



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 409

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S.P. 136

In Senate, February 7, 2017

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### **An Act To Amend the Laws Pertaining to the Maine Public Employees Retirement System**

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Submitted by the Maine Public Employees Retirement System pursuant to Joint Rule 204.  
Reference to the Committee on Appropriations and Financial Affairs suggested and ordered  
printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator HAMPER of Oxford.

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

2 **Sec. 1. 3 MRSA §701, sub-§11-A** is enacted to read:

3 **11-A. Medical provider.** "Medical provider" means a physician or clinical  
4 psychologist.

5 **Sec. 2. 3 MRSA §734**, as amended by PL 2007, c. 491, §12, is further amended to  
6 read:

7 **§734. Medical board**

8 A medical board of the other programs of the Maine Public Employees Retirement  
9 System established in Title 5, section 17106, subsection 1 is the medical board of the  
10 Legislative Retirement Program. The medical board shall arrange for and pass upon all  
11 medical examinations required under this chapter with respect to disability retirements  
12 and shall report in writing to the executive director its conclusions and recommendations  
13 upon all the matters referred to it. The board of trustees may designate other ~~physicians~~  
14 medical providers to provide medical consultation on legislative disability cases.

15 **Sec. 3. 3 MRSA §853**, as amended by PL 2007, c. 491, §27, is further amended to  
16 read:

17 **§853. Disability retirement**

18 Any member who becomes disabled while in service may receive a disability  
19 retirement allowance on the same basis as provided for members of the State Employee  
20 and Teacher Retirement Program by Title 5, chapter 423, subchapter 5, article 3 3-A.

21 **Sec. 4. 4 MRSA §1201, sub-§12-A** is enacted to read:

22 **12-A. Medical provider.** "Medical provider" means a physician or clinical  
23 psychologist.

24 **Sec. 5. 4 MRSA §1234**, as amended by PL 2007, c. 491, §38, is further amended  
25 to read:

26 **§1234. Medical board**

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

34 **Sec. 6. 4 MRSA §1353, sub-§1**, as amended by PL 1991, c. 887, §1 and PL 2007,  
35 c. 58, §3, is further amended to read:

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

11           **Sec. 7. 4 MRSA §1353, sub-§4, ¶C,** as amended by PL 2007, c. 491, §50, is  
12 further amended to read:

13           C. The executive director may require the beneficiary to undergo annual medical  
14 examinations or tests for the purpose of determining whether the beneficiary is  
15 incapacitated. These examinations or tests must be conducted by a qualified  
16 ~~physician~~ medical provider, mutually agreed upon by the executive director and  
17 beneficiary, at a place also mutually agreed upon, and the costs of the examination or  
18 tests must be paid by the Maine Public Employees Retirement System. If the  
19 beneficiary refuses to submit to an examination or tests, the beneficiary's disability  
20 allowance ceases until the beneficiary agrees to the examination or tests. If the  
21 beneficiary's refusal continues for one year, all rights to any further benefits under  
22 this section terminate.

23           **Sec. 8. 5 MRSA §17001, sub-§19-A** is enacted to read:

24           **19-A. Medical provider.** "Medical provider" means a physician or clinical  
25 psychologist.

26           **Sec. 9. 5 MRSA §17053,** as enacted by PL 1985, c. 801, §§5 and 7, is amended to  
27 read:

28           **§17053. Exemption from taxation**

29           The money in the various funds created by this Part and any property owned by the  
30 retirement system are exempt from any state, county or municipal tax in the State.

31           **Sec. 10. 5 MRSA §17102, sub-§1, ¶E,** as amended by PL 2007, c. 491, §75, is  
32 further amended to read:

33           E. A person who is a member or retired member of the Participating Local District  
34 Retirement Program of the retirement system through a participating local district and  
35 who is appointed by the governing body of the Maine Municipal Association.

36           **Sec. 11. 5 MRSA §17103, sub-§11, ¶B,** as amended by PL 1997, c. 651, §3, is  
37 further amended to read:

38           B. Any proposed legislation amending the retirement system law that the board  
39 recommends to improve the retirement system. The joint standing committee of the

1           Legislature having jurisdiction over public employee retirement matters may submit  
2           legislation required to implement recommendations made pursuant to this paragraph;

3           **Sec. 12. 5 MRSA §17103, sub-§13**, as enacted by PL 1993, c. 410, Pt. L, §22  
4           and amended by PL 2007, c. 58, §3, is repealed and the following enacted in its place:

5           **13. Budget.** By June 15th, annually, the board shall adopt an operating budget for  
6           the subsequent fiscal year.

7           **Sec. 13. 5 MRSA §17106, sub-§1**, as amended by PL 2009, c. 322, §6, is further  
8           amended to read:

9           **1. Establishment.** The board shall designate a medical board to be composed of at  
10          least 3 ~~physicians~~ medical providers not eligible to participate in any of the retirement  
11          programs of the retirement system. The board shall make a good faith effort to appoint  
12          ~~physicians~~ medical providers to the medical board who are from those fields ~~of medicine~~  
13          within concerning which the Maine Public Employees Retirement System receives the  
14          greatest number of applications for disability retirement benefits.

15          **Sec. 14. 5 MRSA §17106, sub-§2**, as amended by PL 1995, c. 643, §4, is further  
16          amended to read:

17          **2. Other medical providers.** If determined advisable by the board, the board may  
18          designate other ~~physicians~~ medical providers to provide medical consultation on  
19          disability cases.

20          **Sec. 15. 5 MRSA §17106, sub-§3**, as amended by PL 2009, c. 322, §6, is further  
21          amended to read:

22          **3. Powers and duties.** The medical board is advisory only to the retirement system.  
23          The medical board or other ~~physicians~~ medical providers designated by the board shall  
24          review the file of an applicant for disability retirement and:

25                A. Recommend an additional medical review in those instances where there are  
26                conflicting medical opinions;

27                B. Recommend additional medical tests to be performed on an applicant to obtain  
28                objective evidence of a permanent disability;

29                C. Assist the executive director in determining if a disability review of a recipient of  
30                a disability allowance is warranted;

31                D. Provide a written report of its analysis of how the applicant's medical records do  
32                or do not demonstrate the existence of physical or mental functional limitations  
33                entitling an applicant to benefits under chapter 423, subchapter 5, articles 3 and 3-A,  
34                or chapter 425, subchapter 5, articles 3 or 3-A; and

35                E. Advise the retirement system whether there are medical indications that a person  
36                who is the recipient of a disability retirement benefit under chapter 423, subchapter 5,  
37                article 3-A or chapter 425, subchapter 5, article 3-A should not engage in a  
38                rehabilitation program or whether a recipient is too severely disabled to benefit from

1 rehabilitation in accordance with the purposes of chapter 423, subchapter 5, article  
2 3-A or chapter 425, subchapter 5, article 3-A.

3 **Sec. 16. 5 MRSA §17106-A, sub-§5**, as enacted by PL 2009, c. 322, §7, is  
4 amended to read:

5 **5. Investigation.** The joint standing committee of the Legislature having jurisdiction  
6 over ~~labor~~ public employee retirement matters shall monitor the compliance of the  
7 retirement system and all involved parties with regard to the use of hearing officers and  
8 the independence of hearing officers in the decision-making process. The joint standing  
9 committee of the Legislature having jurisdiction over ~~labor~~ public employee retirement  
10 matters may request the Attorney General to conduct an investigation if a complaint is  
11 made by a hearing officer or any participating party regarding the independence of the  
12 hearing process.

13 **Sec. 17. 5 MRSA §17106-A, sub-§6**, as enacted by PL 2009, c. 322, §7, is  
14 amended to read:

15 **6. Engagement and termination.** The board shall engage only qualified hearing  
16 officers, who must be monitored by the board. A hearing officer may be terminated for  
17 misconduct. Retaliatory action of any kind, including reprimand or termination, may not  
18 be taken against a hearing officer on the basis of that hearing officer's having issued  
19 decisions contrary to the decision of the executive director. In the event of termination,  
20 the retirement system shall set forth in writing the basis for the termination, the propriety  
21 of which may then be considered by the joint standing committee of the Legislature  
22 having jurisdiction over ~~labor~~ public employee retirement matters pursuant to subsection  
23 5.

24 **Sec. 18. 5 MRSA §17152, first ¶**, as amended by PL 2013, c. 602, Pt. A, §1, is  
25 further amended to read:

26 The board may combine the assets of the State Employee and Teacher Retirement  
27 Program with the assets of other retirement programs of the retirement system for  
28 investment purposes. The assets of the State Employee and Teacher Retirement Program  
29 may not be combined with the assets of another retirement program for benefit purposes  
30 or for administrative expenses. All of the assets of the retirement system must be credited  
31 according to the purpose for which they are held among the several funds created by this  
32 section, namely:

33 **Sec. 19. 5 MRSA §17760, sub-§6, ¶D** is enacted to read:

34 D. If funds are appropriated under paragraph B to subsidize the purchase of service  
35 credit for specific members, and those members either decline to purchase service  
36 credit or are able to purchase the service credit without subsidy, the unused funds  
37 must be applied in accordance with paragraph C.

38 **Sec. 20. 5 MRSA §17902, sub-§1, ¶A**, as enacted by PL 1995, c. 643, §5, is  
39 amended to read:

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

11 **Sec. 21. 5 MRSA §17903, sub-§1**, as enacted by PL 1985, c. 801, §§5 and 7, is  
12 amended to read:

13 **1. Agreed upon medical provider.** The examination or tests ~~shall~~ must be  
14 conducted by a qualified ~~physician~~ medical provider mutually agreed upon by the  
15 executive director and member claiming to be disabled.

16 **Sec. 22. 5 MRSA §17910, sub-§2**, as enacted by PL 1985, c. 801, §§5 and 7 and  
17 amended by PL 2007, c. 58, §3, is further amended to read:

18 **2. Dispute over mental or physical capacity.** In the event there is a dispute  
19 between the beneficiary and the former employer over the beneficiary's mental or  
20 physical capacity to perform a specific job, at the option of the beneficiary that dispute  
21 ~~shall~~ must be resolved by the majority decision of 3 ~~physicians~~ medical providers, one  
22 appointed and reimbursed by the beneficiary, one appointed and reimbursed by the  
23 employer and one appointed by the executive director and reimbursed by the Maine  
24 Public Employees Retirement System.

25 **Sec. 23. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2015, c. 392, §1, is  
26 further amended to read:

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

37 **Sec. 24. 5 MRSA §17926, sub-§1**, as enacted by PL 1989, c. 409, §§8 and 12, is  
38 amended to read:

39 **1. Agreed upon medical provider.** The examinations or tests ~~shall~~ must be  
40 conducted by a qualified ~~physician~~ and, when appropriate, a qualified psychologist

1 medical provider mutually agreed upon by the executive director and the member  
2 claiming to be disabled.

3 **Sec. 25. 5 MRSA §17928**, as amended by PL 1997, c. 384, §8, is further amended  
4 to read:

5 **§17928. Computation of benefit**

6 Until July 1, 1996, when a member qualified under section 17924 retires, after  
7 approval for disability retirement by the executive director in accordance with section  
8 17925, the member is entitled to receive a disability retirement benefit equal to 59% of  
9 that member's average final compensation, calculated, for this section only, without  
10 regard to section 17001, subsection 13, paragraph E. The 59% level must be reviewed for  
11 cost-neutral comparability as a part of the actuarial investigation provided under section  
12 17107, subsection 2, paragraph E, beginning with the investigation made January 1, 1997  
13 and every 6 years thereafter. The review that takes place every 6 years must compare  
14 actual experience under the disability plans with actuarial assumptions regarding election  
15 and costs of benefits under the new options elected and identify possible options for  
16 compliance with the federal Older Workers Benefit Protection Act that protect benefits  
17 for employees without additional cost to the State and participating local districts.

18 A member who by election remains covered, as to qualification for benefits, under  
19 section 17924 as written prior to its amendment by Public Law 1991, chapter 887, section  
20 7, qualifies for a disability retirement benefit on meeting the requirements of section  
21 17924, subsection 1, paragraphs C and D. When a member so qualified retires after  
22 approval for disability retirement by the executive director in accordance with this  
23 Article, the member is entitled to receive a disability retirement benefit equal to 66 2/3%  
24 of the member's average final compensation, calculated, for this section only, without  
25 regard to section 17001, subsection 13, paragraph E.

26 **Sec. 26. 5 MRSA §17932, sub-§2**, as enacted by PL 1989, c. 409, §§8 and 12, is  
27 amended to read:

28 **2. Dispute over mental or physical capacity.** If there is a dispute between the  
29 person and the former employer over the person's mental or physical capacity to perform  
30 a specific job, at the option of the person that dispute ~~shall~~ must be resolved by a majority  
31 of 3 ~~physicians~~ medical providers, one appointed and reimbursed by the person, one  
32 appointed and reimbursed by the employer and one appointed and reimbursed by the  
33 retirement system. If the 3 ~~physicians~~ medical providers resolve the dispute in favor of  
34 the person, the former employer ~~shall~~ must reimburse the ~~physician~~ medical provider  
35 appointed by the person.

36 **Sec. 27. 5 MRSA §18053-A** is enacted to read:

37 **§18053-A. Funds**

38 All assets in the group life insurance program may be combined for investment  
39 purposes. The assets attributable to employers of state employees, teachers, Legislators

1 and judges who are participants in the group life insurance program may not be combined  
2 with the assets attributable to other group life insurance participants for benefit purposes.

3 **Sec. 28. 5 MRSA §18060**, as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

4 **Sec. 29. 5 MRSA §18502, sub-§1, ¶A**, as enacted by PL 1995, c. 643, §17, is  
5 amended to read:

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

16 **Sec. 30. 5 MRSA §18503, sub-§1**, as enacted by PL 1985, c. 801, §§5 and 7, is  
17 amended to read:

18 **1. Agreed upon medical provider.** The examination or tests ~~shall~~ must be  
19 conducted by a qualified ~~physician~~ medical provider mutually agreed upon by the  
20 executive director and member claiming to be disabled.

21 **Sec. 31. 5 MRSA §18525, sub-§1, ¶A**, as amended by PL 1995, c. 643, §21, is  
22 further amended to read:

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

33 **Sec. 32. 5 MRSA §18526, sub-§1**, as enacted by PL 1989, c. 409, §§11 and 12, is  
34 amended to read:

35 **1. Agreed upon medical provider.** The examinations or tests ~~shall~~ must be  
36 conducted by a qualified ~~physician and, when appropriate, a qualified psychologist~~  
37 medical provider mutually agreed upon by the executive director and the member  
38 claiming to be disabled.

39 **Sec. 33. 5 MRSA §18528**, as amended by PL 1997, c. 384, §14, is further  
40 amended to read:

1           **§18528. Computation of benefit**

2           When a member qualified under section 18524 retires, after approval for disability  
3 retirement by the executive director in accordance with section 18525, the member is  
4 entitled to receive a disability retirement benefit equal to 59% of that member's average  
5 final compensation, calculated, for this section only, without regard to section 17001,  
6 subsection 13, paragraph E. The 59% level must be reviewed for cost-neutral  
7 comparability as a part of the actuarial investigation provided under section 17107,  
8 subsection 2, paragraph E, beginning with the investigation made January 1, 1997 and  
9 every 6 years thereafter. The review that takes place every 6 years must compare actual  
10 experience under the disability plans with actuarial assumptions regarding election and  
11 costs of benefits under the new options elected and identify possible options for  
12 compliance with the federal Older Workers Benefit Protection Act that protect benefits  
13 for employees without additional cost to the State and participating local districts.

14           A member who by election remains covered, as to qualification for benefits, under  
15 section 18524 as written prior to its amendment by Public Law 1991, chapter 887, section  
16 15, qualifies for a disability retirement benefit on meeting the requirements of section  
17 18524, subsection 1, paragraphs C and D. When a member so qualified retires after  
18 approval for disability retirement by the executive director in accordance with this  
19 Article, the member is entitled to receive a disability retirement benefit equal to 66 2/3%  
20 of the member's average final compensation, calculated, for this section only, without  
21 regard to section 17001, subsection 13, paragraph E.

22           **Sec. 34. 5 MRSA §18532, sub-§2,** as enacted by PL 1989, c. 409, §§11 and 12, is  
23 amended to read:

24           **2. Dispute over mental or physical capacity.** If there is a dispute between the  
25 person and the former employer over the person's mental or physical capacity to perform  
26 a specific job, at the option of the person that dispute ~~shall~~ must be resolved by a majority  
27 of 3 ~~physicians~~ medical providers, one appointed and reimbursed by the person, one  
28 appointed and reimbursed by the employer and one appointed and reimbursed by the  
29 retirement system. If the 3 ~~physicians~~ medical providers resolve the dispute in favor of  
30 the person, the former employer ~~shall~~ must reimburse the ~~physician~~ medical provider  
31 appointed by the person.

32           **Sec. 35. 5 MRSA §18653-A** is enacted to read:

33           **§18653-A. Funds**

34           All assets in the group life insurance program may be combined for investment  
35 purposes. The assets attributable to employers of participating local district participants  
36 in the group life insurance program may not be combined with the assets attributable to  
37 other group life insurance participants for benefit purposes.

38           **Sec. 36. 5 MRSA §18660,** as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

39           **Sec. 37. PL 2015, c. 267, Pt. A, §63, under the caption “RETIREMENT**  
40 **SYSTEM, MAINE PUBLIC EMPLOYEES” in the first occurrence of**



- 1           6. It replaces obsolete language regarding the retirement system budgeting process;
- 2           7. It corrects a reference to the legislative jurisdiction that pertains to matters relating
- 3           to the retirement system;
- 4           8. It clarifies the treatment of retirement system assets;
- 5           9. It clarifies the disposition of funds appropriated to subsidize the purchase of
- 6           military service credit for specific members who subsequently decline to purchase service
- 7           credit or are able to purchase service credit without subsidy;
- 8           10. It changes the manner in which disability retirement benefits are calculated for
- 9           less than full-time members;
- 10          11. It clarifies that assets of the group life insurance program may only be used for
- 11          benefits for participants of employers for which the assets are attributable; and
- 12          12. It removes obsolete language.