

Chapter 510: REDUCTION OF DISABILITY RETIREMENT BENEFITS BECAUSE OF LUMP-SUM SETTLEMENTS OF BENEFITS PAYABLE UNDER THE WORKERS' COMPENSATION OR SIMILAR LAW OR THE UNITED STATES SOCIAL SECURITY ACT

SUMMARY: This chapter sets forth the methodology by which disability retirement benefits ~~under the Maine Legislative Retirement System, Maine Judicial Retirement System and the Maine State Retirement System~~ are reduced when a beneficiary of such benefits receives a lump-sum settlement of benefits payable under the workers' compensation or similar law or the United States Social Security Act.

SECTION 1. DEFINITIONS

1. **Accumulated Contributions.** The term "accumulated contributions" as used in this Chapter means the amount of "accumulated contributions" calculated pursuant to the provisions of the applicable Retirement System plan, as of the effective date of the recipient's entitlement to Retirement System disability retirement benefits.
2. **Actuarial Equivalent of Accumulated Contributions.** "Actuarial Equivalent of Accumulated Contributions" as used in this Chapter means the recipient's accumulated contributions at the time of his or her disability retirement divided by the "annuity factor for recipient's age at retirement" as calculated pursuant to Section 5.2, and then converted to a monthly amount by dividing by twelve.
3. **Actuarial Equivalent of the Lump-Sum Settlement.** "Actuarial Equivalent of the Lump Sum Settlement" as used in this Chapter means the amount of the "lump-sum settlement" divided by the "annuity factor for recipient's age at effective date of lump-sum settlement" calculated pursuant to Section 5.3, and then converted to a monthly amount by dividing by twelve.
4. **Average Annual Earnings.** "Average Annual Earnings" means the total of the person's average final compensation plus other wages and earnings from employment for the calendar year in which the person has the highest total of other wages and earnings from employment during the 5 years immediately preceding the year in which the person became disabled.
- 4.5. **Average Final Compensation.** "Average Final Compensation" as used in this Chapter means the amount of "average final compensation" calculated pursuant to the provisions of the applicable Retirement System plan, as of the effective date of the recipient's entitlement to Retirement System disability retirement benefits.
- 5.6. **Initial Disability Retirement Benefit.** "Initial disability retirement benefit" as used in this Chapter means the monthly disability retirement benefit, not reduced because of disability benefits received under other laws, payable to the recipient as of the effective

date of his or her entitlement to Retirement System plan disability retirement benefits, calculated pursuant to the applicable Retirement System plan provisions.

- ~~6.7.~~ **Lump-Sum Balance.** “Lump-Sum Balance” as used in this Chapter in a given month means the sum of the lump-sum settlement and interest for that month and all prior months subject to reduction pursuant to this Chapter less the reduction amount determined pursuant to Section 4.1 for that month and all prior months subject to reduction pursuant to this Chapter.
- ~~7.8.~~ **Lump-Sum Settlement.** “Lump-sum settlement” as used in this Chapter means the amount paid or to be paid pursuant to a settlement agreement under the workers’ compensation law and/or similar law and/or the United States Social Security Act for the same disability for which Retirement System plan disability retirement benefits are awarded, but not including any part of the lump-sum settlement amount attributable to vocational rehabilitation, attorneys’, physicians’, nurses’, hospital, medical, surgical or related fees or charges or any amount paid or payable under former Title 39, section 56-B for permanent impairment or under Title 39-A, section 212, subsection 3 for specific loss benefits. “Lump-sum settlement” includes amounts paid or to be paid under the United States Social Security Act only if the employment for which Retirement System creditable service with the employer is allowed was also covered under that Act at the date of disability retirement.
- ~~8.9.~~ **Lump-Sum Settlement Agreement.** A “Lump-Sum Settlement Agreement” as used in this Chapter is an agreement, signed or otherwise approved by the approving authority, describing payment of the lump-sum settlement.
- ~~9.10.~~ **Retirement System Plan.** “Retirement System plan” as used in this Chapter means a benefit plan of the Maine Legislative Retirement System, Maine Judicial Retirement System, or the Maine State Retirement System. Benefit plans of the Maine State Retirement System include benefits for eligible state employees, teachers, and Participating Local District (“PLD”) members.

SECTION 2. APPLICABILITY

This Chapter applies to any disability retirement benefit recipient who enters into a lump-sum settlement agreement or otherwise receives a lump sum settlement under the workers’ compensation or similar law or the United States Social Security Act for the same disability for which disability retirement benefits were awarded pursuant to a Retirement System plan.

SECTION 3. MAKING THE REDUCTION

1. When a disability retirement benefit recipient enters into a lump-sum settlement agreement, the monthly Retirement System disability retirement benefit shall be reduced by an amount determined pursuant to the provisions of this Chapter.
2. The reduction amount determined pursuant to the provisions of this Chapter shall be deducted from Retirement System disability retirement benefits payable to the recipient, beginning the first day of the month following the effective date of the lump-sum

settlement. For purposes of this Chapter, the effective date of the lump-sum settlement is the date that the settlement agreement is signed by the approving authority.

3. That same reduction amount determined pursuant to the provisions of this Chapter shall continue to be deducted from the monthly disability retirement benefit otherwise payable for the length of time that the recipient receives a Retirement System disability retirement benefit. If, for periods of time prior to the effective date of the lump-sum settlement during which Retirement System disability retirement benefits are payable to the recipient, the recipient is also paid benefits under the workers' compensation or similar law or the United States Social Security Act, subject to the same limitations described in Section 1.7, then the recipient's disability retirement benefits shall also be reduced by amounts equal to those benefits unless the applicable statute bars any reduction or requires a smaller reduction.
4.
 - A. Notwithstanding Section 3.3, reductions pursuant to this Chapter for a recipient who continues to be entitled to receive disability retirement benefits pursuant to a Retirement System plan that provides for cost-of-living adjustments ("COLAs") shall cease when the sum of the reduction amount equals the amount of the lump-sum settlement plus monthly interest on the lump-sum balance calculated at the annual rate of four percent (4%);
 - B. Notwithstanding Section 3.3, reductions pursuant to this Chapter for a recipient pursuant to a Retirement System plan that does not provide for COLAs shall cease under the same circumstances as for Section 3.4.A except that monthly interest on the lump-sum balance shall be calculated at the annual rate of six percent (6%).
5. To determine when the sum of the reduction amounts will equal the lump-sum settlement plus interest calculated monthly at the annual rate specified in Section 3.4.A and 3.4.B as applicable:
 - A. Calculate the interest for the first month subject to reduction by multiplying the lump-sum settlement by the specified annual interest rate and then dividing the product by 12.
 - B. Determine the lump-sum balance in the given month.
 - C. Calculate the interest for each month after the first month subject to reduction by multiplying the lump-sum balance for the previous month by the specified annual interest rate and then dividing the product by 12.
6. The month in which the lump-sum balance is zero is the last month of disability retirement benefits that will be reduced pursuant to Sections 3.4.A and 3.4.B.
7. If there is no month in which the lump-sum balance is zero, then the last month of disability retirement benefits that will be reduced pursuant to Sections 3.4.A and 3.4.B is the first month in which the lump-sum balance is a negative number. In such case, the reduction amount required for the last month shall be equal to the lump-sum balance for the previous month plus interest.

8. Notwithstanding Sections 3.3, 3.4 and 3.5, the reduction amount shall be recalculated pursuant to the provisions of this Chapter if the recipient enters into a subsequent lump-sum settlement agreement.
9. The amount payable to the disability retirement recipient after the reduction amount is applied will be adjusted by any cost-of-living adjustments (“COLAs”) according to the provisions of the applicable Retirement System plan.

SECTION 4. DETERMINING THE REDUCTION AMOUNT, IF ANY

1. The reduction amount that is to be applied to the recipient’s monthly disability retirement benefit is determined **as follows:**
 - A. For members of the State Employee and Teacher, Legislative, and Judicial Retirement Programs, by subtracting the figure representing 80% of average final compensation, converted to a monthly amount by dividing by twelve, from the amount represented by the sum of the initial disability retirement benefit and actuarial equivalent of the lump sum settlement.
 - A-B. For members of the Participating Local District Retirement Program, by subtracting the figure representing 80% of average annual earnings, converted to a monthly amount by dividing by twelve, from the amount represented by the sum of the initial disability retirement benefit and actuarial equivalent of the lump sum settlement.
2. If the result obtained in Section 4.1 is zero or a negative number, then no reduction is applied to the monthly disability retirement benefits.
3. If the reduction amount calculated in Section 4.1 causes the initial disability retirement benefit to be reduced to an amount that is less than the “actuarial equivalent of accumulated contributions”, then the full reduction amount calculated in Section 4.1 may not be applied. Instead, the recipient shall receive the “actuarial equivalent of accumulated contributions” in lieu of the amount obtained by applying the full reduction described in section 4.1.

SECTION 5. DETERMINING THE ANNUITY FACTORS TO BE USED FOR SECTION 4

1. **Selecting the Applicable Table.** To determine the “annuity factor at age of retirement” or the “annuity factor at age at effective date of lump-sum settlement,” use Table AA of Chapter 303.

NOTE: As of the effective date of this rule, judicial retirement, legislative retirement, and Maine State Retirement System plans for state employees and teachers all include COLAs. Some Participating Local District (“PLD”) plans include COLAs and others do not.

2. **Determining the “Annuity Factor for Recipient’s Age at Retirement.”** To determine the “annuity factor for recipient’s age at retirement,” use the applicable Table to locate the annuity factor that corresponds to the recipient’s attained age as of the first day of the

first month for which he or she received Retirement System plan disability benefits. If the recipient's previous birthday was six months or more prior to the first day of the first month for which he or she received Retirement System plan disability retirement benefits, then use the recipient's age at his or her next birthday to locate the applicable annuity factor.

3. **Determining the "Annuity Factor for Recipient's Age at Effective Date of Lump-Sum Settlement.** To determine the "annuity factor for recipient's age at effective date of lump-sum settlement, use the applicable Table to locate the annuity factor that corresponds to the recipient's attained age as of the effective date of the lump-sum settlement. If the recipient's previous birthday was six months or more prior to the effective date of the lump-sum settlement, then use the recipient's age at his or her next birthday to locate the applicable annuity factor.

SECTION 6. DETERMINING THE AMOUNT OF THE "LUMP-SUM SETTLEMENT" IF THE SETTLEMENT PROVIDES FOR PAYMENT IN A MONTH OR MONTHS FOLLOWING THE DATE THAT THE SETTLEMENT AGREEMENT IS SIGNED BY THE APPROVING AUTHORITY

1. If the lump-sum settlement is to be paid in a single payment but at a date subsequent to the effective date of the settlement agreement, then the single settlement payment must be converted into a single present value amount using the methodology of Section 6.5.B. The resulting present value shall be used as the amount of the lump-sum settlement for purposes of this Chapter.
2. If the lump-sum settlement is to be paid not as a single settlement payment, but instead is to be paid in installments, then the installment amounts must be converted into a single present value amount pursuant to the provisions of this Section. The resulting single present value shall be used as the "lump-sum settlement" for purposes of this Chapter.
3. The provisions of this Chapter do not apply if all of the installments to be paid pursuant to the lump-sum settlement agreement are to be paid in scheduled increments such that the total paid each month is less than or equal to the recipient's disability retirement benefit for that month in the absence of any reduction because of benefits payable under the workers' compensation or similar law or the United States Social Security Act. Instead, the recipient's disability retirement benefits shall be reduced in the same manner as if there had been no lump-sum settlement agreement.
4. Any part of the lump-sum settlement payment amounts attributable to vocational rehabilitation, attorneys' fees, physicians, nurses, hospital, medical, surgical or related fees or charges of any amount paid or payable under former Title 39, section 56-B for permanent impairment or under Title 39-A, section 212, subsection 3 for specific loss benefits shall not be included in any of the payment amounts for purposes of this Section.
5. The single present value of the settlement paid in installments shall be calculated as follows:
 - A. Determine the amount of the first installment payment if the first payment is scheduled to be issued in the same month or in the month immediately following

the month that the settlement agreement is signed or otherwise approved by the approving authority.

- B. To determine the present value of any payment to be issued in a subsequent month, except for any installment amount to be paid for a “term certain and life thereafter,” apply an effective (“real”) interest rate of 7.75% per year.
- C. Determine the present value, using an effective (“real”) interest rate of 7.75% per year of any settlement installment amount to be paid for a certain term of years (“term certain”) and life thereafter as follows:
- (1) Add the recipient’s age as used in Section 5.3 to the number of years in the term certain.
 - (2) Using the sum obtained in Section 6.5.C.1, locate on Table X the corresponding figure in Column B.
 - (3) Divide the amount obtained in Section 6.5.C.2 by the figure in Column A in Table X corresponding to the recipient’s age as used in Section 5.3.
 - (4) Add the result in Section 6.5.C.3 to the annuity factor on Table Y corresponding to the number of months in the term certain.
 - (5) Multiply the result obtained in Section 6.5.C.4 by the installment amount to be paid annually for the term certain and life thereafter.
- D. Add the total results obtained in Sections 6.5.A, 6.5.B and 6.5.C.A to obtain the single value amount to be used as the amount of the “lump-sum settlement” for purposes of this Chapter.

The attached TABLES are an integral part of this Chapter:

TABLE ‘X’: Annuity Factors for use with installment settlement

TABLE ‘Y’: Annuity Factors (for installment settlements) corresponding with the number of months in term certain.

APA Office Note: the tables are available from the Maine State Retirement System Public Employees Retirement System.

STATUTORY AUTHORITY: 3 M.R.S.A. § 853; 4 M.R.S.A. § 1353(6); 5 M.R.S.A. §§ ~~17906(2); 17930(4); 18506(2); 18530(4); 1122(5-A) and 1122(6).~~

Actively-Seeking Work Program Information as of 10/17/22

There are three current members of the Actively-Seeking Work Program:

- Current Member 1 became a participant of the ASW program on 6/1/16;
- Current Member 2 became a participant of the ASW program on 9/6/19; and
- Current Member 3 became a participant of the ASW program on 7/13/21.

For a better understanding of long term participation, below are those who left the ASW program in 2022:

- Prior Member 1 had 17 years in the ASW program and left only when changed over to service retirement;
- Prior Member 2 had 16 years in the ASW program and left only when changed over to service retirement;
- Prior Member 3 had 16 years in the ASW program and left only when changed over to service retirement;
- Prior Member 4 had 16 years in the ASW program and left only when changed over to service retirement;
- Prior Member 5 had eight years in the ASW program and left only when changed over to service retirement; and
- Prior Member 6 had six months in the ASW program and was terminated for failing to show work-seeking activities required by rule.

Regarding the number of ASW participants who left the program in 2022:

- 2022 was an unusual year for ASW participants choosing to leave the program. Participants were excused from all job seeking activity from March 2020 when the pandemic began until January of 2022 when it appeared safe to resume activity and after ASW guidelines were changed to allow all participation to be conducted virtually. When program requirements resumed, there were participants who did not want to return to job search activity. Four participants who were eligible for service retirement opted to terminate participation in the program to accept service retirement benefits. One was required by law to changeover and one opted not to participate in the program and was terminated due to non-compliance.

Participants active in 2022 that appealed the determination they were able to engage in SGA:

- Of the three current participants, two appealed and one did not.
- Of the six former participants, two appealed and four did not.

Questions Posed:

(1) By statute, when a MainePERS disability retiree is determined to no longer be disabled, they continue to receive disability retirement benefits until re-employed as long as they are actively seeking work. Does your plan have a similar provision?

(2) We are considering whether there should be a time limit after which the person should be presumed to not have been actively seeking work because they have not obtained employment. Have you addressed this situation?

Continuation of Benefits	Response
None	Our statute doesn't have a specified time to be reemployed. So, if a person is deemed to not be disabled, the benefit ends.
60 days notice	Our plan allows for periodic review of disability retirees to verify their continued disability. If they are found no longer disabled, their benefit is stopped after 60 days notice
None	If the member is deemed to be no longer disabled, we terminate their disability and that is the end of our involvement.
None	The the disability retirement benefit stops if the person is determined to no longer be disabled.
None	The System does not continue to pay disability retirement benefits if a member is determined to no longer be disabled.
None/Reemployment as public safety	The main plan does not contine benefits, but on the public safety side, a combination of plan provisions and terms of collective bargaining agreements with Police and Fire personnel result in the person being reemployed when no longer disabled.
None	If it is medically determined by a preponderance of evidence that a disability benefit recipient is no longer disabled, their disability benefits end.
Similar	<p>Our LTD program requires annual or biannual reviews until the employee reaches age 62.</p> <p>If the employee is no longer disabled they are placed in the interactive ADA process and if possible, re-employed. We struggle at times with placement and when to conclude the interactive process.</p> <p>Our LTD benefits are very generous and continue until age 75 for civilian employees and age 80 for law enforcement.</p> <p>The benefit continues indefinitely, but is offset when the person becomes eligible for retirement or social security.</p>
None	If we have a disability annuitant who's disability ends, they can continue to receive any non-disability benefit that they would have been eligible to receive, but the disability portion of the benefit does not continue, regardless of whether they are seeking work.
Three Months	By administrative rule a member's disability benefit payments end the earlier of three months after the Board terminates the disability or when the member returns to work.
None	The Retirement System and Police Officers Retirement System do not have a grace period during which a member would continue to receive disability retirement benefits after the member has been determined to no longer be disabled.

MAINE STATE LEGISLATURE

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COMMITTEE ON: AGING, RETIREMENT AND VETERANS

LD#: 977

TITLE: An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System.

HEARING DATE: April 18, 1989

WORK SESSION DATE: April 25, 1989

May 11, 1989

May 16, 1989

REPORTED OUT DATE: June 6, 1989

COMMITTEE REPORT: Ought to Pass as Amended



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 977

H.P. 716

House of Representatives, March 29, 1989

Reference to the Committee on Aging, Retirement and Veterans suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative HICKEY of Augusta.

Cosponsored by Senator CLARK of Cumberland, Representative JALBERT of Lisbon and Senator BUSTIN of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Establish Disability Retirement Benefits for Members of the
Maine State Retirement System.

(EMERGENCY)



1 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
3 as emergencies; and

5 Whereas, the principal addition of this legislation is the
provision for rehabilitation services to recipients of disability
7 retirement benefits from the Maine State Retirement System; and

9 Whereas, the rehabilitation encouraging return to active
service is in the best interest of both recipients of disability
11 retirement benefits and employers; and

13 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
15 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
17 safety; now, therefore,

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

21 **Sec. 1. 5 MRSA §17106, sub-§3, ¶¶C and D,** as enacted by PL
1985, c. 801, §§5 and 7, are amended to read:

23 C. Assist the executive director in determining if a
25 disability review of a recipient of a disability allowance
is warranted; and

27 D. Inform the executive director and board in writing of
29 its view as to the existence of a disability entitling an
applicant to benefits under chapter 423, subchapter V,
31 ~~article~~ articles 3 and 3-A, or chapter 425, subchapter V,
~~article~~ articles 3, or 3-A; and

33 **Sec. 2. 5 MRSA §17106, sub-§3, ¶E** is enacted to read:

35 E. Make recommendations to the executive director and board
37 to determine if rehabilitation services should be provided
to a person who is the recipient of a disability retirement
39 benefit under chapter 423, subchapter V, article 3-A or
chapter 425, subchapter V, article 3-A.

41 **Sec. 3. 5 MRSA §17152,** as enacted by PL 1985, c. 801, §§5 and
43 7, is amended to read:

45 **§17152. Funds**

47 All of the assets of the retirement system shall be credited
according to the purpose for which they are held among 5 7 funds,
49 namely:

51 1. **Members' Contribution Fund.** The Members' Contribution
Fund;

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- 2. Retirement Allowance Fund. The Retirement Allowance Fund;
- 3. Expense Fund. The Expense Fund;
- 4. Survivors' Benefit Fund. The Survivors' Benefit Fund; and
- 5. State Retiree Health Insurance Fund. The State Retiree Health Insurance Fund; ~~and~~
- 6. State Retired Teachers' Health Insurance Fund. The State Retired Teachers' Health Insurance Fund; and
- 7. Disability Retirement Benefit Fund. The Disability Retirement Benefit Fund.

Sec. 4. 5 MRSA §17251, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17251. Establishment

The Retirement Allowance Fund is established in which shall be accumulated all reserves required for the payment of benefits under this Part, other than reserves in the Members' Contribution Fund and, the Survivors' Benefit Fund and the Disability Retirement Benefit Fund.

Sec. 5. 5 MRSA c. 421, sub-c. IV, art. 8 is enacted to read:

Article 8. Disability Retirement Benefit Fund

§17421. Establishment

The Disability Retirement Benefit Fund is established in which shall be accumulated all reserves required for the payment of disability retirement benefits and other costs as set forth in chapter 423, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A. The fund shall include an account for the accumulated contributions of former members who are recipients of disability retirement benefits under this article.

§17422. Disability contribution

For each member, the State and those participating local districts which have elected disability retirement benefits under chapter 425, article 3 or 3-A shall pay annually into the Disability Retirement Benefit Fund an amount equal to a certain percentage of the annual earnable compensation of the member, to be known as the "disability contribution."

1 **§17423. Disability contribution rate**

3 The percentage rate of the disability contribution,
5 described in section 17422, shall be fixed on the basis of the
7 liabilities established by chapter 423, subchapter V, articles 3
9 and 3-A and chapter 425, subchapter V, articles 3 and 3-A. There
11 shall be one percentage rate applicable to all employers whose
13 employees are covered by chapter 423, subchapter V, article 3-A,
15 and chapter 425, subchapter V, article 3-A.

17 **Sec. 6. 5 MRSA §17755**, as enacted by PL 1985, c. 801, §§5 and
19 7, is amended to read:

21 **§17755. Disability retirement service credit**

23 A beneficiary shall receive service credit for the purpose
25 of determining benefits under this Part for the period following
27 termination of service for which he the beneficiary receives
29 disability retirement benefits under subchapter V, article
31 articles 3 and 3-A.

33 **Sec. 7. 5 MRSA §17901-A** is enacted to read:

35 **§17901-A. Applicability**

37 This article applies to all disabilities for which written
39 applications are received by the executive director before July
41 1, 1989. All disabilities for which written applications are
43 received by the executive director after June 30, 1989, are
45 subject to article 3-A.

47 **Sec. 8. 5 MRSA c. 423, sub-c. V, art. 3-A** is enacted to read:

49 **ARTICLE 3-A**

51 **DISABILITY RETIREMENT BENEFITS AFTER JUNE 30, 1989**

53 **§17921. Definitions**

55 As used in this article, unless the context otherwise
57 indicates, the following terms have the following meanings.

59 1. Disabled. "Disabled" means that the member is mentally
61 or physically incapacitated under the following conditions:

63 A. The incapacity is expected to be permanent;

65 B. That it is impossible to perform the duties of the
67 member's employment position;

69 C. After the incapacity has continued for 2 years, the
71 incapacity must render the member unable to engage in any

1 substantially gainful activity for which the member is
2 qualified by training, education or experience; and

3
4 D. The incapacity may be revealed by examinations or tests
5 conducted in accordance with section 17926.

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7 2. Employment position. "Employment position" means:

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9 A. The position in which the member is employed at the time
10 the member becomes incapacitated; or

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12 B. A position of comparable stature and equal or greater
13 compensation and benefits which is made available to the
14 member by the member's employer.

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16 **§17922. Applicability**

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18 This article applies to all disabilities for which written
19 applications are received by the executive director after June
20 30, 1989.

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22 **§17923. Statement of health**

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24 1. Statement required. Any person who becomes a member of
25 the retirement system on or after July 1, 1989, shall submit a
26 statement of that person's health to the executive director on
27 forms prescribed by the executive director.

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29 2. Additional information. If the executive director
30 determines that additional information is necessary to determine
31 the extent of any preexisting disability of the member, the
32 executive director may require that the member undergo medical
33 and, when appropriate, psychological examinations or tests with
34 the results submitted as evidence of the member's health. Any
35 examinations or tests under this subsection are governed by
36 section 17926.

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38 3. Limitation on use. The statement of health or the
39 results of examinations or tests may be used only to determine
40 eligibility for a disability retirement benefit under section
41 17924, subsection 2.

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43 4. Sanction. Any member who is required to submit a
44 statement of health under this section and who does not submit
45 the statement before applying for disability retirement benefits
46 is not eligible to receive those benefits unless that member
47 establishes to the satisfaction of the executive director that
the member meets the requirements of section 17924, subsection 2.

1 §17924. Qualification for benefit

3 1. Qualification. Except as provided in subsection 2, a
5 member qualifies for a disability retirement benefit if disabled:

7 A. While in service; and

9 B. Before reaching the normal retirement age.

11 2. Exception. A member with fewer than 5 years of
13 continuous creditable service immediately preceding that member's
15 application for a disability retirement benefit is not eligible
17 for that benefit if the disability is the result of a physical or
19 mental condition which existed before the member's membership in
21 the retirement system, unless the disability is a result of, or
23 has been substantially aggravated by, an injury or accident
25 received in the line of duty.

27 §17925. Application

29 In order to receive a benefit under this article:

31 1. Written application. The person must apply in writing
33 to the executive director in the format specified by the
35 executive director.

37 A. The executive director shall submit the application and
39 all pertinent medical and psychological information to the
41 medical board for review as required by section 17106,
43 subsection 3.

45 B. As required by section 17106, the medical board shall
47 make a recommendation as to whether or not the member may be
49 provided vocational rehabilitation services;

51 2. Workers' compensation. If the incapacity upon which the
53 application is based is a result of an injury or accident
55 received in the line of duty, the application must include proof
57 that the member has made application for benefits under the
59 workers' compensation laws;

61 3. Social security. If the employment for which creditable
63 service with the employer is allowed was also covered under the
65 United States Social Security Act, the application must include
67 proof that the member has made application for benefits under
69 this Act; and

71 4. Approval. The written application shall be approved by
73 the executive director upon finding that the member has met the
75 requirements of section 17924.

1 §17926. Examinations or tests

3 Any examinations or tests recommended by the medical board
5 in accordance with section 17106 or required by the executive
7 director under section 17921, subsection 1, paragraph D; section
9 17923, subsection 2; section 17924; section 17929, subsection 2,
paragraph B; or section 17933, subsection 3, paragraph A, are
governed as follows.

11 1. Agreed upon physician. The examinations or tests shall
13 be conducted by a qualified physician and, when appropriate, a
15 qualified psychologist mutually agreed upon by the executive
director and the member claiming to be disabled.

17 2. Agreed upon place. The examinations or tests shall be
19 conducted at a place mutually agreed upon by the executive
21 director and the member claiming to be disabled.

23 3. Costs. The costs incurred under subsections 1 and 2
25 shall be paid by the retirement system.

27 §17927. Rehabilitation

29 Upon recommendations from the medical board, rehabilitation
31 services shall be provided to any person who is the recipient of
33 a disability retirement benefit under this article. Services
35 shall be provided by private and public rehabilitation
counselors, government agencies and others approved by the
executive director as qualified to provide rehabilitation
services. The executive director shall consider a rehabilitation
counselor's rate of successfully placing rehabilitated employees
in jobs relative to the placement rates of other counselors in
the State as fundamental in deciding whether to approve the
counselor as qualified.

37 1. Rehabilitation plan. If rehabilitation is feasible and
39 recommended, the retirement system shall designate a
41 rehabilitation provider to evaluate the person and develop a
rehabilitation plan.

43 2. Costs. The executive director may contract with
45 rehabilitation providers to develop and carry out approved
rehabilitation plans.

47 A. Except as provided in paragraph B, the executive
49 director shall pay these providers from funds accumulated in
the Disability Retirement Benefit Fund.

51 B. If the person is entitled to other benefits to meet the
53 cost of rehabilitation services, that person must first
apply for and use those benefits to the extent available to
pay for the goods and services provided.

1 3. Approval of rehabilitation plan. The executive director
2 shall approve any rehabilitation plan that the executive director
3 finds to be in the person's best interest and consistent with the
4 purposes of this article. The person and the executive director
5 shall indicate in writing their approval of and agreement to the
6 submitted rehabilitation plan. The person shall approve the plan
7 within 30 days or, within that time period, submit to the
8 executive director the name of an alternate provider for the
9 executive director's consideration. If the rehabilitation plan
10 includes return to employment with the employer for whom the
11 person worked before becoming disabled, the employer shall also
12 indicate in writing approval of the plan.

13 4. Decline of rehabilitation. If, after recommendation by
14 the medical board, a person declines use of the rehabilitation
15 services offered or refuses to agree to a rehabilitation plan
16 approved by the executive director, the disability retirement
17 benefit payments shall cease at the end of the month following
18 the decline or refusal.

19 A. The executive director shall notify the person in
20 writing of the decision to discontinue the disability
21 retirement benefit.

22 B. The decision shall be subject to appeal under section
23 17451.

24 C. If the person appeals the executive director's decision,
25 the disability retirement allowance shall not be
26 discontinued until all appeals have been exhausted.

27 5. Monitoring of rehabilitation plan. Each rehabilitation
28 plan approved by the executive director shall contain a provision
29 for periodic review of progress being made by the person toward
30 achieving the goal of the plan. The provision relating to review
31 shall include authority for the executive director to terminate
32 the plan or to amend the plan with the same provider or with a
33 change of provider, based upon results of the review or at the
34 request of the person or the provider. Subsections 1, 2, 3 and 4
35 shall apply to any amended plans under this subsection.

36 6. Return to service. If the rehabilitation plan includes
37 return to employment with the person's former employer, that
38 person shall be reemployed in accordance with the plan. If the
39 plan does not include reemployment with the former employer, the
40 executive director shall notify the former employer, in writing,
41 that the person has completed the rehabilitation plan and is
42 ready to return to employment. The former employer shall
43 reemploy the person in the first available position for which
44 that person is qualified, taking into consideration that person's
45 prior compensation and benefits, training, education and
46 experience, including that person's rehabilitation plan.

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7. Other employment under system. If the former employer has not reemployed the person before the expiration of 3 months, the executive director shall inform all other employers whose employees are covered by this article and chapter 425, subchapter V, article 3-A, of the availability of the person and solicit their assistance in finding employment for that person.

§17928. Computation of benefit

When a member qualified under section 17924 retires, after approval for disability retirement by the executive director in accordance with section 17925, the member shall receive a disability retirement benefit equal to 66 2/3% of that member's average final compensation.

§17929. Payment of benefit

1. Beginning. Payment of disability retirement benefits shall begin on the first day of the month following the date of termination of active service of the member, but not more than 6 months before the date of receipt by the executive director of the written application, by or on behalf of the member, for disability retirement, unless it is shown that:

A. It was not reasonably possible to file the application for disability retirement benefits within the 6-month period; and

B. The application was made as soon as reasonably possible.

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins:

(1) On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 23; or

(2) When the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit, if that occurs before the date in subparagraph (1).

(a) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits

1 adjusted by the same percentage adjustments, if
2 any, that were applied to the disability
3 retirement benefits under section 17806.

4 (b) The person shall receive service credit for
5 the purpose of determining benefits under this
6 Part for the period following termination of
7 service for which that person receives disability
8 retirement benefits under this article; and

9
10
11 B. The executive director may require, once each year, that
12 the person undergo examinations or tests, conducted in
13 accordance with section 17926, to determine the person's
14 disability.

15
16 (1) After the disability has continued for 2 years,
17 the disability must render the person unable to engage
18 in any substantially gainful activity which is
19 consistent with the person's training, education or
20 experience and average final compensation adjusted by
21 the same percentage adjustment as has been received
22 under section 17806.

23
24 (2) If the person refuses to submit to the
25 examinations or tests under this paragraph, the
26 disability retirement benefit shall be discontinued
27 until that person withdraws the refusal.

28
29 (3) If the person's refusal under subparagraph (2)
30 continues for one year, all rights to any further
31 benefits under this article shall cease.

32
33 (4) If it is determined, on the basis of the
34 examinations or tests under this paragraph, that the
35 disability of a person no longer exists, the payment of
36 the disability retirement benefit shall cease.

37
38 (5) The executive director shall notify the person in
39 writing of the decision to discontinue the disability
40 retirement allowance under subparagraph (2) or (4).

41
42 (a) The decision shall be subject to appeal under
43 section 17451.

44
45 (b) If the person appeals the executive
46 director's decision, the disability retirement
47 allowance shall not be discontinued until all
appeals have been exhausted.

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3 §17930. Reduction in amount of benefit

5 1. Definition. As used in this section, unless the context
7 otherwise indicates, "adjusted final compensation" means the rate
9 of pay of the person immediately before termination and becoming
11 the recipient of a disability retirement benefit adjusted by the
13 same percentage adjustment as has been received under section
15 17806.

17 2. Compensation from employment not covered by this
19 article. If any person who is the recipient of a disability
21 retirement benefit is reemployed by an employer whose employees
23 are not covered by this article and if the total of the person's
25 monthly disability retirement benefit for any year and the
27 person's total earnable compensation for that year exceeds the
29 person's average final compensation at the time that person
31 became a recipient of a disability retirement benefit, increased
33 or decreased by the same percentage adjustments as have been
35 granted by section 17806:

37 A. The excess shall be deducted from the disability or
39 service retirement benefits during the next calendar year;
41 the deductions to be prorated on a monthly basis in an
43 equitable manner prescribed by the board over the year or
45 part of the year for which the benefits are received;

47 B. The person shall reimburse the retirement system for any
49 excess payments not deducted under paragraph A. If the
51 retirement benefit payments are eliminated by this
53 subsection, the disability shall be deemed to no longer
55 exist, the payment of the disability retirement benefit
shall be discontinued and, except as provided in paragraph
C, all of the person's rights to benefits under this article
shall cease;

C. If, during the first 5 years of reemployment, the person
again becomes disabled, terminates employment and is not
covered by any other disability program, the retirement
system shall resume paying the disability retirement benefit
payable prior to the reemployment with all applicable
cost-of-living adjustments and shall provide rehabilitation
services under section 17927 if recommended by the medical
board. If the benefit payable under the other disability
program is not equal to or greater than the benefit under
this article, the retirement system shall pay the difference
between the amount of the benefit payable under the other
disability program and the amount of the benefit payable
under this article. The executive director shall require
examinations or tests to determine whether the person is
disabled as described in section 17921; and

D. At any time before the elimination of disability
retirement benefit payments by this subsection, the person
may request that benefit payments be terminated and the

1 executive director shall terminate benefit payments at the
2 end of the month in which the request is received.

3

4 3. Compensation from employment covered by this article.
5 If any person who is the recipient of a disability retirement
6 benefit is reemployed by that person's prior employer or any
7 other employer whose employees are covered by this article or
8 chapter 425, subchapter V, article 3-A, and if the total of the
9 person's disability benefit for any year and the person's total
10 earnable compensation for that year exceeds the adjusted final
11 compensation:

12 A. The disability or service retirement benefits will be
13 reduced during the next calendar year by the amount that the
14 total compensation exceeds the adjusted final compensation;
15

16 B. The deductions shall be prorated on a monthly basis in
17 an equitable manner prescribed by the board over the year or
18 part of the year during which the benefits are received;
19

20 C. The person shall reimburse the retirement system for any
21 excess payments not deducted under paragraph A;
22

23 D. The retirement benefit payments are eliminated by this
24 subsection if:
25

26 (1) The person shall again become a member of the
27 retirement system and begin contributing at the current
28 rate; and
29

30 (2) When the person again retires, the person shall
31 receive benefits computed on the basis of that person's
32 entire creditable service and in accordance with the
33 law in effect at that time;
34

35 E. If, during the first 5 years of reemployment, the person
36 again becomes disabled and terminates employment, the
37 retirement system shall resume paying the disability
38 retirement benefit payable prior to the reemployment with
39 all applicable cost-of-living adjustments, or if greater, a
40 disability retirement benefit based upon the person's
41 current average final compensation and shall provide
42 rehabilitation services under section 17927 if recommended
43 by the medical board. The executive director shall require
44 examinations or tests to determine whether the person is
45 disabled as defined in section 17921; and
46

47 F. At any time before the elimination of disability
48 retirement benefit payments by this subsection, the person
49 may request that benefit payments be terminated and the
50 executive director shall terminate benefit payments at the
51 end of the month in which the request is received.

1
2 4. Disability payments under other laws. The reduction of
3 disability retirement benefits because of disability benefits
4 received under other laws is governed as follows.

5
6 A. The amount of any disability retirement benefit payable
7 under this article shall be reduced by any amount received
8 by the person for the same disability under either or both
9 of the following:

11 (1) The workers' compensation or similar laws, except
12 amounts which may be paid or payable under Title 39,
13 section 56-B; or

15 (2) The United States Social Security Act, if the
16 employment for which creditable service with the
17 employer is allowed was also covered under that Act at
18 the date of disability retirement.

19
20 B. The reduction in the disability retirement benefit is
21 governed as follows:

23 (1) The initial disability retirement benefit shall be
24 reduced if necessary so that the benefit plus any
25 benefits under paragraph A do not exceed 80% of the
26 person's average final compensation;

27 (2) The amount determined by the calculation under
28 subparagraph (1) shall not be adjusted when
29 cost-of-living adjustments are applied to the benefits
30 listed under paragraph A; and

31
32 (3) Adjustments under section 17806 shall be applied
33 to the reduced disability retirement benefit calculated
34 under subparagraph (1) or paragraph C.

35
36 C. The disability retirement benefit may not be reduced
37 below the amount of the retirement benefit which is the
38 actuarial equivalent of the member's accumulated
39 contributions at the time of retirement.

40
41 D. Lump-sum settlements of benefits that reduce the
42 disability retirement benefit under this subsection shall be
43 prorated on a monthly basis in an equitable manner
44 prescribed by the board.

45
46 (1) These prorated lump-sum settlements may not
47 include any part of the lump-sum settlement
48 attributable to rehabilitation, attorneys',
49 physicians', nurses', hospital, medical, surgical or
50 related fees or charges or any amount paid or payable
51 under Title 39, section 56-B.

1
3 (2) These prorated lump-sum settlements shall reduce
5 the disability retirement benefit in the same manner
7 and amount as monthly benefits under this subsection.

9 E. Any dispute about amounts paid or payable under workers'
11 compensation or the amount of the lump-sum settlement and
13 its attributions shall be determined on petition by a single
15 member of the Workers' Compensation Commission in accordance
17 with Title 39. These determinations may be appealed under
19 Title 39, section 103-B.

21 §17931. Statement of compensation

23 1. Requirement. The executive director shall require each
25 person who is the recipient of a disability retirement benefit to
27 submit, each calendar year, a statement of compensation received
29 from any gainful occupation during that year.

31 2. Failure to submit statement. Failure to submit the
33 statement under subsection 1 shall result in the following:

35 A. If the person fails to submit the statement required
37 under subsection 1 within 30 days of receipt of the
39 executive director's request for the statement, the
41 disability retirement benefit shall be withheld until the
43 statement is submitted; or

45 B. If the person fails to submit the statement required
47 under subsection 1 within one year of receipt of the
49 executive director's request for the statement, all rights
51 to further benefits shall cease.

(1) The executive director shall notify the person in
 writing of the decision to discontinue the disability
 retirement benefit.

(2) The decision shall be subject to appeal under
 section 17451.

(3) If the person appeals the executive director's
 decision, the disability retirement allowance shall not
 be discontinued until all appeals have been exhausted.

§17932. Voluntary return to service

1. Right to reinstatement. If a person who is the
 recipient of a disability retirement benefit decides that the
 person is no longer incapacitated and is able to perform the
 duties of that person's employment position, the employer for
 whom the person last worked before becoming disabled shall
 reinstate the person to the first available position for which

1 the person is qualified and which is consistent with the person's
2 prior work experience. If a collective bargaining agreement
3 applies to such a position, the employer may offer only a
4 position which the person may claim by virtue of seniority
5 accumulated at the time of the disability, unless otherwise
6 specified in the collective bargaining agreement.

7
8 2. Dispute over mental or physical capacity. If there is a
9 dispute between the person and the former employer over the
10 person's mental or physical capacity to perform a specific job,
11 at the option of the person that dispute shall be resolved by a
12 majority of 3 physicians, one appointed and reimbursed by the
13 person, one appointed and reimbursed by the employer and one
14 appointed and reimbursed by the retirement system. If the 3
15 physicians resolve the dispute in favor of the person, the former
16 employer shall reimburse the physician appointed by the person.

17
18 3. Termination or reduction in benefits. At any time
19 before the elimination of disability retirement benefit payments
20 under section 17930, subsection 3, the person may request that
21 benefit payments be terminated and the executive director shall
22 terminate benefit payments at the end of the month in which the
23 request is received.

24
25 4. Reinstatement of benefits. If, during the first 5 years
26 of reinstatement, the person again becomes disabled and
27 terminates employment, the retirement system shall resume paying
28 the disability retirement benefit payable before the
29 reinstatement with all applicable cost-of-living adjustments, or
30 if greater, a disability retirement benefit based upon the
31 person's current average final compensation. The executive
32 director may require examinations or tests to determine whether
33 the person is disabled under section 17921.

34 §17933. Service retirement

35
36 1. Average final compensation. The service retirement
37 benefit of a person who returns to employment with that person's
38 former employer or any other employer whose employees are covered
39 by this article or chapter 425, subchapter V, article 3-A, after
40 having been the recipient of a disability retirement benefit,
41 shall be computed in its entirety using the average final
42 compensation as defined by section 17001, subsection 4, on the
43 date of that person's termination from service immediately before
44 becoming the recipient of a service retirement benefit.

45
46 2. Costs of benefits. The cost of benefits based upon
47 service credits earned before and during disability shall be
48 charged to the Disability Retirement Benefit Fund. The cost of
49 benefits based upon service credits earned after becoming
50 reemployed shall be charged to the account of the employer
51 through whom the service credits were earned.

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3. Special plans. The service credits earned after return to employment by a person who was employed under a special plan before becoming the recipient of a disability retirement benefit shall be credited toward completing the service requirements for retirement under that special plan. As used in this section, unless the context otherwise indicates, "special plan" means any of the retirement programs in section 17851, subsections 4 to 11 or section 18453, subsections 2 to 9.

A. The executive director may require, once each year, that the member undergo examinations or tests, conducted in accordance with section 17926, to determine that the member is still disabled to the extent that it is impossible to perform the duties of that member's former employment position.

B. If the member refuses to submit to the examinations or tests under paragraph A, the service credits earned after that date shall be based upon the plan applicable to the position in which the member is currently employed.

C. If it is determined on the basis of the examinations or tests under paragraph A that the member is no longer disabled to the extent that it is impossible to perform the duties of the former employment position, the member shall:

(1) Return to employment in a position covered by the same special plan or a comparable special plan that covered the former employment position; or

(2) Remain in the current employment position and have the service credits earned thereafter based upon the plan applicable to the position in which the member is currently employed.

§17934. Optional election

Any person entitled to receive a disability retirement benefit under article 3, as in effect immediately before July 1, 1989, may elect to be governed by this article instead of article 3 by making written application to the executive director within 6 months of the effective date of this article.

Sec. 9. 5 MRSA §18355, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§18355. Disability retirement service credit

A beneficiary shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which he the beneficiary receives

1 disability retirement benefits under subchapter V, ~~article~~
2 articles 3 and 3-A.

3
4 **Sec. 10. 5 MRSA §18501-A** is enacted to read:

5 **§18501-A. Applicability**

6
7 This article applies to all disabilities for which written
8 applications are received by the executive director before July
9 1, 1989. All disabilities for which written applications are
10 received by the executive director after June 30, 1989, are
11 subject to article 3-A.

12
13 **Sec. 11. 5 MRSA c. 425, sub-c. V, art. 3-A** is enacted to read:

14 **ARTICLE 3-A**

15 **DISABILITY RETIREMENT BENEFITS AFTER JUNE 30, 1989**

16
17 **§18521. Definitions**

18
19 As used in this article, unless the context otherwise
20 indicates, the following terms have the following meanings.

21
22 **1. Disabled.** "Disabled" means that the member is mentally
23 or physically incapacitated under the following conditions:

24
25 **A. The incapacity is expected to be permanent;**

26
27 **B. That it is impossible to perform the duties of the**
28 **member's employment position;**

29
30 **C. After the incapacity has continued for 2 years, the**
31 **incapacity must render the member unable to engage in any**
32 **substantially gainful activity for which the member is**
33 **qualified by training, education or experience; and**

34
35 **D. The incapacity may be revealed by examinations or tests**
36 **conducted in accordance with section 18526.**

37
38 **2. Employment position.** "Employment position" means:

39
40 **A. The position in which the member is employed at the time**
41 **the member becomes incapacitated; or**

42
43 **B. A position of comparable stature and equal or greater**
44 **compensation and benefits which is made available to the**
45 **member by the member's employer.**

1
3 §18522. Applicability

5 This article applies to all disabilities for which written
7 applications are received by the executive director after June
9 30, 1989.

11 §18523. Statement of health

13 1. Statement required. Any person who becomes a member of
15 the retirement system on or after July 1, 1989, shall submit a
17 statement of that person's health to the executive director on
19 forms prescribed by the executive director.

21 2. Additional information. If the executive director
23 determines that additional information is necessary to determine
25 the extent of any preexisting disability of the member, the
27 executive director may require that the member undergo medical
29 and, when appropriate, psychological examinations or tests with
31 the results submitted as evidence of the member's health. Any
33 examinations or tests under this subsection are governed by
35 section 18526.

37 3. Limitation on use. The statement of health or the
39 results of examinations or tests may be used only to determine
41 eligibility for a disability retirement benefit under section
43 18524, subsection 2.

45 4. Sanction. Any member who is required to submit a
47 statement of health under this section and who does not submit
49 the statement before applying for disability retirement benefits
51 is not eligible to receive those benefits unless that member
53 establishes to the satisfaction of the executive director that
the member meets the requirements of section 18524, subsection 2.

§18524. Qualification for benefit

1. Qualification. Except as provided in subsection 2, a
member qualifies for a disability retirement benefit if disabled:

A. While in service; and

B. Before reaching the normal retirement age.

2. Exception. A member with fewer than 5 years of
continuous creditable service immediately preceding that member's
application for a disability retirement benefit is not eligible
for that benefit if the disability is the result of a physical or
mental condition which existed before the member's membership in
the retirement system, unless the disability is a result of, or
has been substantially aggravated by, an injury or accident
received in the line of duty.

1 §18525. Application

3 In order to receive a benefit under this article:

5 1. Written application. The person must apply in writing
7 to the executive director in the format specified by the
 executive director.

9 A. The executive director shall submit the application and
11 all pertinent medical and psychological information to the
 medical board for review as required by section 17106,
 subsection 3.

13 B. As required by section 17106, the medical board shall
15 make a recommendation as to whether or not the member may be
17 provided vocational rehabilitation services;

19 2. Workers' compensation. If the incapacity upon which the
 application is based is a result of an injury or accident
21 received in the line of duty, the application must include proof
 that the member has made application for benefits under the
23 workers' compensation laws;

25 3. Social security. If the employment for which creditable
 service with the employer is allowed was also covered under the
27 United States Social Security Act, the application must include
 proof that the member has made application for benefits under
29 this Act; and

31 4. Approval. The written application shall be approved by
 the executive director upon finding that the member has met the
33 requirements of section 18524.

35 §18526. Examinations or tests

37 Any examinations or tests recommended by the medical board
 in accordance with section 17106 or required by the executive
39 director under section 18521, subsection 1, paragraph D; section
 18523, subsection 2; section 18524; section 18529, subsection 2,
41 paragraph B; or section 18533, subsection 3, paragraph A, are
 governed as follows.

43 1. Agreed upon physician. The examinations or tests shall
 be conducted by a qualified physician and, when appropriate, a
45 qualified psychologist mutually agreed upon by the executive
 director and the member claiming to be disabled.

47 2. Agreed upon place. The examinations or tests shall be
49 conducted at a place mutually agreed upon by the executive
 director and the member claiming to be disabled.

51 3. Costs. The costs incurred under subsections 1 and 2
53 shall be paid by the retirement system.

1 **§18527. Rehabilitation**

3 Upon recommendations from the medical board, rehabilitation
5 services shall be provided to any person who is the recipient of
7 a disability retirement benefit under this article. Services
9 shall be provided by private and public rehabilitation
11 counselors, government agencies and others approved by the
13 executive director as qualified to provide rehabilitation
 services. The executive director shall consider a rehabilitation
 counselor's rate of successfully placing rehabilitated employees
 in jobs relative to the placement rates of other counselors in
 the State as fundamental in deciding whether to approve the
 counselor as qualified.

15 1. Rehabilitation plan. If rehabilitation is feasible and
17 recommended, the retirement system shall designate a
 rehabilitation provider to evaluate the person and develop a
 rehabilitation plan.

19 2. Costs. The executive director may contract with
21 rehabilitation providers to develop and carry out approved
23 rehabilitation plans.

25 A. Except as provided in paragraph B, the executive
27 director shall pay these providers from funds accumulated in
 the Disability Retirement Benefit Fund.

29 B. If the person is entitled to other benefits to meet the
31 cost of rehabilitation services, that person must first
 apply for and use those benefits to the extent available to
 pay for the goods and services provided.

33 3. Approval of rehabilitation plan. The executive director
35 shall approve any rehabilitation plan the executive director
37 finds to be in the person's best interest and consistent with the
 purposes of this article. The person and the executive director
 shall indicate in writing their approval of and agreement to the
 submitted rehabilitation plan. The person shall approve the plan
 within 30 days or, within that time period, submit to the
 executive director the name of an alternate provider for the
 executive director's consideration. If the rehabilitation plan
 includes return to employment with the employer for whom the
 person worked before becoming disabled, the employer shall also
 indicate in writing approval of the plan.

45 4. Decline of rehabilitation. If, after recommendation by
47 the medical board, a person declines use of the rehabilitation
49 services offered or refuses to agree to a rehabilitation plan
51 approved by the executive director, the disability retirement
 benefit payments shall cease at the end of the month following
 the decline or refusal.

1 A. The executive director shall notify the person in
2 writing of the decision to discontinue the disability
3 retirement benefit.

4 B. The decision shall be subject to appeal under section
5 17451.

6 C. If the person appeals the executive director's decision,
7 the disability retirement allowance shall not be
8 discontinued until all appeals have been exhausted.

9
10
11 5. Monitoring of rehabilitation plan. Each rehabilitation
12 plan approved by the executive director shall contain a provision
13 for periodic review of progress being made by the person toward
14 achieving the goal of the plan. The provision relating to review
15 shall include authority for the executive director to terminate
16 the plan or to amend the plan with the same provider or with a
17 change of provider, based upon results of the review or at the
18 request of the person or the provider. Subsections 1, 2, 3 and 4
19 shall apply to any amended plans under this subsection.

20
21 6. Return to service. If the rehabilitation plan includes
22 return to employment with the person's former employer, that
23 person shall be reemployed in accordance with the plan. If the
24 plan does not include reemployment with the former employer, the
25 executive director shall notify the former employer, in writing,
26 that the person has completed the rehabilitation plan and is
27 ready to return to employment. The former employer shall
28 reemploy the person in the first available position for which
29 that person is qualified, taking into consideration that person's
30 prior compensation and benefits, training, education and
31 experience, including that person's rehabilitation plan.

32
33 7. Other employment under system. If the former employer
34 has not reemployed the person before the expiration of 3 months,
35 the executive director shall inform all other employers whose
36 employees are covered by this article and chapter 423, subchapter
37 V, article 3-A, of the availability of the person and solicit
38 their assistance in finding employment for that person.

39
40
41 §18528. Computation of benefit

42 When a member qualified under section 18524 retires, after
43 approval for disability retirement by the executive director in
44 accordance with section 18525, the member shall receive a
45 disability retirement benefit equal to 66 2/3% of that member's
46 average final compensation.

47
48 §18529. Payment of benefit

49 1. Beginning. Payment of disability retirement benefits
50 shall begin on the first day of the month following the date of
51

1 termination of active service of the member, but not more than 6
2 months before the date of receipt by the executive director of
3 the written application, by or on behalf of the member, for
4 disability retirement, unless it is shown that:

5 A. It was not reasonably possible to file the application
6 for disability retirement benefits within the 6-month
7 period; and

8 B. The application was made as soon as reasonably possible.

9
10
11 2. Cessation. Payment of disability retirement benefits
12 shall continue as long as a person is disabled, except that:

13
14 A. The disability retirement benefit ceases and a service
15 retirement benefit begins:

16
17 (1) On the 10th anniversary of the person's normal
18 retirement age, as defined in section 17001, subsection
19 23; or

20
21 (2) When the service retirement benefit of a person
22 equals or exceeds the amount of the disability
23 retirement benefit, if that occurs before the date in
24 subparagraph (1).

25
26 (a) When calculating the person's service
27 retirement benefit, the average final compensation
28 shall be the average final compensation at the
29 time that person terminated active service before
30 receiving disability retirement benefits adjusted
31 by the same percentage adjustments, if any, that
32 were applied to the disability retirement benefits
33 under section 18407.

34 (b) The person shall receive service credit for
35 the purpose of determining benefits under this
36 Part for the period following termination of
37 service for which that person receives disability
38 retirement benefits under this article; and

39
40 B. The executive director may require, once each year, that
41 the person undergo examinations or tests, conducted in
42 accordance with section 18526, to determine the person's
43 disability.

44 (1) After the disability has continued for 2 years,
45 the disability must render the person unable to engage
46 in any substantially gainful activity which is
47 consistent with the person's training, education or
48 experience and average final compensation adjusted by
49 the executive director.

1 the same percentage adjustment as has been received
3 under section 18407.

5 (2) If the person refuses to submit to the
7 examinations or tests under this paragraph, the
9 disability retirement benefit shall be discontinued
11 until that person withdraws the refusal.

13 (3) If the person's refusal under subparagraph (2)
15 continues for one year, all rights to any further
17 benefits under this article shall cease.

19 (4) If it is determined, on the basis of the
21 examinations or tests under this paragraph, that the
23 disability of a person no longer exists, the payment of
25 the disability retirement benefit shall cease.

27 (5) The executive director shall notify the person in
29 writing of the decision to discontinue the disability
31 retirement allowance under subparagraph (2) or (4).

33 (a) The decision shall be subject to appeal under
35 section 17451.

37 (b) If the person appeals the executive
39 director's decision, the disability retirement
41 allowance shall not be discontinued until all
43 appeals have been exhausted.

45 **§18530. Reduction in amount of benefit**

47 1. Definition. As used in this section, unless the context
49 otherwise indicates, "adjusted final compensation" means the rate
51 of pay of the person immediately before termination and becoming
 the recipient of a disability retirement benefit adjusted by the
 same percentage adjustment as has been received under section
 18407.

2. Compensation from employment not covered by this
 article. If any person who is the recipient of a disability
 retirement benefit is reemployed by an employer whose employees
 are not covered by this article and if the total of the person's
 monthly disability retirement benefit for any year and the
 person's total earnable compensation for that year exceeds the
 person's average final compensation at the time that person
 became a recipient of a disability retirement benefit, increased
 or decreased by the same percentage adjustments as have been
 granted by section 18407:

A. The excess shall be deducted from the disability or
 service retirement benefits during the next calendar year;
 the deductions to be prorated on a monthly basis in an

1 equitable manner prescribed by the board over the year or
2 part of the year for which the benefits are received;

3
4 B. The person shall reimburse the retirement system for any
5 excess payments not deducted under paragraph A. If the
6 retirement benefit payments are eliminated by this
7 subsection, the disability shall be deemed to no longer
8 exist, the payment of the disability retirement benefit
9 shall be discontinued and, except as provided in paragraph
10 C, all of the person's rights to benefits under this article
11 shall cease;

12
13 C. If, during the first 5 years of reemployment, the person
14 again becomes disabled, terminates employment and is not
15 covered by any other disability program, the retirement
16 system shall resume paying the disability retirement benefit
17 payable prior to the reemployment with all applicable
18 cost-of-living adjustments and shall provide rehabilitation
19 services under section 18527 if recommended by the medical
20 board. If the benefit payable under the other disability
21 program is not equal to or greater than the benefit under
22 this article, the retirement system shall pay the difference
23 between the amount of the benefit payable under the other
24 disability program and the amount of the benefit payable
25 under this article. The executive director shall require
26 examinations or tests to determine whether the person is
27 disabled as described in section 18521; and

28
29 D. At any time before the elimination of disability
30 retirement benefit payments by this subsection, the person
31 may request that benefit payments be terminated and the
32 executive director shall terminate benefit payments at the
33 end of the month in which the request is received.

34
35 3. Compensation from employment covered by this article.
36 If any person who is the recipient of a disability retirement
37 benefit is reemployed by that person's prior employer or any
38 other employer whose employees are covered by this article or
39 chapter 423, subchapter V, article 3-A, and if the total of the
40 person's disability benefit for any year and the person's total
41 earnable compensation for that year exceeds the adjusted final
42 compensation:

43
44 A. The disability or service retirement benefits will be
45 reduced during the next calendar year by the amount that the
46 total compensation exceeds the adjusted final compensation;

47
48 B. The deductions shall be prorated on a monthly basis in
49 an equitable manner prescribed by the board over the year or
50 part of the year during which the benefits are received;

1 C. The person shall reimburse the retirement system for any
2 excess payments not deducted under paragraph A;

3 D. The retirement benefit payments are eliminated by this
4 subsection if:

5
6 (1) The person shall again become a member of the
7 retirement system and begin contributing at the current
8 rate; and

9
10 (2) When the person again retires, the person shall
11 receive benefits computed on the basis of that person's
12 entire creditable service and in accordance with the
13 law in effect at that time;

14
15 E. If, during the first 5 years of reemployment, the person
16 again becomes disabled and terminates employment, the
17 retirement system shall resume paying the disability
18 retirement benefit payable prior to the reemployment with
19 all applicable cost-of-living adjustments, or if greater, a
20 disability retirement benefit based upon the person's
21 current average final compensation and shall provide
22 rehabilitation services under section 18527 if recommended
23 by the medical board. The executive director shall require
24 examinations or tests to determine whether the person is
25 disabled as defined in section 18521; and

26
27 F. At any time before the elimination of disability
28 retirement benefit payments by this subsection, the person
29 may request that benefit payments be terminated and the
30 executive director shall terminate benefit payments at the
31 end of the month in which the request is received.

32
33 4. Disability payments under other laws. The reduction of
34 disability retirement benefits because of disability benefits
35 received under other laws is governed as follows.

36
37 A. The amount of any disability retirement benefit payable
38 under this article shall be reduced by any amount received
39 by the person for the same disability under either or both
40 of the following:

41
42 (1) The workers' compensation or similar laws, except
43 amounts which may be paid or payable under Title 39,
44 section 56-B; or

45
46 (2) The United States Social Security Act, if the
47 employment for which creditable service with the
48 employer is allowed was also covered under that Act at
49 the date of disability retirement.

50
51

1 B. The reduction in the disability retirement benefit is
2 governed as follows:

3 (1) The initial disability retirement benefit shall be
4 reduced if necessary so that the benefit plus any
5 benefits under paragraph A do not exceed 80% of the
6 person's average final compensation;

7 (2) The amount determined by the calculation under
8 subparagraph (1) shall not be adjusted when
9 cost-of-living adjustments are applied to the benefits
10 listed under paragraph A; and

11 (3) Adjustments under section 18407 shall be applied
12 to the reduced disability retirement benefit calculated
13 under subparagraph (1) or paragraph C.

14 C. The disability retirement benefit may not be reduced
15 below the amount of the retirement benefit which is the
16 actuarial equivalent of the member's accumulated
17 contributions at the time of retirement.

18 D. Lump-sum settlements of benefits that reduce the
19 disability retirement benefit under this subsection shall be
20 prorated on a monthly basis in an equitable manner
21 prescribed by the board.

22 (1) These prorated lump-sum settlements may not
23 include any part of the lump-sum settlement
24 attributable to rehabilitation, attorneys',
25 physicians', nurses', hospital, medical, surgical or
26 related fees or charges or any amount paid or payable
27 under Title 39, section 56-B.

28 (2) These prorated lump-sum settlements shall reduce
29 the disability retirement benefit in the same manner
30 and amount as monthly benefits under this subsection.

31 E. Any dispute about amounts paid or payable under workers'
32 compensation or the amount of the lump-sum settlement and
33 its attributions shall be determined on petition by a single
34 member of the Workers' Compensation Commission in accordance
35 with Title 39. These determinations may be appealed under
36 Title 39, section 103-B.

37 §18531. Statement of compensation

38 1. Requirement. The executive director shall require each
39 person who is the recipient of a disability retirement benefit to
40 submit, each calendar year, a statement of compensation received
41 from any gainful occupation during that year.
42

1 2. Failure to submit statement. Failure to submit the
2 statement under subsection 1 shall result in the following:

3
4 A. If the person fails to submit the statement required
5 under subsection 1 within 30 days of receipt of the
6 executive director's request for the statement, the
7 disability retirement benefit shall be withheld until the
8 statement is submitted; or

9
10 B. If the person fails to submit the statement required
11 under subsection 1 within one year of receipt of the
12 executive director's request for the statement, all rights
13 to further benefits shall cease. .

14 (1) The executive director shall notify the person in
15 writing of the decision to discontinue the disability
16 retirement benefit.

17
18 (2) The decision shall be subject to appeal under
19 section 17451.

20
21 (3) If the person appeals the executive director's
22 decision, the disability retirement allowance shall not
23 be discontinued until all appeals have been exhausted.

24
25 §18532. Voluntary return to service

26
27 1. Right to reinstatement. If a person who is the
28 recipient of a disability retirement benefit decides that the
29 person is no longer incapacitated and is able to perform the
30 duties of that person's employment position, the employer for
31 whom the person last worked before becoming disabled shall
32 reinstate the person to the first available position for which
33 the person is qualified and which is consistent with the person's
34 prior work experience. If a collective bargaining agreement
35 applies to such a position, the employer may offer only a
36 position which the person may claim by virtue of seniority
37 accumulated at the time of the disability, unless otherwise
38 specified in the collective bargaining agreement.

39
40 2. Dispute over mental or physical capacity. If there is a
41 dispute between the person and the former employer over the
42 person's mental or physical capacity to perform a specific job,
43 at the option of the person that dispute shall be resolved by a
44 majority of 3 physicians, one appointed and reimbursed by the
45 person, one appointed and reimbursed by the employer and one
46 appointed and reimbursed by the retirement system. If the 3
47 physicians resolve the dispute in favor of the person, the former
48 employer shall reimburse the physician appointed by the person.

49
50 3. Termination or reduction in benefits. At any time
51 before the elimination of disability retirement benefit payments

1 under section 18530, subsection 3, the person may request that
2 benefit payments be terminated and the executive director shall
3 terminate benefit payments at the end of the month in which the
4 request is received.

5
6 4. Reinstatement of benefits. If, during the first 5 years
7 of reinstatement, the person again becomes disabled and
8 terminates employment, the retirement system shall resume paying
9 the disability retirement benefit payable before the
10 reinstatement with all applicable cost-of-living adjustments, or
11 if greater, a disability retirement benefit based upon the
12 person's current average final compensation. The executive
13 director may require examinations or tests to determine whether
14 the person is disabled under section 18521.

15 **§18533. Service retirement**

16
17 1. Average final compensation. The service retirement
18 benefit of a person who returns to employment with that person's
19 former employer or any other employer whose employees are covered
20 by this article or chapter 423, subchapter V, article 3-A, after
21 having been the recipient of a disability retirement benefit,
22 shall be computed in its entirety using the average final
23 compensation as defined by section 17001, subsection 4, on the
24 date of that person's termination from service immediately before
25 becoming the recipient of a service retirement benefit.

26
27 2. Costs of benefits. The cost of benefits based upon
28 service credits earned before and during disability shall be
29 charged to the Disability Retirement Benefit Fund. The cost of
30 benefits based upon service credits earned after becoming
31 reemployed shall be charged to the account of the employer
32 through whom the service credits were earned.

33
34 3. Special plans. The service credits earned after return
35 to employment by a person who was employed under a special plan
36 before becoming the recipient of a disability retirement benefit
37 shall be credited toward completing the service requirements for
38 retirement under that special plan. As used in this section,
39 unless the context otherwise indicates, "special plan" means any
40 of the retirement programs in section 17851, subsections 4 to 11
41 or section 18453, subsections 2 to 9.

42
43 A. The executive director may require, once each year, that
44 the member undergo examinations or tests, conducted in
45 accordance with section 18526, to determine that the member
46 is still disabled to the extent that it is impossible to
47 perform the duties of that member's former employment
48 position.

49
50 B. If the member refuses to submit to the examinations or
51 tests under paragraph A, the service credits earned after

1 that date shall be based upon the plan applicable to the
2 position in which the member is currently employed.

3
4 C. If it is determined on the basis of the examinations or
5 tests under paragraph A that the member is no longer
6 disabled to the extent that it is impossible to perform the
7 duties of the former employment position, the member shall:

8 (1) Return to employment in a position covered by the
9 same special plan or a comparable special plan that
10 covered the former employment position; or

11 (2) Remain in the current employment position and have
12 the service credits earned thereafter based upon the
13 plan applicable to the position in which the member is
14 currently employed.

15
16
17 **§18534. Optional election**

18 Any person entitled to receive a disability retirement
19 benefit under article 3, as in effect immediately before July 1,
20 1989, or under section 1122 of the former retirement system law,
21 as in effect immediately before July 1, 1977, may elect to be
22 governed by this article instead of article 3 by making written
23 application to the executive director within 6 months after
24 adoption of this article by the participating local district. If
25 the election is made, this article shall apply from the date of
26 the person's original eligibility for disability retirement, but
27 any increase in benefits may only be granted from the date of
28 election.

29
30 **Emergency clause.** In view of the emergency cited in the
31 preamble, this Act shall take effect July 1, 1989.

32
33
34 **STATEMENT OF FACT**

35
36
37
38 This bill establishes a new disability retirement plan for
39 members of the Maine State Retirement System. This new plan will
40 be applicable to state employees, teachers and employees of
41 participating local districts which have adopted as part of their
42 retirement plan the disability retirement plan set forth in the
43 Maine Revised Statutes, Title 5, chapter 425, subchapter V,
44 article 3. Subsequent to its enactment, other participating
45 local districts may adopt this new plan.

46
47 The principal difference between the existing disability
48 retirement plan and the plan contained in this bill is that under
49 this plan the Maine State Retirement System may provide
50 rehabilitation services to recipients of disability retirement
51 benefits upon recommendation of the Maine State Retirement

1 System's medical board. Any person who returns to employment
2 with that person's previous employer or any other employer whose
3 employees are covered by this plan would have no reduction in
4 disability retirement benefits until combined earnings on the new
5 job and disability retirement benefit exceed the amount that
6 would have been earned had that person continued to be employed
7 on the previous job. A person who becomes employed by an
8 employer whose employees are not covered by this plan would have
9 that person's earnings limited to the difference between the
10 average final compensation, plus cost-of-living adjustments and
11 the disability retirement benefit.

13 Sections 1 and 2 add to the duties of the Maine State
14 Retirement System's medical board to include duties relating to
15 the new disability plan.

17 Section 3 adds the Disability Retirement Benefit Fund to the
18 list of funds administered by the Maine State Retirement System
19 and corrects an error in prior legislation when a new fund was
20 created, but not added to this list.

21 Section 4 amends a section relating to the Retirement
22 Allowance Fund recognizing the establishment of the Disability
23 Retirement Benefit Fund.

25 Section 5 establishes the Disability Retirement Benefit Fund
26 from which all benefits under this plan will be paid. The State,
27 as the employer of state employees and teachers and participating
28 local districts whose employees are covered by this plan, will
29 make contributions to the fund based upon actuarial valuations,
30 including all members of the retirement system covered by this
31 plan and there will be one rate applicable to all employers.

33 Sections 6 and 9 amend 2 sections in the present law to
34 provide for continuation of service credits for persons who are
35 recipients of disability retirement benefits under this plan in
36 the same manner as persons receiving benefits under the present
37 plan receive service credits.

39 Sections 7 and 10 provide that all disabilities which occur
40 before the effective date of this bill are subject to the present
41 disability retirement plan and all disabilities which occur on
42 and after the effective date of this bill are subject to this
43 plan.

45 Sections 8 and 11 contain the statutory language for the new
46 disability retirement plan. Section 8 pertains to state
47 employees and teachers and section 11 pertains to participating
48 local district employees. The principal differences between the
49 present disability retirement plan and this plan were discussed
50 in the first paragraph. If a person who is the recipient of a
51 disability retirement benefit has that benefit discontinued

1 because of becoming reemployed, that person is entitled to have
2 those benefit payments resumed if that person again becomes
3 disabled within 5 years of becoming reemployed. A person who is
4 reemployed by any employer whose employees are covered by this
5 plan will have complete portability between the person's
6 predisability employment and post-disability employment. A
7 person who was under a special plan, such as police or
8 firefighter, before becoming disabled will receive credit toward
9 retirement under that special plan upon becoming reemployed in
10 any position covered by this plan.

11

12 Because it is expected that the rehabilitation provision in
13 this bill will encourage return to active service of disability
14 recipients from the Maine State Retirement System, there will be
15 a reduction in the long-term costs of disability retirement. An
16 estimate of the reduction of contribution rates cannot be
17 determined.

STATE OF MAINE
114TH LEGISLATURE

LEGISLATIVE NOTICES

Aging, Retirement and Veterans Committee

Tuesday, April 18, 1989 - 1:30 p.m.
Room 109, State Office Building

- (L.D. 977) Bill "An Act to Establish Disability Retirement Benefits for
(H.P. 716) Members of the Maine State Retirement System" (EMERGENCY)
(Presented by Representative HICKEY of Augusta) (Cosponsored
by Senator CLARK of Cumberland, Representative JALBERT of
Lisbon and Senator BUSTIN of Kennebec)
- (L.D. 980) Bill "An Act Regarding Retirement Benefits for Confidential
(S.P. 363) State Employees" (Presented by Senator WEYMOUTH of Kennebec)
(Cosponsored by Representative DELLERT of Gardiner,
Representative MARSH of West Gardiner and Representative
HICKEY of Augusta)

114th LEGISLATURE

COMMITTEE ON AGING, RETIREMENT & VETERANS LD 977

NAME	TOWN/AFFILIATION	FAVOR	OPPOSE	NEITHE
1. Rep. Hickey, Augusta	Sponsor	✓		
2. Sen. Bustin	Co-sponsor	✓		
3. Philip Gingrow		✓		
4. Carl & Lemoren	MSEA	✓		
5. Steve Krause	Me. Teacher's Assoc.	✓		
6. Ed. Gorham	Randolph	✓		
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MAINE STATE RETIREMENT SYSTEM

DATE: April 14, 1989

TO: Senator Bonnie Titcomb, Senate Chair
Representative Daniel Hickey, House Chair

FROM: P. R. Gingrow, Assistant Executive Director

SUBJECT: Board of Trustees' Position Regarding LD #977, An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System

Aging, Retirement & Veterans Committee

Under the provisions of 5 MRSA, §17103, sub-§9, the Board of Trustees of the Maine State Retirement System are required to review proposed legislation and report to the appropriate legislative committee. This statute requires that the report should state the impact of all aspects of the System, including the amendment's purposes, the resulting equitable or inequitable treatment of members, the funding of the cost of the benefits, its consistency with other provisions of the Maine State Retirement System statutes and the value of such an amendment to the System.

During the regular monthly meeting of the Board of Trustees on April 13, 1989, the Board reviewed this legislation and directed the staff to report to the Committee as required by the aforementioned statute. This legislation was developed by the M.S.R.S. staff with the participation of organizations which represent members of the System and organizations which represent employers. The Board; therefore, favors passage of this legislation.

PURPOSE - The purpose of LD #977 is to establish a new disability retirement plan for members of the Retirement System with changes from the present plan in the area of rehabilitation services, combined contribution rate for all employers, changing the earnings limitation so that it is related to

Senator Bonnie Titcomb, Senate Chair
Representative Daniel Hickey, House Chair
Aging, Retirement & Veterans Committee
Memorandum - April 14, 1989
Page 2

disability retirement allowance and average final compensation prior to retirement and permitting present disability retirees to elect to be covered under the new program.

EQUITABLE OR INEQUITABLE TREATMENT OF MEMBERS - This legislation is equitable in its treatment of members as pluses and minuses so far as members of the System are concerned appear to be substantially equal.

FUNDING OF COST - The actuary's review of this legislation, a copy of which is attached, indicates that the rehabilitation provision would, over the long term, decrease costs which would be partially offset by the outside earnings change that would have a minor effect one way or the other and the provision allowing currently disabled members to opt into the new plan.

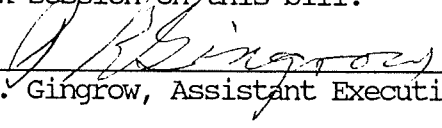
CONSISTENCY WITH OTHER PROVISIONS - This legislation is a change from the present disability retirement law therefore it is not consistent with other provisions of the statute.

VALUE TO THE SYSTEM - The enactment of this legislation would be of value to the System from the point of view of administration and it appears that overall there would be a cost savings because of the rehabilitation provisions. In addition, there appears to be a value to the individual disability retirees in that this legislation would stress rehabilitation and return to employment.

AMENDMENT - During the review of this legislation, the Board directed the staff to request that the Committee amend it to provide that if a member substantially misrepresents his health in the Statement of Health required by this legislation, the member may be denied the right to apply for disability retirement. The proposed amendment is attached. There have been three recent

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cases where there appeared to be substantial misrepresentation of the members health on the Statement of Health. We will provide the Committee with summaries of these cases during your work session on this bill.



P. R. Gingrow, Assistant Executive Director

PRG/pjm
Attachments

cc: Members, Board of Trustees
Representative Daniel Hickey
Senator Nancy Clark
Representative John Jalbert
Senator Beverly Bustin
G. William Buker, State Budget Officer
Bent Schlosser, Director, Fiscal & Program Review
George Viles, Department of Administration
Sawin Millett, Executive Department
John Knox, Legislative Assistant
George Hopkins, Accountant

STATE OF MAINE
COST IMPACT STATEMENT
FOR PROPOSED LEGISLATION

BILL: ID # 977

TITLE: An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System

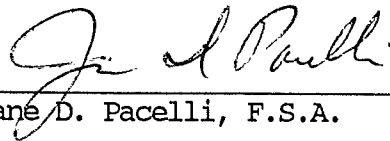
DESCRIPTION: The bill would establish a new disability benefit covering disabilities occurring after June 30, 1989. The provisions regarding benefits and eligibility are essentially unchanged from current law. There are several changes from the current law as follows.

1. The most significant change is to include provisions requiring a disabled member to accept rehabilitation services and require employers to reemploy rehabilitated disabled members.
2. Rather than separate contribution rates for different groups, a single contribution rate would be established for this benefit.
3. Under prior law, benefits would be reduced if outside earnings exceeded \$10,000. Under this bill, benefits would be reduced if the total of the System disability retirement benefit and the person's income exceeded the pay the member was earning in his final position, adjusted for inflation.
4. Members receiving benefits under the current disability provision may elect to be covered under the new program.

COST IMPACT/
COMMENTS: The changes noted in the section above may have an impact on the cost of the disability benefits.

1. The rehabilitation provision will likely decrease the cost of the plan over the long term. There will be added administrative expense which should be more than offset by savings in benefit payments. There is insufficient information available from which to estimate the potential savings for this provisions. As an example, currently, the disability contribution rates for the larger groups are in the neighborhood of 1.5% of pay. If, for example, the new provisions could reduce future disability payments by 5%, this would reduce the employer contribution rate by 0.075% of pay.

2. Currently, separate contribution rates are developed for different groups such as State regular, MIRA teachers, State special, and Participating Local Districts. The use of a single rate will not change the overall cost of the benefit. It will change the allocation of costs among various groups with higher cost groups being subsidized by lower cost groups.
3. The change in the outside earnings test could, depending upon the situation, increase or decrease the cost to the System. However, the new provision seems to be more rational, particularly because it will be indexed to keep up with inflation. We expect the overall effect of this provision to be minor.
4. We have no way to estimate the cost of allowing currently disabled members to elect into the new plan. However, if we assume that a member would only make such an election if he or she believed it to be beneficial (e.g., perhaps because of a more favorable outside earnings provision) then we would expect some additional employer cost.



Jane D. Pacelli, F.S.A.

4/4/85

Date

Proposed amendment to disability bill (LD 977)

Amend §17908, sub-§4, §18508, sub-§4, §17922, sub-§4 and §18523, sub-§4 by adding a new sentence:

Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health, may, upon a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

AMENDDIS 2
4-14-89

MAINE SCHOOL MANAGEMENT
108 Sewall Street
Augusta, Maine 04330

A STATEMENT OF MAINE SCHOOL MANAGEMENT ASSOCIATION ON LD 870, "AN ACT REGARDING VOLUNTARY RETURN TO SERVICE BY TEACHERS"

THE MAINE SCHOOL BOARDS ASSOCIATION AND THE MAINE SCHOOL SUPERINTENDENTS ASSOCIATION SUPPORT LD 870 AS A MEASURE TO ASSURE THAT THEY CAN PLACE THE BEST QUALIFIED TEACHERS IN MAINE'S PUBLIC SCHOOLROOMS.

THE CURRENT LAW, ENACTED WITHOUT OUR KNOWLEDGE IN RECENT YEARS, REQUIRES THE REEMPLOYMENT OF FORMER TEACHERS, WHO UNFORTUNATELY BECAME DISABLED, LONG AFTER THEIR LOCAL EMPLOYMENT HAS BEEN TERMINATED. THAT IS IN DIRECT CONFLICT WITH 20-A MRSA SECTION 13201 WHICH HOLDS LOCAL SCHOOL SUPERINTENDENTS AND SCHOOL BOARDS RESPONSIBLE FOR MAKING DECISIONS ON THE EMPLOYMENT OF TEACHERS. THAT PROCESS REQUIRES THE SUPERINTENDENT TO NOMINATE, AND THE LOCAL BOARD TO APPROVE, THE EMPLOYMENT OF TEACHERS. 5 MRSA, SECTION 17910 (1), AS IT IS NOW WRITTEN, TAKES AWAY FROM SUPERINTENDENTS AND LOCAL SCHOOL BOARDS THE OPPORTUNITY TO EMPLOY THE BEST QUALIFIED CANDIDATES FOR TEACHING POSITIONS.

WE HAVE ALSO DISCOVERED ANOTHER STATUTORY CONFLICT BETWEEN 5 MRSA, SECTION 17910 (1) AND 20-A MRSA, SECTION 13201. UNDER TITLE 20-A, SENIORITY CANNOT BE THE ONLY FACTOR IN A RECALL. TITLE 5 APPARENTLY PROVIDES FOR SENIORITY AS THE ONLY RECALL CRITERION.

FINALLY, THE LAW ALMOST CERTAINLY WILL CONFLICT WITH THE INTENT OF THE MAINE HUMAN RIGHTS ACT. AS WRITTEN, IT WILL IN SOME CASES FORECLOSE EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WHICH THE STATE INTENDS TO PROTECT FROM DISCRIMINATION.

ALTHOUGH 5 MRSA, SECTION 17910 APPEARS TO BE HARMLESS--AND EVEN HELPFUL
TO THOSE WITH TERMINAL DISABILITIES--IT NEEDS TO BE MODIFIED IN ORDER TO
CONFORM TO OTHER LAWS RELATING TO EMPLOYMENT.

WE WILL BE AVAILABLE TO THE COMMITTEE TOWARD THAT END.

/DR



John R. McKernan, Jr.
Governor

George H. Viles
Director

Department of Administration
ADMINISTRATIVE SERVICES DIVISION

Telephone (207) 289-4500

May 2, 1989

Senator Bonnie L. Titcomb, Chair
Representative Dan Hickey, Chair
Committee on Aging, Retirement & Veterans
114th Legislature
State House
Augusta, Maine 04333

Dear Senator Titcomb and Representative Hickey:

L.D. 977, "An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System" is a carefully drafted bill to provide for a disabled State employee to return to work far earlier than under current law.

We are concerned with, and oppose the amendment proposed by MSEA that, after rehabilitation, a person remains on disability until reemployed or until eligible for regular service retirement. The effect of the amendment is to contradict § 17929, sub-§ 2, ¶ B of the bill (pg. 9 of the L.D.) which provides that persons can be removed from disability when able to return to an appropriate job, if they refuse an examination, or if they are no longer disabled.

We also feel that § 17929, sub-§ 2, ¶ B, sub-¶ 1, of the bill as presented should be amended in line 20 to read "...and within 70% of the person's average final compensation..." This would be a more reasonable standard of comparison. Remember that § 17930 would offset lost income. In fact, because of the continuing retirement payment, it makes the greatest sense to have no income comparison between the former position and current potential earnings.

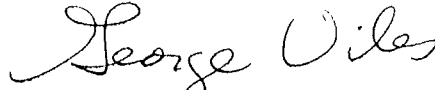
It is important that the State's disability retirement program provide reasonable security to its employees, but the program should not be an incentive for an able person to avoid returning to work.

Committee on Aging, Retirement & Veterans
May 2, 1989
Page Two

We are also concerned with any amendments to the bill which could have a major fiscal impact.

Thank you for your consideration.

Sincerely,



George H. Viles, Director
Administrative Services

GHV/cl

cc: Members, Committee on Aging, Retirement & Veterans

STATE OF MAINE
COST IMPACT STATEMENT
FOR PROPOSED LEGISLATION

BILL: ID # 977

TITLE: An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System

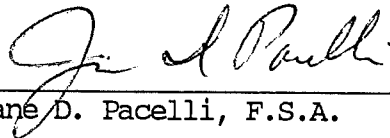
DESCRIPTION: The bill would establish a new disability benefit covering disabilities occurring after June 30, 1989. The provisions regarding benefits and eligibility are essentially unchanged from current law. There are several changes from the current law as follows.

1. The most significant change is to include provisions requiring a disabled member to accept rehabilitation services and require employers to reemploy rehabilitated disabled members.
2. Rather than separate contribution rates for different groups, a single contribution rate would be established for this benefit.
3. Under prior law, benefits would be reduced if outside earnings exceeded \$10,000. Under this bill, benefits would be reduced if the total of the System disability retirement benefit and the person's income exceeded the pay the member was earning in his final position, adjusted for inflation.
4. Members receiving benefits under the current disability provision may elect to be covered under the new program.

COST IMPACT/ The changes noted in the section above may have an impact
COMMENTS: on the cost of the disability benefits.

1. The rehabilitation provision will likely decrease the cost of the plan over the long term. There will be added administrative expense which should be more than offset by savings in benefit payments. There is insufficient information available from which to estimate the potential savings for this provisions. As an example, currently, the disability contribution rates for the larger groups are in the neighborhood of 1.5% of pay. If, for example, the new provisions could reduce future disability payments by 5%, this would reduce the employer contribution rate by 0.075% of pay.

2. Currently, separate contribution rates are developed for different groups such as State regular, MIRA teachers, State special, and Participating Local Districts. The use of a single rate will not change the overall cost of the benefit. It will change the allocation of costs among various groups with higher cost groups being subsidized by lower cost groups.
3. The change in the outside earnings test could, depending upon the situation, increase or decrease the cost to the System. However, the new provision seems to be more rational, particularly because it will be indexed to keep up with inflation. We expect the overall effect of this provision to be minor.
4. We have no way to estimate the cost of allowing currently disabled members to elect into the new plan. However, if we assume that a member would only make such an election if he or she believed it to be beneficial (e.g., perhaps because of a more favorable outside earnings provision) then we would expect some additional employer cost.



Jane D. Pacelli, F.S.A.

4/4/85

Date

Proposed amendment to disability bill (LD 977)

Amend §17908, sub-§4, §18508, sub-§4, §17922, sub-§4 and §18523, sub-§4 by adding a new sentence:

Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health, may, upon a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

AMENDDIS 2
4-14-89

Proposed Amendments to LD #977

§17423 amend to read:

§17423. Disability contribution rate

The percentage rates of the disability contribution, described in section 17422, shall be fixed on the basis of the liabilities established by chapter 423, subchapter V, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A. The actuary shall determine percentage rates applicable to employers whose employees are covered by chapter 423, subchapter V, article 3-A and chapter 425, subchapter V, article 3-A, taking into consideration other factors which influence costs.

§17923, sub-§4, add a new sentence as follows:

Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health, may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

§17928, sub-§2, para. B add a new second sentence to the opening paragraph

B. The executive director may require, once each year, that the person undergo examinations or tests, conducted in accordance with section 17926, to determine the person's disability. The executive director may refer the records documenting the results of the examinations or tests and the persons file to the medical board for a recommendation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.

§17930, sub-§2 amend to read: (add \$10,000 minimum earnings limit)

2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 425, subchapter v, article 3-A, which exceeds \$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person become a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 17806, whichever is greater:

§18523, sub-§4, add a new sentence as follows:

Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health, may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

§18528, sub-§2, para. B add a new second sentence to the opening paragraph

B. The executive director may require, once each year, that the person undergo examinations or tests, conducted in accordance with section 18526, to determine the person's disability. The executive director may refer the records documenting the results of the examinations or tests and the persons file to the medical board for a recommendation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.

§18530, sub-§2 amend to read: (add \$10,000 minimum earnings limit)

2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 423, subchapter v, article 3-A, which exceeds \$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person become a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 18407, whichever is greater:

CASE I

Occupation: Housekeeper

Prior to employment in 1983, the individual was under the care of a physician for osteoarthritis of the left knee and, in fact, left her employment due to her situation. In addition, the individual had a history of back problems. Physician commented "...this patient's past medical history is significant in that while formerly employed by Service Master she came under the orthopedic care of a physician with regard to significant secondary osteoarthritis of the left knee. This individual was, in fact, forced to leave that type of domestic work because of left knee problems. An arthrogram was performed in 1983 to ascertain the severity of the problem.

In December 1985 the individual was employed by a state agency and in August of 1987 applied for disability due to her medical condition. Prior to employment the person completed a Statement of Health as required by statute with no indication of previous medical problems.

Consequently, the individual was hired in a capacity which required job duties beyond her physical capabilities. The physician commented "...it suffices to say, Miss Doe has known osteoarthritis in both knees and in my opinion should not have been hired to perform the type of work she was performing...."

CASE II

Occupation - Prison Guard

Prior to being employed as a prison guard John Doe had a medical history of affective disorder unipolar, depression and anxiety, of which was recurrent and episodic; history of drugs and alcohol; and predisposed to depression due to his childhood history. In fourteen (14) years Mr. Doe was treated for the above mentioned symptoms, either short term or long term, involving group therapy, individual therapy and actual hospital admission to deal with his environmental conditions.

The individual was hired in December, 1982, and in August, 1987, filed for disability, claiming he was suffering from depression and anxiety and that his condition was employment related.

Again, we have an employee hired who did not complete an accurate Statement of Health and indicated no prior medical problems. Had the prison officials known of Mr. Doe's past medical history, he would have been required to provide a current medical evaluation prior to employment.

CASE III

Occupation: Laborer

The individual applied for disability based on a back injury in March 1986. Mr. John Doe was employed by the Department of Transportation for one (1) year and twenty-four (24) days. Medical history reveals that prior to employment with the Department of Transportation the employee had a history of back problems seven (7) years prior, while in the military service and in addition, recurrent problems with the back due to a motor vehicle accident.

Again, we have a Mr. Doe who completed a Statement of Health on which the information provided indicated no past medical problems. As described in the previous cases, this individual should not have been employed for the tasks he was hired to perform, based on his physical limitations. The employee may collect a benefit from the System for the next thirty-three (33) years based on false information as to his medical condition.

MSMA
LD 977

MAINE SCHOOL MANAGEMENT ASSOCIATION
108 SEWALL STREET
AUGUSTA, MAINE 04330

A STATEMENT OF THE MAINE SCHOOL MANAGEMENT ASSOCIATION ON LD 977, AN ACT TO ESTABLISH DISABILITY RETIREMENT BENEFITS FOR MEMBERS OF THE MAINE STATE RETIREMENT SYSTEM.

THE MAINE SCHOOL BOARDS ASSOCIATION AND THE MAINE SCHOOL SUPERINTENDENTS ASSOCIATION WISH TO EXPRESS A SERIOUS CONCERN RELATED TO LD 977 AS WELL AS THE CURRENT LAW (5 MRSA, 17910(1)) ON REINSTATEMENT OF THOSE RETURNING TO EMPLOYMENT AFTER HAVING BEEN DISABLED. AS PROPOSED, THE REINSTATEMENT OF PUBLIC SCHOOL TEACHERS WOULD CONFLICT DIRECTLY WITH 20-A MRSA, 13201, WHICH DESCRIBES THE RESPONSIBILITIES OF SUPERINTENDENTS AND SCHOOL BOARDS IN THE EMPLOYMENT OF TEACHERS.

IN KEEPING WITH OUR CONCERN, WE HAVE PROPOSED A CHANGE IN CURRENT LAW. IT IS CONTAINED IN LD 870, A BILL NOW SCHEDULED FOR A MAY 3 HEARING BEFORE THE LABOR COMMITTEE.

/R

Paul Brunelle
622-3473

Please notify for work session

SENATE

BONNIE L. TITCOMB, DISTRICT 25
NANCY RANDALL CLARK, DISTRICT 26
PAMELA LEE CAHILL, DISTRICT 24

JOHN KNOX, LEGISLATIVE ANALYST
BARBARA DAMON, COMMITTEE CLERK



HOUSE

DANIEL B. HICKEY, AUGUSTA, CHAIR
JOHN McSWEENEY, OLD ORCHARD
ALEXANDER RICHARD, MADISON
JOHN JALBERT, LISBON
LUCIEN A. DUTREMBLE, BIDDEFORD
ARNOLD BREWER, JR., BOOTHBAY HARBOR
JEAN T. DELLERT, GARDINER
MADELINE D. STEVENSON, UNITY
WENDY L. AULT, WAYNE
KATHRYN D. MERRILL, DOVER-FONCROFT

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON AGING, RETIREMENT AND VETERANS

May 18, 1989

Honorable Charles P. Pray, President of the Senate
Honorable John L. Martin, Speaker of the House
114th Maine Legislature
Augusta, Maine 04333

Dear President Pray and Speaker Martin:


We are writing to request authorization to hold the following bills, which were referred prior to April 25, in committee beyond the May 20 deadline established by the Legislative Council:

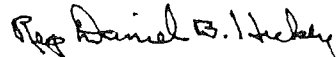
- (L.D. 696) Bill "An Act Concerning Out-of-state Service for Members of the Maine State Retirement System"
- (L.D. 977) Bill "An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System" (EMERGENCY)
- (L.D. 696) Since there was not a definite fiscal note, the Committee has asked the Department of Education to insert a question on their annual teacher questionnaire that will provide the necessary information. If the response is positive, we will request a carry over on this bill. If the response is negative, we will use this bill as a vehicle to require them to provide the needed information.

(L.D. 977) This bill is almost ready to report out. The Committee wants to give Senator Bustin, MSEA, and an opportunity to develop a response to one last issue relating to this bill. This may be accomplished later today or within the next week.

Thank you for your consideration of our request.

Sincerely,


Sen. Bonnie L. Titcomb *me*
Senate Chair


Rep. Daniel B. Hickey
House Chair

LDs 870 and 977

RE: Reinstatement

If a collective bargaining agreement applies to such a position, the employer may offer only a position which the beneficiary could claim by virtue of ~~the-seniority-accumulated~~ the recall provisions in such agreement at the time of the disability.

/dr



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

xl 5/3

Legislative Document

No. 870

H.P. 636

House of Representatives, March 22, 1989

Reference to the Committee on Education suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative BAILEY of Farmington.

Cosponsored by Representative DUTREMBLE of Biddeford, Representative RICHARD of Madison and Representative SMALL of Bath.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act Regarding Voluntary Return to Service by Teachers.



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

3 **5 MRSA §17910, sub-§1, as enacted by PL 1985, c. 801, §§5**
and 7, is amended to read:

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7 1. **Right to reinstatement.** If the beneficiary of a
disability retirement benefit decides that he the beneficiary is
no longer incapacitated and is able to perform the duties of his
9 the beneficiary's employment position, the employer for whom he
the beneficiary last worked prior to becoming disabled shall
11 reinstate the person to the first available position for which
the beneficiary is the best qualified among the available
13 candidates and which is consistent with the beneficiary's prior
work experience. If a collective bargaining agreement applies to
15 such a position, the employer may offer only a position which the
beneficiary could claim by virtue of the seniority accumulated at
17 the time of the disability.

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STATEMENT OF FACT

23 This bill gives superintendents and school boards the
authority to employ the best-qualified teaching candidates in the
25 context of voluntary return to service by teachers who were
receiving disability retirement benefits.

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COPY
R.O.S.
R.O.S.

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L.D. 977

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(Filing No. H-)

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7

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

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COMMITTEE AMENDMENT " " to H.P. 716, L.D. 977, Bill, "An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System"

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Amend the bill by striking out all of the emergency preamble and emergency clause.

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Further amend the bill by striking out the following: "July 1, 1989" wherever it appears and inserting in its place the following: 'October 1, 1989'

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Further amend the bill by striking out the following: "June 30, 1989" wherever it appears and inserting in its place the following: 'September 30, 1989'

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Further amend the bill in that part designated "§17423." by striking out the last sentence (page 3, lines 6 to 9 in L.D.) and inserting the following in its place: 'The actuary shall determine percentage rates applicable to employers whose employees are covered by chapter 423, subchapter V, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A, taking into consideration other factors which influence costs.'

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Further amend the bill in that part designated "§17923." in subsection 4, by inserting at the end the following: 'Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.'

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Further amend the bill in that part designated "§17927.", in subsection 7, by inserting at the end the following:

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'A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement benefit shall not be discontinued, except as provided by section 17929, or until the person is reemployed consistent with this section.'

Further amend the bill in that part designated "§17929." in subsection 2 in paragraph B (page 9, line 11 in L.D.) by inserting at the end of the first paragraph the following: 'The executive director may refer the records documenting the results of the examinations or tests and the person's file to the medical board for a recommendation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.'

Further amend the bill in that part designated "§17929." in subsection 2 in paragraph B in subparagraph (1) by inserting after the last sentence (page 9, line 22 in L.D.) the following: 'The disability retirement benefit shall continue if the person can effectively demonstrate to the executive director that the person is actively seeking work.'

Further amend the bill in that part designated "§17930." by striking out all of subsection 2 and inserting in its place the following:

'2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 425, subchapter V, article 3-A, which exceeds the greater of \$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person became a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 17806:'

Further amend the bill in that part designated "§18523." in subsection 4 by inserting after the last sentence (page 17, line 34 in L.D.) the following: 'Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.'

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Further amend the bill in that part designated "§18527." in subsection 7 by adding at the end (page 20, line 40 in L.D.) the following:

'A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.'

'B. The disability retirement benefit shall not be discontinued, except as provided by section 18529, or until the person is reemployed consistent with this section.'

Further amend the bill in that part designated '§18529.' in subsection 2 in paragraph B by inserting after the first sentence (page 21, line 45 in L.D.) the following: 'The executive director may refer the records documenting the results of the examinations or tests and the person's file to the medical board for a recommendation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.'

Further amend the bill in that part designated "§18529." in subsection 2 in paragraph B in subparagraph (1) by inserting at the end (page 22, line 2 in L.D.) the following: 'The disability retirement benefit shall continue if the person can effectively demonstrate to the executive director that the person is actively seeking work.'

Further amend the bill in that part designated "§18530." by striking out all of subsection 2 and inserting in its place the following:

'2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 423, subchapter V, article 3-A, which exceeds \$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person became a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 18407, whichever is greater.'

Further amend the bill by inserting before the statement of fact the following:

'Effective date. This Act shall take effect October 1, 1989.

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FISCAL NOTE

This bill will make several changes to the disability retirement provisions of the Maine State Retirement System. The rehabilitation provision will decrease costs in the long run by more than the potential increase due to the outside earnings change.'

STATEMENT OF FACT

This amendment:

1. Eliminates the emergency status of the Act and makes it effective October 1, 1989;

2. States that in determining the disability contributions the actuary is to take into consideration other factors that influence cost;

3. States that a submission of a false health statement may result in the loss of the right to apply for disability benefits;

4. Gives the executive director authority to submit the results of a required yearly examination of disability retirees to the medical board for a recommendation regarding rehabilitation;

5. States that persons receiving disability compensation, before adjustments are required to their retirement benefit, may earn the greater of \$10,000 or the difference between the retirement benefit and the person's earnings at the time of retirement. The original bill contained only the second of these provisions; and

6. This amendment clarifies the section on rehabilitation to make explicit the reemployment rights of a person who has successfully completed a rehabilitation program. It also ensures that a person's disability benefits are not terminated due to lack of a reasonable reemployment opportunity, considering the person's prior compensation and benefits, training, education, experience and rehabilitation programs.

**STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 716, L.D. 977, "An Act to Establish Disability Retirement Benefits for Members of the Maine Retirement System"

Amend the bill by adding to Sec. 8 5 MRSA c. 423, sub-c.V, art. 3-A, §17927 sub 7 (page 8, line 7 in L.D.) the following:

"A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that persons prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement allowance shall not be discontinued until the person is reemployed consistent with this section or is eligible for service retirement benefits as provided by section 17929 sub-2 A."

Further amend the bill by adding to Sec. 11 5 MRSA c. 425 sub-c V. art. 3-A. §18527 sub 7 (page 20, line 39 of the L.D.) the following:

"A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that persons prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement allowance shall not be discontinued until the person is reemployed consistent with this section or is eligible for service retirement benefits as provided by section 17929 sub-2 A."

STATEMENT OF FACT

This amendment clarifies the section on rehabilitation to make explicit the reemployment rights of a person who has successfully completed a rehabilitation program. It also insures that a persons disability benefits are not terminated due to lack of comparable reemployment.

STATE OF MAINE

114th Legislature

First Regular Session

Committee Amendment " " to H.P. 716, L.D. 977, "An Act to Establish Disability Retirement Benefits for Members of the Maine Retirement System."

Amend the bill in Section 8 by adding two additional paragraphs in Section 17927, subsection 7, (page 8, line 8, in L.D.) to read:

A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement allowance shall not be discontinued, except as provided by section 17929, or until the person is reemployed consistent with this section.

Further amend the bill in Section 11 by adding two additional paragraphs to section 18527, subsection 7 (page 20, line 40 in L.D.) to read:

A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement allowance shall not be discontinued, except as provided by section 18529, or until the person is reemployed consistent with this section.

Further amend the bill in Section 8, in section 17929, subsection 2, paragraph B, by striking sub-paragraph (1) and replacing it to read:

(1) After the disability has continued for two years, the disability must render the person unable to engage in any substantially gainful activity, taking into consideration that person's prior compensation and benefits, training, education and experience, and any rehabilitation plan under section 17927. The disability retirement benefit shall continue if the person can effectively demonstrate to the executive director that the person is actively seeking work.

Further amend the bill in Section 11, in section 18529, subsection 2, paragraph B, by striking sub-paragraph (1) and replacing it to read:

(1) After the disability has continued for two years, the disability must render the person unable to engage in any substantially gainful activity, taking into consideration that person's prior compensation and benefits, training, education and experience, and any rehabilitation plan under section 18527. The disability retirement benefit shall continue if the person can effectively demonstrate to the executive director that the person is actively seeking work.

STATEMENT OF FACT

This amendment clarifies the section on rehabilitation to make explicit the reemployment rights of a person who has successfully completed a rehabilitation program. It also insures that a person's disability benefits are not terminated due to lack of a reasonable reemployment opportunity considering the person's prior compensation and benefits, training, education, experience, and rehabilitation programs.

BENT SCHLOSSER

Director

Date: 4/19/89 ORIGINAL

JOHN D. WAKEFIELD

Deputy Director

Maine State Legislature
OFFICE OF FISCAL AND PROGRAM REVIEW
Augusta, Maine 04333

TO: Senate Chairman - Sen. B. Titcomb Aging, Retirement & Veterans
House Chairman - Rep. D. Hickey
Sponsor - Rep. Hickey
FROM: John D. Wakefield, Deputy Director
SUBJECT: FISCAL NOTE INFORMATION FOR LD # 977

**An Act to Establish Disability Retirement Benefits for
Members of the Maine State Retirement System**

I. The estimated **INCREASE** of **APPROPRIATION**
required if this Legislative Document is approved.

	1989-90	1990-91
Positions		
Personal Services		
All Other		
Capital Expenditures		
Unallocated	_____	_____
TOTAL		

II. Estimated **INCREASE** of **UNDEDICATED**

Fund Revenues for the biennium is as follows:

	1989-90	1990-91
Undedicated Revenue		
Highway Fund Revenue		
Dedicated Revenue		

III. Remarks:

This bill will make several changes to the disability retirement provisions of the Maine State Retirement System. The rehabilitation provision will decrease costs in the long run by more than the potential increase due to the outside earnings change.

A fiscal note should be amended to this bill.

VOTING TALLY SHEET

Committee: AGING, RETIREMENT AND VETERANS

Date: MAY 25, 1989

Question: LD 977 OTPA

Motion by: Rep Richard / Rep McSweeney

SENATORS		Yea	Nay	Absent	Abstained
1	Sen. Bonnie L. Titcomb	✓			
2	Sen. Nancy Randall Clark	✓			
3	Sen. Pamela Lee Cahill	✓			
REPRESENTATIVES					
1	Rep. Daniel B. Hickey	✓			
2	Rep. John McSweeney	✓			
3	Rep. Alexander Richard	✓			
4	Rep. John Jalbert	<i>JD</i>		✓	
5	Rep. Lucien A. Dutremble	✓			
6	Rep. Arnold Brewer, Jr.	✓			
7	Rep. Jean T. Dellert	✓			
8	Rep. Madeline D. Stevenson	✓			
9	Rep. Wendy L. Ault	✓ <i>WA</i>		✓	
10	Rep. Kathryn D. Merrill	✓			
TOTAL		13			

HOUSE REPORT

THE COMMITTEE ON

Aging, Retirement and Veterans



6-6-89

to which was referred the Bill

"An Act to Establish Disability Retirement for Members of the Maine State Retirement System."


(EMERGENCY)

H.P. 716 L.D. 977
have had the same under consideration, and ask leave to report that the same

Ought to Pass as Amended by

Committee Amendment "A"

This form to be used ONLY in reporting House Bills


Rep. Richard Madison
For the Committee.

Town

BASIS STATEMENT/STATEMENT OF COMMENTS:

Retirement System statutes provide that a person who was awarded disability retirement benefits pursuant to 5 M.R.S.A. §§ 17924 or 18524, and for whom an ability to engage in substantially gainful activity has been determined under 5 M.R.S.A. §§ 17929(2)(B)(1) or 18529(2)(B)(1) may continue to receive a disability retirement benefit so long as the person is actively seeking work.

This Chapter sets out the standards and definitions to be applied in determining whether a disability retirement benefit recipient is in fact actively seeking work. It reflects the Board's view that once an individual is found to be no longer eligible for disability benefits the individual must make the same attempts to obtain employment as would any prudent non-incapacitated unemployed individual. It further reflects the Board's view that a person should not continue to receive a disability retirement benefit during any period in which the person does not comply with the standards set out in this chapter.

The Board held a public hearing on this Chapter on March 7, 2007. The hearing was attended by several disability retirement benefit recipients. Gary Eaton of Litchfield, Randy Kauppinen of Livermore Falls and Doreen Leach of Hudson, all of whom at the time of the hearing were in the actively seeking work program, and Roberta Barnes of Windsor, who has appealed a decision of the Executive Director to be placed in that program, each spoke on their own behalf regarding the impacts of the proposed rule. Written comments were received from Susan Hirsch of Raymond and Roberta Barnes of Windsor on their own behalf and from Gerard P. Conley, Jr. from Cloutier, Barrett, Cloutier and Conley on behalf of disabled individuals in general.

The primary concern presented by the comments was that eight job seeking employer contacts monthly were too many to require for a person in the actively seeking work program. Comments indicated that an insufficient number of jobs are available for a disabled person with a limited capacity and that even fewer jobs are available that either are within the qualifications that the person possesses or that meet the minimum salary level as established under the provisions of retirement law. Concerns were also raised regarding the requirement that one employer contact per month must be in person. It was suggested that most employers request only written contacts during the hiring process. Another concern was that for an individual who is in fact working, making an in-person contact with another prospective employer would prove difficult.

In general response to the comments, the Board remains of the view that it is reasonable to expect individuals to take reasonable steps to actually find work when they have been found to be able to engage in substantially gainful activity but continue to receive disability benefits while they seek work. The law affords this temporary continuing benefit opportunity for the sole purpose of providing income to an individual while a job is sought. It is the member's part of the bargain to diligently seek work and make active efforts to secure employment. In this light the Board believes it to be reasonable to require two attempts per week, for a total of eight attempts per month, to obtain employment in a position for which the individual is qualified and that provides a qualifying salary level. Further, the Board focuses on the word "actively," which provides emphasis to the seeking work requirement. It is the expectation that the member actively seek employment with the same degree of conscientiousness and in the way that an unemployed person who wants employment does. In that light, the Board finds it reasonable to require eight contacts, one of which must be in-person.

With respect to the comment that this in-person contact would be difficult for an individual who was working, the Board reiterates that the individual is required to seek a job for which he or she is qualified and which meets the substantially gainful activity salary level, since it is only a job with these characteristics that precludes further receipt of a holdover disability benefit. The requirement goes to each individual, regardless of employment status in a job that will not result in the termination of benefit. Mr.

Conley, Esq., comments that the changes to Chapter 511 place an unnecessary burden on disabled members. This comment reflects a misunderstanding of both the context and purpose of the actively seeking work law. Individuals in this program have been found to be no longer disabled in that whatever incapacities they still possess in relation to the originally disabling medical condition no longer prevent them from engaging in “substantial gainful activity.” The actively seeking work (“ASW”) program is designed to be a transition to a non-disability benefit status as soon as the individual has secured gainful activity. Therefore, the obligation to actively seek work and take engaged action in a meaningful way appropriately reflect the intent of the law. At its regular meeting on April 12, 2007, Ms. Sullivan made the motion, seconded by Ms. Mitchell, to adopt the rule on standards for actively seeking work. Six voted for the motion (Leslie-Mercier-Metivier-Mitchell-Sullivan-Williams). Two opposed (Lemoine-Viola). Motion carried.

Chapter 702 APPEALS OF DECISIONS OF THE CHIEF EXECUTIVE OFFICER

SUMMARY: This Chapter sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees (“Board”). It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board.

SECTION 1. Purpose and Scope

The purpose of this Chapter is to set out procedures for reaching final agency action on matters initially decided by the Chief Executive Officer (or designee) of the Maine Public Employees Retirement System (“System” or “MainePERS”). The law governing the System provides that the Chief Executive Officer’s decisions may be appealed to the Board, which has authority and responsibility to render a decision that will become the final agency action. The person appealing the Decision has the burden to establish, by a preponderance of the evidence, that the Chief Executive Officer’s Decision is in error. This Chapter applies to appeals by any person aggrieved by a decision of the Chief Executive Officer.

SECTION 2. Authority

The authority for this Chapter is 5 M.R.S. §§ 9051 - 9064 and 5 M.R.S. §17451, which provide that an appeal under section 17451 is an adjudicatory proceeding subject to the Administrative Procedure Act and 5 M.R.S. §§17106-A, 17106-B.

SECTION 3. Definitions

1. **Appeals clerk.** “Appeals clerk” means the dedicated clerk who acts as liaison between the hearing officer and the parties to an appeal. The appeals clerk shall avoid all communication with System staff, or MainePERS representatives, regarding substantive issues for cases on appeal. The appeals clerk shall address all policy and procedural questions to the clerk’s supervisor, the system advisor or Board counsel.
2. **Board.** "Board" means the Board of Trustees of MainePERS.
3. **Board counsel.** “Board counsel” means the attorney general or the designated assistant attorney general assigned to represent the Board and to prepare the Board’s decisions.
4. **Chief Executive Officer.** "Chief Executive Officer" means the Chief Executive Officer of MainePERS or their decision-making designee.
5. **Hearing officer.** "Hearing officer" means an individual who has contracted with the Board to conduct appeal proceedings under this Chapter.

6. **Medical review service provider.** “Medical review service provider” means an entity with whom the Chief Executive Officer has contracted for the review of medical records and the provision of recommendations, opinions and certifications by health care providers employed by the entity.
7. **MainePERS or System Representative.** “MainePERS Representative” or “System Representative” means the person or persons advocating for the decision of the Chief Executive Officer in an appeal.
8. **Participating Local District.** "Participating local district" means a local district which has approved the participation of its employees in the Retirement System under 5 M.R.S. §18201.
9. **Party.** "Party" means the person bringing an appeal, MainePERS, and any person who intervenes in an appeal. If an appeal involves or affects a participating local district, "party" includes the participating local district, regardless of whether the participating local district actually participates as a party in the appeal.
10. **Person.** "Person" means any individual, partnership, corporation, governmental entity, association or public or private organization of any character, other than the Board or the System.
11. **Record.** "Record" means those materials required by 5 M.R.S. §9059 and this rule to be compiled in the course of an appeal.
12. **Staff.** "Staff" means an employee of MainePERS, other than the MainePERS Representative.
13. **Substantially larger caseload.** “Substantially larger caseload” means that the number of appeals a hearing officer is presiding over is at least five and exceeds the mean hearing officer caseload by at least 30%.
14. **System advisor.** “System advisor” is a System employee who is knowledgeable in System policies, practices and procedures and who is available as an informational resource to assist the hearing officer, the Board and Board counsel. ~~If the hearing officer seeks information from the system advisor, such request shall be in writing and both the request and the response shall be copied to the parties and placed of record.~~

SECTION 4. Applicability: Who May Appeal

1. **Application.** This Chapter applies to all appeals of decisions of the Chief Executive Officer to the Board.
2. **Who may appeal.** Any person whose legal rights, duties or privileges are adversely affected by a decision of the Chief Executive Officer may appeal the decision to the Board. A person may but is not required to be represented by another person in accordance with 4 M.R.S. §807.

SECTION 5. Bringing an Appeal

1. **Notice.** When notifying a person whose legal rights, duties or privileges are affected by a decision of the Chief Executive Officer, the System must advise the person of the right to appeal to the Board and of the manner in which the right may be exercised. This notice must comply with 5 M.R.S. §9052.
2. **Statement of appeal.** A person who wishes to appeal a decision of the Chief Executive Officer must begin the appeal process by sending a written statement of appeal to the Board. Any reasonably clear statement to the effect that the person wishes to appeal a decision of the Chief Executive Officer, and identifying that decision, submitted by email or otherwise in writing to the System shall be treated as a statement of appeal. The only issues that are the subject of an appeal are those that have previously been decided by the Chief Executive Officer. If the person wishes to raise issues or conditions not previously considered by the Chief Executive Officer, those additional issues can be added in accordance with section 6(2) below.
3. **Assignment to hearing officer.** When a statement of appeal is received, the System, in a timely manner, will assign the appeal to a hearing officer in accordance with section 8. The System will notify the person of the identity of the assigned hearing officer and alternative hearing officers, describe the process for selecting an alternative hearing officer, briefly outline the appeal process and advise that, if the person fails to appear at any hearing, the appeal may be deemed to have been abandoned and the matter dismissed with prejudice.
4. **Notice to EmployerPartieipating Local District.** If the appeal involves an employee of a participating local district or school unit, the System will notify the employerpartieipating local district that the appeal has been brought, identify the employee and hearing officer, and informadvise that the employerpartieipating local district is how to become a party to the appeal. The notice must comply with 5 M.R.S. §9052.

SECTION 6. Choice of Appeal Process

At the pre-hearing conference described in section 8(3)(C) of this Chapter, the appellant shall affirmatively elect either the expedited or the unrestricted appeal process. This election becomes irrevocable 10 days after the pre-hearing conference, unless the System agrees to a later request to change the election.

1. **Expedited Appeal.** If the appellant elects the expedited process to pursue an appeal of the issues decided in the decision of the Chief Executive Officer, the evidence is limited to the appellant's testimony, the testimony of any lay witnesses and the documentary evidence already considered by the Chief Executive Officer. The parties may not raise any additional issues for decision. It is anticipated that a decision will be issued by the Board within approximately 90 days of the initial pre-hearing conference. Under this option, only non-expert witnesses may provide testimony on behalf of the appellant or the System.
2. **Unrestricted Appeal.** Alternatively, in the unrestricted appeal process, the appellant may raise issues in addition to those decided by the Chief Executive Officer, and the parties may introduce documentary evidence in addition to the evidence already considered by the

Chief Executive Officer and testimony from expert as well as non-expert witnesses. The unrestricted appeal process is anticipated to take substantially longer than 90 days because some or all of the steps listed below may be required, or duplicated prior to the hearing officer's issuance of a recommended decision. An appellant who chooses to proceed under the unrestricted appeal process must affirmatively accept and acknowledge that this appeal process is likely to take substantially longer than 90 days. The additional steps that might occur in the unrestricted appeal process include, but are not limited to the following:

- A. If the appellant introduces issues not previously decided by the Chief Executive Officer, the hearing officer will return the appeal to the Chief Executive Officer for consideration of the new issues and reconsideration of any issues previously decided by the Chief Executive Officer. The appeal will be stayed pending the issuance of a decision of the Chief Executive Officer on all issues.
 - (1) If the new issues include one or more new conditions on which the appellant wishes to apply for disability retirement benefits, the appellant has the same right to an independent medical examination on the new conditions as the appellant would have had if the conditions had been raised in a new application.
- B. If the appellant seeks to introduce new documentary medical evidence on any of the issues previously decided by the Chief Executive Officer, the hearing officer will, at the request of the MainePERS Representative, return the appeal to the Chief Executive Officer for reconsideration of those issues. The appeal will be stayed pending a reconsidered decision of the issues previously decided by the Chief Executive Officer. The Chief Executive Officer may submit the new evidence to the medical review provider.
- C. If any party introduces expert testimony, any other party, upon request to the hearing officer, may be granted additional time to prepare cross-examination of the expert and/or the submission of rebuttal expert testimony. Parties are entitled to a rebuttal hearing on request.

SECTION 7. Public Interest; Notice

If the Chief Executive Officer or designee determines that an appeal involves an issue of substantial public interest, notice must be given to the public, sufficiently in advance of the hearing date, to afford interested parties an adequate opportunity to prepare and submit evidence and to petition to intervene pursuant to 5 M.R.S. §9054. Notice to the public must be given in accordance with 5 M.R.S. §9052(3). If a party asserts that an appeal involves a matter of substantial public interest, such that public notice is required and the Chief Executive Officer or designee does not agree, the Board will make the determination in the following manner.

1. **By request.** The Chief Executive Officer or any other person may request that the Board make a determination of substantial public interest.
2. **Determination after appeal process has begun.** If the Board makes a determination of substantial public interest after the appeal process has begun, the process must be suspended until notice to the public has been given and interested persons have had an adequate opportunity to take action in accordance with this section.

SECTION 8. Hearing officer

1. **Appointment.** The Board shall contract with hearing officers to perform the duties and exercise the powers set forth in this Chapter. The hearing officers must have appropriate experience and training, be fair, impartial, unbiased, and demonstrate a continuing ability to conduct a fair, efficient and effective appeal process.
2. **Assignment; Removal; Replacement**
 - A. An appeal will be assigned by the System to a hearing officer who has no personal or financial interest, direct or indirect, in the appeal or its outcome, and who has not been involved directly or indirectly in the matter that is the subject of the appeal. The fact that a hearing officer is the recipient of a MainePERS benefit does not constitute, by itself, direct or indirect personal or financial interest in an appeal or its outcome. The assignment shall be based on balancing caseloads among contracted hearing officers. The appellant within 15 days after notice of the assigned hearing officer may select an alternative hearing officer who has contracted with the Board.
 - (1) The System need not offer as an alternative any hearing officer who has a substantially larger caseload than other hearing officers. The appellant may select a hearing officer who was not offered as an alternative because of a substantially larger caseload if the appellant shows, within the timeframe for selecting an alternative hearing officer, that the hearing officer is uniquely qualified to preside over the appeal.
 - (2) In an appeal with more than one appellant, if the appellants cannot agree on an alternative hearing officer, the hearing officer assigned by the System will serve as hearing officer.
 - B. If a party files a timely allegation of bias, prejudice or personal or financial interest, either direct or indirect, against the hearing officer, the hearing officer will promptly determine whether to remove herself/himself as hearing officer and will include that determination in the record.
 - C. A hearing officer may also independently remove themselves from the appeal if the hearing officer cannot be fair, impartial and unbiased.
 - D. When a hearing officer is removed, terminated or cannot continue, the System will assign the appeal to another hearing officer, and the appellant will have an opportunity to select an alternative hearing officer consistent with paragraph A and section 5(3). The new hearing officer will continue the ongoing appeal process, unless the hearing officer determines that in order to avoid substantial prejudice to any party it is necessary to start the process anew.
3. **Duty and powers of the hearing officer.** The hearing officer has the duty to render a fair and impartial recommended decision to the Board in accordance with section 15. This recommended decision must be based on the record as a whole and resolve all material

issues in the appeal. In lieu of a recommended decision, the hearing officer may recommend dismissal. The hearing officer has the following powers:

- A. To resolve an appeal without a hearing; provided that the parties mutually agree to dispense with a hearing, by issuing:
 - (1) a recommended decision which meets the requirements of section 15, to be acted on by the Board under section 16, on the basis of the documentary materials which constitute the record; or
 - (2) a recommended dismissal with prejudice to be submitted to the Board for approval if, pursuant to section 6(2), the Chief Executive Officer issues a decision that favors the appellant, in whole or in part, and the appellant withdraws the appeal with respect to all portions of the decision of the Chief Executive Officer that are not in the appellant's favor; or
 - (3) a recommended dismissal, with or without prejudice as circumstances warrant, to be submitted to the Board for approval.
- B. Upon adequate notice to the parties, to schedule the date, time and place or to change the date, time or place and to continue any conference, hearing, or deadline of any nature;¹
- C. Generally working through the appeals clerk, to notify parties and hold a pre-hearing conference, of which all parties must be notified and at which they may participate, the purposes of which may include:
 - (1) determining whether the appellant elects the expedited or unrestricted appeal process in accordance with section 6, and explaining the consequences of the choice of appeal process;
 - (2) identifying and clarifying the issues on appeal and determining whether the appellant intends to introduce issues, not previously considered by the Chief Executive Officer;
 - (3) developing stipulations of fact and admissions as to facts that are not contested;
 - (4) identifying exhibits to apprise the parties as fully as is practicable of the nature of the evidence to be offered by all parties and to eliminate, as far as possible, the element of surprise;
 - (5) identifying witnesses and the manner in which the testimony will be provided as described in section 11(2);
 - (6) identifying any potential parties to the adjudication whose joinder may foster economy, efficiency and fairness;

¹ The MainePERS office in Augusta shall be the normal location for hearings, absent a request made in the notice of appeal or at the pre-hearing conference, together with a showing by the requesting party of a compelling need for an alternative venue.

- (7) identifying and resolving disputes as to production of documents and admissibility of evidence, including the making of evidentiary rulings; and
- (8) any other action that will encourage and maintain a fair, efficient and effective appeal process.

- D. ~~To order, where relevant and useful, one or more independent medical evaluations, for which the System will, to the extent reasonably practicable, provide the names of three appropriately qualified health care providers, among whom the person appealing will choose and to whom the person will go for evaluation, the costs of which will be paid by the System;~~
- E. To return to the Chief Executive Officer or designee for consideration, any issue raised for the first time in the appeal process, as required pursuant to section 6(2)(A);
- EF. To rule on any request at any conference, during the hearing or at any other time during the appeal process, prior to delivery of the recommended decision to the Board;
- FG. Generally working through the appeals clerk, to set the time for all filings, appearances, and other actions by any party or parties in connection with the appeal process, in accordance with 5 M.R.S. §17451;
- GH. To issue subpoena(s) on request of a party or to deny a request when the hearing officer determines that the testimony or evidence is not relevant to any issue of fact in the hearing, or otherwise inadmissible, in accordance with 5 M.R.S. §9060 and section 12 of these rules;
- HI. After the close of the evidence, the parties' receipt of a hearing transcript, if any, and the issuance of an Chief Executive Officer's reconsidered decision as described in section 14, to request that the parties submit briefs on the issues not decided by the Chief Executive Officer in the appellant's favor, and to request or allow the parties to make oral argument to the hearing officer, when the hearing officer deems oral argument to be necessary or useful;
- J. ~~To refer or re-refer to the medical review service provider any matter involving medical evidence, questions or issues;~~
- IK. To ascertain the rights of the parties, to identify and notify all parties that may be affected by a decision, to ensure that all parties have a full opportunity to present their claims orally or in writing and to secure witnesses and evidence to establish their claims, and to assist parties and witnesses in making full and free statements in order to develop all issues which may govern the outcome of the appeal;
- JL. To administer oaths or affirmations to all witnesses in all hearings;

- KM.** To regulate the presentation of evidence, including questioning of witnesses and the participation of parties, in order to ensure an adequate and comprehensive record of the proceedings and to avoid repetition and delay;
- LN.** To examine witnesses and ensure that relevant evidence is admitted in the record;
- MO.** To determine the credibility of witnesses and to decide the weight to be given to testimony and all other evidence;
- NP.** To take official notice of facts in accordance with 5 M.R.S. §9058, and parties shall be copied with the facts noticed, and the source of those facts, which shall be placed of record;
- OQ.** To rule on the admissibility of evidence;
- PR.** To ensure that a complete record is made of the hearing, including recording in accordance with 5 M.R.S. §9059;
- QS.** To consult with the Board's counsel on legal issues; provided that, when an appeal raises issues of equity or constitutionality, the hearing officer must consult with the Board's counsel.
- RT.** To consult with the System advisor if the hearing officer requires information concerning general System structure, policies or practices if the hearing officer determines that such consultation would be helpful to a determination of the issues on appeal. If the hearing officer seeks information from the sSystem advisor, such request shall be in writing and identify the case, and both the request and the response shall be copied to the parties and placed of record.
- SU.** To recommend dismissal in the event an appellant fails to appear at a hearing, or otherwise fails to prosecute the appeal, unless there is a showing of good cause under section 10.

SECTION 9. Duties and Responsibilities of the MainePERS Representative

The MainePERS Representative shall:

1. Organize case. Organize the presentation of the Chief Executive Officer's case;
2. Pre-hearing conference. Participate in the pre-hearing conference;
3. Present witnesses. Present and examine witnesses when appropriate;
4. Provide records. Ensure that relevant records of the System are present at the hearing and that other parties have adequate opportunity to examine the records prior to and during the hearing;
5. Introduce records. Introduce into evidence relevant System records and documents; and
6. Provide evidence. Present and establish relevant facts and circumstances by oral testimony, including that of MainePERS staff, and by documentary evidence.

SECTION 10. Default

1. **Failure to appear.** Except as provided in subsection 2 below, if an appellant fails to participate in a scheduled conference, appear at hearing, or otherwise fails to prosecute the his or her case, the appellant may be deemed by the hearing officer to have abandoned the appeal. The hearing officer will so notify the appellant in writing. If within 10 business days of receipt of the notice, the appellant submits information which demonstrates, in the judgment of the hearing officer, ~~that she or he had~~ good cause for failure to appear, the hearing will be rescheduled. On the 11th day following receipt of the notice by appellant and without suitable response, the decision of the Chief Executive Officer will become final and the hearing officer will issue a recommended dismissal with prejudice to the Board.
2. **Hearing in the absence of the appellant.** A hearing may be held in the absence of the person appealing when:
 - A. The person requests or agrees to a hearing in their absence; or
 - B. The hearing officer, at their discretion, proceeds with the hearing as the alternative to a default.

SECTION 11. Evidence

1. **Admissibility.** Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. **Testimony and Conduct of Hearings.** Testimony may be provided ~~telephonically, by deposition, by video, by a sworn written statement, or, after the requirement to conduct hearings using audio or video conferencing has expired,~~ in person, by video, by deposition, or, for compelling reasons, by telephone or sworn written statement at the discretion of the hearing officer. With the exception of sequestered witnesses, all participants in a hearing conducted by ~~audio or~~ video conferencing must be able to hear and see the other participants, and all participants in a hearing conducted telephonically must be able to hear the other participants. Parties must ensure that witnesses who provide sworn written statements or testimony be available for cross-examination during the hearing, although the cross-examination of expert witnesses may, at the request of a party, take place at a different time.
3. **Irrelevant or repetitious evidence.** Evidence which is irrelevant or unduly repetitive may be excluded.
4. **No formal rules of evidence.** Formal rules of evidence are not required and need not be observed.
5. **Weight of evidence.** The fact that evidence is admitted shall not limit the authority of the hearing officer to determine the weight to be given the evidence.

6. **Hearsay.** Hearsay evidence shall not be excluded simply because of its hearsay nature. The hearing officer will determine the weight to be given to hearsay evidence.
7. **Rules of privilege.** Rules of privilege as provided in the *Maine Rules of Evidence*, Article 5, shall be observed.
8. **Stipulation of facts.** When all parties stipulate to a fact, the hearing officer may make a finding of fact on the basis of the stipulation. Signed statements or on-the-record oral statements by parties are sufficient as stipulations.
9. **Official notice of facts.** The hearing officer may take official notice of a fact upon her/his own initiative or at the request of a party. Official notice may be taken of any fact of which judicial notice could be taken, and in addition, of any general or technical matter within the specialized experience or knowledge of the hearing officer, and of any statutes, rules and non-confidential public records. The hearing officer will notify the parties when official notice is taken and shall afford the parties an opportunity to contest the reliability, substance and/or materiality of the material noticed.
10. **Rebuttal Evidence.** To the extent that the appellant testifies or introduces evidence on matters or facts not previously known to the System, the hearing officer may, at the request of the MainePERS Representative, hold the record open for a reasonable period in order to allow the System to offer rebuttal evidence.

SECTION 12. Discovery and subpoenas

1. **Access to System documents and records.** A party must have an adequate opportunity prior to hearing, and at the hearing, to examine all of the System's documents and records to be offered as evidence. The System must provide to the person bringing the appeal a copy of the relevant portions of the record without charge.
2. **Request for subpoenas.** Any party may request the issuance of a subpoena by presenting the request to the hearing officer. The request must contain:
 - A. The name and address of the party requesting the subpoena; and
 - B. The name and address of the person to be subpoenaed, or other place where the person to be subpoenaed may be found; and
 - C. A brief statement why the testimony or evidence of the person to be subpoenaed is relevant to an issue of fact in the appeal.
3. **Issuance on approval.** If the hearing officer determines that the request seeks testimony or evidence relevant to an issue of fact in the appeal, and not otherwise excludable, the hearing officer must submit the subpoena for approval by the Attorney General or Deputy Attorney General who is not involved in the appeal.
4. **Requirements.** A subpoena shall comply with the requirements of 5 M.R.S. §9060.

SECTION 13. Hearings recorded

1. All hearings will be recorded in a form susceptible to transcription.
2. A copy of the transcript of a hearing or of expert testimony taken pursuant to section 11(2) will be provided to the parties.

SECTION 14. Reconsideration by the Chief Executive Officer

After the close of the evidence and the parties' receipt of any transcript, the Chief Executive Officer shall have ~~30 calendar~~^{10 working} days to reconsider all of the evidence and affirm or reverse, in whole or in part, the decision that is the subject of the appeal. If new grounds for affirming a decision adverse to the appellant are articulated by the Chief Executive Officer at this stage of the process, the hearing officer shall allow the parties a reasonable time to present additional evidence relevant to the issues raised in the Chief Executive Officer's reconsidered decision. If, after receiving the appeal evidence and any transcripts, the Chief Executive Officer consults with the medical review provider, the ~~1300~~-day period described above begins to run upon the Chief Executive Officer's receipt of the medical review provider's reports.

SECTION 15. Recommended decision of the hearing officer

1. **Contents.** Following the hearing or, if the parties have agreed to waive hearing, following review of the documentary and testimonial record, and following the issuance of the Chief Executive Officer's reconsidered decision, the hearing officer will prepare a recommended decision, which will include:
 - A. A clear statement of the subject(s) of the appeal and of the issues which must be resolved to decide the appeal;
 - B. A listing of the date, place of hearing, and participants at the hearing or, if no hearing was held, a statement that the parties agreed to proceed without a hearing or other explanation;
 - C. A listing of all evidence admitted and upon which the recommended final decision is based;
 - D. Findings of fact, which must be sufficient to apprise the parties of the basis for the recommended decision;
 - E. A clear statement of result resolving all issues under consideration; and
 - F. A clear explanation of the reasoning underlying the result, including references to applicable law and rules.
2. **Comments, modification, and delivery to the Board**
 - A. The hearing officer will furnish a copy of the recommended decision to each of the parties for comment. A party's comments must be in writing and must be received within the time period set by the hearing officer.

- B. If a party believes that the hearing officer's decision contains one or more errors of law, or that the hearing officer has exceeded their jurisdiction, or that there is no support in the record for the factual findings of the hearing officer, the party shall so advise the hearing officer in that party's written comments. Identification of the error(s) by specific record citation is required.
- C. The hearing officer may, but is not required to, modify the recommended decision in response to the parties' comments. If in the judgment of the hearing officer, the previously issued recommended decision is substantially modified, the hearing officer will send the recommended decision as modified to the parties for further comment, as provided in paragraph A.
- D. The hearing officer will submit the recommended decision, as originally prepared and as modified, together with the written comments made by the parties, to the Board clerk. Where the recommended decision is not modified, the hearing officer will also deliver to the Board clerk a written response to the parties' written comments. Upon transmittal to the Board, the decision of the hearing officer constitutes the recommended final decision of the hearing officer.
- E. If a party believes that the recommended final decision of the hearing officer contains one or more errors of law, or that the hearing officer has exceeded their jurisdiction, or that there is no support in the record for the factual findings of the hearing officer, the party must so notify the Board in writing so that the notification is received by the Board within 10 days after that party's receipt of the recommended final decision, specifying the error(s) by specific citation to the record. In the event no written comments are received by the Board as specified herein, the Board will be compelled to accept the recommended final decision pursuant to 5 M.R.S. §17106-A and will not schedule consideration of the appeal or permit oral argument by the parties.

SECTION 16. Action by the Board

1. If the Board is compelled to adopt the recommended final decision of the hearing officer pursuant to 5 M.R.S. §17106-A(1), the Board will do so during its monthly meeting, as time permits, and will not schedule consideration of the appeal or permit oral argument by the parties.
2. If a party believes an error exists in the recommended decision pursuant to 5 M.R.S. §17106-A and the alleged error has not been resolved by the hearing officer, that party shall notify the Attorney General's Office, to the attention of MainePERS Board counsel, so that the notification is received within 10 days of that party's receipt of the recommended final decision.
 - A. The Board or Board counsel may on its own initiative, determine that an error pursuant to 5 M.R.S. §17106-A exists in the recommended final decision.
3. Upon review of the record, the Attorney General or designee shall notify the parties, prior to the scheduled Board consideration, whether the Board will be advised that an error of law exists in the recommended final decision.

4. If the Attorney General or designee recommend that the Board find one or more errors in the recommended final decision as described in 5 M.R.S. §17106-A(1), then the following procedures will be followed.
 - A. **Board Consideration.** The Board will consider the recommended final decision, together with the allegation of error(s), on a timely basis and, for an appellant who has chosen the expedited appeal process, will issue a decision within 90 days of the initial pre-hearing conference, when possible.
 - B. **Recommended final decision and record.** In advance of Board consideration, a copy of the recommended final decision with the parties' comments and Board counsel's recommendation, will be forwarded to each Board member.
 - C. **Statement by party.** A party who is present at a scheduled consideration may not offer evidence but may make a statement of position not to exceed 15 minutes in length. Such statement of position may address the alleged error(s) pursuant to 5 M.R.S. §17106-A(1). When a party's statement of position relies on specific portions of the record, the party must provide copies of the relevant portions to the Board and other parties at least 5 days prior to the date for consideration by the Board.
 - D. **Hearing officer present.** If requested by the Board, the hearing officer may be present at the scheduled consideration to assist the Board.
 - E. **Action after consideration.** After considering the recommended final decision, the Board may:
 - (1) adopt the recommended final decision as delivered;
 - (2) modify the recommended final decision;
 - (3) send the recommended final decision back to the same hearing officer if possible, or a replacement hearing officer for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules, or for such other proceedings or considerations as the Board may specify; or
 - (4) reject the recommended final decision in whole or in part and issue an amended Board decision;

5. ~~Board counsel will draft the decision and order.~~ A decision as issued by the Board under this Section is the final administrative decision in the appeal.

SECTION 17. Attorney's Fees

1. The System is required by 5 M.R.S. § 17106-B(5) to pay attorney's fees, up to a total of \$12,000, if an attorney has represented the appellant on appeal of a disability retirement decision and obtained a favorable result. A favorable result is a reversal of a decision of the Board or Chief Executive Officer that results in the grant of benefits to the appellant or otherwise materially advantages the appellant.

2. Attorney's fees under this section may be awarded by a Court on judicial review of a Board decision or by the hearing officer in the case where a decision of the Chief Executive Officer has been reversed by the Board or the Chief Executive Officer.
3. Application to a hearing officer for attorney's fees must be made no later than 30 days after receipt of the Board decision or the dismissal of the appeal following reversal by the Chief Executive Officer.
 - A. The application must be accompanied by proof of the fee arrangement and a statement of attorney's fees incurred in the appeal. The statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and a statement of the attorney's customary billing rate for similar work.
 - B. The hearing officer may grant the application based on the proof submitted or may hold a hearing and receive argument orally, in writing, or both.
 - C. A decision on an attorney's fee application may be appealed to the Board, who shall affirm the decision unless it is not supported by the record as a whole, the Board is advised by Attorney General that the hearing officer has made an error of law, or the decision exceeds the authority or jurisdiction conferred upon the hearing officer.
 1. The process for Board review shall be consistent with section 16 above to the extent applicable.
 2. The Board's decision constitutes final agency action.

STATUTORY AUTHORITY:

5 M.R.S. §§ 9051-9064, 17103(4), 17106-A, 17106-B and 17451

Chapter 5XX: ELIGIBILITY FOR DISABILITY RETIREMENT BENEFITS

SUMMARY: This chapter sets forth

SECTION 1. DEFINITIONS

1. Continuous creditable service
2. Date of incapacity
3. Employment position
4. Existed before membership
5. Incapacity
6. In service
7. Permanent
8. Reasonable accommodation
9. Reasonable commuting distance
10. Substantially gainful activity

SECTION 2. INITIAL ELIGIBILITY

1. Standards
 - a. while in service
 - i. if less than 5 years of continuous creditable service, not eligible if incapacity is the result of a condition that existed before membership unless the incapacity has been caused or substantially aggravated by an injury or accident received in the line of duty from events or circumstances not usually encountered within the scope of the member's employment
 - b. mental or physical condition
 - i. diagnosis needed
 - ii. combination of conditions

- c. causes functional limitations that make the member unable to perform the essential functions of the employment position with reasonable accommodation
 - i. if the incapacity has continued for at least two years, the functional limitations must render the member unable to engage in any substantially gainful activity for which the member is qualified by training, education or experience
 - d. the incapacity is expected to be permanent
 - e. the permanent incapacity may be revealed by an independent medical examination, but the CEO can grant benefits without an IME if medical records demonstrate the permanent incapacity exists
2. Determination of reasonable accommodation
 3. Determination of substantially gainful activity
 - a. An activity may be consistent with a person's training, education or experience even if the person has not previously engaged in or been compensated for the activity. Activities such as volunteer work may be considered.
 - b. Labor market information will relate to the state where the person resides.
 4. Determination of events or circumstances not usually encountered within the scope of the member's employment
 5. Application of disabled veteran presumption
 6. Use of medical review service provider and independent medical examinations
 - a. CEO may grant benefits without use of medical review service provider or an independent medical examination if qualification is clear to a lay person.
 - b. CEO may deny benefits without use of medical review service provider or an independent medical examination on non-medical grounds, including:
 - i. applicant was not in service at the time the applicant claims the incapacity began
 - ii. the applicant is in an age-restricted plan and earned above SGA amount after NRA
 - iii. the claimed incapacity has existed for more than two years and the applicant has earned more than SGA amount during this time
 - iv. the applicant is uncooperative or unresponsive in providing essential information needed to process the application
 - v. the applicant has already been denied benefits on the same condition and last date in service.

- c. CEO may not otherwise deny benefits without an IME unless the IME is waived by the applicant.

SECTION 3. REVIEWS FOR CONTINUING ELIGIBILITY

1. A disability retiree may be reviewed for continuing eligibility in the following circumstances.
 - a. The retiree has not yet had a determination that they are unable to engage in any substantially gainful activity for which they are qualified by training, education or experience and at least two years have passed since their date of incapacity.
 - b. Earnings or other information about a retiree's activities received by MainePERS show that the retiree may have capacity to engage in SGA and at least one year has passed since any previous review.
2. A retiree subject to review under subsection 1 must cooperate in providing information to MainePERS, including providing medical records and releases permitting health care providers to provide medical records. A failure to cooperate will result in the discontinuance of benefits. If the failure continues for one year, it will result in permanent cessation of benefits.
3. The CEO may determine that the retiree continues to be eligible without use of the medical review service provider or an independent medical examination. The CEO may determine that the retiree is no longer eligible on medical grounds only after considering the recommendations and opinions of the medical review service provider and the results of an independent medical examination, unless the latter is waived by the retiree.

STATUTORY AUTHORITY: