

MAINE STATE LEGISLATURE

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(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2478

H.P. 1810 House of Representatives, March 8, 1988
Reported by Representative CARTER for the Committee to
Study the Retirement System pursuant to Public Law 1987,
Chapter 68, Section 9.

Reference to the Joint Standing Committee on Aging,
Retirement and Veterans suggested and printing ordered under
Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Establish Disability Retirement
2 Benefits for Members of the Maine State
3 Retirement System.
4

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

8 Whereas, the principal addition of this
9 legislation is the provision for rehabilitation

1 services to recipients of disability retirement
2 benefits from the Maine State Retirement System; and

3 Whereas, this rehabilitation encouraging return to
4 active service is in the best interest of both
5 recipients of disability retirement benefits and
6 employers; and

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

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

15 Sec. 1. 5 MRSA §17106, sub-§3, ¶¶C and D, as
16 enacted by PL 1985, c. 801, §§5 and 7, are amended to
17 read:

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

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

27 Sec. 2. 5 MRSA §17106, sub-§3, ¶E is enacted to
28 read:

29 E. Make recommendations to the executive director
30 and board to determine if rehabilitation services
31 should be provided to a person who is the
32 recipient of a disability retirement benefit under
33 chapter 423, subchapter V, article 3-A, or chapter
34 425, subchapter V, article 3-A.

35 Sec. 3. 5 MRSA §17152, as enacted by PL 1985,
36 c. 801, §§5 and 7, is amended to read:

1 §17152. Funds

2 All of the assets of the retirement system shall
3 be credited according to the purpose for which they
4 are held among 5 7 funds, namely:

5 1. Members' Contribution Fund. The Members'
6 Contribution Fund;

7 2. Retirement Allowance Fund. The Retirement
8 Allowance Fund;

9 3. Expense Fund. The Expense Fund;

10 4. Survivors' Benefit Fund. The Survivors'
11 Benefit Fund; and

12 5. State Retiree Health Insurance Fund. The
13 State Retiree Health Insurance Fund;

14 6. State Retired Teachers' Health Insurance
15 Fund. The State Retired Teachers' Health Insurance
16 Fund; and

17 7. Disability Retirement Benefit Fund. The
18 Disability Retirement Benefit Fund.

19 Sec. 4. 5 M RSA §17251, as enacted by PL 1985,
20 c. 801, §§5 and 7, is amended to read:

21 §17251. Establishment

22 The Retirement Allowance Fund is established in
23 which shall be accumulated all reserves required for
24 the payment of benefits under this Part, other than
25 reserves in the Members' Contribution Fund and, the
26 Survivors' Benefit Fund and the Disability Retirement
27 Benefit Fund.

28 Sec. 5. 5 M RSA c. 421, sub-c. IV, art. 8 is
29 enacted to read:

30 ARTICLE 8. DISABILITY RETIREMENT BENEFIT FUND

31 §17421. Establishment

1 The Disability Retirement Benefit Fund is
2 established in which shall be accumulated all reserves
3 required for the payment of disability retirement
4 benefits and other costs as set forth in chapter 423,
5 articles 3 and 3-A and chapter 425, subchapter V,
6 articles 3 and 3-A. The fund shall include an account
7 for the accumulated contributions of former members
8 who are recipients of disability retirement benefits
9 under this article.

10 §17422. Disability contribution

11 For each member, the State and those participating
12 local districts which have elected disability
13 retirement benefits under chapter 425, article 3 or
14 3-A shall pay annually into the Disability Retirement
15 Benefit Fund an amount equal to a certain percentage
16 of the annual earnable compensation of the member, to
17 be known as the "disability contribution."

18 §17423. Disability contribution rate

19 The percentage rate of the disability
20 contribution, described in section 17422, shall be
21 fixed on the basis of the liabilities established by
22 chapter 423, subchapter V, articles 3 and 3-A and
23 chapter 425, subchapter V, articles 3 and 3-A. There
24 shall be one percentage rate applicable to all
25 employers whose employees are covered by chapter 423,
26 subchapter V, article 3-A and chapter 425, subchapter
27 V, article 3-A.

28 Sec. 6. 5 MRSA §17755, as enacted by PL 1985,
29 c. 801, §§5 and 7, is amended to read:

30 §17755. Disability retirement service credit

31 A beneficiary shall receive service credit for the
32 purpose of determining benefits under this Part for
33 the period following termination of service for which
34 he receives disability retirement benefits under
35 subchapter V, ~~article~~ articles 3 and 3-A.

36 Sec. 7. 5 MRSA §17901-A is enacted to read:

1 §17901-A. Applicability

2 This article applies to all disabilities which
3 occur before July 1, 1988. All disabilities which
4 occur after June 30, 1988 are subject to article 3-A.

5 Sec. 8. 5 MRSA c. 423, sub-c. V, art. 3-A is
6 enacted to read:

7 ARTICLE 3-A. DISABILITY RETIREMENT BENEFITS AFTER
8 JUNE 30, 1988

9 §17921. Definitions

10 As used in this article, unless the context
11 otherwise indicates, the following terms have the
12 following meanings.

13 1. Disabled. "Disabled" means that the member is
14 mentally or physically incapacitated under the
15 following conditions:

16 A. Which incapacity can be expected to be
17 permanent;

18 B. To the extent that it is impossible to perform
19 the duties of the member's employment position;

20 C. After the incapacity has continued for 2
21 years, the incapacity must render the member
22 unable to engage in any substantially gainful
23 activity for which the member is qualified by
24 training, education or experience; and

25 D. So that the incapacity will be revealed by
26 examinations or tests conducted in accordance with
27 section 17926.

28 §17922. Applicability

29 This article applies to all disabilities which
30 occur after June 30, 1988.

31 §17923. Statement of health

1 1. Statement required. Any person who becomes a
2 member of the retirement system on or after July 1,
3 1988, shall submit a statement of that person's health
4 to the executive director on forms prescribed by the
5 executive director.

6 2. Additional information. If the executive
7 director determines that additional information is
8 necessary to determine the extent of any preexisting
9 disability of the member, the executive director may
10 require that the member undergo medical and, when
11 appropriate, psychological examinations or tests with
12 the results submitted as evidence of the member's
13 health. Any examinations or tests under this
14 subsection are governed by section 17926.

15 3. Limitation on use. The statement of health or
16 the results of examinations or tests may be used only
17 to determine eligibility for a disability retirement
18 benefit under section 17924, subsection 2.

19 4. Sanction. Any member who is required to
20 submit a statement of health under this section and
21 who does not submit the statement before applying for
22 disability retirement benefits is not eligible to
23 receive those benefits unless that member establishes
24 to the satisfaction of the executive director that the
25 member meets the requirements of section 17924,
26 subsection 2.

27 §17924. Qualification for benefit

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

31 A. While in service; and

32 B. Before reaching the normal retirement age.

33 2. Exception. A member with fewer than 5 years
34 of continuous creditable service immediately preceding
35 that member's application for a disability retirement
36 benefit is not eligible for that benefit if the

1 disability is the result of a physical or mental
2 condition which existed before the member's latest
3 membership in the retirement system, unless the
4 disability is a result of, or has been substantially
5 aggravated by, an injury or accident received in the
6 line of duty.

7 §17925. Application

8 In order to receive a benefit under this article:

9 1. Written application. The member must apply in
10 writing to the executive director in the format
11 specified by the executive director.

12 A. The executive director shall submit the
13 application and all pertinent medical and
14 psychological information to the medical board for
15 review as required by section 17106, subsection 3.

16 B. As required by section 17106, the medical
17 board shall make a recommendation as to whether or
18 not the member should be provided vocational
19 rehabilitation services;

20 2. Workers' compensation. If the incapacity upon
21 which the application is based is a result of an
22 injury or accident received in the line of duty, the
23 application must include proof that the member has
24 made application for benefits under the workers'
25 compensation laws; and

26 3. Approval. The written application must be
27 approved by the executive director upon finding that
28 the member has met the requirements of section 17924.

29 §17926. Examinations or tests

30 Any examinations or tests recommended by the
31 medical board in accordance with section 17106 or
32 required by the executive director under section
33 17921, subsection 1, paragraph D; section 17923,
34 subsection 2; section 17924; section 17929, subsection
35 2, paragraph B; or section 17933, subsection 3,
36 paragraph A are governed as follows.

1 1. Agreed upon physician. The examinations or
2 tests shall be conducted by a qualified physician and,
3 when appropriate, a qualified psychologist mutually
4 agreed upon by the executive director and the member
5 claiming to be disabled.

6 2. Agreed upon place. The examinations or tests
7 shall be conducted at a place mutually agreed upon by
8 the executive director and the member claiming to be
9 disabled.

10 3. Costs. The costs incurred under subsections 1
11 and 2 shall be paid by the retirement system.

12 §17927. Rehabilitation

13 Upon recommendations from the medical board,
14 rehabilitation services shall be provided to any
15 person who is the recipient of a disability retirement
16 benefit under this article. Services shall be
17 provided by private and public rehabilitation
18 counselors, governmental agencies and others approved
19 by the executive director as qualified to provide
20 rehabilitation services. The executive director shall
21 consider a rehabilitation counselor's rate of
22 successfully placing rehabilitated employees in jobs
23 relative to the placement rates of other counselors in
24 the State as fundamental in deciding whether to
25 approve the counselor as qualified.

26 1. Rehabilitation plan. If rehabilitation is
27 feasible and recommended, the retirement system shall
28 designate a rehabilitation provider to evaluate the
29 person and develop a rehabilitation plan.

30 2. Costs. The executive director may contract
31 with rehabilitation providers to develop and carry out
32 approved rehabilitation plans.

33 A. Except as provided in paragraph B, the
34 executive director may pay these providers from
35 funds accumulated in the Disability Retirement
36 Benefit Fund.

1 B. If the person is entitled to other benefits to
2 meet the cost of vocational rehabilitation
3 services, that person must first apply for and use
4 those benefits to the extent available to pay for
5 the goods and services provided.

6 3. Approval of rehabilitation plan. The
7 executive director shall approve any rehabilitation
8 plan the executive director finds to be in the
9 person's best interest and consistent with the
10 purposes of this article. The person and the
11 executive director shall indicate in writing their
12 approval of and agreement to the submitted
13 rehabilitation plan. The person shall approve the
14 plan within 30 days or, within that time period,
15 submit to the executive director the name of an
16 alternate provider for the executive director's
17 consideration. If the rehabilitation plan includes
18 return to employment with the employer for whom the
19 person worked before becoming disabled, the employer
20 shall also indicate in writing approval of the plan.

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

28 A. The executive director shall notify the person
29 in writing of the decision to discontinue the
30 disability retirement benefit.

31 B. The decision shall be subject to appeal under
32 section 17451.

33 5. Return to service. If the rehabilitation plan
34 includes return to employment with the person's former
35 employer, that person shall be reemployed in
36 accordance with the plan. If the plan does not
37 include reemployment with the former employer, the
38 executive director shall notify the former employer,
39 in writing, that the person has completed the
40 rehabilitation plan and is ready to return to

1 employment. The former employer shall reemploy the
2 person in the first available position for which that
3 person is qualified, taking into consideration that
4 person's training, education and experience, including
5 that person's rehabilitation plan.

6 6. Other employment under system. If the former
7 employer has not reemployed the person before the
8 expiration of 3 months, the executive director shall
9 inform all other employers whose employees are covered
10 by this article and chapter 425, subchapter V, article
11 3-A, of the availability of the person and solicit
12 their assistance in finding employment for that person.

13 §17928. Computation of benefit

14 When a member qualified under section 17924
15 retires, after approval for disability retirement by
16 the executive director in accordance with section
17 17925, the member shall receive a disability
18 retirement benefit equal to 66 2/3% of that member's
19 average final compensation.

20 §17929. Payment of benefit

21 1. Beginning. Payment of disability retirement
22 benefits shall begin on the first day of the month
23 following the date of termination of active service of
24 the member, but not more than 6 months before the date
25 of receipt by the executive director of the written
26 application, by or on behalf of the member, for
27 disability retirement, unless it is shown that:

28 A. It was not reasonably possible to file the
29 application for disability retirement benefits
30 within the 6-month period; and

31 B. The application was made as soon as was
32 reasonably possible.

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

36 A. The disability retirement benefit ceases and a

1 service retirement benefit begins:

2 (1) On the 10th anniversary of the person's
3 normal retirement age, as defined in section
4 17001, subsection 23; or

5 (2) When the service retirement benefit of a
6 person equals or exceeds the amount of the
7 disability retirement benefit, if that occurs
8 before the date in subparagraph (1).

9 (a) When calculating the person's
10 service retirement benefit, the average
11 final compensation shall be the average
12 final compensation at the time that
13 person terminated from active service
14 before receiving disability retirement
15 benefits adjusted by the same percentage
16 adjustments, if any, that were applied
17 to the disability retirement benefits
18 under section 17806.

19 (b) The person shall receive service
20 credit for the purpose of determining
21 benefits under this Part for the period
22 following termination of service for
23 which that person receives disability
24 retirement benefits under this article;
25 and

26 B. After the disability has continued for 2
27 years, the disability must render the person
28 unable to engage in any substantially gainful
29 activity for which the person is qualified by
30 training, education or experience.

31 (1) The executive director may require, once
32 each year, that the person undergo
33 examinations or tests, conducted in
34 accordance with section 17926, to determine
35 the person's disability.

36 (2) If the person refuses to submit to the
37 examinations or tests under subparagraph (1),
38 the disability retirement benefit shall be

1 discontinued until that person withdraws the
2 refusal.

3 (3) If the person's refusal under
4 subparagraph (2) continues for one year, all
5 rights to any further benefits under this
6 article shall cease.

7 (4) If it is determined, on the basis of the
8 examinations or tests under subparagraph (1),
9 that the disability of a person no longer
10 exists, the payment of the disability
11 retirement benefit shall cease.

12 §17930. Reduction in amount of benefit

13 1. Definition. As used in this section, unless
14 the context otherwise indicates, "adjusted final
15 compensation" means the present rate of pay of an
16 employee in the position in which the person was
17 employed immediately before termination and becoming a
18 recipient of a disability retirement benefit.

19 2. Compensation from employment not covered by
20 this article. If any person who is the recipient of a
21 disability retirement benefit is reemployed by an
22 employer whose employees are not covered by this
23 article and if the total of the person's monthly
24 disability retirement benefit for any year and the
25 person's total earnable compensation for that year
26 exceeds the person's average final compensation at the
27 time that person became a recipient of a disability
28 retirement benefit, increased or decreased by the same
29 percentage adjustments as have been granted by section
30 17806:

31 A. The excess shall be deducted from the
32 disability or service retirement benefits during
33 the next calendar year, the deductions to be
34 prorated on a monthly basis in an equitable manner
35 prescribed by the board over the year or part of
36 the year for which the benefits are received;

37 B. The person shall reimburse the retirement
38 system for any excess payments not deducted under

1 paragraph A. If the retirement benefit payments
2 are eliminated by this subsection, the disability
3 shall be deemed to no longer exist, the payments
4 of the disability retirement benefit shall be
5 discontinued and, except as provided in paragraph
6 D, all of the person's rights to benefits under
7 this article shall cease;

8 C. If, during the first 5 years of reemployment,
9 the person again becomes disabled, terminates
10 employment and is not covered by any other
11 disability program, the retirement system shall
12 resume paying the disability retirement benefit
13 payable prior to the reemployment with all
14 applicable cost-of-living adjustments. The
15 executive director shall require examinations or
16 tests to determine whether the person is disabled
17 as described in section 17921; and

18 D. At any time before the elimination of
19 disability retirement benefit payments by this
20 subsection, the person may request that benefit
21 payments be terminated and the executive director
22 shall terminate benefit payments at the end of the
23 month in which the request is received.

24 3. Compensation from employment covered by this
25 article. If any person who is the recipient of a
26 disability retirement benefit is reemployed by that
27 person's prior employer or any other employer whose
28 employees are covered by this article and if the total
29 of the person's disability benefit for any year and
30 the person's total earnable compensation for that year
31 exceeds the adjusted final compensation:

32 A. The disability or service retirement benefits
33 will be reduced during the next calendar year by
34 the amount that the total compensation exceeds the
35 adjusted final compensation;

36 B. The deductions shall be prorated on a monthly
37 basis in an equitable manner prescribed by the
38 board over the year or part of the year during
39 which the benefits are received;

1 C. The person shall reimburse the retirement
2 system for any excess payments not deducted under
3 paragraph A;

4 D. If the retirement benefit payments are
5 eliminated by this subsection:

6 (1) The person shall again become a member
7 of the retirement system and begin
8 contributing at the current rate; and

9 (2) When the person again retires, the
10 person shall receive benefits computed on the
11 basis of that person's entire creditable
12 service and in accordance with the law in
13 effect at that time;

14 E. If, during the first 5 years of reemployment,
15 the person again becomes disabled and terminates
16 employment, the retirement system shall resume
17 paying the disability retirement benefit payable
18 prior to the reemployment with all applicable
19 cost-of-living adjustments, or, if greater, a
20 disability retirement benefit based upon the
21 person's current average final compensation. The
22 executive director shall require examinations or
23 tests to determine whether the person is disabled
24 as described in section 17921; and

25 F. At any time before the elimination of
26 disability retirement benefit payments by this
27 subsection, the person may request that benefit
28 payments be terminated and the executive director
29 shall terminate benefit payments at the end of the
30 month in which the request is received.

31 4. Disability payments under other laws. The
32 reduction of disability retirement benefits because of
33 disability benefits received under other laws is
34 governed as follows.

35 A. The amount of any disability retirement
36 benefit payable under this article shall be
37 reduced by any amount received by the person for
38 the same disability under either or both of the

1 following:

2 (1) The workers' compensation or similar
3 laws, except amounts which may be paid or
4 payable under Title 39, section 56 or 56-A; or

5 (2) The United States Social Security Act,
6 if the employment for which creditable
7 service with the employer is allowed was also
8 covered under that Act at the date of
9 disability retirement.

10 B. The reduction in the disability retirement
11 benefit shall be the amount necessary to make the
12 total of the initial disability retirement
13 benefit, not including adjustments under section
14 17806, plus the offset amounts of workers'
15 compensation and social security benefits, as
16 limited under paragraph A, equal to 80% of average
17 final compensation.

18 C. The disability retirement benefit may not be
19 reduced below the amount of the retirement benefit
20 which is the actuarial equivalent of the member's
21 accumulated contributions at the time of
22 retirement.

23 D. Lump-sum settlements of benefits that would
24 reduce the disability retirement benefit under
25 this subsection shall be prorated on a monthly
26 basis in an equitable manner prescribed by the
27 board.

28 (1) These prorated lump-sum settlements may
29 not include any part of the lump-sum
30 settlement attributable to rehabilitation,
31 attorneys' fees, physicians', nurses',
32 hospital, medical, surgical or related fees
33 or charges or any amount paid or payable
34 under Title 39, section 56 or 56-A.

35 (2) These prorated lump-sum settlements
36 shall reduce the disability retirement
37 benefit in the same manner and amount as
38 monthly benefits under this subsection.

1 E. Any dispute about amounts paid or payable
2 under workers' compensation or about the amount of
3 the lump-sum settlement and its proration shall be
4 determined on petition by a single member of the
5 Workers' Compensation Commission in accordance
6 with Title 39. These determinations may be
7 appealed under Title 39, section 103-B.

8 §17931. Statement of compensation

9 1. Requirement. The executive director shall
10 require each person who is the recipient of a
11 disability retirement benefit to submit, each calendar
12 year, a statement of compensation received from any
13 gainful occupation during that year.

14 2. Failure to submit statement. Failure to
15 submit the statement under subsection 1 shall result
16 in the following:

17 A. If the person fails to submit the statement
18 required under subsection 1 within 30 days of
19 receipt of the executive director's request for
20 the statement, the disability retirement benefit
21 shall be discontinued until the statement is
22 submitted; or

23 B. If the person fails to submit the statement
24 required under subsection 1, within one year of
25 receipt of the executive director's request for
26 the statement, all rights to further benefits
27 shall cease.

28 §17932. Voluntary return to service

29 1. Right to reinstatement. If a person who is
30 the recipient of a disability retirement benefit
31 decides that the person is no longer incapacitated and
32 is able to perform the duties of that person's
33 employment position, the employer for whom the person
34 last worked before becoming disabled shall reinstate
35 the person to the first available position for which
36 the person is qualified and which is consistent with
37 the person's prior work experience. If a collective

1 bargaining agreement applies to such a position, the
2 employer may offer only a position which the person
3 could claim by virtue of the seniority accumulated at
4 the time of the disability.

5 2. Dispute over mental or physical capacity. If
6 there is a dispute between the person and the former
7 employer over the person's mental or physical capacity
8 to perform a specific job, at the option of the person
9 that dispute shall be resolved by the majority of 3
10 physicians, one appointed and reimbursed by the
11 person, one appointed and reimbursed by the employer
12 and one appointed by the executive director and
13 reimbursed by the retirement system.

14 3. Termination or reduction in benefits. At any
15 time before the elimination of disability retirement
16 benefit payments under section 17930, subsection 3,
17 the person may request that benefit payments be
18 terminated and the executive director shall terminate
19 benefit payments at the end of the month in which the
20 request is received.

21 4. Reinstatement of benefits. If, during the
22 first 5 years of reinstatement, the person again
23 becomes disabled and terminates employment, the
24 retirement system shall resume paying the disability
25 retirement benefit payable before the reinstatement
26 with all applicable cost-of-living adjustments, or, if
27 greater, a disability retirement benefit based upon
28 the person's current average final compensation. The
29 executive director may require examinations or tests
30 to determine whether the person is disabled under
31 section 17921.

32 §17933. Service retirement

33 1. Average final compensation. The service
34 retirement benefit of a person who returns to
35 employment with that person's former employer or any
36 other employer whose employees are covered by this
37 article or chapter 425, subchapter V, article 3-A,
38 after having been the recipient of a disability
39 retirement benefit, will be computed in its entirety
40 using the average final compensation as defined by

1 section 17001, subsection 4, on the date of that
2 person's termination from service immediately before
3 becoming the recipient of a service retirement benefit.

4 2. Costs of benefits. The cost of benefits based
5 upon service credits earned before and during
6 disability shall be charged to the Disability
7 Retirement Benefit Fund. The cost of benefits based
8 upon service credits earned after becoming reemployed
9 shall be charged to the account of the employer
10 through whom the service credits were earned.

11 3. Special plans. The service credits earned
12 after return to employment by a person who was
13 employed under a special plan before becoming the
14 recipient of a disability retirement benefit may be
15 credited toward completing the service requirements
16 for retirement under that special plan. As used in
17 this section, unless the context otherwise indicates,
18 "special plan" means any of the retirement programs in
19 section 17851, subsections 4 to 11 or section 18453,
20 subsections 2 to 9.

21 A. The executive director may require, once each
22 year, that the member undergo examinations or
23 tests, conducted in accordance with section 17926,
24 to determine that the member is still disabled to
25 the extent that it is impossible to perform the
26 duties of that member's former employment position.

27 B. If the member refuses to submit to the
28 examinations or tests under paragraph A, the
29 service credits earned after that date shall be
30 based upon the plan applicable to the position in
31 which the member is currently employed.

32 C. If it is determined, on the basis of the
33 examinations or tests under paragraph A, that the
34 member is no longer disabled to the extent that it
35 is impossible to perform the duties of the former
36 employment position, the member shall:

37 (1) Return to employment in a position
38 covered by the same special plan, or a
39 comparable special plan, that covered the

1 former employment position; or

2 (2) Remain in the current employment
3 position and have the service credits earned
4 thereafter based upon the plan applicable to
5 the position in which the member is currently
6 employed.

7 Sec. 9. 5 MRSA §18355, as enacted by PL 1985,
8 c. 801, §§5 and 7, is amended to read:

9 §18355. Disability retirement service credit

10 A beneficiary shall receive service credit for the
11 purpose of determining benefits under this Part for
12 the period following termination of service for which
13 he receives disability retirement benefits under
14 subchapter V, ~~article~~ articles 3 and 3-A.

15 Sec. 10. 5 MRSA §18501-A is enacted to read:

16 §18501-A. Applicability

17 This article applies to all disabilities which
18 occur before July 1, 1988. All disabilities which
19 occur after June 30, 1988 are subject to article 3-A.

20 Sec. 11. 5 MRSA c. 425, sub-c. V, art. 3-A is
21 enacted to read:

22 ARTICLE 3-A. DISABILITY RETIREMENT BENEFITS AFTER
23 JUNE 30, 1988

24 §18521. Definitions

25 As used in this article, unless the context
26 otherwise indicates, the following terms have the
27 following meanings.

28 1. Disabled. "Disabled" means that the member is
29 mentally or physically incapacitated under the
30 following conditions:

31 A. Which incapacity can be expected to be
32 permanent;

1 B. To the extent that it is impossible to perform
2 the duties of the member's employment position;

3 C. After the incapacity has continued for 2
4 years, the incapacity must render the member
5 unable to engage in any substantially gainful
6 activity for which the member is qualified by
7 training, education or experience; and

8 D. So that the incapacity will be revealed by
9 examinations or tests conducted in accordance with
10 section 18526.

11 §18522. Applicability

12 This article applies to all disabilities which
13 occur after June 30, 1988.

14 §18523. Statement of health

15 1. Statement required. Any person who becomes a
16 member of the retirement system on or after July 1,
17 1988, shall submit a statement of health to the
18 executive director on forms prescribed by the
19 executive director.

20 2. Additional information. If the executive
21 director determines that additional information is
22 necessary to determine the extent of any preexisting
23 disability of the member, the executive director may
24 require that the member undergo medical and, when
25 appropriate, psychological examinations or tests with
26 the results submitted as evidence of the member's
27 health. Any examinations or tests under this
28 subsection are governed by section 18526.

29 3. Limitation on use. The statement of health or
30 the results of examinations or tests may be used only
31 to determine eligibility for a disability retirement
32 benefit under section 18524, subsection 2.

33 4. Sanction. Any member who is required to
34 submit a statement of health under this section and
35 who does not submit the statement before applying for

1 disability retirement benefits is not eligible to
2 receive those benefits unless that member establishes
3 to the satisfaction of the executive director that
4 that member meets the requirements of section 18524,
5 subsection 2.

6 §18524. Qualification for benefit

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

10 A. While in service; and

11 B. Before reaching the normal retirement age.

12 2. Exception. A member with fewer than 5 years
13 of continuous creditable service immediately preceding
14 an application for a disability retirement benefit is
15 not eligible for that benefit if the disability is the
16 result of a physical or mental condition which existed
17 before the member's latest membership in the
18 retirement system, unless the disability is a result
19 of, or has been substantially aggravated by, an injury
20 or accident received in the line of duty.

21 §18525. Application

22 In order to receive a benefit under this article:

23 1. Written application. The member must apply in
24 writing to the executive director in the format
25 specified by the executive director;

26 A. The executive director shall submit the
27 application and all pertinent medical and
28 psychological information to the medical board for
29 review as required by section 17106, subsection 3.

30 B. As required by section 17106, the medical
31 board shall make a recommendation as to whether or
32 not the member should be provided vocational
33 rehabilitation services;

34 2. Workers' compensation. If the incapacity upon

1 which the application is based is a result of an
2 injury or accident received in the line of duty, the
3 application must include proof that the member has
4 made application for benefits under the workers'
5 compensation laws; and

6 3. Approval. The written application must be
7 approved by the executive director upon finding that
8 the member has met the requirements of section 18524.

9 §18526. Examinations or tests

10 Any examinations or tests, recommended by the
11 medical board in accordance with section 17106 or
12 required by the executive director, under section
13 18521, subsection 1, paragraph D; section 18523,
14 subsection 2; section 18524; section 18529, subsection
15 2, paragraph B; or section 18533, subsection 3,
16 paragraph A are governed as follows.

17 1. Agreed upon physician. The examinations or
18 tests shall be conducted by a qualified physician and,
19 when appropriate, a qualified psychologist mutually
20 agreed upon by the executive director and the member
21 claiming to be disabled.

22 2. Agreed upon place. The examinations or tests
23 shall be conducted at a place mutually agreed upon by
24 the executive director and the member claiming to be
25 disabled.

26 3. Costs. The costs incurred under subsections 1
27 and 2 shall be paid by the retirement system.

28 §18527. Rehabilitation

29 Upon recommendations from the medical board,
30 rehabilitation services shall be provided to any
31 person who is the recipient of a disability retirement
32 benefit under this article. Services shall be
33 provided by private and public rehabilitation
34 counselors, governmental agencies and others approved
35 by the executive director as qualified to provide
36 rehabilitation services. The executive director shall
37 consider a rehabilitation counselor's rate of

1 successfully placing rehabilitated employees in jobs
2 relative to the placement rates of other counselors in
3 the State as fundamental in deciding whether to
4 approve the counselor as qualified.

5 1. Rehabilitation plan. If rehabilitation is
6 recommended, the retirement system shall designate a
7 rehabilitation provider to evaluate the person and
8 develop a rehabilitation plan.

9 2. Costs. The executive director may contract
10 with rehabilitation providers to develop and carry out
11 approved rehabilitation plans.

12 A. Except as provided in paragraph B, the
13 executive director may pay these providers from
14 funds accumulated in the Disability Retirement
15 Benefit Fund.

16 B. If the person is entitled to other benefits to
17 meet the cost of vocational rehabilitation
18 services, that person must first apply for and use
19 those benefits to the extent available to pay for
20 the goods and services provided.

21 3. Approval of rehabilitation plan. The
22 executive director shall approve any rehabilitation
23 plan found to be in the person's best interest and
24 consistent with the purposes of this article. The
25 person and the executive director shall indicate in
26 writing their approval of and agreement to the
27 submitted rehabilitation plan. The person shall
28 approve the plan within 30 days or, within that time
29 period, submit to the executive director the name of
30 an alternate provider for the executive director's
31 consideration. If the rehabilitation plan includes
32 return to employment with the employer for whom the
33 person worked before becoming disabled, the employer
34 shall also indicate in writing approval of the plan.

35 4. Decline of rehabilitation. If, after
36 recommendation by the medical board, a person declines
37 use of the rehabilitation services offered or refuses
38 to agree to a rehabilitation plan approved by the
39 executive director, the disability retirement benefit

1 payments shall cease at the end of the month following
2 the decline or refusal.

3 A. The executive director shall notify the person
4 in writing of the decision to discontinue the
5 disability retirement benefit.

6 B. The decision shall be subject to appeal under
7 section 17451.

8 5. Return to service. If the rehabilitation plan
9 includes return to employment with the person's former
10 employer, that person shall be reemployed in
11 accordance with the plan. If the plan does not
12 include reemployment with the former employer, the
13 executive director shall notify the former employer,
14 in writing, that the person has completed the
15 rehabilitation plan and is ready to return to
16 employment. The former employer shall reemploy the
17 person in the first available position for which that
18 person is qualified, taking into consideration
19 training, education and experience, including that
20 person's rehabilitation plan.

21 6. Other employment under system. If the former
22 employer has not reemployed the person before the
23 expiration of 3 months, the executive director shall
24 inform all other employers whose employees are covered
25 by this article and chapter 423, subchapter V, article
26 3-A, of the availability of the person and solicit
27 their assistance in finding employment for that person.

28 §18528. Computation of benefit

29 When a member qualified under section 18524
30 retires, after approval for disability retirement by
31 the executive director in accordance with section
32 18525, the member shall receive a disability
33 retirement benefit equal to 66 2/3% of that member's
34 average final compensation.

35 §18529. Payment of benefit

36 1. Beginning. Payment of disability retirement
37 benefits shall begin on the first day of the month

1 following the date of termination of active service of
2 the member, but not more than 6 months before the date
3 of receipt by the executive director of the written
4 application, by or on behalf of the member, for
5 disability retirement, unless it is shown that:

6 A. It was not reasonably possible to file the
7 application for disability retirement benefits
8 within the 6-month period; and

9 B. The application was made as soon as was
10 reasonably possible.

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

14 A. The disability retirement benefit ceases and a
15 service retirement benefit begins:

16 (1) On the 10th anniversary of the person's
17 normal retirement age, as defined in section
18 17001, subsection 23; or

19 (2) When the service retirement benefit of a
20 person equals or exceeds the amount of the
21 disability retirement benefit, if that occurs
22 before the date in subparagraph (1).

23 (a) When calculating the person's
24 service retirement benefit, the average
25 final compensation shall be the average
26 final compensation at the time that
27 person terminated from active service
28 before receiving disability retirement
29 benefits adjusted by the same percentage
30 adjustments, if any, that were applied
31 to the disability retirement benefits
32 under section 18407.

33 (b) The person shall receive service
34 credit for the purpose of determining
35 benefits under this Part for the period
36 following termination of service for
37 which that person receives disability

1 retirement benefits under this article;
2 and

3 B. After the disability has continued for 2
4 years, the disability must render the person
5 unable to engage in any substantially gainful
6 activity for which the person is qualified by
7 training, education or experience.

8 (1) The executive director may require, once
9 each year, that the person undergo
10 examinations or tests, conducted in
11 accordance with section 18526, to determine
12 the person's disability.

13 (2) If the person refuses to submit to the
14 examinations or tests under subparagraph (1),
15 the disability retirement benefit shall be
16 discontinued until that person withdraws the
17 refusal.

18 (3) If the person's refusal under
19 subparagraph (2) continues for one year, all
20 rights to any further benefits under this
21 article shall cease.

22 (4) If it is determined, on the basis of the
23 examinations or tests under subparagraph (1),
24 that the disability of a person no longer
25 exists, the payment of the disability
26 retirement benefit shall cease.

27 §18530. Reduction in amount of benefit

28 1. Definition. As used in this section, unless
29 the context otherwise indicates, "adjusted final
30 compensation" means the present rate of pay of the
31 employee in the position in which the person was
32 employed immediately before termination and becoming a
33 recipient of a disability retirement benefit.

34 2. Compensation from employment not covered by
35 this article. If any person who is the recipient of a
36 disability retirement benefit is reemployed by an
37 employer whose employees are not covered by this

1 article and if the total of the person's monthly
2 disability retirement benefit for any year and the
3 person's total earnable compensation for that year
4 exceeds the person's average final compensation at the
5 time that person became a recipient of a disability
6 retirement benefit, increased or decreased by the same
7 percentage adjustments as have been granted by section
8 17806:

9 A. The excess shall be deducted from the
10 disability or service retirement benefits during
11 the next calendar year, the deductions to be
12 prorated on a monthly basis in an equitable manner
13 prescribed by the board over the year or part of
14 the year for which the benefits are received;

15 B. The person shall reimburse the retirement
16 system for any excess payments not deducted under
17 paragraph A. If the retirement benefit payments
18 are eliminated by this subsection, the disability
19 shall be deemed to no longer exist, the payments
20 of the disability retirement benefit shall be
21 discontinued and, except as provided in paragraph
22 D, all of the person's rights to benefits under
23 this article shall cease;

24 C. If, during the first 5 years of reemployment,
25 the person again becomes disabled, terminates
26 employment and is not covered by any other
27 disability program, the retirement system shall
28 resume paying the disability retirement benefit
29 payable prior to the reemployment with all
30 applicable cost-of-living adjustments. The
31 executive director shall require examinations or
32 tests to determine whether the person is disabled
33 as described in section 18521; and

34 D. At any time before the elimination of
35 disability retirement benefit payments by this
36 subsection, the person may request that benefit
37 payments be terminated and the executive director
38 shall terminate benefit payments at the end of the
39 month in which the request is received.

40 3. Compensation from employment covered by this

1 article. If any person who is the recipient of a
2 disability retirement benefit is reemployed by that
3 person's prior employer or any other employer whose
4 employees are covered by this article and if the total
5 of the person's disability benefit for any year and
6 the person's total earnable compensation for that year
7 exceeds the adjusted final compensation:

8 A. The disability or service retirement benefits
9 will be reduced during the next calendar year by
10 the amount that the total compensation exceeds the
11 adjusted final compensation;

12 B. The deductions shall be prorated on a monthly
13 basis in an equitable manner prescribed by the
14 board over the year or part of the year during
15 which the benefits are received;

16 C. The person shall reimburse the retirement
17 system for any excess payments not deducted under
18 paragraph A;

19 D. If the retirement benefit payments are
20 eliminated by this subsection:

21 (1) The person shall again become a member
22 of the retirement system and begin
23 contributing at the current rate; and

24 (2) When the person again retires, the
25 person shall receive benefits computed on the
26 basis of that person's entire creditable
27 service and in accordance with the law in
28 effect at that time;

29 E. If, during the first 5 years of reemployment,
30 the person again becomes disabled and terminates
31 employment, the retirement system shall resume
32 paying the disability retirement benefit payable
33 prior to the reemployment with all applicable
34 cost-of-living adjustments, or, if greater, a
35 disability retirement benefit based upon the
36 person's current average final compensation. The
37 executive director shall require examinations or
38 tests to determine whether the person is disabled

1 as described in section 18521; and

2 F. At any time before the elimination of
3 disability retirement benefit payments by this
4 subsection, the person may request that benefit
5 payments be terminated and the executive director
6 shall terminate benefit payments at the end of the
7 month in which the request is received.

8 4. Disability payments under other laws. The
9 reduction of disability retirement benefits because of
10 disability benefits received under other laws is
11 governed as follows.

12 A. The amount of any disability retirement
13 benefit payable under this article shall be
14 reduced by any amount received by the person for
15 the same disability under either or both of the
16 following:

17 (1) The workers' compensation or similar
18 laws, except amounts which may be paid or
19 payable under Title 39, section 56 or 56-A; or

20 (2) The United States Social Security Act,
21 if the employment for which creditable
22 service with the employer is allowed was also
23 covered under that Act at the date of
24 disability retirement.

25 B. The reduction in the disability retirement
26 benefit shall be the amount necessary to make the
27 total of the initial disability retirement
28 benefit, not including adjustments under section
29 17806, plus the offset amounts of workers'
30 compensation and social security benefits, as
31 limited under paragraph A, equal to 80% of average
32 final compensation.

33 C. The disability retirement benefit may not be
34 reduced below the amount of the retirement benefit
35 which is the actuarial equivalent of the member's
36 accumulated contributions at the time of
37 retirement.

1 D. Lump-sum settlements of benefits that would
2 reduce the disability retirement benefit under
3 this subsection shall be prorated on a monthly
4 basis in an equitable manner prescribed by the
5 board.

6 (1) These prorated lump-sum settlements may
7 not include any part of the lump-sum
8 settlement attributable to rehabilitation,
9 attorneys' fees, physicians', nurses',
10 hospital, medical, surgical or related fees
11 or charges or any amount paid or payable
12 under Title 39, section 56 or 56-A.

13 (2) These prorated lump-sum settlements
14 shall reduce the disability retirement
15 benefit in the same manner and amount as
16 monthly benefits under this subsection.

17 E. Any dispute about amounts paid or payable
18 under workers' compensation or about the amount of
19 the lump-sum settlement and its proration shall be
20 determined on petition by a single member of the
21 Workers' Compensation Commission in accordance
22 with Title 39. These determinations may be
23 appealed under Title 39, section 103-B.

24 §18531. Statement of compensation

25 1. Requirement. The executive director shall
26 require each person who is the recipient of a
27 disability retirement benefit to submit, each calendar
28 year, a statement of compensation received from any
29 gainful occupation during that year.

30 2. Failure to submit statement. Failure to
31 submit the statement under subsection 1 shall result
32 in the following:

33 A. If the person fails to submit the statement
34 required under subsection 1 within 30 days of
35 receipt of the executive director's request for
36 the statement, the disability retirement benefit
37 shall be discontinued until the statement is
38 submitted; or

1 B. If the person fails to submit the statement
2 required under subsection 1, within one year of
3 receipt of the executive director's request for
4 the statement, all rights to further benefits
5 shall cease.

6 §18532. Voluntary return to service

7 1. Right to reinstatement. If a person who is the
8 recipient of a disability retirement benefit decides
9 that the person is no longer incapacitated and is able
10 to perform the duties of that person's employment
11 position, the employer for whom the person last worked
12 before becoming disabled shall reinstate the person to
13 the first available position for which the person is
14 qualified and which is consistent with the person's
15 prior work experience. If a collective bargaining
16 agreement applies to such a position, the employer may
17 offer only a position which the person could claim by
18 virtue of the seniority accumulated at the time of the
19 disability.

20 2. Dispute over mental or physical capacity. If
21 there is a dispute between the person and the former
22 employer over the person's mental or physical capacity
23 to perform a specific job, at the option of the person
24 that dispute shall be resolved by the majority of 3
25 physicians, one appointed and reimbursed by the
26 person, one appointed and reimbursed by the employer
27 and one appointed by the executive director and
28 reimbursed by the retirement system.

29 3. Termination or reduction in benefits. At any
30 time before the elimination of disability retirement
31 benefit payments under section 18530, subsection 3,
32 the person may request that benefit payments be
33 terminated and the executive director shall terminate
34 benefit payments at the end of the month in which the
35 request is received.

36 4. Reinstatement of benefits. If, during the
37 first 5 years of reinstatement, the person again
38 becomes disabled and terminates employment, the
39 retirement system shall resume paying the disability

1 retirement benefit payable before the reinstatement
2 with all applicable cost-of-living adjustments, or, if
3 greater, a disability retirement benefit based upon
4 the person's current average final compensation. The
5 executive director may require examinations or tests
6 to determine whether the person is disabled under
7 section 18521.

8 §18533. Service retirement

9 1. Average final compensation. The service
10 retirement benefit of a person who returns to
11 employment with that person's former employer or any
12 other employer whose employees are covered by this
13 article or chapter 423, subchapter V, article 3-A,
14 after having been the recipient of a disability
15 retirement benefit, will be computed in its entirety
16 using the average final compensation as defined by
17 section 17001, subsection 4, on the date of that
18 person's termination from service immediately before
19 his becoming the recipient of a service retirement
20 benefit.

21 2. Costs of benefits. The cost of benefits based
22 upon service credits earned before and during
23 disability shall be charged to the Disability
24 Retirement Benefit Fund. The cost of benefits based
25 upon service credits earned after becoming reemployed
26 shall be charged to the account of the employer
27 through whom the service credits were earned.

28 3. Special plans. The service credits earned
29 after return to employment by a person who was
30 employed under a special plan before becoming the
31 recipient of a disability retirement benefit may be
32 credited toward completing the service requirements
33 for retirement under that special plan. As used in
34 this section, unless the context otherwise indicates,
35 "special plan" means any of the retirement programs in
36 section 17851, subsections 4 to 11 or section 18453,
37 subsections 2 to 9.

38 A. The executive director may require, once each
39 year, that the member undergo examinations or
40 tests, conducted in accordance with section 18526,

1 to determine that the member is still disabled to
2 the extent that it is impossible to perform the
3 duties of that member's former employment position.

4 B. If the member refuses to submit to the
5 examinations or tests under paragraph A, the
6 service credits earned thereafter shall be based
7 upon the plan applicable to the position in which
8 the member is currently employed.

9 C. If it is determined, on the basis of the
10 examinations or tests under paragraph A, that the
11 member is no longer disabled to the extent that it
12 is impossible to perform the duties of the former
13 employment position, the member shall:

14 (1) Return to employment in a position
15 covered by the same special plan, or a
16 comparable special plan, that covered the
17 former employment position; or

18 (2) Remain in the current employment
19 position and have the service credits earned
20 thereafter based upon the plan applicable to
21 the position in which the member is currently
22 employed.

23 Emergency clause. In view of the emergency
24 cited in the preamble, this Act shall take effect when
25 approved.

26 STATEMENT OF FACT

27 This bill establishes a new disability retirement
28 plan for members of the Maine State Retirement
29 System. This new plan will be applicable to state
30 employees, teachers and employees of participating
31 local districts which have adopted as part of their
32 retirement plan the disability retirement plan set
33 forth in the Maine Revised Statutes, Title 5, chapter
34 425, subchapter V, article 3. Subsequent to its
35 enactment, other participating local districts may
36 adopt this new plan.

1 The principal difference between the existing
2 disability retirement plan and the plan contained in
3 this bill is that under this plan the Maine State
4 Retirement System may provide rehabilitation services
5 to recipients of disability retirement benefits upon
6 recommendation of the Maine State Retirement System's
7 medical board. Any person who returns to employment
8 with his previous employer or any other employer whose
9 employees are covered by this plan would have no
10 reduction in disability retirement benefits until
11 combined earnings on his new job and disability
12 retirement benefit exceed the amount he would have
13 been earning had he continued to be employed on his
14 previous job. A person who becomes employed by an
15 employer whose employees are not covered by this plan
16 would have his earnings limited to the difference
17 between his average final compensation, plus
18 cost-of-living adjustments, and his disability
19 retirement benefit.

20 Sections 1 and 2 of the bill add to the duties of
21 the Maine State Retirement System's medical board to
22 include duties relating to the new disability plan.

23 Section 3 adds the Disability Retirement Benefit
24 Fund to the list of funds administered by the Maine
25 State Retirement System and corrects an error in prior
26 legislation when a new fund was created, but not added
27 to this list.

28 Section 4 amends a section relating to the
29 Retirement Allowance Fund recognizing the
30 establishment of the Disability Retirement Benefit
31 Fund.

32 Section 5 establishes the Disability Retirement
33 Benefit Fund from which all benefits under this plan
34 will be paid. The State, as the employer of state
35 employees and teachers and participating local
36 districts whose employees are covered by this plan,
37 will make contributions to the fund based upon
38 actuarial valuations, including all members of the
39 retirement system covered by this plan, hence there
40 will be one rate applicable to all employers.

1 Sections 6 and 9 amend 2 sections in the present
2 law to provide for continuation of service credits for
3 persons who are recipients of disability retirement
4 benefits under this plan in the same manner as persons
5 receiving benefits under the present plan receive
6 service credits.

7 Sections 7 and 10 provide that all disabilities
8 which occur before the effective date of this bill are
9 subject to the present disability retirement plan and
10 all disabilities which occur on and after the
11 effective date of this bill are subject to this plan.

12 Sections 8 and 11 contain the statutory language
13 for the new disability retirement plan. Section 8
14 pertains to state employees and teachers and section
15 11 pertains to participating local district
16 employees. The principal differences between the
17 present disability retirement plan and this plan were
18 discussed in the opening paragraph. There are several
19 other areas where this plan differs from the present
20 plan. If a person who is the recipient of a
21 disability retirement benefit has his benefit
22 discontinued because of his becoming reemployed, he is
23 entitled to have his benefit payments resumed if he
24 again becomes disabled within 5 years of becoming
25 reemployed. A person who is reemployed by any
26 employer whose employees are covered by this plan will
27 have complete portability between his predisability
28 employment and his post-disability employment. A
29 person who was under a special plan, such as police or
30 fire fighter, before becoming disabled will receive
31 credit toward retirement under that special plan upon
32 becoming reemployed in any position covered by this
33 plan.

34 Because it is expected that the rehabilitation
35 provision in this bill will encourage return to active
36 service of disability recipients from the Maine State
37 Retirement System, there will be a reduction in the
38 long-term costs of disability retirement. An estimate
39 of the reduction of contribution rates cannot be
40 determined.

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