

MAINE STATE LEGISLATURE

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COMMISSION TO STUDY A LONG-TERM DISABILITY
PROGRAM FOR THE MAINE STATE RETIREMENT SYSTEM MEMBERS

DATE: September 30, 1992

TO: Honorable John L. Martin, Speaker, Maine House of Representatives
Honorable Charles P. Pray, President Maine Senate

FROM: Lenny Madore, Chair, Commission to Study a Long-term Disability
Program for the Maine State Retirement System Members

SUBJECT: Report of the Commission to Study a Long-term Disability Program for
the Maine State Retirement System Members

In 1991, by Resolve c. 48, the Legislature established the Commission to Study a Long-Term Disability Program for the Maine State Retirement System Members. Pursuant to its legislative charge, the Commission studied the requirements of the Older Workers Benefit Protection Act and of the Maine State Retirement System disability plans, in order to discharge its responsibilities to "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement disability programs", to "recommend modifications to present Maine State Retirement System disability programs as determined appropriate", and to "submit its findings with any recommended legislation" to the Legislature.

The result of the Commission's work is two reports, one by a four-member Majority and one by a three-member Minority. These reports, with legislative amendments implementing each, are attached.

The Commission wishes to state its distress at the refusal of the United States Equal Employment Opportunity Commission to adopt rules or issue regulatory guidance that would have enabled the Commission to consider other approaches to establishing a non-discriminatory disability plan having the least cost impact on employers and the least benefit impact for employees. The Commission also wishes to state its distress that the United States Congress failed to compel the Equal Employment Opportunity Commission to act and failed to extend the effective date of the Older Workers Benefit Protection Act pending EEOC action.

A list of Commission members, a copy of the legislation creating the Commission and a copy of the Older Workers Benefit Protection Act are included.

On behalf of all of the Commission members, I wish to express our appreciation for the opportunity to serve the State of Maine.

LM/pjm
Attachments

JAN 15 2002

MAJORITY REPORT

COMMISSION TO STUDY LONG-TERM DISABILITY PROGRAM

FOR MAINE STATE RETIREMENT SYSTEM MEMBERS

The Commission made a lengthy and thorough review of the options available to bring the Maine State Retirement System into compliance with the Older Workers Benefit Protection Act. Our conclusion is that the current plan level should be maintained at 66 2/3% benefit while eliminating age cut-off for application eligibility and moving members to normal retirement only when the benefit is equal to or greater than the disability benefit.

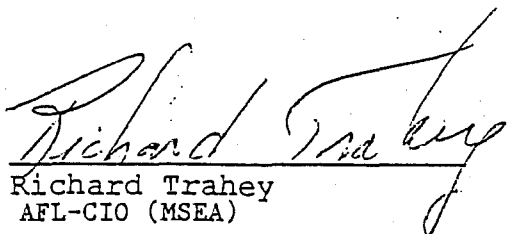
The minority of the Commission recommends an alternative method which reduces the disability benefit while eliminating the age cut off for application eligibility and moving members to normal retirement only when the benefit is equal to or greater than the disability benefit. The minority argues that the reduction in benefit level is necessary due to potential additional costs to the system of maintaining the benefit level at 66 2/3%. They further argue that additional cost violates the intent one of our Commission duties in the legislation which established our Commission. Chapter 48, Resolves directed us in part to "develop an alternative program which approximates the overall cost of the present MSRS disability programs ----"

The majority members of the Commission are firmly convinced that "approximate overall cost" should not be applicable only to the state or MSRS costs. We maintain that the costs to future disabled members associated with any substantive reduction in disability benefits deserve equal attention and concern.

Sincerely,

Steve Crouse
Maine Teachers Association

Rodney Pierce
AFL-CIO (Retired Firefighters)



Richard Trahey
AFL-CIO (MSEA)

William Blodgett
Maine Association of Retirees

Legislation recommended by the Majority Report of the Commission
to Study a Long-term Disability Program for the Maine State
Retirement System Members

AN ACT to Amend the Disability Provisions of the
Maine State Retirement Statutes 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 Older Workers Benefit Protection Act becomes effective as to public employers on October 16, 1992; and

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

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

Whereas, the Maine 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 Older Workers Benefit Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs; and

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

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

Whereas, enactment of this Act will amend the Retirement System statutes to conform to the requirements of the Older Workers Benefit Protection Act and, while increasing employer costs, will preserve or enhance benefits for currently-employed and future employees who become disabled; 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. 4 MRSA §1353, sub-§1, as amended by PL 1983, c. 863, 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:~~ 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 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 State Retirement System.~~

Sec. 2. 4 MRSA §1353, sub-§7, paragraph A, as amended by PL 1983, c. 863, is further amended to read:

7. Change to service retirement.

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

Sec. 3. 5 MRSA §17904, sub-§1, as amended by PL 1991, c. 434, §1, is further amended to read:

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

~~A- While-in-service,-and~~

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

Sec. 4. 5 MRSA §17907, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

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

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

~~(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. 5. 5 MRSA §17924, sub-§1, as amended by PL 1991, c. 434, §2, is further 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. 6. 5 MRSA §17929, sub-§2, as enacted by PL 1989, c. 409, §§ 8, 12, is amended to read:

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: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) 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.

(2) 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.

~~(1) On the 10th anniversary of the person's normal retirement age, as defined in section 17001, subsection 237 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~~

Sec. 7. 5 MRSA §18202, sub-§3, is enacted to read:

3. Adoption of OWBPA disability plan amendments.

A. A participating local district may adopt the amendments made by this Act by filing with Board a duly certified copy of the vote of the body which would be entitled to approve participation under section 18201. In its vote, the body shall specify the effective date of the adoption.

B. As of the effective date of the adoption, the disability plan in effect for the employees of the participating local district immediately prior to the effective date of adoption is amended by the provisions of this Act, which are applicable to the district's plan. Employees of the district whose written applications for disability retirement are received by the retirement system on or after the date on which the adoption is effective are covered under the disability plan as amended by this Act.

C. Non-discriminatory administration of disability plans. Regardless whether a participating local district adopts the amendments made by this Act, as to applications for disability retirement for district employees received by the retirement system on or after October 16, 1992, the retirement system will administer the district's disability plan in a manner which meets the requirements of the Older Workers Benefit Protection Act.

Sec. 8. 5 MRSA §18504, sub-§1, as amended by PL 1991, c. 434, §3, is further amended to read:

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

A- ~~While-in-service+-and~~

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

Sec. 9. 5 MRSA §18507, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

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

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 would equal or exceed the amount of his disability retirement benefit.

~~(1) On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-person's-normal-retirement-age+-as defined-in-section-17001+-subsection-23+-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. 10. 5 MRSA §18524, sub-§1, as amended by PL 1991, c. 434, §4, is further 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. 11. 5 MRSA §18529, sub-§2, as enacted by PL 1989, c. 409, is amended to read:

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: when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) 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.

(2) 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.

~~(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~~

Sec. 12. 5 MRSA, Part 20, Chapter 425, subchapter V, is amended by enacting new Article 3-B to read:

ARTICLE 3-B. Application of Requirements of Older Workers Benefits Protection Act to Formerly Available Disability Plans

§18541. Application of requirements of OWBPA to formerly available disability plans.

In the case of a participating local district having a retirement system disability plan other than that provided by Title 5, chapter 425, subchapter 5, article 3-A, which plan is in force immediately prior to the adoption by the participating local district of the amendments made by this Act, a member who is an employee of the district whose written application for disability retirement is received by the retirement system after the effective date of the adoption by the district of amendments made by this Act is eligible to apply regardless of the member's age at time of application.

Sec. 13. Application.

1. This Act applies to members of the retirement system who are state employees, teachers or employees of participating local districts whose written applications for disability retirement are received by the retirement system on or after October 16, 1992, regardless whether they are members on October 16, 1992 or become members thereafter.

2. Except as specifically provided in this Act, nothing in the 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 the effective date of this Act.

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

STATEMENT OF FACT

This legislation is driven by the requirements of the Older Workers Benefit Protection Act (OWBPA), passed in 1990 and effective for public employers on October 16, 1992. The OWBPA requires that public retirement plans, including the disability provisions of such plans, be non-discriminatory as to age. In response to the passage of the OWBPA, the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members was established by the Maine Legislature and was directed to "develop an alternative (disability) program as provided by the transitional language in the Older Workers Benefits Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." As directed by the legislation which established it (Resolves 1991, c. 48), the Commission was made up of representatives of labor and management groups whose constituent members are Retirement System members and was chaired by a gubernatorial appointee representing neither labor nor management. After several meetings and study of information provided by the Retirement System and actuarial consultants, the Commission members adopted majority and minority reports and presented them to the Legislature, each accompanied by proposed legislation.

It should be noted that the changes required by the OWBPA do not apply to persons currently receiving disability benefits.

This bill accompanies the Majority Report of the Commission. In brief, the Commission Majority recommended to the Legislature the adoption of statutory amendments which would remove discriminatory provisions of the Retirement System disability plans currently in force. Current benefit levels (66 2/3% of average final compensation) would be unchanged, because the Majority believes that the legislative directive to "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement disability programs" encompasses the "cost" of reduced benefits to future employees who become disabled. For that reason, the Majority recommended that benefit levels for future recipients of disability benefits not be reduced from their present levels.

Because the Majority's recommendations would increase costs to participating local districts, as well as the state, the amendments are effective only with respect to districts which adopt them. Because the Retirement System cannot run the risk of liability for failure to comply with the Older Workers Benefit Protection Act by virtue of the fact that it administers discriminatory disability benefit programs, the bill provides that without regard to adoption by a local district the System will administer the district's plan in accordance with Older Workers Benefit Protection Act requirements. (It should be noted that districts always have the option to withdraw from the Retirement System.)

Section 1 amends the eligibility provisions of the current judicial disability law by removing age-eligibility limitations.

Section 2 amends the disability benefits cessation provision of the judicial retirement laws by eliminating the age-related change to service retirement, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 3 amends the eligibility provisions of the disability law currently applicable to legislators by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability.

Section 4 amends the disability benefits cessation provision of the disability law currently applicable to legislators by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that the change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 5 amends the eligibility provisions of the current disability law (Article 3-A) for state employees and teachers and for employees of those participating local districts which are covered by Article 3-A by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability; Sections 8 and 10 make the same changes in the participating local district provisions of the Retirement System statute for the Article 3 and Article 3-A disability plans.

Section 6 amends the disability benefits cessation provision of Article 3-A by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits; Sections 9 and 11 do the same in the participating local district provisions of the statute for the Article 3 and Article 3-A disability plans.

Section 7 provides for the adoption by participating local districts of the amendments made by the bill and for the non-discriminatory administration of district disability plans by the Retirement System.

Section 8. See Section 5.

Section 9. See Section 6.

Section 10. See Section 5.

Section 11. See Section 6.

Section 12 provides for changes required by the Older Workers Benefit Protection Act to formerly-available disability plans still in force for many participating local districts.

Section 13 provides for the application of the Act.

FISCAL NOTE

The increase in the cost of disability benefits to the State over the cost of current disability benefits for state employees and teachers which is caused by the elimination of age-related eligibility standards with no accompanying reduction in benefits is estimated to be \$2.2 million per year for each year of the biennium. The increase in costs to participating local districts will be different for each district, depending on the disability plan in effect for the district, the number of district employees, the ages and age distribution of the employees, and the incidence of disability among the employees.

MINORITY REPORT

Commission to Study a Long-term Disability Program for Maine

State Retirement System Members

Summary: The minority believes that the proposal put forth by the majority of the Commission fails to meet the mandate of the Maine Legislature, and is neither a realistic nor affordable response to changes in the Older Workers Benefit Protection Act. The majority option will cost the State and Participating Districts at least \$3 million more per year than is currently being spent on disability programs. The option favored by the minority contains no such additional costs.

The 115th Maine Legislature created the Commission to examine the current Maine State Retirement Disability program in light of the revisions mandated by the passage of the Older Workers Benefit Protection Act (OWBPA). Passed by the Congress, the OWBPA has had the effect of classifying some portions of public employer disability plans, like the MSRS disability plan, as discriminatory. Accordingly, this Commission was created to identify and recommend alternatives or changes to the current disability program that will bring the plan into compliance with OWBPA. The Commission is to report its findings to the Legislature.

The direction given to the Commission by the Maine Legislature was, however, more specific than just to identify and recommend solutions. Section 4, part 2 of the Resolve establishing the Commission states: [that the Commission should] "develop an alternative program . . . that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." (See enclosed legislation.)

The Commission, with the able help of the MSRS staff examined many options for compliance and the implications of each option. The work of the Commission was severely hampered by the complete lack of guidance or technical assistance from the Equal Employment

Opportunity Commission. After considerable discussion and debate, the Commission narrowed the options it was considering to two similar plans:

- * The first plan removes the discriminatory aspects of the existing disability plan and maintains the current benefit level of 66 2/3 % of salary. This is called the "full top up" option.
- * The second option also removes the discriminatory aspects of the current disability plan but lowers the benefit level to 59 % for new participants. This option is called a "partial top up" option.

The majority of the Commission has voted to recommend to the Legislature the full top up option. The minority opposes the full top up option and favors the partial top up option. The recommendation of the majority of the members of this Commission most certainly does not meet the criteria set by the Legislature because it does not approximate the cost of the existing disability program. In fact, this option exceeds the cost of the current plan by a considerable amount.

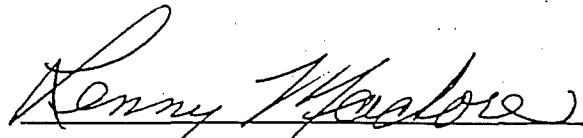
In an August 25 letter to Hope Bartlett, MSRS Retirement Benefits Administrator, the actuarial firm of Milliman and Robertson, Inc. estimated the costs of various options the Commission was considering. The additional cost to the State for state employees and teachers in the full top up option is estimated to be \$2.2 million in the first year, or \$4.4 million in the biennium (see enclosed letter). This money will have to be appropriated by the Legislature. The additional costs that will be imposed on Participating Local Districts under this option are estimated to be in the range of \$1 million in the first year. As should be clear, the option selected by the majority is decidedly not one that approximates the cost of the current disability plan.


The plan supported by the members in the minority is, according to Milliman and Robertson, an option that very closely approximates the cost of the current disability program. There are estimated to be no additional long term costs that will have to be paid by the State nor imposed on the Participating Local Districts (PLDs). This option then meets the requirement of the Maine Legislature that the recommendation of the Commission be one with costs that approximate current costs. The report of the majority has dismissed the instructions of the Maine Legislature completely in this regard.

This is not to say that the minority takes lightly the lowering of benefit levels. We do not. However, no current employees of state government, teachers nor employees of PLDs will have their current level of benefits cut. The 59 % benefit level will apply only to new hires. This situation will not affect adversely any existing employees, and will not result in additional costs being placed on the state or districts. Like the state itself, PLDs are in extremely difficult financial circumstances. The financial resources are not present to extend new and more costly benefit programs. PLDs simply can not afford the full top up option.

An additional issue concerns the very short time frame left for compliance. The deadline for compliance is October 16, 1992. Should the Legislature adopt the recommendation of the majority, that action will result in enhanced benefits to participants. This then may well require a vote of each PLD as to whether or not to adopt the new benefits. Given the very short time frame remaining, this will be a major burden to the PLDs and the Maine State Retirement System.

Therefore, for the reasons stated above, the minority supports the partial top up option as the most appropriate response to the Congressional legislation. Not only does the partial top up option not adversely affect current employees, and not cost the state and PLD's additional monies, but it most closely meets the instructions given to the Commission by the members of the 115th Legislature.


Lenny Madore, Chairman


David Barrett
Maine Municipal Association

Robert Fowler
Maine School Management Association

Legislation Recommended by the Minority Report of the Commission
to Study a Long-term Disability Program for the Maine State
Retirement System Members

AN ACT to Amend the Disability Provisions of the
Maine State Retirement Statutes 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 Older Workers Benefit Protection Act becomes effective as to public employers on October 16, 1992; and

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

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

Whereas, the Maine 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 Older Workers Benefit Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs; and

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

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

Whereas, enactment of this Act will amend the Retirement System statutes to conform to the requirements of the 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 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. 4 MRSA §1353, sub-§1, as amended by PL 1983, c. 863, 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:~~ 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 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 State Retirement System.~~

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

2. Amount. The amount of a disability retirement allowance shall be ~~66-2/3~~ 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 disability benefits calculated in accordance with chapter 29, instead of this subsection.

Sec. 3. 4 MRSA §1353, sub-§7, paragraph A, as amended by PL 1983, c. 863, is further amended to read:

7. Change to service retirement.

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

Sec. 4. 5 MRSA §17904, sub-§1, as amended by PL 1991, c. 434, §1, is further amended to read:

1. Qualification. Except as provided in subsection 2, a member qualifies for a disability retirement benefit if he 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, is amended to read:

When a member qualified under section 17904 retires, the member shall receive a disability retirement benefit equal to 66 ~~2/3~~ 59% of his average final compensation.

Sec. 6. 5 MRSA §17907, sub-§2, as enacted by PL 1985, c. 801, is amended to read:

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

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

~~{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 amended by PL 1991, c. 434, §2, is further amended to read:

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

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

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~~ 59% of that member's average final compensation.

~~A- While-in-service;-and~~

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

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

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 when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) 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.

(2) 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.

~~{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-reeive-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. 10. 5 MRSA Part 20, Chapter 423, subchapter V, is amended by enacting a new Article 3-B to read:

ARTICLE 3-B. Member Election of Disability Plan

§17941. Member election of disability plan

1. A member who was hired as a state employee or teacher on or before October 16, 1992 Act and who is so employed on that date may elect to be covered under the retirement system's disability plan as amended by this Act.

A. The retirement system is responsible for providing to state agencies and school administrative units information meeting the requirements of the Older Workers Benefit Protection Act which describes the disability plan as amended by this Act and the disability plan without the 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 must 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 disability plan as amended by this 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 to be established by the executive director which is not later than 180 days after October 16, 1992.

F. The state agency or school administrative unit must return the completed election forms to the retirement system by a date to be established by the executive director not which is not 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. Until and unless a member elects to be covered under the retirement system's disability plan as amended by this Act, the member is covered under the system's plan without the amendments.

3. Except as specifically provided in this Act, nothing in the 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.

Sec. 11. 5 MRSA §18504, sub-§1, as amended by PL 1991, c. 434, §3, is further amended to read:

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

~~A. While-in-service; and~~

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

Sec. 12. 5 MRSA §18202, sub-§3, is enacted to read:

3. Notwithstanding the provisions of subsections 1 and 2, the amendments made by this Act apply to each participating local district without adoption by the district.

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

When a member qualified under section 18504 retires, the member shall receive a disability retirement benefit equal to 66 2/3 59% of his average final compensation.

Sec. 14. 5 MRSA §18507, sub-§2, as enacted by PL 1975, c. 622, is amended to read:

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

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 would equal or exceed the amount of his disability retirement benefit.

~~(1) On-the-last-day-of-the-month-in-which-the-10th anniversary-of-the-person's-normal-retirement-age, as defined-in-section-17001, subsection-23, 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 amended by PL 1991, c. 434, §4, is further 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, 12, is amended to read:

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 59% of that member's average final compensation.

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

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+ when the service retirement benefit of a person equals or exceeds the amount of the disability retirement benefit.

(1) 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.

(2) 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.

~~(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~~

Sec. 18. 5 MRSA, Part 20, Chapter 425, subchapter V, is amended by enacting new Article 3-B to read:

ARTICLE 3-B. Member Election of Disability Plan

1. Each participating local district shall offer to members who are employees hired on or 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 by this Act.

A. The retirement system is responsible for providing to the participating local district information meeting the requirements of the Older Workers Benefit Protection Act which describes the district's disability plan as amended by this Act and the district's disability plan without the amendments and a form for individual member election.

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 must 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 by this 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 to be established by the executive director which is not later than 180 days after October 16, 1992, and the election is irrevocable.

F. The participating local district must return the completed election forms to the retirement system not later than a date to be established by the executive director.

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

2. Until and unless a member elects to be covered under the district's disability plan as amended by this Act, the member is covered under the district's disability plan without the amendments.

Sec. 19. 5 MRSA, Chapter 425, subchapter V, is amended by enacting new Article 3-C 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 Title 5, chapter 425, subchapter 5, article 3 or that provided by Title 5, chapter 425, subchapter 5, article 3-A, which plan is in force on October 15, 1992, the following apply on and after October 16, 1992:

1. A member who is an employee of the district who applies for a disability retirement benefit after the effective date of his election to be covered under the plan as amended by this Act is eligible to apply regardless of the member's age at time of application;

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

3. In the case of occupational disability under such a plan, the disability retirement allowance shall be equal to 59% of the member's average final compensation at the time of disability retirement.

Sec. 20. Application.

1. The amendments made by this Act to the retirement system's disability plan for members who are 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 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 System after October 16, 1992.

2. Members who are 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 the amendments.

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

STATEMENT OF FACT

This legislation is driven by the requirements of the Older Workers Benefit Protection Act (OWBPA), passed in 1990 and effective for public employers on October 16, 1992. The OWBPA requires that public retirement plans, including the disability provisions of such plans, be non-discriminatory as to age. In response to the passage of the OWBPA, the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members was established by the Maine Legislature and was directed to "develop an alternative (disability) program as provided by the transitional language in the Older Workers Benefits Protection Act that approximates the overall cost of the present Maine State Retirement System disability programs prior to revision." As directed by the legislation which established it (Resolves 1991, c. 48), the Commission was made up of representatives of labor and management groups whose constituent members are Retirement System members and was chaired by a gubernatorial appointee representing neither labor nor management. After several meetings and study of information provided by the Retirement System and actuarial consultants, the Commission members adopted majority and minority reports and presented them to the Legislature, each accompanied by proposed legislation.

It should be noted that the changes required by the OWBPA do not apply to persons currently receiving disability benefits.

This bill accompanies the Minority Report of the Commission. In brief, the Commission Minority recommended to the Legislature the adoption of statutory amendments which would (1) remove discriminatory provisions of the Retirement System disability plans currently in force for state employees, teachers and employees of participating local districts; (2) decrease disability benefits from 66 2/3% to 59% of average final compensation; (3) offset the resulting increase in disability costs to the State and participating local districts (caused by the increase in the number of persons eligible to apply for disability and by the increased incidence of disability resulting from the fact that the newly-eligible members are older and therefore more likely to incur disability); and (4) give to each member employed on the effective date of the Act the option to elect to be covered under the disability plan applicable to the member as amended by this bill or, by not so electing, to remain covered under that plan without the amendments. The bill which embodies the Minority's recommendations meets the requirements of the Older Workers Benefit Protection Act and the directive of the Legislature that the amended disability program "approximate the overall cost" of the present Maine State Retirement System disability programs.

Section 1 amends the eligibility provisions of the current judicial disability law by removing age-eligibility limitations.

Section 2 reduces disability benefits under the judicial retirement laws from 66 2/3 to 59% of average final compensation.

Section 3 amends the disability benefits cessation provision of the judicial retirement laws by eliminating the age-related change to service retirement, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 4 amends the eligibility provisions of the disability law currently applicable to legislators by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability.

Section 5 reduces disability benefits under the plan currently applicable to legislators from 66 2/3 to 59% of average final compensation.

Section 6 amends the disability benefits cessation provision of the disability law currently applicable to legislators by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that the change to service retirement occurs only when service retirement benefits equal or exceed disability benefits.

Section 7 amends the eligibility provisions of the current disability law (Article 3-A) for state employees and teachers and for employees of those participating local districts covered by Article 3-A by removing the eligibility limitation which prevents members at or beyond normal retirement age from applying for disability; Sections 11 and 15 make the same changes in the participating local district provisions of the Retirement System statute for both Article 3 and Article 3-A disability plans.

Section 8 reduces Article 3-A disability benefits from 66 2/3 to 59% of average final compensation; Sections 13 and 16 do the same in the participating local district provisions of the Retirement System statute in both Article 3 and Article 3-A.

Section 9 amends the disability benefits cessation provision by eliminating the change to service retirement on the 10th anniversary of normal retirement age, so that change to service retirement occurs only when service retirement benefits equal or exceed disability benefits; Sections 14 and 17 do the same in the participating local district provisions of the statute in Article 3 and Article 3-A.

Section 10 provides for individual election to be covered under the disability plan as amended by this bill; Section 18 provides for the election by employees of participating local districts.

Section 11. See Section 1.

Section 12 provides that the amendments made by this bill apply to participating local districts without adoption. Since the effect of the amendments will be cost-neutral, adoption by districts is not necessary.

Section 13. See Section 8.

Section 14. See Section 9.

Section 15. See Section 7.

Section 16. See Section 8.

Section 17. See Section 9.

Section 18. See Section 10.

Section 19 provides for changes required by the Older Workers Benefit Protection Act to formerly-available disability plans still in force for many participating local districts.

Section 20 provides for the application of the Act.

FISCAL NOTE

The increase in cost over the current disability plan for state employees and teachers which is caused by the elimination of age-related eligibility limitations is offset, certainly in the long term and possibly in the short term, by the reduction in the disability benefit level from 66 2/3% to 59% of average final compensation. There may be an increase in cost in the very near term, depending on which employees elect to move to the amended plan and the relative incidence of disability among those who move and those who do not.

The reduction in benefit level also applies to employees of participating local districts, offsetting the increase in the cost caused by elimination of age-related eligibility limitations. Here, too, the offset is certain in the long term and possible in the short term, and very near term cost increase may occur for some districts, depending on employee election to move and disability incidence among those who move and those who do not.

APPROVED

OCT 16 '92

BY GOVERNOR

CHAPTER

887

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

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 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. 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.