

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

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1989

working an equivalent length of time and performing a substantially equivalent job at the work site.

D. Except when the employer has good cause related to the trainee's work performance, the employer shall, upon completion of the on-the-job training contract, offer the trainee continued employment with at least equivalent wages, benefits and working conditions, as existed under the contract.

E. The employer with whom the contract is made has not, in the past, violated paragraph D.

3. Nondisplacement; noninfringement; existing collective bargaining agreements. An on-the-job training contract may be executed only if:

A. No currently employed worker would be displaced by the trainee, including partial displacement such as reduction in the hours of work, wages or employment benefits;

B. The training position would not impair existing contracts for the services or collective bargaining agreements, except when the written concurrence of the labor organization concerned has been obtained;

C. No other individual is on layoff from the same or any substantially equivalent job for which the trainee would be trained;

D. The employer has not terminated the employment of any regular employee or otherwise reduced the work force of the employer with the intention of filling the vacancy so created by contracting to hire the trainee; and

E. The job for which the individual would be trained is not being created in a promotional line that will infringe in any way on the promotional opportunities of currently employed individuals.

4. Apprenticeable occupations. With respect to each placement under the Maine Job Training System, the Department of Labor shall:

A. Determine whether the occupation is apprenticeable in accordance with a list of apprenticeable occupations provided by the State Apprenticeship and Training Council;

B. If the occupation is determined to be apprenticeable, contact the State Apprenticeship and Training Council for assistance in establishing an apprenticeship position that would follow Maine Job Training System placement;

C. Ensure that the State Apprenticeship and Training Council provides a semiannual and annual list to the Commissioner of Labor on both the number of Maine Job Training System referrals received and the number of apprenticeship positions that were

established from the Maine Job Training System referrals; and

D. If an apprenticeship program is developed under this subsection, provide the trainee information on various education and training opportunities that may be of assistance for indenturing in the apprenticeship program.

§2173. Labor education

Each person enrolled in a program under the Maine Job Training System shall be provided an informational pamphlet on labor law which explains the person's rights and responsibilities and lists the appropriate agency to contact for additional information. The informational pamphlet shall be developed and disseminated to all Maine Job Training System service providers by January 1, 1990.

1. Content of pamphlet. The pamphlet shall cover such laws as:

A. The National Labor Relations Act, Public Law 1935, No. 198, 49 Stat 449;

B. The Occupational Safety and Health Act of 1970, Public Law 91-596;

C. The Fair Labor Standards Act, Public Law 1938, No. 7118, 52 Stat 1060;

D. The Workers' Compensation Act;

E. Unemployment insurance laws; and

F. State and federal laws relating to employment discrimination, including sexual harassment.

2. Review with providers. To enhance the trainees' knowledge of labor law, the Maine Job Training System service providers shall, when offering prevocational services to program participants, review the content of the informational pamphlet with the program participants, unless the participants have already received this review.

3. Staff training. The direct service staff of the Maine Job Training System service providers shall receive training to expand their knowledge of the labor laws contained in the informational pamphlet.

See title page for effective date.

CHAPTER 409

H.P. 716 - L.D. 977

An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System

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

Sec. 1. 5 MRSA §17106, sub-§3, ¶¶C and D, as enacted by PL 1985, c. 801, §§5 and 7, are amended to read:

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

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

Sec. 2. 5 MRSA §17106, sub-§3, ¶E is enacted to read:

E. Make recommendations to the executive director and board to determine if rehabilitation services should be provided to a person who is the recipient of a disability retirement benefit under chapter 423, subchapter V, article 3-A or chapter 425, subchapter V, article 3-A.

Sec. 3. 5 MRSA §17152, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17152. Funds

All of the assets of the retirement system shall be credited according to the purpose for which they are held among 5 funds, namely:

1. **Members' Contribution Fund.** The Members' Contribution Fund;

2. **Retirement Allowance Fund.** The Retirement Allowance Fund;

3. **Expense Fund.** The Expense Fund;

4. **Survivors' Benefit Fund.** The Survivors' Benefit Fund; and

5. **State Retiree Health Insurance Fund.** The State Retiree Health Insurance Fund;

6. **State Retired Teachers' Health Insurance Fund.** The State Retired Teachers' Health Insurance Fund; and

7. **Disability Retirement Benefit Fund.** The Disability Retirement Benefit Fund.

Sec. 4. 5 MRSA §17251, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17251. Establishment

The Retirement Allowance Fund is established in which shall be accumulated all reserves required for the payment of benefits under this Part, other than reserves in

the Members' Contribution Fund and, the Survivors' Benefit Fund and the Disability Retirement Benefit Fund.

Sec. 5. 5 MRSA c. 421, sub-c. IV, art. 8 is enacted to read:

Article 8. Disability Retirement Benefit Fund

§17421. Establishment

The Disability Retirement Benefit Fund is established in which shall be accumulated all reserves required for the payment of disability retirement benefits and other costs as set forth in chapter 423, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A. The fund shall include an account for the accumulated contributions of former members who are recipients of disability retirement benefits under this article.

§17422. Disability contribution

For each member, the State and those participating local districts which have elected disability retirement benefits under chapter 425, article 3 or 3-A shall pay annually into the Disability Retirement Benefit Fund an amount equal to a certain percentage of the annual earnable compensation of the member, to be known as the "disability contribution."

§17423. Disability contribution rate

The percentage rate of the disability contribution, described in section 17422, shall be fixed on the basis of the liabilities established by chapter 423, subchapter V, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A. The actuary shall determine percentage rates applicable to employers whose employees are covered by chapter 423, subchapter V, articles 3 and 3-A and chapter 425, subchapter V, articles 3 and 3-A, taking into consideration other factors which influence costs.

Sec. 6. 5 MRSA §17755, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17755. Disability retirement service credit

A beneficiary shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which ~~he~~ the beneficiary receives disability retirement benefits under subchapter V, ~~article articles 3 and 3-A.~~

Sec. 7. 5 MRSA §17901-A is enacted to read:

§17901-A. Applicability

This article applies to all disabilities for which written applications are received by the executive director before October 1, 1989. All disabilities for which written applications are received by the executive director after September 30, 1989, are subject to article 3-A.

Sec. 8. 5 MRSA c. 423, sub-c. V, art. 3-A is enacted to read:

ARTICLE 3-ADISABILITY RETIREMENT BENEFITS AFTER
SEPTEMBER 30, 1989§17921. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Disabled. "Disabled" means that the member is mentally or physically incapacitated under the following conditions:

- A. The incapacity is expected to be permanent;
- B. That it is impossible to perform the duties of the member's employment position;
- C. After the incapacity has continued for 2 years, the incapacity must render the member unable to engage in any substantially gainful activity for which the member is qualified by training, education or experience; and
- D. The incapacity may be revealed by examinations or tests conducted in accordance with section 17926.

2. Employment position. "Employment position" means:

- A. The position in which the member is employed at the time the member becomes incapacitated; or
- B. A position of comparable stature and equal or greater compensation and benefits which is made available to the member by the member's employer.

§17922. Applicability

This article applies to all disabilities for which written applications are received by the executive director after September 30, 1989.

§17923. Statement of health

1. Statement required. Any person who becomes a member of the retirement system on or after October 1, 1989, shall submit a statement of that person's health to the executive director on forms prescribed by the executive director.

2. Additional information. If the executive director determines that additional information is necessary to determine the extent of any preexisting disability of the member, the executive director may require that the member undergo medical and, when appropriate, psychological examinations or tests with the results submitted as evidence of the member's health. Any examinations or tests under this subsection are governed by section 17926.

3. Limitation on use. The statement of health or the results of examinations or tests may be used only to deter-

mine eligibility for a disability retirement benefit under section 17924, subsection 2.

4. Sanction. Any member who is required to submit a statement of health under this section and who does not submit the statement before applying for disability retirement benefits is not eligible to receive those benefits unless that member establishes to the satisfaction of the executive director that the member meets the requirements of section 17924, subsection 2. Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

§17924. Qualification for benefit

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled:

- A. While in service; and
- B. Before reaching the normal retirement age.

2. Exception. A member with fewer than 5 years of continuous creditable service immediately preceding that member's application for a disability retirement benefit is not eligible for that benefit if the disability is the result of a physical or mental condition which existed before the member's membership in the retirement system, unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty.

§17925. Application

In order to receive a benefit under this article:

1. Written application. The person must apply in writing to the executive director in the format specified by the executive director.

A. The executive director shall submit the application and all pertinent medical and psychological information to the medical board for review as required by section 17106, subsection 3.

B. As required by section 17106, the medical board shall make a recommendation as to whether or not the member may be provided vocational rehabilitation services;

2. Workers' compensation. If the incapacity upon which the application is based is a result of an injury or accident received in the line of duty, the application must include proof that the member has made application for benefits under the workers' compensation laws;

3. Social security. If the employment for which creditable service with the employer is allowed was also covered under the United States Social Security Act, the

application must include proof that the member has made application for benefits under this Act; and

4. Approval. The written application shall be approved by the executive director upon finding that the member has met the requirements of section 17924.

§17926. Examinations or tests

Any examinations or tests recommended by the medical board in accordance with section 17106 or required by the executive director under section 17921, subsection 1, paragraph D; section 17923, subsection 2; section 17924; section 17929, subsection 2, paragraph B; or section 17933, subsection 3, paragraph A, are governed as follows.

1. Agreed upon physician. The examinations or tests shall be conducted by a qualified physician and, when appropriate, a qualified psychologist mutually agreed upon by the executive director and the member claiming to be disabled.

2. Agreed upon place. The examinations or tests shall be conducted at a place mutually agreed upon by the executive director and the member claiming to be disabled.

3. Costs. The costs incurred under subsections 1 and 2 shall be paid by the retirement system.

§17927. Rehabilitation

Upon recommendations from the medical board, rehabilitation services shall be provided to any person who is the recipient of a disability retirement benefit under this article. Services shall be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified.

1. Rehabilitation plan. If rehabilitation is feasible and recommended, the retirement system shall designate a rehabilitation provider to evaluate the person and develop a rehabilitation plan.

2. Costs. The executive director may contract with rehabilitation providers to develop and carry out approved rehabilitation plans.

A. Except as provided in paragraph B, the executive director shall pay these providers from funds accumulated in the Disability Retirement Benefit Fund.

B. If the person is entitled to other benefits to meet the cost of rehabilitation services, that person must first apply for and use those benefits to the extent available to pay for the goods and services provided.

3. Approval of rehabilitation plan. The executive director shall approve any rehabilitation plan that the execu-

tive director finds to be in the person's best interest and consistent with the purposes of this article. The person and the executive director shall indicate in writing their approval of and agreement to the submitted rehabilitation plan. The person shall approve the plan within 30 days or, within that time period, submit to the executive director the name of an alternate provider for the executive director's consideration. If the rehabilitation plan includes return to employment with the employer for whom the person worked before becoming disabled, the employer shall also indicate in writing approval of the plan.

4. Decline of rehabilitation. If, after recommendation by the medical board, a person declines use of the rehabilitation services offered or refuses to agree to a rehabilitation plan approved by the executive director, the disability retirement benefit payments shall cease at the end of the month following the decline or refusal.

A. The executive director shall notify the person in writing of the decision to discontinue the disability retirement benefit.

B. The decision shall be subject to appeal under section 17451.

C. If the person appeals the executive director's decision, the disability retirement allowance shall not be discontinued until all appeals have been exhausted.

5. Monitoring of rehabilitation plan. Each rehabilitation plan approved by the executive director shall contain a provision for periodic review of progress being made by the person toward achieving the goal of the plan. The provision relating to review shall include authority for the executive director to terminate the plan or to amend the plan with the same provider or with a change of provider, based upon results of the review or at the request of the person or the provider. Subsections 1, 2, 3 and 4 shall apply to any amended plans under this subsection.

6. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person shall be reemployed in accordance with the plan. If the plan does not include reemployment with the former employer, the executive director shall notify the former employer, in writing, that the person has completed the rehabilitation plan and is ready to return to employment. The former employer shall reemploy the person in the first available position for which that person is qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

7. Other employment under system. If the former employer has not reemployed the person before the expiration of 3 months, the executive director shall inform all other employers whose employees are covered by this article and chapter 425, subchapter V, article 3-A, of the availability of the person and solicit their assistance in finding employment for that person.

A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement benefit shall not be discontinued, except as provided by section 17929, or until the person is reemployed consistent with this section.

§17928. Computation of benefit

When a member qualified under section 17924 retires, after approval for disability retirement by the executive director in accordance with section 17925, the member shall receive a disability retirement benefit equal to 66 2/3% of that member's average final compensation.

§17929. Payment of benefit

1. Beginning. Payment of disability retirement benefits shall begin on the first day of the month following the date of termination of active service of the member, but not more than 6 months before the date of receipt by the executive director of the written application, by or on behalf of the member, for disability retirement, unless it is shown that:

A. It was not reasonably possible to file the application for disability retirement benefits within the 6-month period; and

B. The application was made as soon as reasonably possible.

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins:

(1) On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 23; or

(2) When the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit, if that occurs before the date in subparagraph (1).

(a) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability

retirement benefits under section 17806.

(b) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article; and

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

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

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

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

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

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

(a) The decision shall be subject to appeal under section 17451.

(b) If the person appeals the executive director's decision, the disability retirement allowance shall not be dis-

continued until all appeals have been exhausted.

§17930. Reduction in amount of benefit

1. Definition. As used in this section, unless the context otherwise indicates, "adjusted final compensation" means the rate of pay of the person immediately before termination and becoming the recipient of a disability retirement benefit adjusted by the same percentage adjustment as has been received under section 17806.

2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 425, subchapter V, article 3-A, which exceeds the greater of \$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person became a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 17806:

A. The excess shall be deducted from the disability or service retirement benefits during the next calendar year; the deductions to be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year for which the benefits are received;

B. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A. If the retirement benefit payments are eliminated by this subsection, the disability shall be deemed to no longer exist, the payment of the disability retirement benefit shall be discontinued and, except as provided in paragraph C, all of the person's rights to benefits under this article shall cease;

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

D. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the executive director shall terminate

benefit payments at the end of the month in which the request is received.

3. Compensation from employment covered by this article. If any person who is the recipient of a disability retirement benefit is reemployed by that person's prior employer or any other employer whose employees are covered by this article or chapter 425, subchapter V, article 3-A, and if the total of the person's disability benefit for any year and the person's total earnable compensation for that year exceeds the adjusted final compensation:

A. The disability or service retirement benefits will be reduced during the next calendar year by the amount that the total compensation exceeds the adjusted final compensation;

B. The deductions shall be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year during which the benefits are received;

C. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A;

D. The retirement benefit payments are eliminated by this subsection if:

(1) The person shall again become a member of the retirement system and begin contributing at the current rate; and

(2) When the person again retires, the person shall receive benefits computed on the basis of that person's entire creditable service and in accordance with the law in effect at that time;

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

F. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the executive director shall terminate benefit payments at the end of the month in which the request is received.

4. Disability payments under other laws. The reduction of disability retirement benefits because of disability benefits received under other laws is governed as follows.

A. The amount of any disability retirement benefit payable under this article shall be reduced by any amount received by the person for the same disability under either or both of the following:

(1) The workers' compensation or similar laws, except amounts which may be paid or payable under Title 39, section 56-B; or

(2) The United States Social Security Act, if the employment for which creditable service with the employer is allowed was also covered under that Act at the date of disability retirement.

B. The reduction in the disability retirement benefit is governed as follows:

(1) The initial disability retirement benefit shall be reduced if necessary so that the benefit plus any benefits under paragraph A do not exceed 80% of the person's average final compensation;

(2) The amount determined by the calculation under subparagraph (1) shall not be adjusted when cost-of-living adjustments are applied to the benefits listed under paragraph A; and

(3) Adjustments under section 17806 shall be applied to the reduced disability retirement benefit calculated under subparagraph (1) or paragraph C.

C. The disability retirement benefit may not be reduced below the amount of the retirement benefit which is the actuarial equivalent of the member's accumulated contributions at the time of retirement.

D. Lump-sum settlements of benefits that reduce the disability retirement benefit under this subsection shall be prorated on a monthly basis in an equitable manner prescribed by the board.

(1) These prorated lump-sum settlements may not include any part of the lump-sum settlement attributable to rehabilitation, attorneys', physicians', nurses', hospital, medical, surgical or related fees or charges or any amount paid or payable under Title 39, section 56-B.

(2) These prorated lump-sum settlements shall reduce the disability retirement benefit in the same manner and amount as monthly benefits under this subsection.

E. Any dispute about amounts paid or payable under workers' compensation or the amount of the lump-sum settlement and its attributions shall be determined on petition by a single member of the Workers' Compensation Commission in accordance with

Title 39. These determinations may be appealed under Title 39, section 103-B.

§17931. Statement of compensation

1. Requirement. The executive director shall require each person who is the recipient of a disability retirement benefit to submit, each calendar year, a statement of compensation received from any gainful occupation during that year.

2. Failure to submit statement. Failure to submit the statement under subsection 1 shall result in the following:

A. If the person fails to submit the statement required under subsection 1 within 30 days of receipt of the executive director's request for the statement, the disability retirement benefit shall be withheld until the statement is submitted; or

B. If the person fails to submit the statement required under subsection 1 within one year of receipt of the executive director's request for the statement, all rights to further benefits shall cease.

(1) The executive director shall notify the person in writing of the decision to discontinue the disability retirement benefit.

(2) The decision shall be subject to appeal under section 17451.

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

§17932. Voluntary return to service

1. Right to reinstatement. If a person who is the recipient of a disability retirement benefit decides that the person is no longer incapacitated and is able to perform the duties of that person's employment position, the employer for whom the person last worked before becoming disabled shall reinstate the person to the first available position for which the person is qualified and which is consistent with the person's prior work experience. If a collective bargaining agreement applies to such a position, the employer may offer only a position which the person may claim by virtue of seniority accumulated at the time of the disability, unless otherwise specified in the collective bargaining agreement.

2. Dispute over mental or physical capacity. If there is a dispute between the person and the former employer over the person's mental or physical capacity to perform a specific job, at the option of the person that dispute shall be resolved by a majority of 3 physicians, one appointed and reimbursed by the person, one appointed and reimbursed by the employer and one appointed and reimbursed by the retirement system. If the 3 physicians resolve the dispute in favor of the person, the former employer shall reimburse the physician appointed by the person.

3. Termination or reduction in benefits. At any time before the elimination of disability retirement benefit payments under section 17930, subsection 3, the person may request that benefit payments be terminated and the executive director shall terminate benefit payments at the end of the month in which the request is received.

4. Reinstatement of benefits. If, during the first 5 years of reinstatement, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable before the reinstatement with all applicable cost-of-living adjustments, or if greater, a disability retirement benefit based upon the person's current average final compensation. The executive director may require examinations or tests to determine whether the person is disabled under section 17921.

§17933. Service retirement

1. Average final compensation. The service retirement benefit of a person who returns to employment with that person's former employer or any other employer whose employees are covered by this article or chapter 425, subchapter V, article 3-A, after having been the recipient of a disability retirement benefit, shall be computed in its entirety using the average final compensation as defined by section 17001, subsection 4, on the date of that person's termination from service immediately before becoming the recipient of a service retirement benefit.

2. Costs of benefits. The cost of benefits based upon service credits earned before and during disability shall be charged to the Disability Retirement Benefit Fund. The cost of benefits based upon service credits earned after becoming reemployed shall be charged to the account of the employer through whom the service credits were earned.

3. Special plans. The service credits earned after return to employment by a person who was employed under a special plan before becoming the recipient of a disability retirement benefit shall be credited toward completing the service requirements for retirement under that special plan. As used in this section, unless the context otherwise indicates, "special plan" means any of the retirement programs in section 17851, subsections 4 to 11 or section 18453, subsections 2 to 9.

A. The executive director may require, once each year, that the member undergo examinations or tests, conducted in accordance with section 17926, to determine that the member is still disabled to the extent that it is impossible to perform the duties of that member's former employment position.

B. If the member refuses to submit to the examinations or tests under paragraph A, the service credits earned after that date shall be based upon the plan applicable to the position in which the member is currently employed.

C. If it is determined on the basis of the examinations or tests under paragraph A that the member is no

longer disabled to the extent that it is impossible to perform the duties of the former employment position, the member shall:

(1) Return to employment in a position covered by the same special plan or a comparable special plan that covered the former employment position; or

(2) Remain in the current employment position and have the service credits earned thereafter based upon the plan applicable to the position in which the member is currently employed.

§17934. Optional election

Any person entitled to receive a disability retirement benefit under article 3, as in effect immediately before October 1, 1989, may elect to be governed by this article instead of article 3 by making written application to the executive director within 6 months of the effective date of this article.

Sec. 9. 5 MRSA §18355, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§18355. Disability retirement service credit

A beneficiary shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which he the beneficiary receives disability retirement benefits under subchapter V, ~~article~~ articles 3 and 3-A.

Sec. 10. 5 MRSA §18501-A is enacted to read:

§18501-A. Applicability

This article applies to all disabilities for which written applications are received by the executive director before October 1, 1989. All disabilities for which written applications are received by the executive director after September 30, 1989, are subject to article 3-A.

Sec. 11. 5 MRSA c. 425, sub-c. V, art. 3-A is enacted to read:

ARTICLE 3-A

DISABILITY RETIREMENT BENEFITS AFTER SEPTEMBER 30, 1989

§18521. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Disabled. "Disabled" means that the member is mentally or physically incapacitated under the following conditions:

A. The incapacity is expected to be permanent;

B. That it is impossible to perform the duties of the member's employment position;

C. After the incapacity has continued for 2 years, the incapacity must render the member unable to engage in any substantially gainful activity for which the member is qualified by training, education or experience; and

D. The incapacity may be revealed by examinations or tests conducted in accordance with section 18526.

2. Employment position. "Employment position" means:

A. The position in which the member is employed at the time the member becomes incapacitated; or

B. A position of comparable stature and equal or greater compensation and benefits which is made available to the member by the member's employer.

§18522. Applicability

This article applies to all disabilities for which written applications are received by the executive director after September 30, 1989.

§18523. Statement of health

1. Statement required. Any person who becomes a member of the retirement system on or after October 1, 1989, shall submit a statement of that person's health to the executive director on forms prescribed by the executive director.

2. Additional information. If the executive director determines that additional information is necessary to determine the extent of any preexisting disability of the member, the executive director may require that the member undergo medical and, when appropriate, psychological examinations or tests with the results submitted as evidence of the member's health. Any examinations or tests under this subsection are governed by section 18526.

3. Limitation on use. The statement of health or the results of examinations or tests may be used only to determine eligibility for a disability retirement benefit under section 18524, subsection 2.

4. Sanction. Any member who is required to submit a statement of health under this section and who does not submit the statement before applying for disability retirement benefits is not eligible to receive those benefits unless that member establishes to the satisfaction of the executive director that the member meets the requirements of section 18524, subsection 2. Any member who is required to submit a statement of health under this section and who submits a statement which substantially misrepresents the member's physical or mental health may, upon recommendation by the medical board and a finding by the executive director that the misrepresentation was substantial, be denied the right to file an application for disability retirement benefits.

§18524. Qualification for benefit

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if disabled:

A. While in service; and

B. Before reaching the normal retirement age.

2. Exception. A member with fewer than 5 years of continuous creditable service immediately preceding that member's application for a disability retirement benefit is not eligible for that benefit if the disability is the result of a physical or mental condition which existed before the member's membership in the retirement system, unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty.

§18525. Application

In order to receive a benefit under this article:

1. Written application. The person must apply in writing to the executive director in the format specified by the executive director.

A. The executive director shall submit the application and all pertinent medical and psychological information to the medical board for review as required by section 17106, subsection 3.

B. As required by section 17106, the medical board shall make a recommendation as to whether or not the member may be provided vocational rehabilitation services;

2. Workers' compensation. If the incapacity upon which the application is based is a result of an injury or accident received in the line of duty, the application must include proof that the member has made application for benefits under the workers' compensation laws;

3. Social security. If the employment for which creditable service with the employer is allowed was also covered under the United States Social Security Act, the application must include proof that the member has made application for benefits under this Act; and

4. Approval. The written application shall be approved by the executive director upon finding that the member has met the requirements of section 18524.

§18526. Examinations or tests

Any examinations or tests recommended by the medical board in accordance with section 17106 or required by the executive director under section 18521, subsection 1, paragraph D; section 18523, subsection 2; section 18524; section 18529, subsection 2, paragraph B; or section 18533, subsection 3, paragraph A, are governed as follows.

1. Agreed upon physician. The examinations or tests shall be conducted by a qualified physician and, when appropriate, a qualified psychologist mutually agreed upon by the executive director and the member claiming to be disabled.

2. Agreed upon place. The examinations or tests shall be conducted at a place mutually agreed upon by the executive director and the member claiming to be disabled.

3. Costs. The costs incurred under subsections 1 and 2 shall be paid by the retirement system.

§18527. Rehabilitation

Upon recommendations from the medical board, rehabilitation services shall be provided to any person who is the recipient of a disability retirement benefit under this article. Services shall be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified.

1. Rehabilitation plan. If rehabilitation is feasible and recommended, the retirement system shall designate a rehabilitation provider to evaluate the person and develop a rehabilitation plan.

2. Costs. The executive director may contract with rehabilitation providers to develop and carry out approved rehabilitation plans.

A. Except as provided in paragraph B, the executive director shall pay these providers from funds accumulated in the Disability Retirement Benefit Fund.

B. If the person is entitled to other benefits to meet the cost of rehabilitation services, that person must first apply for and use those benefits to the extent available to pay for the goods and services provided.

3. Approval of rehabilitation plan. The executive director shall approve any rehabilitation plan the executive director finds to be in the person's best interest and consistent with the purposes of this article. The person and the executive director shall indicate in writing their approval of and agreement to the submitted rehabilitation plan. The person shall approve the plan within 30 days or, within that time period, submit to the executive director the name of an alternate provider for the executive director's consideration. If the rehabilitation plan includes return to employment with the employer for whom the person worked before becoming disabled, the employer shall also indicate in writing approval of the plan.

4. Decline of rehabilitation. If, after recommendation by the medical board, a person declines use of the rehabilitation services offered or refuses to agree to a rehabilitation plan approved by the executive director, the dis-

ability retirement benefit payments shall cease at the end of the month following the decline or refusal.

A. The executive director shall notify the person in writing of the decision to discontinue the disability retirement benefit.

B. The decision shall be subject to appeal under section 17451.

C. If the person appeals the executive director's decision, the disability retirement allowance shall not be discontinued until all appeals have been exhausted.

5. Monitoring of rehabilitation plan. Each rehabilitation plan approved by the executive director shall contain a provision for periodic review of progress being made by the person toward achieving the goal of the plan. The provision relating to review shall include authority for the executive director to terminate the plan or to amend the plan with the same provider or with a change of provider, based upon results of the review or at the request of the person or the provider. Subsections 1, 2, 3 and 4 shall apply to any amended plans under this subsection.

6. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person shall be reemployed in accordance with the plan. If the plan does not include reemployment with the former employer, the executive director shall notify the former employer, in writing, that the person has completed the rehabilitation plan and is ready to return to employment. The former employer shall reemploy the person in the first available position for which that person is qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

7. Other employment under system. If the former employer has not reemployed the person before the expiration of 3 months, the executive director shall inform all other employers whose employees are covered by this article and chapter 423, subchapter V, article 3-A, of the availability of the person and solicit their assistance in finding employment for that person.

A. The person shall not be required to accept employment which reasonably necessitates relocation or for which the person is not qualified, taking into consideration that person's prior compensation and benefits, training, education and experience, including that person's rehabilitation plan.

B. The disability retirement benefit shall not be discontinued, except as provided by section 18529, or until the person is reemployed consistent with this section.

§18528. Computation of benefit

When a member qualified under section 18524 retires, after approval for disability retirement by the executive

director in accordance with section 18525, the member shall receive a disability retirement benefit equal to 66 2/3% of that member's average final compensation.

§18529. Payment of benefit

1. Beginning. Payment of disability retirement benefits shall begin on the first day of the month following the date of termination of active service of the member, but not more than 6 months before the date of receipt by the executive director of the written application, by or on behalf of the member, for disability retirement, unless it is shown that:

A. It was not reasonably possible to file the application for disability retirement benefits within the 6-month period; and

B. The application was made as soon as reasonably possible.

2. Cessation. Payment of disability retirement benefits shall continue as long as a person is disabled, except that:

A. The disability retirement benefit ceases and a service retirement benefit begins:

(1) On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 23; or

(2) When the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit, if that occurs before the date in subparagraph (1).

(a) When calculating the person's service retirement benefit, the average final compensation shall be the average final compensation at the time that person terminated active service before receiving disability retirement benefits adjusted by the same percentage adjustments, if any, that were applied to the disability retirement benefits under section 18407.

(b) The person shall receive service credit for the purpose of determining benefits under this Part for the period following termination of service for which that person receives disability retirement benefits under this article; and

B. The executive director may require, once each year, that the person undergo examinations or tests, conducted in accordance with section 18526, to determine the person's disability. The executive director may refer the records documenting the results of the examinations or tests and the person's file to

the medical board for a recommendation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.

(1) After the disability has continued for 2 years, the disability must render the person unable to engage in any substantially gainful activity which is consistent with the person's training, education or experience and average final compensation adjusted by the same percentage adjustment as has been received under section 18407. The disability retirement benefit shall continue if the person can effectively demonstrate to the executive director that the person is actively seeking work.

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

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

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

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

(a) The decision shall be subject to appeal under section 17451.

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

§18530. Reduction in amount of benefit

1. Definition. As used in this section, unless the context otherwise indicates, "adjusted final compensation" means the rate of pay of the person immediately before termination and becoming the recipient of a disability retirement benefit adjusted by the same percentage adjustment as has been received under section 18407.

2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 423, subchapter V, article 3-A, which exceeds

\$10,000 or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person became a recipient of a disability retirement benefit, increased or decreased by the same percentage adjustments as have been granted by section 18407, whichever is greater:

A. The excess shall be deducted from the disability or service retirement benefits during the next calendar year; the deductions to be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year for which the benefits are received;

B. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A. If the retirement benefit payments are eliminated by this subsection, the disability shall be deemed to no longer exist, the payment of the disability retirement benefit shall be discontinued and, except as provided in paragraph C, all of the person's rights to benefits under this article shall cease;

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

D. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the executive director shall terminate benefit payments at the end of the month in which the request is received.

3. Compensation from employment covered by this article. If any person who is the recipient of a disability retirement benefit is reemployed by that person's prior employer or any other employer whose employees are covered by this article or chapter 423, subchapter V, article 3-A, and if the total of the person's disability benefit for any year and the person's total earnable compensation for that year exceeds the adjusted final compensation:

A. The disability or service retirement benefits will be reduced during the next calendar year by the amount that the total compensation exceeds the adjusted final compensation;

B. The deductions shall be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year during which the benefits are received;

C. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A;

D. The retirement benefit payments are eliminated by this subsection if:

(1) The person shall again become a member of the retirement system and begin contributing at the current rate; and

(2) When the person again retires, the person shall receive benefits computed on the basis of that person's entire creditable service and in accordance with the law in effect at that time;

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

F. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the executive director shall terminate benefit payments at the end of the month in which the request is received.

4. Disability payments under other laws. The reduction of disability retirement benefits because of disability benefits received under other laws is governed as follows.

A. The amount of any disability retirement benefit payable under this article shall be reduced by any amount received by the person for the same disability under either or both of the following:

(1) The workers' compensation or similar laws, except amounts which may be paid or payable under Title 39, section 56-B; or

(2) The United States Social Security Act, if the employment for which creditable service with the employer is allowed was also covered under that Act at the date of disability retirement.

B. The reduction in the disability retirement benefit is governed as follows:

(1) The initial disability retirement benefit shall be reduced if necessary so that the benefit plus any benefits under paragraph A do not exceed 80% of the person's average final compensation;

(2) The amount determined by the calculation under subparagraph (1) shall not be adjusted when cost-of-living adjustments are applied to the benefits listed under paragraph A; and

(3) Adjustments under section 18407 shall be applied to the reduced disability retirement benefit calculated under subparagraph (1) or paragraph C.

C. The disability retirement benefit may not be reduced below the amount of the retirement benefit which is the actuarial equivalent of the member's accumulated contributions at the time of retirement.

D. Lump-sum settlements of benefits that reduce the disability retirement benefit under this subsection shall be prorated on a monthly basis in an equitable manner prescribed by the board.

(1) These prorated lump-sum settlements may not include any part of the lump-sum settlement attributable to rehabilitation, attorneys', physicians', nurses', hospital, medical, surgical or related fees or charges or any amount paid or payable under Title 39, section 56-B.

(2) These prorated lump-sum settlements shall reduce the disability retirement benefit in the same manner and amount as monthly benefits under this subsection.

E. Any dispute about amounts paid or payable under workers' compensation or the amount of the lump-sum settlement and its attributions shall be determined on petition by a single member of the Workers' Compensation Commission in accordance with Title 39. These determinations may be appealed under Title 39, section 103-B.

§18531. Statement of compensation

1. Requirement. The executive director shall require each person who is the recipient of a disability retirement benefit to submit, each calendar year, a statement of compensation received from any gainful occupation during that year.

2. Failure to submit statement. Failure to submit the statement under subsection 1 shall result in the following:

A. If the person fails to submit the statement required under subsection 1 within 30 days of receipt of the executive director's request for the statement, the disability retirement benefit shall be withheld until the statement is submitted; or

B. If the person fails to submit the statement required under subsection 1 within one year of receipt of the executive director's request for the statement, all rights to further benefits shall cease.

(1) The executive director shall notify the person in writing of the decision to discontinue the disability retirement benefit.

(2) The decision shall be subject to appeal under section 17451.

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

§18532. Voluntary return to service

1. Right to reinstatement. If a person who is the recipient of a disability retirement benefit decides that the person is no longer incapacitated and is able to perform the duties of that person's employment position, the employer for whom the person last worked before becoming disabled shall reinstate the person to the first available position for which the person is qualified and which is consistent with the person's prior work experience. If a collective bargaining agreement applies to such a position, the employer may offer only a position which the person may claim by virtue of seniority accumulated at the time of the disability, unless otherwise specified in the collective bargaining agreement.

2. Dispute over mental or physical capacity. If there is a dispute between the person and the former employer over the person's mental or physical capacity to perform a specific job, at the option of the person that dispute shall be resolved by a majority of 3 physicians, one appointed and reimbursed by the person, one appointed and reimbursed by the employer and one appointed and reimbursed by the retirement system. If the 3 physicians resolve the dispute in favor of the person, the former employer shall reimburse the physician appointed by the person.

3. Termination or reduction in benefits. At any time before the elimination of disability retirement benefit payments under section 18530, subsection 3, the person may request that benefit payments be terminated and the executive director shall terminate benefit payments at the end of the month in which the request is received.

4. Reinstatement of benefits. If, during the first 5 years of reinstatement, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable before the reinstatement with all applicable cost-of-living adjustments, or if greater, a disability retirement benefit based upon the person's current average final compensation.

The executive director may require examinations or tests to determine whether the person is disabled under section 18521.

§18533. Service retirement

1. Average final compensation. The service retirement benefit of a person who returns to employment with that person's former employer or any other employer whose employees are covered by this article or chapter 423, subchapter V, article 3-A, after having been the recipient of a disability retirement benefit, shall be computed in its entirety using the average final compensation as defined by section 17001, subsection 4, on the date of that person's termination from service immediately before becoming the recipient of a service retirement benefit.

2. Costs of benefits. The cost of benefits based upon service credits earned before and during disability shall be charged to the Disability Retirement Benefit Fund. The cost of benefits based upon service credits earned after becoming reemployed shall be charged to the account of the employer through whom the service credits were earned.

3. Special plans. The service credits earned after return to employment by a person who was employed under a special plan before becoming the recipient of a disability retirement benefit shall be credited toward completing the service requirements for retirement under that special plan. As used in this section, unless the context otherwise indicates, "special plan" means any of the retirement programs in section 17851, subsections 4 to 11 or section 18453, subsections 2 to 9.

A. The executive director may require, once each year, that the member undergo examinations or tests, conducted in accordance with section 18526, to determine that the member is still disabled to the extent that it is impossible to perform the duties of that member's former employment position.

B. If the member refuses to submit to the examinations or tests under paragraph A, the service credits earned after that date shall be based upon the plan applicable to the position in which the member is currently employed.

C. If it is determined on the basis of the examinations or tests under paragraph A that the member is no longer disabled to the extent that it is impossible to perform the duties of the former employment position, the member shall:

(1) Return to employment in a position covered by the same special plan or a comparable special plan that covered the former employment position; or

(2) Remain in the current employment position and have the service credits earned thereafter based upon the plan applicable to the position in which the member is currently employed.

§18534. Optional election

Any person entitled to receive a disability retirement benefit under article 3, as in effect immediately before October 1, 1989, or under section 1122 of the former retirement system law, as in effect immediately before July 1, 1977, may elect to be governed by this article instead of article 3 by making written application to the executive director within 6 months after adoption of this article by the participating local district. If the election is made, this article shall apply from the date of the person's original eligibility for disability retirement, but any increase in benefits may only be granted from the date of election.

Sec. 12. Effective date. This Act shall take effect October 1, 1989.

Effective October 1, 1989.

CHAPTER 410

S.P. 461 - L.D. 1246

An Act to Change the Name of the State Capitol Commission to the State House and Capitol Park Commission and to Amend the Law Governing the Commission

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State Capitol Commission is entrusted with the task of developing a plan for the preservation and development of the aesthetic and historical integrity of the State Capitol and its adjacent grounds; and

Whereas, preservation of the Capitol Park area is an integral and necessary component of successfully completing this task; and

Whereas, development of the plan requires the active participation and attention of the Director of the State Capitol Commission; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 3 MRSA §162, sub-§12, as amended by PL 1983, c. 824, Pt. V, is further amended to read:

12. Physical facilities for Legislature. To insure that adequate physical facilities are provided for the efficient operation of the Legislature and to provide for and determine the utilization of legislatively controlled facilities both