

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 668

6
7 H.P. 469

House of Representatives, February 26, 1985

8 Submitted by the Joint Standing Committee on Aging, Retirement and
9 Veterans pursuant to Joint Rule 19. Approved by the Legislative Council
10 April 25, 1984.

11 Reported by Representative Hickey from the Committee on Aging,
Retirement and Veterans and printed under Joint Rule 19.

EDWIN H. PERT, Clerk

12 STATE OF MAINE
13

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

17 AN ACT to Modify State Disability Retirement
18 Provisions.
19

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

22 Sec. 1. 5 MRSA §1001, sub-§24-A is enacted to
23 read:

24 24-A. Suitable work. "Suitable work" means work
25 appropriate to the employee's physical and psycholog-
26 ical condition when a position is available but does
27 not include employment for which the employee is not
28 qualified. Rate of pay shall not be considered in
29 determining suitable work.

30 Sec. 2. 5 MRSA §1122, sub-§1, as amended by PL
31 1977, c. 580, §12, is further amended to read:

32 1. Occurrence of disability. Any eligible member
33 who, while in service and prior to attaining age 60
34 or reaching the normal retirement age for a particu-

1 lar group of employees, if earlier, has become men-
2 tally or physically incapacitated to such an extent
3 that it is impossible for him to perform the duties
4 of his present employment position or those of any
5 other position offering suitable work with the same
6 employer, may, if such incapacity can be expected to
7 be permanent, retire on a disability retirement al-
8 lowance upon written application to the executive di-
9 rector and approval of the application by the execu-
10 tive director. The incapacity of the member must be
11 such that it shall be revealed by medical examination
12 or tests conducted by a qualified physician, who
13 shall be mutually agreed upon by the director and
14 member specialist in an appropriate medical field.
15 Any such examination or tests shall be conducted at a
16 place mutually agreed upon and The member shall
17 choose from a list of 3 specialists provided by the
18 medical board. Vocational assessments may be re-
19 quired by the retirement system. The costs
20 thereof shall be paid by the retirement system.

21 The application must be filed within 3 months from
22 the date the member ceased being paid or within 12
23 months of the date he ceased being paid provided that
24 he was disabled at that time and was on leave of ab-
25 sence for medical reasons without pay since he ceased
26 being paid. An application may be filed later than
27 the times provided in this subsection if it can be
28 shown that the member was mentally incapacitated at
29 the time he ceased being paid.

30 Sec. 3. 5 MRSa §1122, sub-§1-A, as enacted by PL
31 1977, c. 450, §2, is amended to read:

32 1-A. Eligibility for disability.

33 A. Members with less than 5 years of continuous
34 creditable service immediately preceding their
35 application for a disability allowance are not
36 eligible for that disability retirement allowance
37 if that disability is the result of a physical or
38 mental condition which existed prior to the per-
39 sons latest membership in the system, unless the
40 disability is a result of, or preexisting
41 condition has been substantially aggravated by,
42 an injury or accident received in the line of
43 duty the present employment. If a member with

1 less than 5 years of continuous creditable ser-
2 vice applies for disability retirement benefits,
3 he shall undergo all medical examinations and
4 tests required by the retirement system in order
5 to determine whether the disability is the result
6 of a condition which preexisted membership. The
7 member shall choose from a list of 3 qualified
8 specialists in the appropriate medical field.
9 This list shall be provided by the medical board.
10 The costs shall be paid by the retirement system.

11 B. Any person who becomes a member of the system
12 ~~on or after July 1, 1977,~~ shall submit a state-
13 ment of his health to the executive director on
14 forms prescribed by the executive director. If
15 the executive director determines that additional
16 information is necessary to determine the extent
17 of any preexisting disability of the employee,
18 the executive director may require that a medical
19 examination or tests be submitted as evidence of
20 that employee's health. ~~Any such examination or~~
21 ~~tests shall be conducted at a place mutually~~
22 ~~agreed upon and~~ The member shall choose from a
23 list of 3 qualified specialists in the appropri-
24 ate area of medicine. The list shall be provided
25 by the medical board. ~~the~~ The costs thereof shall
26 be paid by the retirement system. This statement
27 of health or examination or test result shall on-
28 ly be utilized in determining eligibility for a
29 disability retirement allowance pursuant to para-
30 graph A. Any member subject to this paragraph who
31 does not submit a statement of health as re-
32 quired, ~~prior to his application for disability~~
33 benefits in accordance with this section, at the
34 time of employment will not be eligible for ~~those~~
35 disability benefits unless he establishes to the
36 satisfaction of the executive director that he
37 meets the qualifications of paragraph A. Failure
38 to disclose a preexisting medical condition is
39 subject of the action under section 1004.

40 Sec. 4. 5 MRSA §1122, sub-§2, as repealed and
41 replaced by PL 1975, c. 622, §54, is amended to
42 read:

43 2. Retirement allowance payments. Upon retire-
44 ment in accordance with subsection 1, a person who

1 became a member before January 1, 1986, shall receive
2 a retirement allowance equal to 66 2/3% of his aver-
3 age final compensation.

4 Upon retirement in accordance with subsection 1, a
5 person who became a member on or after January 1,
6 1986, shall receive a retirement allowance consisting
7 of a benefit which shall be an annual amount deter-
8 mined by multiplying the total years and fractions of
9 years of creditable service of the member, and in ad-
10 dition the projected number of years and fractions of
11 years between the effective date of his disability
12 retirement and normal retirement age, assuming con-
13 tinuous service, by 2% of his average final compensa-
14 tion. In no case shall a disability retirement bene-
15 fit be greater than 80% of the member's average final
16 compensation or less than 30% of his average final
17 compensation, except where the amount is reduced in
18 subsection 5-A.

19 Retirement allowance payments shall commence at the
20 date of termination of active service of the member
21 but not more than 6 months prior to the date of re-
22 ceipt by the executive director of the written appli-
23 cation by or on behalf of the member for disability
24 retirement, unless it shall be shown that it was not
25 reasonably possible to file such application for dis-
26 ability benefits within such 6-month period and that
27 such application was made as soon as was reasonably
28 possible.

29 The continuance of payment of a disability retirement
30 allowance shall be subject to the terms of subsec-
31 tions 3 and 4.

32 **Sec. 5. 5 MRSA §1122, sub-§3, ¶A, as repealed**
33 **and replaced by PL 1977, c. 696, §40, is amended to**
34 **read:**

35 **A. The disability retirement allowance of a ben-**
36 **eficiary shall cease on the 10th anniversary of**
37 **his normal retirement age, as defined in section**
38 **1001, subsection 27, or prior thereto whenever**
39 **the service retirement allowance of a beneficiary**
40 **would equal or exceed the amount of his disabili-**
41 **ty retirement allowance.**

1 Sec. 6. 5 MRSA §1122, sub-§4, as amended by PL
2 1977, c. 564, §33, is further amended to read:

3 4. Continuance of disability retirement allow-
4 ance. Payment of a disability retirement allowance
5 shall continue, subject to subsection 3, as long as
6 the incapacity of the beneficiary to perform the du-
7 ties of his employment position continues or until
8 suitable work with his employer becomes available,
9 except that, after the disability has continued for 5
10 years one year, the incapacity of the beneficiary
11 must also be such that he is unable to engage in any
12 substantially gainful activities for which he is
13 qualified by training, education or experience. The
14 executive director may require, once each year, a
15 beneficiary who is receiving a disability retirement
16 allowance to undergo medical examinations or tests
17 conducted by a qualified physician, ~~who shall be mu-~~
18 ~~tually agreed upon by the director and member,~~ spe-
19 cialist in an appropriate medical field for the pur-
20 pose of determining the incapacity of the beneficia-
21 ry. Any such examination or tests shall be conducted
22 at a place mutually agreed upon and The member shall
23 choose from a list of 3 qualified specialists pro-
24 vided by the medical board. If it is found that the
25 beneficiary is able to engage in any substantially
26 gainful activities and if no suitable work opportuni-
27 ties are available, the retirement system may have a
28 vocational assessment done by a vocational rehabili-
29 tation facility selected by the retirement system.
30 ~~the~~ The costs thereof shall be paid by the retirement
31 system. Should the beneficiary refuse to submit to
32 any such examination or, tests, or vocational
33 assessment his disability retirement allowance shall
34 be discontinued until his withdrawal of such refusal,
35 and, should his refusal continue for one year, all
36 his rights to any further benefits under this section
37 shall cease. If it is determined on the basis of any
38 such examination or tests that the incapacity of a
39 beneficiary has ceased, the payment of his disability
40 retirement allowance shall terminate and he shall
41 have all of the reemployment privileges granted other
42 employees of that employer.

43 For the purpose of this subsection, the disability
44 beneficiary's average final compensation at retire-
45 ment, used to determine his earning capacity, shall

1 include the same percentage adjustments, if any, that
2 would apply to the amount of retirement allowance of
3 the beneficiary under section 1128-

4 Sec. 7. 5 MRSA §1122, sub-§4-A is enacted to
5 read:

6 4-A. Return to work encouraged. The executive
7 director with approval of the board of trustees may
8 enter into vocational or physical rehabilitation
9 agreements with state or private rehabilitation agen-
10 cies and beneficiaries of disability allowances. The
11 purpose of the agreements shall be to restore the
12 beneficiaries of disability retirement allowances to
13 employment in which they are performing substantially
14 gainful activities. The beneficiaries shall have all
15 of the reemployment privileges granted other employ-
16 ees of that employer.

17 Notwithstanding subsection 5 and section 1123, a ben-
18 efiary of a disability allowance who has completed
19 a vocational or physical rehabilitation training pro-
20 gram and who becomes reemployed shall continue to re-
21 ceive full benefits for a total trial work period of
22 9 months while testing his ability to work. Contin-
23 ued benefits after 9 months shall be governed by sub-
24 section 5. If a person is employed on a trial basis
25 in a position in which he is performing substantially
26 gainful activities the executive director may agree
27 to pay the employer for all or a portion of the costs
28 of that position for up to one year.

29 Any beneficiary whose disability allowance is
30 discontinued under this paragraph may apply for and
31 have his disability allowance restored within 5 years
32 of becoming reemployed after the discontinuance of
33 his allowance if he again becomes disabled as a re-
34 sult of the medical condition for which the initial
35 disability retirement allowance was granted. The
36 disability shall be documented by current medical da-
37 ta. The restored allowance shall be based upon the
38 disability allowance previously granted, adjusted to
39 include the same percentage increases, if any, that
40 would apply to the retirement allowance of the ben-
41 efiary under section 1128.

1 Section 2 deletes reference to age 60 using the
2 general term normal retirement age, provides a new
3 method of selecting a doctor to perform the examina-
4 tion and revises the provisions regarding the initial
5 determination of disability. Currently, a member
6 must be unable to perform the duties of his present
7 job. The bill requires that he also be unable to
8 perform other suitable work with the same employer.
9 The section adds a new requirement that the applica-
10 tion for disability benefits must be filed within 3
11 months of the time the member ceased being paid by
12 the State.

13 Sections 3 and 4 clarify the language regarding
14 the aggravation of a preexisting condition by the
15 present job for members with less than 5 years of
16 continuous service, require such a member to undergo
17 all tests required by the retirement system at the
18 time he applies for disability, provide a new method
19 to select a doctor to perform the examinations and
20 changes in the time when a statement of health must
21 be filed. Currently, a member must file the state-
22 ment prior to his application for disability bene-
23 fits. The bill changes that to the time of employ-
24 ment. Failure to do so at that time will result in
25 ineligibility for benefits. The retirement system
26 screens new employees to make sure they have filed
27 statements. Section 3 also changes the method of
28 calculating disability benefits. For employees hired
29 after January 1, 1986, disability benefits will be 2%
30 per year of actual and projected service until age
31 60, rather than the current 2/3 of average final com-
32 pensation.

33 Section 6 makes changes in conditions under which
34 disability benefits continue to be paid. The section
35 adds language concerning suitable work with his em-
36 ployer consistent with section 2, decreases from 5
37 years to 1 year the length of time before the retire-
38 ment system may review the case to determine if the
39 recipient is able to engage in any substantially
40 gainful employment and provides a new method for se-
41 lection of a doctor to perform the examination. The
42 bill also grants the retirement system the authority
43 to have a vocational assessment done on the recipient
44 and grants reemployment rights to the recipient.

1 Section 7 allows the retirement system to con-
2 tract with state or private agencies for rehabilita-
3 tion services for recipients in order to restore them
4 to substantially gainful employment. This section
5 also allows a recipient who has completed a rehabili-
6 tation program to continue to receive benefits for 9
7 months after returning to work, provides that the re-
8 tirement system may enter into agreements with em-
9 ployers to pay all or part of the wages of a person
10 returned to work on a trail basis and allows a person
11 who returns to work to go out on disability again if
12 his disability recurs within 5 years.

13 Section 8 changes the amount of earnings allowed
14 while receiving disability benefits. Presently, the
15 earnings limit is \$10,000; the bill provides that the
16 benefits would be the difference between the average
17 final compensation, adjusted for subsequent salary
18 increases in the position and the new earnings.

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