

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1292

S.P. 474

In Senate, March 31, 2009

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

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President MITCHELL of Kennebec.
Cosponsored by Representative TUTTLE of Sanford and
Senators: JACKSON of Aroostook, McCORMICK of Kennebec, Representative: BLODGETT
of Augusta.

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

2 **Sec. 1. 2 MRSA §6-D**, as amended by PL 1993, c. 410, Pt. L, §2 and PL 2007, c.
3 58, §3, is further amended to read:

4 **§6-D. Salary of the Executive Director of the Maine Public Employees Retirement**
5 **System**

6 Notwithstanding Title 5, section 17105, subsection 3, the salary of the Executive
7 Director and deputy directors appointed by the Executive Director of the Maine Public
8 Employees Retirement System are established by the ~~Board of Trustees of the Maine~~
9 ~~Public Employees Retirement System~~ Governor and may not exceed the maximum rate of
10 salary that may be received by a state employee.

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

13 **3. Recovery of overpayments by the retirement system.** Any amounts due the
14 retirement system as the result of overpayment or erroneous payment of benefits, an
15 excess refund of contributions or overpayment or erroneous payment of life insurance
16 benefits may be recovered from an individual's contributions, any benefits or life
17 insurance benefits payable under this Part to the individual or the beneficiary of the
18 individual or any combination of contributions and benefits. If the overpayment or
19 excess refund of contributions resulted from an ~~unintentional~~ mistake of or incorrect
20 information provided by an employee of the retirement system or mistake of the retiree
21 who is unaware of a rule or provision of law governing the operation of the retirement
22 system, the retiree or the recipient of the benefit or life insurance benefit, no interest may
23 be collected by the retirement system on the amount to be recovered no penalties or
24 interest may be levied on the retiree's income and the retirement system may not reduce
25 retirement benefits to the retiree to an extent that the reduction results in less than a
26 livable income or an unreasonable and significant disruption in the ability of the retiree to
27 sustain the retiree's quality of life. The executive director may also take action to recover
28 those amounts due from any amounts payable to the individual by any other state agency
29 or by an action in a court of competent jurisdiction. Whenever the executive director
30 makes a decision to recover any amounts under this subsection, that decision is subject to
31 appeal under section 17451; and

32 The Maine Public Employees Retirement System shall verify eligibility of an employee
33 for retirement benefits under the retirement system no later than 60 days following the
34 effective date of employment of the employee. If, after verification, it is determined that
35 the employer provided incorrect information to the retirement system that would
36 disqualify the employee for retirement benefits under the retirement system, the employee
37 may not lose any retirement benefits. In the case in which social security is the proper
38 retirement funding source, the employer shall pay the employee and employer share for
39 the time period following the employee's retirement to the time of discovery of
40 ineligibility under the retirement system. The State is not responsible for the employer
41 contribution when the employer is a school district, municipality or county.

1 **Sec. 3. 5 MRSA §17101, sub-§1**, as amended by PL 1993, c. 410, Pt. L, §14, is
2 further amended to read:

3 **1. Purpose.** There is established a retirement system, the functions and operations of
4 which are under the supervision of the board, for the purpose of providing retirement
5 allowances and other benefits under this Part for employees. Providing and preserving
6 access to disability benefits and a reasonable quality of life for members of the Maine
7 Public Employees Retirement System who become disabled is as important as
8 preservation of the integrity and financial well-being of the retirement system.

9 **Sec. 4. 5 MRSA §17103, sub-§6**, as amended by PL 2007, c. 491, §77, is further
10 amended to read:

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

15 Whenever the board finds that, because of an error or omission on the part of the
16 employer of a member or retired member, a member or retired member is required to
17 make a payment or payments to the retirement system, the board may waive payment of
18 all or part of the amount due from the member or retired member. In instances governed
19 by section 17054, subsection 3 or 4 the board shall make decisions in accordance with the
20 requirements of those provisions.

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

22 **6-A. Ensure communication between the board and members of the retirement**
23 **system.** The board shall ensure that all members of the retirement system are made
24 aware of the requirements by law or rule and any changes to these requirements
25 governing retirees, disability benefits and any other benefits provided by the retirement
26 system. The board shall ensure that any retirement information provided to retirement
27 system members is provided by highly competent individuals well-trained and
28 knowledgeable about the benefits and requirements of the retirement system in both law
29 and rules, including requirements to qualify for disability retirement, and including
30 information provided by individuals representing participating local districts to members.

31 **Sec. 6. 5 MRSA §17103, sub-§6-B** is enacted to read:

32 **6-B. Ensure communication between the board and the administrative staff of**
33 **the retirement system.** The board shall establish a process and make every effort to
34 meet at least once a year with administrative personnel, including hearing examiners, to
35 discuss issues of concern to the administrative staff. Information provided to the board is
36 confidential unless the administrative staff declares otherwise.

37 **Sec. 7. 5 MRSA §17103, sub-§8**, as amended by PL 1989, c. 483, Pt. A, §§27
38 and 63, is repealed.

1 **Sec. 8. 5 MRSA §17103, sub-§11**, as amended by PL 1997, c. 651, §3, is further
2 amended to read:

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

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

7 B. Any proposed legislation amending the retirement system law that the board
8 recommends to improve the retirement system;

9 C. A discussion of the progress toward meeting the goals of chapter 161;

10 D. A review of the operations of the retirement system, including a summary of
11 administrative expenses and improvements in the delivery of services to members of
12 the retirement system; and

13 E. A budget report showing the budget status of the administrative operations and
14 functions of the system for the current fiscal year relative to the budget for the current
15 fiscal year;

16 F. The number of individuals who retired in the 12 months of the previous year by
17 employee status to include state employees, teachers and participating local district
18 employees;

19 G. The number of new active members of the retirement system for the previous year
20 by employee status;

21 H. The amount of earnings on investment in the 12 months of the previous year;

22 I. The total amount of employee and employer contributions to the retirement system
23 in the 12 months of the previous year and the total amount of payout to retirees by
24 employee status; and

25 J. The number of persons who applied for disability retirement in the 12 months of
26 the previous year including:

27 (1) The number of applicants for disability retirement who were awarded
28 benefits at the application stage;

29 (2) The number of applicants for disability retirement who were awarded
30 benefits following the submission of additional information;

31 (3) The net number of applicants for disability retirement who appealed
32 decisions that denied disability retirement status; and

33 (4) The number of applicants who were granted disability retirement following
34 their appeals.

35 **Sec. 9. 5 MRSA §17103-A** is enacted to read:

36 **§17103-A. Appointment of the executive director**

37 The executive director is appointed by the Governor in consultation with the board
38 and subject to approval by the joint standing committee of the Legislature with

1 jurisdiction over labor matters and confirmation by the Senate. The salary of the
2 executive director is set by the Governor. The person nominated for executive director
3 must demonstrate concern and understanding of the needs of public employees and
4 retirees, as well as fiscal knowledge and competency.

5 **Sec. 10. 5 MRSA §17105, sub-§1**, as amended by PL 2007, c. 491, §78, is
6 further amended to read:

7 **1. Duties.** In addition to other duties set out in this Part, the executive director, as
8 appointed under section 17103, ~~subsection 8~~ 17103-A, shall have has the following
9 duties.

10 A. The executive director shall ~~have~~ has administrative responsibility for the
11 retirement system, including responsibility for the approval of the payment of all
12 benefits under this Part.

13 B. The executive director shall obtain whatever services are required to transact the
14 business of the retirement system.

15 C. The executive director shall keep in convenient form whatever data are necessary
16 for actuarial valuation of the various funds of the retirement system and for checking
17 the experience of each of the programs of the retirement system.

18 D. Whenever the executive director determines that a fraud, an attempted fraud or a
19 violation of law in connection with funds administered by the retirement system may
20 have occurred, the executive director shall:

21 (1) Report in writing all information concerning the fraud or violation to the
22 Attorney General or the Attorney General's designee for such action as ~~he~~ the
23 Attorney General or the Attorney General's designee may ~~deem~~ determine
24 appropriate, including civil action for recovery of funds and criminal prosecution
25 by the Attorney General; and

26 (2) Upon request of the Attorney General and in such a manner as the Attorney
27 General ~~deems~~ determines appropriate, assist in the recovery of funds.

28 E. The executive director shall cause to be delivered to each participating local
29 district a written notice setting forth the amendments or additions to this Part and
30 shall require from each participating local district an acknowledgment of receipt of
31 that notice.

32 F. Upon discovery of any error in any record of the retirement system, the executive
33 director shall, to the extent practicable, correct the record.

34 **Sec. 11. 5 MRSA §17105-A** is enacted to read:

35 **§17105-A. Adverse decisions of the board or executive director**

36 Prior to any adverse decision rendered by the board or the executive director with
37 respect to an applicant regarding any benefits, penalties or assessment of interest, the
38 board and executive director shall hold a hearing to which the applicant may bring legal
39 counsel. Failure to follow this procedure invalidates any adverse decision rendered by the
40 board or the executive director.

1 **Sec. 12. 5 MRSA §17106**, as amended by PL 2007, c. 491, §79, is further
2 amended to read:

3 **§17106. Medical board**

4 **1. Establishment.** The board shall designate a medical board or boards each to be
5 composed of 3 physicians not eligible to participate in any of the retirement programs of
6 the retirement system. The medical board or boards must be composed of physicians
7 whose practices involve treating the physical or mental conditions that afflict the
8 applicant and for which the applicant is applying for benefits.

9 **2. Other physicians.** If determined advisable by the board, the board may designate
10 other physicians to provide medical consultation on disability cases. Prior to rendering
11 any adverse recommendations regarding a disability case, the medical board shall provide
12 the applicant and or the applicant's attorney with the criteria, standards and reasons,
13 including medical criteria on which the decisions of the medical board are based. The
14 medical board shall explain how the applicant failed to meet the necessary criteria and
15 standards to qualify for a disability benefit.

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

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

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

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

25 D. Inform the executive director and board in writing of its view as to the existence
26 of a disability entitling an applicant to benefits under chapter 423, subchapter ~~∇~~ 5,
27 articles 3 and 3-A, or chapter 425, subchapter ~~∇~~ 5, articles 3 or 3-A; and

28 E. Advise the executive director and board at the request of either whether there are
29 medical indications that a person who is the recipient of a disability retirement benefit
30 under chapter 423, subchapter ~~∇~~ 5, article 3-A or chapter 425, subchapter ~~∇~~ 5, article
31 3-A should not engage in a rehabilitation program or whether a recipient is too
32 severely disabled to benefit from rehabilitation in accordance with the purposes of
33 chapter 423, subchapter ~~∇~~ 5, article 3-A or chapter 425, subchapter ~~∇~~ 5, article 3-A.

34 **4. Opinions of the medical board.** Opinions expressed by the medical board at the
35 request of the retirement system must be in writing and must be provided to all applicants
36 or recipients of disability retirement benefits whenever the retirement system relies on
37 those opinions to grant, reject or terminate benefits.

38 A. Opinions expressed by the medical board in connection with an application for or
39 review of benefits may not be considered expert evidence if relied upon by the
40 retirement system or its hearing officers or the board of trustees to deny or

1 discontinue benefits unless the author of the opinion is made available for cross-
2 examination to the applicant or recipient or appointed legal representative.

3 B. An opinion on a material issue expressed by the medical board, whether subject to
4 cross-examination or not, may not:

5 (1) Be given dispositive weight whether in the administrative process triggered
6 by an application for disability retirement benefits or any subsequent review
7 process; and

8 (2) Be considered substantial evidence in support of the retirement system's
9 decision to deny an initial application for disability retirement benefits, or to
10 terminate those benefits in any subsequent review process, unless that opinion is
11 independently supported by credible evidence in the record.

12 C. The weight to be given all expert medical evidence must be determined by the
13 following factors:

14 (1) Preferential weight must be given to medical opinions offered by an
15 applicant's or recipient's treating medical provider on all material issues,
16 including, but not limited to, the existence of a medical condition, the impairment
17 it causes directly or indirectly, the propriety of medical care, the permanency of
18 any incapacity and prognosis, so long as those opinions are expressed by
19 appropriately qualified providers;

20 (2) The amount of preferential weight afforded the opinions under subparagraph
21 1 must be gauged by the expertise of the provider with regard to the material
22 medical issue commented upon, the extent or duration of treatment provided, the
23 thoroughness of an evaluation, the medical foundation upon which the opinion is
24 based and the consistency of the opinion with other evidence in the record; and

25 (3) If an opinion expressed by a treating medical provider on any material issue
26 in dispute is supported by medically acceptable standards, practices, procedures
27 and approaches, and is consistent with other expert opinion in the record, it must
28 be given controlling weight over the contrary opinion or conclusion reached by
29 any nontreating, nonevaluating source.

30 5. Cross-examination by deposition. When an applicant disagrees with the
31 opinions of the medical board, and the medical board's written opinions are offered as
32 evidence in an administrative hearing pursuant to this chapter, the applicant is entitled to
33 cross-examine any member of the medical board by deposition, the cost of which must be
34 borne by the applicant and the transcript of which must be admitted as evidence at
35 hearing.

36 6. Opinions of treating medical providers. Unless the substantial evidence of
37 record compels a contrary conclusion, the opinions of an applicant's treating medical
38 provider must be accorded controlling weight by the hearing officer.

39 **Sec. 13. 5 MRSA §17106-A is enacted to read:**

1 **§17106-A. Hearing officers**

2 Any hearing officers employed or contracted pursuant to this chapter are authorized
3 to make final decisions about disability benefits and other benefits based on all the data
4 and evidence presented at the hearing, including information provided by treating
5 physicians, public officials, witnesses, the medical board and other sources. The findings
6 and opinions of the hearing officers or examiners must be made in accordance with
7 section 17106, subsections 5 and 6.

8 **Sec. 14. 5 MRSA §17924, sub-§2, ¶A** is enacted to read:

9 A. This subsection applies only to members whose creditable service began 5 or
10 fewer years prior to the member's application for disability benefits. This paragraph is
11 effective retroactively to March 27, 2007.

12 **Sec. 15. 5 MRSA §18504, sub-§2**, as amended by PL 2007, c. 491, §244, is
13 further amended to read:

14 **2. Exception.** A member with fewer than 5 years of continuous creditable service
15 immediately preceding that member's application for a disability retirement benefit is not
16 eligible for that benefit if the disability is the result of a physical or mental condition that
17 existed before the member's latest membership in a retirement program of the Maine
18 Public Employees Retirement System, unless the disability is a result of, or has been
19 substantially aggravated by, an injury or accident received in the line of duty but from
20 events or circumstances not usually encountered within the scope of the member's
21 employment.

22 A. This subsection applies only to members whose creditable service began 5 or
23 fewer years prior to the member's application for disability benefits. This paragraph is
24 effective retroactively to March 27, 2007.

25 **Sec. 16. 5 MRSA §18511, sub-§2**, as amended by PL 1989, c. 878, Pt. B, §6, is
26 further amended to read:

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

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

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

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

SUMMARY

1
2 This bill provides more transparency, accountability and protection for public
3 employees with respect to the processes and policies of the Maine Public Employees
4 Retirement System. The bill:

5 1. Provides that the executive director of the retirement system be appointed by the
6 Governor subject to confirmation by the Senate;

7 2. Provides that persons providing information to prospective retiring public
8 employees be well trained and knowledgeable about retirement system laws and rules and
9 be able to provide this information in understandable terms;

10 3. Provides that mistakes by public employees or employees of the retirement system
11 in regard to retirement system benefits, including overpayments, may not result in
12 punitive and unreasonable penalties that result in reducing benefits below a livable
13 income;

14 4. Provides that public employees who enroll in the retirement system must be
15 reviewed by the retirement system no later than 60 days following enrollment in regard to
16 eligibility for benefits under the retirement system;

17 5. Authorizes hearing examiners to make final decisions about disability benefits and
18 other benefits based on all the data and evidence presented at the hearing, including
19 information provided by treating physicians, public officials, witnesses, the medical
20 board and other sources;

21 6. Provides that the opinions of an applicant's treating medical provider must be
22 accorded controlling weight unless the substantial evidence of record compels a contrary
23 conclusion;

24 7. Requires the board of trustees to communicate with administrative staff throughout
25 the retirement system at least once a year in regard to issues of concern to the staff;

26 8. Requires the medical board, the executive director or the board of trustees, prior to
27 making any adverse recommendations regarding a disability case, to meet with the
28 applicant or the applicant's attorney to provide the criteria, standards and reasons,
29 including medical criteria on which the decisions of the medical board are based;

30 9. Requires the medical board to which a disability retirement request has been
31 referred to be composed of physicians whose practices involve or have involved the
32 treatment of the physical or mental conditions on which the case of the applicant is based;

33 10. Establishes as a purpose of the retirement system the provision of and
34 preservation of access to disability benefits and a reasonable and decent quality of life for
35 members of the retirement system, including individuals who become disabled. This
36 provision is given equal weight with the integrity and financial well-being of the
37 retirement system;

1 11. Requires additional information as part of the retirement system's annual report to
2 include information regarding the number of state employees, teachers and participating
3 district employees who retired and the amount of retirement payouts, the number of
4 persons who applied for disability retirement and the number denied disability retirement
5 in the previous year and the number of applicants who were denied disability retirement
6 following submission of additional information and following applicants' appeals; and

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