

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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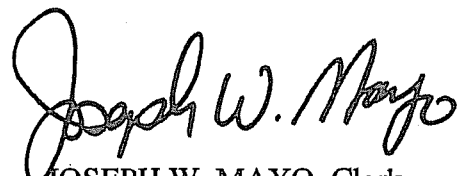
H.P. 921

House of Representatives, April 12, 1993

**An Act Related to Disability Retirement under the Maine State Retirement System.**

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Submitted by the Maine State Retirement System pursuant to Joint Rule 24.  
Reference to the Committee on Aging, Retirement and Veterans suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative TUFTS of Stockton Springs.

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

2  
4       Sec. 1. 3 MRSA §853, as amended by PL 1989, c. 133, §9, is  
further amended to read:

6       **§853. Disability retirement**

8       Any member who becomes disabled while in service may receive  
a disability retirement allowance on the same basis as provided  
10      for members of the Maine State Retirement System by Title 5,  
chapter 423, subchapter V, article 3 3-A.

12       Sec. 2. 4 MRSA §1353, sub-§1-A, ¶C is enacted to read:

14       C. A member is not eligible for a disability retirement  
16      benefit based on a disability or the aggravation of a  
preexisting physical or mental condition that:

18               (1) Arises in connection with the commission of a  
20              crime for which the member is convicted;

22               (2) Results in conduct for which the member is  
24              convicted of a crime; or

26               (3) Results in conduct that renders the member unable  
28              to perform the duties of the member's employment  
position or to engage in substantially gainful activity.

30       Sec. 3. 4 MRSA §1353, sub-§6-A is enacted to read:

32       6-A. Benefit during incarceration. A person is not  
entitled to any disability retirement benefit for any period in  
34      which that person is a sentenced prisoner serving a term of  
incarceration of 30 days or more imposed in this State or any  
36      other jurisdiction. A person is considered incarcerated as long  
as that person is under a sentence of confinement, including any  
38      periods when the person is temporarily or intermittently outside  
of the facility for reasons such as work release, furlough,  
40      school attendance or hospitalization, and has not been released  
due to parole or pardon. Entitlement to the disability  
42      retirement benefit must be reinstated as of the first day of the  
month following the month in which the person's incarceration  
44      ends. A payment may not be made for the period of time during  
which the person was incarcerated.

46      A person is not entitled to receive service credit under section  
1302, subsection 2 or any disability retirement-related benefits  
48      during a period of incarceration. The time during which a person  
is incarcerated must be counted in determining the expiration of  
50      2 years of disability retirement under subsection 4, paragraph A.

2 The Department of Corrections and the sheriff of each county or  
4 the sheriff's designee shall meet with the retirement system to  
establish the means of exchanging the information required to  
6 implement this subsection.

8 **Sec. 4. 5 MRSA §17904, sub-§3** is enacted to read:

10 **3. Misconduct-related disability.** A member is not eligible  
for a disability retirement benefit based on a disability or the  
12 aggravation of a preexisting physical or mental condition that:

14 A. Arises in connection with the commission of a crime for  
which the member is convicted;

16 B. Results in conduct for which the member is convicted of  
a crime; or

18 C. Results in conduct that renders the member unable to  
20 perform the duties of the member's employment position or to  
engage in substantially gainful activity.

22 **Sec. 5. 5 MRSA §17907, sub-§2, ¶E** is enacted to read:

24 E. A person is not entitled to any disability retirement  
26 benefit for any period in which that person is a sentenced  
28 prisoner serving a term of incarceration of 30 days or more  
30 imposed in this State or any other jurisdiction. A person  
32 is considered incarcerated as long as that person is under a  
sentence of confinement, including any periods when the  
34 person is temporarily or intermittently outside of the  
facility for reasons such as work release, furlough, school  
36 attendance or hospitalization, and has not been released due  
to parole or pardon. Entitlement to the disability  
38 retirement benefit must be reinstated as of the first day of  
the month following the month in which the person's  
incarceration ends. A payment may not be made for the  
period of time during which the person was incarcerated.

40 A person is not entitled to receive service credit under  
42 section 17755 or any disability retirement-related benefits  
during a period of incarceration. The time during which a  
44 person is incarcerated must be counted in determining the  
expiration of 5 years of disability retirement under  
46 paragraph B.

48 The Department of Corrections and the sheriff of each county  
or the sheriff's designee shall meet with the retirement  
50 system to establish the means of exchanging the information  
required to implement this paragraph.

2           **Sec. 6. 5 MRSA §17924, sub-§3** is enacted to read:

4           **3. Misconduct-related disability.** A member is not eligible  
6 for a disability retirement benefit based on a disability or the  
8 aggravation of a preexisting physical or mental condition that:

10           A. Arises in connection with the commission of a crime for  
12 which the member is convicted;

14           B. Results in conduct for which the member is convicted of  
16 a crime; or

18           C. Results in conduct that renders the member unable to  
20 perform the duties of the member's employment position or to  
22 engage in substantially gainful activity.

24           **Sec. 7. 5 MRSA §17927, sub-§4, ¶C**, as enacted by PL 1989, c.  
26 409, §§8 and 12, is amended to read:

28           C. If the person appeals the executive director's decision,  
30 the disability retirement allowance shall may not be  
32 discontinued until all administrative appeals have been  
34 exhausted.

36           **Sec. 8. 5 MRSA §17929, sub-§2, ¶B**, as enacted by PL 1989, c.  
38 409, §§8 and 12, is amended to read:

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

(1) After the disability has continued for 2 years,  
the disability must render the person unable to engage  
in any substantially gainful activity which that is  
consistent with the person's training, education or  
experience and average final compensation adjusted by  
the same percentage adjustment as has been received  
under section 17806. The disability retirement benefit  
~~shall continue~~ continues if the person can effectively  
demonstrate to the executive director that the person  
is actively seeking work.

(2) If the person refuses to submit to the  
examinations or tests under this paragraph, the

2 disability retirement benefit shall-be is discontinued  
until that person withdraws the refusal.

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

8 (4) If it is determined, on the basis of the  
examinations or tests under this paragraph, that the  
10 disability of a person no longer exists, the payment of  
the disability retirement benefit shall-cease ceases.

12 (5) The executive director shall notify the person in  
14 writing of the decision to discontinue the disability  
retirement allowance under subparagraph (2) or (4).

16 (a) The decision shall-be is subject to appeal  
18 under section 17451.

20 (b) If the person appeals the executive  
22 director's decision, the disability retirement  
allowance shall may not be discontinued until all  
24 administrative appeals have been exhausted.

26 **Sec. 9. 5 MRSA §17929, sub-§2, ¶C** is enacted to read:

28 C. A person is not entitled to any disability retirement  
benefit for any period in which that person is a sentenced  
prisoner serving a term of incarceration of 30 days or more  
imposed in this State or any other jurisdiction. A person  
is considered incarcerated as long as that person is under a  
sentence of confinement, including any periods when the  
person is temporarily or intermittently outside of the  
facility for reasons such as work release, furlough, school  
attendance or hospitalization, and has not been released due  
to parole or pardon. Entitlement to the disability  
retirement benefit must be reinstated as of the first day of  
the month following the month in which the person's  
incarceration ends. A payment may not be made for the  
period of time during which the person was incarcerated.

42 A person is not entitled to receive service credit under  
section 17755 or any disability retirement-related benefits  
during a period of incarceration. The time during which a  
person is incarcerated must be counted in determining the  
expiration of 2 years of disability retirement under  
paragraph B, subparagraph (1).

48 The Department of Corrections and the sheriff of each county  
50 or the sheriff's designee shall meet with the retirement

2 system to establish the means of exchanging the information  
3 required to implement this paragraph.

4 **Sec. 10. 5 MRSA §17931, sub-§2, ¶B,** as enacted by PL 1989, c.  
5 409, §§8 and 12, is amended to read:

6 B. If the person fails to submit the statement required  
7 under subsection 1 within one year of receipt of the  
8 executive director's request for the statement, all rights  
9 to further benefits shall cease.

10 (1) The executive director shall notify the person in  
11 writing of the decision to discontinue the disability  
12 retirement benefit.

13 (2) The decision shall ~~be~~ is subject to appeal under  
14 section 17451.

15 (3) If the person appeals the executive director's  
16 decision, the disability retirement allowance shall may  
17 not be discontinued until all administrative appeals  
18 have been exhausted.

19 **Sec. 11. 5 MRSA §18504, sub-§3** is enacted to read:

20 **3. Misconduct-related disability.** A member is not eligible  
21 for a disability retirement benefit based on a disability or the  
22 aggravation of a preexisting physical or mental condition that:

23 A. Arises in connection with the commission of a crime for  
24 which the member is convicted;

25 B. Results in conduct for which the member is convicted of  
26 a crime; or

27 C. Results in conduct that renders the member unable to  
28 perform the duties of the member's employment position or to  
29 engage in substantially gainful activity.

30 **Sec. 12. 5 MRSA §18507, sub-§2, ¶E** is enacted to read:

31 E. A person is not entitled to any disability retirement  
32 benefit for any period in which that person is a sentenced  
33 prisoner serving a term of incarceration of 30 days or more  
34 imposed in this State or any other jurisdiction. A person  
35 is considered incarcerated as long as that person is under a  
36 sentence of confinement, including any periods when the  
37 person is temporarily or intermittently outside of the  
38 facility for reasons such as work release, furlough, school  
39 attendance or hospitalization, and has not been released due  
40

2 to parole or pardon. Entitlement to the disability  
4 retirement benefit must be reinstated as of the first day of  
6 the month following the month in which the person's  
8 incarceration ends. A payment may not be made for the  
10 period of time during which the person was incarcerated.

12 A person is not entitled to receive service credit under  
14 section 18355 or any disability retirement-related benefits  
16 during a period of incarceration. The time during which a  
18 person is incarcerated must be counted in determining the  
20 expiration of 5 years of disability retirement under  
22 paragraph B.

24 The Department of Corrections and the sheriff of each county  
26 or the sheriff's designee shall meet with the retirement  
28 system to establish the means of exchanging the information  
30 required to implement this paragraph.

32 **Sec. 13. 5 MRSA §18524, sub-§3** is enacted to read:

34 **3. Misconduct-related disability.** A member is not eligible  
36 for a disability retirement benefit based on a disability or the  
38 aggravation of a preexisting physical or mental condition that:

40 A. Arises in connection with the commission of a crime for  
42 which the member is convicted;

44 B. Results in conduct for which the member is convicted of  
46 a crime; or

48 C. Results in conduct that renders the member unable to  
50 perform the duties of the member's employment position or to  
engage in substantially gainful activity.

**Sec. 14. 5 MRSA §18527, sub-§4, ¶C,** as enacted by PL 1989, c.  
409, §§11 and 12, is amended to read:

C. If the person appeals the executive director's decision,  
the disability retirement allowance ~~shall~~ may not be  
discontinued until all administrative appeals have been  
exhausted.

**Sec. 15. 5 MRSA §18529, sub-§2, ¶B,** as enacted by PL 1989, c.  
409, §§11 and 12, is amended to read:

B. The executive director may require, once each year, that  
the person undergo examinations or tests, conducted in  
accordance with section 18526, to determine the person's  
disability. The executive director may refer the records  
documenting the results of the examinations or tests and the



2 person's file to the medical board for a recommendation  
regarding rehabilitation in accordance with section 17106,  
4 subsection 3, paragraph E.

6 (1) After the disability has continued for 2 years,  
the disability must render the person unable to engage  
8 in any substantially gainful activity which that is  
consistent with the person's training, education or  
10 experience and average final compensation adjusted by  
the same percentage adjustment as has been received  
12 under section 18407. The disability retirement benefit  
~~shall continue~~ continues if the person can effectively  
14 demonstrate to the executive director that the person  
is actively seeking work.

16 (2) If the person refuses to submit to the  
examinations or tests under this paragraph, the  
18 disability retirement benefit ~~shall be~~ is discontinued  
until that person withdraws the refusal.

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

24 (4) If it is determined, on the basis of the  
26 examinations or tests under this paragraph, that the  
disability of a person no longer exists, the payment of  
28 the disability retirement benefit ~~shall cease~~ ceases.

30 (5) The executive director shall notify the person in  
writing of the decision to discontinue the disability  
32 retirement allowance under subparagraph (2) or (4).

34 (a) The decision ~~shall be~~ is subject to appeal  
under section 17451.

36 (b) If the person appeals the executive  
38 director's decision, the disability retirement  
allowance ~~shall~~ may not be discontinued until all  
40 administrative appeals have been exhausted.

42 **Sec. 16. 5 MRSA §18529, sub-§2, ¶C is enacted to read:**

44 C. A person is not entitled to any disability retirement  
46 benefit for any period in which that person is a sentenced  
48 prisoner serving a term of incarceration of 30 days or more  
imposed in this State or any other jurisdiction. A person  
is considered incarcerated as long as that person is under a  
50 sentence of confinement, including any periods when the  
person is temporarily or intermittently outside of the

2 facility for reasons such as work release, furlough, school  
4 attendance or hospitalization, and has not been released due  
6 to parole or pardon. Entitlement to the disability  
8 retirement benefit must be reinstated as of the first day of  
10 the month following the month in which the person's  
12 incarceration ends. A payment may not be made for the  
14 period of time during which the person was incarcerated.

16 A person is not entitled to receive service credit under  
18 section 18355 or any disability retirement-related benefits  
20 during a period of incarceration. The time during which a  
22 person is incarcerated must be counted in determining the  
24 expiration of 2 years of disability retirement under  
26 paragraph B, subparagraph (1).

28 The Department of Corrections and the sheriff of each county  
30 or the sheriff's designee shall meet with the retirement  
32 system to establish the means of exchanging the information  
34 required to implement this paragraph.

36 **Sec. 17. 5 MRSA §18531, sub-§2, ¶B,** as enacted by PL 1989, c.  
38 409, §§11 and 12, is amended to read:

40 B. If the person fails to submit the statement required  
42 under subsection 1 within one year of receipt of the  
44 executive director's request for the statement, all rights  
46 to further benefits shall cease.

48 (1) The executive director shall notify the person in  
50 writing of the decision to discontinue the disability  
retirement benefit.

(2) The decision shall ~~be~~ is subject to appeal under  
section 17451.

(3) If the person appeals the executive director's  
decision, the disability retirement allowance shall may  
not be discontinued until all administrative appeals  
have been exhausted.

**Sec. 18. 5 MRSA c. 425, sub-c. V, art. 3-C, first 3 lines,** are  
repealed and the following enacted in their place:

**Article 3-C**

**DISABILITY UNDER FORMERLY AVAILABLE**  
**DISABILITY PLANS**

**Sec. 19. 5 MRSA §18543** is enacted to read:

2 §18543. Crime-related disability; incarcerated recipient

4 When a participating local district has a retirement system  
6 disability plan other than that provided by article 3 or 3-A, the  
8 following provisions apply.

10 1. Misconduct-related disability. A member is not eligible  
12 for a disability retirement benefit based on a disability or the  
14 aggravation of a preexisting physical or mental condition that:

16 A. Arises in connection with the commission of a crime for  
18 which the member is convicted;

20 B. Results in conduct for which the member is convicted of  
22 a crime; or

24 C. Results in conduct that renders the member unable to  
26 perform the duties of the member's employment position or to  
28 engage in substantially gainful activity.

30 2. Incarcerated recipient of disability retirement  
32 benefit. A person is not entitled to any disability retirement  
34 benefit for any period in which that person is a sentenced  
36 prisoner serving a term of incarceration of 30 days or more  
38 imposed in this State or any other jurisdiction. A person is  
40 considered incarcerated as long as that person is under a  
42 sentence of confinement, including any periods when the person is  
44 temporarily or intermittently outside of the facility for reasons  
46 such as work release, furlough, school attendance or  
hospitalization, and has not been released due to parole or  
pardon. Entitlement to the disability retirement benefit must be  
reinstated as of the first day of the month following the month  
in which the person's incarceration ends. A payment may not be  
made for the period of time during which the person was  
incarcerated.

A person is not entitled to receive any disability  
retirement-related benefits during a period of incarceration.

The Department of Corrections and the sheriff of each county or  
the sheriff's designee shall meet with the retirement system to  
establish the means of exchanging the information required to  
implement this subsection.

## STATEMENT OF FACT

2

4 This bill amends the legislative disability retirement  
6 provisions to put Legislators under the same disability plan as  
8 state employees. Legislators' disability coverage has  
10 historically been that provided to state employees, but the  
12 legislative disability provision was not amended when the state  
14 employee plan under the Maine Revised Statutes, Title 5, chapter  
16 423, subchapter V, article 3-A was established in 1989.

10

12 The bill also amends the disability plans of the Maine State  
14 Retirement System to provide that:

14

16 1. A member of the Maine State Retirement System or  
18 Judicial Retirement System is not eligible for disability  
20 retirement benefits based on a disability, or the aggravation of  
22 a preexisting physical or mental condition that arises in  
24 connection with commission of a crime or results in conduct of  
26 which the consequence is conviction for a crime or the legal  
28 inability to work; and

22

24 2. A person is not entitled to any disability benefits or  
26 other benefits related to disability retirement under the Maine  
28 State Retirement System or Judicial Retirement System for a  
30 period of time during which the person is incarcerated for a  
32 period of 30 days or more; a service credit does not accrue  
34 during incarceration; and the time period for disability review  
36 continues to run during incarceration. These changes have been  
adopted from provisions in the Maine Workers' Compensation laws  
and the Federal Social Security regulations.

32

34 The bill also provides that in any case in which a recipient  
36 of a disability retirement benefit under Title 5, chapter 423,  
subchapter V, article 3-A of the Maine State Retirement System  
laws appeals the executive director's decision to discontinue  
that benefit, the discontinuance may be held in abeyance only  
until the exhaustion of all administrative appeals.