

# MAINE STATE LEGISLATURE

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Date: 3/17/2020

**MAJORITY**

(Filing No. S- 477 )

**LABOR AND HOUSING**

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**STATE OF MAINE**

**SENATE**

**129TH LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 680, L.D. 1978, Bill, "An Act To Improve the Disability Retirement Program of the Maine Public Employees Retirement System"

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

**Sec. 1. 3 MRSA §701, sub-§9-A is enacted to read:**

**9-A. Health care provider.** "Health care provider" means an appropriately licensed, certified or registered provider of mental or physical health care, either in the public or private sector.

**Sec. 2. 3 MRSA §701, sub-§11-A, as enacted by PL 2017, c. 88, §1, is repealed.**

**Sec. 3. 3 MRSA §734, as amended by PL 2017, c. 88, §2, is repealed.**

**Sec. 4. 4 MRSA §1201, sub-§6-A, ¶B, as enacted by PL 1989, c. 133, §17, is amended to read:**

B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

**Sec. 5. 4 MRSA §1201, sub-§9-A is enacted to read:**

**9-A. Health care provider.** "Health care provider" means an appropriately licensed, certified or registered provider of mental or physical health care, either in the public or private sector.

**Sec. 6. 4 MRSA §1201, sub-§12-A, as enacted by PL 2017, c. 88, §4, is repealed.**

**Sec. 7. 4 MRSA §1234, as amended by PL 2017, c. 88, §5, is further amended to read:**

**COMMITTEE AMENDMENT**

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**§1234. Medical board review of disability**

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

**Sec. 8. 4 MRSA §1353, sub-§1**, as amended by PL 2017, c. 88, §6, is further amended to read:

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

**Sec. 9. 4 MRSA §1353, sub-§4, ¶C**, as amended by PL 2017, c. 88, §7, is further amended to read:

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

**Sec. 10. 5 MRSA §11007, sub-§3**, as enacted by PL 1977, c. 551, §3, is amended to read:

**3. Judgment.** The court ~~shall~~ may not substitute its judgment for that of the agency on questions of fact, ~~except that, with respect to a timely appeal by an individual of a denial of a disability determination by a hearing officer pursuant to sections 17106-A and 17106-B, the court shall review the matter de novo.~~

**Sec. 11. 5 MRSA §17001, sub-§12, ¶B**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~ an independent health care provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

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1           **Sec. 12. 5 MRSA §17001, sub-§18-B** is enacted to read:

2           **18-B. Health care provider.** "Health care provider" means an appropriately  
3 licensed, certified or registered provider of mental or physical health care, either in the  
4 public or private sector.

5           **Sec. 13. 5 MRSA §17001, sub-§19-A**, as enacted by PL 2017, c. 88, §8, is  
6 repealed.

7           **Sec. 14. 5 MRSA §17106**, as amended by PL 2017, c. 88, §§14 to 16, is repealed.

8           **Sec. 15. 5 MRSA §17106-A, first ¶**, as enacted by PL 2009, c. 322, §7, is  
9 amended to read:

10           ~~A hearing officer employed, contracted or otherwise provided by the board~~ The board  
11 shall contract with qualified attorneys to act as hearing officers to implement the  
12 provisions of this chapter is. Hearing officers are subject to the provisions of this section.  
13 Hearing officers are not employees of the board but independent contractors who serve as  
14 neutral and independent decision makers.

15           **Sec. 16. 5 MRSA §17106-A, sub-§6**, as amended by PL 2017, c. 88, §18, is  
16 further amended to read:

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

26           **Sec. 17. 5 MRSA §17106-B** is enacted to read:

27           **§17106-B. Disability retirement; medical review**

28           **1. Disability retirement forms; assessment.** The executive director shall develop  
29 and make easily accessible to health care providers in this State a disability form that  
30 allows a health care provider to provide an assessment of a member's ability to work after  
31 taking into account the member's mental or physical disability under the standards of this  
32 Part. References in this section to "disability form" refer to the form developed by the  
33 executive director. A member seeking disability retirement shall obtain an assessment  
34 from the health care provider of the member's ability to work after taking into account the  
35 member's mental or physical disability, and, if the health care provider finds that the  
36 member is disabled under the standards of this Part, the health care provider, at the  
37 request of the member, shall file with the executive director a disability form signed by  
38 the health care provider. The health care provider shall also provide a copy of the form to  
39 the member. The executive director may find that a member has a mental or physical  
40 disability and is eligible for disability retirement based on the information provided in the  
41 form or by the long-term disability insurance carrier providing coverage under this Part.

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2. Medical review. If the executive director is unable to determine whether a member is eligible for disability retirement based on the information provided in the disability form or by the insurance carrier under subsection 1, the executive director shall direct the member to have an independent medical examination by an independent health care provider.

A. The retirement system shall pay all fees of the independent health care provider. The independent health care provider may not be a state employee and may not have any association with the retirement system other than providing independent medical examinations or medical consultations and receiving payment for these services and, unless the member consents in writing, may not have previously examined or treated the member with respect to the member's mental or physical disability.

B. The member may have a representative present at the independent medical examination, who may be a union representative, an attorney or a health care provider of the member's choice. The retirement system shall reimburse the member's representative as follows:

(1) If the representative is a health care provider, the retirement system shall pay that health care provider a standard per diem rate established by the board and a reasonable mileage reimbursement; and

(2) Any other representative of the member may be paid a reasonable mileage reimbursement only.

3. Disability determination; appeal. After an independent medical review under subsection 2, the executive director or designee shall make a determination of eligibility for disability retirement based upon the totality of the evidence and in accordance with subsection 4. The retirement system shall employ or engage one or more registered nurses or health care providers to assist in this determination. Qualifications of these persons must include at least a 4-year degree and experience with occupational disabilities. A determination by the executive director or designee that the member is not disabled may be appealed by the member to a hearing officer, who shall hear the appeal in accordance with section 17106-A. The board shall by rule provide for procedures for the member to participate in selection of the hearing officer who will hear the member's appeal. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

4. Medical evidence. When reviewing medical evidence in making a determination of disability, the board, executive director and hearing officers shall primarily consider medical opinions in the record and whether the opinions are supported by sound medical evidence and are consistent with other medical evidence in the record.

5. Attorney's fees. If a member has retained services of an attorney to represent the member before a hearing officer or in a court proceeding on appeal of a board decision, the fee arrangement has been approved by the hearing officer or the court and the attorney obtains a favorable result for the member, the attorney's legal fees must be paid by the retirement system, up to a maximum of \$12,000. The fee arrangement may be a contingency fee, in which case the payment by the retirement system must be applied toward the satisfaction of the contingency fee.

# COMMITTEE AMENDMENT

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1           **Sec. 18. 5 MRSA §17911, first ¶**, as enacted by PL 2003, c. 387, §4, is amended  
2 to read:

3           Upon agreement of the executive director and the person, rehabilitation services may  
4 be provided to any person who is the recipient of a disability retirement benefit under this  
5 article as a means to the person being able to return to substantially gainful activity. As a  
6 condition of entering into an agreement to provide rehabilitation services, the executive  
7 director must determine that rehabilitation is feasible, that rehabilitation is consistent with  
8 the purposes of this article, that the recipient is suitable for rehabilitation services and that  
9 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~  
10 ~~appropriate, determination of suitability must include consultation with the medical board~~  
11 ~~to determine any medical indications that the recipient should not engage in a~~  
12 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~  
13 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be  
14 provided by private and public rehabilitation counselors, government agencies and others  
15 approved by the executive director as qualified to provide rehabilitation services. The  
16 executive director shall consider a rehabilitation counselor's rate of successfully placing  
17 rehabilitated employees in jobs relative to the placement rates of other counselors in the  
18 State as fundamental in deciding whether to approve the counselor as qualified. This  
19 section does not affect the ongoing requirement that a person remain disabled in order to  
20 continue to receive disability benefits.

21           **Sec. 19. 5 MRSA §17921, sub-§1, ¶B**, as enacted by PL 1989, c. 409, §§8 and  
22 12, is amended to read:

23           B. ~~That it is impossible to perform the duties of the member is unable to perform the~~  
24 essential functions of the member's employment position with reasonable  
25 accommodation;

26           **Sec. 20. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2017, c. 88, §25, is  
27 further amended to read:

28           A. The executive director shall obtain independent medical consultation on  
29 examinations of each applicant for disability retirement benefits in accordance with  
30 ~~related rules established by the board, which must include provisions indicating when~~  
31 ~~a case must be reviewed by a medical board and when alternative means of medical~~  
32 ~~consultation are acceptable. Rules adopted pursuant to this paragraph are routine~~  
33 ~~technical rules as defined in chapter 375, subchapter 2 A. Whether provided by the~~  
34 ~~medical board or by an alternative means, medical consultation obtained by the~~  
35 ~~executive director must be objective and be provided by a medical provider or~~  
36 ~~medical providers qualified to review the case by specialty or experience and to~~  
37 ~~whom the applicant is not known~~ section 17106-B.

38           **Sec. 21. 5 MRSA §17926**, as amended by PL 2017, c. 88, §26, is further amended  
39 to read:

40           **§17926. Examinations or tests**

41           Any examinations or tests ~~recommended by the medical board in accordance with~~  
42 conducted under section ~~17106~~ 17106-B or required by the executive director under

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1 section 17921, subsection 1, paragraph D; section 17924; section 17929, subsection 2,  
2 paragraph B; or section 17933, subsection 3, paragraph A, are governed as follows.

3 **1. Agreed upon medical health care provider.** The examinations or tests must be  
4 conducted by a qualified ~~medical~~ health care provider mutually agreed upon by the  
5 executive director and the member claiming to be disabled.

6 **2. Agreed upon place.** The examinations or tests ~~shall~~ must be conducted at the  
7 health care provider's office or facility or at a place mutually agreed upon by the  
8 executive director and the member claiming to be disabled.

9 **3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the  
10 retirement system.

11 **Sec. 22. 5 MRSA §17927, first ¶,** as amended by PL 2003, c. 387, §5, is further  
12 amended to read:

13 Upon agreement of the executive director and the person, rehabilitation services may  
14 be provided to any person who is the recipient of a disability retirement benefit under this  
15 article as a means to the person being able to return to substantially gainful activity. As a  
16 condition of entering into an agreement to provide rehabilitation services, the executive  
17 director must determine that rehabilitation is feasible, that rehabilitation is consistent with  
18 the purposes of this article, that the recipient is suitable for rehabilitation services and that  
19 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~  
20 ~~appropriate, determination of suitability must include consultation with the medical board~~  
21 ~~to determine any medical indications that the recipient should not engage in a~~  
22 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~  
23 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be  
24 provided by private and public rehabilitation counselors, government agencies and others  
25 approved by the executive director as qualified to provide rehabilitation services. The  
26 executive director shall consider a rehabilitation counselor's rate of successfully placing  
27 rehabilitated employees in jobs relative to the placement rates of other counselors in the  
28 State as fundamental in deciding whether to approve the counselor as qualified. This  
29 section does not affect the ongoing requirement that a person remain disabled in order to  
30 continue to receive disability benefits.

31 **Sec. 23. 5 MRSA §17929, sub-§2, ¶B,** as amended by PL 2003, c. 675, §2, is  
32 further amended to read:

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

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

R O P S

COMMITTEE AMENDMENT "A" to S.P. 680, L.D. 1978 (S-447)

1 seeking work. For the purposes of this subparagraph, the ability to engage in  
2 substantially gainful activity is demonstrated by the ability to perform work  
3 resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average  
4 final compensation at retirement, whichever is greater, adjusted by the same  
5 percentage adjustments granted under section 17806.

6 (2) If the person refuses to submit to the examinations or tests under this  
7 paragraph, the disability retirement benefit is discontinued until that person  
8 withdraws the refusal.

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

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

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

16 (a) The decision is subject to appeal under section 17451.

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

20 **Sec. 24. 5 MRSA §17930, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§8 and  
21 12, is amended to read:

22 C. If, during the first 5 years of reemployment, the person again becomes disabled,  
23 terminates employment and is not covered by any other disability program, the  
24 retirement system shall resume paying the disability retirement benefit payable prior  
25 to the reemployment with all applicable cost-of-living adjustments and shall provide  
26 rehabilitation services under in accordance with section 17927 ~~if recommended by~~  
27 ~~the medical board~~. If the benefit payable under the other disability program is not  
28 equal to or greater than the benefit under this article, the retirement system shall pay  
29 the difference between the amount of the benefit payable under the other disability  
30 program and the amount of the benefit payable under this article. The executive  
31 director shall require examinations or tests to determine whether the person is  
32 disabled as described in section 17921; and

33 **Sec. 25. 5 MRSA §17930, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§8 and  
34 12, is amended to read:

35 E. If, during the first 5 years of reemployment, the person again becomes disabled  
36 and terminates employment, the retirement system shall resume paying the disability  
37 retirement benefit payable prior to the reemployment with all applicable cost-of-  
38 living adjustments, or if greater, a disability retirement benefit based upon the  
39 person's current average final compensation and shall provide rehabilitation services  
40 under in accordance with section 17927 ~~if recommended by the medical board~~. The

**COMMITTEE AMENDMENT**



R.O.F.S

1 executive director shall require examinations or tests to determine whether the person  
2 is disabled as defined in section 17921; and

3 **Sec. 26. 5 MRSA §17932, sub-§2**, as amended by PL 2017, c. 88, §27, is further  
4 amended to read:

5 **2. Dispute over mental or physical capacity.** If there is a dispute between the  
6 person and the former employer over the person's mental or physical capacity to perform  
7 a specific job, at the option of the person that dispute must be resolved by a majority of 3  
8 ~~medical~~ health care providers, one appointed and reimbursed by the person, one  
9 appointed and reimbursed by the employer and one appointed and reimbursed by the  
10 retirement system. If the 3 ~~medical~~ health care providers resolve the dispute in favor of  
11 the person, the former employer must reimburse the ~~medical~~ health care provider  
12 appointed by the person.

13 **Sec. 27. 5 MRSA §17953, sub-§3, ¶A**, as amended by PL 1991, c. 469, §2, is  
14 further amended to read:

15 A. A surviving spouse of the qualifying member is paid a \$150 benefit each month  
16 beginning the first month after the death occurs and continuing during the surviving  
17 spouse's lifetime, if:

18 (1) The deceased qualifying member had 10 years of creditable service at the  
19 time of death; or

20 (2) The surviving spouse is certified by ~~the medical board~~ an independent health  
21 care provider to be permanently mentally incompetent or permanently physically  
22 incapacitated and is determined by the executive director to be unable to engage  
23 in any substantially gainful employment.

24 A full month's benefit is paid to the estate of the surviving spouse for the month in  
25 which the surviving spouse dies.

26 **Sec. 28. 5 MRSA §17953, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §2, is  
27 further amended to read:

28 A. A designated beneficiary who is alive at the time of the death of the qualifying  
29 member is paid \$150 per month beginning the first month after the death occurs and  
30 continuing until the date of the designated beneficiary's death, if the designated  
31 beneficiary is certified by ~~the medical board~~ an independent health care provider  
32 to be permanently mentally incompetent or permanently physically incapacitated and is  
33 determined by the executive director to be unable to engage in any substantially  
34 gainful employment.

35 **Sec. 29. 5 MRSA §18502, sub-§1, ¶A**, as amended by PL 2017, c. 88, §30, is  
36 further amended to read:

37 A. The executive director shall obtain independent medical ~~consultation on~~  
38 examinations of each applicant for disability retirement benefits in accordance with  
39 ~~related rules established by the board, which must include provisions indicating when~~  
40 ~~a case must be reviewed by a medical board and when alternative means of medical~~  
41 ~~consultation are acceptable. Rules adopted pursuant to this paragraph are routine~~  
42 ~~technical rules as defined in chapter 375, subchapter 2-A. Whether provided by the~~

# COMMITTEE AMENDMENT

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1 ~~medical board or by an alternative means, medical consultation obtained by the~~  
2 ~~executive director must be objective and be provided by a medical provider or~~  
3 ~~medical providers qualified to review the case by specialty or experience and to~~  
4 ~~whom the applicant is not known section 17106-B.~~

5 **Sec. 30. 5 MRSA §18503, sub-§1**, as amended by PL 2017, c. 88, §31, is further  
6 amended to read:

7 **1. Agreed upon medical health care provider.** The examination or tests must be  
8 conducted by a qualified medical health care provider mutually agreed upon by the  
9 executive director and member claiming to be disabled.

10 **Sec. 31. 5 MRSA §18503, sub-§2**, as enacted by PL 1985, c. 801, §§5 and 7, is  
11 amended to read:

12 **2. Agreed upon place.** The examination or tests ~~shall~~ must be conducted at the  
13 health care provider's office or facility or at a place mutually agreed upon by the  
14 executive director and member claiming to be disabled.

15 **Sec. 32. 5 MRSA §18512, first ¶**, as enacted by PL 2003, c. 387, §10, is  
16 amended to read:

17 Upon agreement of the executive director and the person, rehabilitation services may  
18 be provided to any person who is the recipient of a disability retirement benefit under this  
19 article as a means to the person being able to return to substantially gainful activity. As a  
20 condition of entering into an agreement to provide rehabilitation services, the executive  
21 director must determine that rehabilitation is feasible, that rehabilitation is consistent with  
22 the purposes of this article, that the recipient is suitable for rehabilitation services and that  
23 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~  
24 ~~appropriate, determination of suitability must include consultation with the medical board~~  
25 ~~to determine any medical indications that the recipient should not engage in a~~  
26 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~  
27 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be  
28 provided by private and public rehabilitation counselors, government agencies and others  
29 approved by the executive director as qualified to provide rehabilitation services. The  
30 executive director shall consider a rehabilitation counselor's rate of successfully placing  
31 rehabilitated employees in jobs relative to the placement rates of other counselors in the  
32 State as fundamental in deciding whether to approve the counselor as qualified. This  
33 section does not affect the ongoing requirement that a person remain disabled in order to  
34 continue to receive disability benefits.

35 **Sec. 33. 5 MRSA §18521, sub-§1, ¶B**, as enacted by PL 1989, c. 409, §§11 and  
36 12, is amended to read:

37 **B.** That it is ~~impossible to perform the duties~~ the member is unable to perform the  
38 essential functions of the member's employment position with reasonable  
39 accommodations;

40 **Sec. 34. 5 MRSA §18525, sub-§1, ¶A**, as amended by PL 2017, c. 88, §32, is  
41 further amended to read:

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1 A. The executive director shall obtain independent medical consultation ~~on~~  
2 ~~examinations of~~ each applicant for disability retirement benefits in accordance with  
3 ~~related rules established by the board, which must include provisions indicating when~~  
4 ~~a case must be reviewed by a medical board and when alternative means of medical~~  
5 ~~consultation are acceptable. Rules adopted pursuant to this paragraph are routine~~  
6 ~~technical rules as defined in chapter 375, subchapter 2-A. Whether provided by the~~  
7 ~~medical board or by an alternative means, medical consultation obtained by the~~  
8 ~~executive director must be objective and be provided by a medical provider or~~  
9 ~~medical providers qualified to review the case by specialty or experience and to~~  
10 ~~whom the applicant is not known~~ section 17106-B.

11 **Sec. 35. 5 MRSA §18526**, as amended by PL 2017, c. 88, §33, is further amended  
12 to read:

13 **§18526. Examinations or tests**

14 Any examinations or tests ~~recommended by the medical board in accordance with~~  
15 conducted under section 17106 17106-B or required by the executive director under  
16 section 18521, subsection 1, paragraph D; section 18524; section 18529, subsection 2,  
17 paragraph B; or section 18533, subsection 3, paragraph A, are governed as follows.

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

21 **2. Agreed upon place.** The examinations or tests ~~shall~~ must be conducted at the  
22 health care provider's office or facility or at a place mutually agreed upon by the  
23 executive director and the member claiming to be disabled.

24 **3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the  
25 retirement system.

26 **Sec. 36. 5 MRSA §18527, first ¶**, as amended by PL 2003, c. 387, §11, is further  
27 amended to read:

28 Upon agreement of the executive director and the person, rehabilitation services may  
29 be provided to any person who is the recipient of a disability retirement benefit under this  
30 article as a means to the person being able to return to substantially gainful activity. As a  
31 condition of entering into an agreement to provide rehabilitation services, the executive  
32 director must determine that rehabilitation is feasible, that rehabilitation is consistent with  
33 the purposes of this article, that the recipient is suitable for rehabilitation services and that  
34 rehabilitation services are likely to lead to substantially gainful activity. ~~When~~  
35 ~~appropriate, determination of suitability must include consultation with the medical board~~  
36 ~~to determine any medical indications that the recipient should not engage in a~~  
37 ~~rehabilitation program or to identify a recipient too severely disabled to benefit from~~  
38 ~~rehabilitation services in accordance with the purposes of this article.~~ Services must be  
39 provided by private and public rehabilitation counselors, government agencies and others  
40 approved by the executive director as qualified to provide rehabilitation services. The  
41 executive director shall consider a rehabilitation counselor's rate of successfully placing  
42 rehabilitated employees in jobs relative to the placement rates of other counselors in the  
43 State as fundamental in deciding whether to approve the counselor as qualified. This

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1 section does not affect the ongoing requirement that a person remain disabled in order to  
2 continue to receive disability benefits.

3 **Sec. 37. 5 MRSA §18529, sub-§2, ¶B**, as amended by PL 2003, c. 675, §4, is  
4 further amended to read:

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

11 (1) After the disability has continued for 2 years, the disability must render the  
12 person unable to engage in any substantially gainful activity that is consistent  
13 with the person's training, education or experience and average final  
14 compensation adjusted by the same percentage adjustment as has been received  
15 under section 18407. The disability retirement benefit continues if the person can  
16 effectively demonstrate to the executive director that the person is actively  
17 seeking work. For purposes of this subparagraph, the ability to engage in  
18 substantially gainful activity is demonstrated by the ability to perform work  
19 resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average  
20 final compensation at retirement, whichever is greater, adjusted by the same  
21 percentage adjustments granted under section 18407.

22 (2) If the person refuses to submit to the examinations or tests under this  
23 paragraph, the disability retirement benefit is discontinued until that person  
24 withdraws the refusal.

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

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

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

32 (a) The decision is subject to appeal under section 17451.

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

36 **Sec. 38. 5 MRSA §18530, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§11 and  
37 12, is amended to read:

38 C. If, during the first 5 years of reemployment, the person again becomes disabled,  
39 terminates employment and is not covered by any other disability program, the  
40 retirement system shall resume paying the disability retirement benefit payable prior  
41 to the reemployment with all applicable cost-of-living adjustments and shall provide

ROFS

COMMITTEE AMENDMENT "A" to S.P. 680, L.D. 1978 (S-417)

1 rehabilitation services under in accordance with section 18527 ~~if recommended by~~  
2 ~~the medical board~~. If the benefit payable under the other disability program is not  
3 equal to or greater than the benefit under this article, the retirement system shall pay  
4 the difference between the amount of the benefit payable under the other disability  
5 program and the amount of the benefit payable under this article. The executive  
6 director shall require examinations or tests to determine whether the person is  
7 disabled as described in section 18521; and

8 **Sec. 39. 5 MRSA §18530, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§11 and  
9 12, is amended to read:

10 E. If, during the first 5 years of reemployment, the person again becomes disabled  
11 and terminates employment, the retirement system shall resume paying the disability  
12 retirement benefit payable prior to the reemployment with all applicable cost-of-  
13 living adjustments, or if greater, a disability retirement benefit based upon the  
14 person's current average final compensation and shall provide rehabilitation services  
15 under in accordance with section 18527 ~~if recommended by the medical board~~. The  
16 executive director shall require examinations or tests to determine whether the person  
17 is disabled as defined in section 18521; and

18 **Sec. 40. 5 MRSA §18553, sub-§3, ¶A**, as amended by PL 1991, c. 469, §5, is  
19 further amended to read:

20 A. A surviving spouse of the qualifying member is paid a \$150 benefit each month  
21 beginning the first month after the death occurs and continuing during the surviving  
22 spouse's lifetime, if:

- 23 (1) The deceased qualifying member had 10 years of creditable service at the  
24 time of death; or
- 25 (2) The surviving spouse is certified by ~~the medical board~~ an independent health  
26 care provider to be permanently mentally incompetent or permanently physically  
27 incapacitated and is determined by the executive director to be unable to engage  
28 in any substantially gainful employment.

29 A full month's benefit is paid to the estate of the surviving spouse for the month in  
30 which the surviving spouse dies.

31 **Sec. 41. 5 MRSA §18553, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §5, is  
32 further amended to read:

33 A. A designated beneficiary who is alive at the time of the death of the qualifying  
34 member is paid \$150 per month beginning the first month after the death occurs and  
35 continuing until the date of the designated beneficiary's death, if the designated  
36 beneficiary is certified by ~~the medical board~~ an independent health care provider  
37 to be permanently mentally incompetent or permanently physically incapacitated and is  
38 determined by the executive director to be unable to engage in any substantially  
39 gainful employment.

40 **Sec. 42. Implementation plan for mandatory long-term disability**  
41 **insurance.** The Maine Public Employees Retirement System shall convene a  
42 stakeholder group, including representatives of participant employers and employee

# COMMITTEE AMENDMENT

R O F S

1 groups, to develop an implementation plan for providing mandatory long-term disability  
2 insurance coverage to retirement system members through their employers. The Maine  
3 Public Employees Retirement System shall submit an implementation plan, including any  
4 recommended legislation, to the joint standing committee of the Legislature having  
5 jurisdiction over retirement matters no later than January 4, 2021. The joint standing  
6 committee of the Legislature having jurisdiction over retirement matters may report out  
7 legislation in the First Regular Session of the 130th Legislature based on the report.

8 **Sec. 43. Reports on disability retirement.** The Maine Public Employees  
9 Retirement System shall report twice to the joint standing committee of the Legislature  
10 having jurisdiction over retirement matters, no later than March 31, 2021 and January 31,  
11 2022, on the experience of the system and its members after the implementation of this  
12 Act. The joint standing committee of the Legislature having jurisdiction over retirement  
13 matters may report out a bill to the 130th Legislature on matters related to the reports.

14 **Sec. 44. Application.** This Act applies to disability retirement benefit applications  
15 received by the Maine Public Employees Retirement System on or after the effective date  
16 of this Act.'

17 **SUMMARY**

18 This amendment replaces the bill and is the majority report of the committee. The  
19 amendment makes changes consistent across retirement programs of the Maine Public  
20 Employees Retirement System; clarifies the decision-making process for disability  
21 retirement applications; eliminates expansion of the definition of "disability" and creation  
22 of a preapproval benefit to avoid creating an unfunded actuarial liability; specifies that  
23 independent medical examinations may take place at the health care provider's office or  
24 facility; and requires the retirement system to report to the joint standing committee of the  
25 Legislature having jurisdiction over retirement matters on the experience of the  
26 retirement system and its members under the changes. The amendment also requires  
27 formation of a stakeholder group to report to the joint standing committee of the  
28 Legislature having jurisdiction over retirement matters on implementing mandatory long-  
29 term disability insurance coverage.

30 **FISCAL NOTE REQUIRED**

31 (See attached)



Approved: 03/15/20 *MBC*

# 129th MAINE LEGISLATURE

LD 1978

LR 2648(02)

## An Act To Improve the Disability Retirement Program of the Maine Public Employees Retirement System

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-447)  
Committee: Labor and Housing  
Fiscal Note Required: Yes

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### Fiscal Note

Increased administrative costs - Maine Public Employees Retirement System

#### Fiscal Detail and Notes

Implementing the requirements of this legislation will result in increased administrative costs to the Maine Public Employees Retirement System. All retirement system administrative costs are charged against the assets held by the system. No General Fund appropriations are required.