Susan Hawes
Portland, Maine

February 3, 2026

Testimony In Opposition as Written
Requesting Targeted Amendments with Proposed Language

LD 2169
An Act to Improve the Public Employees Disability Retirement Program by Modifying Provisions Controlling the Reduction of Benefits and Clarifying Terminology

PART ONE of TWO[1]

Good afternoon, Senator Tipping, Representative Roeder, and members of the Committee.

My name is Susan Hawes. I live in Portland. My husband has been a MainePERS disability retiree since 2018 and will remain in the disability program until 2040, when Maine's retirement law converts him to regular service retirement at age 70.

Thank you for the opportunity to testify in opposition to the system's bill, LD 2169. After analysis, one of the most consequential decisions MainePERS can make—that a disabled retiree is determined by MainePERS as "no longer disabled" and therefore no longer eligible for disability benefits—remains a harmful practice at the program which will be codified into law if LD 2169 is not amended.

I did the best I could to identify and offer statutory language to fix the bill in the time available. With my 11/13/2025 FOAA request for the draft language still pending, I received notice of the hearing on January 22 and was able to then find and access the system's bill. Using existing MainePERS decisions and individual retiree experiences to highlight the harmful practices codified by this bill. There are innumerable Board decisions dating back at least two decades which reflect the outcomes of the system's disability eligibility review practices—just ask me and I can send examples.

Notwithstanding how my experience with MainePERS has been over these past five years,[2] I do appreciate the system's stated intent behind the reforms to address concerns heard by the Board during rulemaking in June 2024. Some of the public comments are included at the end of my attached "Detailed Responses" document.

Unfortunately, as written, LD 2169 reinforces current practices which harm disabled retirees and falls short of the promises MainePERS made in its "Proposed Disability Enhancements" document published 11/13/2025.

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[1] See document attached to my testimony titled, "PART TWO OF TWO Detailed Responses."
[2] See Hawes public comments MainePERS Board of Trustees Nomination Hearing for Richard Metivier (1/14/2026) and Hawes LD 2145(132nd) testimony (1/20/2026).

Comparing LD 2169 with the MainePERS "Proposed Disability Enhancements":

MainePERS promised:

✓ Improve outcomes and build trust in the system
✓ Prospective-only benefit adjustments
✓ End retroactive "overpayments" and claw back of paid benefits
✓ Encouragement—not punishment—for attempts to return to work

LD 2169 delivers:

✗ No statutory ban on claw backs of "excess compensation" (aka overpayments)
✗ No expert vocational standards when deciding a disabled retiree is no longer disabled/no longer meets the criteria for the disability benefit
✗ No relief from existing disability overpayment debt
✗ Expanded discretion to end disability benefit and place the retiree into Actively Seeking Work status (ASW)
✗ Removal of PLD-specific offset protection without removing the system's Workers Compensation offset
✗ No oversight reporting

1. MainePERS Commitment: *End retroactive overpayments and claw backs of disability benefits*

What MainePERS promised: "Benefit overpayments are not recouped... benefits are reduced prospectively"

Where LD 2169 fails
The bill **does not prohibit retroactive recovery**. To the contrary, Secs. 6, 12 , 19, and 26 create overpayments retroactively applied just as MainePERS has practiced in the past causing great financial harm to Maine's disabled public employees.

The proposed language in these sections allows MainePERS to calculate retroactively then deduct the "prorated" excess compensation over the following year. Instead, reductions should be "prospective" thereby only reducing monthly benefits during ongoing return to work attempts. And the bill says nothing about indebted members with existing and interest accruing Accounts Receivable balances or those whose suspended benefits are still unpaid to them by MainePERS.

Amendment language needed

Add new language applicable to SET and PLD plans:
"A disability retirement benefit must not be reduced, recovered, or recouped retroactively, except in cases of convicted criminal fraud. Any Accounts Receivable balance created by a disability benefit overpayment is eliminated. Benefits suspended since July 1, 2014 (Fiscal Year 2015), solely due to disability-related noncompliance must be paid with interest to disabled retirees receiving disability benefits as of January 1, 2026."

Why this matters:
Without this language, the promise not to recoup overpayments created by "excess compensation" is unenforceable and retirees with suspended benefits will not receive needed relief.

2. Commitment: *Encourage return to work by removing disincentives*

What MainePERS promised: Return-to-work would be encouraged by eliminating penalties and adjusting benefits prospectively not RETROACTIVELY

Where LD 2169 fails
LD 2169 still allows MainePERS to:

- treat minimal earnings and potential earnings as evidence of not disabled
- reduce and terminate disability benefits without proving actual work capacity
- Retroactively reduce benefits by amounts deducted over the following year

Amendment language needed

Insert into all disability-continuation and termination sections:
"A retiree's disability status must not be terminated, and the retiree must not be placed involuntarily in Actively Seeking Work status, based solely on earnings, potential earnings, or economic thresholds. A MainePERS finding of work capacity must be supported by a qualified medical and vocational or occupational assessment."

Why this matters:
Retroactive benefit adjustments do not encourage work if earnings still trigger termination without a qualified vocation opinion as proof of capacity.

3. Commitment: *Simplify eligibility determinations fairly*

What MainePERS promised: Eligibility reviews would focus on whether the retiree is engaging or could engage in substantially gainful activity—not on medical diagnoses alone.

Where LD 2169 fails
The bill **never defines how work capacity is determined**, allowing staff to infer employability from:

- perceived medical recovery
- earnings or potential earnings
- assumed job availability
- labor-market data

Amendment language needed for Definitions

Add language to ensure qualified vocational opinions are in hand regarding a disabled retiree's capacity when being found not disabled by a MainePERS employee. Suggested language, "A member or retiree must not be involuntarily placed into Actively Seeking Work status unless MainePERS has first obtained a qualified vocational opinion establishing that the individual has the functional, cognitive, and psychological capacity to engage in job search activities and employment consistent with Chapter 511." Maybe add to or combine with language from Commitment #2 above.

Add the Actively Seeking Work Status (ASW) definition into statute from rule ch. 511

Rule Ch. 511 states the following definition of ASW: "Actively seeking work status" means that a final determination has been made that the person no longer meets the requirements for the continuation of disability retirement benefits and that the person is able to engage in substantially gainful activity. In this status, disability benefits are continued until the person has secured substantially gainful activity but only so long as the person is actively seeking work."

Add a definition of "hardship."

Suggestion definition: "Hardship" means a circumstance in which the application of a reduction, suspension, termination, or offset of a disability retirement benefit would reasonably be expected to cause material financial, medical, or functional harm to a disabled retiree, considering the totality of the retiree's circumstances and the purposes of the disability retirement program. In determining hardship, the retirement system shall consider individualized evidence, including the retiree's ability to meet basic living expenses, manage the disabling condition, and sustain employment within functional limitations, as well as the cumulative impact of benefit offsets and fluctuating or episodic disability. A finding of hardship may be made notwithstanding compensation meeting or exceeding any threshold. Number of hardship waivers applied for and granted to be added to MainePERS Annual Report to the Legislature. 5 MRS §17103 (11)(J) Annual Report to the Legislature Sec. 11-J re disability statistics.

Why This Matters

The amendments proposed go to the heart of how MainePERS determines whether a disabled retiree remains entitled to disability benefits.

As written, LD 2169 continues to allow MainePERS fiduciary employees to conclude that a retiree is "no longer disabled" or to involuntarily place the retiree into **Actively Seeking Work (ASW)** status **without first establishing—through qualified vocational evidence—that the individual actually has the functional, cognitive, and psychological capacity to job-search or work**. This is not a technical oversight; it is a structural gap with serious consequences as evidenced in Board Decisions over at least two decades.

A. Medical Improvement Is Not the Same as Work Capacity

Disability retirement is based on the inability to perform work—not merely on medical diagnoses. Yet under LD 2169, disability status can effectively be ended based on earnings thresholds, economic assumptions, or generalized labor-market concepts, **without any requirement for a professional vocational opinion**.

Requiring a **qualified vocational opinion** before a retiree is found no longer disabled or placed into ASW ensures that decisions are based on **actual work capacity**, not assumptions. This aligns with MainePERS's stated commitment to encourage return to work

when appropriate—and avoids forcing retirees into job-search obligations they are not capable of meeting.

B. Actively Seeking Work Must Mean the Retiree Is Able to Seek Work
Rule Chapter 511 correctly defined ASW as a status that applies **only after a final determination that the person is able to engage in substantially gainful activity.** LD 2169 adopts ASW as a statutory mechanism but **without defining this prerequisite in the rule**, allowing Actively Seeking Work Status to function as a holding pattern even when capacity has not been established.

Placing the **Rule Ch. 511 definition of ASW directly into statute** restores the original intent:

- ASW is not a test to see if someone can work;
- ASW applies only after a final, expert-supported finding that the person *can* job hunt and work.

Without this definition, ASW becomes a coercive status rather than a transitional one, exposing disabled retirees to suspension or termination of benefits for failure to comply with requirements they cannot meet.

C. Vocational Opinions Are Necessary to Prevent Arbitrary Decisions or Inconsistent Outcomes
MainePERS eliminated its Medical Board years ago, but LD 2169 does not replace the safeguards with any statutory requirement for vocational expertise. As a result, determinations about work capacity may be made by non-experts relying on earnings data or assumptions about available jobs.

Adding language requiring a **qualified vocational opinion**—including assessment of functional, cognitive, and psychological capacity—creates a consistent, defensible standard and prevents similarly situated retirees from being treated differently based on subjective judgment.

These amendments do not expand benefits. They do one essential thing:
they ensure that decisions ending disability status or imposing work obligations are based on expert evidence, clear definitions, and transparent standards—rather than assumption or discretion. Without these changes, LD 2169 risks codifying the very practices that have caused harm to disabled retirees in the past, after removing the guardrails that once limited that harm.

4. Commitment: ***Use calculations most beneficial to the member***

What MainePERS promised: Calculations use the highest, most favorable values

Where LD 2169 fails
LD 2169:

- removes the PLD Average Annual Earnings (AAE) offset protection which mitigates the impact of any system offsets—a benefit unique to PLD plan—without evidence the PLD Advisory Committee voted to or requested the elimination of this benefit from the PLD plan,
- leaves the Workers' Compensation offset fully intact
- The Board's haphazard regulatory agenda has resulted in two Workers Compensation offset system bills this session, LD 2145 and LD 2169 (sec. 25 & 26) directing the legislature to take divergent actions related to the system's Workers Compensation offset. And further taking another bite at the apple in this second bill where MainePERS staff again direct the legislature to eliminate the PLD's disability offset protection benefit.

Amendment language needed

Restore the AAE language in Sec. 26 which was repealed in Sec. 25:

5 MRS §18530(4)(B)(1), in part, "...average annual earnings means the total of the person's average final compensation plus other wages and earnings from employment for the calendar year in which the person has the highest total of other wages and earnings from employment during the 5 years immediately preceding the year in which the person became disabled."

Why this matters:
Eliminating the AAE offset protection without eliminating the last remaining system offset is not "most beneficial to the member" and contradicts the stated rationale for simplification and purported "member centric" reform.

5. Commitment: ***Apply flexibility and waivers fairly***

What MainePERS promised:
Waivers and flexibility would promote individualized, hopefully more fair outcomes

Where LD 2169 fails
The bill authorizes hardship waivers but:

- does not define hardship
- does not require written findings or reporting

Amendment language needed

Add to each plan's Definitions:
See suggested Hardship Definition at Commitment #3 above.

Why this matters:
Undefined discretion invites unequal treatment.

6. Commitment: *Transparency and accountability*

What MainePERS represented:
These reforms would improve outcomes and trust in the system

Where LD 2169 fails
The system's bill provides zero transparency as to results of these proposed reforms and **no mechanism** for the Legislature to verify outcomes are as the legislature intends.

Amendment language needed

Amend 5 M.R.S. §17103(11)(J):
"The annual report must include additional disability-specific data by retirement plan reporting the number of transfers of disabled retirees into Actively Seeking Work Status during the year, how many ASW status disabled retirees are terminated because they have been successfully become employed, how many return from ASW to regular disability benefits (failed return to work attempts), the number of new benefit reductions applied, terminations, waivers applied for and number granted by waiver type (Annual Statement of Compensation, Hardship)...."

Why this matters:
Without data, the Legislature can neither confirm that the promises were kept, nor discern if unintended consequences are harming Maine's disabled public employees.

In conclusion, MainePERS's November 13, 2025, commitments are **policy promises**. LD 2169, as written, **does not legally deliver them**.

These targeted amendments I offer are the **minimum statutory language** required to protect my husband and others like him who will never have work capacity. Disabled retirees must be free from arbitrary fiduciary decisions about benefit eligibility made by unqualified staff. Thank you for your attention to these matters so vital to the well-being and financial security of Maine's disabled public employees.

I appreciate all the committee has done so far to ensure MainePERS provides the "suitable disability benefits" as the legislature intended when it created the retirement system.

Susan Hawes
Portland, Maine
February 3, 2026

Testimony In Opposition as Written
LD 2169 An Act to Improve the Public Employees Disability Retirement Program by Modifying Provisions Controlling the Reduction of Benefits and Clarifying Terminology

DETAILED RESPONSES
Demonstrating How LD 2169 Codifies MainePERS Harmful Interpretations and Applications of Statutes and Rules Governing the Disability Retirement Program

PART TWO OF TWO[1]

PART I. LD 2169 Codifies Work-Capacity Decisions Without Requiring Expert Capacity Evidence
PART II. Disability and Substantially Gainful Activity Definitions Codify a Medical + Economic Framework Without Vocational Standards
PART III. Examinations or Tests: No Clear Limits on Non-Medical Capacity Findings
PART IV. Excess Compensation: A Partial Improvement That Still Allows Capacity Findings Without Expertise
PART V. Offset Protection Unique to the PLD Plan Is Removed Without Eliminating the System's Workers' Compensation Offset (similar to the system's LD 2145 on the WC offset heard Jan. 20)
PART VI. Imputed Income and Misinterpretation of "Earnings" reported on W-2s
PART VII. Hardship, Waivers, and Unequal Treatment
PART VIII. Oversight and Accountability
PART IX. A Return-to-Work Model That Works: Security First
Part X. Sample June 2024 Rulemaking Public Comments from Members Indebted to MainePERS by so-called disability benefits "overpayments" [excess compensation]

Retirement Plans Affected by LD 2169

- **SET Plan** – Title 5, Chapter 423 (State Employees & Teachers)
  NOTE: MainePERS employees are not in the SET retirement plan; they are in the PLD plan.
- **PLD Plan** – Participating Local Districts, Title 5, chapters 425 and 427—no state contributions, a list of Participating Local Districts can be found at the end of each MainePERS Annual Comprehensive Financial Report (ACFR).

Four distinct disability retirement plans are impacted by LD 2169:

1. **[LD 2169 Secs. 1-7]** SET Article 3 (disability benefits bef. 1989) §17901-17911
2. **[LD 2169 Secs. 8-13]** SET Article 3-A (disability benefits aft. 1989) §17921-17934
3. **[LD 2169 Secs. 14-21]** PLD Article 3 (disability benefits bef. 1989) §18501-18512
4. **[LD 2169 Secs. 22-26]** PLD Article 3-A (disability benefits aft. 1989) §18521-18534

Throughout the bill, provisions are often mirrored between the SET and PLD plans, though not always consistently, including what appears to be a drafting error in **Sec. 10** (SET) and the omission of the PLD plan's disability offset protection benefit (AAE) between **Secs. 25** and **Sec. 26**.

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[1] See PART ONE OF TWO Hawes Testimony on LD 2169(132nd), titled MainePERS Disability Retirement Program Reforms

PART I. MOST IMPORTANT: LD 2169 Codifies Work-Capacity Decisions Without Requiring Expert Capacity Evidence

LD 2169 reorganizes disability law around earnings limits and economic thresholds to mirror its current practices, but it does not require the one thing that must be first and foremost in every eligibility review decision resulting in assignment to Actively Seeking Work status ("not disabled"):

A qualified determination that the retiree actually has the functional, cognitive, and psychological capacity to work—or even to job-search.

Without that expert foundation, the program is a "potential" earnings-driven mechanism where a MainePERS employee may infer capacity from:

- perceived medical improvement or "silence" in records,
- actual earnings,
- potential earnings,
- or generalized labor-market job listings.

This is not an abstract concern. It is exactly how long-term disabled retirees have been forced into Actively Seeking Work (ASW) status by MainePERS for years, required to submit unemployment-style job applications, and then terminated by MainePERS for failing to comply—even when they cannot realistically job hunt or work.

One disabled retiree told me that years of forced ASW status were "humiliating." Despite significant successful volunteer service in the community, they could not succeed or be retained in even basic paid jobs at their advanced age. The stress and uncertainty harmed their health, yet the system did not obtain meaningful vocational review.

This same risk applies to my husband. He is permanently unemployable due to cognitive impairment from a lifetime of epilepsy, and MainePERS has exempted him from biennial eligibility reviews and the Annual Statement of Compensation. Under LD 2169's expanded focus on earnings and "potential" earnings, I fear that even something like pottery income—or simply the appearance of activity—could be misconstrued by MainePERS employees as work capacity and trigger ASW status or termination. Nothing about earning money from a hobby changes the underlying fact that he is not safely employable and cannot independently comply with reporting requirements.

PART II. Disability and Substantially Gainful Activity Definitions Codify a Medical + Economic Framework Without Vocational Standards

MainePERS affirms and expands its medical + economic eligibility determinations—still without consulting qualified vocational experts

The proposed language codifies disability eligibility in a medical-plus-economic framework, in which earnings thresholds and economic assumptions are used to determine whether a person is "not disabled."

In spring 2023, MainePERS repealed Rule Chapter 507, *Determination of Inability to Engage in Substantially Gainful Activity*. That repeal matters because it removed the clearest written standards describing exactly how MainePERS converts earnings records—or potential earnings—into a finding that a retiree is no longer disabled.

Under Rule Chapter 506's continuing-eligibility structure, after two years from the date of incapacity, *the retiree must prove inability to engage in any substantially gainful activity*—meaning any work within education, training, or experience, even if never previously performed. MainePERS has expressed this standard to retirees plainly: if it has been more than two years, the retiree must show they are incapable of performing any job within their education, training, and experience that would allow earnings at their Substantially Gainful Activity earnings threshold.

LD 2169 increases the earnings limitation threshold amounts that trigger benefit reductions and terminations. That is a meaningful improvement in proportionality. However, it does not change how MainePERS makes the underlying capacity finding.

The problem: LD 2169 softens the outcome but leaves untouched the moment disability status is lost

The system's framework still follows a predictable chain:
earnings (or "potential" earnings) → presumption of capacity → "no longer disabled" → Actively Seeking Work (ASW) mandates → termination

LD 2169 softens financial consequences but once a MainePERS employee determines SGA capacity, proportionality ends and the harsher Chapter 511 enforcement begins.

However:
- the only mandated tool remains a medical exam,
- no vocational standards are specified,
- and no income verification method is defined.

A medical record showing improvement, or a lack of mention in medical records of ongoing, known functional limitations, does not automatically establish the retiree can function in sustained employment.

This is not theoretical. The MainePERS Board has upheld disability terminations based upon an MainePERS employee's perception of medical improvement in the records plus labor-market surveys of the state that the retiree allegedly "could" perform, perhaps with accommodations, even when the retiree credibly disputes commuting feasibility, job demands, and mismatch with their experience. The bill spells it out in Secs. 3, 9, 16 and 23, "Substantially gainful activity means any combination of activities, tasks or efforts, with any reasonable accommodations, for which the member is qualified by

training, education or experience that **would** generate annual income in the labor market...."[2]

Rule Ch. 511 "Standards for Actively Seeking Work," Sec. 3 (2) states, "A person who has not secured employment at or above the substantially gainful activity earnings level after five years in actively seeking work status is presumed to not have been actively seeking work not withstanding compliance with subsection 1. This presumption may be rebutted by information showing that the failure to secure employment at or above the substantially gainful activity earnings level was beyond the person's control. For persons in actively seeing work status on December 31, 2022, the five-year period begins to run on that date."

This is how retirees have been placed into ASW based on a capacity inference, then required to actively job hunt on an ongoing basis to continue receiving benefits for five years before benefits are terminated (whether or not the retiree is gainfully employed by that point, because, in MainePERS employee's opinion, the disabled retiree "could" be employed). If the disabled retiree cannot meet the demands, they lose the disability benefit even before the five year limit on Actively Seeking Work Status.

- Who determines that a retiree is capable of job hunting before MainePERS places the retiree into ASW
- Whether an independent vocational assessment is required to find work capacity
- What evidence beyond earnings is sufficient to declare the retiree "no longer disabled"

Many MainePERS Board decisions illustrate the structure: For example, a farmer who had been found permanently disabled for over a decade was suddenly placed at about age 67 into Actively Seeking Work status by MainePERS. To continue receiving monthly disability benefits, he was required to prove he was job hunting regularly—similar to unemployment insurance requirements—because the MainePERS employee decided that the retiree could be earning at the SGA level in management-type jobs –jobs a vocational rehabilitation contractor simply identified which match the disabled retiree's experience (in this case experience from 20-40 years before!).[3]

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[2] There is an apparent typo in one of four iterations of the SGA definition language being revised across the four disability retirement plans addressed in the bill. The fourth occurrence says "*on*" the labor market. The other three correctly use "in" the labor market.

[3] A pattern I have observed, and Maine Association of Retirees alludes to in its LD 1978(129th) testimony, is that MainePERS exerts "eligibility" pressure on disabled retirees after the retiree reaches the age where they can start their **(lower)** regular service retirement benefit and voluntarily stop disability benefits. See MAR complaint about lower benefits after changeover from disability to regular service retirement in LD 1978(129th), J. Timothy Leet, President, testimony, Maine Association of Retirees, 1/28/2020 (The MAR testimony is only found in the committee file for LD 1978). *By state law, the changeover from disability benefits to regular service retirement occurs when the disability benefit amount EQUALS the regular service retirement amount.*

PART III. Examinations or Tests: No Clear Limits on Non-Medical Capacity Findings

These sections amend statutes governing examinations or tests used to determine disability under the new definitions.

Prior to 2020 under rule Ch. 202, the physicians on the MainePERS Medical Board (MB) provided safeguards that are now absent: for example, the MB recommended tests to determine capacity to engage in substantially gainful activity, and it provided written advice to MainePERS regarding whether a recipient was capable of such activity.

Today, the bill does not clearly answer:

- Do unqualified employees infer work capacity from partial records, gaps in treatment, or "activity" observed in daily life without qualified medical and vocational opinions?
- When must MainePERS consult a Medical Review Service Provider or conduct an Independent Medical Exam (IME) before placing a retiree into ASW?
- How many disabled retirees actually transition to service retirement according to the disability statutes?

This uncertainty is not benign. My husband may someday resume his hobby of making pottery. Will my husband making pottery look to an unqualified MainePERS employee like my husband has gained work capacity? Unlike his previous pottery self-employment, any administrative tasks, supply purchases, sales, shipping, delivery, etc. would have to be done by me or someone else.

My disabled husband enjoying making pottery and paying for his supplies by selling pieces of pottery does not translate into employability, and it certainly should not trigger annual testing, force financial reporting, or eventually lead to the termination of his benefits via placing him in Actively Seeking Work.

PART IV. Excess Compensation: A Partial Improvement That Still Allows Capacity Findings Without Expertise

The bill enacts new "excess compensation" provisions. A positive aspect is that modest earnings *may* no longer automatically trigger the most severe outcomes.

However, without safeguards in statute:

- MainePERS can still treat even minimal income or "potential earnings" as evidence of capacity to earn SGA amount
- decisions can still be based on generalized labor-market assumptions without establishing an individual's actual work capacity
- and discretionary waivers lack clear standards and transparency

This is precisely how retirees end up punished by MainePERS for trying to improve their lives.

PART V. Offset Protection Unique to the PLD Plan Is Eliminated Without Eliminating the System's Workers' Compensation Offset

In LD 2169, MainePERS staff again attempt to remove **Average Annual Earnings (AAE)** offset protection benefit for PLD disabled retirees while continuing to apply the system-wide workers' compensation offset.

LD 2145 Sec. 5 heard January 20th is the system's first attempt. The system offered no evidence in LD 2145 that the PLD Advisory Committee voted on or requested MainePERS staff ask the legislature to eliminate this PLD plan benefit. Yet in LD 2169, the staff *again* direct the Legislature to repeal the PLD offset benefit—this time through omission in between Sec. 25 (repeal) and Sec. 26 (replaced without AAE language).

If the workers' compensation offset remains in statute, the PLD plan's related AAE offset protection must remain as well. Until it eliminates the workers' compensation offset, the Legislature must retain the PLD's AAE offset protection.

PART VI. Imputed Income and Misinterpretation of "Earnings" on W-2s

LD 2169's expanded focus on earnings increases the risk that MainePERS will continue to misinterpret W-2 tax information as employment earnings.

Despite my LD 2145 testimony, I do not believe the imputed income issue is resolved. In one case, MainePERS treated about $7,000 in imputed income—amounts added to a W-2 solely for tax purposes, in this case taxable employer-paid domestic partner health insurance—as part of the "earnings" counted to claw back paid disability benefits and terminate eligibility. If the retiree had refused the taxable benefit, the paycheck would not have increased. **Imputed income is not employment earnings.**

Without statutory clarity, retirees remain exposed to incorrect earnings determinations by MainePERS employees that do not reflect actual compensation or earning capacity.

PART VII. Hardship, Waivers, and Unequal Treatment

LD 2169 authorizes hardship-related discretion without defining hardship or requiring written findings and reporting.

I have already experienced how opaque discretion plays out. On February 5, 2025, the CEO informed me via email of a new waiver process available, "Below are links to the information and form to request a waiver from filing the Annual Statement of Compensation. If you are completing the form for your husband, you should sign your own name not his." We did not rush to submit a waiver application because the 2025 Annual Statement of Compensation due had already been submitted. Surprisingly, about a week later through untracked postal mail, staff sent us a letter never posted to the document section of the member portal, informing us my husband was waived from annual financial reporting.

Without standards, hardship determinations risk inconsistency across similarly situated retirees leaving too much discretion and no accountability through reporting.

PART VIII. Oversight and Accountability

How will the Committee know whether this major reform bill is working? LD 2169 makes significant changes and codifies practices that have produced harm. Without required reporting, neither the Legislature nor the public will be able to evaluate outcomes or detect unintended consequences.

History shows why this matters: reforms intended to speed review processes resulted in sharply declining disability approval rates and increased denials and terminations, described publicly by MainePERS CEO as "unintended consequences."[4] The conditions persisted unaddressed until the legislature passed reform in PL 2021 Ch. 277 but that legislation addressed mostly issues with *applications*—not eligibility reviews and ASW.

LD 2169 should be amended to require reporting and data collection, including:

- ASW placements and duration,
- terminations and successful transition to SGA
- Annual Statement of Compensation waivers and hardship waivers, number applied and number granted
- Outcomes by plan

PART IX. A Return-to-Work Model That Works: Security First

Encouraging and supporting a return to work is good and feasible—for some. Before his hiring as a Corrections Office, my husband received Social Security Disability benefits. In 1997, he had a seizure in the parking lot at Barber Foods (usually nocturnal) and was not allowed to return to his position as a Machine Operator. We had just bought a house and had a baby. He was 27. Almost a decade later, after realizing he had been seizure free for two years, he successfully returned to work. Social Security's "Ticket to Work" allowed him to try working for a year without fear of losing benefits immediately. That security—not punishment—is what made his successful return-to-work possible in 2006.

One size does not fit all. Some retirees **will never regain work capacity**. For them, the program must provide stability and protect them from repeated testing and reporting that serves no legitimate purpose except to cause the termination of the disability benefits through the application of red tape.

In closing, LD 2169 falls short by codifying the same capacity-determination machinery that has harmed disabled public service retirees for decades. I provided draft language suggestions in my spoken/written testimony to the committee (Part One of Two). **The bill should not move forward without a committee amendment to add statutory guardrails** requiring expert capacity determinations, limits on involuntary

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[4] See Joe Lawlor, "Reforms to state retirement system backfire on Mainers with disabilities: The number of disability applications approved by the Maine Public Employees Retirement System has plummeted since 2009, with critics saying workers with disabilities no longer have time to make their cases effectively," *Portland* (Maine) *Press Herald*, August 24, 2015.

Actively Seeking Work placement, protection against misclassification of imputed income as earnings, retention of PLD offset protection until MainePERS ends its Workers Compensation offset, and meaningful legislative oversight.

Thank you for your careful consideration. I am happy to help the committee in any way, now or in the future. I will do my best to be present at the work session.

Part X. LD 2169 Appears to be an Attempt by MainePERS respond to the June 2024 Rulemaking Concerns regarding Members Indebted to MainePERS by so-called "Overpayments" [excess compensation]

Penobscot County resident, 25 years as a firefighter/paramedic
"After receiving my 2021 Annual Statement of Compensation with our 2021 tax returns in late 2022, MEPERS made assumptions about the tax information and ended my disability retirement. I appealed the decision but ultimately did not have the financial resources or stamina to fight so I transitioned to regular retirement effective December 1, 2022. A YEAR LATER, in November 2023, MEPERS informed me that because I made too much money in 2022, my full-service retirement check would be garnished until $35,788.76 plus 6.5% interest is paid back. This has been devastating. Now at age 55 and with mental health challenges, I am working harder than ever in order to be able to afford my bills WITHOUT my MEPERS retirement money. My wife and I had to make the difficult decision to sell one of our rental properties to make ends meet during this turbulent time. My wife and I file joint tax returns and work together. Why was the joint income on our tax returns not split 50/50? She has not had a W-2 since 2016 and doesn't draw a paycheck from either business. She earned half of the net income."

Hancock County resident, firefighter/paramedic
In February 2008, when I was 28 years old, I was hit head on by another vehicle in what turned out to be a "horrific," career ending car accident which prevented me from returning to my chosen career as a firefighter/paramedic....In 2015 I was notified by MainePERS that I had "over earned" on the earnings limitation of the prior year [which] occurred because I chose to go work and make a better life for my family. The "overpayment" during my last year on MainePERS disability retirement was reported to me as $8798 and has been accruing interest since 2015. Having been unable to pay the disability retirement benefits MainePERS says I owe back to them, that debt MainePERS created for me has grown to almost $15,000 in 2024.... This outdated policy of retroactively applying earnings limitations and charging back benefits to disabled retirees as overpayments, punishing those of us trying to take initiative and return to gainful employment, will most likely not have a great impact on my life... MainePERS has unnecessarily ruined lives and caused harmful stress on disabled retirees and their families by how MainePERS applies limitations to kick retirees off the disability retirement program. This rule must disclose the guidance provided to employees by management on applying "compensation limitations and offsets." Additionally, the rule should describe how the agency "claws back" these debts MainePERS creates and deems "overpayments." My understanding is that, when I retire in the future, MainePERS will take 100% of my full regular service retirement check until the debt is paid or, if I should die, MainePERS will make my loved ones pay by taking the amount from my MainePERS life insurance.

MainePERS PLD Advisory Committee member:
The unexpected can have devastating implications for the member. While the employer may have a temporary blip when an employee can no longer serve, the employee and their family have entered into a different permanent life. The fact that a MainePERS disability applicant only gains approval on permanency of the condition that ended employment, there are no illegitimate recipients..... Every effort should be made to provide a brighter future. Shared experiences are important. As [the Hancock resident] described, he chose not to "settle" but is now going to have a reduced retirement with garnishments. He is still disabled but chose to make his life better. Perhaps it is time that we reevaluate the disability process and not punish people for wanting a better life.