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Legislative Document

No. 1644

S.P. 529

In Senate, May 5, 2021

An Act To Improve the Disability Retirement Program of the Maine Public Employees Retirement System

Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.
Cosponsored by Representative TALBOT ROSS of Portland and
Senator: President JACKSON of Aroostook, Representatives: DUNPHY of Old Town, Speaker
FECTEAU of Biddeford.

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

2 **Sec. 1. 3 MRSA §701, sub-§11-A**, as enacted by PL 2017, c. 88, §1, is repealed.

3 **Sec. 2. 3 MRSA §734**, as amended by PL 2017, c. 88, §2, is repealed.

4 **Sec. 3. 4 MRSA §1201, sub-§6-A, ¶B**, as enacted by PL 1989, c. 133, §17, is
5 amended to read:

6 B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~
7 an independent health care provider or the medical review service provider to be
8 permanently mentally incompetent or permanently physically incapacitated and
9 determined by the executive director to be unable to engage in any substantially gainful
10 employment.

11 **Sec. 4. 4 MRSA §1201, sub-§10-A** is enacted to read:

12 **10-A. Health care provider.** "Health care provider" means an appropriately licensed,
13 certified or registered provider of mental or physical health care, in either the public or
14 private sector.

15 **Sec. 5. 4 MRSA §1201, sub-§12-A**, as enacted by PL 2017, c. 88, §4, is repealed.

16 **Sec. 6. 4 MRSA §1201, sub-§12-B** is enacted to read:

17 **12-B. Medical review service provider.** "Medical review service provider" means
18 an entity with whom the executive director has contracted for the review of medical records
19 and the provision of recommendations, opinions and certifications under this chapter by
20 health care providers employed by the entity.

21 **Sec. 7. 4 MRSA §1234**, as amended by PL 2017, c. 88, §5, is further amended to
22 read:

23 **§1234. Medical board review of disability**

24 ~~A medical board of the other programs of the Maine Public Employees Retirement~~
25 ~~System established in section 17106, subsection 1 is the medical board of the Judicial~~
26 ~~Retirement Program. The medical board shall arrange for and pass upon all medical~~
27 ~~examinations required under this chapter with respect to disability retirements and shall~~
28 ~~report in writing to the Supreme Judicial Court its conclusions and recommendations upon~~
29 ~~all the matters referred to it. The board of trustees may designate other medical~~ health care
30 providers to provide medical consultation on judicial disability cases.

31 **Sec. 8. 4 MRSA §1353, sub-§1**, as amended by PL 2017, c. 88, §6, is further
32 amended to read:

33 **1. Conditions.** Any member who becomes disabled while in service may receive a
34 disability retirement allowance by order of at least 5 Justices of the Supreme Judicial Court
35 or upon written application to the executive director, ~~review and report of the application~~
36 ~~by the medical board~~ and approval of that application by at least 5 of the Justices of the
37 Supreme Judicial Court if that member is mentally or physically incapacitated to the extent
38 that it is impossible for that member to perform the duties as a judge and the incapacity is
39 expected to be permanent, as shown by medical examination or tests. A qualified medical
40 health care provider mutually agreed upon by the executive director and member shall

1 conduct the examinations or tests at an agreed upon place, and the costs must be paid by
2 the Maine Public Employees Retirement System.

3 **Sec. 9. 4 MRSA §1353, sub-§4, ¶C**, as amended by PL 2017, c. 88, §7, is further
4 amended to read:

5 C. The executive director may require the beneficiary to undergo annual medical
6 examinations or tests for the purpose of determining whether the beneficiary is
7 incapacitated. These examinations or tests must be conducted by a ~~qualified medical~~
8 health care provider, mutually agreed upon by the executive director and beneficiary,
9 at a place also mutually agreed upon, and the costs of the examination or tests must be
10 paid by the Maine Public Employees Retirement System. If the beneficiary refuses to
11 submit to an examination or tests, the beneficiary's disability allowance ceases until the
12 beneficiary agrees to the examination or tests. If the beneficiary's refusal continues for
13 one year, all rights to any further benefits under this section terminate.

14 **Sec. 10. 5 MRSA §11007, sub-§3**, as enacted by PL 1977, c. 551, §3, is amended
15 to read:

16 **3. Judgment.** The court ~~shall~~ may not substitute its judgment for that of the agency
17 on questions of fact, ~~except that, with respect to a timely appeal by an individual of a denial~~
18 of a disability determination by a hearing officer pursuant to sections 17106-A and
19 17106-B, the court shall review the matter de novo.

20 **Sec. 11. 5 MRSA §17001, sub-§12, ¶B**, as enacted by PL 1985, c. 801, §§5 and
21 7, is amended to read:

22 B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~
23 an independent health care provider or the medical review service provider to be
24 permanently mentally incompetent or permanently physically incapacitated and
25 determined by the executive director to be unable to engage in any substantially gainful
26 employment.

27 **Sec. 12. 5 MRSA §17001, sub-§18-B** is enacted to read:

28 **18-B. Health care provider.** "Health care provider" means an appropriately licensed,
29 certified or registered provider of mental or physical health care, in either the public or
30 private sector.

31 **Sec. 13. 5 MRSA §17001, sub-§19-A**, as enacted by PL 2017, c. 88, §8, is
32 repealed.

33 **Sec. 14. 5 MRSA §17001, sub-§19-B** is enacted to read:

34 **19-B. Medical review service provider.** "Medical review service provider" means
35 an entity with whom the executive director has contracted for the review of medical records
36 and the provision of recommendations, opinions and certifications under this Part by health
37 care providers employed by the entity.

38 **Sec. 15. 5 MRSA §17106**, as amended by PL 2017, c. 88, §§14 to 16, is repealed.

39 **Sec. 16. 5 MRSA §17106-A, first ¶**, as enacted by PL 2009, c. 322, §7, is amended
40 to read:

1 ~~A hearing officer employed, contracted or otherwise provided by the board~~ The board
2 shall contract with qualified attorneys to act as hearing officers to implement the provisions
3 of this chapter is. Hearing officers are subject to the provisions of this section. Hearing
4 officers are not employees of the board but independent contractors who serve as neutral
5 and independent decision makers.

6 **Sec. 17. 5 MRSA §17106-A, sub-§6**, as amended by PL 2017, c. 88, §18, is further
7 amended to read:

8 **6. Engagement and termination.** The board shall ~~engage~~ contract with only qualified
9 hearing officers, ~~who must be monitored by the board.~~ A contract with a hearing officer
10 may be terminated for misconduct. Retaliatory action of any kind, including reprimand or
11 termination, may not be taken against a hearing officer on the basis of that hearing officer's
12 having issued decisions contrary to the decision of the executive director. In the event of
13 termination, the retirement system shall set forth in writing the basis for the termination,
14 the propriety of which may then be considered by the joint standing committee of the
15 Legislature having jurisdiction over public employee retirement matters pursuant to
16 subsection 5.

17 **Sec. 18. 5 MRSA §17106-B** is enacted to read:

18 **§17106-B. Disability retirement; medical review**

19 **1. Disability retirement forms; assessment.** The executive director shall develop
20 and make easily accessible to health care providers in this State a disability form that allows
21 a health care provider to provide an assessment of a member's ability to work after taking
22 into account the member's mental or physical disability under the standards of this Part.
23 References in this section to "disability form" refer to the form developed by the executive
24 director. A member seeking disability retirement shall cooperate with the executive director
25 in obtaining the member's medical records and may obtain an assessment from the health
26 care provider of the member's ability to work after taking into account the member's mental
27 or physical disability, and, if the health care provider finds that the member is disabled
28 under the standards of this Part, the health care provider, at the request of the member, may
29 file with the executive director a disability form signed by the health care provider. The
30 health care provider shall also provide a copy of the form to the member. The executive
31 director may find that a member has a mental or physical disability and is eligible for
32 disability retirement based on the information provided in the form and medical records.
33 The executive director may seek, receive and consider recommendations and opinions from
34 the medical review service provider in making this determination.

35 **2. Medical review.** If the executive director is unable to determine whether a member
36 is eligible for disability retirement based on the information provided under subsection 1,
37 the executive director shall direct the member to have an independent medical examination
38 by an independent health care provider. The member may waive the independent medical
39 examination, in which case the executive director may determine that the member is not
40 eligible for disability retirement. The member may appeal this determination under
41 subsection 3.

42 **A.** The retirement system shall pay all fees of the independent health care provider.
43 The independent health care provider may not be a state employee and may not have
44 any association with the retirement system other than providing independent medical
45 examinations or medical consultations and receiving payment for these services and,

1 unless the member consents in writing, may not have previously examined or treated
2 the member with respect to the member's mental or physical disability.

3 B. The member may have a representative present at the independent medical
4 examination, who may be a union representative, an attorney or a health care provider
5 of the member's choice. The retirement system shall reimburse the member's
6 representative as follows:

7 (1) If the representative is a health care provider, the retirement system shall pay
8 that health care provider a standard per diem rate established by the board and a
9 reasonable mileage reimbursement; and

10 (2) Any other representative of the member may be paid a reasonable mileage
11 reimbursement only.

12 **3. Disability determination; appeal.** After an independent medical review under
13 subsection 2, the executive director or the executive director's designee shall make a
14 determination of eligibility for disability retirement based upon the totality of the evidence
15 and in accordance with subsection 4. The executive director or the executive director's
16 designee may obtain recommendations or opinions from the medical review service
17 provider to assist in this determination. A determination by the executive director or the
18 executive director's designee that the member is not disabled may be appealed by the
19 member to a hearing officer, who shall hear the appeal in accordance with section 17106-A.
20 The board shall by rule provide for procedures for the member to participate in selection
21 of the hearing officer who will hear the member's appeal. Rules adopted pursuant to this
22 subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

23 **4. Medical evidence.** When reviewing medical evidence in making determinations of
24 disability, the board, executive director and hearing officers shall primarily consider
25 medical opinions in the record and whether the opinions are supported by sound medical
26 evidence and are consistent with other medical evidence in the record.

27 **5. Attorney's fees.** If a member has retained services of an attorney to represent the
28 member before a hearing officer or in a court proceeding on appeal of a board decision, the
29 fee arrangement has been approved by the hearing officer or the court and the attorney
30 obtains a favorable result for the member, the attorney's fees must be paid by the retirement
31 system, up to a maximum of \$12,000. The fee arrangement may be a contingency fee, in
32 which case the payment by the retirement system must be applied toward the satisfaction
33 of the contingency fee.

34 **Sec. 19. 5 MRSA §17902, sub-§1, ¶A,** as amended by PL 2017, c. 88, §22, is
35 further amended to read:

36 A. The executive director shall obtain medical consultation on each applicant for
37 disability retirement benefits in accordance with related rules established by the board,
38 ~~which must include provisions indicating when a case must be reviewed by a medical~~
39 ~~board and when alternative means of medical consultation are acceptable.~~ Rules
40 adopted pursuant to this paragraph are routine technical rules as defined in chapter 375,
41 subchapter 2-A. ~~Whether provided by the medical board or by an alternative means,~~
42 ~~medical~~ Medical consultation obtained by the executive director must be objective and
43 be provided by a medical provider or medical providers qualified to review the case by
44 specialty or experience and to whom the applicant is not known.

1 **Sec. 20. 5 MRSA §17911, first ¶**, as enacted by PL 2003, c. 387, §4, is amended
2 to read:

3 Upon agreement of the executive director and the person, rehabilitation services may
4 be provided to any person who is the recipient of a disability retirement benefit under this
5 article as a means to the person being able to return to substantially gainful activity. As a
6 condition of entering into an agreement to provide rehabilitation services, the executive
7 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
8 the purposes of this article, that the recipient is suitable for rehabilitation services and that
9 rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate,~~
10 ~~determination of suitability must include consultation with the medical board to determine~~
11 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~
12 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~
13 ~~accordance with the purposes of this article.~~ Services must be provided by private and
14 public rehabilitation counselors, government agencies and others approved by the
15 executive director as qualified to provide rehabilitation services. The executive director
16 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated
17 employees in jobs relative to the placement rates of other counselors in the State as
18 fundamental in deciding whether to approve the counselor as qualified. This section does
19 not affect the ongoing requirement that a person remain disabled in order to continue to
20 receive disability benefits.

21 **Sec. 21. 5 MRSA §17921, sub-§1, ¶B**, as enacted by PL 1989, c. 409, §§8 and 12,
22 is amended to read:

23 B. That it is impossible to perform the duties of the member is unable to perform the
24 essential functions of the member's employment position with reasonable
25 accommodation;

26 **Sec. 22. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2017, c. 88, §25, is
27 repealed.

28 **Sec. 23. 5 MRSA §17926**, as amended by PL 2017, c. 88, §26, is further amended
29 to read:

30 **§17926. Examinations or tests**

31 Any examinations or tests ~~recommended by the medical board in accordance with~~
32 ~~conducted under section 17106 17106-B~~ or required by the executive director under section
33 17921, subsection 1, paragraph D; section 17924; section 17929, subsection 2, paragraph
34 B; or section 17933, subsection 3, paragraph A; are governed as follows.

35 **1. Agreed upon medical health care provider.** The examinations or tests must be
36 conducted by a ~~qualified medical~~ health care provider mutually agreed upon by the
37 executive director and the member claiming to be disabled.

38 **2. Agreed upon place.** The examinations or tests ~~shall~~ must be conducted at the health
39 care provider's office or facility or at a place mutually agreed upon by the executive director
40 and the member claiming to be disabled.

41 **3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the
42 retirement system.

1 **Sec. 24. 5 MRSA §17927, first ¶**, as amended by PL 2003, c. 387, §5, is further
2 amended to read:

3 Upon agreement of the executive director and the person, rehabilitation services may
4 be provided to any person who is the recipient of a disability retirement benefit under this
5 article as a means to the person being able to return to substantially gainful activity. As a
6 condition of entering into an agreement to provide rehabilitation services, the executive
7 director must determine that rehabilitation is feasible, that rehabilitation is consistent with
8 the purposes of this article, that the recipient is suitable for rehabilitation services and that
9 rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate,~~
10 ~~determination of suitability must include consultation with the medical board to determine~~
11 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~
12 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~
13 ~~accordance with the purposes of this article.~~ Services must be provided by private and
14 public rehabilitation counselors, government agencies and others approved by the
15 executive director as qualified to provide rehabilitation services. The executive director
16 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated
17 employees in jobs relative to the placement rates of other counselors in the State as
18 fundamental in deciding whether to approve the counselor as qualified. This section does
19 not affect the ongoing requirement that a person remain disabled in order to continue to
20 receive disability benefits.

21 **Sec. 25. 5 MRSA §17929, sub-§2, ¶B**, as amended by PL 2003, c. 675, §2, is
22 further amended to read:

23 B. The executive director may require, once each year, that the person undergo
24 examinations or tests, conducted in accordance with section 17926, to determine the
25 person's disability. ~~The executive director may refer the records documenting the~~
26 ~~results of the examinations or tests and the person's file to the medical board for medical~~
27 ~~consultation regarding rehabilitation in accordance with section 17106, subsection 3,~~
28 ~~paragraph E.~~

29 (1) After the disability has continued for 2 years, the disability must render the
30 person unable to engage in any substantially gainful activity that is consistent with
31 the person's training, education or experience and average final compensation
32 adjusted by the same percentage adjustment as has been received under section
33 17806. The disability retirement benefit continues if the person can effectively
34 demonstrate to the executive director that the person is actively seeking work. For
35 the purposes of this subparagraph, the ability to engage in substantially gainful
36 activity is demonstrated by the ability to perform work resulting in annual earnings
37 that exceed \$20,000 or 80% of the recipient's average final compensation at
38 retirement, whichever is greater, adjusted by the same percentage adjustments
39 granted under section 17806.

40 (2) If the person refuses to submit to the examinations or tests under this paragraph,
41 the disability retirement benefit is discontinued until that person withdraws the
42 refusal.

43 (3) If the person's refusal under subparagraph (2) continues for one year, all rights
44 to any further benefits under this article cease.

1 (4) If it is determined, on the basis of the examinations or tests under this
2 paragraph, that the disability of a person no longer exists, the payment of the
3 disability retirement benefit ceases.

4 (5) The executive director shall notify the person in writing of the decision to
5 discontinue the disability retirement allowance under subparagraph (2) or (4).

6 (a) The decision is subject to appeal under section 17451.

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

10 **Sec. 26. 5 MRSA §17930, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§8 and 12,
11 is amended to read:

12 C. If, during the first 5 years of reemployment, the person again becomes disabled,
13 terminates employment and is not covered by any other disability program, the
14 retirement system shall resume paying the disability retirement benefit payable prior to
15 the reemployment with all applicable cost-of-living adjustments and shall provide
16 rehabilitation services ~~under~~ in accordance with section 17927 ~~if recommended by the~~
17 ~~medical board~~. If the benefit payable under the other disability program is not equal to
18 or greater than the benefit under this article, the retirement system shall pay the
19 difference between the amount of the benefit payable under the other disability
20 program and the amount of the benefit payable under this article. The executive
21 director shall require examinations or tests to determine whether the person is disabled
22 as described in section 17921; and

23 **Sec. 27. 5 MRSA §17930, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§8 and 12,
24 is amended to read:

25 E. If, during the first 5 years of reemployment, the person again becomes disabled and
26 terminates employment, the retirement system shall resume paying the disability
27 retirement benefit payable prior to the reemployment with all applicable cost-of-living
28 adjustments, or if greater, a disability retirement benefit based upon the person's current
29 average final compensation and shall provide rehabilitation services ~~under~~ in
30 accordance with section 17927 ~~if recommended by the medical board~~. The executive
31 director shall require examinations or tests to determine whether the person is disabled
32 as defined in section 17921; and

33 **Sec. 28. 5 MRSA §17932, sub-§2**, as amended by PL 2017, c. 88, §27, is further
34 amended to read:

35 **2. Dispute over mental or physical capacity.** If there is a dispute between the person
36 and the former employer over the person's mental or physical capacity to perform a specific
37 job, at the option of the person that dispute must be resolved by a majority of 3 ~~medical~~
38 health care providers, one appointed and reimbursed by the person, one appointed and
39 reimbursed by the employer and one appointed and reimbursed by the retirement system.
40 If the 3 ~~medical~~ health care providers resolve the dispute in favor of the person, the former
41 employer must reimburse the ~~medical~~ health care provider appointed by the person.

42 **Sec. 29. 5 MRSA §17953, sub-§3, ¶A**, as amended by PL 1991, c. 469, §2, is
43 further amended to read:

1 A. A surviving spouse of the qualifying member is paid a \$150 benefit each month
2 beginning the first month after the death occurs and continuing during the surviving
3 spouse's lifetime, if:

4 (1) The deceased qualifying member had 10 years of creditable service at the time
5 of death; or

6 (2) The surviving spouse is certified by ~~the medical board~~ an independent health
7 care provider or the medical review service provider to be permanently mentally
8 incompetent or permanently physically incapacitated and is determined by the
9 executive director to be unable to engage in any substantially gainful employment.

10 A full month's benefit is paid to the estate of the surviving spouse for the month in
11 which the surviving spouse dies.

12 **Sec. 30. 5 MRSA §17953, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §2, is
13 further amended to read:

14 A. A designated beneficiary who is alive at the time of the death of the qualifying
15 member is paid \$150 per month beginning the first month after the death occurs and
16 continuing until the date of the designated beneficiary's death, if the designated
17 beneficiary is certified by ~~the medical board~~ an independent health care provider or the
18 medical review service provider to be permanently mentally incompetent or
19 permanently physically incapacitated and is determined by the executive director to be
20 unable to engage in any substantially gainful employment.

21 **Sec. 31. 5 MRSA §18502, sub-§1, ¶A**, as amended by PL 2017, c. 88, §30, is
22 repealed.

23 **Sec. 32. 5 MRSA §18503**, as amended by PL 2017, c. 88, §31, is further amended
24 to read:

25 **§18503. Examination or tests**

26 The examination or tests to determine whether a member is disabled under section
27 18501 are governed as follows.

28 **1. Agreed upon ~~medical health care~~ health care provider.** The examination or tests must be
29 conducted by a ~~qualified medical health care~~ health care provider mutually agreed upon by the
30 executive director and member claiming to be disabled.

31 **2. Agreed upon place.** The examination or tests ~~shall~~ must be conducted at the health
32 care provider's office or facility or at a place mutually agreed upon by the executive director
33 and member claiming to be disabled.

34 **3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the
35 retirement system.

36 **Sec. 33. 5 MRSA §18512, first ¶**, as enacted by PL 2003, c. 387, §10, is amended
37 to read:

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

1 the purposes of this article, that the recipient is suitable for rehabilitation services and that
2 rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate,~~
3 ~~determination of suitability must include consultation with the medical board to determine~~
4 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~
5 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~
6 ~~accordance with the purposes of this article.~~ Services must be provided by private and
7 public rehabilitation counselors, government agencies and others approved by the
8 executive director as qualified to provide rehabilitation services. The executive director
9 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated
10 employees in jobs relative to the placement rates of other counselors in the State as
11 fundamental in deciding whether to approve the counselor as qualified. This section does
12 not affect the ongoing requirement that a person remain disabled in order to continue to
13 receive disability benefits.

14 **Sec. 34. 5 MRSA §18521, sub-§1, ¶B,** as enacted by PL 1989, c. 409, §§11 and
15 12, is amended to read:

16 B. That ~~it is impossible to perform the duties~~ the member is unable to perform the
17 essential functions of the member's employment position with reasonable
18 accommodation;

19 **Sec. 35. 5 MRSA §18525, sub-§1, ¶A,** as amended by PL 2017, c. 88, §32, is
20 repealed.

21 **Sec. 36. 5 MRSA §18526,** as amended by PL 2017, c. 88, §33, is further amended
22 to read:

23 **§18526. Examinations or tests**

24 Any examinations or tests ~~recommended by the medical board in accordance with~~
25 ~~conducted under~~ section ~~17106~~ 17106-B or required by the executive director under section
26 18521, subsection 1, paragraph D; section 18524; section 18529, subsection 2, paragraph
27 B; or section 18533, subsection 3, paragraph A; are governed as follows.

28 **1. Agreed upon medical health care provider.** The examinations or tests must be
29 conducted by a ~~qualified medical~~ health care provider mutually agreed upon by the
30 executive director and the member claiming to be disabled.

31 **2. Agreed upon place.** The examinations or tests ~~shall~~ must be conducted at the health
32 care provider's office or facility or at a place mutually agreed upon by the executive director
33 and the member claiming to be disabled.

34 **3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the
35 retirement system.

36 **Sec. 37. 5 MRSA §18527, first ¶,** as amended by PL 2003, c. 387, §11, is further
37 amended to read:

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

1 rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate,~~
2 ~~determination of suitability must include consultation with the medical board to determine~~
3 ~~any medical indications that the recipient should not engage in a rehabilitation program or~~
4 ~~to identify a recipient too severely disabled to benefit from rehabilitation services in~~
5 ~~accordance with the purposes of this article.~~ Services must be provided by private and
6 public rehabilitation counselors, government agencies and others approved by the
7 executive director as qualified to provide rehabilitation services. The executive director
8 shall consider a rehabilitation counselor's rate of successfully placing rehabilitated
9 employees in jobs relative to the placement rates of other counselors in the State as
10 fundamental in deciding whether to approve the counselor as qualified. This section does
11 not affect the ongoing requirement that a person remain disabled in order to continue to
12 receive disability benefits.

13 **Sec. 38. 5 MRSA §18529, sub-§2, ¶B**, as amended by PL 2003, c. 675, §4, is
14 further amended to read:

15 B. The executive director may require, once each year, that the person undergo
16 examinations or tests, conducted in accordance with section 18526, to determine the
17 person's disability. ~~The executive director may refer the records documenting the~~
18 ~~results of the examinations or tests and the person's file to the medical board for medical~~
19 ~~consultation regarding rehabilitation in accordance with section 17106, subsection 3,~~
20 ~~paragraph E.~~

21 (1) After the disability has continued for 2 years, the disability must render the
22 person unable to engage in any substantially gainful activity that is consistent with
23 the person's training, education or experience and average final compensation
24 adjusted by the same percentage adjustment as has been received under section
25 18407. The disability retirement benefit continues if the person can effectively
26 demonstrate to the executive director that the person is actively seeking work. For
27 purposes of this subparagraph, the ability to engage in substantially gainful activity
28 is demonstrated by the ability to perform work resulting in annual earnings that
29 exceed \$20,000 or 80% of the recipient's average final compensation at retirement,
30 whichever is greater, adjusted by the same percentage adjustments granted under
31 section 18407.

32 (2) If the person refuses to submit to the examinations or tests under this paragraph,
33 the disability retirement benefit is discontinued until that person withdraws the
34 refusal.

35 (3) If the person's refusal under subparagraph (2) continues for one year, all rights
36 to any further benefits under this article cease.

37 (4) If it is determined, on the basis of the examinations or tests under this
38 paragraph, that the disability of a person no longer exists, the payment of the
39 disability retirement benefit ceases.

40 (5) The executive director shall notify the person in writing of the decision to
41 discontinue the disability retirement allowance under subparagraph (2) or (4).

42 (a) The decision is subject to appeal under section 17451.

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

4 **Sec. 39. 5 MRSA §18530, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§11 and
5 12, is amended to read:

6 C. If, during the first 5 years of reemployment, the person again becomes disabled,
7 terminates employment and is not covered by any other disability program, the
8 retirement system shall resume paying the disability retirement benefit payable prior to
9 the reemployment with all applicable cost-of-living adjustments and shall provide
10 rehabilitation services ~~under in accordance with section 18527 if recommended by the~~
11 ~~medical board~~. If the benefit payable under the other disability program is not equal to
12 or greater than the benefit under this article, the retirement system shall pay the
13 difference between the amount of the benefit payable under the other disability
14 program and the amount of the benefit payable under this article. The executive
15 director shall require examinations or tests to determine whether the person is disabled
16 as described in section 18521; and

17 **Sec. 40. 5 MRSA §18530, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§11 and
18 12, is amended to read:

19 E. If, during the first 5 years of reemployment, the person again becomes disabled and
20 terminates employment, the retirement system shall resume paying the disability
21 retirement benefit payable prior to the reemployment with all applicable cost-of-living
22 adjustments, or if greater, a disability retirement benefit based upon the person's current
23 average final compensation and shall provide rehabilitation services ~~under in~~
24 ~~accordance with section 18527 if recommended by the medical board~~. The executive
25 director shall require examinations or tests to determine whether the person is disabled
26 as defined in section 18521; and

27 **Sec. 41. 5 MRSA §18553, sub-§3, ¶A**, as amended by PL 1991, c. 469, §5, is
28 further amended to read:

29 A. A surviving spouse of the qualifying member is paid a \$150 benefit each month
30 beginning the first month after the death occurs and continuing during the surviving
31 spouse's lifetime, if:

32 (1) The deceased qualifying member had 10 years of creditable service at the time
33 of death; or

34 (2) The surviving spouse is certified by ~~the medical board~~ an independent health
35 care provider or the medical review service provider to be permanently mentally
36 incompetent or permanently physically incapacitated and is determined by the
37 executive director to be unable to engage in any substantially gainful employment.

38 A full month's benefit is paid to the estate of the surviving spouse for the month in
39 which the surviving spouse dies.

40 **Sec. 42. 5 MRSA §18553, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §5, is
41 further amended to read:

42 A. A designated beneficiary who is alive at the time of the death of the qualifying
43 member is paid \$150 per month beginning the first month after the death occurs and

1 continuing until the date of the designated beneficiary's death, if the designated
2 beneficiary is certified by ~~the medical board~~ an independent health care provider or the
3 medical review service provider to be permanently mentally incompetent or
4 permanently physically incapacitated and is determined by the executive director to be
5 unable to engage in any substantially gainful employment.

6 **Sec. 43. Implementation plan for mandatory long-term disability**
7 **insurance.** The Maine Public Employees Retirement System shall convene a stakeholder
8 group, including representatives of participant employers and employee groups, to develop
9 an implementation plan for providing mandatory long-term disability insurance coverage
10 to retirement system members through their employers. The Maine Public Employees
11 Retirement System shall submit an implementation plan, including any recommended
12 legislation, to the joint standing committee of the Legislature having jurisdiction over
13 retirement matters no later than January 3, 2023. The joint standing committee of the
14 Legislature having jurisdiction over retirement matters may report out a bill to the 131st
15 Legislature on matters related to the report.

16 **Sec. 44. Report on disability retirement.** The Maine Public Employees
17 Retirement System shall report to the joint standing committee of the Legislature having
18 jurisdiction over retirement matters, no later than January 31, 2023, on the experience of
19 the system and its members after the implementation of this Act. The joint standing
20 committee of the Legislature having jurisdiction over retirement matters may report out a
21 bill to the 131st Legislature on matters related to the report.

22 **Sec. 45. Application.** This Act applies to disability retirement benefit applications
23 received by the Maine Public Employees Retirement System on or after the effective date
24 of this Act.

25 SUMMARY

26 This bill amends the laws relating to disability retirement under the Maine Public
27 Employees Retirement System and makes other changes relating to the structure of the
28 Maine Public Employees Retirement System. This bill:

29 1. Repeals the laws providing for a medical board and permits the executive director
30 to contract with a medical review service provider;

31 2. Provides that the system's hearing officers are not employees of the Board of
32 Trustees of the Maine Public Employees Retirement System but independent contractors
33 that serve as neutral and independent decision makers;

34 3. Modifies the definition of "disabled";

35 4. Provides that an adverse decision by a hearing officer that is appealed to the court
36 must be given de novo review;

37 5. Restructures the disability retirement application process so that the executive
38 director may grant benefits based on medical records and the member's health care
39 provider's views, may obtain opinions and recommendations from the medical review
40 service provider and may not deny an application for disability retirement benefits without
41 first obtaining an independent medical examination unless waived by the member;

1 6. Provides that, when reviewing medical evidence in making a determination of
2 disability, the board, executive director and hearing officers must primarily consider
3 medical opinions in the record and whether the opinions are supported by sound medical
4 evidence and are consistent with other medical evidence in the record;

5 7. Provides that attorney's fees up to a maximum of \$12,000 must be paid by the Maine
6 Public Employees Retirement System for a member who appeals the denial of disability
7 benefits and who subsequently is awarded those benefits;

8 8. Requires the retirement system to report to the joint standing committee of the
9 Legislature having jurisdiction over retirement matters on the experience of the retirement
10 system and its members under the changes made by the bill; and

11 9. Requires formation of a stakeholder group to report to the joint standing committee
12 of the Legislature having jurisdiction over retirement matters on implementing mandatory
13 long-term disability insurance coverage.