

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1644

S.P. 529

In Senate, May 5, 2021

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

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Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.  
Cosponsored by Representative TALBOT ROSS of Portland and  
Senator: President JACKSON of Aroostook, Representatives: DUNPHY of Old Town, Speaker  
FECTEAU of Biddeford.

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

2 **Sec. 1. 3 MRSA §701, sub-§11-A**, as enacted by PL 2017, c. 88, §1, is repealed.

3 **Sec. 2. 3 MRSA §734**, as amended by PL 2017, c. 88, §2, is repealed.

4 **Sec. 3. 4 MRSA §1201, sub-§6-A, ¶B**, as enacted by PL 1989, c. 133, §17, is  
5 amended to read:

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

11 **Sec. 4. 4 MRSA §1201, sub-§10-A** is enacted to read:

12 **10-A. Health care provider.** "Health care provider" means an appropriately licensed,  
13 certified or registered provider of mental or physical health care, in either the public or  
14 private sector.

15 **Sec. 5. 4 MRSA §1201, sub-§12-A**, as enacted by PL 2017, c. 88, §4, is repealed.

16 **Sec. 6. 4 MRSA §1201, sub-§12-B** is enacted to read:

17 **12-B. Medical review service provider.** "Medical review service provider" means  
18 an entity with whom the executive director has contracted for the review of medical records  
19 and the provision of recommendations, opinions and certifications under this chapter by  
20 health care providers employed by the entity.

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

23 **§1234. ~~Medical board~~ review of disability**

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

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

33 **1. Conditions.** Any member who becomes disabled while in service may receive a  
34 disability retirement allowance by order of at least 5 Justices of the Supreme Judicial Court  
35 or upon written application to the executive director, ~~review and report of the application~~  
36 ~~by the medical board~~ and approval of that application by at least 5 of the Justices of the  
37 Supreme Judicial Court if that member is mentally or physically incapacitated to the extent  
38 that it is impossible for that member to perform the duties as a judge and the incapacity is  
39 expected to be permanent, as shown by medical examination or tests. A qualified medical  
40 health care provider mutually agreed upon by the executive director and member shall

1 conduct the examinations or tests at an agreed upon place, and the costs must be paid by  
2 the Maine Public Employees Retirement System.

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

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

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

16 **3. Judgment.** The court shall may not substitute its judgment for that of the agency  
17 on questions of fact, except that, with respect to a timely appeal by an individual of a denial  
18 of a disability determination by a hearing officer pursuant to sections 17106-A and  
19 17106-B, the court shall review the matter de novo.

20 **Sec. 11. 5 MRSA §17001, sub-§12, ¶B**, as enacted by PL 1985, c. 801, §§5 and  
21 7, is amended to read:

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

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

28 **18-B. Health care provider.** "Health care provider" means an appropriately licensed,  
29 certified or registered provider of mental or physical health care, in either the public or  
30 private sector.

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

33 **Sec. 14. 5 MRSA §17001, sub-§19-B** is enacted to read:

34 **19-B. Medical review service provider.** "Medical review service provider" means  
35 an entity with whom the executive director has contracted for the review of medical records  
36 and the provision of recommendations, opinions and certifications under this Part by health  
37 care providers employed by the entity.

38 **Sec. 15. 5 MRSA §17106**, as amended by PL 2017, c. 88, §§14 to 16, is repealed.

39 **Sec. 16. 5 MRSA §17106-A, first ¶**, as enacted by PL 2009, c. 322, §7, is amended  
40 to read:

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

6           **Sec. 17. 5 MRSA §17106-A, sub-§6**, as amended by PL 2017, c. 88, §18, is further  
7 amended to read:

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

17           **Sec. 18. 5 MRSA §17106-B** is enacted to read:

18           **§17106-B. Disability retirement; medical review**

19           **1. Disability retirement forms; assessment.** The executive director shall develop  
20 and make easily accessible to health care providers in this State a disability form that allows  
21 a health care provider to provide an assessment of a member's ability to work after taking  
22 into account the member's mental or physical disability under the standards of this Part.  
23 References in this section to "disability form" refer to the form developed by the executive  
24 director. A member seeking disability retirement shall cooperate with the executive director  
25 in obtaining the member's medical records and may obtain an assessment from the health  
26 care provider of the member's ability to work after taking into account the member's mental  
27 or physical disability, and, if the health care provider finds that the member is disabled  
28 under the standards of this Part, the health care provider, at the request of the member, may  
29 file with the executive director a disability form signed by the health care provider. The  
30 health care provider shall also provide a copy of the form to the member. The executive  
31 director may find that a member has a mental or physical disability and is eligible for  
32 disability retirement based on the information provided in the form and medical records.  
33 The executive director may seek, receive and consider recommendations and opinions from  
34 the medical review service provider in making this determination.

35           **2. Medical review.** If the executive director is unable to determine whether a member  
36 is eligible for disability retirement based on the information provided under subsection 1,  
37 the executive director shall direct the member to have an independent medical examination  
38 by an independent health care provider. The member may waive the independent medical  
39 examination, in which case the executive director may determine that the member is not  
40 eligible for disability retirement. The member may appeal this determination under  
41 subsection 3.

42           **A.** The retirement system shall pay all fees of the independent health care provider.  
43 The independent health care provider may not be a state employee and may not have  
44 any association with the retirement system other than providing independent medical  
45 examinations or medical consultations and receiving payment for these services and,

1 unless the member consents in writing, may not have previously examined or treated  
2 the member with respect to the member's mental or physical disability.

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

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

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

12 **3. Disability determination; appeal.** After an independent medical review under  
13 subsection 2, the executive director or the executive director's designee shall make a  
14 determination of eligibility for disability retirement based upon the totality of the evidence  
15 and in accordance with subsection 4. The executive director or the executive director's  
16 designee may obtain recommendations or opinions from the medical review service  
17 provider to assist in this determination. A determination by the executive director or the  
18 executive director's designee that the member is not disabled may be appealed by the  
19 member to a hearing officer, who shall hear the appeal in accordance with section 17106-A.  
20 The board shall by rule provide for procedures for the member to participate in selection  
21 of the hearing officer who will hear the member's appeal. Rules adopted pursuant to this  
22 subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

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

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

34 **Sec. 19. 5 MRSA §17902, sub-§1, ¶A,** as amended by PL 2017, c. 88, §22, is  
35 further amended to read:

36 A. The executive director shall obtain medical consultation on each applicant for  
37 disability retirement benefits in accordance with related rules established by the board,  
38 ~~which must include provisions indicating when a case must be reviewed by a medical~~  
39 ~~board and when alternative means of medical consultation are acceptable.~~ Rules  
40 adopted pursuant to this paragraph are routine technical rules as defined in chapter 375,  
41 subchapter 2-A. ~~Whether provided by the medical board or by an alternative means,~~  
42 ~~medical~~ Medical consultation obtained by the executive director must be objective and  
43 be provided by a medical provider or medical providers qualified to review the case by  
44 specialty or experience and to whom the applicant is not known.

1           **Sec. 20. 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 appropriate,~~  
10 ~~determination of suitability must include consultation with the medical board to determine~~  
11 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~  
12 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~  
13 ~~accordance with the purposes of this article.~~ Services must be provided by private and  
14 public rehabilitation counselors, government agencies and others approved by the  
15 executive director as qualified to provide rehabilitation services. The executive director  
16 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated  
17 employees in jobs relative to the placement rates of other counselors in the State as  
18 fundamental in deciding whether to approve the counselor as qualified. This section does  
19 not affect the ongoing requirement that a person remain disabled in order to continue to  
20 receive disability benefits.

21           **Sec. 21. 5 MRSA §17921, sub-§1, ¶B**, as enacted by PL 1989, c. 409, §§8 and 12,  
22 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. 22. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2017, c. 88, §25, is  
27 repealed.

28           **Sec. 23. 5 MRSA §17926**, as amended by PL 2017, c. 88, §26, is further amended  
29 to read:

30 **§17926. Examinations or tests**

31           Any examinations or tests ~~recommended by the medical board in accordance with~~  
32 ~~conducted under section 17106 17106-B~~ or required by the executive director under section  
33 17921, subsection 1, paragraph D; section 17924; section 17929, subsection 2, paragraph  
34 B; or section 17933, subsection 3, paragraph A; are governed as follows.

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

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

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

1           **Sec. 24. 5 MRSA §17927, first ¶**, as amended by PL 2003, c. 387, §5, is further  
2 amended 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 appropriate,~~  
10 ~~determination of suitability must include consultation with the medical board to determine~~  
11 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~  
12 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~  
13 ~~accordance with the purposes of this article.~~ Services must be provided by private and  
14 public rehabilitation counselors, government agencies and others approved by the  
15 executive director as qualified to provide rehabilitation services. The executive director  
16 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated  
17 employees in jobs relative to the placement rates of other counselors in the State as  
18 fundamental in deciding whether to approve the counselor as qualified. This section does  
19 not affect the ongoing requirement that a person remain disabled in order to continue to  
20 receive disability benefits.

21           **Sec. 25. 5 MRSA §17929, sub-§2, ¶B**, as amended by PL 2003, c. 675, §2, is  
22 further amended to read:

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

29           (1) After the disability has continued for 2 years, the disability must render the  
30 person unable to engage in any substantially gainful activity that is consistent with  
31 the person's training, education or experience and average final compensation  
32 adjusted by the same percentage adjustment as has been received under section  
33 17806. The disability retirement benefit continues if the person can effectively  
34 demonstrate to the executive director that the person is actively seeking work. For  
35 the purposes of this subparagraph, the ability to engage in substantially gainful  
36 activity is demonstrated by the ability to perform work resulting in annual earnings  
37 that exceed \$20,000 or 80% of the recipient's average final compensation at  
38 retirement, whichever is greater, adjusted by the same percentage adjustments  
39 granted under section 17806.

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

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



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

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

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

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

10 **Sec. 26. 5 MRSA §17930, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§8 and 12,  
11 is amended to read:

12 C. If, during the first 5 years of reemployment, the person again becomes disabled,  
13 terminates employment and is not covered by any other disability program, the  
14 retirement system shall resume paying the disability retirement benefit payable prior to  
15 the reemployment with all applicable cost-of-living adjustments and shall provide  
16 rehabilitation services ~~under~~ in accordance with section 17927 ~~if recommended by the~~  
17 ~~medical board~~. If the benefit payable under the other disability program is not equal to  
18 or greater than the benefit under this article, the retirement system shall pay the  
19 difference between the amount of the benefit payable under the other disability  
20 program and the amount of the benefit payable under this article. The executive  
21 director shall require examinations or tests to determine whether the person is disabled  
22 as described in section 17921; and

23 **Sec. 27. 5 MRSA §17930, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§8 and 12,  
24 is amended to read:

25 E. If, during the first 5 years of reemployment, the person again becomes disabled and  
26 terminates employment, the retirement system shall resume paying the disability  
27 retirement benefit payable prior to the reemployment with all applicable cost-of-living  
28 adjustments, or if greater, a disability retirement benefit based upon the person's current  
29 average final compensation and shall provide rehabilitation services ~~under~~ in  
30 accordance with section 17927 ~~if recommended by the medical board~~. The executive  
31 director shall require examinations or tests to determine whether the person is disabled  
32 as defined in section 17921; and

33 **Sec. 28. 5 MRSA §17932, sub-§2**, as amended by PL 2017, c. 88, §27, is further  
34 amended to read:

35 **2. Dispute over mental or physical capacity.** If there is a dispute between the person  
36 and the former employer over the person's mental or physical capacity to perform a specific  
37 job, at the option of the person that dispute must be resolved by a majority of 3 ~~medical~~  
38 health care providers, one appointed and reimbursed by the person, one appointed and  
39 reimbursed by the employer and one appointed and reimbursed by the retirement system.  
40 If the 3 ~~medical~~ health care providers resolve the dispute in favor of the person, the former  
41 employer must reimburse the ~~medical~~ health care provider appointed by the person.

42 **Sec. 29. 5 MRSA §17953, sub-§3, ¶A**, as amended by PL 1991, c. 469, §2, is  
43 further amended to read:

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

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

6 (2) The surviving spouse is certified by ~~the medical board~~ an independent health  
7 care provider or the medical review service provider to be permanently mentally  
8 incompetent or permanently physically incapacitated and is determined by the  
9 executive director to be unable to engage in any substantially gainful employment.

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

12 **Sec. 30. 5 MRSA §17953, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §2, is  
13 further amended to read:

14 A. A designated beneficiary who is alive at the time of the death of the qualifying  
15 member is paid \$150 per month beginning the first month after the death occurs and  
16 continuing until the date of the designated beneficiary's death, if the designated  
17 beneficiary is certified by ~~the medical board~~ an independent health care provider or the  
18 medical review service provider to be permanently mentally incompetent or  
19 permanently physically incapacitated and is determined by the executive director to be  
20 unable to engage in any substantially gainful employment.

21 **Sec. 31. 5 MRSA §18502, sub-§1, ¶A**, as amended by PL 2017, c. 88, §30, is  
22 repealed.

23 **Sec. 32. 5 MRSA §18503**, as amended by PL 2017, c. 88, §31, is further amended  
24 to read:

25 **§18503. Examination or tests**

26 The examination or tests to determine whether a member is disabled under section  
27 18501 are governed as follows.

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

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

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

36 **Sec. 33. 5 MRSA §18512, first ¶**, as enacted by PL 2003, c. 387, §10, is amended  
37 to read:

38 Upon agreement of the executive director and the person, rehabilitation services may  
39 be provided to any person who is the recipient of a disability retirement benefit under this  
40 article as a means to the person being able to return to substantially gainful activity. As a  
41 condition of entering into an agreement to provide rehabilitation services, the executive  
42 director must determine that rehabilitation is feasible, that rehabilitation is consistent with

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

14 **Sec. 34. 5 MRSA §18521, sub-§1, ¶B,** as enacted by PL 1989, c. 409, §§11 and  
15 12, is amended to read:

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

19 **Sec. 35. 5 MRSA §18525, sub-§1, ¶A,** as amended by PL 2017, c. 88, §32, is  
20 repealed.

21 **Sec. 36. 5 MRSA §18526,** as amended by PL 2017, c. 88, §33, is further amended  
22 to read:

23 **§18526. Examinations or tests**

24 Any examinations or tests ~~recommended by the medical board in accordance with~~  
25 ~~conducted under~~ section ~~17106~~ 17106-B or required by the executive director under section  
26 18521, subsection 1, paragraph D; section 18524; section 18529, subsection 2, paragraph  
27 B; or section 18533, subsection 3, paragraph A; are governed as follows.

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

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

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

36 **Sec. 37. 5 MRSA §18527, first ¶,** as amended by PL 2003, c. 387, §11, is further  
37 amended to read:

38 Upon agreement of the executive director and the person, rehabilitation services may  
39 be provided to any person who is the recipient of a disability retirement benefit under this  
40 article as a means to the person being able to return to substantially gainful activity. As a  
41 condition of entering into an agreement to provide rehabilitation services, the executive  
42 director must determine that rehabilitation is feasible, that rehabilitation is consistent with  
43 the purposes of this article, that the recipient is suitable for rehabilitation services and that

1 rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate,~~  
2 ~~determination of suitability must include consultation with the medical board to determine~~  
3 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~  
4 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~  
5 ~~accordance with the purposes of this article.~~ Services must be provided by private and  
6 public rehabilitation counselors, government agencies and others approved by the  
7 executive director as qualified to provide rehabilitation services. The executive director  
8 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated  
9 employees in jobs relative to the placement rates of other counselors in the State as  
10 fundamental in deciding whether to approve the counselor as qualified. This section does  
11 not affect the ongoing requirement that a person remain disabled in order to continue to  
12 receive disability benefits.

13 **Sec. 38. 5 MRSA §18529, sub-§2, ¶B**, as amended by PL 2003, c. 675, §4, is  
14 further amended to read:

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

21 (1) After the disability has continued for 2 years, the disability must render the  
22 person unable to engage in any substantially gainful activity that is consistent with  
23 the person's training, education or experience and average final compensation  
24 adjusted by the same percentage adjustment as has been received under section  
25 18407. The disability retirement benefit continues if the person can effectively  
26 demonstrate to the executive director that the person is actively seeking work. For  
27 purposes of this subparagraph, the ability to engage in substantially gainful activity  
28 is demonstrated by the ability to perform work resulting in annual earnings that  
29 exceed \$20,000 or 80% of the recipient's average final compensation at retirement,  
30 whichever is greater, adjusted by the same percentage adjustments granted under  
31 section 18407.

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

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

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

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

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

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

4 **Sec. 39. 5 MRSA §18530, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§11 and  
5 12, is amended to read:

6 C. If, during the first 5 years of reemployment, the person again becomes disabled,  
7 terminates employment and is not covered by any other disability program, the  
8 retirement system shall resume paying the disability retirement benefit payable prior to  
9 the reemployment with all applicable cost-of-living adjustments and shall provide  
10 rehabilitation services ~~under in accordance with section 18527 if recommended by the~~  
11 ~~medical board~~. If the benefit payable under the other disability program is not equal to  
12 or greater than the benefit under this article, the retirement system shall pay the  
13 difference between the amount of the benefit payable under the other disability  
14 program and the amount of the benefit payable under this article. The executive  
15 director shall require examinations or tests to determine whether the person is disabled  
16 as described in section 18521; and

17 **Sec. 40. 5 MRSA §18530, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§11 and  
18 12, is amended to read:

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

27 **Sec. 41. 5 MRSA §18553, sub-§3, ¶A**, as amended by PL 1991, c. 469, §5, is  
28 further amended to read:

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

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

34 (2) The surviving spouse is certified by ~~the medical board~~ an independent health  
35 care provider or the medical review service provider to be permanently mentally  
36 incompetent or permanently physically incapacitated and is determined by the  
37 executive director to be unable to engage in any substantially gainful employment.

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

40 **Sec. 42. 5 MRSA §18553, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §5, is  
41 further amended to read:

42 A. A designated beneficiary who is alive at the time of the death of the qualifying  
43 member is paid \$150 per month beginning the first month after the death occurs and

1 continuing until the date of the designated beneficiary's death, if the designated  
2 beneficiary is certified by ~~the medical board~~ an independent health care provider or the  
3 medical review service provider to be permanently mentally incompetent or  
4 permanently physically incapacitated and is determined by the executive director to be  
5 unable to engage in any substantially gainful employment.

6 **Sec. 43. Implementation plan for mandatory long-term disability**  
7 **insurance.** The Maine Public Employees Retirement System shall convene a stakeholder  
8 group, including representatives of participant employers and employee groups, to develop  
9 an implementation plan for providing mandatory long-term disability insurance coverage  
10 to retirement system members through their employers. The Maine Public Employees  
11 Retirement System shall submit an implementation plan, including any recommended  
12 legislation, to the joint standing committee of the Legislature having jurisdiction over  
13 retirement matters no later than January 3, 2023. The joint standing committee of the  
14 Legislature having jurisdiction over retirement matters may report out a bill to the 131st  
15 Legislature on matters related to the report.

16 **Sec. 44. Report on disability retirement.** The Maine Public Employees  
17 Retirement System shall report to the joint standing committee of the Legislature having  
18 jurisdiction over retirement matters, no later than January 31, 2023, on the experience of  
19 the system and its members after the implementation of this Act. The joint standing  
20 committee of the Legislature having jurisdiction over retirement matters may report out a  
21 bill to the 131st Legislature on matters related to the report.

22 **Sec. 45. Application.** This Act applies to disability retirement benefit applications  
23 received by the Maine Public Employees Retirement System on or after the effective date  
24 of this Act.

## 25 SUMMARY

26 This bill amends the laws relating to disability retirement under the Maine Public  
27 Employees Retirement System and makes other changes relating to the structure of the  
28 Maine Public Employees Retirement System. This bill:

29 1. Repeals the laws providing for a medical board and permits the executive director  
30 to contract with a medical review service provider;

31 2. Provides that the system's hearing officers are not employees of the Board of  
32 Trustees of the Maine Public Employees Retirement System but independent contractors  
33 that serve as neutral and independent decision makers;

34 3. Modifies the definition of "disabled";

35 4. Provides that an adverse decision by a hearing officer that is appealed to the court  
36 must be given de novo review;

37 5. Restructures the disability retirement application process so that the executive  
38 director may grant benefits based on medical records and the member's health care  
39 provider's views, may obtain opinions and recommendations from the medical review  
40 service provider and may not deny an application for disability retirement benefits without  
41 first obtaining an independent medical examination unless waived by the member;

1           6. Provides that, when reviewing medical evidence in making a determination of  
2 disability, the board, executive director and hearing officers must primarily consider  
3 medical opinions in the record and whether the opinions are supported by sound medical  
4 evidence and are consistent with other medical evidence in the record;

5           7. Provides that attorney's fees up to a maximum of \$12,000 must be paid by the Maine  
6 Public Employees Retirement System for a member who appeals the denial of disability  
7 benefits and who subsequently is awarded those benefits;

8           8. Requires the retirement system to report to the joint standing committee of the  
9 Legislature having jurisdiction over retirement matters on the experience of the retirement  
10 system and its members under the changes made by the bill; and

11           9. Requires formation of a stakeholder group to report to the joint standing committee  
12 of the Legislature having jurisdiction over retirement matters on implementing mandatory  
13 long-term disability insurance coverage.