

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 409

S.P. 136

In Senate, February 7, 2017

An Act To Amend the Laws Pertaining to the Maine Public Employees Retirement System

Submitted by the Maine Public Employees Retirement System pursuant to Joint Rule 204.
Reference to the Committee on Appropriations and Financial Affairs suggested and ordered
printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator HAMPER of Oxford.

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

2 **Sec. 1. 3 MRSA §701, sub-§11-A** is enacted to read:

3 **11-A. Medical provider.** "Medical provider" means a physician or clinical
4 psychologist.

5 **Sec. 2. 3 MRSA §734**, as amended by PL 2007, c. 491, §12, is further amended to
6 read:

7 **§734. Medical board**

8 A medical board of the other programs of the Maine Public Employees Retirement
9 System established in Title 5, section 17106, subsection 1 is the medical board of the
10 Legislative Retirement Program. The medical board shall arrange for and pass upon all
11 medical examinations required under this chapter with respect to disability retirements
12 and shall report in writing to the executive director its conclusions and recommendations
13 upon all the matters referred to it. The board of trustees may designate other ~~physicians~~
14 medical providers to provide medical consultation on legislative disability cases.

15 **Sec. 3. 3 MRSA §853**, as amended by PL 2007, c. 491, §27, is further amended to
16 read:

17 **§853. Disability retirement**

18 Any member who becomes disabled while in service may receive a disability
19 retirement allowance on the same basis as provided for members of the State Employee
20 and Teacher Retirement Program by Title 5, chapter 423, subchapter 5, article 3 ~~3-A~~.

21 **Sec. 4. 4 MRSA §1201, sub-§12-A** is enacted to read:

22 **12-A. Medical provider.** "Medical provider" means a physician or clinical
23 psychologist.

24 **Sec. 5. 4 MRSA §1234**, as amended by PL 2007, c. 491, §38, is further amended
25 to read:

26 **§1234. Medical board**

27 A medical board of the other programs of the Maine Public Employees Retirement
28 System established in section 17106, subsection 1 is the medical board of the Judicial
29 Retirement Program. The medical board shall arrange for and pass upon all medical
30 examinations required under this chapter with respect to disability retirements and shall
31 report in writing to the Supreme Judicial Court its conclusions and recommendations
32 upon all the matters referred to it. The board of trustees may designate other ~~physicians~~
33 medical providers to provide medical consultation on judicial disability cases.

34 **Sec. 6. 4 MRSA §1353, sub-§1**, as amended by PL 1991, c. 887, §1 and PL 2007,
35 c. 58, §3, is further amended to read:

1 **1. Conditions.** Any member who becomes disabled while in service may receive a
2 disability retirement allowance by order of at least 5 Justices of the Supreme Judicial
3 Court or upon written application to the executive director, review and report of the
4 application by the medical board and approval of that application by at least 5 of the
5 Justices of the Supreme Judicial Court if that member is mentally or physically
6 incapacitated to the extent that it is impossible for that member to perform the duties as a
7 judge and the incapacity is expected to be permanent, as shown by medical examination
8 or tests. A qualified ~~physician~~ medical provider mutually agreed upon by the executive
9 director and member shall conduct the examinations or tests at an agreed upon place, and
10 the costs must be paid by the Maine Public Employees Retirement System.

11 **Sec. 7. 4 MRSA §1353, sub-§4, ¶C,** as amended by PL 2007, c. 491, §50, is
12 further amended to read:

13 C. The executive director may require the beneficiary to undergo annual medical
14 examinations or tests for the purpose of determining whether the beneficiary is
15 incapacitated. These examinations or tests must be conducted by a qualified
16 ~~physician~~ medical provider, mutually agreed upon by the executive director and
17 beneficiary, at a place also mutually agreed upon, and the costs of the examination or
18 tests must be paid by the Maine Public Employees Retirement System. If the
19 beneficiary refuses to submit to an examination or tests, the beneficiary's disability
20 allowance ceases until the beneficiary agrees to the examination or tests. If the
21 beneficiary's refusal continues for one year, all rights to any further benefits under
22 this section terminate.

23 **Sec. 8. 5 MRSA §17001, sub-§19-A** is enacted to read:

24 **19-A. Medical provider.** "Medical provider" means a physician or clinical
25 psychologist.

26 **Sec. 9. 5 MRSA §17053,** as enacted by PL 1985, c. 801, §§5 and 7, is amended to
27 read:

28 **§17053. Exemption from taxation**

29 The money in the various funds created by this Part and any property owned by the
30 retirement system are exempt from any state, county or municipal tax in the State.

31 **Sec. 10. 5 MRSA §17102, sub-§1, ¶E,** as amended by PL 2007, c. 491, §75, is
32 further amended to read:

33 E. A person who is a member or retired member of the Participating Local District
34 Retirement Program of the retirement system through a participating local district and
35 who is appointed by the governing body of the Maine Municipal Association.

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

38 B. Any proposed legislation amending the retirement system law that the board
39 recommends to improve the retirement system. The joint standing committee of the

1 Legislature having jurisdiction over public employee retirement matters may submit
2 legislation required to implement recommendations made pursuant to this paragraph;

3 **Sec. 12. 5 MRSA §17103, sub-§13**, as enacted by PL 1993, c. 410, Pt. L, §22
4 and amended by PL 2007, c. 58, §3, is repealed and the following enacted in its place:

5 **13. Budget.** By June 15th, annually, the board shall adopt an operating budget for
6 the subsequent fiscal year.

7 **Sec. 13. 5 MRSA §17106, sub-§1**, as amended by PL 2009, c. 322, §6, is further
8 amended to read:

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

15 **Sec. 14. 5 MRSA §17106, sub-§2**, as amended by PL 1995, c. 643, §4, is further
16 amended to read:

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

20 **Sec. 15. 5 MRSA §17106, sub-§3**, as amended by PL 2009, c. 322, §6, is further
21 amended to read:

22 **3. Powers and duties.** The medical board is advisory only to the retirement system.
23 The medical board or other ~~physicians~~ medical providers designated by the board shall
24 review the file of an applicant for disability retirement and:

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

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

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

31 D. Provide a written report of its analysis of how the applicant's medical records do
32 or do not demonstrate the existence of physical or mental functional limitations
33 entitling an applicant to benefits under chapter 423, subchapter 5, articles 3 and 3-A,
34 or chapter 425, subchapter 5, articles 3 or 3-A; and

35 E. Advise the retirement system whether there are medical indications that a person
36 who is the recipient of a disability retirement benefit under chapter 423, subchapter 5,
37 article 3-A or chapter 425, subchapter 5, article 3-A should not engage in a
38 rehabilitation program or whether a recipient is too severely disabled to benefit from

1 rehabilitation in accordance with the purposes of chapter 423, subchapter 5, article
2 3-A or chapter 425, subchapter 5, article 3-A.

3 **Sec. 16. 5 MRSA §17106-A, sub-§5**, as enacted by PL 2009, c. 322, §7, is
4 amended to read:

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

13 **Sec. 17. 5 MRSA §17106-A, sub-§6**, as enacted by PL 2009, c. 322, §7, is
14 amended to read:

15 **6. Engagement and termination.** The board shall engage only qualified hearing
16 officers, who must be monitored by the board. A hearing officer may be terminated for
17 misconduct. Retaliatory action of any kind, including reprimand or termination, may not
18 be taken against a hearing officer on the basis of that hearing officer's having issued
19 decisions contrary to the decision of the executive director. In the event of termination,
20 the retirement system shall set forth in writing the basis for the termination, the propriety
21 of which may then be considered by the joint standing committee of the Legislature
22 having jurisdiction over ~~labor~~ public employee retirement matters pursuant to subsection
23 5.

24 **Sec. 18. 5 MRSA §17152, first ¶**, as amended by PL 2013, c. 602, Pt. A, §1, is
25 further amended to read:

26 The board may combine the assets of the State Employee and Teacher Retirement
27 Program with the assets of other retirement programs of the retirement system for
28 investment purposes. The assets of the State Employee and Teacher Retirement Program
29 may not be combined with the assets of another retirement program for benefit purposes
30 or for administrative expenses. All of the assets of the retirement system must be credited
31 according to the purpose for which they are held among the several funds created by this
32 section, namely:

33 **Sec. 19. 5 MRSA §17760, sub-§6, ¶D** is enacted to read:

34 D. If funds are appropriated under paragraph B to subsidize the purchase of service
35 credit for specific members, and those members either decline to purchase service
36 credit or are able to purchase the service credit without subsidy, the unused funds
37 must be applied in accordance with paragraph C.

38 **Sec. 20. 5 MRSA §17902, sub-§1, ¶A**, as enacted by PL 1995, c. 643, §5, is
39 amended to read:

1 A. The executive director shall obtain medical consultation on each applicant for
2 disability retirement benefits in accordance with related rules established by the
3 board, which must include provisions indicating when a case must be reviewed by a
4 medical board and when alternative means of medical consultation are acceptable.
5 Rules adopted pursuant to this paragraph are routine technical rules as defined in
6 chapter 375, subchapter ~~H-A~~ 2-A. Whether provided by the medical board or by an
7 alternative means, medical consultation obtained by the executive director must be
8 objective and be provided by a ~~physician~~ medical provider or ~~physicians~~ medical
9 providers qualified to review the case by specialty or experience and to whom the
10 applicant is not known.

11 **Sec. 21. 5 MRSA §17903, sub-§1**, as enacted by PL 1985, c. 801, §§5 and 7, is
12 amended to read:

13 **1. Agreed upon medical provider.** The examination or tests ~~shall~~ must be
14 conducted by a qualified ~~physician~~ medical provider mutually agreed upon by the
15 executive director and member claiming to be disabled.

16 **Sec. 22. 5 MRSA §17910, sub-§2**, as enacted by PL 1985, c. 801, §§5 and 7 and
17 amended by PL 2007, c. 58, §3, is further amended to read:

18 **2. Dispute over mental or physical capacity.** In the event there is a dispute
19 between the beneficiary and the former employer over the beneficiary's mental or
20 physical capacity to perform a specific job, at the option of the beneficiary that dispute
21 ~~shall~~ must be resolved by the majority decision of 3 ~~physicians~~ medical providers, one
22 appointed and reimbursed by the beneficiary, one appointed and reimbursed by the
23 employer and one appointed by the executive director and reimbursed by the Maine
24 Public Employees Retirement System.

25 **Sec. 23. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2015, c. 392, §1, is
26 further amended to read:

27 A. The executive director shall obtain medical consultation on each applicant for
28 disability in accordance with related rules established by the board, which must
29 include provisions indicating when a case must be reviewed by a medical board and
30 when alternative means of medical consultation are acceptable. Rules adopted
31 pursuant to this paragraph are routine technical rules as defined in chapter 375,
32 subchapter 2-A. Whether provided by the medical board or by an alternative means,
33 medical consultation obtained by the executive director must be objective and be
34 provided by a ~~physician~~ medical provider or ~~physicians~~ medical providers qualified
35 to review the case by specialty or experience and to whom the applicant is not
36 known.

37 **Sec. 24. 5 MRSA §17926, sub-§1**, as enacted by PL 1989, c. 409, §§8 and 12, is
38 amended to read:

39 **1. Agreed upon medical provider.** The examinations or tests ~~shall~~ must be
40 conducted by a qualified ~~physician~~ and, when appropriate, a qualified psychologist

1 medical provider mutually agreed upon by the executive director and the member
2 claiming to be disabled.

3 **Sec. 25. 5 MRSA §17928**, as amended by PL 1997, c. 384, §8, is further amended
4 to read:

5 **§17928. Computation of benefit**

6 Until July 1, 1996, when a member qualified under section 17924 retires, after
7 approval for disability retirement by the executive director in accordance with section
8 17925, the member is entitled to receive a disability retirement benefit equal to 59% of
9 that member's average final compensation, calculated, for this section only, without
10 regard to section 17001, subsection 13, paragraph E. The 59% level must be reviewed for
11 cost-neutral comparability as a part of the actuarial investigation provided under section
12 17107, subsection 2, paragraph E, beginning with the investigation made January 1, 1997
13 and every 6 years thereafter. The review that takes place every 6 years must compare
14 actual experience under the disability plans with actuarial assumptions regarding election
15 and costs of benefits under the new options elected and identify possible options for
16 compliance with the federal Older Workers Benefit Protection Act that protect benefits
17 for employees without additional cost to the State and participating local districts.

18 A member who by election remains covered, as to qualification for benefits, under
19 section 17924 as written prior to its amendment by Public Law 1991, chapter 887, section
20 7, qualifies for a disability retirement benefit on meeting the requirements of section
21 17924, subsection 1, paragraphs C and D. When a member so qualified retires after
22 approval for disability retirement by the executive director in accordance with this
23 Article, the member is entitled to receive a disability retirement benefit equal to 66 2/3%
24 of the member's average final compensation, calculated, for this section only, without
25 regard to section 17001, subsection 13, paragraph E.

26 **Sec. 26. 5 MRSA §17932, sub-§2**, as enacted by PL 1989, c. 409, §§8 and 12, is
27 amended to read:

28 **2. Dispute over mental or physical capacity.** If there is a dispute between the
29 person and the former employer over the person's mental or physical capacity to perform
30 a specific job, at the option of the person that dispute ~~shall~~ must be resolved by a majority
31 of 3 ~~physicians~~ medical providers, one appointed and reimbursed by the person, one
32 appointed and reimbursed by the employer and one appointed and reimbursed by the
33 retirement system. If the 3 ~~physicians~~ medical providers resolve the dispute in favor of
34 the person, the former employer ~~shall~~ must reimburse the ~~physician~~ medical provider
35 appointed by the person.

36 **Sec. 27. 5 MRSA §18053-A** is enacted to read:

37 **§18053-A. Funds**

38 All assets in the group life insurance program may be combined for investment
39 purposes. The assets attributable to employers of state employees, teachers, Legislators

1 and judges who are participants in the group life insurance program may not be combined
2 with the assets attributable to other group life insurance participants for benefit purposes.

3 **Sec. 28. 5 MRSA §18060**, as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

4 **Sec. 29. 5 MRSA §18502, sub-§1, ¶A**, as enacted by PL 1995, c. 643, §17, is
5 amended to read:

6 A. The executive director shall obtain medical consultation on each applicant for
7 disability retirement benefits in accordance with related rules established by the
8 board, which must include provisions indicating when a case must be reviewed by a
9 medical board and when alternative means of medical consultation are acceptable.
10 Rules adopted pursuant to this paragraph are routine technical rules as defined in
11 chapter 375, subchapter ~~H-A~~ 2-A. Whether provided by the medical board or by an
12 alternative means, medical consultation obtained by the executive director must be
13 objective and be provided by a ~~physician~~ medical provider or ~~physicians~~ medical
14 providers qualified to review the case by specialty or experience and to whom the
15 applicant is not known.

16 **Sec. 30. 5 MRSA §18503, sub-§1**, as enacted by PL 1985, c. 801, §§5 and 7, is
17 amended to read:

18 **1. Agreed upon medical provider.** The examination or tests ~~shall~~ must be
19 conducted by a qualified ~~physician~~ medical provider mutually agreed upon by the
20 executive director and member claiming to be disabled.

21 **Sec. 31. 5 MRSA §18525, sub-§1, ¶A**, as amended by PL 1995, c. 643, §21, is
22 further amended to read:

23 A. The executive director shall obtain medical consultation on each applicant for
24 disability in accordance with related rules established by the board, which must
25 include provisions indicating when a case must be reviewed by a medical board and
26 when alternative means of medical consultation are acceptable. Rules adopted
27 pursuant to this paragraph are routine technical rules as defined in chapter 375,
28 subchapter ~~H-A~~ 2-A. Whether provided by the medical board or by an alternative
29 means, medical consultation obtained by the executive director must be objective and
30 be provided by a ~~physician~~ medical provider or ~~physicians~~ medical providers
31 qualified to review the case by specialty or experience and to whom the applicant is
32 not known.

33 **Sec. 32. 5 MRSA §18526, sub-§1**, as enacted by PL 1989, c. 409, §§11 and 12, is
34 amended to read:

35 **1. Agreed upon medical provider.** The examinations or tests ~~shall~~ must be
36 conducted by a qualified ~~physician and, when appropriate, a qualified psychologist~~
37 medical provider mutually agreed upon by the executive director and the member
38 claiming to be disabled.

39 **Sec. 33. 5 MRSA §18528**, as amended by PL 1997, c. 384, §14, is further
40 amended to read:

1 **§18528. Computation of benefit**

2 When a member qualified under section 18524 retires, after approval for disability
3 retirement by the executive director in accordance with section 18525, the member is
4 entitled to receive a disability retirement benefit equal to 59% of that member's average
5 final compensation, calculated, for this section only, without regard to section 17001,
6 subsection 13, paragraph E. The 59% level must be reviewed for cost-neutral
7 comparability as a part of the actuarial investigation provided under section 17107,
8 subsection 2, paragraph E, beginning with the investigation made January 1, 1997 and
9 every 6 years thereafter. The review that takes place every 6 years must compare actual
10 experience under the disability plans with actuarial assumptions regarding election and
11 costs of benefits under the new options elected and identify possible options for
12 compliance with the federal Older Workers Benefit Protection Act that protect benefits
13 for employees without additional cost to the State and participating local districts.

14 A member who by election remains covered, as to qualification for benefits, under
15 section 18524 as written prior to its amendment by Public Law 1991, chapter 887, section
16 15, qualifies for a disability retirement benefit on meeting the requirements of section
17 18524, subsection 1, paragraphs C and D. When a member so qualified retires after
18 approval for disability retirement by the executive director in accordance with this
19 Article, the member is entitled to receive a disability retirement benefit equal to 66 2/3%
20 of the member's average final compensation, calculated, for this section only, without
21 regard to section 17001, subsection 13, paragraph E.

22 **Sec. 34. 5 MRSA §18532, sub-§2,** as enacted by PL 1989, c. 409, §§11 and 12, is
23 amended to read:

24 **2. Dispute over mental or physical capacity.** If there is a dispute between the
25 person and the former employer over the person's mental or physical capacity to perform
26 a specific job, at the option of the person that dispute ~~shall~~ must be resolved by a majority
27 of 3 ~~physicians~~ medical providers, one appointed and reimbursed by the person, one
28 appointed and reimbursed by the employer and one appointed and reimbursed by the
29 retirement system. If the 3 ~~physicians~~ medical providers resolve the dispute in favor of
30 the person, the former employer ~~shall~~ must reimburse the ~~physician~~ medical provider
31 appointed by the person.

32 **Sec. 35. 5 MRSA §18653-A** is enacted to read:

33 **§18653-A. Funds**

34 All assets in the group life insurance program may be combined for investment
35 purposes. The assets attributable to employers of participating local district participants
36 in the group life insurance program may not be combined with the assets attributable to
37 other group life insurance participants for benefit purposes.

38 **Sec. 36. 5 MRSA §18660,** as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

39 **Sec. 37. PL 2015, c. 267, Pt. A, §63, under the caption “RETIREMENT**
40 **SYSTEM, MAINE PUBLIC EMPLOYEES” in the first occurrence of**

1 **“Retirement System - Subsidized Military Service Credit Z094”** is amended by
2 amending the initiative to read:

3 Initiative: Provides funds to allow for 2 members who the Maine Public Employees
4 Retirement System determined were qualified to purchase military service credit at a
5 subsidized rate pursuant to the Maine Revised Statutes, Title 5, section 17760 in 2004. If
6 the 2 members for whom funds are appropriated under this section either decline to
7 purchase service credit or are able to purchase the service credit without subsidy, the
8 unused funds must be applied in accordance with Title 5, section 17760, subsection 6,
9 paragraph C.

10 **Sec. 38. PL 2015, c. 267, Pt. A, §63, under the caption “RETIREMENT**
11 **SYSTEM, MAINE PUBLIC EMPLOYEES” in the 2nd occurrence of**
12 **“Retirement System - Subsidized Military Service Credit Z094”** is amended by
13 amending the initiative to read:

14 Initiative: Provides funds to allow for 3 members who the Maine Public Employees
15 Retirement System determined were qualified to purchase military service credit at a
16 subsidized rate pursuant to the Maine Revised Statutes, Title 5, section 17760 in 2005,
17 2012 and 2013. If the 3 members for whom funds are appropriated under this section
18 either decline to purchase service credit or are able to purchase the service credit without
19 subsidy, the unused funds must be applied in accordance with Title 5, section 17760,
20 subsection 6, paragraph C.

21 **Sec. 39. Applicability.** The provisions of sections 25 and 33 of this Act apply to
22 benefits paid to disability retirement benefit recipients who are found eligible for those
23 benefits after the effective date of this Act.

24 SUMMARY

25 This bill makes the following changes to the laws governing the Maine Public
26 Employees Retirement System:

27 1. It replaces the term "physician" with "medical provider" and defines "medical
28 provider" to include physicians and clinical psychologists, which permits clinical
29 psychologists to be included in the composition of the medical board and for other
30 medical consultations;

31 2. It clarifies that the board member who represents participating local districts may
32 be either an active or retired member.

33 3. It clarifies the basis on which disability benefits for members of the Legislative
34 Retirement Program are determined;

35 4. It clarifies that any property owned by the retirement system is tax exempt;

36 5. It gives the joint standing committee of the Legislature having jurisdiction over
37 public employee retirement matters the authority to report out legislation as
38 recommended by the board of trustees to improve the retirement system;

- 1 6. It replaces obsolete language regarding the retirement system budgeting process;
- 2 7. It corrects a reference to the legislative jurisdiction that pertains to matters relating
- 3 to the retirement system;
- 4 8. It clarifies the treatment of retirement system assets;
- 5 9. It clarifies the disposition of funds appropriated to subsidize the purchase of
- 6 military service credit for specific members who subsequently decline to purchase service
- 7 credit or are able to purchase service credit without subsidy;
- 8 10. It changes the manner in which disability retirement benefits are calculated for
- 9 less than full-time members;
- 10 11. It clarifies that assets of the group life insurance program may only be used for
- 11 benefits for participants of employers for which the assets are attributable; and
- 12 12. It removes obsolete language.