

# MAINE STATE LEGISLATURE

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# **LEGISLATIVE COUNCIL**

**October 6, 1992**

## **REVISED AGENDA**

### **CALL TO ORDER**

### **ROLL CALL**

### **SECRETARY'S REPORT**

Summary of September 30, 1992, Council Meeting

### **EXECUTIVE DIRECTOR'S REPORT**

Item #1: Public Bill Status System: Proposed Fee Schedule

Item #2 Pre-Legislative Conference: Preliminary Schedule

### **REPORTS FROM COUNCIL COMMITTEES**

Committee on the Legislative Budget

### **OLD BUSINESS**

Item #1: Report from the Committee to Develop a Total Quality Management Plan for the Legislature. (Tabled at September 30 meeting).

### **NEW BUSINESS**

Item #1: Recommendation from the Speaker regarding the salary for the newly-elected Clerk of the House.

Item #2: Commission to Study a Long-term Disability Program for the Maine State Retirement System Members: Submission of Report and Request for Legislative Action

### **ANNOUNCEMENTS AND REMARKS**

### **ADJOURNMENT**



SEN. CHARLES P. PRAY  
CHAIR

REP. DAN A. GWADOWSKY  
VICE-CHAIR

STATE OF MAINE

115th LEGISLATURE

LEGISLATIVE COUNCIL

SEN. NANCY RANDALL CLARK  
SEN. DENNIS L. DUTREMBLE  
SEN. CHARLES M. WEBSTER  
SEN. PAMELA L. CAHILL  
REP. JOHN L. MARTIN  
REP. JOSEPH W. MAYO  
REP. WALTER E. WHITCOMB  
REP. FRANCIS C. MARSANO

SARAH C. TUBBESING  
EXECUTIVE DIRECTOR

## MEETING SUMMARY

**September 30, 1992**

**Approved October 6, 1992**

### CALL TO ORDER

The Legislative Council meeting was called to order by the Chair, Senator Pray, at 5:39 p.m.

### ROLL CALL

<b>Senators:</b>	Sen. Pray, Sen. Clark, Sen. Webster, Sen. Dutremble, Sen. Cahill
<b>Representatives:</b>	Rep. Marsano Absent: Rep. Martin, Rep. Gwadosky, Rep. Whitcomb, Rep. Mayo
<b>Legislative Officers:</b>	Sally Tubbesing, Executive Director, Legislative Council Lynn Randall, State Law Librarian John Wakefield, Director, Office of Fiscal and Program Review Martha Freeman, Director, Office of Policy and Legal Analysis David Kennedy, Revisor of Statutes

The Chair declared that a quorum was present and proceeded with the agenda.

### SECRETARY'S REPORT

The Summary of the August 26, 1992, meeting was approved and placed on file. (Motion by Sen. Webster; second by Rep. Marsano; unanimous).

## EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing, Executive Director, presented the following items for Council consideration:

### Item #1: Personnel Actions

Ms. Tubbesing notified the Council of the following personnel transactions that had occurred since the August Council meeting:

- Carrie C. McFadden and John G. Kelly have been hired to fill two vacant Research Assistant positions in the Office of Policy & Legal Analysis.
- Micki Hoddinott has been hired to fill a vacant half-time position as Paralegal Assistant in the Revisor's Office.
- Jayne Deneen, Legislative Proofreader, and Linda Gero, Legislative Technician, have both submitted their resignations.

Both of these positions are in the Revisor's Office.

The Chair, Sen. Pray, observed that one of the legislative candidates had stated that the Council should not be filling any new positions at this point in the legislative cycle. Senator Pray then stated for the record that these were not new positions and, further, that the Legislature, upon recommendation of this Legislative Council, had eliminated 11 positions, left 15 additional positions unfunded, and downgraded 6 other positions in the current biennium.

**Motion:** That the Director's Report be accepted and that the Executive Director and Office Directors be authorized to fill these positions as soon as they become vacant. (Motion by Sen. Clark; second by Sen. Cahill; unanimous).

### Item #2: Printing Contracts for the 116th Legislature

Ms. Tubbesing reported that the Secretary of the Senate, Clerk of the House and she had worked with the Director of the State Purchasing Division to develop bid specifications for the various printing contracts that are awarded in advance of each legislative biennium. These contracts include printing LD's and amendments, Senate and House Calendars, Legislative Record, Senate and House Registers and Rosters. She noted that these contracts needed to be finally awarded no later than mid-October to give the successful bidders time to prepare for the beginning of the legislative session.

**Motion:** That the Executive Director be authorized to accept the appropriate bids and execute contracts with the successful bidders for these printing contracts. (Motion by Sen. Dutremble; second by Sen. Cahill; unanimous).

## REPORTS FROM COUNCIL COMMITTEES

### Committee on the Legislative Budget

Senator Pray, who chairs this Committee, reported that the Committee had continued to meet but had not yet completed its recommendations for the Council.

No further Council action was necessary.

## OLD BUSINESS

Item #1: Request for Staff Assistance for the Legislative Members of the Task Force to Provide Recommendations Regarding School Funding Issues. (Tabled at July 22, Council meeting)

Motion: That this item be tabled. (Motion by Sen. Webster; second by Sen. Dutremble; unanimous).

## NEW BUSINESS

Item #1: Submission of Study Reports

- a. Environmental Crimes (Staff study authorized by the Council at the request of the Joint Standing Committees on Energy & Natural Resources and Judiciary).

Motion: That the Report be accepted and placed on file. (Motion by Sen. Dutremble; second by Sen. Clark; unanimous).

Item #2: Report from the Committee to Develop a Total Quality Management Plan for the Legislature.

Motion: That this item be table until the Council's October meeting. (Motion by Sen. Dutremble; second by Sen. Clark; unanimous).

Item #3: Requests to Introduce Legislation to the Third Special Session.

The Council took no action on this item.

## ANNOUNCEMENTS AND REMARKS

None.

## ADJOURNMENT

The Council meeting was adjourned at 5:45 p.m., on the motion of Sen. Webster (second by Sen. Clark) without objection.

# **PUBLIC STATUS SYSTEM**

## **PROPOSED STRUCTURE AND FEE SCHEDULE**

### **Customer Groups**

Legislators (remote access)  
State Agencies  
Non-State Agency Subscribers  
Legislative Staff (remote access)

### **Products to be Available**

Bill Status  
LD and Amendment Text  
Statute Text/Phrase Search  
Legislative Committee Membership  
Legislative Schedule Information  
Public Hearings & Work Session  
Legislative Council

### **Proposed Fee Schedule**

- **Objectives**

1. Avoid "competition" with the Legislative Document Service
2. Keep low enough to assure broad access
3. Build in a disincentive to tying up one of the in-coming lines.

- **Components**

1. **Initial Sign-up Charge**

- Required software
- Password
- Users' Manual
- Modem (if subscriber doesn't have one)

2. **Annual Subscription Fee**

- Users' Manual Updates
- New Password

3. **On-line Charges**

- Variable cost based on actual usage of the system
- Propose establishing "peak" (6 am - 6 pm) and "non-peak" (6 pm - 6 am) rates

• **Fee Structure**

**Sign-up** \$300 (+ \$200 to cover cost  
of modem if required)

Legislators	--
State Agencies on IBM	x
State Agencies direct to Wang	x
Non-State Subscribers	x
Legislative Staff	--

**Annual Subscription** \$ 50/\$100

Legislators	--
State Agencies on IBM	\$ 50
State Agencies direct to Wang	\$ 50
Non-State Agency Subscribers	\$100
Legislative Staff	--

**On Line Charges** \$ 27/hour (peak)  
\$ 18/hour (non-peak)

Legislators*	x
State Agencies	x
Non-State Agency Subscribers	x
Legislative Staff*	x

**\*Note:** Propose that use charges for members will be sent to Secretary and Clerk for review and reimbursement in accordance with policies established in each chamber. Use charges for non-partisan staff to be sent to each Office Director, who would manage a total budget allocation for on-line time.

# DRAFT

116th LEGISLATURE  
PRE-LEGISLATIVE CONFERENCE  
VERY PRELIMINARY AGENDA

115th/1st

Monday

(No activities)

Proposed 116th/1st

Monday, November 30

Orientation for Freshman Legislators

10:00 am Registration  
3rd Floor Rotunda

10:00 - 11:00 am Tours of the State House

These will be small group tours of the State House - to help new members get their bearings. Tour "guides" will have an advance training session.

11:00 - 12 noon Legislative Salary and Benefits  
Presentation by Office of the Executive Director. All members will have received a special information packet in November. Purpose of this session is to answer questions. Note: Representatives from Health Insurance and Retirement Programs will be available on Thursday, December 3.

12 noon Buffet Lunch  
Legislative Council Chamber

1:00 - 3:00 pm Offices of the Secretary and Clerk: Responsibilities and Services to Members

House Chamber

3:00 - 3:45 pm Mock Sessions  
Senate and House Chambers

Dinner Sponsored by Leadership



**115th/1st****Tuesday**

8:00 - 9:30 am	GENERAL REGISTRATION Third Floor Rotunda
9:30 am	WELCOMING REMARKS Hall of the House
9:45 - 12 noon	DEMOCRATIC & REPUBLICAN CAUCUSES
10:00 am	Tour of the Blaine House for Legislators' Families
12 noon - 2:00 pm	Seminar on Legislative Ethics (Box lunch served)
2:15 - 3:30 pm	Legislators' Compensation
6:00 pm	Reception/Cash Bar
7:00 pm	Banquet

**PROPOSED 116th/1st****Tuesday, December 1**

8:00 - 9:30 am	GENERAL REGISTRATION Third Floor Rotunda
9:30 am	WELCOMING REMARKS Hall of the House
9:45 - 12 noon	DEMOCRATIC & REPUBLICAN CAUCUSES
10:00 am	Tour of the Blaine House for Legislators' Families
11:45 am - 1:00 pm	Box Lunches Available Legislative Council Chamber
1:15 - 2:30 pm	Seminar on Legislative Ethics Hall of the House  Honorable N. Paul Gauvreau and Honorable Francis C. Marsano  Members of the Commission on Governmental Ethics
2:45 - 3:45 pm	Dealing with the Press Panel Discussion
6:00 pm	Reception/Cash Bar
7:00 pm	Banquet

**115th/1st**

**Wednesday**

10:00 am                      Swearing In Ceremonies

**Thursday**

8:30 - 9:15 am              Non-Partisan Staff Services:  
                                 An Overview  
                                 Room 228

9:30 - 12:30 pm              Workshops  
                                 \* How to File a Bill Request  
                                 \* How to Use the Law Library  
                                 \* How to Use Research  
                                     & Committee Staff

**PROPOSED 116th/1st**

**Wednesday, December 2nd**

10:00 am                      Swearing In Ceremonies

**Thursday**

8:30 - 9:15 am              Non-Partisan Staff Services:  
                                 An Overview  
                                 Room 228

9:30 am - 12:30 pm          Concurrent Workshops  
                                 \* How to File a Bill Request  
                                 \* How to Use the Law Library  
                                 \* How to Use Research  
                                     & Committee Staff

**Spouse Workshop**

9:30 am - 12:30 pm          Workshop for Spouses  
                                 Topics will include:  
                                 \* A brief introduction to  
                                     "legislative lingo"  
                                 \* How to handle constituent phone  
                                     calls  
                                 \* Resources available at the State  
                                     House

COMMISSION TO STUDY A LONG-TERM DISABILITY  
PROGRAM FOR THE MAINE STATE RETIREMENT SYSTEM MEMBERS

DATE: September 30, 1992

TO: Honorable John L. Martin, Speaker, Maine House of Representatives  
Honorable Charles P. Pray, President Maine Senate

FROM: Lenny Madore, Chair, Commission to Study a Long-term Disability  
Program for the Maine State Retirement System Members

SUBJECT: Report of the Commission to Study a Long-term Disability Program for  
the Maine State Retirement System Members

In 1991, by Resolve c. 48, the Legislature established the Commission to Study a Long-Term Disability Program for the Maine State Retirement System Members. Pursuant to its legislative charge, the Commission studied the requirements of the Older Workers Benefit Protection Act and of the Maine State Retirement System disability plans, in order to discharge its responsibilities to "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement disability programs", to "recommend modifications to present Maine State Retirement System disability programs as determined appropriate", and to "submit its findings with any recommended legislation" to the Legislature.

The result of the Commission's work is two reports, one by a four-member Majority and one by a three-member Minority. These reports, with legislative amendments implementing each, are attached.

The Commission wishes to state its distress at the refusal of the United States Equal Employment Opportunity Commission to adopt rules or issue regulatory guidance that would have enabled the Commission to consider other approaches to establishing a non-discriminatory disability plan having the least cost impact on employers and the least benefit impact for employees. The Commission also wishes to state its distress that the United States Congress failed to compel the Equal Employment Opportunity Commission to act and failed to extend the effective date of the Older Workers Benefit Protection Act pending EEOC action.

A list of Commission members, a copy of the legislation creating the Commission and a copy of the Older Workers Benefit Protection Act are included.

On behalf of all of the Commission members, I wish to express our appreciation for the opportunity to serve the State of Maine.

LM/pjm  
Attachments

MAJORITY REPORT

COMMISSION TO STUDY LONG-TERM DISABILITY PROGRAM

FOR MAINE STATE RETIREMENT SYSTEM MEMBERS

The Commission made a lengthy and thorough review of the options available to bring the Maine State Retirement System into compliance with the Older Workers Benefit Protection Act. Our conclusion is that the current plan level should be maintained at 66 2/3% benefit while eliminating age cut-off for application eligibility and moving members to normal retirement only when the benefit is equal to or greater than the disability benefit.

The minority of the Commission recommends an alternative method which reduces the disability benefit while eliminating the age cut off for application eligibility and moving members to normal retirement only when the benefit is equal to or greater than the disability benefit. The minority argues that the reduction in benefit level is necessary due to potential additional costs to the system of maintaining the benefit level at 66 2/3%. They further argue that additional cost violates the intent one of our Commission duties in the legislation which established our Commission. Chapter 48, Resolves directed us in part to "develop an alternative program which approximates the overall cost of the present MSRS disability programs ----"

The majority members of the Commission are firmly convinced that "approximate overall cost" should not be applicable only to the state or MSRS costs. We maintain that the costs to future disabled members associated with any substantive reduction in disability benefits deserve equal attention and concern.

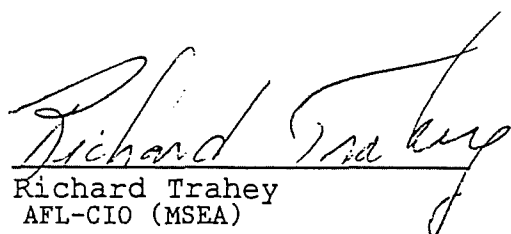
Sincerely,

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Steve Crouse  
Maine Teachers Association

---

Rodney Pierce  
AFL-CIO (Retired Firefighters)



---

Richard Trahey  
AFL-CIO (MSEA)

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William Blodgett  
Maine Association of Retirees

Legislation recommended by the Majority Report of the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members

**AN ACT to Amend the Disability Provisions of the  
Maine State Retirement Statutes to Comply with the  
Requirements of the Older Workers Benefit Protection Act**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Older Workers Benefit Protection Act becomes effective as to public employers on October 16, 1992; and

**Whereas,** the Older Workers Benefit Protection Act requires that public retirement plans, including the disability provisions of those plans, be non-discriminatory as to age; and

**Whereas,** the Equal Opportunity Employment Commission of the United States has failed to promulgate rules or issue any regulatory guidance as to approaches to establishing a non-discriminatory disability plan having the least cost impact on employers and the least benefit impact for employees; and

**Whereas,** the Maine Legislature created the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members and directed it to develop an alternative disability program as provided by the transitional language in the Older Workers Benefit Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs; and

**Whereas,** the Equal Employment Opportunity Commission's failure to act has severely limited the approaches available to the Commission to meet the intent of the Maine Legislature; and

**Whereas,** if existing disability provisions of the Retirement System statutes are not amended, there will be a substantial risk that such provisions will not meet the requirements of the Older Workers Benefit Protection Act resulting in liability under that Act for the Retirement System; and

**Whereas,** enactment of this Act will amend the Retirement System statutes to conform to the requirements of the Older Workers Benefit Protection Act and, while increasing employer costs, will preserve or enhance benefits for currently-employed and future employees who become disabled; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately

necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 4 MRSA §1353, sub-§1, as amended by PL 1983, c. 863, is further amended to read:

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

~~A- He has not completed the eligibility requirements for retirement under section 1351, subsection 1 or 2, and~~

~~B- He became mentally or physically incapacitated to the extent that it is impossible for him to perform his duties as a judge, and the incapacity is expected to be permanent, as shown by medical examination or tests. -- The examination or tests shall be conducted by a qualified physician mutually agreed upon by the executive director and member, at an agreed upon place, and the costs shall be paid by the Maine State Retirement System.~~

**Sec. 2.** 4 MRSA §1353, sub-§7, paragraph A, as amended by PL 1983, c. 863, is further amended to read:

7. Change to service retirement.

A. The disability retirement allowance of a beneficiary shall ~~cease at age 70, or prior thereto,~~ whenever the service retirement allowance of the beneficiary would equal or exceed the amount of his disability retirement allowance.

**Sec. 3.** 5 MRSA §17904, sub-§1, as amended by PL 1991, c. 434, §1, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he becomes disabled ~~while in service.~~

~~A- While-in-service;-and~~

~~B- Before-reaching-the-normal-retirement-age-~~

Sec. 4. 5 MRSA §17907, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue so long as a person is disabled, except that:

A. The disability retirement benefit ceases and eligibility for a service retirement begins: on the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit.

~~(1) On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-beneficiary's-normal-retirement-age occurs;-or~~

~~(2) On-the-last-day-of-the-month-in-which-the-service retirement-benefit-of-the-beneficiary-would-equal-or exceed-the-amount-of-his-disability-retirement-benefit;-if that-occurs-before-the-10th-anniversary-of-the beneficiary's-normal-retirement-age;~~

Sec. 5. 5 MRSA §17924, sub-§1, as amended by PL 1991, c. 434, §2, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled: while in service.

~~A- While-in-service;-and~~

~~B- Before-reaching-the-normal-retirement-age-~~

Sec. 6. 5 MRSA §17929, sub-§2, as enacted by PL 1989, c. 409, §§ 8, 12, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) When calculating the person's service retirement benefit, the average final compensation shall be the

average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 17806.

(2) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article.

~~{1} On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 23, or~~

~~{2} When the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit, if that occurs before the date in subparagraph {1}:~~

~~{a} When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 17806.~~

~~{b} The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article; and~~

Sec. 7. 5 MRSA §18202, sub-§3, is enacted to read:

3. Adoption of OWBPA disability plan amendments.

A. A participating local district may adopt the amendments made by this Act by filing with Board a duly certified copy of the vote of the body which would be entitled to approve participation under section 18201. In its vote, the body shall specify the effective date of the adoption.

B. As of the effective date of the adoption, the disability plan in effect for the employees of the participating local district immediately prior to the effective date of adoption is amended by the provisions of this Act, which are applicable to the district's plan. Employees of the district whose written applications for disability retirement are received by the retirement system on or after the date on which the adoption is effective are covered under the disability plan as amended by this Act.



C. Non-discriminatory administration of disability plans. Regardless whether a participating local district adopts the amendments made by this Act, as to applications for disability retirement for district employees received by the retirement system on or after October 16, 1992, the retirement system will administer the district's disability plan in a manner which meets the requirements of the Older Workers Benefit Protection Act.

Sec. 8. 5 MRSA §18504, sub-§1, as amended by PL 1991, c. 434, §3, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he becomes disabled+ while in service.

A- ~~While-in-service+-and~~

B- ~~Before-reaching-the-normal-retirement-age-~~

Sec. 9. 5 MRSA §18507, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. A disability retirement benefit ceases and eligibility for a service retirement benefit begins+ on the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit.

~~{1} On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-person's-normal-retirement-age+-as defined-in-section-17001+-subsection-23+-or~~

~~{2} On-the-last-day-of-the-month-in-which-the-service retirement-benefit-of-the-beneficiary-would-equal-or exceed-the-amount-of-his-disability-retirement-benefit+-if that-occurs-before-the-10th-anniversary-of-the beneficiary's-normal-retirement-age+~~

Sec. 10. 5 MRSA §18524, sub-§1, as amended by PL 1991, c. 434, §4, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled+ while in service.

A- ~~While-in-service+-and~~

B- ~~Before-reaching-the-normal-retirement-age-~~

Sec. 11. 5 MRSA §18529, sub-§2, as enacted by PL 1989, c. 409, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 18407.

(2) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article.

~~{1} On-the-10th-anniversary-of-the-person's-normal retirement-age,-as-defined-in-section-17001,-subsection 23,-or~~

~~{2} When-the-service-retirement-benefit-of-a-person equals-or-exceeds-the-amount-of-the-disability-retirement benefit,-if-that-occurs-before-the-date-in-subparagraph {1}-~~

~~{a} When-calculating-the-person's-service-retirement benefit,-the-average-final-compensation-shall-be-the average-final-compensation-at-the-time-that-person terminated-active-service-before-receiving-disability retirement-benefits-adjusted-by-the-same-percentage adjustments,-if-any,-that-were-applied-to-the disability-retirement-benefits-under-section-18407-~~

~~{b} The-person-shall-receive-service-credit-for-the purpose-of-determining-benefits-under-this-Part-for the-period-following-termination-of-service-for-which that-person-receives-disability-retirement-benefits under-this-article,-and~~

Sec. 12. 5 MRSA, Part 20, Chapter 425, subchapter V, is amended by enacting new Article 3-B to read:

ARTICLE 3-B. Application of Requirements of Older Workers Benefits Protection Act to Formerly Available Disability Plans

§18541. Application of requirements of OWBPA to formerly available disability plans.

In the case of a participating local district having a retirement system disability plan other than that provided by Title 5, chapter 425, subchapter 5, article 3-A, which plan is in force immediately prior to the adoption by the participating local district of the amendments made by this Act, a member who is an employee of the district whose written application for disability retirement is received by the retirement system after the effective date of the adoption by the district of amendments made by this Act is eligible to apply regardless of the member's age at time of application.

Sec. 13. Application.

1. This Act applies to members of the retirement system who are state employees, teachers or employees of participating local districts whose written applications for disability retirement are received by the retirement system on or after October 16, 1992, regardless whether they are members on October 16, 1992 or become members thereafter.

2. Except as specifically provided in this Act, nothing in the Act changes any standard for or requirement of eligibility for disability, on initial application or subsequent review, under any retirement system disability plan in effect immediately prior to the effective date of this Act.

Emergency Clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

## STATEMENT OF FACT

This legislation is driven by the requirements of the Older Workers Benefit Protection Act (OWBPA), passed in 1990 and effective for public employers on October 16, 1992. The OWBPA requires that public retirement plans, including the disability provisions of such plans, be non-discriminatory as to age. In response to the passage of the OWBPA, the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members was established by the Maine Legislature and was directed to "develop an alternative (disability) program as provided by the transitional language in the Older Workers Benefits Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." As directed by the legislation which established it (Resolves 1991, c. 48), the Commission was made up of representatives of labor and management groups whose constituent members are Retirement System members and was chaired by a gubernatorial appointee representing neither labor nor management. After several meetings and study of information provided by the Retirement System and actuarial consultants, the Commission members adopted majority and minority reports and presented them to the Legislature, each accompanied by proposed legislation.

It should be noted that the changes required by the OWBPA do not apply to persons currently receiving disability benefits.

This bill accompanies the Majority Report of the Commission. In brief, the Commission Majority recommended to the Legislature the adoption of statutory amendments which would remove discriminatory provisions of the Retirement System disability plans currently in force. Current benefit levels (66 2/3% of average final compensation) would be unchanged, because the Majority believes that the legislative directive to "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement disability programs" encompasses the "cost" of reduced benefits to future employees who become disabled. For that reason, the Majority recommended that benefit levels for future recipients of disability benefits not be reduced from their present levels.

Because the Majority's recommendations would increase costs to participating local districts, as well as the state, the amendments are effective only with respect to districts which adopt them. Because the Retirement System cannot run the risk of liability for failure to comply with the Older Workers Benefit Protection Act by virtue of the fact that it administers discriminatory disability benefit programs, the bill provides that without regard to adoption by a local district the System will administer the district's plan in accordance with Older Workers Benefit Protection Act requirements. (It should be noted that districts always have the option to withdraw from the Retirement System.)

Section 1 amends the eligibility provisions of the current judicial disability law by removing age-eligibility limitations.

Section 2 amends the disability benefits cessation provision of the judicial retirement laws by eliminating the age-related change to service retirement, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 3 amends the eligibility provisions of the disability law currently applicable to legislators by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability.

Section 4 amends the disability benefits cessation provision of the disability law currently applicable to legislators by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that the change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 5 amends the eligibility provisions of the current disability law (Article 3-A) for state employees and teachers and for employees of those participating local districts which are covered by Article 3-A by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability; Sections 8 and 10 make the same changes in the participating local district provisions of the Retirement System statute for the Article 3 and Article 3-A disability plans.

Section 6 amends the disability benefits cessation provision of Article 3-A by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits; Sections 9 and 11 do the same in the participating local district provisions of the statute for the Article 3 and Article 3-A disability plans.

Section 7 provides for the adoption by participating local districts of the amendments made by the bill and for the non-discriminatory administration of district disability plans by the Retirement System.

Section 8. See Section 5.

Section 9. See Section 6.

Section 10. See Section 5.

Section 11. See Section 6.

Section 12 provides for changes required by the Older Workers Benefit Protection Act to formerly-available disability plans still in force for many participating local districts.

Section 13 provides for the application of the Act.

FISCAL NOTE

The increase in the cost of disability benefits to the State over the cost of current disability benefits for state employees and teachers which is caused by the elimination of age-related eligibility standards with no accompanying reduction in benefits is estimated to be \$2.2 million per year for each year of the biennium. The increase in costs to participating local districts will be different for each district, depending on the disability plan in effect for the district, the number of district employees, the ages and age distribution of the employees, and the incidence of disability among the employees.

## MINORITY REPORT

### Commission to Study a Long-term Disability Program for Maine

#### State Retirement System Members

*Summary: The minority believes that the proposal put forth by the majority of the Commission fails to meet the mandate of the Maine Legislature, and is neither a realistic nor affordable response to changes in the Older Workers Benefit Protection Act. The majority option will cost the State and Participating Districts at least \$3 million more per year than is currently being spent on disability programs. The option favored by the minority contains no such additional costs.*

The 115th Maine Legislature created the Commission to examine the current Maine State Retirement Disability program in light of the revisions mandated by the passage of the Older Workers Benefit Protection Act (OWBPA). Passed by the Congress, the OWBPA has had the effect of classifying some portions of public employer disability plans, like the MSRS disability plan, as discriminatory. Accordingly, this Commission was created to identify and recommend alternatives or changes to the current disability program that will bring the plan into compliance with OWBPA. The Commission is to report its findings to the Legislature.

The direction given to the Commission by the Maine Legislature was, however, more specific than just to identify and recommend solutions. Section 4, part 2 of the Resolve establishing the Commission states: [that the Commission should] "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." (See enclosed legislation.)

The Commission, with the able help of the MSRS staff examined many options for compliance and the implications of each option. The work of the Commission was severely hampered by the complete lack of guidance or technical assistance from the Equal Employment

Opportunity Commission. After considerable discussion and debate, the Commission narrowed the options it was considering to two similar plans:

- \* The first plan removes the discriminatory aspects of the existing disability plan and maintains the current benefit level of 66 2/3 % of salary. This is called the "full top up" option.
- \* The second option also removes the discriminatory aspects of the current disability plan but lowers the benefit level to 59 % for new participants. This option is called a "partial top up" option.

The majority of the Commission has voted to recommend to the Legislature the full top up option. The minority opposes the full top up option and favors the partial top up option. The recommendation of the majority of the members of this Commission most certainly does not meet the criteria set by the Legislature because it does not approximate the cost of the existing disability program. In fact, this option exceeds the cost of the current plan by a considerable amount.

In an August 25 letter to Hope Bartlett, MSRS Retirement Benefits Administrator, the actuarial firm of Milliman and Robertson, Inc. estimated the costs of various options the Commission was considering. The additional cost to the State for state employees and teachers in the full top up option is estimated to be \$2.2 million in the first year, or \$4.4 million in the biennium (see enclosed letter). This money will have to be appropriated by the Legislature. The additional costs that will be imposed on Participating Local Districts under this option are estimated to be in the range of \$1 million in the first year. As should be clear, the option selected by the majority is decidedly not one that approximates the cost of the current disability plan.

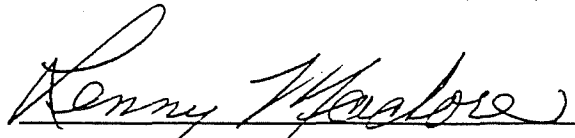
The plan supported by the members in the minority is, according to Milliman and Robertson, an option that very closely approximates the cost of the current disability program. There are estimated to be no additional long term costs that will have to be paid by the State nor imposed on the Participating Local Districts (PLDs). This option then meets the requirement of the Maine Legislature that the recommendation of the Commission be one with costs that approximate current costs. The report of the majority has dismissed the instructions of the Maine Legislature completely in this regard.




This is not to say that the minority takes lightly the lowering of benefit levels. We do not. However, no current employees of state government, teachers nor employees of PLDs will have their current level of benefits cut. The 59% benefit level will apply only to new hires. This situation will not affect adversely any existing employees, and will not result in additional costs being placed on the state or districts. Like the state itself, PLDs are in extremely difficult financial circumstances. The financial resources are not present to extend new and more costly benefit programs. PLDs simply can not afford the full top up option.

An additional issue concerns the very short time frame left for compliance. The deadline for compliance is October 16, 1992. Should the Legislature adopt the recommendation of the majority, that action will result in enhanced benefits to participants. This then may well require a vote of each PLD as to whether or not to adopt the new benefits. Given the very short time frame remaining, this will be a major burden to the PLDs and the Maine State Retirement System.

Therefore, for the reasons stated above, the minority supports the partial top up option as the most appropriate response to the Congressional legislation. Not only does the partial top up option not adversely affect current employees, and not cost the state and PLD's additional monies, but it most closely meets the instructions given to the Commission by the members of the 115th Legislature.

  
Lenny Madore, Chairman

  
David Barrett  
Maine Municipal Association

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Robert Fowler  
Maine School Management Association

Legislation Recommended by the Minority Report of the Commission  
to Study a Long-term Disability Program for the Maine State  
Retirement System Members

**AN ACT to Amend the Disability Provisions of the  
Maine State Retirement Statutes to Comply with the  
Requirements of the Older Workers Benefit Protection Act**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Older Workers Benefit Protection Act becomes effective as to public employers on October 16, 1992; and

Whereas, the Older Workers Benefit Protection Act requires that public retirement plans, including the disability provisions of those plans, be non-discriminatory as to age; and

Whereas, the Equal Opportunity Employment Commission of the United States has failed to promulgate rules or issue any regulatory guidance as to approaches to establishing a non-discriminatory disability plan having the least cost impact on employers and the least benefit impact for employees; and

Whereas, the Maine Legislature created the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members and directed it to develop an alternative disability program as provided by the transitional language in the Older Workers Benefit Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs; and

Whereas, the Equal Employment Opportunity Commission's failure to act has severely limited the approaches available to the Commission to meet the intent of the Maine Legislature; and

Whereas, if existing disability provisions of the Retirement System statutes are not amended, there will be a substantial risk that such provisions will not meet the requirements of the Older Workers Benefit Protection Act, resulting in liability under that Act for the Retirement System; and

Whereas, enactment of this Act will amend the Retirement System statutes to conform to the requirements of the Older Workers Benefit Protection Act while not increasing the disability benefit costs to public employers and while allowing current employees to elect whether or not to be covered under the amendments; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of

Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 4 MRSA §1353, sub-§1, as amended by PL 1983, c. 863, is further amended to read:

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

~~A- He has not completed the eligibility requirements for retirement under section 1351, subsection 1 or 2, and~~

~~B- He became mentally or physically incapacitated to the extent that it is impossible for him to perform his duties as a judge, and the incapacity is expected to be permanent, as shown by medical examination or tests. The examination or tests shall be conducted by a qualified physician mutually agreed upon by the executive director and member, at an agreed upon place, and the costs shall be paid by the Maine State Retirement System.~~

**Sec. 2.** 4 MRSA §1353, sub-§2, as amended by PL 1983, c. 863, is further amended to read:

2. Amount. The amount of a disability retirement allowance shall be ~~66-2/3~~ 59% of the member's average final compensation. Any member entitled to this benefit who was serving as a judge on November 30, 1984, may elect to have his disability benefits calculated in accordance with chapter 29, instead of this subsection.

**Sec. 3.** 4 MRSA §1353, sub-§7, paragraph A, as amended by PL 1983, c. 863, is further amended to read:

7. Change to service retirement.

A. The disability retirement allowance of a beneficiary shall cease ~~at age 70, or prior thereto,~~ whenever the service retirement allowance of the beneficiary would equal or exceed the amount of his disability retirement allowance.

Sec. 4. 5 MRSA §17904, sub-§1, as amended by PL 1991, c. 434, §1, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he becomes disabled+ while in service.

A- ~~While-in-service+-and~~

B- ~~Before-reaching-the-normal-retirement-age-~~

Sec. 5. 5 MRSA §17905, as enacted by PL 1985, c. 801, is amended to read:

When a member qualified under section 17904 retires, the member shall receive a disability retirement benefit equal to 66 2/3 59% of his average final compensation.

Sec. 6. 5 MRSA §17907, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue so long as a person is disabled, except that:

A. The disability retirement benefit ceases and eligibility for a service retirement begins+ on the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit.

~~{1} On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-beneficiary's-normal-retirement-age occurs+-or~~

~~{2} On-the-last-day-of-the-month-in-which-the-service retirement-benefit-of-the-beneficiary-would-equal-or exceed-the-amount-of-his-disability-retirement-benefit+-if that-occurs-before-the-10th-anniversary-of-the beneficiary's-normal-retirement-age+~~

Sec. 7. 5 MRSA §17924, sub-§1, as amended by PL 1991, c. 434, §2, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled+ while in service.

Sec. 8. 5 MRSA §17928, as enacted by PL 1989, c. 409, §§ 8 and 12, is amended to read:

When a member qualified under section 17924 retires, after approval for disability retirement by the executive director in accordance with section 17925, the member shall receive a disability retirement benefit equal to 66-2/3 59% of that member's average final compensation.

~~A- While-in-service-and~~

~~B- Before-reaching-the-normal-retirement-age-~~

Sec. 9. 5 MRSA §17929, sub-§2, as enacted by PL 1989, c. 409, §§ 8, 12, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 17806.

(2) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article.

~~{1} On-the-10th-anniversary-of-the-person's-normal retirement-age, as-defined-in-section-17001, subsection 23, or~~

~~{2} When-the-service-retirement-benefit-of-a-person equals-or-exceeds-the-amount-of-the-disability-retirement benefit, if-that-occurs-before-the-date-in-subparagraph {1}-~~

~~{a} When-calculating-the-person's-service-retirement benefit, the-average-final-compensation-shall-be-the average-final-compensation-at-the-time-that-person terminated-active-service-before-receiving-disability retirement-benefits-adjusted-by-the-same-percentage adjustments, if-any, that-were-applied-to-the disability-retirement-benefits-under-section-17806-~~

~~{b} The-person-shall-receive-service-credit-for-the purpose-of-determining-benefits-under-this-Part-for the-period-following-termination-of-service-for-which that-person-receives-disability-retirement-benefits under-this-article-and~~

Sec. 10. 5 MRSA Part 20, Chapter 423, subchapter V, is amended by enacting a new Article 3-B to read:

ARTICLE 3-B. Member Election of Disability Plan

§17941. Member election of disability plan

1. A member who was hired as a state employee or teacher on or before October 16, 1992 Act and who is so employed on that date may elect to be covered under the retirement system's disability plan as amended by this Act.

A. The retirement system is responsible for providing to state agencies and school administrative units information meeting the requirements of the Older Workers Benefit Protection Act which describes the disability plan as amended by this Act and the disability plan without the amendments and a form for individual member election to be covered under the plan as amended.

B. The state agency or school administrative unit is responsible for giving the information and election form to each member entitled to the election, for collecting the completed election forms and for returning the election forms to the retirement system.

C. The state agency or school administrative unit must give the information and election form to each member entitled to the election not later than October 16, 1992.

D. A member's election to be covered under the disability plan as amended by this Act is effective 180 days after October 16, 1992.

E. A member's election is not effective unless it is signed and dated on or before a date to be established by the executive director which is not later than 180 days after October 16, 1992.

F. The state agency or school administrative unit must return the completed election forms to the retirement system by a date to be established by the executive director not which is not later than 180 days after October 16, 1992.

G. The executive director may establish additional policies and procedures necessary to carry out this section in an efficient and fair manner.

2. Until and unless a member elects to be covered under the retirement system's disability plan as amended by this Act, the member is covered under the system's plan without the amendments.

3. Except as specifically provided in this Act, nothing in the Act changes any standard for or requirement of eligibility for

disability, on initial application or subsequent review, under any retirement system disability plan in effect immediately prior to enactment of this Act.

Sec. 11. 5 MRSA §18504, sub-§1, as amended by PL 1991, c. 434, §3, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he becomes disabled+ while in service.

A+ ~~While-in-service+and~~

B+ ~~Before-reaching-the-normal-retirement-age-~~

Sec. 12. 5 MRSA §18202, sub-§3, is enacted to read:

3. Notwithstanding the provisions of subsections 1 and 2, the amendments made by this Act apply to each participating local district without adoption by the district.

Sec. 13. 5 MRSA §18505, as enacted by PL 1985, c. 801, is amended to read:

When a member qualified under section 18504 retires, the member shall receive a disability retirement benefit equal to 66 2/3 59% of his average final compensation.

Sec. 14. 5 MRSA §18507, sub-§2, as enacted by PL 1975, c. 622, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. A disability retirement benefit ceases and eligibility for a service retirement benefit begins+ on the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit.

~~{1} On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-person's-normal-retirement-age,-as defined-in-section-17001,-subsection-23,-or~~

~~{2} On-the-last-day-of-the-month-in-which-the-service retirement-benefit-of-the-beneficiary-would-equal-or exceed-the-amount-of-his-disability-retirement-benefit,-if that-occurs-before-the-10th-anniversary-of-the beneficiary's-normal-retirement-age;~~

Sec. 15. 5 MRSA §18524, sub-§1, as amended by PL 1991, c. 434, §4, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled+ while in service.

A. ~~While-in-service+-and~~

B. ~~Before-reaching-the-normal-retirement-age-~~

Sec. 16. 5 MRSA §18528, as enacted by PL 1989, c. 409, §§ 11, 12, is amended to read:

When a member qualified under section 18524 retires, after approval for disability retirement by the executive director in accordance with section 18525, the member shall receive a disability retirement benefit equal to  $66\frac{2}{3}$  59% of that member's average final compensation.

Sec. 17. 5 MRSA §18529, sub-§2, as enacted by PL 1989, c. 409, is amended to read:

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins+ when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 18407.

(2) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article.

~~{1} On-the-10th-anniversary-of-the-person's-normal retirement-age+-as-defined-in-section-17001+-subsection 23+-or~~

~~{2} When-the-service-retirement-benefit-of-a-person equals-or-exceeds-the-amount-of-the-disability-retirement benefit+-if-that-occurs-before-the-date-in-subparagraph {1}+-~~

~~{a} When-calculating-the-person's-service-retirement benefit+-the-average-final-compensation-shall-be-the average-final-compensation-at-the-time-that-person~~



~~terminated-active-service-before-receiving-disability  
retirement-benefits-adjusted-by-the-same-percentage  
adjustments,-if-any,-that-were-applied-to-the  
disability-retirement-benefits-under-section-18407.~~

~~(b) The-person-shall-receive-service-credit-for-the  
purpose-of-determining-benefits-under-this-Part-for  
the-period-following-termination-of-service-for-which  
that-person-receives-disability-retirement-benefits  
under-this-article,-and~~

Sec. 18. 5 MRSA, Part 20, Chapter 425, subchapter V, is amended by enacting new Article 3-B to read:

ARTICLE 3-B. Member Election of Disability Plan

1. Each participating local district shall offer to members who are employees hired on or before October 16, 1992 and so employed on that date an opportunity to elect to be covered under the district's disability plan as amended by this Act.

A. The retirement system is responsible for providing to the participating local district information meeting the requirements of the Older Workers Benefit Protection Act which describes the district's disability plan as amended by this Act and the district's disability plan without the amendments and a form for individual member election.

B. The participating local district is responsible for giving the information and election form to each member entitled to the election, for collecting the completed election forms and for returning the election forms to the retirement system.

C. The participating local district must give the information and election form to each member not later than October 16, 1992.

D. A member's election to be covered under the district's disability plan as amended by this Act is effective 180 days after October 16, 1992.

E. A member's election is not effective unless it is signed and dated on or before a date to be established by the executive director which is not later than 180 days after October 16, 1992, and the election is irrevocable.

F. The participating local district must return the completed election forms to the retirement system not later than a date to be established by the executive director.

G. The executive director of the retirement system may establish additional policies and procedures necessary to carry out this section in an efficient and fair manner.

2. Until and unless a member elects to be covered under the district's disability plan as amended by this Act, the member is covered under the district's disability plan without the amendments.

**Sec. 19.** 5 MRSA, Chapter 425, subchapter V, is amended by enacting new Article 3-C to read:

ARTICLE 3-C. Disability Under Formerly Available  
Disability Plans After October 16, 1992

§18542. Disability under formerly available disability plans  
after October 16, 1992.

In the case of a participating local district having a retirement system disability plan other than that provided by Title 5, chapter 425, subchapter 5, article 3 or that provided by Title 5, chapter 425, subchapter 5, article 3-A, which plan is in force on October 15, 1992, the following apply on and after October 16, 1992:

1. A member who is an employee of the district who applies for a disability retirement benefit after the effective date of his election to be covered under the plan as amended by this Act is eligible to apply regardless of the member's age at time of application;

2. In the case of ordinary disability under such a plan, the disability retirement allowance shall be calculated as provided under the plan except that the amount of the retirement allowance must not exceed 59% of the member's average final compensation at the time of disability retirement;

3. In the case of occupational disability under such a plan, the disability retirement allowance shall be equal to 59% of the member's average final compensation at the time of disability retirement.

**Sec. 20. Application.**

1. The amendments made by this Act to the retirement system's disability plan for members who are state employees and teachers and to the disability plans of participating local districts for members who are district employees apply to those members who elect, in accordance with this Act, to be covered under the applicable disability plan as amended by this Act and to those who become members after October 16, 1992. For those members who so elect, the applicable disability plan as amended by this Act applies to a written application for disability retirement received by the system after the effective date of the election. For those who become members after October 16, 1992, the applicable disability plan as amended by this Act applies to a written application for disability retirement received by the System after October 16, 1992.

2. Members who are state employees, teachers or employees of participating local districts who do not elect to be covered under the applicable disability plan as amended by this Act continue to be covered by the applicable disability plan without the amendments.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

## STATEMENT OF FACT

This legislation is driven by the requirements of the Older Workers Benefit Protection Act (OWBPA), passed in 1990 and effective for public employers on October 16, 1992. The OWBPA requires that public retirement plans, including the disability provisions of such plans, be non-discriminatory as to age. In response to the passage of the OWBPA, the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members was established by the Maine Legislature and was directed to "develop an alternative (disability) program as provided by the transitional language in the Older Workers Benefits Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." As directed by the legislation which established it (Resolves 1991, c. 48), the Commission was made up of representatives of labor and management groups whose constituent members are Retirement System members and was chaired by a gubernatorial appointee representing neither labor nor management. After several meetings and study of information provided by the Retirement System and actuarial consultants, the Commission members adopted majority and minority reports and presented them to the Legislature, each accompanied by proposed legislation.

It should be noted that the changes required by the OWBPA do not apply to persons currently receiving disability benefits.

This bill accompanies the Minority Report of the Commission. In brief, the Commission Minority recommended to the Legislature the adoption of statutory amendments which would (1) remove discriminatory provisions of the Retirement System disability plans currently in force for state employees, teachers and employees of participating local districts; (2) decrease disability benefits from 66 2/3% to 59% of average final compensation; (3) offset the resulting increase in disability costs to the State and participating local districts (caused by the increase in the number of persons eligible to apply for disability and by the increased incidence of disability resulting from the fact that the newly-eligible members are older and therefore more likely to incur disability); and (4) give to each member employed on the effective date of the Act the option to elect to be covered under the disability plan applicable to the member as amended by this bill or, by not so electing, to remain covered under that plan without the amendments. The bill which embodies the Minority's recommendations meets the requirements of the Older Workers Benefit Protection Act and the directive of the Legislature that the amended disability program "approximate the overall cost" of the present Maine State Retirement System disability programs.

Section 1 amends the eligibility provisions of the current judicial disability law by removing age-eligibility limitations.

Section 2 reduces disability benefits under the judicial retirement laws from 66 2/3 to 59% of average final compensation.

Section 3 amends the disability benefits cessation provision of the judicial retirement laws by eliminating the age-related change to service retirement, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 4 amends the eligibility provisions of the disability law currently applicable to legislators by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability.

Section 5 reduces disability benefits under the plan currently applicable to legislators from 66 2/3 to 59% of average final compensation.

Section 6 amends the disability benefits cessation provision of the disability law currently applicable to legislators by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that the change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 7 amends the eligibility provisions of the current disability law (Article 3-A) for state employees and teachers and for employees of those participating local districts covered by Article 3-A by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability; Sections 11 and 15 make the same changes in the participating local district provisions of the Retirement System statute for both Article 3 and Article 3-A disability plans.

Section 8 reduces Article 3-A disability benefits from 66 2/3 to 59% of average final compensation; Sections 13 and 16 do the same in the participating local district provisions of the Retirement System statute in both Article 3 and Article 3-A.

Section 9 amends the disability benefits cessation provision by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits; Sections 14 and 17 do the same in the participating local district provisions of the statute in Article 3 and Article 3-A.

Section 10 provides for individual election to be covered under the disability plan as amended by this bill; Section 18 provides for the election by employees of participating local districts.

Section 11. See Section 1.

Section 12 provides that the amendments made by this bill apply to participating local districts without adoption. Since the effect of the amendments will be cost-neutral, adoption by districts is not necessary.

Section 13. See Section 8.

Section 14. See Section 9.

Section 15. See Section 7.

Section 16. See Section 8.

Section 17. See Section 9.

Section 18. See Section 10.

Section 19 provides for changes required by the Older Workers Benefit Protection Act to formerly-available disability plans still in force for many participating local districts.

Section 20 provides for the application of the Act.

#### FISCAL NOTE

The increase in cost over the current disability plan for state employees and teachers which is caused by the elimination of age-related eligibility limitations is offset, certainly in the long term and possibly in the short term, by the reduction in the disability benefit level from 66 2/3% to 59% of average final compensation. There may be an increase in cost in the very near term, depending on which employees elect to move to the amended plan and the relative incidence of disability among those who move and those who do not.

The reduction in benefit level also applies to employees of participating local districts, offsetting the increase in the cost caused by elimination of age-related eligibility limitations. Here, too, the offset is certain in the long term and possible in the short term, and very near term cost increase may occur for some districts, depending on employee election to move and disability incidence among those who move and those who do not.

COMMISSION TO STUDY A LONG-TERM DISABILITY  
PROGRAM FOR THE MAINE STATE RETIREMENT SYSTEM MEMBERS

(Chapter 48, Resolves 1991)

MEMBERSHIP

David Barrett	Maine Municipal Association
William Blodget	Maine Association of Retirees
Steve Crouse	Maine Teachers Association
Robert Fowler	Maine School Management Association
Rodney Pierce	AFL-CIO (Retired Firefighters)
Richard Trahey	AFL-CIO (MSEA)
Lenny Madore	Chair

JUL 10 '91

48

BY GOVERNOR

RESOLVES

## STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

S.P. 288 - L.D. 770

Resolve, to Create the Commission to Study a Long-term  
Disability Program for the Maine State Retirement System  
Members

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members shall report its findings and recommendations, including any necessary implementing legislation, to the Second Regular Session of the 115th Legislature; and

Whereas, the Older Workers Protection Act, which was enacted by the United States Congress and signed by the President on October 16, 1990, mandates eligibility modifications for the Maine State Retirement System disability program 2 years after the effective date of the Act; and

Whereas, the Act allows legislative discretion in complying with these revisions within the 2-year period; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Commission established. Resolved: That the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of the following members:



1. Four voting members who are members of organizations that represent employees and retirees, appointed by the Governor after being nominated by their respective organizations as follows:

A. One member nominated by the Maine Teachers Association;

B. One member nominated by the Maine Association of Retirees; and

C. Two members nominated by the Maine American Federation of Labor and Congress of Industrial Organizations, Public Sector Division;

2. Two voting members appointed by the Governor after being nominated as follows:

A. One member nominated by the Maine Municipal Association; and

B. One member nominated by the Maine School Management Association;

3. One member appointed by the Governor; and

4. The Executive Director of the Maine State Retirement System or the executive director's designee to serve as an ex officio nonvoting member; and be it further

Sec. 3. Appointments; meetings. Resolved: That all appointments be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council must be notified by all appointing authorities when the selections are made. The Chair of the Legislative Council shall call the first meeting of the commission. The commission shall select a chair from its membership; and be it further

Sec. 4. Duties. Resolved: That the commission shall undertake a study of the revisions mandated by the Older Workers Protection Act and the effect on the eligibility requirements of the present Maine State Retirement System disability programs. As part of the study the commission shall:

1. Identify specific disability requirements affected by the Older Workers Protection Act and the associated cost of implementation;

2. Develop an alternative program as provided by the transitional language in the Older Workers Protection Act that

approximates the overall cost of the present Maine State Retirement System disability programs prior to revision;

3. Recommend modifications to present Maine State Retirement System disability programs as determined appropriate during the course of the commission's study; and

4. Study the issue of making the proposed changes in the disability system applicable to current recipients of benefits and identify the cost of that action; and be it further

Sec. 5. Report. Resolved: That the commission shall submit its findings with any recommended legislation pursuant to this resolve to the Second Regular Session of the 115th Legislature by November 1, 1991; and be it further

Sec. 6. Staff assistance. Resolved: That the Maine State Retirement System staff provide any necessary staff assistance for the commission and the retirement system's actuaries shall furnish actuarial services to the commission under the actuaries contract with the retirement system up to a value of \$20,000; and be it further

Sec. 7. Compensation. Resolved: That the members of the commission are not entitled to per diem compensation, but may be reimbursed for their expenses. The cost of expenses must be covered by the retirement system.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Public Law 101-433  
101st Congress

## An Act

Oct. 16, 1990  
[S. 1511]

To amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT  
PROTECTION

## 29 USC 621 note. SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

## SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan."

## SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) in subsection (f), by striking paragraph (2) and inserting the following new paragraph:

"(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

"(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this Act.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act; or"

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be

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Retirement.

reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1936) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

"(A) paid to the individual that the individual voluntarily elects to receive; or

"(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible."

#### SEC. 104. RULES AND REGULATIONS.

29 USC 623 note.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

#### SEC. 105. EFFECTIVE DATE.

29 USC 623 note.

(a) **IN GENERAL.**—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 180 days after the date of enactment of this Act.

(b) **COLLECTIVELY BARGAINED AGREEMENTS.**—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section, this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

(c) **STATES AND POLITICAL SUBDIVISIONS.**—

(1) **IN GENERAL.**—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law, this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) **ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.**—

(A) **IN GENERAL.**—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, implement new disability benefits that satisfy the require-

ments of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) **PREVIOUS DISABILITY BENEFITS.**—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) **ABROGATION OF RIGHT TO RECEIVE BENEFITS.**—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) **STATE ASSISTANCE.**—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) **DEFINITIONS.**—For purposes of this subsection:

(A) **EMPLOYER AND STATE.**—The terms “employer” and “State” shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) **DISABILITY BENEFITS.**—The term “disability benefits” means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) **REASONABLE NOTICE.**—The term “reasonable notice” means, with respect to notice of new disability benefits described in paragraph (2)(A), that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) **DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.**—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 (as redesignated by section 103(2) of this Act).

(e) **CONTINUED BENEFIT PAYMENTS.**—Notwithstanding any other provision of this section, on and after the effective date of this title

and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act if the intent of the modification is to evade the purposes of this Act.

## TITLE II—WAIVER OF RIGHTS OR CLAIMS

### SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

“(X1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

“(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

“(B) the waiver specifically refers to rights or claims arising under this Act;

“(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

“(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

“(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

“(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

“(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

“(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

“(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

“(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

“(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission."

29 USC 626 note. SEC. 292. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

### TITLE III—SEVERABILITY

29 USC 621 note. SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

Approved October 16, 1990.

#### LEGISLATIVE HISTORY—S. 1511 (H.R. 3200):

HOUSE REPORTS: No. 101-864 accompanying H.R. 3200 (Comm. on Education and Labor).

SENATE REPORTS: No. 101-263 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 136 (1990):

Sept. 17, 18, 24, considered and passed Senate.

Oct. 2, 3, considered and passed House.