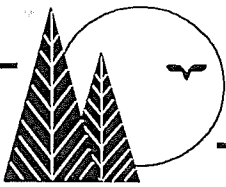


# MAINE STATE LEGISLATURE

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# MAINE STATE RETIREMENT SYSTEM

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Kay R. H. Evans, *Deputy Director*  
Gail Drake Wright, *Deputy Director*

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DATE: February 20, 1996

TO: Senator Charles Begley, Senate Chair, Committee on Labor  
Representative Pamela Hatch, House Chair, Committee on Labor

FROM: *Gail Drake Wright*  
Gail Drake Wright, Deputy Director

SUBJECT: Proposed Disability Legislation

As you will recall, Chapter 38 of the Private and Special Laws of the First Regular Session of the 117th Legislature directed the Maine State Retirement System to devise a proposed methodology and plan that would consolidate the disability plans currently administered by the MSRS into a single pooled plan modeled after the Article 3-A disability plan. The MSRS was further directed to present that methodology and proposed legislation to you before adjournment of the Second Regular Session of the 117th Legislature.

The MSRS has studied the single pooled plan concept, as well as several other changes to the disability laws, and has met on two occasions with constituent groups with an interest in the disability laws. The general consensus reached by the MSRS and the constituent groups is that the single pooled disability plan requires further study and discussion. Accordingly, we are proposing legislation that designates two study committees and directs them to consider the single pooled plan concept as well as certain specific other areas of the disability programs and report proposed legislation to this Committee during the next session of the Legislature.

The legislation we are currently proposing accomplishes two other purposes: (1) it amends certain provisions of the disability plans that were considered by the Retirement System and constituent groups and (2) it continues the 59% benefit amount to be paid to disability recipients who elected to be covered under the Retirement System disability plan applicable to members as that plan was amended to meet the requirements of the federal Older Workers Benefit Protection Act. Because the current provision

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setting the benefit amount will expire on June 30, 1996, this legislation is proposed as emergency legislation.

cc: Senator S. Peter Mills  
Senator Anne M. Rand  
Representative Gail Chase  
Representative Patricia Lemaire  
Representative Roland Samson  
Representative John Tuttle  
Representative Henry Joy  
Representative Steven Joyce  
Representative Robert Pendleton  
Representative Vaughn Stedman  
Representative Tom Winsor  
David Elliott

**An Act to Make Changes to the Disability Plans under the  
Maine State Retirement System and to Institute a  
Process to Propose Further Changes**

**Whereas**, the Maine State Retirement System was directed by Chapter 38 of the Private and Special Laws of the First Regular Session of the 117th Legislature to devise a proposed methodology and plan that would consolidate the disability plans currently administered by the Maine State Retirement System into a single pooled plan modeled after the Article 3-A plan, and present that methodology and proposed legislation to the joint standing committee of the Legislature having jurisdiction over labor matters before adjournment of the Second Regular Session of the 117th Legislature; and

**Whereas**, interested parties to the single pooled plan have had inadequate time to understand and endorse the single plan idea; and

**Whereas**, the Board of Trustees of the Maine State Retirement System continually strives to make improvements in the administration of its disability plans; and

**Whereas**, Chapter 595 of the Second Regular Session of the 116th Legislature directs the Maine State Retirement System to study and analyze the experience of the disability plans amended to meet the requirements of the Older Worker Benefit Protection Act and report possible options for compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts; and

**Whereas**, provisions in the law directing the benefit amount to be received by persons having elected to be covered under the retirement system disability plan applicable to the member as that plan was amended to meet the requirements of the federal Older Workers Benefit Protection Act will expire on June 30, 1996; and

**Whereas**, the benefit amount to be received by such persons after June 30, 1996, must be established beginning July 1, 1996; now, therefore

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

**Sec. 1.** A study committee shall be established to study the single pooled disability plan concept and other changes to the disability plans administered by the Maine State Retirement System. The committee shall

be comprised of six members: one member from the Maine State Employees Association, one member from the Maine Education Association; one member from the Maine School Management Association; one member from the Maine State Retirement System; and two members appointed by the Governor to speak for the State as the employer of State employees covered by the disability programs and, for disability program purposes, of teachers. In addition to its substantive participation, the Retirement System is responsible to schedule meetings, to obtain actuarial information where necessary, to provide general staff support, and to draft proposed legislation.

The committee is charged with reporting back to the joint standing committee of the Legislature having jurisdiction over retirement matters by February 15, 1997, with appropriate legislation. The committee shall consider but not be limited to considering the following issues:

- (1) a methodology and plan that would consolidate the disability plans currently administered by the Maine State Retirement System into a single pooled plan modeled after the Article 3-A plan;
- (2) whether or not the disability plan or plans should retain limits on the amount recipients can earn while receiving disability benefits;
- (3) whether or not Article 3-A should retain the actively seeking work exemption from discontinuance of benefits;
- (4) whether or not payment of benefits should continue when a recipient appeals beyond the administrative appeals process a decision to discontinue the recipient's benefits;
- (5) whether or not provisions should be added to the disability plans restricting payment of benefits for misconduct-related disability or during incarceration; and
- (6) whether or not provisions should be added to the disability plan or plans that distinguish between recipients who become disabled in the line of duty and those who do not.

With respect to the interest of participating local districts in the above issues and in such related issues as may impact participating local districts, the Participating Local District Advisory Committee established under 5 MRSA §18802 shall serve as the study committee for those participating

local districts in the Consolidated Plan for participating local districts. The Retirement System shall have the same role with this study committee as with the study committee established above. The Participating Local District Advisory Committee shall not take up these issues until after July 1, 1996. The Retirement System shall also inform those participating local districts that are not in the Consolidated Plan and that have members who are then receiving disability benefits or who continue to be covered under Retirement System disability programs by virtue of continuing to be contributing members of the Retirement System of the issues under discussion that would affect those participating local districts.

Regardless whether all members of both study committees agree on any or all of its provisions, the proposed legislation must address all of the issues set out above in subsections 1-6 so that the legislative committee and the Legislature can understand and decide the policy matters inherent in these issues. To that end, as to any provisions on which there is not agreement among these study committees' members, members advocating particular policy positions shall provide the legislative committee with an explanation of their policy positions and the reasons that are the basis for their positions.

**Sec. 2.** 4 MRSA §1353, sub-§2, as last amended by PL 1993, c. 595, §1, is further amended to read:

**2. Amount.** Until July 1, 1998, the amount of a disability retirement allowance is 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 that member's disability benefits calculated in accordance with chapter 29, instead of this subsection. A member who is serving as a judge on October 16, 1992 may elect to be covered under the disability benefit plan applicable to the judge as that plan is amended to meet the requirements of the federal Older Workers Benefit Protection Act. The election must be made by the same procedure provided in Title 5, section 17941 for state employees.~~

**Sec. 3.** 5 MRSA §17106, sub-§§ 1, 2 and 3, as last amended by PL 1989, c. 409, §§ 1,2 and 12, is further amended to read:

#### **§17106. Medical Board**

**1. Establishment.** The board shall designate a medical board or boards each to be composed of 3 physicians not eligible to participate in the retirement system.

2. **Other physicians.** ~~If required~~ deemed advisable by the board, the board may designate other physicians ~~may be employed to provide medical consultation report on special~~ disability cases.

3. **Powers and duties.** The medical board or other physician designated by the board shall, at the request of the executive director, review the file of ~~each~~ an applicant for disability retirement and shall as requested, respond on any or all of the following:

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

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

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

D. Inform the executive director and board in writing of its view as to the existence of a disability entitling an applicant to benefits under chapter 423, subchapter V, articles 3 and 3-A or chapter 425, subchapter V, article 3-A; and

E. ~~Make recommendations~~ Advise ~~to~~ the executive director and board at the request of either to determine if rehabilitation services should be provided to if whether there are medical indications that a person who is the recipient of a disability retirement benefit under chapter 423, subchapter V, article 3-A or chapter 425, subchapter V, article 3-A should not engage in a rehabilitation program or whether a recipient is too severely disabled to benefit from rehabilitation in accordance with the purposes of chapter 423, subchapter V, article 3-A.

**Sec. 4.** 5 MRSA §17902, as enacted by PL 1985, c. 801 §§ 5 and 7, is amended to read:

**§17902. Application**

In order to receive a benefit under this article:

1. **Written application.** The person must apply in writing to the executive director in the format specified by the executive director; and

A. The executive director shall obtain medical consultation on each applicant for disability in accordance with related rules established by the board which rules shall, in relation to section 17103, include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable. Whether provided by the medical board or by an alternative means, medical consultation obtained by the executive director shall be objective, by a physician or physicians to whom the applicant is not known and by a physician or physicians appropriate to review the case by specialty or experience.

2. **Approval.** The written application must be approved by the executive director.

**Sec. 5.** 5 MRSA §17904, sub-§2, as last amended by PL 1991, c. 434, §1, is further amended to read:

2. **Exception.** ~~A member with fewer than 5 years of continuous creditable service immediately preceding that member's application for a disability retirement benefit is not eligible for that benefit if the disability is the result of a physical or mental condition which existed before the member's membership in the retirement system,~~ If the disability is the result of a physical or mental condition that existed before the commencement of the member's current active membership in the retirement system and the member has fewer than 5 continuous years of creditable service during some period of membership that began after the pre-existing condition arose, that member is not eligible for a disability retirement benefit unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty but from events or circumstances not usually encountered within the scope of the member's employment.

**Sec. 6.** 5 MRSA §17905, as last amended by PL 1993, c. 595, §7, is further amended to read:

**§17905. Computation of benefit**

Until July 1, ~~1996~~ 1998, when a member qualified under section 17904 retires, the member is entitled to receive a disability retirement benefit equal to 59% of the member's average final compensation.

**Sec. 7.** 5 MRSA §17908, as enacted by PL 1985, c. 801, §§ 5 and 7, is hereby repealed.



**Sec. 8.** 5 MRSA §17923, as enacted by PL 1989, c. 409, §§ 8, 12, is hereby repealed.

**Sec. 9.** 5 MRSA §17924, sub-§2, as last amended by PL 1991, c. 434, §2, is further amended as follows:

**2. Exception.** ~~A member with fewer than 5 years of continuous creditable service immediately preceding that member's application for a disability retirement benefit is not eligible for that benefit if the disability is the result of a physical or mental condition which existed before the member's membership in the retirement system;~~ If the disability is the result of a physical or mental condition that existed before the commencement of the member's current active membership in the retirement system and the member has fewer than 5 continuous years of creditable service during some period of membership that began after the pre-existing condition arose, that member is not eligible for a disability retirement benefit unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty but from events or circumstances not usually encountered within the scope of the member's employment.

**Sec. 10.** 5 MRSA §17925, as enacted by PL 1989, c. 409, §§ 8, 12, is amended to read:

**§17925. Application**

In order to receive a benefit under this article:

**1. Written application.** The person must apply in writing to the executive director in the format specified by the executive director.

~~A. The executive director shall submit the application and all pertinent medical and psychological information to the medical board for review as required by section 17106, subsection 3.~~ shall obtain medical consultation on each applicant for disability in accordance with related rules established by the board which rules shall, in relation to section 17103, include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable. Whether provided by the medical board or by an alternative means, medical consultation obtained by the executive director shall be objective, by a physician or physicians to whom the applicant is not known and by a physician or physicians appropriate to review the case by specialty or experience.

2. **Approval.** The written application must be approved by the executive director.

**Sec. 11.** 5 MRSA §17925, sub-§1, ¶B, as enacted by PL 1989, c. 409, §§ 8, 12, is hereby repealed.

**Sec. 12.** 5 MRSA §17927, first unnumbered paragraph and sub-§4, as last amended by PL 1991, c. 580, § 10, is further amended to read:

**§17927. Rehabilitation**

~~Upon recommendations from the medical board, rehabilitation~~ Rehabilitation services shall be provided to any person who is the recipient of a disability retirement benefit under this article whenever the executive director determines that rehabilitation is feasible, is consistent with the purposes of this article and the recipient is found suitable by the executive director for rehabilitation services. Where necessary, determination of suitability shall include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article. Services shall be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified.

**Sec. 13.** 5 MRSA §17927, sub-§4, as repealed and replaced by PL 1991, c. 580, §10, is further amended to read:

4. **Decline of rehabilitation.** If, ~~after recommendation by the medical board,~~ a person declines use of the rehabilitation services offered or refuses to agree to a rehabilitation plan approved by the executive director, the disability retirement benefit payments shall cease at the end of the month following the decline or refusal.

**Sec. 14.** 5 MRSA §17928, as last amended by PL 1993, c. 595, §8, is further amended to read:

**§17928. Computation of benefit**

Until July 1, ~~1996~~ 1998, when a member qualified under section 17924 retires, after approval for disability retirement by the executive director in accordance with section 17925, the member is entitled to receive disability retirement benefit equal to 59% of that member's average final compensation.

**Sec. 15.** 5 MRSA §17929, sub-§2, ¶B, as last amended by PL 1991, c. 887, §9, is further amended to read:

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

**Sec. 16.** 5 MRSA §17941, as enacted by PL 1991, c. 887 §10, is hereby repealed.

**Sec. 17. Study and report.** The Maine State Retirement System shall study and analyze the experience of the disability plans amended to meet the requirements of the federal Older Workers Benefit Protection Act. The retirement system shall submit by January 15, 1998 a report to the Governor, the joint standing committee of the Legislature having jurisdiction over aging, retirement and veterans matters, the members of the Legislative Council and the Executive Director of the Legislative Council. The report must compare actual experience under the plans with actuarial assumptions regarding elections and costs of benefits under the new options elected. The report must also identify possible options for compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts.

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

**STATEMENT OF FACT**

There are three purposes of this bill: (1) to designate study committees to study the merger of the three disability plans administered by the Maine State Retirement System into one pooled plan modeled after

Article 3-A and to study other changes to the disability plan or plans; (2) to make current changes in Articles 3 and 3-A to improve the present administration of the disability plans and (3) to establish through June 30, 1998 the level of benefit payments under the disability plans amended to comply with the federal Older Workers Benefit Protection Act.

Section 1 establishes a committee to study the merger of the three disability plans into one pooled plan and to study other changes to the disability plans.

Sections 2, 6 and 14 establish the level of disability retirement allowance at 59% of the member's average final compensation for judges, state employees and teachers who are covered by a no-age disability plan in compliance with the federal Older Workers Benefit Protection Act.

Sections 3, 4, 10, 11, 13, and 15 permit the Retirement System Board of Trustees to establish more than one medical board, clarifies the medical board's role in rehabilitation reviews and gives the Board flexibility through rulemaking to determine how it will obtain medical consultation on each applicant for disability retirement benefits.

Sections 7 and 8 repeal provisions in Article 3 and 3-A respectively requiring Maine State Retirement System members to file Statements of Health.

Sections 5 and 9 modify pre-existing condition language currently in Articles 3 and 3-A respectively to allow an applicant to meet the five-year continuous creditable service requirement notwithstanding a break in service as long as five continuous years of service are earned after the pre-existing condition arises.

Section 12 states criteria for determining a recipient of disability retirement benefits to be eligible for rehabilitation services.

Section 17 directs the MSRS to analyze the experience of the disability plans amended to meet the requirements of federal Older Workers Benefit Protection Act and report to the Legislature a cost neutral level of benefit payment to be established as of July 1, 1998.

**Please note that parallel changes will have to be made to the sections of the statute governing disability plans for Participating Local Districts.**

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