

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2316

6
7 H.P. 1751

House of Representatives, March 19, 1984

8 Referred to the Committee on Aging, Retirement and Veterans. Sent up
9 for concurrence and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Hickey of Augusta.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Clarify Disability
18 Retirement Provisions.
19

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

22 Sec. 1. 5 MRSA §1122, sub-§1, as amended by PL
23 1977, c. 580, §12, is further amended to read:

24 1. Occurrence of disability. Any eligible member
25 who, while in service and prior to attaining age 60
26 or reaching the normal retirement age for a particu-
27 lar group of employees, if earlier, has become men-
28 tally or physically incapacitated to such an extent
29 that it is impossible for him to perform the duties
30 of his present employment position, or those of any
31 other position offering comparable pay and benefits,
32 may, if such incapacity can be expected to be perma-
33 nent, retire on a disability retirement allowance
34 upon written application to the executive director
35 and approval of the application by the executive di-

1 rector. The incapacity of the member must be such
2 that it shall be revealed by medical examination or
3 tests conducted by a qualified physician, who shall
4 be mutually agreed upon by the director and member.
5 Any such examination or tests shall be conducted at a
6 place mutually agreed upon and the costs thereof
7 shall be paid by the retirement system.

8 Sec. 2. 5 MRSA §1122, sub-§1-A, ¶A, as enacted
9 by PL 1977, c. 450, §2, is amended to read:

10 A. Members with less than 5 years of continuous
11 creditable service immediately preceding their
12 application for a disability allowance are not
13 eligible for that disability retirement allowance
14 if that disability is the result of a physical or
15 mental condition which existed prior to the per-
16 sons latest membership in the system, unless the
17 disability is a result of, or has been substan-
18 tially aggravated by, an injury or accident re-
19 ceived in the line of duty. If a member with less
20 than 5 years of continuous creditable service ap-
21 plies for disability retirement benefits within
22 this time period, he shall undergo all medical
23 examinations and tests required by the retirement
24 system. These examinations and tests shall be
25 conducted by a qualified physician to be mutually
26 agreed upon by the executive director and the
27 member, and the costs thereof shall be paid by
28 the retirement system. The purpose of the exami-
29 nation and tests shall be to determine if the
30 physical or mental condition claimed preexisted
31 the person's latest membership in the system.

32 Sec. 3. 5 MRSA §1122, sub-§4, as amended by PL
33 1977, c. 564, §33, is further amended to read:

34 4. Continuance of disability retirement allow-
35 ance. Payment of a disability retirement allowance
36 shall continue, subject to subsection 3, as long as
37 the incapacity of the beneficiary to perform the du-
38 ties of his employment position continues, except
39 that, after the disability has continued for 5 3
40 years, the incapacity of the beneficiary must also be
41 such that he is unable to engage in any substantially
42 gainful activities for which he is qualified by
43 training, education or experience. The executive di-

1 rector may require, once each year, a beneficiary who
2 is receiving a disability retirement allowance to un-
3 dergo medical examinations or tests conducted by a
4 qualified physician, who shall be mutually agreed
5 upon by the director and member, for the purpose of
6 determining the incapacity of the beneficiary. Any
7 such examination or tests shall be conducted at a
8 place mutually agreed upon and the costs thereof
9 shall be paid by the retirement system. Should the
10 beneficiary refuse to submit to any such examination
11 or tests, his disability retirement allowance shall
12 be discontinued until his withdrawal of such refusal,
13 and should his refusal continue for one year, all his
14 rights to any further benefits under this section
15 shall cease. If it is determined on the basis of any
16 such examination or tests that the incapacity of a
17 beneficiary has ceased, the payment of his disability
18 retirement allowance shall terminate and he shall
19 have all of the reemployment privileges granted other
20 employees.

21 For the purpose of this subsection, the disability
22 beneficiary's average final compensation at retire-
23 ment, used to determine his earning capacity, shall
24 include the same percentage adjustments, if any, that
25 would apply to the amount of retirement allowance of
26 the beneficiary under section 1128.

27 The executive director with approval of the board of
28 trustees may enter into vocational or physical reha-
29 ilitation agreements with state or private rehabili-
30 tation agencies and beneficiaries of disability al-
31 lowances. The purpose of such agreements shall be to
32 restore the beneficiaries of disability retirement
33 allowances to substantially gainful employment. Such
34 beneficiaries shall then have all of the reemployment
35 privileges granted other employees.

36 A beneficiary of a disability allowance upon becoming
37 reemployed shall continue to receive full benefits
38 for a total trial work period of 9 months while test-
39 ing his ability to work. Continuing benefits after
40 9 months will be based upon subsection 5.

41 Any beneficiary whose disability allowance is discon-
42 tinued under this paragraph may apply for and have
43 his disability allowance restored within 5 years of

1 becoming reemployed after the discontinuance of this
2 allowance if he again becomes disabled as a result of
3 the medical condition for which the initial disabili-
4 ty retirement allowance was granted. The disability
5 shall be documented by current medical data. The re-
6 stored allowance shall be based upon the disability
7 allowance previously granted, adjusted to include the
8 same percentage increases, if any, that would apply
9 to the retirement allowance of the beneficiary under
10 section 1128.

11 Sec. 4. 5 MRSA §1122, sub-§5, as amended by PL
12 1979, c. 222, §1, is repealed and the following en-
13 acted in its place:

14 5. Earnings. The executive director shall re-
15 quire each beneficiary who is receiving a disability
16 retirement allowance to submit, each calendar year, a
17 statement of his compensation received from engaging
18 in any gainful occupation during that year. If, for
19 any such year, the total of the compensation and the
20 disability retirement allowance of the beneficiary is
21 greater than his average final compensation, the ex-
22 cess shall be deducted from the disability or service
23 retirement allowance payments during the next calen-
24 dar year, those deductions to be prorated on a month-
25 ly basis in an equitable manner prescribed by the
26 board of trustees over the year or part thereof for
27 which benefits are received. The beneficiary shall
28 be responsible for reimbursing the Maine State Re-
29 irement System for any excess payments not so de-
30 ducted.

31 If a beneficiary does not submit such a statement
32 within 30 days of receipt of request therefor by the
33 executive director, his disability retirement allow-
34 ance shall be discontinued until that statement is
35 submitted and, if the statement is not submitted
36 within one year of receipt of that request, all his
37 rights to any further benefits shall cease.

38 For the purposes of this subsection, the disability
39 beneficiary's average final compensation used to de-
40 termine his earning capacity shall be adjusted to in-
41 clude all wage and salary increases applied to his
42 previous position subsequent to his receiving a dis-
43 ability retirement allowance.

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STATEMENT OF FACT

2 Section 1 of the bill removes the qualifying age
3 of 60 years from the Revised Statutes, Title 5, sec-
4 tion 1121, subsection 1, and refers only to the nor-
5 mal retirement age. This bill also provides for the
6 possibility of a lateral job transfer before an indi-
7 vidual is entitled to a disability retirement allow-
8 ance.

9 Section 2 standardizes the medical conditions ap-
10 plied to all applicants for disability allowances.

11 Section 3. The period for review of a disability
12 recipient's capacity to work is reduced from 5 years
13 to 3 years upon the recommendation of experts in the
14 area of rehabilitation. It is recommended that pers-
15 ons able to reenter the work force be encouraged to
16 do so as rapidly as possible. The longer the period
17 of time before review, the more difficult it is to
18 persuade a recipient of benefits that it might be
19 possible for him to return to work.

20 The 2nd paragraph of Title 5, section 1122, sub-
21 section 4, now appears under Title 5, section 1122,
22 subsection 5, earnings.

23 This allows the retirement system to enter into
24 contractual agreements to provide for rehabilitation
25 of persons on disability allowances. To encourage
26 entry into such programs, participants would be as-
27 sured reinstatement privileges.

28 In addition, this section provides a bonus and
29 income protection for a person for 9 months following
30 reemployment after completion of a rehabilitation
31 program. The recipients of this benefit would then
32 be subject to the earning provisions applied to all
33 recipients of disability allowances.

34 A disabled state employee returning to state ser-
35 vice would continue to be eligible for a disability
36 allowance under Title 5, section 1122, subsection
37 1-A, as the time while receiving a disability allow-
38 ance is added to continuous creditable service. An
39 employee foregoing disability and reemployed in the
40 private sector would not receive the same disability

1 protection. By offering continuing protection for 5
2 years for the same disability, an individual would
3 not be discouraged from seeking work in the private
4 sector.

5 Section 4 proposes changes in earnings allowed
6 under disability which provides that upon reemploy-
7 ment the retirement system will continue to pay the
8 difference between the beneficiary's average final
9 compensation, adjusted for subsequent salary in-
10 creases in his previous position, and the new level
11 of compensation.

12 The paragraph previously appearing under Title 5,
13 section 1122, subsection 4, providing adjustments in
14 average final compensation has been modified and
15 placed here.

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