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An Act To Improve the Disability Retirement Program of the Maine Public Employees Retirement System

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

Sec. 1. 3 MRSA §734, as amended by PL 2017, c. 88, §2, is repealed.

Sec. 2. 4 MRSA §1201, sub-§6-A, ¶B, as enacted by PL 1989, c. 133, §17, is amended to read:

B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

Sec. 3. 4 MRSA §1234, as amended by PL 2017, c. 88, §5, is further amended to read:

§ 1234. Medical board review of disability

~~A medical board of the other programs of the Maine Public Employees Retirement System established in section 17106, subsection 1 is the medical board of the Judicial Retirement Program. The medical board shall arrange for and pass upon all medical examinations required under this chapter with respect to disability retirements and shall report in writing to the Supreme Judicial Court its conclusions and recommendations upon all the matters referred to it. The board of trustees may designate other medical providers to provide medical consultation on judicial disability cases.~~

Sec. 4. 4 MRSA §1353, sub-§1, as amended by PL 2017, c. 88, §6, is further amended to read:

1. Conditions. Any member who becomes disabled while in service may receive a disability retirement allowance by order of at least 5 Justices of the Supreme Judicial Court or upon written application to the executive director, ~~review and report of the application by the medical board and approval of that application by at least 5 of the Justices of the Supreme Judicial Court if that member is mentally or physically incapacitated to the extent that it is impossible for that member to perform the duties as a judge and the incapacity is expected to be permanent, as shown by medical examination or tests. A qualified medical provider mutually agreed upon by the executive director and member shall conduct the examinations or tests at an agreed upon place, and the costs must be paid by the Maine Public Employees Retirement System.~~

Sec. 5. 5 MRSA §11007, sub-§3, as enacted by PL 1977, c. 551, §3, is amended to read:

3. Judgment. ~~The court shall~~ may not substitute its judgment for that of the agency on questions of fact, except that with respect to a timely appeal by an individual of a denial of a disability determination by a hearing officer pursuant to sections 17106-A and 17106-B, the court shall review the matter de novo.

Sec. 6. 5 MRSA §17001, sub-§12, ¶B, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

Sec. 7. 5 MRSA §17001, sub-§18-B is enacted to read:

18-B. Health care provider. "Health care provider" means an appropriately licensed, certified or registered provider of mental or physical health care, either in the public or private sector, or any business establishment providing health care services.

Sec. 8. 5 MRSA §17106, as amended by PL 2017, c. 88, §§14 to 16, is repealed.

Sec. 9. 5 MRSA §17106-A, first ¶, as enacted by PL 2009, c. 322, §7, is amended to read:

~~A hearing officer employed, contracted or otherwise provided by the board~~The board shall contract with qualified attorneys to act as hearing officers to implement the provisions of this chapter is. Hearing officers are subject to the provisions of this section. Hearing officers are not employees of the board but independent contractors that serve as neutral and independent decision makers.

Sec. 10. 5 MRSA §17106-A, sub-§1, as enacted by PL 2009, c. 322, §7, is amended to read:

1. Independent decision makers. All hearing officers are independent decision makers and are authorized to make recommended final decisions in regard to matters that come before them, consistent with applicable statutes and rules. A decision of the hearing officer must be based upon the record as a whole. ~~The~~Except as provided in section 17106-B, the board shall accept the recommended decision of the hearing officer unless the recommended decision is not supported by the record as a whole, the retirement system is advised by the 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. A decision of the board upon a recommended decision of the hearing officer constitutes final agency action. The board shall retain its decision-making authority in all retirement system policy areas.

Sec. 11. 5 MRSA §17106-A, sub-§6, as amended by PL 2017, c. 88, §18, is further amended to read:

6. Engagement and termination. ~~The board shall engage~~contract with only qualified hearing officers, ~~who must be monitored by the board.~~ A contract with a hearing officer may be terminated for misconduct. Retaliatory action of any kind, including reprimand or termination, may not be taken against a hearing officer on the basis of that hearing officer's having issued decisions contrary to the decision of the executive director. In the event of termination, the retirement system shall set forth in writing the basis for the termination, the propriety of which may then be considered by the joint standing committee of the Legislature having jurisdiction over public employee retirement matters pursuant to subsection 5.

Sec. 12. 5 MRSA §17106-B is enacted to read:

§ 17106-B. Disability retirement; medical review

1. Disability retirement forms; assessment; preapproval benefit. The board shall develop and make easily accessible to health care providers in this State a residual functional capacity form that allows a provider to provide an assessment of a member's ability to work after taking into account the member's mental or physical disability. A member seeking disability retirement shall obtain an assessment from the health care provider of the member's ability to work after taking into account the member's mental or physical disability, and, if the health care provider finds that the member is disabled, the health care provider, at the request of the member, shall file with the board a residual functional capacity form signed by a health care provider. The provider shall also provide a copy of the form to the member. The board may find that a member has a mental or physical disability and is eligible for disability retirement based on the information provided in the form.

A. Beginning with the first full month following the receipt of a residual functional capacity form that states a member is unable to perform essential functions of a job due to a disability that is expected to last at least 12 months, the member must be granted a preapproval benefit calculated at 50% of full disability retirement for 6 months or until a determination of disability is made entitling the member to full disability retirement, whichever comes first. This preapproval payment may be made upon a disability application only once within a 5-year period.

2. Medical review. If the board is unable to determine whether a member is eligible for disability retirement based on the information provided in the residual functional capacity form under subsection 1, the board shall direct the member to have an independent medical examination by an independent health care provider.

A. The board shall pay all fees of the independent health care provider. The independent health care provider may not be a state employee and may not have any association with the board other than providing the independent medical examination and receiving payment for that service and, unless the member consents in writing, may not have previously examined or treated the member with respect to the member's mental or physical disability.

B. The member may have a representative present at the independent medical examination, who may be a union representative, an attorney or a health care provider of the member's choice. The board shall reimburse the member's representative as follows:

(1) If the representative is a health care provider, the board shall pay that provider a standard per diem rate established by the board and a reasonable mileage reimbursement; and

(2) Any other representative of the member must be paid a reasonable mileage reimbursement only.

3. Disability specialist finding; board determination; appeal. After an independent medical review under subsection 2, the board shall refer the member's application to an employee of the board who is a disability specialist, who shall, in consultation with the board, make a finding of disability based upon the totality of the evidence and in accordance with subsection 4. A finding by the disability

specialist may be accepted or rejected by the board. A final decision of the board that the member is not disabled may be appealed by the member to a hearing officer, who shall hear the appeal in accordance with section 17106-A.

4. Medical evidence. When reviewing medical evidence in making a determination of disability, the board, disability specialists and hearing officers shall primarily consider medical opinions in the record and whether the opinions are supported by sound medical evidence and are consistent with other medical evidence in the record.

5. Attorney's fees. If a member has retained services of an attorney to represent the member before a hearing officer or in a court proceeding on appeal of a hearing officer's decision and the fee arrangement has been approved by the hearing officer or the court and the attorney obtains a favorable result for the member, the attorney's legal fees must be paid by the board up to a maximum of \$12,000. The fee arrangement may be a contingency fee, in which case the payment by the board must be applied toward the satisfaction of the contingency fee.

Sec. 13. 5 MRSA §17902, sub-§1, ¶A, as amended by PL 2017, c. 88, §22, is further amended to read:

A. The executive director shall obtain medical consultation on each applicant for disability retirement benefits in accordance with related rules established by the board, ~~which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable.~~ Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. ~~Whether provided by the medical board or by an alternative means, medical~~ Medical consultation obtained by the executive director must be objective and be provided by a medical provider or medical providers qualified to review the case by specialty or experience and to whom the applicant is not known.

Sec. 14. 5 MRSA §17911, first ¶, as enacted by PL 2003, c. 387, §4, is amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

Sec. 15. 5 MRSA §17921, sub-§1, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

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

A. The incapacity is expected to ~~be permanent~~result in death or has lasted or is expected to last for a continuous period of at least 12 months;

B. That it is ~~impossible to perform the duties of~~the member is unable to perform the essential functions of the member's employment position with or without reasonable and appropriate accommodation;

C. After the incapacity has continued for 2 years, the incapacity must render the member unable either to earn at least 75% of the member's predisability earnings or to engage in any substantially gainful activity for which the member is qualified by training, education or experience; and

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

Sec. 16. 5 MRSA §17925, sub-§1, ¶A, as amended by PL 2017, c. 88, §25, is further amended to read:

A. The executive director shall obtain medical consultation on each applicant for disability in accordance with related rules established by the board, ~~which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable.~~ Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. ~~Whether provided by the medical board or by an alternative means, medical~~Medical consultation obtained by the executive director must be objective and be provided by a medical provider or medical providers qualified to review the case by specialty or experience and to whom the applicant is not known.

Sec. 17. 5 MRSA §17926, first ¶, as amended by PL 1995, c. 643, §11, is further amended to read:

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

Sec. 18. 5 MRSA §17927, first ¶, as amended by PL 2003, c. 387, §5, is further amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for

rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

Sec. 19.5 MRSA §17929, sub-§2, ¶B, as amended by PL 2003, c. 675, §2, is further amended to read:

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 person's file to the medical board for medical consultation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.~~

(1) After the disability has continued for 2 years, the disability must render the person unable to engage in any substantially gainful activity that is consistent with the person's training, education or experience and average final compensation adjusted by the same percentage adjustment as has been received under section 17806. The disability retirement benefit continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For the purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 17806.

(2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is discontinued until that person withdraws the refusal.

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

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

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

(a) The decision is subject to appeal under section 17451.

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

Sec. 20. 5 MRSA §17930, sub-§2, ¶C, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

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 ~~underin accordance with~~ 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

Sec. 21. 5 MRSA §17930, sub-§3, ¶E, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

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

Sec. 22. 5 MRSA §17953, sub-§3, ¶A, as amended by PL 1991, c. 469, §2, is further amended to read:

A. A surviving spouse of the qualifying member is paid a \$150 benefit each month beginning the first month after the death occurs and continuing during the surviving spouse's lifetime, if:

- (1) The deceased qualifying member had 10 years of creditable service at the time of death; or
- (2) The surviving spouse is certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

A full month's benefit is paid to the estate of the surviving spouse for the month in which the surviving spouse dies.

Sec. 23. 5 MRSA §17953, sub-§5-A, ¶A, as amended by PL 1991, c. 469, §2, is further amended to read:

A. A designated beneficiary who is alive at the time of the death of the qualifying member is paid \$150 per month beginning the first month after the death occurs and continuing until the date of the designated beneficiary's death, if the designated beneficiary is certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

Sec. 24. 5 MRSA §18502, sub-§1, ¶A, as amended by PL 2017, c. 88, §30, is further amended to read:

A. The executive director shall obtain medical consultation on each applicant for disability retirement benefits in accordance with related rules established by the board, ~~which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable.~~ Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. ~~Whether provided by the medical board or by an alternative means, medical~~ Medical consultation obtained by the executive director must be objective and be provided by a medical provider or medical providers qualified to review the case by specialty or experience and to whom the applicant is not known.

Sec. 25. 5 MRSA §18512, first ¶, as enacted by PL 2003, c. 387, §10, is amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

Sec. 26. 5 MRSA §18525, sub-§1, ¶A, as amended by PL 2017, c. 88, §32, is further amended to read:

A. The executive director shall obtain medical consultation on each applicant for disability in accordance with related rules established by the board, ~~which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical~~

~~consultation are acceptable.~~ Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. ~~Whether provided by the medical board or by an alternative means, medical~~ Medical consultation obtained by the executive director must be objective and be provided by a medical provider or medical providers qualified to review the case by specialty or experience and to whom the applicant is not known.

Sec. 27. 5 MRSA §18526, first ¶, as amended by PL 1995, c. 643, §23, is further amended to read:

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

Sec. 28. 5 MRSA §18527, first ¶, as amended by PL 2003, c. 387, §11, is further amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

Sec. 29. 5 MRSA §18529, sub-§2, ¶B, as amended by PL 2003, c. 675, §4, is further amended to read:

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 person's file to the medical board for medical consultation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.~~

(1) After the disability has continued for 2 years, the disability must render the person unable to engage in any substantially gainful activity that is consistent with the person's training, education or experience and average final compensation adjusted by the same percentage adjustment as has been received under section 18407. The disability retirement benefit

continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 18407.

(2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is discontinued until that person withdraws the refusal.

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

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

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

(a) The decision is subject to appeal under section 17451.

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

Sec. 30.5 MRSA §18530, sub-§2, ¶C, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

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~~ in accordance with section 18527 ~~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 18521; and

Sec. 31.5 MRSA §18530, sub-§3, ¶E, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

E. If, during the first 5 years of reemployment, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments, or if greater, a disability

retirement benefit based upon the person's current average final compensation and shall provide rehabilitation services ~~underin accordance with~~ section 18527 if ~~recommended by the medical board~~. The executive director shall require examinations or tests to determine whether the person is disabled as defined in section 18521; and

Sec. 32. 5 MRSA §18553, sub-§3, ¶A, as amended by PL 1991, c. 469, §5, is further amended to read:

A. A surviving spouse of the qualifying member is paid a \$150 benefit each month beginning the first month after the death occurs and continuing during the surviving spouse's lifetime, if:

(1) The deceased qualifying member had 10 years of creditable service at the time of death; or

(2) The surviving spouse is certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

A full month's benefit is paid to the estate of the surviving spouse for the month in which the surviving spouse dies.

Sec. 33. 5 MRSA §18553, sub-§5-A, ¶A, as amended by PL 1991, c. 469, §5, is further amended to read:

A. A designated beneficiary who is alive at the time of the death of the qualifying member is paid \$150 per month beginning the first month after the death occurs and continuing until the date of the designated beneficiary's death, if the designated beneficiary is certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

SUMMARY

This bill amends the laws relating to disability retirement under the Maine Public Employees Retirement System and makes other changes relating to the structure of the Maine Public Employees Retirement System. This bill:

1. Repeals the laws providing for a medical board to review applications for disability retirement;
2. Provides that the system's hearing officers are not employees of the Board of Trustees of the Maine Public Employees Retirement System but independent contractors that serve as neutral and independent decision makers;
3. Modifies the definition of "disabled";

4. Provides that a member seeking disability retirement must obtain a residual functional capacity assessment from a health care provider. The bill defines "health care provider." The board may find that a member has a mental or physical disability and is eligible for disability retirement based on the information provided through the assessment. If the board is unable to determine whether the member is eligible for disability retirement based on the information provided through the assessment, the board must direct the member to have an independent medical examination by an independent health care provider. After an independent medical review, the board must refer the member's application to a disability specialist, who must, in consultation with the board, make a finding of disability based upon the totality of the evidence. A final decision of the board that the member is not disabled may be appealed by the member to a hearing officer. An adverse decision by the hearing officer may be appealed to the court, which must review the matter de novo;

5. Provides that, beginning with the first full month following the receipt of a residual functional capacity form that states a member is unable to perform essential functions of a job due to a disability that is expected to last at least 12 months, the member must be granted a preapproval benefit calculated at 50% of full disability retirement for 6 months or until a determination of disability is made entitling the member to full disability retirement, whichever comes first. This preapproval payment may be made upon a disability application only once within a 5-year period;

6. Provides that, when reviewing medical evidence in making a determination of disability, the board, disability specialists and hearing officers must primarily consider medical opinions in the record and whether the opinions are supported by sound medical evidence and are consistent with other medical evidence in the record; and

7. Provides that, if a member has retained services of an attorney to represent the member before a hearing officer or in a court proceeding on appeal of a hearing officer's decision and the fee arrangement has been approved by the hearing officer or the court and the attorney obtains a favorable result for the member, the attorney's legal fees must be paid by the board up to a maximum of \$12,000. The attorney may have a contingency fee arrangement, in which case any payment from the board must be applied toward the satisfaction of the contingency fee.