

MAINE STATE LEGISLATURE

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R. d. S.

L.D. 1698

DATE: 03/30/96

(Filing No. H- 899)

LABOR

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698, Bill, "An Act to Expedite the Decision-making Process for Disability Retirement under the Maine State Retirement System"

Amend the bill by striking out the title and substituting the following:

'An Act to Make Changes to the Disability Plans Administered by the Maine State Retirement System and to Establish a Process for Further Improvements'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, the Maine State Retirement System was directed by Private and Special Law 1995, chapter 38 to devise a proposed methodology and plan that would consolidate the disability plans currently administered by the Maine State Retirement System into a single pooled plan modeled after the plan set out in the Maine Revised Statutes, Title 5, chapter 423, subchapter V, article 3-A and chapter 425, subchapter V, article 3-A, and present that methodology and proposed legislation to the joint standing committee of the Legislature having jurisdiction over labor matters before adjournment of the Second Regular Session of the 117th Legislature; and

COMMITTEE AMENDMENT

R. of S.

2 Whereas, interested parties to the single pooled plan have
had inadequate time to understand and endorse the single plan
idea; and

4 Whereas, the Board of Trustees of the Maine State
6 Retirement System continually strives to make improvements in the
administration of its disability plans; and

8 Whereas, Public Law 1993, chapter 595 directs the Maine
10 State Retirement System to study and analyze the experience of
the disability plans amended to meet the requirements of the
12 federal Older Workers Benefit Protection Act and report possible
options for compliance with the federal Older Workers Benefit
14 Protection Act that protect benefits for employees without
additional cost to the State and participating local districts;
16 and

18 Whereas, provisions in the law establishing the benefit
amount to be received by persons having elected to be covered
20 under the retirement system disability plan applicable to the
member as that plan was amended to meet the requirements of the
22 federal Older Workers Benefit Protection Act will expire on June
30, 1996; and

24 Whereas, the benefit amount to be received by such persons
26 after June 30, 1996 must be established beginning July 1, 1996;
and

28 Whereas, in the judgment of the Legislature, these facts
30 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
32 necessary for the preservation of the public peace, health and
safety; now, therefore,

34 **Be it enacted by the People of the State of Maine as follows**

36 **Sec. 1. 3 MRSA §734**, as enacted by PL 1985, c. 507, §1, is
38 amended to read:

40 **§734. Medical board**

42 ~~The--Medical--Board~~ A medical board of the Maine State
44 Retirement System ~~shall--be~~ established in section 17106,
subsection 1 is the Medical--Board medical board of the Maine
46 Legislative Retirement System. The medical board shall arrange
for and pass upon all medical examinations required under this
48 chapter with respect to disability retirements and shall report,
in writing to the executive director, its conclusions and
recommendations upon all the matters referred to it. ~~If--required,~~
50 The board of trustees may designate other physicians may--be

R. of B.

2 employed to report-on-special provide medical consultation on
legislative disability cases.

4 Sec. 2. 4 MRSA §1234, as amended by PL 1983, c. 863, Pt. B,
§§14 and 45, is further amended to read:

6 §1234. Medical board

8
10 The--Medical--Board A medical board of the Maine State
Retirement System shall--be established in section 17106,
12 subsection 1 is the Medical--Board medical board of the Maine
Judicial Retirement System. The medical board shall arrange for
14 and pass upon all medical examinations required under this
chapter with respect to disability retirements and shall report
16 in writing to the Supreme Judicial Court, its conclusions and
recommendations upon all the matters referred to it. If
18 required, The board of trustees may designate other physicians
may-be-employed to report-on-special provide medical consultation
on judicial disability cases.

20
22 Sec. 3. 4 MRSA §1353, sub-§2, as amended by PL 1993, c. 595,
§1, is further amended to read:

24 2. Amount. Until July 1, 1996, the amount of a disability
26 retirement allowance is 59% of the member's average final
compensation. Any--member--entitled--to--this--benefit--who--was
28 serving-as-a-judge-on-November-30,-1984-may-elect-to-have-that
member's--disability--benefits--calculated--in--accordance--with
chapter-29,-instead-of-this-subsection.--A-member-who-is-serving
30 as-a-judge-on-October-16,-1992-may-elect-to-be-covered-under-the
disability-benefit-plan-applicable-to-the-judge-as-that-plan-is
32 amended-to-meet-the-requirements-of-the-federal-Older-Workers
Benefit-Protection-Act.--The-election-must-be-made-by-the-same
34 procedure-provided-in-Title-5,-section-17941-for-state-employees.

36 Sec. 4. 5 MRSA §17106, as amended by PL 1989, c. 409, §§1, 2
and 12, is further amended to read:

38 §17106. Medical board

40
42 1. Establishment. The board shall designate a medical board
or boards each to be composed of 3 physicians not eligible to
participate in the retirement system.

44
46 2. Other physicians. If required determined advisable by
the board, the board may designate other physicians may--be
48 employed to report provide medical consultation on special
disability cases.

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698

3. Powers and duties. The medical board or other physician designated by the board shall, at the request of the executive director, review the file of each an applicant for disability retirement and as requested shall respond on any or all of the following:

A. Recommend an additional medical review in those instances where there are conflicting medical opinions;

B. Recommend additional medical tests to be performed on an applicant to obtain objective evidence of a permanent disability;

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

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

E. ~~Make recommendations to~~ Advise the executive director and board ~~to determine if rehabilitation services should be provided to~~ at the request of either whether there are medical indications that a person who is the recipient of a disability retirement benefit under chapter 423, subchapter V, article 3-A or chapter 425, subchapter V, article 3-A should not engage in a rehabilitation program or whether a recipient is too severely disabled to benefit from rehabilitation in accordance with the purposes of chapter 423, subchapter V, article 3-A or chapter 425, subchapter V, article 3-A.

Sec. 5. 5 MRSA §17902, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17902. Application

~~In order to receive a benefit under this article:~~

1. Written application. The In order to receive a benefit under this article, the person must apply in writing to the executive director in the format specified by the executive director, ~~and.~~

A. The executive director shall obtain medical consultation on each applicant for disability retirement benefits in accordance with related rules established by the board,

R. & S.

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698

2 which must include provisions indicating when a case must be
4 reviewed by a medical board and when alternative means of
6 medical consultation are acceptable. Rules adopted pursuant
8 to this paragraph are routine technical rules as defined in
10 chapter 375, subchapter II-A. Whether provided by the
12 medical board or by an alternative means, medical
14 consultation obtained by the executive director must be
16 objective and be provided by a physician or physicians
18 qualified to review the case by specialty or experience and
20 to whom the applicant is not known.

2. **Approval.** The written application must be approved by the executive director.

Sec. 6. 5 MRSA §17904, sub-§2, as amended by PL 1991, c. 434, §1, is further amended to read:

2. **Exception.** ~~A--member--with--fewer--than--5--years--of~~
~~continuous-creditable-service-immediately-preceding-that-member's~~
~~application-for-a-disability-retirement-benefit-is-not-eligible~~
~~for-that-benefit-if~~ If the disability is the result of a physical
or mental condition which that existed before the commencement of
the member's latest current active membership in the retirement
system and the member has fewer than 5 continuous years of
creditable service during some period of membership that began
after the preexisting condition arose, that member is not
eligible for a disability retirement benefit unless the
disability is a result of, or has been substantially aggravated
by, an injury or accident received in the line of duty but from
events or circumstances not usually encountered within the scope
of the member's employment.

Sec. 7. 5 MRSA §17905, as amended by PL 1993, c. 595, §7, is further amended to read:

§17905. Computation of benefit

~~Until--July--1--1996--when~~ When a member qualified under
section 17904 retires, the member is entitled to receive a
disability retirement benefit equal to 59% of the member's
average final compensation. The 59% level must be reviewed for
cost-neutral comparability as a part of the actuarial
investigation provided under section 17107, subsection 2,
paragraph E, beginning with the investigation made January 1,
1997 and every 6 years thereafter. The review that takes place
every 6 years must compare actual experience under the disability
plans with actuarial assumptions regarding election and costs of
benefits under the new options elected and identify possible
options for compliance with the federal Older Workers Benefit

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698

2 Protection Act that protect benefits for employees without
3 additional cost to the State and participating local districts.

4 A member who by election remains covered, as to
5 qualification for benefits, under section 17904 as written prior
6 to its amendment by Public Law 1991, chapter 887, section 4, is,
7 when qualified under that section, entitled to receive a
8 disability retirement benefit equal to 66 2/3% of the member's
9 average final compensation.

10 **Sec. 8. 5 MRSA §17908**, as enacted by PL 1985, c. 801, §§5 and
11 7, is repealed.

12 **Sec. 9. 5 MRSA 17923**, as enacted by PL 1989, c. 409, §§8 and
13 12, is repealed.

14 **Sec. 10. 5 MRSA §17924, sub-§2**, as amended by PL 1991, c. 434,
15 §2, is further amended to read:

16 **2. Exception.** ~~A member with fewer than 5 years of~~
17 ~~continuous creditable service immediately preceding that member's~~
18 ~~application for a disability retirement benefit is not eligible~~
19 ~~for that benefit if~~ If the disability is the result of a physical
20 or mental condition which that existed before the commencement of
21 the member's current active membership in the retirement system
22 and the member has fewer than 5 continuous years of creditable
23 service during some period of membership that began after the
24 preexisting condition arose, that member is not eligible for a
25 disability retirement benefit unless the disability is a result
26 of, or has been substantially aggravated by, an injury or
27 accident received in the line of duty but from events or
28 circumstances not usually encountered within the scope of the
29 member's employment.

30 **Sec. 11. 5 MRSA §17925, sub-§1, ¶A**, as enacted by PL 1989, c.
31 409, §§8 and 12, is amended to read:

32 **A.** ~~The executive director shall submit the application and~~
33 ~~all pertinent medical and psychological information to the~~
34 ~~medical board for review as required by section 17106,~~
35 ~~subsection 3~~ obtain medical consultation on each applicant
36 for disability in accordance with related rules established
37 by the board, which must include provisions indicating when
38 a case must be reviewed by a medical board and when
39 alternative means of medical consultation are acceptable.
40 Rules adopted pursuant to this paragraph are routine
41 technical rules as defined in chapter 375, subchapter II-A.
42 Whether provided by the medical board or by an alternative
43 means, medical consultation obtained by the executive
44 director must be objective and be provided by a physician or
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R. of B.

2 physicians qualified to review the case by specialty or
experience and to whom the applicant is not known .

4 **Sec. 12. 5 MRSA §17925, sub-§1, ¶B,** as enacted by PL 1989, c.
409, §§8 and 12, is repealed.

6 **Sec. 13. 5 MRSA §17926, first ¶,** as enacted by PL 1989, c. 409,
8 §§8 and 12, is amended to read:

10 Any examinations or tests recommended by the medical board
12 in accordance with section 17106 or required by the executive
14 director under section 17921, subsection 1, paragraph D; ~~section~~
~~17923,--subsection-3,~~ section 17924; section 17929, subsection 2,
16 paragraph B; or section 17933, subsection 3, paragraph A, are
governed as follows.

18 **Sec. 14. 5 MRSA §17927, first ¶,** as enacted by PL 1989, c. 409,
§§8 and 12, is amended to read:

20 ~~Upon recommendations from the medical board,--rehabilitation~~
22 Rehabilitation services shall must be provided to any person who
24 is the recipient of a disability retirement benefit under this
article whenever the executive director determines that
26 rehabilitation is feasible, that rehabilitation is consistent
with the purposes of this article and that the recipient is
28 suitable for rehabilitation services. When necessary,
determination of suitability must include consultation with the
30 medical board to determine any medical indications that the
recipient should not engage in a rehabilitation program or to
32 identify a recipient too severely disabled to benefit from
rehabilitation services in accordance with the purposes of this
34 article. Services shall must be provided by private and public
36 rehabilitation counselors, government agencies and others
38 approved by the executive director as qualified to provide
40 rehabilitation services. The executive director shall consider a
rehabilitation counselor's rate of successfully placing
rehabilitated employees in jobs relative to the placement rates
of other counselors in the State as fundamental in deciding
whether to approve the counselor as qualified.

42 **Sec. 15. 5 MRSA §17927, sub-§4,** as enacted by PL 1989, c. 409,
§§8 and 12, is amended to read:

44 **4. Decline of rehabilitation.** ~~If,--after--recommendation--by~~
46 ~~the--medical--board,~~ a person declines use of the rehabilitation
48 services offered or refuses to agree to a rehabilitation plan
50 approved by the executive director, the disability retirement
benefit payments shall cease at the end of the month following
the decline or refusal.

R. d. S.

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

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

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

12 Sec. 16. 5 MRSA §17928, as amended by PL 1993, c. 595, §8, is
further amended to read:

14 **§17928. Computation of benefit**

16
18 ~~Until July 1, 1996, when~~ When a member qualified under
section 17924 retires, after approval for disability retirement
20 by the executive director in accordance with section 17925, the
member is entitled to receive a disability retirement benefit
22 equal to 59% of that member's average final compensation. The
59% level must be reviewed for cost-neutral comparability as a
part of the actuarial investigation provided under section 17107,
subsection 2, paragraph E, beginning with the investigation made
January 1, 1997 and every 6 years thereafter. The review that
takes place every 6 years must compare actual experience under
the disability plans with actuarial assumptions regarding
election and costs of benefits under the new options elected and
identify possible options for compliance with the federal Older
Workers Benefit Protection Act that protect benefits for
employees without additional cost to the State and participating
local districts.

34 Sec. 17. 5 MRSA §17929, sub-§2, ¶B, as enacted by PL 1989, c.
409, §§8 and 12, is amended to read:

36
38 B. The executive director may require, once each year, that
the person undergo examinations or tests, conducted in
40 accordance with section 17926, to determine the person's
disability. The executive director may refer the records
42 documenting the results of the examinations or tests and the
person's file to the medical board for a--recommendation
medical consultation regarding rehabilitation in accordance
44 with section 17106, subsection 3, paragraph E.

46 (1) After the disability has continued for 2 years,
the disability must render the person unable to engage
48 in any substantially gainful activity which that is
consistent with the person's training, education or
50 experience and average final compensation adjusted by

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

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

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

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

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

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

Sec. 18. 5 MRSA §17941, as enacted by PL 1991, c. 887, §10, is repealed.

Sec. 19. 5 MRSA §18502, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§18502. Application

~~In order to receive a benefit under this article:~~

1. **Written application.** The In order to receive a benefit under this article, the person must apply in writing to the executive director in the format specified by the executive director ~~and~~.

A. The executive director shall obtain medical consultation on each applicant for disability retirement benefits in accordance with related rules established by the board,

R. of S.

2 which must include provisions indicating when a case must be
4 reviewed by a medical board and when alternative means of
6 medical consultation are acceptable. Rules adopted pursuant
8 to this paragraph are routine technical rules as defined in
10 chapter 375, subchapter II-A. Whether provided by the
medical board or by an alternative means, medical
consultation obtained by the executive director must be
objective and be provided by a physician or physicians
qualified to review the case by specialty or experience and
to whom the applicant is not known.

12 2. **Approval.** The written application must be approved by
14 the executive director.

16 **Sec. 20. 5 MRSA §18504, sub-§2,** as amended by PL 1991, c. 434,
§3, is further amended to read:

18 2. **Exception.** ~~A--member--with--fewer--than--5--years--of~~
20 ~~continuous-creditable-service-immediately-preceding-that-member's~~
22 ~~application-for-a-disability-retirement-benefit-is-not-eligible~~
24 ~~for-that-benefit-if~~ If the disability is the result of a physical
26 or mental condition which that existed before the commencement of
28 the member's latest current active membership in the retirement
30 system and the member has fewer than 5 continuous years of
32 creditable service during some period of membership that began
after the preexisting condition arose, that member is not
eligible for a disability retirement benefit unless the
disability is a result of, or has been substantially aggravated
by, an injury or accident received in the line of duty but from
events or circumstances not usually encountered within the scope
of the member's employment.

34 **Sec. 21. 5 MRSA §18505,** as amended by PL 1993, c. 595, §11,
is further amended to read:

36 **§18505. Computation of benefit**

38 ~~Until--July--1--1996--when~~ When a member qualified under
40 section 18504 retires, the member is entitled to receive a
42 disability retirement benefit equal to 59% of the member's
44 average final compensation. The 59% level must be reviewed for
cost-neutral comparability as a part of the actuarial
investigation provided under section 17107, subsection 2,
paragraph E, beginning with the investigation made January 1,
1997 and every six years thereafter. The review that takes place
every 6 years must compare actual experience under the disability
plans with actuarial assumptions regarding election and costs of
benefits under the new options elected and identify possible
options for compliance with the federal Older Workers Benefit

R. d. S.

Protection Act that protect benefits for employees without additional cost to the State and participating local districts.

Sec. 22. 5 MRSA §18508, as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

Sec. 23. 5 MRSA §18523, as enacted by PL 1989, c. 409, §§11 and 12, is repealed.

Sec. 24. 5 MRSA §18524, sub-§2, as amended by PL 1991, c. 434, §4, is further amended to read:

2. **Exception.** ~~A member with fewer than 5 years of continuous creditable service immediately preceding that member's application for a disability retirement benefit is not eligible for that benefit if~~ If the disability is the result of a physical or mental condition which that existed before the commencement of the member's current active membership in the retirement system and the member has fewer than 5 continuous years of creditable service during some period of membership that began after the preexisting condition arose, that member is not eligible for a disability retirement benefit unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty but from events or circumstances not usually encountered within the scope of the member's employment.

Sec. 25. 5 MRSA §18525, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

§18525. Application

~~In order to receive a benefit under this article:~~

1. **Written application.** The In order to receive a benefit under this article, the person must apply in writing to the executive director in the format specified by the executive director.

A. ~~The executive director shall submit the application and all pertinent medical and psychological information to the medical board for review as required by section 17106, subsection 3~~ obtain medical consultation on each applicant for disability in accordance with related rules established by the board, which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable. Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter II-A. Whether provided by the medical board or by an alternative

A. d. S.

2 means, medical consultation obtained by the executive
3 director must be objective and be provided by a physician or
4 physicians qualified to review the case by specialty or
5 experience and to whom the applicant is not known.

6 B. As required by section 17106, the medical board shall
7 make a recommendation as to whether or not the member may be
8 provided vocational rehabilitation services.

10 2. **Workers' compensation.** If the incapacity upon which the
11 application is based is a result of an injury or accident
12 received in the line of duty, the application must include proof
13 that the member has made application for benefits under the
14 workers' compensation laws.

16 3. **Social security.** If the employment for which creditable
17 service with the employer is allowed was also covered under the
18 United States Social Security Act, the application must include
19 proof that the member has made application for benefits under
20 this Act and.

22 4. **Approval.** The written application shall ~~shall~~ must be
23 approved by the executive director upon finding that the member
24 has met the requirements of section 18524.

26 **Sec. 26. 5 MRSA §18525, sub-§1, ¶B,** as enacted by PL 1989, c.
27 409, §§11 and 12, is repealed.

28 **Sec. 27. 5 MRSA §18526, first ¶,** as enacted by PL 1989, c. 409,
29 §§11 and 12, is amended to read:

32 Any examinations or tests recommended by the medical board
33 in accordance with section 17106 or required by the executive
34 director under section 18521, subsection 1, paragraph D; ~~section~~
35 ~~18523, subsection 2,~~ section 18524; section 18529, subsection 2,
36 paragraph B; or section 18533, subsection 3, paragraph A, are
37 governed as follows.

38 **Sec. 28. 5 MRSA §18527, first ¶,** as enacted by PL 1989, c. 409,
39 §§11 and 12, is amended to read:

42 ~~Upon recommendations from the medical board, rehabilitation~~
43 Rehabilitation services shall must be provided to any person who
44 is the recipient of a disability retirement benefit under this
45 article if the executive director determines that rehabilitation
46 is feasible, that rehabilitation is consistent with the purposes
47 of this article and that the recipient is suitable for
48 rehabilitation services. When necessary, determination of
49 suitability must include consultation with the medical board to
50 determine any medical indications that the recipient should not

engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article. Services shall must be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified.

Sec. 29. 5 MRSA §18527, sub-§4, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

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

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

B. The decision shall ~~be~~ is subject to appeal under section 17451.

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

Sec. 30. 5 MRSA §18528, as amended by PL 1993, c. 595, §12, is further amended to read:

§18528. Computation of benefit

~~Until July 1, 1996, when~~ When a member qualified under section 18524 retires, after approval for disability retirement by the executive director in accordance with section 18525, the member is entitled to receive a disability retirement benefit equal to 59% of that member's average final compensation. The 59% level must be reviewed for cost-neutral comparability as a part of the actuarial investigation provided under section 17107, subsection 2, paragraph E, beginning with the investigation made January 1, 1997 and every 6 years thereafter. The review that takes place every 6 years must compare actual experience under the disability plans with actuarial assumptions regarding election and costs of benefits under the new options elected and

R. of S.

2 identify possible options for compliance with the federal Older
3 Workers Benefit Protection Act that protect benefits for
4 employees without additional cost to the State and participating
5 local districts.

6 **Sec. 31. 5 MRSA §18529, sub-§2, ¶B**, as enacted by PL 1989, c.
7 409, §§11 and 12, is amended to read:

8 B. The executive director may require, once each year, that
9 the person undergo examinations or tests, conducted in
10 accordance with section 18526, to determine the person's
11 disability. The executive director may refer the records
12 documenting the results of the examinations or tests and the
13 person's file to the medical board for a--~~recommendation~~
14 medical consultation regarding rehabilitation in accordance
15 with section 17106, subsection 3, paragraph E.

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

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

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

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

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

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

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

6 **Sec. 32. 5 MRSA §18541**, as enacted by PL 1991, c. 887, §18,
7 is repealed.

8 **Sec. 33. Committee to Study Disability Retirement.** The
9 Committee to Study Disability Retirement, referred to in this
10 section as the "study committee," is established to examine the
11 single pooled disability plan concept and other changes to the
12 disability plans administered by the Maine State Retirement
13 System.

14 **1. Membership.** The study committee consists of 9 members:
15 one member from the Maine State Employees Association; one member
16 from the Maine Education Association; one member of the American
17 Federation of State, County and Municipal Employees; one member
18 of the American Federation of Teachers; one member of the Maine
19 State Troopers Association; one member from the Maine School
20 Management Association; one member from the Maine State
21 Retirement System; and 2 members appointed by the Governor to
22 represent the interests of the State with respect to disability
23 plans for state employees and teachers.

24 **2. Convening; chair.** When all the members have been
25 appointed, the Chair of the Legislative Council shall convene the
26 first meeting. The members shall select a chair from among the
27 membership.

28 **3. Compensation.** Members are not entitled to compensation.

29 **4. Retirement system; support.** The Maine State Retirement
30 System is responsible for scheduling meetings, obtaining
31 actuarial information when necessary, providing general staff
32 support, drafting proposed legislation and distributing the
33 report.

34 **5. Charge; report.** The study committee shall issue a
35 report to the joint standing committee of the Legislature having
36 jurisdiction over retirement matters by February 15, 1997,
37 including appropriate draft legislation. Following receipt of
38 the study committee's report, the legislative committee may
39 introduce legislation to the First Regular Session of the 118th
40 Legislature. The study committee shall consider, without
41 limitation, the following issues:

42 A. A methodology and plan that would consolidate the
43 disability plans currently administered by the Maine State
44 Retirement System.

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698

A. d. S.

- 2 Retirement System into a single pooled plan modeled after
the plan set out in the Maine Revised Statutes, Title 5,
chapter 423, subchapter V, article 3-A;
- 4
- 6 B. Whether or not the disability plan or plans should
retain limits on the amount recipients can earn while
receiving disability benefits;
- 8
- 10 C. Whether or not the plan should retain the "actively
seeking work" exemption from discontinuance of benefits;
- 12
- 14 D. Whether or not payment of benefits should continue when
a recipient appeals beyond the administrative appeals
process a decision to discontinue the recipient's benefits;
- 16
- 18 E. Whether or not provisions should be added to the
disability plans restricting payment of benefits for
misconduct-related disability or during incarceration; and
- 20
- 22 F. Whether or not provisions should be added to the
disability plan or plans that distinguish between recipients
who become disabled in the line of duty and those who do not.

24 The proposed legislation must address all of the issues set out
in paragraphs A to F so that the legislative committee and the
26 Legislature are presented the full range of views on the policy
matters involved in these issues. If there is not agreement
28 among study committee members, on any of the issues, members
advocating particular policy positions on all sides of the issue
30 or issues shall provide the legislative committee with an
explanation of their policy positions and the reasons that are
32 the basis for their positions.

34 **6. Participating local districts.** With respect to the
interest of participating local districts in the issues in
36 subsection 5 and in such related issues as may impact
participating local districts, the Participating Local District
38 Advisory Committee established under the Maine Revised Statutes,
Title 5, section 18802 shall serve as the study committee for
40 those participating local districts in the consolidated
retirement plan for participating local districts. The
42 Participating Local District Advisory Committee shall report to
the joint standing committee of the Legislature having
44 jurisdiction over retirement matters at the same time and in the
same manner as provided in subsection 5. The Maine State
46 Retirement System has the same staff support role with this study
committee as with the Committee to Study Disability Retirement.
48 The Participating Local District Advisory Committee may not take
up these issues until after July 1, 1996. The Maine State
50 Retirement System shall also inform those participating local

districts that are not in the consolidated retirement plan and that have members who are then receiving disability benefits or who continue to be covered under retirement system disability programs by virtue of continuing to be contributing members of the retirement system of the issues under discussion that would affect those participating local districts.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The additional costs to provide staffing and administrative support to the Committee to Study Disability Retirement can be absorbed by the Maine State Retirement System utilizing existing budgeted resources.'

SUMMARY

This amendment replaces the bill. It results from the report of the Maine State Retirement System pursuant to Private and Special Law 1995, chapter 38. The amendment deals with the same issue as the bill in a more comprehensive way. It also deals with other disability issues identified in the retirement system report. The amendment also adds an emergency preamble and clause.

There are 3 purposes of this amendment:

1. To make current changes in the Maine Revised Statutes, Title 5, chapter 423, subchapter V, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A to improve the present administration of the disability plans;

2. To establish the level of benefit payments under the disability plans amended to comply with the federal Older Workers Benefit Protection Act; and

3. To establish a study committee to study the merger of the 3 disability plans administered by the Maine State Retirement System into one pooled plan modeled after the Maine Revised Statutes, Title 5, chapter 423, subchapter V, article 3-A and chapter 425, suchapter V, article 3-A to study other changes to the disability plan or plans.

100

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1698

2 The amendment permits the Board of Trustees of the Maine
4 State Retirement System to establish more than one medical board,
clarifies the medical board's role in rehabilitation reviews and
6 gives the board flexibility through rulemaking to determine how
it will obtain medical consultation on each applicant for
disability retirement benefits.

8
10 It establishes the level of disability retirement allowance
at 59% of the member's average final compensation for judges,
12 state employees and teachers who are covered by a "no-age"
disability plan in compliance with the federal Older Workers
Benefit Protection Act.

14 It repeals provisions requiring Maine State Retirement
16 System members to file statements of health.

18 It modifies current preexisting condition language to allow
an applicant to meet the 5-year continuous creditable service
20 requirement notwithstanding a break in service as long as 5
continuous years of service are earned after the preexisting
22 condition arises.

24 It establishes criteria for determining whether a recipient
of disability retirement benefits is eligible for rehabilitation
26 services.

28 It repeals the provisions of current law providing members
the option to elect coverage under a disability plan that is
30 amended to meet the requirements of the federal Older Workers
Benefit Protection Act because the election has taken place.

32 It enacts provisions applying to participating local
34 districts that are parallel to those that apply to state
employees.

36 This amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT