

MAINE STATE LEGISLATURE

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JOINT STANDING COMMITTEE ON
AGING, RETIREMENT & VETERANS
ON ITS STUDY OF DISABILITY
RETIREMENT UNDER THE MAINE
STATE RETIREMENT SYSTEM

JANUARY 1985

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Rep. Joseph Mayo
Rep. Dana Stevenson
Rep. Raynold Theriault
Rep. Edward Ainsworth

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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

COMMITTEE ON AGING, RETIREMENT AND VETERANS

January 29, 1985

Rep. John Diamond
Chairman, Legislative Council
State House
Augusta, ME 04333

Dear Rep. Diamond:

Enclosed is a copy of the report of the Joint Standing Committee on Aging, Retirement and Veterans on its study of disability retirement under the Maine State Retirement System. Proposed legislation for introduction this Session is included in the report.

Please contact us if you have any questions or comments.

Sincerely,

Handwritten signature of Charles G. Dow.

Sen. Charles G. Dow
Senate Chair

Handwritten signature of Daniel B. Hickey.

Rep. Daniel B. Hickey
House Chair

Enc.
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REPORT OF THE
JOINT STANDING COMMITTEE ON
AGING, RETIREMENT AND VETERANS
ON ITS STUDY OF
DISABILITY RETIREMENT
UNDER THE
MAINE STATE RETIREMENT SYSTEM

I. INTRODUCTION

During the Second Regular Session of the 111th Legislature, LD 2316, AN ACT to Clarify Disability Retirement Provisions, was assigned to the Joint Standing Committee on Aging, Retirement and Veterans. The bill pointed out several areas of concern in the disability retirement laws governing members of the Maine State Retirement System. Due to conflicting testimony on how best to deal with those concerns, the Committee requested permission to study the disability retirement law and determine whether changes were needed.

The Legislative Council approved that request on April 25, 1984. A subcommittee consisting of Representatives Francis Perry, Joseph Mayo, Dana Stevenson, Raynold Theriault and Edward Ainsworth was chosen. Rep. Dan Hickey also attended many of the subcommittee's work sessions. Roberta Weil, Executive Director of the Retirement System and members of her staff attended meetings and provided background information to the subcommittee. George Viles of the Department of Personnel, Diana Scully of the State Bureau of Rehabilitation and Dr. Mary Skorapa, a member of the Retirement System's Medical Advisory

Board and a physician specializing in rehabilitation, also assisted the subcommittee in its deliberations.

Representatives of the Maine State Employees' Association, Council 74 of AFSCME and the Maine Teachers' Association were invited to each subcommittee meeting in order to have the benefit of their perspective on the disability issue.

II. CURRENT SITUATION

Title 5 MRSA section 1122 governs disability retirement for State employees and teachers. (See copy attached at Appendix A.) Members of participating local districts are covered if their district has adopted the provisions of section 1122.

Covered members of the Maine State Retirement System who become permanently, physically or mentally incapacitated and unable to perform the duties of their employment position are entitled to a disability retirement benefit. For employees who have been members of the Retirement System for less than 5 years, the disability must not be the result of a condition which pre-existed employment with the State. The disability benefit is 66 2/3% of the employees average final compensation (AFC) and continues for up to 5 years as long as the employee is incapable of performing his or her regular duties. After 5 years, the Retirement System may review each case annually to determine if the retiree is able to "engage in any substantially gainful activities for which he is qualified by training, education, or experience." There is no provision for

vocational or physical rehabilitation for disability retirees. There are currently approximately 550 disability retirees.

III. COMMITTEE DELIBERATIONS AND RECOMMENDATIONS

As a result of its study the Committee feels there are several areas where problems exist. The Committee has not been able to document thoroughly the extent of the problem, but has heard sufficient testimony to conclude that there is a need for changes in the following areas. Proposed legislation to implement the Committee's recommendations is attached at Appendix B.

A. Initial Determination of Disability

1. Ability to Perform Other Suitable Work.

Currently, section 1122, subsection 1 provides a disability retirement benefit to an employee who is permanently physically or mentally incapable of performing the duties of his or her present job. This is an all or nothing proposition. Either the employee can perform the employment duties of that job, in which case he or she is not disabled, or the employee cannot perform those duties, in which case he or she is disabled and collects full disability benefits.

The subcommittee heard testimony that on occasion an employee may be incapable of performing his or her present job, but may be able to perform other jobs adequately. The question was raised whether that person should receive

disability benefits right away or whether he or she ought to be required to try other suitable work first. Suitable work means available work with the same employer for which the employee is physically and mentally qualified. It does not mean work only at the same or a similar rate of pay.

Recommendation: Disability retirement benefits should be paid if the employee is permanently incapacitated to such an extent that he or she is incapable of performing the duties of his or her present position or another position with the same employer offering suitable work.

2. Pre-existing conditions. The Retirement System representatives stressed the need for changes in the current law concerning the determination of whether a disability is the result of a condition which pre-existed membership in the System (employee is not eligible for disability benefits) or of a pre-existing condition or which has been substantially aggravated in the line of duty (employee is eligible for disability benefits). Current law requires that a statement of an employee's health prior to employment with the State to be filed by that employee at anytime before he or she applies for disability benefits. It also allows an employee who has not filed the statement the opportunity to establish that his or her disability is not the result of a pre-existing condition. The Retirement System indicated these provisions made it difficult to determine when a disability was the result of a pre-existing condition. In addition, at the time of

application for disability benefits, further medical examinations and tests may be needed to determine whether a disability is the result of a pre-existing condition or has been substantially aggravated by the present employment. The current law does not provide for those examinations and tests.

Recommendation: A statement of health must be filed with the Retirement System at the time of employment in order to be eligible for disability benefits. The Retirement system shall continue to implement administrative safeguards which assure that no person may become a member without having filed that statement.

Recommendation: The Retirement System may require additional medical examinations and tests for any member with less than 5 years continuous service who applies for disability benefits. The purpose of the examinations and tests shall be to determine whether the disability is solely the result of a pre-existing condition or is the result of a pre-existing condition which has been substantially aggravated by the present employment.

3. Deadline for Filing Application. The subcommittee also learned that there is presently no deadline for filing an application for disability benefits. Incidents of employees filing for benefits months or years after leaving service were described to the subcommittee. In such cases

it can be very difficult to document whether the disability did or did not occur while the former employee was a member of the Retirement System.

Recommendation: An application for disability benefits must be filed within 3 months from the date an employee stops work or within 12 months, if the employee is on medical leave of absence. Those limits shall not apply where the employee is mentally incapacitated.

B. Benefit Level

Section 1122, subsection 2 provides a disability retirement benefit of 66 2/3% of a member's average final compensation (AFC). That provision coupled with the current earnings test (see discussion p. 7), the 5-year period before first review (see discussion p. 6), and the provision allowing disability beneficiaries to collect the 2/3 benefit for up to 10 years following their normal retirement age has led to speculation that some workers, especially those nearing normal retirement age, may attempt to qualify for the enhanced disability benefit, rather than settle for normal retirement benefits.

Recommendation: The disability benefit for employees hired after January 1, 1986, shall be calculated by multiplying the number of years of creditable service earned prior to disability plus the number of years from the date of disability to age 60, by 2%.

C. Continuation of Disability Benefits

Section 1122, subsection 4 provides that once awarded disability benefits continue for 5 years as long as the incapacity to perform the duties of the employment position continues. After 5 years, the Retirement System may review the case once each year to determine that the disability is such that the beneficiary is unable to engage in "any substantially gainful activities for which he is qualified by training, education or experience." The subcommittee received testimony from several sources indicating that the sooner the case of a disabled worker is reviewed, the sooner he or she is offered counselling and retraining and the sooner there is an expectation created that he or she can return to work, the sooner and more likely it is that the worker will return to work. Conversely, the longer the time before the review, the more likely it is that the beneficiary's self image will suffer and that he or she will settle into a way of life which makes it more and more likely that he or she will never return to work.

Recommendations: The period before the first review of a disability beneficiary' case should be shortened to 1 year.

Recommendation: The Retirement System should be able to have a vocational assessment done for a beneficiary who is found able to engage in substantially gainful activities.

D. Earnings Test

Section 1122, subsection 5 allows a recipient of a disability benefit to earn up to \$10,000 a year before earnings

are offset against the disability benefit. Situations were described to the subcommittee where disability retirees were able to immediately return to employment doing similar work and earn \$10,000/year which coupled with their disability benefit, gave them a higher yearly income than they received while working full-time.

Recommendation: A beneficiary's disability retirement benefit and his or her earnings while receiving that benefit shall be compared with the beneficiary's compensation in his or her last employment position, adjusted for inflation. If the benefits, plus current earnings, exceed the level of compensation in that position, the excess shall be offset against the benefits in the next year. As is the current practice, unearned income such as rent and interest shall not be counted in the earnings test.

E. Choice of Physician

Whenever medical examinations or tests are required by current law, those examinations and tests are to be conducted by a "qualified physician, who shall be mutually agreed upon" by the Retirement System and the member. That provision raises the possibility that the process may be frustrated by the inability to mutually agree on a physician.

Recommendation: The Medical Advisory Board to the Retirement System shall provide a list of 3 qualified specialists in the appropriate medical field from which the member shall choose one to conduct the examinations or tests. The costs shall continue to be paid by the system.

F. Rehabilitation Program

Present law makes no specific provision for rehabilitation services for disabled state workers. The subcommittee feels there are cases when a worker is incapable of performing the duties of his current job or other suitable work, but would be capable of performing substantially gainful activities, especially with counselling and retraining.

Recommendation: The Retirement System may enter into agreements with the State or private rehabilitation agencies to provide vocational or physical rehabilitation services for disability recipients.

Recommendation: If a disabled employee is found to be able to engage in substantially gainful activities, the Retirement System may require the employee to participate in a vocational assessment.

Recommendation: Recipients of a disability benefit who are determined to be able to engage in substantially gainful activities and who have undergone rehabilitation programs shall have the same reemployment privileges as other employees.

Recommendation: Recipients of a disability benefit who return to work following completion of a rehabilitation program shall continue to receive full benefits for 9 months while testing their ability to work.

Recommendation: Recipients of a disability benefit who have their benefits discontinued after completing a rehabilitation program and returning to work may have their

disability benefit restored within 5 years if they again become disabled as a result of the original disability.

Recommendation: If the recipient of a disability benefit is employed on a trial basis, the Retirement System may agree to pay the employer for all or part of the costs of that position for up to one year.

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TITLE 5

§ 1122. Disability retirement

1. Occurrence of disability. Any eligible member who, while in service and prior to attaining age 60 or reaching the normal retirement age for a particular group of employees, if earlier, has become mentally or physically incapacitated to such an extent that it is impossible for him to perform the duties of his employment position, may, if such incapacity can be expected to be permanent, retire on a disability retirement allowance upon written application to the executive director and approval of the application by the executive director. The incapacity of the member must be such that it shall be revealed by medical examination or tests conducted by a qualified physician, who shall be mutually agreed upon by the director and member. Any such examination or tests shall be conducted at a place mutually agreed upon and the costs thereof shall be paid by the retirement system.

1-A. Eligibility for disability.

A. Members with less than 5 years of continuous creditable service immediately preceding their application for a disability allowance are not eligible for that disability retirement allowance if that disability is the result of a physical or mental condition which existed prior to the persons latest membership in the system, unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty.

B. Any person who becomes a member of the system on or after July 1, 1977, shall submit a statement of his health to the executive director on forms prescribed by the executive director. If the executive director determines that additional information is necessary to determine the extent of any preexisting disability of the employee, the executive director may require that a medical examination or tests be submitted as evidence of that employee's health. Any such examination or tests shall be conducted at a place mutually agreed upon and

the costs thereof shall be paid by the retirement system. This statement of health or examination or test result shall only be utilized in determining eligibility for a disability retirement allowance pursuant to paragraph A. Any member subject to this paragraph who does not submit a statement of health as required, prior to his application for disability benefits in accordance with this section, will not be eligible for those benefits unless he establishes to the satisfaction of the executive director that he meets the qualifications of paragraph A.

2. Retirement allowance payments. Upon retirement in accordance with subsection 1, a member shall receive a retirement allowance equal to 66 2/3% of his average final compensation.

Retirement allowance payments shall commence at the date of termination of active service of the member but not more than 6 months prior to the date of receipt by the executive director of the written application by or on behalf of the member for disability retirement, unless it shall be shown that it was not reasonably possible to file such application for disability benefits within such 6-month period and that such application was made as soon as was reasonably possible.

The continuance of payment of a disability retirement allowance shall be subject to the terms of subsections 3 and 4.

3. Change to service retirement.

A. The disability retirement allowance of a beneficiary shall cease on the 10th anniversary of his normal retirement age, as defined in section 1001, subsection 27, or prior thereto whenever the service retirement allowance of a beneficiary would equal or exceed the amount of his disability retirement allowance.

B. A service retirement allowance shall be paid to the beneficiary commencing at the date of termination of the disability retirement allowance as determined in paragraph A.

4. Continuance of disability retirement allowance. Payment of a disability retirement allowance shall continue, subject to subsection 3, as long as the incapacity of the

beneficiary to perform the duties of his employment position continues, except that, after the disability has continued for 5 years, the incapacity of the beneficiary must also be such that he is unable to engage in any substantially gainful activities for which he is qualified by training, education or experience. The executive director may require, once each year, a beneficiary who is receiving a disability retirement allowance to undergo medical examinations or tests conducted by a qualified physician, who shall be mutually agreed upon by the director and member, for the purpose of determining the incapacity of the beneficiary. Any such examination or tests shall be conducted at a place mutually agreed upon and the costs thereof shall be paid by the retirement system. Should the beneficiary refuse to submit to any such examination or tests, his disability retirement allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights to any further benefits under this section shall cease. If it is determined on the basis of any such examination or tests that the incapacity of a beneficiary has ceased, the payment of his disability retirement allowance shall terminate.

For the purpose of this subsection, the disability beneficiary's average final compensation at retirement, used to determine his earning capacity, shall include the same percentage adjustments, if any, that would apply to the amount of retirement allowance of the beneficiary under section 1128.

5. Earnings. The executive director shall require each beneficiary who is receiving a disability retirement allowance to submit, each calendar year, a statement of his compensation received from engaging in any gainful occupation during that year. If, for any year, that compensation exceeds \$10,000, the excess shall be deducted from the disability or service retirement allowance payments during the next calendar year, the deductions to be prorated on a monthly basis in an equitable manner prescribed by the board of trustees over the year or part thereof for which benefits are received. The beneficiary shall be responsible for reimbursing the State Retirement System for any excess payments not so deducted.

Should a beneficiary not submit such a statement within 30 days of receipt of request therefor by the executive director, his disability retirement allowance shall be discontin-

ued until such statement is submitted, and should the statement not be submitted within one year of receipt of such request, all his rights to any further benefits shall cease.

5-A. Disability payments under other laws. The amount of any disability retirement allowance payable under this section shall be reduced by any amount received by the beneficiary for the same disability under either of or both:

A. The workmen's compensation or similar law, except amounts which may be paid or payable under Title 39, sections 56 or 56-A; or

B. The Federal Social Security Act, if the employment for which creditable service with the employer is allowed was also covered under such Act at the date of disability retirement.

The reduction in the disability retirement allowance shall be an amount necessary to make the total of the disability retirement allowance, not including adjustments under section 1128, and the offset amounts of workmen's compensation and Social Security benefits, as limited above, equal to 80% of average final compensation. The disability retirement allowance shall not be reduced below the amount of the retirement allowance which is the actuarial equivalent of the member's accumulated contributions at the time of his retirement.

Lump-sum settlements of benefits that would reduce the disability retirement allowance under this subsection shall be prorated on a monthly basis in an equitable manner prescribed by the board of trustees, but such prorated lump-sum settlements shall not include any part of the lump-sum settlement attributable to vocational rehabilitation, attorney's fees or physicians, nurses, hospital, medical, surgical or related fees or charges, or any amount paid or payable under Title 39, sections 56 or 56-A. The prorated lump-sum settlement amounts shall reduce the disability retirement allowance in the same manner and amount as monthly benefits under this subsection.

Any dispute as to amounts paid or payable under workmen's compensation, or as to the amount of the lump-sum settlement and its attributions, shall be determined, on petition, by a single member of the Industrial Accident Commission, as provided under Title 39. Such determinations may be appealed in the manner provided by Title 39, section 103-B.

6.

7. Optional election. The provisions of this section may be elected by any beneficiary entitled to a disability retirement allowance under the provisions of section 1122 as in effect immediately prior to July 1, 1977, in lieu of the provisions applicable to the disability retirement allowance which he is receiving, upon written application to the executive director prior to January 1, 1978. If elected, the provisions of this section shall apply from the date of the beneficiary's original eligibility for disability retirement, but all increases in benefits shall only be granted from the date of election.

FIRST REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY FIVE

AN ACT to Modify State Disability Retirement Provisions.

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

Sec. 1. 5 MRSA §1001, sub-§28 is enacted to read:

28. Suitable Work. "Suitable work" means work appropriate to the employee's physical and psychological condition when such a position is available but does not include employment for which the employee is not qualified. Rate of pay shall not be considered in determining suitable work.

Sec. 2. 5 MRSA §1122, sub-§1, as amended by PL 1977, c. 580, §12 is further amended to read:

1. Occurrence of disability. Any eligible member who, while in service and prior to attaining age 60 or reaching the normal retirement age for a particular group of employees, ~~if earlier,~~ has become mentally or physically incapacitated to such an extent that it is impossible for him to perform the duties of his present employment position, or those of any other position offering suitable work with the same employer, may, if such incapacity can be expected to be permanent, retire on a disability retirement allowance upon written application to the executive director and approval of the application by the executive director. The incapacity of the member must be such that it shall be revealed by medical examination or tests conducted by a qualified physician

specialist in an appropriate medical field, who shall be mutually agreed upon by the director and member. Any such examination or tests shall be conducted at a place mutually agreed upon and The member shall choose from a list of three specialists provided by the medical board. Vocational assessments may be required by the retirement system. The costs thereof shall be paid by the retirement system.

The application must be filed within three months from the date the member ceased being paid or within twelve months of the date he ceased being paid provided he was disabled at that time and was on a leave of absence for medical reasons without pay since he ceased being paid. An application may be filed later than the times provided in this subsection if it can be shown that the member was mentally incapacitated at the time he ceased being paid.

Sec. 3. 5 MRSA §1122, sub-§§1-A and 2, as enacted by PL 1977, c. 450, §2, are amended to read:

A. Members with less than 5 years of continuous creditable service immediately preceding their application for a disability allowance are not eligible for that disability retirement allowance if that disability is the result of a physical or mental condition which existed prior to the persons latest membership in the system, unless the disability is a result of, or pre-existing condition has been substantially aggravated by, an injury or accident received in the line of duty, the present employment. If a member with less than 5 years of continuous creditable service applies for disability retirement benefits, he shall undergo all medical examinations and tests required by the retirement system in order to determine whether the disability is the result of a condition which pre-existed membership. The member shall choose from a list of three qualified specialists in the appropriate medical field. This list shall be provided by the medical board. The costs shall be paid by the retirement system.

B. Any person who becomes a member of the system on or after July 1, 1977, shall submit a statement of his health to the executive director on forms prescribed by the executive director. If the executive director determines that additional information is necessary to determine the extent of any preexisting disability of the employee, the executive director may require that a medical examination or tests be submitted as evidence of that employee's health. Any such examination or tests shall be conducted at a place mutually agreed upon and The member shall choose from a list of three qualified specialists in the appropriate area of medicine. The list shall be provided by the medical board. The costs thereof shall be paid by the retirement system. This statement of health or examination or test result shall only be utilized in determining eligibility for a disability retirement

allowance pursuant to paragraph A. Any member subject to this paragraph who does not submit a statement of health as required, ~~prior-to-his-application-for-disability-benefits~~ in accordance with this section, at time of employment will not be eligible for these disability benefits, unless he establishes to the satisfaction of the executive director that he meets the qualifications ~~of paragraph A.~~ Failure to disclose a pre-existing medical condition is subject to action under Section 1004.

2. Retirement allowance payments. Upon retirement in accordance with subsection 1, a person who became a member before January 1, 1986 shall receive a retirement allowance equal to 66 2/3% of his average final compensation.

Upon retirement in accordance with section 1, a person who became a member on after January 1, 1986 shall receive a retirement allowance consisting of a benefit which shall be an annual amount determined by multiplying the total years and fractions thereof of creditable service of the member, and in addition thereto the projected number of years and fractions thereof between the effective date of his disability retirement and normal retirement age, assuming continuous service, by two per cent of his average final compensation. In no case shall a disability retirement benefit be greater than 80% of the member's average final compensation or less than 30% of his average final compensation, except where the amount is reduced as provided in subsection 5-A.

Retirement allowance payments shall commence at the date of termination of active service of the member but not more than 6 months prior to the date of receipt by the executive director of the written application by or on behalf of the member for disability retirement, unless it shall be shown that it was not reasonably possible to file such application for disability benefits within such 6-month period and that such application was made as soon as was reasonably possible. The continuance of payment of the disability retirement allowance shall be subject to the terms of subsections 3 and 4.

Sec. 4. 5 MRSA §1122, sub-§3, ¶A is amended as follows:

3. Change to service retirement.

A. The disability retirement allowance of a beneficiary shall cease on the ~~10th anniversary of his normal retirement age, as defined in section 1001, subsection 27, or prior thereto whenever the service retirement allowance of a beneficiary would equal or exceed the amount of his disability retirement allowance.~~

Sec. 5. 5 MRSA §1122, sub-§4 is amended as follows:

4. Continuation of disability retirement allowance.
Payment of a disability retirement allowance shall continue,

subject to subsection 3, as long as the incapacity of the beneficiary to perform the duties of his employment position continues or until suitable work with his employer becomes available except that, after the disability has continued for 5 1 years the incapacity of the beneficiary must also be such that he is unable to engage in any substantially gainful activities for which he is qualified by training, education or experience. The executive director may require once each year, a beneficiary who is receiving a disability retirement allowance to undergo medical examinations or tests conducted by a qualified physician, ~~who shall be mutually agreed upon by the director and the member~~ specialist in an appropriate medical field for the purpose of determining the incapacity of the beneficiary. ~~Any such examination or tests shall be conducted at a place mutually agreed upon and~~ The member shall choose from a list of three qualified specialists provided by the medical board. If it is found that the beneficiary is able to engage in any substantially gainful activities and if no suitable work opportunities are available, the retirement system may have a vocational assessment done by a vocational rehabilitation facility selected by the retirement system. ~~The costs thereof shall be paid by the retirement system.~~ Should the beneficiary refuse to submit to any such examination, ~~or tests, or vocational assessment~~ his disability retirement allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights to any further benefits under this section shall cease. If it is determined on the basis of any such examination or tests that the incapacity of a beneficiary has ceased, the payment of his disability retirement allowance shall terminate and he shall have all of the reemployment privileges granted other employees of that employer.

~~For the purpose of this subsection, the disability beneficiary's average final compensation at retirement, used to determine his earning capacity, shall include the same percentage adjustments, if any, that would apply to the amount of retirement allowance of the beneficiary under section 1128.~~

Sec. 6. 5 MRSA §1122, sub-§4-A is enacted to read:

4-A. Return to work encouraged. The executive director with approval of the board of trustees may enter into vocational or physical rehabilitation agreements with state or private rehabilitation agencies and beneficiaries of disability allowances. The purpose of the agreements shall be to restore the beneficiaries of disability retirement allowances to employment in which they are performing substantially gainful activities. The beneficiaries shall then have all of the reemployment privileges granted other employees of that employer.

Notwithstanding subsection 5 and section 1123 a beneficiary of a disability allowance who has completed a vocational or physical rehabilitation training program and who becomes reemployed shall continue to receive full benefits for a total trial work period of 9 months while testing his ability to work. Continued benefits after 9 months will be governed by subsection 5. If a person is employed on a trial basis in a position in which he is performing substantially gainful activities, the executive director may agree to pay the employer for all or a portion of the costs of that position for up to one year.

Any beneficiary whose disability allowance is discontinued under this paragraph may apply for and have his disability allowance restored within 5 years of becoming reemployed after the discontinuance of his allowance if he again becomes disabled as a result of the medical condition for which the initial disability retirement allowance was granted. The disability shall be documented by current medical data. The restored allowance shall be based upon the disability allowance previously granted, adjusted to include the same percentage increases, if any, that would apply to the retirement allowance of the beneficiary under section 1128.

Sec. 7. 5 MRSA §1122, sub-§5, as amended by PL 1979, c. 222, §1, is repealed and the following enacted in its place:

5. Earnings. The executive director shall require each beneficiary who is receiving a disability retirement allowance to submit, each calendar year, a statement of his compensation received from engaging in any gainful occupation during that year. If, for any such year, the total of the compensation and the disability retirement allowance of the beneficiary is greater than his average final compensation, the excess shall be deducted from the disability retirement allowance payments during the next calendar year, those deductions to be prorated on a monthly basis in an equitable manner prescribed by the board of trustees over the year or part thereof for which benefits are received. The beneficiary shall be responsible for reimbursing the retirement system for any excess payments not so deducted.

If a beneficiary does not submit such a statement within 30 days of receipt of request therefor by the executive director, his disability retirement allowance shall be discontinued until that statement is submitted and, if the statement is not submitted within one year of receipt of that request, all his rights to any further benefits shall cease.

For the purposes of this subsection, the disability beneficiary's average final compensation used to determine his earning capacity shall be adjusted to include all wage and salary increases applied to his last previous position subsequent to his receiving a disability retirement allowance.

STATEMENT OF FACT

This bill which makes several changes in the disability retirement program for state employees is the result of a study by the Joint Standing Committee on Aging, Retirement and Veterans.

Section 1 defines the term "suitable work."

Section 2 deletes reference to age 60 using the general term normal retirement age, provides a new method of selecting a doctor to perform the examination and revises the provisions regarding the initial determination of disability. Currently, a member must be unable to perform the duties of his present job. The bill would require that he also be unable to perform other suitable work with the same employer. The section adds a new requirement that the application for disability benefits must be filed within 3 months of the time the member ceased being paid by the State.

Section 3 clarifies language regarding the aggravation of a preexisting condition by the present job for members with less than 5 years of continuous service, requires such a member undergo all tests required by the retirement system at the time he applies for disability, provides a new method to select a doctor to perform the examinations and changes in the time when a statement of health must be filed. Currently, a member must file the statement prior to his application for disability benefits. The bill would change that to the time of employment. Failure to do so at that time would result in ineligibility for benefits. The Retirement System screens each new employee to make sure they have filed a statement. The section also changes the method of calculating disability benefits. For employees hired after January 1, 1986, disability benefits will be 2% per year of actual and projected service until age 60, rather than the current 2/3 of average final compensation.

Section 5 makes changes in the conditions under which disability benefits continue to be paid. The section adds language concerning suitable work with his employer consistent with section 2, decreases from 5 years to 1 year the length of time before the retirement system may review the case to determine if the recipient is able to engage in any substantially gainful employment, and provides a new method for selection of a doctor to perform the examination. The bill also grants the retirement system the authority to have a vocational assessment done on the recipient and grants reemployment rights to the recipient.

Section 6 allows the retirement system to contract with state or private agencies for rehabilitation services for recipients in order to restore them to substantially gainful employment. This section also allows a recipient who has

completed a rehab program to continue to receive benefits for 9 months after returning to work, provides that the retirement system may enter agreements with employers to pay all or part of the wages of a person returned to work on a trial basis and allows a person who returns to work to go out on disability again if his disability recurs within 5 years.

Section 7 changes the amount of earnings allowed while receiving disability benefits. Presently, the earnings limit is \$10,000; the bill would provide that the benefits would be the difference between the average final compensation, adjusted for subsequent salary increases in the position, and the new earnings.

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