

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1759

S.P. 706

In Senate, April 24, 2023

An Act to Clarify the Disability Retirement Program of the Maine Public Employees Retirement System

Reference to the Committee on Labor and Housing suggested 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 DUSON of Cumberland.
Cosponsored by Representative OSHER of Orono and
Senators: HICKMAN of Kennebec, INGWERSEN of York, TIPPING of Penobscot,
Representatives: BRENNAN of Portland, DODGE of Belfast, MALON of Biddeford,
ROEDER of Bangor, Speaker TALBOT ROSS of Portland.

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

2 **Sec. 1. 4 MRSA §1201, sub-§10-B** is enacted to read:

3 **10-B. Gainful occupation.** "Gainful occupation" means work done by a retiree for
4 pay or for the generation of profit primarily by means of the retiree's own productive work
5 activity.

6 **Sec. 2. 4 MRSA §1353, sub-§4, ¶B,** as corrected by RR 2021, c. 1, Pt. B, §45, is
7 amended to read:

8 B. After that period, the allowance continues only if the beneficiary is unable to engage
9 in any substantially gainful activities for which the beneficiary is qualified by training,
10 education or experience. The board, chief executive officer and hearing officers shall
11 consider medical and vocational evidence in determining whether the beneficiary has
12 the physical, mental and vocational capabilities to perform substantially gainful
13 activity.

14 **Sec. 3. 5 MRSA §17103, sub-§11,** as amended by PL 2021, c. 548, §§12 to 16, is
15 further amended to read:

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

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

20 B. Any proposed legislation amending the retirement system law that the board
21 recommends to improve the retirement system. The joint standing committee of the
22 Legislature having jurisdiction over public employee retirement matters may submit
23 legislation required to implement recommendations made pursuant to this paragraph;

24 D. A review of the operations of the retirement system, including a summary of
25 administrative expenses and improvements in the delivery of services to members of
26 the retirement system;

27 E. A budget report showing the budget status of the administrative operations and
28 functions of the system for the current fiscal year relative to the budget for the current
29 fiscal year;

30 F. The number of individuals who retired in the previous calendar year categorized by
31 plan status;

32 G. The number of new active members of the retirement system who became members
33 during the previous year, by plan status;

34 H. The amount of earnings on investment in the previous calendar year;

35 I. The total amount of employee and employer contributions to the retirement system
36 in the previous calendar year and the total ~~amount of~~ payout amounts to retirees service
37 retirement members and to disability beneficiaries, categorized by plan status;

38 J. The number of persons who applied for disability retirement during the previous
39 calendar year including:

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

1 (3) The number of applicants for disability retirement who appealed decisions that
2 denied disability retirement status; and

3 (4) The number of applicants who were granted disability retirement following
4 their appeals; ~~and~~

5 K. Data from a survey of members and employees that measures the level of
6 satisfaction and experience that members and employees have with the retirement
7 system. For the purposes of this paragraph, "employee" means an employee of the
8 retirement system.;

9 L. The number of service retirement members and number of disability beneficiaries
10 on January 1st in the previous calendar year;

11 M. The number of administrative decisions during the previous calendar year
12 concerning a disability beneficiary's ability to engage in substantially gainful activity;

13 N. The number of disability beneficiaries who were actively seeking work at any time
14 during the previous calendar year under section 17929, subsection 2, paragraph B,
15 subparagraph (1) and section 18529, subsection 2, paragraph B, subparagraph (1) and
16 rules adopted pursuant to those sections regarding standards for actively seeking work;

17 O. The status of disability beneficiaries whose benefits were suspended, reduced or
18 terminated during the previous calendar year, including:

19 (1) The number of disability beneficiaries whose benefits were suspended for
20 failure to submit an annual statement of compensation or earnings in a timely
21 manner;

22 (2) The number of disability beneficiaries whose benefits were reduced because
23 they exceeded the limit of allowable annual earnings;

24 (3) The number of disability beneficiaries whose benefits were terminated because
25 they exceeded the limit of allowable annual earnings;

26 (4) The number of appeals of decisions to suspend, reduce or terminate disability
27 retirement benefits; and

28 (5) The results of appeals of decisions to suspend, reduce or terminate disability
29 retirement benefits.

30 **Sec. 4. 5 MRSA §17901**, as enacted by PL 1985, c. 801, §§5 and 7, is amended by
31 enacting at the end a new paragraph to read:

32 As used in this article, unless the context otherwise indicates, "gainful occupation"
33 means work done by a retiree for pay or for the generation of profit primarily by means of
34 the retiree's own productive work activity.

35 **Sec. 5. 5 MRSA §17907, sub-§2, ¶B**, as amended by PL 2003, c. 675, §1 and PL
36 2021, c. 548, §45, is further amended to read:

37 B. After the disability has continued for 5 years, the disability of the beneficiary must
38 render the beneficiary unable to engage in any substantially gainful activity for which
39 the beneficiary is qualified by training, education or experience. The board, chief
40 executive officer and hearing officers shall consider medical and vocational evidence
41 in determining whether the beneficiary has the physical, mental and vocational

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

6 (1) The chief executive officer may require, once each year, a recipient of a
7 disability retirement benefit to undergo medical examinations or tests, conducted
8 in accordance with section 17903, to determine the disability of the beneficiary.

9 (2) If the beneficiary refuses to submit to the examination or tests under
10 subparagraph (1), the beneficiary's disability retirement benefit is discontinued
11 until the beneficiary withdraws the refusal.

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

14 (4) If it is determined, on the basis of the examination or tests under subparagraph
15 (1), that the disability of a beneficiary no longer exists, the payment of the
16 beneficiary's disability retirement benefit ceases;

17 **Sec. 6. 5 MRSA §17921, sub-§3** is enacted to read:

18 **3. Gainful activity.** "Gainful activity" means work done by a retiree for pay or for
19 the generation of profit primarily by means of the retiree's own productive work activity.

20 **Sec. 7. 5 MRSA §17929, sub-§2, ¶B,** as amended by PL 2021, c. 277, §25 and c.
21 548, §45, is further amended by amending subparagraph (1) to read:

22 (1) After the disability has continued for 2 years, the disability must render the
23 person unable to engage in any substantially gainful activity that is consistent with
24 the person's training, education or experience and average final compensation
25 adjusted by the same percentage adjustment as has been received under section
26 17806. The board, chief executive officer and hearing officers shall consider
27 medical and vocational evidence in determining whether the beneficiary has the
28 physical, mental and vocational capabilities to perform substantially gainful
29 activity. The disability retirement benefit continues if the person can effectively
30 demonstrate to the chief executive officer that the person is actively seeking work.
31 For the purposes of this subparagraph, the ability to engage in substantially gainful
32 activity is demonstrated by the ability to perform work resulting in annual earnings
33 that exceed \$20,000 or 80% of the recipient's average final compensation at
34 retirement, whichever is greater, adjusted by the same percentage adjustments
35 granted under section 17806.

36 **Sec. 8. 5 MRSA §18501,** as enacted by PL 1985, c. 801, §§5 and 7, is amended by
37 enacting at the end a new paragraph to read:

38 As used in this article, unless the context otherwise indicates, "gainful occupation"
39 means work done by a retiree for pay or for the generation of profit primarily by means of
40 the retiree's own productive work activity.

41 **Sec. 9. 5 MRSA §18507, sub-§2, ¶B,** as amended by PL 2003, c. 675, §3 and PL
42 2021, c. 548, §45, is further amended to read:

1 B. After the disability has continued for 5 years, the disability of the beneficiary must
2 render the beneficiary unable to engage in any substantially gainful activity for which
3 the beneficiary is qualified by training, education or experience. The board, chief
4 executive officer and hearing officers shall consider medical and vocational evidence
5 in determining whether the beneficiary has the physical, mental and vocational
6 capabilities to perform substantially gainful activity. For purposes of this paragraph,
7 the ability to engage in substantially gainful activity is demonstrated by the ability to
8 perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's
9 average final compensation at retirement, whichever is greater, adjusted by the same
10 percentage adjustments granted under section 18407.

11 (1) The chief executive officer may require, once each year, a recipient of a
12 disability retirement benefit to undergo medical examinations or tests, conducted
13 in accordance with section 18503, to determine the disability of the beneficiary.

14 (2) If the beneficiary refuses to submit to the examination or tests under
15 subparagraph (1), the beneficiary's disability retirement benefit is discontinued
16 until the beneficiary withdraws the refusal.

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

19 (4) If it is determined, on the basis of the examination or tests under subparagraph
20 (1), that the disability of a beneficiary no longer exists, the payment of the
21 beneficiary's disability retirement benefit ceases.

22 **Sec. 10. 5 MRSA §18521, sub-§3** is enacted to read:

23 **3. Gainful activity.** "Gainful activity" means work done by a retiree for pay or for
24 the generation of profit primarily by means of the retiree's own productive work activity.

25 **Sec. 11. 5 MRSA §18529, sub-§2, ¶B,** as amended by PL 2021, c. 277, §38 and
26 c. 548, §45, is further amended by amending subparagraph (1) to read:

27 (1) After the disability has continued for 2 years, the disability must render the
28 person unable to engage in any substantially gainful activity that is consistent with
29 the person's training, education or experience and average final compensation
30 adjusted by the same percentage adjustment as has been received under section
31 18407. The board, chief executive officer and hearing officers shall consider
32 medical and vocational evidence in determining whether the beneficiary has the
33 physical, mental and vocational capabilities to perform substantially gainful
34 activity. The disability retirement benefit continues if the person can effectively
35 demonstrate to the chief executive officer that the person is actively seeking work.
36 For purposes of this subparagraph, the ability to engage in substantially gainful
37 activity is demonstrated by the ability to perform work resulting in annual earnings
38 that exceed \$20,000 or 80% of the recipient's average final compensation at
39 retirement, whichever is greater, adjusted by the same percentage adjustments
40 granted under section 18407.

41 **Sec. 12. Application.** This Act applies to the disability retirement benefit program
42 of the Maine Public Employees Retirement System on the effective date of this Act.

1 **SUMMARY**

2 This bill amends the laws relating to disability retirement under the Maine Public
3 Employees Retirement System. The bill:

4 1. Provides that the Board of Trustees of the Maine Public Employees Retirement
5 System, the Chief Executive Officer of the Maine Public Employees Retirement System
6 and hearing officers shall consider medical and vocational evidence in determining whether
7 the beneficiary has the physical, mental and vocational capabilities to perform substantially
8 gainful activity;

9 2. Defines the term "gainful activity" in the article governing disability retirement
10 benefits after September 30, 1989 for state employees and teachers and the article
11 governing disability retirement benefits for participating local districts;

12 3. Defines the term "gainful occupation" in the chapter governing judicial retirement
13 on or after December 1, 1984, the article governing disability retirement benefits of state
14 employees and teachers and the article governing disability retirement benefits for
15 participating local districts; and

16 4. Requires that the retirement system's annual report to the joint standing committee
17 of the Legislature having jurisdiction over retirement matters include statistics about
18 administrative decisions affecting the benefits of disability beneficiaries, appeals of those
19 decisions and the overall numbers of disability retirement beneficiaries.