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SECOND REGULAR SESSION-2020

Legislative Document

No. 1978

S.P. 680

In Senate, January 8, 2020

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.
Cosponsored by Representative INGWERSEN of Arundel and
Senators: BELLOWS of Kennebec, President JACKSON of Aroostook, POULIOT of
Kennebec, SANBORN, H. of Cumberland, Representatives: BERRY of Bowdoinham,
HARNETT of Gardiner, HUBBELL of Bar Harbor, TALBOT ROSS of Portland.

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

2 **Sec. 1. 3 MRSA §734**, as amended by PL 2017, c. 88, §2, is repealed.

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

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

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

11 **§1234. Medical board review of disability**

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

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

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

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

33 **3. Judgment.** The court ~~shall~~ may not substitute its judgment for that of the agency
34 on questions of fact, except that with respect to a timely appeal by an individual of a
35 denial of a disability determination by a hearing officer pursuant to sections 17106-A and
36 17106-B, the court shall review the matter de novo.

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

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

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

6 **18-B. Health care provider.** "Health care provider" means an appropriately
7 licensed, certified or registered provider of mental or physical health care, either in the
8 public or private sector, or any business establishment providing health care services.

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

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

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

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

19 **1. Independent decision makers.** All hearing officers are independent decision
20 makers and are authorized to make recommended final decisions in regard to matters that
21 come before them, consistent with applicable statutes and rules. A decision of the
22 hearing officer must be based upon the record as a whole. ~~The~~ Except as provided in
23 section 17106-B, the board shall accept the recommended decision of the hearing officer
24 unless the recommended decision is not supported by the record as a whole, the
25 retirement system is advised by the Attorney General that the hearing officer has made an
26 error of law or the decision exceeds the authority or jurisdiction conferred upon the
27 hearing officer. A decision of the board upon a recommended decision of the hearing
28 officer constitutes final agency action. The board shall retain its decision-making
29 authority in all retirement system policy areas.

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

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

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

2 **§17106-B. Disability retirement; medical review**

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

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

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

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

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

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

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

41 **3. Disability specialist finding; board determination; appeal.** After an
42 independent medical review under subsection 2, the board shall refer the member's

1 application to an employee of the board who is a disability specialist, who shall, in
2 consultation with the board, make a finding of disability based upon the totality of the
3 evidence and in accordance with subsection 4. A finding by the disability specialist may
4 be accepted or rejected by the board. A final decision of the board that the member is not
5 disabled may be appealed by the member to a hearing officer, who shall hear the appeal
6 in accordance with section 17106-A.

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

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

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

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

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

32 Upon agreement of the executive director and the person, rehabilitation services may
33 be provided to any person who is the recipient of a disability retirement benefit under this
34 article as a means to the person being able to return to substantially gainful activity. As a
35 condition of entering into an agreement to provide rehabilitation services, the executive
36 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
37 the purposes of this article, that the recipient is suitable for rehabilitation services and that
38 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~
39 ~~appropriate, determination of suitability must include consultation with the medical board~~
40 ~~to determine any medical indications that the recipient should not engage in a~~
41 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~
42 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be
43 provided by private and public rehabilitation counselors, government agencies and others

1 approved by the executive director as qualified to provide rehabilitation services. The
2 executive director shall consider a rehabilitation counselor's rate of successfully placing
3 rehabilitated employees in jobs relative to the placement rates of other counselors in the
4 State as fundamental in deciding whether to approve the counselor as qualified. This
5 section does not affect the ongoing requirement that a person remain disabled in order to
6 continue to receive disability benefits.

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

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

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

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

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

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

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

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

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

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

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

1 Upon agreement of the executive director and the person, rehabilitation services may
2 be provided to any person who is the recipient of a disability retirement benefit under this
3 article as a means to the person being able to return to substantially gainful activity. As a
4 condition of entering into an agreement to provide rehabilitation services, the executive
5 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
6 the purposes of this article, that the recipient is suitable for rehabilitation services and that
7 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~
8 ~~appropriate, determination of suitability must include consultation with the medical board~~
9 ~~to determine any medical indications that the recipient should not engage in a~~
10 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~
11 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be
12 provided by private and public rehabilitation counselors, government agencies and others
13 approved by the executive director as qualified to provide rehabilitation services. The
14 executive director shall consider a rehabilitation counselor's rate of successfully placing
15 rehabilitated employees in jobs relative to the placement rates of other counselors in the
16 State as fundamental in deciding whether to approve the counselor as qualified. This
17 section does not affect the ongoing requirement that a person remain disabled in order to
18 continue to receive disability benefits.

19 **Sec. 19. 5 MRSA §17929, sub-§2, ¶B**, as amended by PL 2003, c. 675, §2, is
20 further amended to read:

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

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

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

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

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

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

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

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

10 **Sec. 20. 5 MRSA §17930, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§8 and
11 12, is amended to read:

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

23 **Sec. 21. 5 MRSA §17930, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§8 and
24 24, is amended to read:

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

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

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

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

40 (2) The surviving spouse is certified by ~~the medical board~~ an independent health
41 care provider to be permanently mentally incompetent or permanently physically

1 incapacitated and is determined by the executive director to be unable to engage
2 in any substantially gainful employment.

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

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

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

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

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

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

28 Upon agreement of the executive director and the person, rehabilitation services may
29 be provided to any person who is the recipient of a disability retirement benefit under this
30 article as a means to the person being able to return to substantially gainful activity. As a
31 condition of entering into an agreement to provide rehabilitation services, the executive
32 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
33 the purposes of this article, that the recipient is suitable for rehabilitation services and that
34 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~
35 ~~appropriate, determination of suitability must include consultation with the medical board~~
36 ~~to determine any medical indications that the recipient should not engage in a~~
37 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~
38 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be
39 provided by private and public rehabilitation counselors, government agencies and others
40 approved by the executive director as qualified to provide rehabilitation services. The
41 executive director shall consider a rehabilitation counselor's rate of successfully placing
42 rehabilitated employees in jobs relative to the placement rates of other counselors in the
43 State as fundamental in deciding whether to approve the counselor as qualified. This

1 section does not affect the ongoing requirement that a person remain disabled in order to
2 continue to receive disability benefits.

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

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

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

16 Any examinations or tests ~~recommended by the medical board in accordance with~~
17 ~~conducted under~~ section 47106 17106-B or required by the executive director under
18 section 18521, subsection 1, paragraph D; section 18524; section 18529, subsection 2,
19 paragraph B; or section 18533, subsection 3, paragraph A; are governed as follows.

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

22 Upon agreement of the executive director and the person, rehabilitation services may
23 be provided to any person who is the recipient of a disability retirement benefit under this
24 article as a means to the person being able to return to substantially gainful activity. As a
25 condition of entering into an agreement to provide rehabilitation services, the executive
26 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
27 the purposes of this article, that the recipient is suitable for rehabilitation services and that
28 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~
29 ~~appropriate, determination of suitability must include consultation with the medical board~~
30 ~~to determine any medical indications that the recipient should not engage in a~~
31 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~
32 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be
33 provided by private and public rehabilitation counselors, government agencies and others
34 approved by the executive director as qualified to provide rehabilitation services. The
35 executive director shall consider a rehabilitation counselor's rate of successfully placing
36 rehabilitated employees in jobs relative to the placement rates of other counselors in the
37 State as fundamental in deciding whether to approve the counselor as qualified. This
38 section does not affect the ongoing requirement that a person remain disabled in order to
39 continue to receive disability benefits.

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

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

7 (1) After the disability has continued for 2 years, the disability must render the
8 person unable to engage in any substantially gainful activity that is consistent
9 with the person's training, education or experience and average final
10 compensation adjusted by the same percentage adjustment as has been received
11 under section 18407. The disability retirement benefit continues if the person can
12 effectively demonstrate to the executive director that the person is actively
13 seeking work. For purposes of this subparagraph, the ability to engage in
14 substantially gainful activity is demonstrated by the ability to perform work
15 resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average
16 final compensation at retirement, whichever is greater, adjusted by the same
17 percentage adjustments granted under section 18407.

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

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

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

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

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

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

32 **Sec. 30. 5 MRSA §18530, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§11 and
33 12, is amended to read:

34 C. If, during the first 5 years of reemployment, the person again becomes disabled,
35 terminates employment and is not covered by any other disability program, the
36 retirement system shall resume paying the disability retirement benefit payable prior
37 to the reemployment with all applicable cost-of-living adjustments and shall provide
38 rehabilitation services under in accordance with section 18527 ~~if recommended by~~
39 ~~the medical board~~. If the benefit payable under the other disability program is not
40 equal to or greater than the benefit under this article, the retirement system shall pay
41 the difference between the amount of the benefit payable under the other disability
42 program and the amount of the benefit payable under this article. The executive

1 director shall require examinations or tests to determine whether the person is
2 disabled as described in section 18521; and

3 **Sec. 31. 5 MRSA §18530, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§11 and
4 12, is amended to read:

5 E. If, during the first 5 years of reemployment, the person again becomes disabled
6 and terminates employment, the retirement system shall resume paying the disability
7 retirement benefit payable prior to the reemployment with all applicable cost-of-
8 living adjustments, or if greater, a disability retirement benefit based upon the
9 person's current average final compensation and shall provide rehabilitation services
10 ~~under in accordance with section 18527 if recommended by the medical board.~~ The
11 executive director shall require examinations or tests to determine whether the person
12 is disabled as defined in section 18521; and

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

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

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

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

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

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

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

35 **SUMMARY**

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

1 1. Repeals the laws providing for a medical board to review applications for
2 disability retirement;

3 2. Provides that the system's hearing officers are not employees of the Board of
4 Trustees of the Maine Public Employees Retirement System but independent contractors
5 that serve as neutral and independent decision makers;

6 3. Modifies the definition of "disabled";

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

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

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

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