

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

harvesting and hauling services are considerably lower on the land of such owners. The Legislature finds that it is in the public interest to ensure a reasonable rate of compensation for harvesting and hauling services and therefore creates in this chapter a process whereby the State displaces existing market forces and, upon request, sets the rates of compensation for such services.

Sec. 2. 26 MRSA §1352, sub-§5, ¶A, as enacted by PL 2003, c. 670, §3, is amended to read:

A. A person that owns directly or through affiliated persons, or possesses economic control over, more than 400,000 acres in a labor market area, which acreage constitutes more than 30% of the total land area in that labor market area; or

Sec. 3. 26 MRSA §1352, sub-§10, as enacted by PL 2003, c. 670, §3, is amended to read:

10. Person. "Person" includes one or more individuals, partnerships, corporations, limited liability corporations, business organizations and associations.

See title page for effective date.

CHAPTER 675

H.P. 1336 - L.D. 1814

An Act Concerning Disability Retirement Benefits under the Maine State Retirement System

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

Sec. 1. 5 MRSA §17907, sub-§2, ¶B, as amended by PL 1987, c. 256, §17, is further amended to read:

B. After the disability has continued for 5 years, the disability of the beneficiary must render ~~him~~ the beneficiary unable to engage in any substantially gainful activity for which the beneficiary is qualified by training, education or experience. For purposes of this paragraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 17806.

(1) The executive director may require, once each year, a recipient of a disability retirement benefit to undergo medical examinations or tests, conducted in accor-

dance with section 17903, to determine the disability of the beneficiary.

(2) If the beneficiary refuses to submit to the examination or tests under subparagraph (1), ~~his~~ the beneficiary's disability retirement benefit ~~shall be~~ is discontinued until ~~he~~ the beneficiary withdraws the refusal.

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

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

Sec. 2. 5 MRSA §17929, sub-§2, ¶B, as amended by PL 1995, c. 643, §15, is further amended to read:

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 medical consultation 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 that 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 continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For the purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 17806.

(2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is discon-

tinued 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 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 ceases.

(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 is subject to appeal under section 17451.

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

Sec. 3. 5 MRSA §18507, sub-§2, ¶B, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. After the disability has continued for 5 years, the disability of the beneficiary must render ~~him~~ the beneficiary unable to engage in any substantially gainful activity for which the beneficiary is qualified by training, education or experience. For purposes of this paragraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 18407.

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

(2) If the beneficiary refuses to submit to the examination or tests under subparagraph (1), ~~his~~ the beneficiary's disability retirement benefit ~~shall be~~ is discontinued until ~~he~~ the beneficiary withdraws the refusal.

(3) If the beneficiary's refusal under subparagraph (2) continues for one year, all ~~his~~

the beneficiary's rights to any further benefits under this article ~~shall~~ cease.

(4) If it is determined, on the basis of the examination or tests under subparagraph (1), that the disability of a beneficiary no longer exists, the payment of ~~his~~ the beneficiary's disability retirement benefit ~~shall cease; and ceases.~~

Sec. 4. 5 MRSA §18529, sub-§2, ¶B, as amended by PL 1995, c. 643, §27, is further amended to read:

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 medical consultation 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 that 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 continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 18407.

(2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is 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 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 ex-

ists, the payment of the disability retirement benefit ceases.

(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 is subject to appeal under section 17451.

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

See title page for effective date.

CHAPTER 676

S.P. 801 - L.D. 1960

An Act Regarding the Continued Provision of Free and Appropriate Public Education for Eligible Children of Kindergarten Age

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

Sec. 1. 20-A MRSA §7001, sub-§2, as amended by PL 2003, c. 477, §6, is further amended by adding a new paragraph at the end to read:

Notwithstanding paragraph A, "exceptional student" does not include a child who reaches 5 years of age between September 1st and October 15th who is already receiving free, appropriate public education services through the Child Development Services System and whose parent chooses, in accordance with rules adopted by the commissioner, not to enroll the child in kindergarten until the start of the following school year.

Sec. 2. 20-A MRSA §7001, sub-§4, ¶B-1 is enacted to read:

B-1. Notwithstanding paragraph B, has reached 5 years of age between September 1st and October 15th, is already receiving free, appropriate public education services through the Child Development Services System and whose parent chooses, in accordance with rules adopted by the commissioner, not to enroll the child in kindergarten until the start of the following school year.

Sec. 3. 20-A MRSA §7725, sub-§1, as amended by PL 1993, c. 625, §3, is further amended to read:

1. Child Development Services System. "Child Development Services System," or "CDS," means regional sites, or their successor sites, a state-level intermediate educational unit, or its successor, and the Interdepartmental Coordinating Council for Early Intervention, or its successor, established to ensure the provision of childfind activities, early intervention services and free, appropriate ~~and~~ public education services to eligible children.

Sec. 4. 20-A MRSA §7727, sub-§3, as amended by PL 2001, c. 510, §1, is further amended to read:

3. Rule-making authority. The commissioner may adopt rules necessary to implement this chapter in accordance with the Maine Administrative Procedure Act. Rules adopted pursuant to this chapter that establish and maintain a statewide network that ensures the provisions of ~~Childfind~~ childfind for families and children from birth to ~~5 years of age~~ under 6 years of age and rules governing the eligibility for and delivery of free, appropriate public education services to children with disabilities from birth to ~~5 years of age~~ under 6 years of age and their families are major substantive rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. 5. 20-A MRSA §7727, sub-§5, ¶¶B and C, as renumbered by PL 2001, c. 471, Pt. C, §4 and affected by §10, are amended to read:

B. That preschool children with disabilities, from age 3 to under age 6, including those children who reach 5 years of age between September 1st and October 15th who are already receiving free, appropriate public education services through the Child Development Services System and whose parents choose, in accordance with rules adopted by the commissioner, not to enroll those children in kindergarten until the start of the following school year, have free, appropriate public education services available to them at no cost to the family;

C. That rules are developed, adopted and implemented describing minimum standards for the following:

- (1) Least restrictive environment;
- (2) Nondiscrimination;
- (3) Rights of parents, including, beginning in school year 2004-2005, the right to choose to not enroll in kindergarten until the start of the following school year a child with disabilities who is already receiving free, appropriate public education services through the Child Development Services