

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FOURTH SPECIAL SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 887

S.P. 977 - L.D. 2466

**An Act to Amend the Disability Provisions of the
Maine State Retirement Laws to Comply with the
Requirements of the Older Workers Benefit
Protection Act**

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

Whereas, the federal Older Workers Benefit Protection Act becomes effective as to public employers on October 16, 1992; and

Whereas, the federal Older Workers Benefit Protection Act requires that public retirement plans, including the disability provisions of those plans, be nondiscriminatory as to age; and

Whereas, the federal Equal Employment Opportunity Commission has failed to promulgate rules or issue any regulatory guidance as to approaches to establishing a nondiscriminatory disability plan having the least cost impact on employers and the least benefit impact for employees; and

Whereas, the Legislature created the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members and directed it to develop an alternative disability program as provided by the transitional language in the federal Older Workers Benefit Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs; and

Whereas, the federal Equal Employment Opportunity Commission's failure to act has severely limited the approaches available to the commission to meet the intent of the Legislature; and

Whereas, if existing disability provisions of the Maine State Retirement System laws are not amended, there will be a substantial risk that those provisions will not meet the requirements of the federal Older Workers Benefit Protection Act, resulting in liability under that Act for the Maine State Retirement System; and

Whereas, enactment of this Act will amend the Maine State Retirement System laws to conform to the requirements of the federal Older Workers Benefit Protection Act while not increasing the disability benefit costs to public employers and while allowing current employees to elect whether or not to be covered under the amendments; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Con-

stitution 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. 4 MRSA §1353, sub-§1, as amended by PL 1983, c. 863, Pt. B, §§26 and 45, is further amended to read:

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

~~A. He has not completed the eligibility requirements for retirement under section 1351, subsection 1 or 2; and~~

~~B. He became mentally or physically incapacitated to the extent that it is impossible for him to perform his duties as a judge, and the incapacity is expected to be permanent, as shown by medical examination or tests. The examination or tests shall be conducted by a qualified physician mutually agreed upon by the executive director and member, at an agreed upon place, and the costs shall be paid by the Maine Judicial Retirement System.~~

Sec. 2. 4 MRSA §1353, sub-§2, as amended by PL 1983, c. 863, Pt. B, §§26 and 45, is further amended to read:

2. Amount. ~~The~~ Until July 1, 1994, the amount of a disability retirement allowance shall be 66-2/3% is 59% of the member's average final compensation. Any member entitled to this benefit who was serving as a judge on November 30, 1984; may elect to have ~~his~~ that member's disability benefits calculated in accordance with chapter 29, instead of this subsection. A member who is serving as a judge on October 16, 1992 may elect to be covered under the disability benefit plan applicable to the judge as that plan is amended to meet the requirements of the federal Older Workers Benefit Protection Act. The election must be made by the same procedure provided in Title 5, section 17941 for state employees.

Sec. 3. 4 MRSA §1353, sub-§7, ¶A, as enacted by PL 1983, c. 853, Pt. C, §§15 and 18, is amended to read:

A. The disability retirement allowance of a beneficiary ~~shall must cease at age 70, or prior thereto~~; whenever the service retirement allowance of the beneficiary would equal or exceed the amount of ~~his the member's~~ disability retirement allowance.

~~(1) On the last day of the month in which the 10th anniversary of the beneficiary's normal retirement age occurs; or~~

~~(2) On the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit, if that occurs before the 10th anniversary of the beneficiary's normal retirement age;~~

Sec. 4. 5 MRSA §17904, sub-§1, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if ~~he the member~~ becomes disabled: while in service.

~~A. While in service; and~~

~~B. Before reaching the normal retirement age.~~

Sec. 5. 5 MRSA §17905, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§17905. Computation of benefit

When Until July 1, 1994, when a member qualified under section 17904 retires, the member ~~shall is~~ entitled to receive a disability retirement benefit equal to ~~66 2/3%~~ 59% of ~~his the member's~~ average final compensation.

Sec. 6. 5 MRSA §17907, sub-§2, ¶A, as repealed and replaced by PL 1987, c. 256, §16, is amended to read:

A. The disability retirement benefit ceases and eligibility for a service retirement benefit begins: on the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of the member's disability retirement benefit.

~~(1) On the last day of the month in which the 10th anniversary of the beneficiary's normal retirement age occurs; or~~

~~(2) On the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of~~

~~his disability retirement benefit, if that occurs before the 10th anniversary of the beneficiary's normal retirement age;~~

Sec. 7. 5 MRSA §17924, sub-§1, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

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

~~A. While in service; and~~

~~B. Before reaching the normal retirement age.~~

Sec. 8. 5 MRSA §17928, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

§17928. Computation of benefit

When Until July 1, 1994, 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 is~~ entitled to receive a disability retirement benefit equal to ~~66 2/3%~~ 59% of that member's average final compensation.

Sec. 9. 5 MRSA §17929, sub-§2, ¶A, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

A. The disability retirement benefit ceases and a service retirement benefit begins: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

~~(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~~

(1) When calculating the person's service retirement benefit, the average final compensation is 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.

(2) The person is entitled to 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.

Sec. 10. 5 MRSA c. 423, sub-c. V, art. 3-B is enacted to read:

Article 3-B

MEMBER ELECTION OF DISABILITY PLAN

§17941. Member election of disability plan

1. Member election. A member who was hired as a state employee or teacher before October 16, 1992 and who is so employed on that date may elect to be covered under the retirement system disability plan applicable to the member as that plan is amended to meet the requirements of the federal Older Workers Benefit Protection Act.

A. The retirement system is responsible for providing to state agencies and school administrative units information that describes the applicable disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act, the disability plan without those amendments and a form for individual member election to be covered under the plan as amended.

B. The state agency or school administrative unit is responsible for giving the information and election form to each member entitled to the election, for collecting the completed election forms and for returning the election forms to the retirement system.

C. The state agency or school administrative unit shall give the information and election form to each member entitled to the election not later than October 16, 1992.

D. A member's election to be covered under the applicable disability plan as amended to meet the

requirements of the federal Older Workers Benefit Protection Act is effective 180 days after October 16, 1992.

E. A member's election is not effective unless it is signed and dated on or before a date established by the executive director that may not be later than 180 days after October 16, 1992 and the election is irrevocable.

F. The state agency or school administrative unit shall return the completed election forms to the retirement system by a date established by the executive director that may not be later than 180 days after October 16, 1992.

G. The executive director may establish additional policies and procedures necessary to carry out this section in an efficient and fair manner.

2. Members who do not elect. Until a member elects to be covered under the applicable retirement system disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act and the election is effective, the member is covered under the plan without those amendments.

Sec. 11. 5 MRSA §18202, sub-§3 is enacted to read:

3. Application. Notwithstanding the provisions of subsections 1 and 2, the amendments made to retirement system disability plans to meet the requirements of the federal Older Workers Benefit Protection Act apply to each participating local district without adoption by the district.

Sec. 12. 5 MRSA §18504, sub-§1, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he the member becomes disabled; while in service.

A. While in service; and

B. Before reaching the normal retirement age.

Sec. 13. 5 MRSA §18505, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

§18505. Computation of benefit

~~When~~ Until July 1, 1994, when a member qualified under section 18504 retires, the member shall is entitled to receive a disability retirement benefit equal to 66 2/3 59% of his the member's average final compensation.

Sec. 14. 5 MRSA §18507, sub-§2, ¶A, as repealed and replaced by PL 1987, c. 256, §41, is amended to read:

A. A disability retirement benefit ceases and eligibility for a service retirement benefit begins: on the last day of the month in which the service retirement benefit of the beneficiary equals or exceeds the amount of the member's disability retirement benefit.

~~(1) On the last day of the month in which the 10th anniversary of the beneficiary's normal retirement age occurs; or~~

~~(2) On the last day of the month in which the service retirement benefit of the beneficiary would equal or exceed the amount of his disability retirement benefit, if that occurs before the 10th anniversary of the beneficiary's normal retirement age;~~

Sec. 15. 5 MRSA §18524, sub-§1, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

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

~~A. While in service; and~~

~~B. Before reaching the normal retirement age.~~

Sec. 16. 5 MRSA §18528, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

§18528. Computation of benefit

~~When~~ Until July 1, 1994, 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~~ is entitled to receive a disability retirement benefit equal to ~~66 2/3%~~ 59% of that member's average final compensation.

Sec. 17. 5 MRSA §18529, sub-§2, ¶A, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

A. The disability retirement benefit ceases and a service retirement benefit begins: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

~~(1) On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 23; or~~ When calculating the person's service retirement benefit, the average final compensation is 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.

~~(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). The person is entitled to 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~~

~~(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~~

Sec. 18. 5 MRSA c. 425, sub-c. V, art. 3-B is enacted to read:

Article 3-B

MEMBER ELECTION OF DISABILITY PLAN

§18541. Member election of disability plan

1. Member election. Each participating local district shall offer to members who are employees of the district hired before October 16, 1992 and so employed on that date an opportunity to elect to be covered under the district's disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act.

A. The retirement system is responsible for providing to the participating local district information that describes the district's disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act, the district's disability plan without those amendments and a form for individual member election to be covered under the plan as amended.

B. The participating local district is responsible for giving the information and election form to each member entitled to the election, for collecting the completed election forms and for returning the election forms to the retirement system.

C. The participating local district shall give the information and election form to each member not later than October 16, 1992.

D. A member's election to be covered under the district's disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act is effective 180 days after October 16, 1992.

E. A member's election is not effective unless it is signed and dated on or before a date established by the executive director that is not later than 180 days after October 16, 1992 and the election is irrevocable.

F. The participating local district shall return the completed election forms to the retirement system not later than a date established by the executive director that may not be later than 180 days after October 16, 1992.

G. The executive director may establish additional policies and procedures necessary to carry out this section in an efficient and fair manner.

2. Members who do not elect. Until a member elects to be covered under the district's disability plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act and the election is effective, the member is covered under the plan without those amendments.

Sec. 19. 5 MRSA c. 425, sub-c. V, art. 3-C is enacted to read:

Article 3-C

**DISABILITY UNDER FORMERLY
AVAILABLE
DISABILITY PLANS AFTER
OCTOBER 16, 1992**

§18542. Disability under formerly available disability plans after October 16, 1992

In the case of a participating local district having a retirement system disability plan other than that provided by article 3 or 3-A, which plan is in force on October 15, 1992, the following provisions apply on and after October 16, 1992:

1. Eligibility. A member who is an employee of the district who applies for a disability retirement benefit after the effective date of the member's election to be covered under the plan as amended to meet the requirements of the federal Older Workers Benefit Protection Act is eligible to apply regardless of the member's age at time of application;

2. Ordinary disability allowance. In the case of ordinary disability under such a plan, the disability retirement allowance must be calculated as provided under the plan except that until July 1, 1994 the amount of the retirement allowance may not exceed 59% of the member's average final compensation at the time of disability retirement; and

3. Occupational disability allowance. In the case of occupational disability under such a plan, the disability retirement allowance is, until July 1, 1994, equal to 59% of the member's average final compensation at the time of disability retirement.

Sec. 20. Application. The amendments made by this Act to the disability plans of the Maine Judicial Retirement System and the Maine State Retirement System for members who are Legislators, state employees and teachers and to the disability plans of participating local districts for members who are district employees apply to those members who elect, in accordance with this Act, to be covered under the applicable disability plan as amended by this Act and to those who become members after October 16, 1992. For those members who so elect, the applicable disability plan as amended by this Act applies to a written application for disability retirement received by the retirement system after the effective date of the election. For those who become members after October 16, 1992, the applicable disability plan as amended by this Act applies to a written application for disability retirement received by the retirement system after October 16, 1992.

Except as specifically provided in this Act, nothing in this Act changes any standard for or requirement of eligibility for disability, on initial application or subsequent review, under any retirement system disability plan in effect immediately prior to enactment of this Act.

Members who are judges, Legislators, state employees, teachers or employees of participating local districts who do not elect to be covered under the applicable disability plan as amended by this Act continue to be covered by the applicable disability plan without those amendments.

Sec. 21. Study and report. The Maine State Retirement System shall study and analyze the experience of the plans covered by this Act. The retirement system shall submit by February 1, 1994 a report to the Governor, the Joint Standing Committee on Aging, Retirement and Veterans, the members of the Legislative Council and the Executive Director of the Legislative Council. The report must compare actual experience under the plans with actuarial assumptions regarding elections and costs of benefits under the new options elected. The report must also identify possible options for compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective October 16, 1992.
