

Testimony of Jeff McCabe
Maine Service Employees Association, SEIU Local 1989
Before the Joint Standing Committee on Labor and Housing

In Support of LD 1152, An Act to Make Long-term Disability Insurance Coverage Available to Public Employees

Sponsored by Senator Ingwersen of York

April 4, 2023

Senator Tipping, Representative Amy Roeder, members of the Committee on Labor and Housing, I'm Jeff McCabe, Director of Politics and Legislation for the Maine Service Employees Association, Local 1989 of the Service Employees International Union. The Maine Service Employees Association represents over 13,000 public sector and private sector workers.

Like many bills before the Legislature, LD 1152 has been in development over several legislative sessions. It comes from issues and problems surrounding both disabilities covered and the disability determination process at the Maine Public Employees Retirement System (MainePERS).

We are committed to working to improve MainePERS benefits for participants and feel that we are partners with MainePERS in meeting this goal. MainePERS staff and leadership have in recent years continued to be a resource in sharing important knowledge with this committee and making important updates in the delivery of services. MainePERS has clearly made a commitment to better serve plan participants. This, however, does not mean MainePERS can always be proactive or advocate for a specific position.

What is proposed in LD 1152 is long overdue. This is a benefit that will strengthen efficiencies for MainePERS, help workers who are facing life-changing illnesses avoid potential financial ruin, and help with recruitment and retention within MainePERS.

For the proposed program to work as originally identified, it must not be an optional benefit but a program that public sector employers provide. This benefit might be the exact thing that allows someone to focus on their health and will bring with the outcome of them returning to work someday, or, in some cases, the transition to disability retirement.

Attached you will find first-hand experiences of MainePERS participants that brought us to this point in time. Below the worker testimonials are excerpts from testimony by both MainePERS and the Maine Department of Administrative and Financial Services on related legislation from 2020 on this issue. That particular legislation, LD 1978, died during the 129th Legislature. Please vote to support LD 1152 to make long-term disability insurance coverage available to all MainePERS participants. Thank you and I'm happy to answer any questions.

Voices of MainePERS participants

Randy Bodge, former Maine DOT worker:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=139331>

“Because of the stage 4 carcinoid cancer, I currently get a shot every three weeks in my hip, and I will for the rest of my life. The side effects from this form of cancer and treatment are unbearable at times. I get up every day and do what I can, but I tire easily and I don't sleep well. I hide my pain, and I struggle with depression and anxiety. If you have never had cancer, you will never know or understand the pain that comes along with it. I applied for disability retirement from MainePERS in the fall of 2013. My wife and I were shocked when MainePERS denied my claim.”

Christopher Kroot, former Maine State employee:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=139332>

“I applied for disability retirement in September of 2016. All of my primary doctors have said that I am unable to work and will never be able to work. This includes a primary care physician whose practice I've been going to for 25 years, a trauma expert that I see in Boston for 10 years, a physiatrist, an acupuncturist in naturopathic doctor I've been seeing for 10 years, and a psychiatrist who was the past Clinical Director of the Trauma and Dissociative Disorders Program at McLean Hospital. Over the next three years I would suffer denials and appeals without ever being seen by a doctor representing the retirement system.”

Kathy Morse, former DHHS employee:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=136823>

“I worked at DHHS for 6 months when I got into a terrible accident. I had stayed late at work and as I was driving home I was hit head on. It broke bones in my feet, leg, knee, ribs, and my ankles – they were destroyed. I couldn't put any pressure on my feet for 6 months. I didn't want to lose my job so returned as soon as possible, maybe too soon. It was still hard mentally and became hard physically too, but I pushed myself and never thought of leaving. I'd been back for 5 months when I got rear-ended while I was working. I didn't take any time off although I was injured. I continued to push myself, but because of pain from unsuccessful healing and arthritis, nerve damage, low stamina, PTSD, depression, comprehension problems, emotional instability, and memory impairment I wasn't able to push like I had before. I can't tell you how hard it still is for me to get into a vehicle. I can't walk far or for long, I lose my balance, can't remember things or control my emotions, and get confused very easily. Even simple things are extremely hard for me. I started the process of getting accommodations, but my doctor returned the form saying it wouldn't help and I'm unable to work....Over the years I've been diagnosed with several things that impact my mental and physical health. Since the accident in December 2014 I've had 2 primary care doctors, a neurologist, 2 psychologists, and a neuropsychologist all claim I have several permanent disabling conditions that prevent employment. The evidence is clear and valid. It will soon be 3 years since I've worked. The board has changed what they've said, ignored facts, and made ridiculous

statements. They disregarded everything that my doctors have said and seem to make up rules to suit themselves.”

Gina Pellieter, former worker at the Bureau of Liquor Enforcement:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=139323>

I am writing this testimony because after two-years-plus of trying to recover from that brain injury and battling the symptoms, I was unable to build that layer of protection around my nervous system. In July 2016, my sister brought me into PERS to submit an application for disability. I gave PERS access to all of my medical records physical, emotional and mental health. I carried my Anthem medical payment so when their decision was made, I would still have insurance in my future. I went through their courtroom process of hearings twice. As I said earlier, I have been in a courtroom several times never as a criminal but on the right side of the law. We discovered that PERS has their own version of courtroom procedures, like the questioning by the PERS attorney (or prosecutor) is downright humiliating never before had I felt like a criminal until the PERS prosecutor tried to "poke holes" into my life story. The hearing officer (or unbiased judge) seemed fair initially but showed her bias in November 2019 by ruling against my case. The Medical Board (or hidden jury) are somehow able to review my physical, mental, emotional health (the most personal and intimate details of my life) and create a narrative that gets them to "application denied."

From DAFS Testimony on LD 1978 in the 129th Legislature:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=139335>

“For disabilities that are permanent, the Maine Public Employees Retirement System provides the existing disability retirement benefit. Permanent disability retirement benefits are similar to regular retirement benefits: in both cases, it is anticipated that the person receiving benefits will never be returning to work which is why these two benefits are combined in the same benefit plan.

When the illness or disability lasts more than 12 months, but is not considered permanent, there is a gap. This is a very different demographic, representing people who may be able to return to work at some point in the future. The State does not currently offer a benefit to cover this situation. We recognize this deficiency and how terrible it can be for employees who are already in a very difficult position.”

From MainePERS Testimony on LD 1978 in the 129th Legislature:

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=139322>

“The second way to expand the benefit is through the long-term disability insurance program (LTDI) we are implementing later this year. These issues are the reason that, in the last Legislature, we requested and received legislative authority to offer a voluntary LTDI program which would provide income replacement up until the time a member would qualify for a disability pension. Voluntary LTDI has an

inherent drawback that won't fix the problem before you today. We know from experience that a predictably low number of people voluntarily enroll in coverage they have to pay for, which then doesn't achieve the policy goals of L.D. 1978 or by itself alleviate the problems that exist today.

Employer-paid LTDI coverage avoids this problem because it covers all employees automatically, and is more cost-effective as a result. There are three key advantages to employer-paid coverage. The first is that all members have consistent coverage and can get early intervention and assistance, possibly limiting their time away from work or enabling them to successfully return to work with the accommodations needed to make them successful. The second is that members lives are improved because they receive income protection while they are disabled instead of no income until they are eligible for disability retirement. The third is that most of the information needed for a disability retirement can be gathered in the LTDI process, with a smooth transition between the carrier and MainePERS for individuals who become permanently disabled."



DATE: January 29, 2020

TO: Senator Shenna Bellows, Chair
Representative Mike Sylvester, Chair
Members, Joint Standing Committee on Labor and Housing

FROM: Sandra J. Matheson, Executive Director

SUBJECT: Testimony on L.D. 1978 – An Act to Improve the Disability Retirement Program of the Maine Public Employees Retirement System

Good afternoon, Senator Bellows, Representative Sylvester, and members of the Joint Standing Committee on Labor and Housing. I am Sandy Matheson, Executive Director of the Maine Public Employees Retirement System.

We are **testifying neither for nor against L.D. 1978**. However, we want to be clear that we agree with the policy goal of this bill. Expanding income replacement to our members for a broader range of disability situations will help address many of the situations that exist today.

We currently provide retirement benefits to approximately 46,500 retirees, of which approximately 1,970, or 4%, are disability retirees. The disability retirement we administer as provided for in law is a narrow benefit that is currently structured differently than Social Security or Workers Compensation. It is a pension benefit. As we see and experience, and listen to today, it does not meet the needs of all that apply. And that causes difficulties, pain, and frustration for our members. And for us.

My goal since I came to the System a decade ago was to improve this program and eliminate these difficulties for our members. We have worked with stakeholders, made a significant amount of process changes, and introduced legislation, but dishearteningly always find ourselves back at this same point, which is why we agree with the intent of this bill.

It is clear the only substantive way to address the issues that will always plague the program as provided by existing law is to expand the benefits available. Currently, the assistance most of our members have when they find it too difficult to work is a patchwork of sick time policies, member-paid short-term disability insurance, and less frequently, access to long-term disability insurance. For many their only option is to

apply for disability retirement, for which they may not yet qualify. This is the core of the problem.

There are two ways to expand benefits and reduce or eliminate the problems you see here today. L.D. 1978 is the first. It broadens the scope of the disability retirement benefits we provide by expanding the definition of disabled and making interim benefits available to applicants. We think this can definitely relieve some of the problems. You may want to consider that, while it expands the number of people that qualify, it draws another line for qualification without addressing the patchwork path of inconsistent benefits most members go through before they apply to us.

The second way to expand the benefit is through the long-term disability insurance program (LTDI) we are implementing later this year. These issues are the reason that, in the last Legislature, we requested and received legislative authority to offer a voluntary LTDI program which would provide income replacement up until the time a member would qualify for a disability pension. Voluntary LTDI has an inherent drawback that won't fix the problem before you today. We know from experience that a predictably low number of people voluntarily enroll in coverage they have to pay for, which then doesn't achieve the policy goals of L.D. 1978 or by itself alleviate the problems that exist today.

Employer-paid LTDI coverage avoids this problem because it covers all employees automatically, and is more cost-effective as a result. There are three key advantages to employer-paid coverage. The first is that all members have consistent coverage and can get early intervention and assistance, possibly limiting their time away from work or enabling them to successfully return to work with the accommodations needed to make them successful. The second is that members' lives are improved because they receive income protection while they are disabled instead of no income until they are eligible for disability retirement. The third is that most of the information needed for a disability retirement can be gathered in the LTDI process, with a smooth transition between the carrier and MainePERS for individuals who become permanently disabled.

The annual, or normal cost of employer-paid LTDI is comparable to the annual cost of L.D. 1978. It simply expands coverage in a different way. Both approaches increase the annual cost by approximately the same amount, an average of .2% of payroll.¹ The cost difference between the two is that L.D. 1978 creates an unfunded actuarial liability of approximately \$17.25 million for the State/Teacher plan because it expands retirement benefits beyond what has been built into the pension rates. Under the State Constitution, the \$17.25 million would have to be appropriated at the time the expansion

¹ This equates to approximately \$3.9 million in additional annual costs -- approximately \$2.4 million for State employees and approximately \$1.5 million for teachers.



became effective. This number was carefully calculated to reflect the costs of providing additional retirement income to those that would qualify for these expanded benefits based on our experience.

LTDI is prospective, and the benefits do not come out of the pension trust. Therefore, LTDI does not create an unfunded actuarial liability. Our voluntary LTDI policy will be available in the next few months. We interviewed three outstanding long-term disability insurance carriers last week and are in the decision-making process of selecting a finalist at this time. If the Legislature chooses to make this mandatory for state employees and teachers, it can be added to our pension rates as a convenience to employers. This means that the normal cost of the pension would stay the same, but the total we bill employers would increase by an average of approximately .2% of payroll. The State would see this increase for state employees, legislators and judges; school districts for teachers; and our PLD employers for their employees if they approve that change. While mandatory LTDI coverage does not require an up-front payment, it would require a statutory amendment to permit funding through an add-on to pension rates.

We have met with the sponsor and stakeholder groups to discuss L.D. 1978 and expressed to them that we agree with the policy goals of the bill. We have identified the cost impacts to them, along with some improvements we think would help clarify the bill's intent for administration of the program and some concerns. Those areas are outlined in an attachment to this testimony. We would be very pleased to continue to work together with the sponsor and stakeholders to reach consensus on an improved process and benefits for our members.

Thank you for your consideration of this testimony. I would be pleased to answer your questions, and we will be available at your work session.

L.D. 1978 – Possible Areas for Clarification or Concern

- Section 7 of the bill defines “health care provider” in an ambiguous way. We suggest deleting “or any business establishment providing health care services.”
- Section 12 of the bill is unclear about the role of the MainePERS Board of Trustees in reviewing disability applications. To the extent day-to-day administration of the program by the Board is intended, that would not be compatible with the Board’s structure and composition.
- Section 12 also is unclear on the process for reviewing final Board decisions. The language suggests that an independent hearing officer would review the final Board decision and then make a recommendation back to the Board.
- Section 12 contains a requirement that a health care provider performing an independent medical examination “may not have any association with the board other than providing the independent medical examination.” This language is ambiguous and may be read as prohibiting the use of a particular provider more than once.
- The preapproval benefit in Section 12 likely would be subject to a 10% early withdrawal penalty under federal law for some recipients. It is unclear whether this penalty also would apply to some recipients of disability retirement benefits if Section 15 were enacted.
- The language of Section 13 should be revised to be consistent with Section 12. Section 12 provides for independent medical examinations, not medical consultations, and does not require them in all cases.
- Unless otherwise intended, the bill’s revisions should carry across all retirement programs administered by MainePERS.
- The bill will increase administrative costs in the form of independent medical examination costs and member’s attorney fees. It may be difficult to find enough health care providers to perform all of the independent medical examinations.