

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

Sec. 17. 7 MRSA §1821, as enacted by PL 1999, c. 765, §8, is amended to read:

§1821. Maine chronic wasting disease surveillance program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chronic wasting disease" means any ~~form of transmissible spongiform encephalopathy member of the family of transmissible spongiform encephalopathies to which cervids, as defined in section 1333, are susceptible.~~

B. "Susceptible animal" means any animal, whether domestic or wild, belonging to a species that is capable or believed to be capable of contracting chronic wasting disease.

2. Powers of commissioner. The commissioner may prohibit the importation of ~~any a~~ susceptible animal from a region, state or country where ~~infection by~~ chronic wasting disease has been ~~documented confirmed.~~

3. Prevention of chronic wasting disease. The commissioner shall monitor reports of ~~infection by confirmed cases of~~ chronic wasting disease and ~~communicate the contents of those reports to people involved in the production, care or management of susceptible animals. The commissioner shall monitor progress in developing the development of~~ diagnostic tests and vaccinations for the disease and ~~communicate the availability of tests and vaccines to people involved in the production, care or management of susceptible animals. The commissioner shall develop a program to prevent, so far as possible, the introduction of~~ chronic wasting disease in the State.

4. Maine chronic wasting disease surveillance program; rules. The commissioner shall develop a chronic wasting disease surveillance program. The commissioner, in consultation with the Commissioner of Inland Fisheries and Wildlife, shall adopt rules to ~~establish the requirements for participation in the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

Sec. 18. 22 MRSA §2511, sub-§13, as enacted by PL 1999, c. 771, §1, is amended to read:

13. Domesticated deer. "Domesticated deer" means fallow deer, family Cervidae, subfamily Cervinae, genus Dama; red deer, family Cervidae, subfamily Cervinae, genus Cervus, species Elaphus; and any other species specified under Title 7, section ~~1331, subsection 1-A~~ 1333, subsection 1 kept as

domestic animals for ~~the purpose of either~~ breeding stock or for sale as food.

Sec. 19. 22 MRSA §2823-B, sub-§6, as enacted by PL 2001, c. 308, §2, is amended to read:

6. Lawful possession of hypodermic apparatuses by livestock owners. A person who owns livestock is authorized to possess and have control of hypodermic apparatuses for the purpose of administering antibiotics, vitamins and vaccines to treat medical conditions or promote the health of that person's livestock. For the purposes of this subsection, "livestock" means cattle, equines, sheep, goats, swine, ~~llamas members of the genus Lama, poultry, rabbits and domesticated deer cervids~~ as defined in Title 7, section ~~1331~~ 1333, subsection 1.

Sec. 20. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Division of Animal Health and Industry 0394

Initiative: Provides initial allocations for the Cattle Health Assurance Program Fund.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$500	\$500
Other Special Revenue		
Funds Total	\$500	\$500

See title page for effective date.

CHAPTER 387

S.P. 501 - L.D. 1501

An Act To Amend the Laws Relating to the Maine State Retirement System

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

Sec. 1. 4 MRSA §1201, sub-§7, as enacted by PL 1983, c. 853, Pt. C, §§15 and 18, is amended to read:

7. Consumer Price Index. "Consumer Price Index" means the Consumer Price Index for ~~All Urban Wage Earners and Clerical Workers: United States City Average, All items, 1967=100 Consumers, CPI-U~~, as compiled by the United States Department of Labor, Bureau of Labor Statistics; or, if the index is revised or superseded, the board shall employ the Consumer Price Index shall be the index represented compiled by the Bureau of Labor Statistics as

reflecting most accurately, United States Department of Labor that the board of trustees finds to be most reflective of changes in the purchasing power of the dollar by for the broadest population of consumers, including retired consumers.

Sec. 2. 5 MRSA §17760, first ¶, as amended by PL 1991, c. 479, §2, is further amended to read:

Service credit for service in the United States Armed Forces is governed as follows. Except as provided in subsection 1, paragraph B, subparagraph (1), service credit under this section is limited to ~~4~~ 5 years.

Sec. 3. 5 MRSA §17760, sub-§1, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

1. Service after becoming a member. A member is entitled to service credit for the period of time during which ~~his~~ the member's membership is continued under section 17655, subsection 1, under the following terms and conditions.

A. ~~No~~ A member who is otherwise entitled to service credit for military leave may not be deprived of these credits if the member's return to membership service is delayed beyond 90 days after ~~his~~ the member's separation from the service in the Armed Forces of the United States, under conditions other than dishonorable, if the delay is caused by an illness or disability incurred in the service in the armed forces.

B. A member may not receive service credit for military leave beyond the end of the period of first enlistment or induction or beyond ~~4~~ 5 years from the date of original call to active duty in the armed forces, whichever is less, unless:

- (1) The member's return to active duty in the armed forces or the extension of the period of service beyond ~~4~~ 5 years is required by some mandatory provision; and
- (2) The person presents proof of the return to or extension of service satisfactory to the board.

Sec. 4. 5 MRSA §17911 is enacted to read:

§17911. Rehabilitation

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

rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article. Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

For the purposes of this section, "person" means any person who is the recipient of a disability retirement benefit.

1. Rehabilitation plan. If the executive director makes the determinations necessary to provide rehabilitation services under this section and rehabilitation agreed to by the parties, 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 Retirement Allowance Fund, established under section 17251.

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 and the person shall approve any rehabilitation plan developed under subsection 1 and shall indicate in writing their approval of and agreement to the 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 also shall indicate in writing approval of the plan.

4. Monitoring of rehabilitation plan. Each rehabilitation plan approved by the executive director must contain a provision for periodic review of progress being made by the person toward achieving the goal of the plan and substantially gainful activity. The provision relating to review must 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 and 3 apply to any amended plans under this subsection. A person is entitled to a single rehabilitation plan during the course of the person's incapacity except when the person demonstrates that a termination of the plan was reasonable and for good cause. Any entitlement to amend a rehabilitation plan or establish a new plan ends with a determination by the executive director that the person is no longer disabled.

5. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person must be reemployed in accordance with the plan. 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 training and education received under that person's rehabilitation plan.

6. Employment exception. A person is not required to accept employment that 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 training and education received under that person's rehabilitation plan. The disability retirement benefit may not be discontinued except as provided by section 17929 or until the person is reemployed consistent with this section.

Sec. 5. 5 MRSA §17927, as amended by PL 1995, c. 643, §§12 and 13, is further amended to read:

§17927. Rehabilitation

Rehabilitation Upon agreement of the executive director and the person, rehabilitation services must may be provided to any person who is the recipient of a disability retirement benefit under this article whenever as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation

services, the executive director ~~determines~~ must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article and, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. When necessary appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article. Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

For the purposes of this section, "person" means any person who is the recipient of a disability retirement benefit.

1. Rehabilitation plan. If the executive director makes the determinations necessary to provide rehabilitation services under this section and rehabilitation is ~~feasible and recommended~~ agreed to by the parties, 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~~ Retirement Allowance Fund, established under section 17251.

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 and the person shall approve any rehabilitation plan that 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 developed under subsection 1 and 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 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 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 is subject to appeal under section 17451.~~

~~C. If the person appeals the executive director's decision, the disability retirement allowance may 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 and substantially gainful activity. The provision relating to review ~~shall~~ must 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, and 3 ~~and 4~~ shall apply to any amended plans under this subsection. A person is entitled to a single rehabilitation plan during the course of the person's incapacity, except when the person demonstrates that a termination of the plan was reasonable and for good cause. Any entitlement to amend a rehabilitation plan or establish a new plan ends with a determination by the executive director that the person is no longer disabled.

6. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person must be reemployed in accordance with the plan. 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 training

and education received under that person's rehabilitation plan.

7. Other employment under system. A person is not required to accept employment that 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 training and education received under that person's rehabilitation plan. The disability retirement benefit may not be discontinued except as provided by section 17929 or until the person is reemployed consistent with this section.

Sec. 6. 5 MRSA §18252, as amended by PL 2001, c. 699, §3, is further amended to read:

§18252. Membership in districts with Social Security coverage under Social Security Section 218 agreement

An employee who is or would be covered by the United States Social Security Act as a result of employment by a participating local district having a so-called "Social Security Section 218 agreement" may elect to join, not to join, to cease contributions to or to withdraw from the retirement system under the following conditions.

1. New employees. A new employee may join the retirement system at the beginning of ~~his~~ employment or on any anniversary of the beginning of ~~his~~ employment, so long as ~~he~~ the employee is still an employee of the participating local district and the district continues to be a participating local district.

2. Employee who is participating member. An employee who is a participating member of the retirement system ~~and who wishes~~ may elect to withdraw from ~~cease contributions to~~ the system ~~may~~ and, at the employee's discretion, may withdraw accumulated contributions in accordance with the procedures in section 18306.

3. Employee who has previously ceased contributions. An employee who has previously ~~withdrawn from~~ elected to cease contributions to the retirement system, whether or not accumulated contributions have been withdrawn, may choose to rejoin the system ~~within 3 years of withdrawal~~ at any time under the following conditions.

A. ~~The~~ If the employee withdrew accumulated contributions and is rejoining the system within 3 years of the date that a refund was paid under section 18306, the employee must repay to the retirement system an amount equivalent to the withdrawn accumulated contributions plus the amount of interest which that would be required of any terminated employee who had become

reemployed and had elected to rejoin the retirement system and to repay the contributions.

A-1. If the employee withdrew accumulated contributions and is rejoining the system more than 3 years from the date that a refund was paid under section 18306, the employee may not repay to the retirement system the contributions withdrawn under subsection 2.

B. The employer must still be a participating local district allowing new membership in the retirement system.

~~4. Employee who has previously withdrawn rejoins after 3 years. An employee who has previously withdrawn from the retirement system may choose to rejoin the system after 3 years of withdrawal under the following conditions.~~

~~A. The employee may not repay to the retirement system the contributions withdrawn under subsection 2.~~

~~B. The employer must still be a participating local district allowing new membership in the retirement system.~~

5. Limit on right to rejoin. The right of an employee to rejoin under ~~either~~ subsection 3 ~~or 4~~ is limited to one occurrence.

6. Restoration to service. If any person who is the recipient of a service retirement benefit is covered by the United States Social Security Act upon being restored to service, continuation of that person's benefit is governed by the following.

A. The person may elect to have the service retirement benefit continued during the period of time the person is restored to service and the person may not accumulate any additional service credits.

B. The person may elect to have the service retirement benefit terminated, again become a member of the retirement system and begin contributing at the current rate.

(1) The person is entitled to accumulate additional service credits during the period of time the person is restored to service.

(2) When the person again retires, the person is entitled to receive benefits computed on the person's entire creditable service and in accordance with the law in effect at the time.

C. Upon being restored to service, the person ~~shall~~ must elect to have benefits either continued or terminated. If written notification of the per-

son's election is not received by the executive director within 60 days of restoration to service, the person is deemed to have elected the provisions of paragraph A. The election, regardless of how it is made, is irrevocable during the period of restoration to services.

Sec. 7. 5 MRSA §18252-A, sub-§1, ¶¶A and B, as enacted by PL 1997, c. 709, §4, are amended to read:

A. An employee hired by a participating local district, or rehired following a break in service, after the date on which the employer provides a plan under section 18252-B ~~shall~~ must elect at the time of hiring or rehiring whether to be a member under the retirement system or to be covered under a plan provided by the employer under section 18252-B.

(1) If the employee elects to be a member under the retirement system, the election is effective as of the date of hire or rehire.

(a) An employee who elects to be a member of the retirement system may later elect to be covered under a plan provided by the employer under section 18252-B. The employee who so elects ~~shall~~ may, at the employee's discretion, withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures.

(b) An employee who elects under division (a) to be covered under a plan provided by the employer under section 18252-B may later elect to again become a member under the retirement system, unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer contribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) An employee who elects under division (b) to again become a member of the retirement system may not pay contributions or pick-up contributions or receive service credit for the period during which the employee elected not to be a member under the retirement system. The employee may, in accordance with section 18304, repay contributions withdrawn under division (a) and may, as permitted under other relevant retirement system

law, rule and policy, repay other refunded contributions.

(d) An employee who, having elected to again become a member under the retirement system under division (c), later elects again not to be a member may not thereafter become a member under the retirement system while employed by the same participating local district.

(2) An employee who elects to be covered under a plan provided by the employer under section 18252-B may later elect to become a member under the retirement system.

(a) Membership service credit for an employee joining the retirement system under this subparagraph begins as of the effective date of first contributions or pick-up contributions to the retirement system following the employee's election under this subparagraph.

(b) An employee who joins the retirement system under this subparagraph may not pay contributions or have pick-up contributions made on or receive any service credit for the period during which the employee elected not to be a member of the retirement system.

(c) An employee who, having elected to become a member under the retirement system under this subparagraph, later elects again not to be a member ~~shall may, at the employee's discretion,~~ withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under the retirement system while employed by the same participating local district.

B. An employee of the participating local district who is a member under the retirement system on the date on which the employer provides a plan under section 18252-B may elect to remain a member under the retirement system or to become covered under a plan provided by the employer under section 18252-B.

(1) If the employee elects not to remain a member, the election is effective as of the first day of the month in which no contri-

butions or pick-up contributions are made to the retirement system by the employee. An employee who elects not to remain a member ~~shall may, at the employee's discretion,~~ withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures.

(2) An employee who elects not to remain a member under the retirement system may later elect to again become a member.

(a) Membership service credit for an employee who elects to again become a member under the retirement system under this subparagraph begins as of the effective date of the first contributions or pick-up contributions to the retirement system following the employee's election under this subparagraph.

(b) An employee who rejoins the retirement system under this subparagraph may not pay contributions or pick-up contributions or receive service credit for the period during which the employee elected not to be a member under the retirement system. The employee may, in accordance with section 18304, repay contributions refunded under subparagraph (1), unless to so elect would have the effect of requiring the employer, without the employer's agreement, to make an employer contribution to both the retirement system and the plan provided by the employer under section 18252-B.

(c) An employee who, having elected to again become a member under the retirement system under this subparagraph, later elects again not to be a member ~~shall may, at the employee's discretion,~~ withdraw accumulated contributions in accordance with applicable requirements of law and rule and retirement system procedures and may not thereafter become a member under the retirement system while employed by the same participating local district.

Sec. 8. 5 MRSA §18360, first ¶, as amended by PL 1991, c. 479, §5, is further amended to read:

Service credit for service in the Armed Forces of the United States is governed as follows. Except as

provided in subsection 1, paragraph B, subparagraph (1), service credit under this section is limited to ~~4~~ 5 years.

Sec. 9. 5 MRSA §18360, sub-§1, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

1. Service after becoming a member. A member is entitled to service credit for the period of time during which ~~his~~ the member's membership is continued under section 18258, subsection 1, under the following terms and conditions.

A. ~~No~~ A member who is otherwise entitled to service credit for military leave may not be deprived of these credits if the member's return to membership service is delayed beyond 90 days after ~~his~~ the member's separation from the service in the Armed Forces of the United States, under conditions other than dishonorable, if the delay is caused by an illness or disability incurred in the service in the armed forces.

B. A member may not receive service credit for military leave beyond the end of the period of first enlistment or induction or beyond ~~4~~ 5 years from the date of original call to active duty in the armed forces, whichever is less, unless:

(1) The member's return to active duty in the armed forces or the extension of the period of service beyond ~~4~~ 5 years is required by some mandatory provision; and

(2) The member presents proof of the return to or extension of service satisfactory to the board.

Sec. 10. 5 MRSA §18512 is enacted to read:

§18512. Rehabilitation

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article. Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

For the purposes of this section, "person" means any person who is the recipient of a disability retirement benefit.

1. Rehabilitation plan. If the executive director makes the determinations necessary to provide rehabilitation services under this section and rehabilitation agreed to by the parties, 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 Retirement Allowance Fund, established under section 17251.

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 and the person shall approve any rehabilitation plan developed under subsection 1 and shall indicate in writing their approval of and agreement to the 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 also shall indicate in writing approval of the plan.

4. Monitoring of rehabilitation plan. Each rehabilitation plan approved by the executive director must contain a provision for periodic review of progress being made by the person toward achieving the goal of the plan and substantially gainful activity. The provision relating to review must 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 and 3 apply to any amended plans under this subsection. A person is entitled to a single rehabilitation plan during the course of the person's incapacity except when the person demonstrates that a termination of the plan was reasonable and for good cause. Any entitlement to amend a rehabilitation plan or establish a new plan ends with a determination by the executive director that the person is no longer disabled.

5. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person must be reemployed in accordance with the plan. 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 training and education received under that person's rehabilitation plan.

6. Employment exception. A person is not required to accept employment that 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 training and education received under that person's rehabilitation plan. The disability retirement benefit may not be discontinued except as provided by section 17929 or until the person is reemployed consistent with this section.

Sec. 11. 5 MRSA §18527, as amended by PL 1995, c. 643, §24 and 25, is further amended to read:

§18527. Rehabilitation

Rehabilitation Upon agreement of the executive director and the person, rehabilitation services must may be provided to any person who is the recipient of a disability retirement benefit under this article if as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director determines must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article and, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. When necessary appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this

article. Services must 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. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

For the purposes of this section, "person" means any person who is the recipient of a disability retirement benefit.

1. Rehabilitation plan. If the executive director makes the determinations necessary to provide rehabilitation services under this section and rehabilitation is ~~feasible and recommended~~ agreed to by the parties, 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~~ Retirement Allowance Fund, established under section 17251.

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 and the person 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~~ developed under subsection 1 and 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 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 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 is subject to appeal under section 17451.~~

~~C. If the person appeals the executive director's decision, the disability retirement allowance may 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 and substantially gainful activity. The provision relating to review ~~shall~~ must 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, and 3 ~~and 4~~ shall apply to any amended plans under this subsection. A person is entitled to a single rehabilitation plan during the course of the person's incapacity, except when the person demonstrates that a termination of the plan was reasonable and for good cause. Any entitlement to amend a rehabilitation plan or establish a new plan ends with a determination by the executive director that the person is no longer disabled.

6. Return to service. If the rehabilitation plan includes return to employment with the person's former employer, that person must be reemployed in accordance with the plan. 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 training and education received under that person's rehabilitation plan.

7. Other employment under system. A person is not required to accept employment that 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 training and education received under that person's rehabilitation plan. The disability retirement benefit may not be discontinued except as provided by section 18529 or until the person is reemployed consistent with this section.

Sec. 12. 5 MRSA §18801, sub-§6, as enacted by PL 1989, c. 811, §3, is amended to read:

6. Plan design and amendments. The rules adopted by the board must be based entirely upon proposals for the consolidated retirement plan and proposed amendments to the consolidated retirement plan received from the Participating Local District Advisory Committee or from the retirement system staff. The board shall adopt as a rule any proposal received from the Participating Local District Advisory Committee or return the proposal to the advisory committee with a statement setting forth the reasons for not adopting the proposal.

Sec. 13. 5 MRSA §18802-A, sub-§§5 and 6, as enacted by PL 1997, c. 12, §1 and affected by §2, are amended to read:

5. Transaction of business. The transaction of business by the advisory committee is governed as follows.

A. Seven voting members constitute a quorum for the transaction of any business.

B. Each member is entitled to one vote.

C. ~~Except as provided by subsection 6, 6 affirmative votes are~~ Affirmative votes of a simple majority of the quorum or, if greater, of the voting members present are necessary for the passage of any resolution or any other action by the advisory committee.

6. Proposal for plan design or amendment. The advisory committee ~~shall~~ may present to the board proposals for the consolidated retirement plan and amendments to the plan. Passage of any resolution or any other action by the advisory committee relating to proposals for the consolidated retirement plan or proposed amendments to the consolidated retirement plan requires ~~8~~ affirmative votes of a simple majority of the quorum or, if greater, of the voting members present.

Sec. 14. PL 2001, c. 442, §5, as amended by PL 2001, c. 557, §1 and c. 699, §7, is further amended to read:

Sec. 5. Status of employees who have retired and returned to covered employment under the Maine State Retirement System; choice to retire rather than continue to work. Notwithstanding the Maine Revised Statutes, Title 5, section 17651 and section 17652, recipients of a service retirement benefit from the Maine State Retirement System who have returned to covered employment under the retirement system in a position that would otherwise be covered by the retirement plan for state employees and teachers may not

~~contribute to rejoin~~ the retirement system, do not earn creditable service for their employment after retirement and do not earn any additional retirement benefits as a result of that employment. By retiring from a position covered under the retirement system, an employee exercises that employee's choice between continuing to work and thereby continuing to accrue retirement service credit and, potentially, an increased earnable compensation, and retiring, with both service credit and earnable compensation thereby becoming fixed. The employee's retirement constitutes the employee's knowing and voluntary waiver of any claim of any nature under federal or state law with respect to retirement system service credit or earnable compensation related to return to employment after retirement. ~~They~~ Recipients of a service retirement benefit from the retirement system may participate in other retirement options available to similar employees, including the state program of tax-deferred arrangements under Title 5, chapter 67, at the discretion of their employer. For purposes of participation in the state employee health insurance program pursuant to the Maine Revised Statutes, Title 5, section 285 or in dental health insurance coverage offered by the State, recipients of a service retirement benefit under the Maine State Retirement System who are retired state employees and who are reemployed as state employees must be treated as retirees under section 285, subsection 1-A for purposes of eligibility for coverage under the group plan. A recipient of a service retirement benefit under the Maine State Retirement System who is a retired teacher and who returns to work as a teacher under this Act is eligible for coverage under the group health insurance plan for active teachers in the school administrative unit in which newly employed. For purposes of participation in the group accident and sickness or health insurance for retired teachers pursuant to Title 20-A, section 13451, a recipient of a service retirement benefit under the Maine State Retirement System who is a retired teacher who returns to work under this Act is eligible upon ceasing work to return to coverage under the group health insurance plan in effect for active teachers in the school unit from which the teacher originally retired, including state payment of a percentage of the premium cost under section 13451.

Sec. 15. PL 2001, c. 442, §§6 and 7 are enacted to read:

Sec. 6. Interpretation and application; rulemaking. The provisions of this Act that establish the opportunity to retire from a position covered under the retirement system and to thereafter return to work in a position covered under the retirement system with no reduction of retirement benefits or limitation on compensation must be interpreted and applied in a manner that meets applicable requirements of federal law and regulation, including, but not limited to, the Internal Revenue

Code and Internal Revenue Service regulations. The retirement system shall adopt rules for the interpretation and application of the provisions that reflect these requirements. Rules adopted under this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 7. Reporting requirements. Retirement system employers are required to identify and report to the retirement system, in the manner specified by the retirement system, each individual who is a retiree who becomes an employee of the employer. The employer shall report each such employee whenever and so long as an employee is the employer's employee. The employer shall inquire of individuals hired to ascertain whether an individual is a retiree and the individual shall disclose that. "Employer" includes the State, all school administrative units and all participating local districts. "Employee" means an already retired individual receiving a Maine State Retirement System retirement benefit, regardless of the retirement system plan retired under, who after retirement is employed by an employer as defined in this section. "Retire" means to receive a retirement benefit from the retirement system. "Retiree" means an individual who receives a retirement benefit from the retirement system under any of the retirement system's retirement plans.

Sec. 16. PL 2001, c. 699, §8 is amended to read:

Sec. 8. Status of employees who have retired and returned to covered participating local district employment under Maine State Retirement System. Notwithstanding the Maine Revised Statutes, Title 5, section 18251, ~~subsection 1~~ section 18252 and section 18252-A, recipients of a service retirement benefit from the Maine State Retirement System for service in the employment of a participating local district who have returned to covered employment under the retirement system in a position that would otherwise be covered by the retirement plan for a participating local district may not ~~contribute to rejoin~~ the retirement system, do not earn creditable service for their employment after retirement and do not earn any additional retirement benefits as a result of that employment. By retiring from a position covered under the retirement system, an employee exercises that employee's choice between continuing to work and thereby continuing to accrue retirement service credit and, potentially, an increased earnable compensation, and retiring, with both service credit and earnable compensation thereby becoming fixed. The employee's retirement constitutes the employee's knowing and voluntary waiver of any claim of any nature under federal or state law with respect to retirement service credit or earnable compensation related to return to employment after retirement. This section applies only to retired

participating local district employees to whom Title 5, section 17001, subsection 32, paragraph B applies.

Sec. 17. PL 2001, c. 699, §§9 and 10 are enacted to read:

Sec. 9. Interpretation and application; rulemaking. The provisions of this Act that establish the opportunity to retire from a position covered under the retirement system and to thereafter return to work in a position covered under the retirement system with no reduction of retirement benefits or limitation on compensation must be interpreted and applied in a manner that meets applicable requirements of federal law and regulation, including, but not limited to, the Internal Revenue Code and Internal Revenue Service regulations. The retirement system shall adopt rules for the interpretation and application of the provisions that reflect these requirements. Rules adopted under this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 10. Reporting requirements. Retirement system employers are required to identify and report to the retirement system, in the manner specified by the retirement system, each individual who is a retiree who becomes an employee of the employer. The employer shall report each such employee whenever and so long as an employee is the employer's employee. The employer shall inquire of individuals hired to ascertain whether an individual is a retiree and the individual shall disclose that. "Employer" includes the State, all school administrative units and all participating local districts. "Employee" means an already retired individual receiving a Maine State Retirement System retirement benefit, regardless of the retirement system plan retired under, who after retirement is employed by an employer as defined in this section. "Retire" means to receive a retirement benefit from the retirement system. "Retiree" means an individual who receives a retirement benefit from the retirement system under any of the retirement system's retirement plans.

See title page for effective date.

CHAPTER 388

H.P. 1085 - L.D. 1480

An Act To Change the Time Requirement for Mental Retardation Evaluations

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

Sec. 1. 34-B MRSA §5469, first ¶, as repealed and replaced by PL 1983, c. 580, §20, is amended to read:

Within ~~30~~ 90 days of the day of the application made under section 5467, the department shall obtain a report of the comprehensive evaluation made under section 5468, which ~~shall~~ must state specifically ~~in the report~~ whether or not the client is mentally retarded.

Sec. 2. Report. The Department of Behavioral and Developmental Services shall report to the Joint Standing Committee on Health and Human Services by January 30, 2004 regarding the length of time from application to completion of the comprehensive evaluation report for individuals who applied for mental retardation services during calendar year 2003. The department shall provide the committee with an accounting of the number of days between the date the application was made and the date the comprehensive evaluation report was completed for each application for mental retardation services received by the department during that period. The department shall also provide the committee with summary statistics, including the median number of days between application and report, for all applications for mental retardation services received in calendar year 2003 and separately for the periods before and after the effective date of this legislation.

See title page for effective date.

CHAPTER 389

H.P. 1166 - L.D. 1593

An Act To Amend Laws Relating to Development of Service Plans for Persons with Mental Retardation

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

Sec. 1. 34-B MRSA §5437, sub-§4, as enacted by PL 1985, c. 486, §2, is amended to read:

4. Disbursement not to be approved. ~~No~~ A disbursement for client needs may not be approved for any service or activity not recommended by ~~interdisciplinary~~ a planning team or necessary to comply with regulations. ~~No~~ A disbursement may not be made unless evidence is provided that the expense is not reimbursable by the Medicaid Program. It is the intent of the Legislature that the contingency fund established in this section be the funding source of last resort.

Sec. 2. 34-B MRSA §5461, sub-§7, as enacted by PL 1983, c. 459, §7, is repealed.