

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 2270

H. P. 1192

House of Representatives, January 2, 1974

Referred to the Committee on Veterans and Retirement. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Martin of Eagle Lake.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

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**AN ACT Relating to Disability Retirement and to Benefits for Survivors of  
Disability Retired Employees under the State Retirement System.**

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

**Sec. 1. R. S., T. 5, § 1091, sub-§ 6, ¶ A, additional.** Subsection 6 of section 1091 of Title 5 of the Revised Statutes, is amended by adding a new paragraph A to read as follows:

**A. Wherever in this chapter, as amended, the term "member" is used in the context of a retired but living person or as a deceased person, whether in active employment or retired under benefits provided by this chapter immediately prior to death, such term shall be construed as means of reference to the person and such use shall be deemed not inconsistent with this subsection, that any member who becomes a beneficiary as the result of his own retirement or who dies, thereupon ceases to be a member.**

**Sec. 2. R. S., T. 5, § 1122, sub-§ 1, ¶ B, amended.** Paragraph B of subsection 1 of section 1122 of Title 5 of the Revised Statutes, as amended, is further amended to read as follows:

**B. Upon retirement in accordance with paragraph A, a member shall receive a retirement allowance determined as follows, or, if eligible, a service retirement allowance determined in accordance with section 1121, if greater, in which case the member shall be entitled to the exercise of an option under section 1126 providing for a reduced retirement allowance to the member with an allowance after death of the member to a surviving spouse, which shall be the only beneficiary designation authorized in the**

event of the death of a member retired on a disability, and, at time of death, receiving a service retirement allowance in lieu of a lesser disability retirement allowance as determined under this section: An amount equal to ~~90%~~ of  $1/50$  of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds 25% of his average final compensation; otherwise an amount equal to 25% of his average final compensation, provided such allowance shall not exceed 90% of  $1/50$  of his average final compensation multiplied by the number of years which would be creditable to him were his creditable service to include the period from the time of retirement to the attainment of age 60. ~~At the death of the member after retirement the excess, if any, of his accumulated contributions at the time of his retirement over the portion of the total retirement allowance payments, actually made to him during his lifetime, which is the actuarial equivalent of such accumulated contributions, shall be paid in a lump sum to such person, if any, as he has nominated by written designation duly acknowledged and filed with the board of trustees, otherwise his estate~~ Whenever, after retirement on a disability retirement allowance determined in accordance with this paragraph, a service retirement allowance computed under section 1121 based on the actual number of years of creditable service or, if the member then be under age 60 with less than 30 years of creditable service, a service retirement allowance reduced by the applicable rate of reduction for service retirement prior to age 60, would yield a larger retirement allowance than the disability retirement allowance determined under this paragraph, the member shall be entitled to the larger amount with option privileges provided under section 1126 except as modified by this paragraph. Whenever a member becomes eligible to exercise an option under section 1126 as the result of receiving a service retirement allowance larger than a disability retirement allowance, the trustees forthwith shall notify the member, by certified mail, of his eligibility to exercise such option and shall inform the member of the final date on which the notification by the member of the exercise of such option must be in the possession of the board of trustees in order for the option to be effective. If, by the specified date, the member has not placed in the possession of the board of trustees his notification of an option selection, the service retirement allowance will be paid as one without survivor options and payments shall terminate as of the date of death of the member. At the death of the member while receiving a disability retirement allowance determined in accordance with this paragraph, the benefits provided in section 1124 shall be paid to such survivor or survivors as may be entitled to them under section 1124 and payments of such benefits shall continue in accordance with the provisions of section 1124.

Each person receiving a retirement allowance shall become entitled to a recomputation of benefits based upon the change in formula provided by ~~this~~ chapter 542 of the public laws of 1973 and such amount, exclusive of retirement allowance adjustments as granted under section 1128, shall be paid. Said recomputation and payments therefor shall become effective as of the first day of the month following the effective date of this Act November, 1973. Such adjustments as may have been granted under section 1128 shall not be changed, improved or impaired.

Except that any member, whose application for a disability retirement allowance is approved and who has ~~25 or more years of creditable service and who has not attained age 60~~, shall be entitled to a disability retirement allowance, the computation for which shall be 90% of  $1/50$  of his average final compensation multiplied by the number of years which would be creditable to him ~~were his creditable service to include the period from the time of retirement to the attainment of age 60~~. If the member has 30 or more years of creditable service and is retired for reasons of disability prior to the attainment of age 60 under a service retirement allowance determined in accordance with section 1121, such retirement allowance shall not be subject to the reduction prescribed by section 1121, subsection 3 for service retirement prior to the attainment of age 60, provided that the member, prior to retirement, undergo the medical examination required for approval of retirement for ordinary disability under paragraph A, and, subsequently until attainment of age 60, undergo the periodic medical examinations required of persons retired for disability under subsection 3. **A member retired for disability reasons on an unreduced service retirement allowance prior to attainment of age 60 after having completed 30 or more years of creditable service shall be entitled to exercise an option as authorized under section 1126, except as modified by this paragraph.**

Any recipient of a disability retirement allowance on the effective date of this Act shall be entitled to a review and a recomputation of benefits and, if this amount is greater than that being paid, then an adjustment shall be made, without retroactivity, and shall become effective on the first day of the next following month.

Any disability retirement allowance for a member retired on a disability prior to the effective date of this Act and which, at the time the retired member attains age 60, is larger than a service retirement allowance based on the actual number of years of creditable service, shall not be reduced. In such case, the allowance will continue to be considered as a disability retirement allowance until the death of the member and the member shall have no right of selection of an option under section 1126 but shall be limited to those survivor benefits provided in section 1124; provided that such member at age 60 may voluntarily accept a lesser retirement allowance for service retirement, in which case he shall be entitled to select an option as authorized in section 1126 except as modified by this paragraph.

**Sec. 3. R. S., T. 5, § 1124, sub-§ 1, ¶ B, sub-¶ (1), amended.** Subparagraph (1) of paragraph B of subsection 1 of section 1124 of Title 5 of the Revised Statutes, as amended by section 4 of chapter 122 of the public laws of 1973, is further amended to read as follows:

(1) **General eligibility provisions for non-service-connected death.** The deceased member must have had at least 18 months of creditable service within the 42 months prior to date of death, or be ~~under 60 years of age and~~ receiving at the time of death a disability allowance as provided in section 1122 and any lump sum due under section 1122 shall be paid into the Survivors' Benefit Fund, except that any member who has been restored to service after having been a recipient of a disability retirement

allowance or a service incurred disability retirement allowance shall be exempted from the requirement that the member must have had at least 18 months of creditable service within the 42 months immediately prior to date of death. The provisions of this subparagraph shall apply in the event of death of a member retired on a disability retirement allowance under section 1122, subsection 1, paragraph B, as it existed prior to the effective date of this Act, under which the disability retirement allowance exceeds the amount of a service retirement allowance at age 60 and the recipient chooses not to accept the lesser service retirement allowance which would entitle him to the selection of an option under section 1126.

### STATEMENT OF FACT

The retirement law as now written allows no provision for survivor income for the widow of a state employee or teacher retired on a disability retirement allowance unless the death of the employee or teacher occurs before he reaches 60 years of age, in which case, the widow, or the male spouse, together with dependent children become eligible to survivor benefit payments which, in the case of the spouse, continue for life unless remarriage occurs prior to age 60. Allowances for up to 3 children under 18 years of age, or up to 22 years of age if they are full-time students and unmarried, continue until the children successively go over the age of eligibility. However, if a disabled employee or teacher lives until he reaches his 16th birthday, death on or after the 16th birthday permanently and totally deprives his widow of any income payments derived from his service for the remainder of her life, even though the employee or teacher may have served for up to 25 years and contributed thousands of dollars to the retirement system.

The enactment of chapter 542 of the public laws of 1973, by reducing the number of years required for a service retirement discounted for retirement prior to age 60, makes possible a service retirement at an earlier age. It is inequitable to the disabled person and his family to equate a voluntary early retirement with one that is forced upon the member by physical or mental conditions over which he has no control. While a member faced with termination of work for disability after having served in excess of 25 years of covered employment as a state employee or teacher, could elect an early service retirement allowance in lieu of a disability retirement allowance in order to provide survivor income protection for his widow in the probable event of his prior death, the increasingly severe reduction in allowance for each year that the date of retirement is remote from age 60 and the further reduction required in providing for 2 life expectancies, so reduces the allowance payable upon retirement as to be insufficient for subsistence level of living. At common age 50, for example, an early retirement with 25 years of service by the member and provision for Option 2 survivor coverage, the retirement allowance would be approximately 67% of that for the member's life alone at age 60, which means that a retirement income forced by a disabling condition would be approximately 33.5% of the average income over

the best 3 years of earnings and somewhat less than that percentage on the basis of the most recent income before disability forced a retirement. As limited as it is, the employee or teacher with 25 years or more of service has that choice. The employee or teacher disabled with less than 25 years of service has no choice but to accept the disability retirement allowance calculation which provides no survivor income protection unless he dies before reaching age 60.

The possibility, even probability, that the physical condition which brought on the disability retirement of the member is such that constant care of the disabled member would prevent his wife from securing employment to supplement family income and to provide for her own financial security in the event of the probable prior death of her husband. The end result would be to inject the widow into a search for gainful livelihood following her husband's death when she, herself, would be in the vicinity of 60 years of age or older, inexperienced, untrained, with inadequate background to compete for suitable employment, and time to provide for her own retirement when no longer able to work.

In addition, there is a major factor of public policy, not to mention personal abhorrence, in placing a financial premium on the death of any person by a specified date, which, in effect, is exactly what the present retirement law provides.

This bill would provide survivor benefit coverage for a surviving spouse for life, unless remarriage occurred before age 60, and it would permit the granting of a service retirement allowance with survivor option privileges whenever the service retirement allowance exceeds the retirement allowance as computed under the disability provision.

It also would repeal, without retroactive effect upon any member who has retired under its provisions, the disability retirement provision for a member with more than 25 but less than 30 years of creditable service. This provision is made redundant by the enactment of chapter 542 of the public laws of 1973.

The bill also makes a technical clarification of the repeated use of the term "member" throughout the retirement law in a manner inconsistent with the definition of the time when membership ceases as contained in section 1091 of the law. This step is taken in order that there may not, at some future time, be a ruling adverse to a retired person's interests, or to those of the beneficiaries of deceased persons, dependent upon the question of whether he is or is not a member of the system.