determine as of the last day of the prior plan year, or the federal reserve H.15 as determined by the Board for the year of the Member's termination. That withdrawal would occur only after the proper completion of the applicable forms by the Member and after receipt by the Retirement System. Upon such withdrawal, no further benefits will be payable from this Plan.



(b) If a Vested Member's Employment is terminated for any reason other than death, Disability or Retirement, he will be entitled to a monthly benefit under Section 6.01, beginning as of his Normal Retirement Age, or a reduced benefit under Section 6.04, beginning as of his Early Retirement Age, as the Member shall properly elect. There is no lump sum withdrawal of Member Contributions permitted in this situation.

**Section 7.04. Forfeitures.** Forfeitures of Employer contributions arising from Termination of Employment, withdrawal or any other reason may not be applied to increase the benefits any individual would otherwise receive under the Plan. However, forfeitures will remain trust assets, and as such, may be used to reduce the Employer's contribution.

## **ARTICLE VIII.**

### **FORMS OF RETIREMENT INCOME**

**Section 8.01. Standard Benefit Payment Form; Other Payment Options.** A Member may elect, or may revoke a previous election and make a new election, at any time prior to his Retirement Date, to have his Retirement benefit payable under the standard benefit payment option or under one of the other benefit payment options set forth in this Article. The standard benefit payment option is a monthly retirement benefit payable to the Retiree during his lifetime only. At the death of the Retiree all payments will cease and no further benefits will be payable to the estate of the Retiree or other persons. The benefit shall be paid in accordance with and subject to the terms of the benefit payment option elected. Election of any form of benefit shall be made by the Member in writing on the Applicable Form, and shall be subject to approval by the Retirement System.

**Section 8.02. Description of Benefit Forms.**

(a) Form A: Standard Benefit – Straight Life Option. The amount of any optional benefit set forth below shall be the Actuarial Equivalent of the amount of the standard benefit that would otherwise be payable to the Retiree under Section \_\_\_\_ (monthly retirement benefit payable to the Retiree during his lifetime only. This standard benefit option will be referred to as "Form A").

(b) Form B: 100% Joint and Survivor Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit provided under this Form B. If the Member elects Form B, he will receive a decreased retirement benefit which shall be payable during his lifetime. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in the same amount as the Retiree. This option will be referred to as Form B.

(c) Form C: 50% Joint and Survivor Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit provided under this Form C. If the Member elects Form C, then he will receive a decreased retirement benefit which shall be payable during his lifetime. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in an amount equal to 50% of the amount paid to the Retiree. This option will be referred to as Form C.

(d) Form A1 to A3: Straight Life Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarial calculated reduction in the retirement

benefit to account for the COLA provided under these Forms A1 to A3. If the member election Form A1 to A3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form A1), 2% (Form A2) or 3% (Form A3) COLA, as selected by the Member at retirement.

(e) Form B1 to B3: 100% Joint and Survivor Option with COLA. A retirement benefit computed and paid in the same manner as Form B above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit and the COLA provided under this Form B1 to B3. If the member elects Form B1 to B3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form B1), 2% (Form B2), or 3% (Form B3) COLA, as selected by the Member at retirement. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in the same amount as paid to the Retiree, with the same COLA percentage as elected by the Retiree at retirement. This option will be referred to as Form B1, B2 and B3 (depending on the COLA amount selected by the Retiree at retirement).

(f) Form C1 to C3: 50% Joint and Survivor Option with COLA. A retirement benefit computed and paid in the same manner as Form C above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit and the COLA provided under this Form C1 to C3. If the member elects Form C1 to C3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form C1), 2% (Form C2) or 3% (Form C3) COLA, as selected by the Member at retirement. If the Retiree's designated Beneficiary should survive the Retiree, a benefit in the amount of 50% of the Member's benefit shall continue to be paid to the Beneficiary after the Retiree's death during the

lifetime of the Beneficiary, with the same COLA percentage as elected by the Retiree at retirement. This option will be referred to as Form C1, C2 and C3 (depending on the COLA amount selected by the Retiree at retirement).

**Section 8.03. Cancellation of Election.** The election by a Member of any option in this Article VIII shall be null and void if either the Member or his designated Beneficiary dies before the Member's Retirement Date.

**Section 8.04. Rules for Small Benefits.**

(a) The Actuarial Present Value of a Vested Plan benefit shall be distributed in a cash single sum payment to the Member, Member, or Beneficiary, as applicable, if the Actuarial Equivalent of the benefit payable to the recipient does not exceed One Thousand Dollars (\$1,000) on the date of distribution. The Actuarial Present Value of said Plan benefit shall be determined in accordance with Section 2.03.

(b) If the Actuarial Present Value of a Plan benefit is between One and Five Thousand Dollars (\$5000) on the date of distribution, the only form of benefit distribution is a single lump sum payment. The Member may elect to have that payment made at any time from their date of termination until their Normal Retirement Age, as properly elected on a form provided by and received by the Retirement System. The Actuarial Present Value of the Plan benefit shall be determined in accordance with Section 2.03.

**Section 8.05. Compliance with Internal Revenue Section 401(a)(9).** All distributions shall be made in compliance with Code Section 401(a)(9).

**ARTICLE IX.**

**DEATH BENEFITS**

**Section 9.01. Death in Service Pre-Commencement of Retirement Benefit – Vested**

**Member.** In the event a Vested Member's employment ceases by reason of his death prior to his Termination, there shall be no benefit payable from the Plan, except for the following:

(1) If the Vested Member is eligible for an Early Retirement Benefit, the Vested Member's spouse, if any, will receive the greater of:

- (i) The Member's contributions pursuant to Section 7.03, or
- (ii) Spouse's 50% benefit, determined as if the Member had commenced a Form C Early Retirement or Normal Retirement benefit depending on which (the Member was eligible for) with his spouse as the designated Beneficiary, on the day before the Member died.

(2) If the Vested Member is not eligible for an Early Retirement Benefit, the Vested Member's Beneficiary will receive the Member's contributions pursuant to Section 7.03.

(3) If the Vested Member is eligible for an Early Retirement Benefit but is not survived by a Spouse, the Vested Member's Beneficiary will receive the Member's contributions pursuant to Section 7.03.

**Section 9.02. Death in Service Pre-Commencement of Retirement Benefit-Non-**

**vested Member.** In the event a Non-vested Member's employment ceases by reason of his death prior to his Termination, there shall be no benefit payable from the Plan, except the Member contributions pursuant to Section 7.03 shall be paid to the Member's Beneficiary.

**Section 9.03. Death Post-Commencement of Retirement Benefit.** In the event a Retiree dies after his Normal Retirement Date, the only benefit payable from the Plan, if any, shall be the survivor benefit, if any, elected under Article VI.

**ARTICLE X.**

**LIMITATIONS ON BENEFITS**

**Section 10.01. Effective Date.** The Plan shall be administered so as to comply with this Article, except as otherwise provided herein.

**Section 10.02. Limitation on Annual Benefit.**

(a) In no event shall the aggregate annual benefit for a calendar year (the "limitation year") provided under this Plan and all other defined benefit plans (without regard to whether the plan has terminated) of the Employer for any Member exceed an amount equal to One Hundred Sixty Thousand Dollars (\$160,000) as adjusted pursuant to Code Section 415(d)(1)(A).

(b) Adjustment for Benefits Commencing Before Age 62.

(1) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2015, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Member's retirement income benefit commencement date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's retirement income benefit commencement date that is the actuarial equivalent of the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the

applicable mortality table for the retirement income benefit commencement date (expressing the Member's age based on completed calendar months as of the retirement income benefit commencement date).

(2) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2015, and the Plan has an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Member's retirement income benefit commencement date is the lesser of the limitation determined under paragraph (1) and the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Member's retirement income benefit commencement date to the annual amount of the immediately commencing straight life annuity under the Plan at age sixty-two (62), both determined without applying the limitations of this Article.

Furthermore, notwithstanding the requirements of this section, the adjustments provided for in this subsection shall not apply (i) in the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, or (ii) in the case of Disability benefits or pre-Retirement death benefits.

(c) Adjustment for Form Subject to Code Section 417(e)(3). For distributions made in any form other than a straight life annuity or a qualified joint and survivor annuity to which

Code Section 417(e)(3) does not apply, such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarial equivalent of such benefit.

(1) The actuarially equivalent straight life annuity is equal to the greater of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) the annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same retirement income benefit commencement date as the Member's form of benefit; and

(B) the annual amount of the straight life annuity commencing at the same retirement income benefit commencement date that has the same actuarial present value as the Member's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85 for years after December 31, 2008).

(d) Adjustment for Form Not Subject to Code Section 417(e)(3). As required by final Treasury Regulations, for distributions made in any form to which Code Section 417(e)(3) applies, such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "least of" when adjusted in accordance with the following assumptions):

(1) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value



as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in Article \_\_\_\_ of the Plan for actuarial experience;

(2) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable, computed using a five and five-tenths percent (5.5%) interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85); or

(3) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable computed using the applicable interest rate for the distribution under Internal Revenue Service guidance, using the rate in effect for the first day of the plan year with a one-year stabilization period and the applicable mortality table for the distribution under Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85), divided by one and five-one-hundredths (1.05).

(e) Limitations on benefits under this Article shall not apply where the total annual benefits payable to a Member under this Plan and all other qualified defined benefit plans (whether or not terminated) of the Employer do not exceed Ten Thousand Dollars (\$10,000) in the aggregate. This minimum limitation is not applicable for a Member whose Employer maintains or has maintained a defined contribution plan in which such Member participated.

(f) The Ten Thousand Dollars (\$10,000) minimum limitation, if provided, must be reduced where a Member has less than ten (10) years of Quarters of Coverage (40 Quarters of Coverage) with the Employer at the time the Member begins to receive retirement benefits under

the Plan, and the maximum dollar limitation must be reduced where a Member has less than ten (10) years of Quarters of Coverage when retirement benefits under the Plan commence. These adjustments are made by multiplying the applicable limitations by the appropriate fraction:

(A) For the Ten Thousand Dollars (\$10,000) minimum limitation – years of Quarters of Coverage with the employer as of and including, the current limitation year divided by ten (10); or

(B) For the maximum dollar limitation – years of participation with the employer as of and including, the current limitation year divided by ten (10).

(g) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:

(A) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any automatic cost of living adjustments under Section \_\_\_\_\_;

(B) to the extent the Member's benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living adjustments under Section \_\_\_\_\_ until such time as the benefit plus the accumulated adjustments under Section \_\_\_\_\_ are less than the Limit;

(C) thereafter, in any subsequent limitation year, a Member's annual benefit, including any automatic cost of living increases under Section \_\_\_\_\_, shall be tested under the then applicable benefit Limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but

(D) in no event shall a Member's benefit payable under the Plan in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding provisions are applied by reducing the Code Section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.

**Section 10.03.      Limitation on Annual Additions.**

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition" for a Member for any calendar year (the "limitation year"), exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost of living under Code Section 415(d); or

(2) One hundred percent (100%) of the "compensation" of such Member received from an Employer during the limitation year.

(b) For purposes of this Section, "compensation" means all of a Member's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Employer at the election of the Employee and which is not

includable in the gross income of the Employee by reason of Code Section 125 or 457, but shall exclude Employee contributions picked up under Code Section 414(h)(2). Compensation shall also include any amount deferred by the Employer at the election of the Employee which is not includable in the gross income of the Employee by reason of Code Section 132(f)(4). The following types of payments, if paid by the later of (i) two and one-half (2½) months following a Member's Termination of Employment, or (ii) the last day of the limitation year that includes the Member's Termination of Employment, will be included as compensation for purposes of this Section: payments that, absent a Termination of Employment, would have been paid to the Member while he or she continued in employment and that are regular compensation for services rendered, and payments of accrued bona fide sick, vacation, or other leave, but only if the Member would have been able to use the leave if employment had continued. Any payments not described in the preceding sentence are not considered compensation if paid after severance from employment, even if they are paid within two and one-half (2½) months following severance from employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service. An Employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the

compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service). A Member's compensation for purposes of this Section shall not exceed the annual limit under Code Section 401(a)(17).

(c) For purposes of this Section, "annual addition" means the sum of the following amounts credited to a Member's accounts for the limitation year under this Plan and any other plan maintained by an Employer: (i) employer contributions; (ii) employee contributions; (iii) forfeitures; and (iv) allocations under a simplified employee pension plan. Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by an Employer are treated as annual additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by an Employer are treated as an annual additions to a defined contribution plan.

(d) If the annual addition for a Member under the Plan would be greater than the annual addition for such Member as limited by subsection (a), then the excess shall be corrected as permitted under the IRS Employee Plans Compliance Resolution System (currently set forth in Revenue Procedure 2008-50).

**Section 10.04.            Interpretation of this Article.**

(a)     The annual additions and annual benefit of a Member shall be adjusted pursuant to this Article so as to produce the maximum annual benefit and maximum annual additions permissible for such Member.

(b)     For purposes of this Section and subject to Code Section 415(h), all defined benefit plans of an Employer, whether or not terminated, are to be treated as a single defined benefit plan, and all defined contribution plans of an Employer are to be treated as a single defined contribution plan.

**ARTICLE XI.**

**UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT**  
**("USERRA")**

(a)     The provisions set forth in this Section are designed to comply with the applicable provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and the Uniformed Services Employment and Reemployment Act ("USERRA") and are effective as indicated herein.

(b)     Effective with respect to death occurring, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Code Section 401(a)(37), survivors of the Member are entitled to any additional benefits that the Plan would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed. In any event, a deceased Member's period of qualified (as in contributions paid?) military service must be counted for vesting purposes.

(c)     To the extent required by Code Sections 3401(h) and 414(u)(2), an individual receiving differential wage payments (while the individual is performing qualified military

service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

## **ARTICLE XII.**

### **DISTRIBUTION AND ROLLOVER RULES**

**Section 12.01.**        **Distribution Rules Imposed by Federal Law.** Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with Code Section 401(a)(9) and the Treasury regulations promulgated thereunder, including the incidental benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules:

(a)     The Plan shall apply a good faith reasonable interpretation of the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Final Regulations under Code Section 401(a)(9).

(b)     A Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's required beginning date. For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Member reaches age seventy and one-half (70½), or (ii) the calendar year in which the Member Retires.

(c)     If the Member dies before distributions begin, the Member's entire Vested interest (if any) will be distributed, or begin to be distributed, no later than as follows:

(1) If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age seventy and one-half (70½), if later.

(2) If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, over the life of the designated beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(4) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the



surviving spouse begin, this subsection (c), other than (c)(1), will apply as if the surviving spouse were the Member.

If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under this subsection (c)), the date distributions are considered to begin is the date distributions actually commence.

(d) The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under subsection (c)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's required beginning date.

(e) Any additional benefits accruing to the Member in a calendar year after the first distribution year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a non-spouse beneficiary, annuity payments to be made on or after the Member's required beginning date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment

for such period that would have been payable to the Member using the applicable table set forth in the Treasury Regulations.

**Section 12.02.**      **Rollover of Distributions.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The following definitions shall apply to this Section:

(a) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includible in gross income; or (iv) any other distributions which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code Section 402(g) or 415.

(b) An "Eligible Retirement Plan" is any one of the following that accepts the Distributee's Eligible Rollover Distribution: (i) an individual retirement account described in Code Section 408(a); (ii) an individual retirement annuity described in Code Section 408(b); (iii) an annuity plan described in Code Section 403(a); (iv) a qualified trust described in Code Section 401(a); (v) an eligible employer described in Code Section 457(e)(1)(A); (vi) an annuity plan described in Code Section 403(b); or (vii) a Roth IRA described in Code Section 408A.

The portion of an Eligible Rollover Distribution that is not includible in gross income may be transferred only to (I) an individual retirement account or individual retirement annuity described in Code Sections 408(a) or 408(b); or (II) a qualified defined contribution plan described in Code Section 401(a), a qualified plan described in Code Section 403(a), a qualified defined benefit plan described in Code Section 401(a), or an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) A "Distributee" includes an employee or former employee. A Distributee also includes the employee's or former employee's surviving spouse. A Distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse beneficiary may only make a direct rollover of the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Section 12.03.** **Acceptance of Eligible Rollover Distributions.** The Plan does not accept rollovers.

### **ARTICLE XIII.**

#### **CLAIMS AND LITIGATION**

**Section 13.01.** **Disputes.** In the event of disagreement between a Member, Member, Disability Recipient or Beneficiary and the Retirement System with respect to any

rights, claims, or responsibilities under the Plan which cannot be resolved by the Retirement System as provided under Article \_\_\_\_, the aggrieved party may make an appeal regarding such rights, claims, or responsibilities to the Board pursuant to 5 M.R.S. § 17451 and Board Rule Ch. 702. In the event that any such rights, claims, or responsibilities result in a suit or other legal action by the aggrieved party, such action shall be defended in the same manner as other suits against the Retirement System.

#### **ARTICLE XIV.**

##### **AMENDMENT AND TERMINATION**

The Legislature shall have the right at any time, and from time to time, to amend, in whole or in part, or terminate, the Plan; provided, however, that no such amendment shall:

- (a) Reduce the previously earned benefits of any Active Member, Inactive Member, Retiree, Disability Recipient or Beneficiary, based on Unit value and Quarters of Coverage at the time of the amendment; or,
- (b) Authorize or permit any part of the Trust Fund held by the Board to be diverted to purposes other than for the exclusive benefit of Members and their Beneficiaries.

The Legislature delegates to the Board the ability to make any amendments required for federal law compliance or administrative reason.

#### **ARTICLE XV.**

##### **NON-ALIENATION OF BENEFITS**

- (a) The right of a Member to a retirement allowance, the retirement allowance itself, the refund of a Member's accumulated contributions, any death benefit, any other right accrued or accruing to any Member under this Part and the money in the various funds created by this Part may not be subject to execution, garnishment, attachment or any other process and shall be unassignable except that:

(1) Retirement allowance available for child support. A Member's retirement allowance is available to satisfy any child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process;

(2) 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 Board Rule Ch. 702.

(3) Qualified domestic relations order. The rights of a Member, Member, beneficiary or other payee under this Part are subject to the rights of or assignment to an

alternate payee under a qualified domestic relations order in accordance with Article \_\_\_\_\_.

(b) None of the benefits, payments, proceeds, or distributions payable under the Plan shall be subject to the claim of any creditor of any Member or to the claim of any creditor of any Beneficiary hereunder, or to any legal process of levy or attachment by any creditor of any such Member or Beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any Member or Beneficiary; and neither shall any such Member or Beneficiary have any right to alienate, commute, anticipate, transfer, encumber, pledge, or assign any of the benefits, payments, proceeds, or distributions under this Plan.

#### **ARTICLE XVI.**

#### **QUALIFIED DOMESTIC RELATIONS ORDERS** **[DISCUSS CURRENT ODRO's]**

**Section 16.01.**      **Determination by Executive Director.** The executive director or the executive director's designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order under this section. A determination by the executive director or the executive director's designee under this section may be appealed to the Board as provided by 5 M.R.S. § 17451 and Board Rule Ch. 702.

**Section 16.02.**      **No Jurisdiction Over Retirement System.** The Retirement System may not be made a party with respect to a divorce or other domestic relations action in which an Alternate Payee's right to receive all or a portion of the benefits payable to a Member or retiree under the Retirement System is created or established. A party to such an action who attempts to make the Retirement System a party to the action contrary to this subsection is liable to the Retirement System for its costs and attorney fees.

**Section 16.03.**      **Benefits and Withdrawal of Contributions.** For the purposes of this section, benefits payable with respect to a Member or Member under any of the programs of the Retirement System include the types of benefits payable by the Retirement System and a withdrawal of contributions from the Retirement System.

**Section 16.04.**      **Requirements.** A domestic relations order is a qualified domestic relations order only if the order:

(a) Clearly specifies the name, social security number and last known mailing address, if any, of the Member or retiree and the name, social security number and mailing address of each alternate payee covered by the order;

(b) Clearly specifies the amount or percentage of the Member's or retiree's benefits to be paid by the Retirement System to each Alternate Payee or the manner in which the amount or percentage is to be determined;

(c) Clearly specifies the number of payments or the period to which the order applies;

(d) Clearly specifies that the order applies to the Retirement System;

(e) Does not require the Retirement System to provide a type or form of benefit or an option not otherwise provided by the Retirement System;

(f) Does not require the Retirement System to provide increased benefits determined on the basis of actuarial value;

(g) Does not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a qualified domestic relations order; and

(h) Does not require the payment of benefits to an Alternate Payee before the retirement of a Member, the distribution of a withdrawal of contributions to a Member or other distribution to a Member required by law.

**Section 16.05.**      **Additional Criteria.** The Board may also require by rule that a qualified domestic relations order meet one or more of the following requirements.

(a) The order must provide for a proportional reduction of the amount awarded to an Alternate Payee in the event of the retirement of the Member before normal retirement age.

(b) The order may not purport to require the designation of a particular person as the recipient of benefits in the event of a Member's or Member's death.

(c) The order may not purport to require the selection of a particular benefit payment plan or option.

(d) The order must provide clearly for each possible benefit distribution under plan provisions.

(e) The order may not require any action on the part of the Retirement System contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to an Alternate Payee.

(f) The order may not make the award of an interest contingent on any condition other than those conditions resulting in the liability of the Retirement System for payments under its plan provisions.

(g) The order may not purport to award any future benefit increases that are provided or required by the Legislature.

(h) The order must provide for a proportional reduction of the amount awarded to an Alternate Payee in the event that benefits available to the retiree or Member are reduced by law.



**Section 16.06.**      **Determination.**      The Executive Director or the Executive Director's designee, upon receipt of a proposed domestic relations order, written request for a determination and payment of a fee established by the Retirement System, shall determine whether the proposed order, once adopted by the court. is a qualified domestic relations order and shall notify the Member or retiree and each Alternate Payee of the determination.

(a)      If the proposed order is determined to conform to the requirements of a qualified domestic relations order, once issued by a court and upon receipt of a certified copy of the order by the Retirement System, the Retirement System shall pay benefits in accordance with the order and shall give effect to the plain meaning of its terms notwithstanding any failure of the order to cite or reference statutory or rule provisions. A beneficiary or recipient of a right or benefit provided for or awarded in a qualified domestic relations order may not be deprived of that right or benefit, or any part of that right or benefit, by a subsequent act or omission of the Member, another claimant or beneficiary or the Retirement System, notwithstanding any provision of law to the contrary or any policy or procedure the Retirement System employs in the implementation of this Part.

(b)      If the proposed order, or the final order, does not conform to the requirements of a qualified domestic relations order, the Member or Member or any Alternate Payee named in the order may appeal the Executive Director's determination in the manner specified in 5 M.R.S. § 17451 or may petition the court that issued the order to amend the order so that it is qualified. Except as otherwise provided by law, the court that issued the order or that otherwise would have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

**Section 16.07.**      **Interim Accounting.** During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the Executive Director, the Executive Director's designee, the Board, a court of competent jurisdiction or otherwise, the Retirement System shall account separately for the amounts, in this section referred to as the "segregated amounts," that would have been payable to the Alternate Payee during that period if the order had been determined to be a qualified domestic relations order.

**Section 16.08.**      **Payment of Segregated Amounts.** If a domestic relations order is determined to be a qualified domestic relations order, the Retirement System shall pay the segregated amounts to the person or persons entitled to the segregated amounts and shall thereafter pay benefits pursuant to the order.

**Section 16.09.**      **Payments if Determined Not Qualified or if No Determination Within 18 Months.** If a domestic relations order is determined not to be a qualified domestic relations order or if the issue as to whether a domestic relations order is a qualified domestic relations order is not resolved within 18 months of the date the order and written request for a determination are received by the Retirement System, the Retirement System shall pay the segregated amounts without interest, and shall thereafter pay benefits, to the person or persons who would have been entitled to such amounts if there had been no order. This subsection may not be construed to limit or otherwise affect any liability, responsibility or duty of a party with respect to any other party to the action from which the order arose.

**Section 16.10.**      **Determination After 18 Months.** Any determination that an order is a qualified domestic relations order that is made after the close of the 18-month period established in subsection 9 must be applied prospectively only.

**Section 16.11.**        **No Liability.** The Retirement System, the Board and officers and employees of the Retirement System are not liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause of action in which a Member or a Retiree was a party or for making payments in accordance with Subsection \_\_\_\_.

**Section 16.12.**        **Information Provided to Spouse.** Upon being furnished with an attested copy of a complaint for divorce, the Retirement System shall provide the spouse of a Member or Retiree with the same information that would be provided to the Member or Retiree.

**Section 16.13.**        **Rules.** The Board may adopt rules to implement this section. The rules may provide for charging a reasonable fee for processing domestic relations orders.

**Section 16.14.**        **Application.** This section applies to all domestic relations orders issued.

## **ARTICLE XVII.**

### **INFORMATION NOT PUBLIC RECORD**

**Section 17.01.**        **Medical Information.** Medical information of any kind in the possession of the Retirement System, including information pertaining to diagnosis or treatment of mental or emotional disorders, is confidential and not open to public inspection and does not constitute "public records" as defined in 1 M.R.S § 402(3). Records containing medical information may be examined by the employee to whom they relate or by the Employer for any purposes related to any claim for workers' compensation or any other benefit. The employee must be advised in writing by the Retirement System of any request by the Employer to examine the employee's medical records. Medical information obtained pursuant to this section remains confidential, except as otherwise provided by law, and except when involved in proceedings

resulting from an appeal pursuant to 5 M.R.S. § 17451 or proceedings regarding claims for other retirement benefits.

**Section 17.02.**      **Home Contact Information.**      Except as provided in this subsection, records of home contact information of Members and benefit recipients of any of the programs of the Retirement System and of staff members that are in the possession of the Retirement System are confidential, not open to public inspection and not public records as defined in 1 M.R.S § 402(3).

(a)      For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home e-mail address.

(b)      This subsection does not apply to the home address of a Member or a benefit recipient of any of the programs of the Retirement System used only for Membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the Retirement System Member or benefit recipient has signed a form made available by the Retirement System indicating that the individual does not authorize disclosure of that individual's home address. The Retirement System may not provide information under this subsection to an organization if the Retirement System has determined that the organization obtained information for the purpose of Membership recruitment but used the information for a purpose other than Membership recruitment.

(c)      **Investment activity information.**      Disclosure of private market investment activity of the Retirement System is governed by this subsection.

(1)      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 actual or potential private market investments of the Retirement System is confidential and not open to public inspection and does not constitute "public records" as defined in 1 M.R.S. § 402(3), if, in the sole discretion of the Retirement System, the disclosure of the material, data or information may:

(i) Impair the Retirement System's ability to obtain such material, data or information in the future;

(ii) Cause substantial harm to the competitive position of the Retirement System or of the person or entity from whom the information was obtained; or

(iii) Result in the potential violation of state and federal laws and regulations relating to insider trading.

(2) The following information concerning any fund in which the Retirement System is invested is not exempt from disclosure:

(i) The Retirement System's total commitment to the fund;

(ii) The date of the commitment to the fund;

(iii) Contributions and distributions made to or received from the fund;

(iv) The market value of the investment;

(v) The name of the fund; and

(vi) The interim internal rate of return of the fund.

(3) For purposes of this subsection, "private market investment" means:

(i) Direct investments in land, timber, mineral rights, private company equity or private company debt;

(ii) Indirect investments in limited partnerships, limited liability corporations or other entities that may invest in the investments described in subparagraph (1);

(iii) 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

(iv) Investments or potential investments of the Retirement System pursuant to the state innovation finance program authorized under Title 10, section 1026-T.

(d) **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 1 M.R.S. § 402(3):

(1) 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.

(i) 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 1 M.R.S. § 402(3)(O).

(ii) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(iii) 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;

(2) 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:

(i) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(ii) Performance evaluations and personal references submitted in confidence;

(iii) Information pertaining to the creditworthiness of a named employee;

(iv) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

(v) 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 1 M.R.S. § 402(3)(O); and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and

(vi) 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

(1) 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.

(2) **Treatment of confidential information.** Confidential information provided under subsection (d) is governed by the following.

(c) Only the information that is necessary and directly related to the proceeding may be released.

(d) 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.

(e) 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.

### **ARTICLE XVIII.**

#### **INFORMATION FOR ADMINISTRATIVE OR JUDICIAL PROCEEDINGS**

If information regarding the availability, calculation or value of any benefit is required for an administrative or judicial proceeding, the party seeking the information must file written questions requesting that information with the Executive Director. The Executive Director, or the executive director's designee, shall make a certified response to those questions within 30 days and the certified response is admissible as evidence in any administrative or judicial proceeding. A subpoena or other form of discovery directed at obtaining the information may not be issued nor may employees of the Retirement System be required to testify on the subjects covered by the certified response unless there is an express finding by an administrative agency or a court that there is a compelling necessity to permit further discovery or to require testimony.

### **ARTICLE XIX.**

#### **MISCELLANEOUS**

##### **Section 19.01. Construction.**

(a) Words used in this Plan in the masculine gender shall be construed to include the feminine gender where appropriate, and words used in this Plan in the singular or plural shall be construed as being in the plural or singular where appropriate. Any typos shall be ignored and a

misspelled word shall be interpreted as though it were correctly spelled. Political correctness shall be assumed, notwithstanding the apparent meaning.

(b) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code, and, when not inconsistent with the Code, the laws of the State of Maine.

(c) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute a qualified governmental retirement plan under the provisions of Code Sections 401 and 414(d) and the trust as exempt from tax under Code Sections 501 and 115, and (ii) causes the Plan to comply with all applicable requirements of the Code and federal law shall prevail over any different interpretation.

(d) In resolving any conflict between the Plan and any policy or contract issued under the Plan, the provisions of the Plan shall prevail.

(e) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(f) Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(1) as conferring upon any Member, Beneficiary, or any other person a right or claim against the Board, the Employer, or the Retirement System, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(2) as a contract or Agreement between the Employer and any Member or other person;

(3) as being consideration for, or an inducement or condition of, employment of any Member or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Member or other person to continue or terminate the employment relationship at any time; or

(4) as giving any Member the right to be retained in the service of an Employer or to interfere with the right of an Employer to discharge any Member or other person at any time.

**Section 19.02.            Non-Diversion.**

(a) The assets of the Plan shall never inure to the benefit of an Employer and shall be held for the exclusive purposes of providing benefits to Members in the Plan and their beneficiaries and defraying reasonable expenses of administering the Plan, except in the case of a contribution which is made by an Employer under a mistake of fact as determined solely by the Retirement System. Such contribution shall be returned (or credited?) to the Employer, upon demand, and shall be reduced for any loss incurred but unadjusted for any gains earned during the time the mistaken contribution was part of the Plan fund.

(b) Trust assets shall be managed in compliance with Code Section 503(b).

**Section 19.03.            Legally Incompetent; Power of Attorney.** Any Member, Former Member, Terminated Member, or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Retirement System receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed and is authorized to take action by Title 18-A, article V. Payment of any benefit to an incapacitated person, as defined in Title 18-A, section 5-101, or a minor shall be made in

accordance with Title 18-A, article V. Any payment so made shall be a complete discharge of liability under the Plan. No person may act as an attorney-in-fact for an Employee, Member, Member Disability Benefit Recipient or Beneficiary with respect to a matter involving the Plan unless a valid power of attorney document appointing such person and authorizing such action is submitted in a form and manner acceptable to the Retirement System. The Retirement System shall be entitled to rely upon a power of attorney document which it reasonably determines to be valid, without liability for actions taken by the Retirement System at the request of the designated attorney-in-fact, unless and until the Retirement System receives notice that the power of attorney is no longer effective.

**Section 19.04.**      **Non-Discrimination.** The Retirement System shall administer the Plan in a uniform and consistent manner with respect to all Members.

**Section 19.05.**      **Limitation of Liability; Legal Actions.**

(a) It is expressly understood and agreed by each Employee who becomes a Member hereunder that, except for willful neglect or fraud, neither the Employer, the nor the Board shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such Member hereby releases the Employer, all its employees and agents, and the Board from any and all liability or obligation.

(b) The Employer and the Retirement System shall be the only necessary parties to any action or proceeding involving any rights under the Plan or the proper administration thereof, and no Member, Member, Disability Benefit Recipient, Beneficiary, or other persons having or claiming to have an interest in the Plan shall be entitled to any notice of process. Any final judgment which is not appealed or appealable that may be entered in any such action or

proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest in the Plan.

Each fiduciary under the Plan shall be responsible only for the specific duties assigned under the Plan and shall not be directly or indirectly responsible for the duties assigned to another fiduciary. Any person or a group of persons may serve in more than one (1) fiduciary capacity with respect to the Plan.

**Section 19.06.**      **Claims.** Any payment to a Member or Beneficiary, or to their legal representatives, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Employer, either of which may require such Member, Beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release, in such form as shall be determined by the Retirement System.

**Section 19.07.**      **Errors in Benefits.**

(a)      **Underpayments.** Any underpayments from the Plan fund to a Member, Disability Benefit Recipient or to a Beneficiary caused by administrative errors shall be corrected with simple [**compound**] interest from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the Plan actuary for estimating future plan investment earnings as of the date of the correction. Underpayments shall be made up from the Plan.

(b)      **Overpayments.** [**Should we use current Maine procedure?**] In the event of an overpayment from the Trust Fund to a Member or to a Beneficiary caused by administrative error, the following provisions shall apply:

(1)      **Determination of Reasonableness of Collection from Retired Members or Beneficiaries.** The Retirement System will make a determination of whether collection of the overpayment (in full or in part) from a Member or Beneficiary is reasonable under

the particular facts and circumstances involved. The Retirement System shall consider (1) the hardship of collection on the Member or Beneficiary; (2) any legal impediments to collection; and (3) the potential risk of litigation if collection is pursued.

(2) Collection Process. If a determination under this subsection is made that collection from the Member or Beneficiary is reasonable, the overpayment shall be corrected with interest compounded annually from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the plan actuary for estimating future plan investment earnings as of the date of the correction. In collecting amounts of the overpayment (in full or in part), the Retirement System shall have the discretion to use any of the following options: (i) single sum payments; (ii) installment payments; (iii) actuarial reduction of future Retirement payments; or (iv) deductions from Retirement payments.

**Section 19.08.** **Notice.** Any notice given under the Plan shall be sufficient if given to: (1) the Board if addressed to the Retirement System at its office; (2) the Employer if addressed to the address of the Governing Authority indicated in the Adoption Agreement; or (3) a Member or Beneficiary, when addressed to the Member at his or her address as it appears in the records of the Retirement System or the Employer.

**Section 19.09.** **Change of Address.** The Member, Member, Beneficiary, Alternate Payee and Employer is responsible for furnishing a change of address to the Retirement System.

**Section 19.10.** **Right of Recovery.** If the Retirement System makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Retirement System may recover that incorrect payment, whether or not it was made

due to the error of the Retirement System, from the person to whom it was made, or from any other appropriate party. If any such incorrect payment is made directly to a Member, the provisions of Section 20.08 apply.

**Section 19.11.**      **Evidence of Action.** Any action by any Employer pursuant to any of the provisions of the Plan shall be evidenced by ordinance or resolution of the governing body, and the Retirement System shall be fully protected in acting in accordance with such resolution or ordinance so certified to it. All orders, requests, and instructions to the Retirement System by an Employer or by any duly authorized representative, shall be in writing and the Retirement System shall act and be fully protected in acting in accordance with such orders, requests, and instructions.

**Section 19.12.**      **Reliance.** The Retirement System or Board shall not incur any liability in acting upon any notice, request, signed letter, telegram, or other paper or document believed by the Retirement System or Board to be genuine or to be executed or sent by an authorized person.

**Section 19.13.**      **Entire Plan.** The Plan document and the documents incorporated by reference herein shall constitute the only legally governing documents for the Plan. No statement by the Trustees, Employer, or Retirement System shall be used in any claim unless in writing, signed by the party against whom the claim is being made.