

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

M  
R. 086

Date: 6-2-09

(Filing No. S-285)

LABOR

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE  
SENATE  
124TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 474, L.D. 1292, Bill, "An Act To Provide More Transparency and Protection for Public Employees in the Laws Governing the Maine Public Employees Retirement System"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 5 MRSA §17054, sub-§3, as amended by PL 1993, c. 386, §2, is further amended to read:

3. Recovery of overpayments by the retirement system. Any amounts due the retirement system as the result of overpayment or erroneous payment of benefits, an excess refund of contributions or overpayment or erroneous payment of life insurance benefits may be recovered from an individual's contributions, any benefits or life insurance benefits payable under this Part to the individual or the beneficiary of the individual or any combination of contributions and benefits. If the overpayment or excess refund of contributions resulted from an ~~unintentional~~ a mistake of or incorrect information provided by an employee of the retirement system, or a mistake of the retiree or the recipient of the benefit or life insurance benefit, no a penalty or interest may not be collected assessed by the retirement system ~~on the amount to be recovered.~~ In all cases of recovery of overpayments through the reduction of a retirement benefit, whether with or without the assessment of interest by the retirement system, the recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule. The executive director may also take action to recover those amounts due from any amounts payable to the individual by any other state agency or by an action in a court of competent jurisdiction. Whenever the executive director makes a decision to recover any amounts under this subsection, that decision is subject to appeal under section 17451; ~~and.~~

Employers are responsible for enrolling employees in the correct retirement plan. The retirement system shall provide training, education and information to assist employers in the correct enrollment of employees. If an employee is enrolled in the incorrect retirement plan by the employer through no fault of the employee, the employee may not

COMMITTEE AMENDMENT

1 lose any retirement benefits. The State is not responsible for the employer contribution  
2 when the employer is a school district, municipality or county and those contributions and  
3 assessed interest, if applicable, must be paid to the retirement system by the school  
4 district, municipality or county; and

5 **Sec. 2. 5 MRSA §17103, sub-§6**, as amended by PL 2007, c. 491, §77, is further  
6 amended to read:

7 **6. Rights, credits and privileges; decisions.** The board shall in all cases make the  
8 final and determining administrative decision in all matters affecting the rights, credits  
9 and privileges of all members of all programs of the retirement system whether in  
10 participating local districts or in the state service.

11 Whenever the board finds that, because of an error or omission on the part of the  
12 employer of a member or retired member, a member or retired member is required to  
13 make a payment or payments to the retirement system, the board may waive payment of  
14 all or part of the amount due from the member or retired member. In these instances of  
15 recovery of overpayments from members of the retirement system, the retirement system  
16 is governed by section 17054, subsection 3.

17 **Sec. 3. 5 MRSA §17103, sub-§6-A** is enacted to read:

18 **6-A. Communication between the board and members of the retirement system.**  
19 Communications between the board and members of the retirement system are governed  
20 by this subsection.

21 A. The board shall make all members aware of the requirements in law or rule and  
22 any changes to these requirements governing retirees, disability benefits and any  
23 other benefits provided by the retirement system. All retirement information  
24 provided to retirement system members must be provided by highly competent  
25 individuals well-trained and knowledgeable about the benefits and requirements of  
26 the retirement system in both law and rules, including requirements to qualify for  
27 disability retirement, and including information provided by individuals representing  
28 participating local districts to members. The board shall provide applicants for  
29 retirement or disability status with materials summarizing the most significant  
30 requirements and restrictions in state laws and rules to include, at a minimum,  
31 retirement benefits, postretirement employment and responsibilities of retirees.  
32 These materials must be clearly written in simple and understandable terms.

33 B. In the event that a member requests to retire before normal retirement age, it is the  
34 primary responsibility of the retirement system to ensure through all feasible means  
35 that the member is informed of all the restrictions related to early retirement.

36 **Sec. 4. 5 MRSA §17103, sub-§11**, as amended by PL 1997, c. 651, §3, is further  
37 amended to read:

38 **11. Report to Legislature.** The board shall make a written report to the appropriate  
39 legislative committee on or before the March 1st of each year that must contain:

40 A. A discussion of any areas of policy or administration that, in the opinion of the  
41 board, should be brought to the attention of the committee;

- 1 B. Any proposed legislation amending the retirement system law that the board
- 2 recommends to improve the retirement system;
- 3 C. A discussion of the progress toward meeting the goals of chapter 161;
- 4 D. A review of the operations of the retirement system, including a summary of
- 5 administrative expenses and improvements in the delivery of services to members of
- 6 the retirement system; and
- 7 E. A budget report showing the budget status of the administrative operations and
- 8 functions of the system for the current fiscal year relative to the budget for the current
- 9 fiscal year;
- 10 F. The number of individuals who retired in the previous calendar year categorized
- 11 by plan status;
- 12 G. The number of new active members of the retirement system who became
- 13 members during the previous year, by plan status;
- 14 H. The amount of earnings on investment in the previous calendar year;
- 15 I. The total amount of employee and employer contributions to the retirement system
- 16 in the previous calendar year and the total amount of payout to retirees, categorized
- 17 by plan status; and
- 18 J. The number of persons who applied for disability retirement during the previous
- 19 calendar year including:
  - 20 (1) The number of applicants for disability retirement who were awarded
  - 21 benefits at the application stage;
  - 22 (2) The number of applicants for disability retirement who were awarded
  - 23 benefits following the submission of additional information;
  - 24 (3) The net number of applicants for disability retirement who appealed
  - 25 decisions that denied disability retirement status; and
  - 26 (4) The number of applicants who were granted disability retirement following
  - 27 their appeals.

28 Sec. 5. 5 MRSA §17105-A is enacted to read:

29 **§17105-A. Adverse decisions of the retirement system**

30 Prior to any adverse decision rendered by retirement system staff with respect to the  
31 recoupment, suspension or termination of benefits, or assessment of penalties or interest,  
32 the affected member or retiree is entitled to an informal hearing to which the member or  
33 retiree may bring legal counsel. The retirement system shall issue a written decision; this  
34 decision is subject to the retirement system's review and appeal process pursuant to  
35 section 17451.

36 Sec. 6. 5 MRSA §17106, as amended by PL 2007, c. 491, §79, is further amended  
37 to read:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**§17106. Medical board**

**1. Establishment.** The board shall designate a medical board ~~or boards each~~ to be composed of at least 3 physicians not eligible to participate in any of the retirement programs of the retirement system. The board shall make a good faith effort to appoint physicians to the medical board who are from those fields of medicine within which the Maine Public Employees Retirement System receives the greatest number of applications for disability retirement benefits.

**2. Other physicians.** If determined advisable by the board, the board may designate other physicians to provide medical consultation on disability cases.

**3. Powers and duties.** The medical board is advisory only to the retirement system. The medical board or other ~~physician~~ physicians designated by the board shall, at the request of the executive director, review the file of 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~~ Provide a written report of its analysis of how the applicant's medical records do or do not demonstrate the existence of physical or mental functional limitations entitling an applicant to benefits under chapter 423, subchapter ~~5~~ 5, articles 3 and 3-A, or chapter 425, subchapter ~~5~~ 5, articles 3 or 3-A; and

~~E. Advise the executive director and board at the request of either retirement system~~ whether there are medical indications that a person who is the recipient of a disability retirement benefit under chapter 423, subchapter ~~5~~ 5, article 3-A or chapter 425, subchapter ~~5~~ 5, 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 ~~5~~ 5, article 3-A or chapter 425, subchapter ~~5~~ 5, article 3-A.

**4. Medical evidence.** The provisions of this subsection apply to medical evidence used for a disability retirement determination.

A. The retirement system shall consider the applicant's disability application, medical records and the medical board's analysis in making a disability retirement determination.

B. Explicit or implicit preferential weight may not be afforded any medical evidence or source of evidence, whether provided by the retirement system, its medical board or contracted examiners, or by any member, in connection with the application, review or hearing processes.

C. When addressing the weight to be given any medical evidence upon which a determination to award, deny or discontinue benefits is made, the retirement system,

A. 08.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

hearing officers and board of trustees shall consider, at least, the expertise of the medical source, the foundation of information upon which the opinion is rendered and its consistency with other medical evidence in the record.

D. The retirement system shall offer to review the decision and the records supporting that decision with the applicant prior to issuing a determination.

Sec. 7. 5 MRSA §17106-A is enacted to read:

**§17106-A. Use of hearing officers**

A hearing officer employed, contracted or otherwise provided by the board to implement the provisions of this chapter is subject to the provisions of this section.

1. Independent decision makers. All hearing officers are independent decision makers and are authorized to make recommended final decisions in regard to matters that come before them, consistent with applicable statutes and rules. A decision of the hearing officer must be based upon the record as a whole. The board shall accept the recommended decision of the hearing officer unless the recommended decision is not supported by the record as a whole, the retirement system is advised by the Attorney General that the hearing officer has made an error of law or the decision exceeds the authority or jurisdiction conferred upon the hearing officer. A decision of the board upon a recommended decision of the hearing officer constitutes final agency action. The board shall retain its decision-making authority in all retirement system policy areas.

2. No direct or indirect influence. A party to the appeal, including the appellant, the board, the executive director or the staff of the board may not exert direct or indirect influence on a hearing officer with regard to decisions of the hearing officer or the decision-making process.

3. Decision-making process. In the course of the decision-making process, hearing officers may accept, reject or determine the amount of weight to be given any information offered into evidence, including, but not limited to, medical evidence submitted by any of the parties to the appeal.

4. Discussion of issues before the hearing officers. All parties to an appeal, including the appellant, the board, the executive director and the retirement system staff are prohibited from ex parte communication with the hearing officer. All parties, including the appellant, the board, the executive director and the retirement system staff are prohibited from initiating or engaging in any discussion with a hearing officer regarding the substance of any pending case without first making all parties aware of the proposed contact and without also giving all parties the opportunity to participate in any communication.

5. Investigation. The joint standing committee of the Legislature having jurisdiction over labor matters shall monitor the compliance of the retirement system and all involved parties with regard to the use of hearing officers and the independence of hearing officers in the decision-making process. The joint standing committee of the Legislature having jurisdiction over labor matters may request the Attorney General to conduct an investigation if a complaint is made by a hearing officer or any participating party regarding the independence of the hearing process.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**6. Engagement and termination.** The board shall engage only qualified hearing officers, who must be monitored by the board. A hearing officer may be terminated for misconduct. Retaliatory action of any kind, including reprimand or termination, may not be taken against a hearing officer on the basis of that hearing officer's having issued decisions contrary to the decision of the executive director. In the event of termination, the retirement system shall set forth in writing the basis for the termination, the propriety of which may then be considered by the joint standing committee of the Legislature having jurisdiction over labor matters pursuant to subsection 5.

**Sec. 8. 5 MRSA §17924, sub-§2,** as amended by PL 2007, c. 491, §177, 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~~ last date in service is not eligible for that a disability retirement benefit if the disability is the result of a physical or mental condition that existed before the member's membership in a retirement program of the Maine Public Employees Retirement System, 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. 9. 5 MRSA §18504, sub-§2,** as amended by PL 2007, c. 491, §244, 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~~ last date of service is not eligible for that a disability retirement benefit if the disability is the result of a physical or mental condition that existed before the member's ~~latest~~ membership in a retirement program of the Maine Public Employees Retirement System, 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. 10. 5 MRSA §18511, sub-§2,** as amended by PL 1989, c. 878, Pt. B, §6, is further amended to read:

**2. Presumption.** ~~In participating local districts which have not adopted the disability retirement benefits enacted by Public Law 1975, chapter 622, section 54, and subsequent amendments, it~~ It is presumed that a member incurred a disability in the line of duty ~~which that~~ occurred while in actual performance of duty at some definite time and place and ~~which that~~ was not caused by the willful negligence of the member if:

A. The disability is the result of a cardiovascular injury ~~which that~~ occurred, or a cardiovascular or pulmonary disease ~~which that~~ developed, within 6 months of having participated in ~~fire-fighting~~ firefighting or in a training or drill ~~which that~~ involved ~~fire-fighting~~ firefighting; and

B. The member was an active member of a municipal fire department or of a volunteer fire association, as defined in Title 30-A, section 3151, for at least 2 years before the injury or the onset of the disease; ~~and.~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

~~C. The member has been granted workers' compensation benefits for the cardiovascular injury or disease or the pulmonary disease.~~

**Sec. 11. 5 MRSA §18524, sub-§2**, as amended by PL 2007, c. 491, §246, 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 last date of service is not eligible for that a disability retirement benefit if the disability is the result of a physical or mental condition that existed before the member's membership in a retirement program of the Maine Public Employees Retirement System, 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. 12. Report.** The Maine Public Employees Retirement System shall submit a report on the implementation of the new processes established under this Act and indicate whether those processes have resulted in the elimination of the necessity of deposing the medical board created pursuant to the Maine Revised Statutes, Title 5, section 17106. The retirement system also shall report on whether the pre-Tidd v. MSRS Docket Number HOUSC-AP-06-001 decision status offers enough protection for members with a preexisting disability. The retirement system shall report to the Joint Standing Committee on Labor by January 10, 2010. After receipt and review of the report, the joint standing committee may report out a bill to the Second Regular Session of the 124th Legislature.'

**SUMMARY**

This amendment provides more transparency, accountability and protection for public employees with respect to the processes and policies of the Maine Public Employees Retirement System. The amendment:

- 1. Provides that persons providing information to prospective retiring public employees be well trained and knowledgeable about retirement system laws and rules and be able to provide this information in understandable terms;
- 2. Provides that mistakes by public employees or employees of the retirement system in regard to retirement system benefits, including overpayments, may not result in unreasonable penalties and recovery must consider personal economic stability;
- 3. Authorizes hearing officers to make recommended final decisions and requires such decisions to be made on the record as a whole;
- 4. Implements a finding of the court that opinions of the medical board are advisory only;
- 5. Affords equal weight to medical evidence, regardless of the source of that evidence;
- 6. Entitles a member or retiree along with counsel an opportunity to an informal hearing prior to any adverse decision by the retirement staff;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

7. Requires the Board of Trustees of the Maine Public Employees Retirement System to attempt to appoint to the medical board physicians chosen from those fields of medicine for which the retirement system receives the greatest number of applications for disability retirement benefits;

8. Requires additional information, as part of the retirement system's annual report, including the number of individuals who retired in the previous calendar year categorized by plan status; the number of new active members of the retirement system who became members during the previous year, by plan status; the amount of earnings on investment in the previous calendar year; the total amount of employee and employer contributions to the retirement system in the previous calendar year and the total amount of payout to retirees, categorized by plan status; and the number of persons who applied for disability retirement during the previous calendar year;

9. Addresses a decision of the Superior Court that discriminates against all employees who take more than 30 days of unpaid leave during any period of their last 5 years of retirement system service, regardless of their total service in the retirement system;

10. Provides that a member whose employer wrongly or incorrectly enrolls a member in the Maine Public Employees Retirement System does not lose any retirement benefits. The State does not bear responsibility for the employer's mistake; and

11. Requires the Maine Public Employees Retirement System to report back to the Joint Standing Committee on Labor with the results of the implementation of the changes required by this legislation by January 10, 2010. The joint standing committee may report out legislation in the Second Regular Session of the 124th Legislature.

**FISCAL NOTE REQUIRED**

(See attached)



# 124th MAINE LEGISLATURE

LD 1292

LR 769(02)

**An Act To Provide More Transparency and Protection for Public Employees in the Laws Governing the Maine Public Employees Retirement System**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Labor**

**Fiscal Note Required: Yes**

---

## Fiscal Note

Minor cost increase - Other Funds

### Fiscal Detail and Notes

Additional costs to the Maine Public Employees Retirement System associated with implementing the requirements of this legislation can be absorbed within existing budgeted resources.