

- **The NEW LANGUAGE Attached was added to H.304 and was passed by the Senate on 4.14.15**
 - **Proposed Changes to Disability Retirement found in Title 3, Chapter 16, of the Vermont Employees Retirement System Statute: § 462 and § 463**
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NOTE: The below recommended changes to disability retirement will affect only the State Retirement System and will not affect, VSTRS (Teachers), or VMERS (Municipal) Retirement Systems. The Teachers' and Municipal Systems will be reviewed by the Treasurer's Office at a later date (not this session), as there are differences to their statutes that need to be reviewed.

Explanation of Additions/Changes from the Treasurer's Office: The Treasurer's Office worked closely with employee groups, the Commissioner of Human Resources, and the Attorney General's Office to clarify the treatment of disability retirements within the state retirement system and to add an income verification requirement for those retirees receiving disability retirement.

Disability retirement is a benefit that protects disabled employees who are not eligible for normal retirement. This protection is an essential fairness and provides retirement security. As fiduciaries to the retirement system the retirement boards must also take additional steps to ensure continuing eligibility, including verification of outside employment and adjustment to retirement benefits as needed. The proposed statutory change accomplishes this and also provides for re-employment rights when a retiree is deemed no longer disabled by the Medical Review Board.

The recommended changes do not impact the disability review process, which rest with the Medical review Board. But the proposed changes do offer remedy in cases where the individual is no longer disabled or is actively employed while receiving benefits.

The recommended changes do not add any additional costs to the state. In fact, the changes allow for a layer of protection in regard to potential fraud and therefore potential savings for the State.

The recommended changes were completed in partnership with the Department of Human Resources, the Attorney General's Office, Vermont State Employees Association and the Vermont Troopers Association.

The Treasurer's Office feels that the recommended changes in the language address deficiencies in the current statutory language in a fair and equitable manner, providing dignity to the member while maintaining a fiduciary responsibility to the State.

Proposed language additions/changes to H.304 would read:

Title 3, Chapter 16

§ 462. Reexamination of disability beneficiary

(a)

Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the retirement board may, and upon the member's application shall, require any disability beneficiary who has not reached his or her normal retirement date to undergo a medical examination, by the medical board or by a physician or physicians designated by the medical board, such examination to be made at the place of residence of such beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not reached his or her normal retirement date refuse to submit to such medical examination, the beneficiary's allowance may be discontinued until his or her withdrawal of such refusal, and should the beneficiary's refusal continue for one year, all the beneficiary's rights in and to his or her pension may be revoked by the retirement board.

(b)

Should the medical board report and certify to the retirement board that any disability beneficiary has a residual functional capacity which might enable the beneficiary to return to work, and should the retirement board reasonably conclude that the beneficiary is engaged in or is, as a result of specific findings made by a certified vocational counselor, able to engage in a gainful occupation paying more than the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary's pension shall be reduced to an amount which, together with his or her annuity and the amount earnable by him or her, shall equal the beneficiary's average final compensation at retirement, adjusted for inflation each year following retirement on the same basis as for beneficiaries as provided in section 470 of this title; provided that: ~~Should the beneficiary's earning capacity be later changed, his or her pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his or her annuity, equals the beneficiary's average final compensation at retirement. For the purposes of this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title.~~

(1) The retirement board shall provide written notice and an opportunity to be heard to the beneficiary prior to any reduction of the beneficiary's pension under this subsection (b);

- (2) If the beneficiary has engaged in a gainful occupation subsequent to receiving disability retirement, the retirement board in its discretion may reject in whole or in part a vocational assessment of the beneficiary's ability to engage in a more gainful occupation and may rely in whole or in part on evidence of a beneficiary's actual earnings in determining the amount earnable by the beneficiary. In addition, if the retirement board's determination is based in whole or in part on a vocational assessment of ability to engage in a gainful occupation, the beneficiary shall be notified of his or her entitlement to the same reemployment rights as are available to State employees under the existing collective bargaining agreement entered into between the State and the applicable bargaining representative, or extension of such contractual benefits. Such rights shall commence as of the date of the determination and shall be based upon the reemployment rights said beneficiary would have had at the time they retired from State service. The reduction of pension amount will be held in abeyance until the reemployment rights have expired. In the event that the beneficiary is subsequently reemployed by the State, the beneficiary's retirement allowance shall cease, effective on the date when reemployment commences. In the event that the beneficiary is not subsequently reemployed by the State, the reduction of the beneficiary's pension shall commence the month following the month in which the beneficiary's reemployment rights expired;
- (3) In the event that a beneficiary's pension has been reduced and should the beneficiary's earning capability later change, his or her pension may be further modified; provided that no reemployment rights shall be afforded to the beneficiary in connection with any later change and provided further that the new pension amount, together with the amount earnable by him or her, shall not exceed the beneficiary's average final compensation at retirement, adjusted for inflation; and
- (4) For the purposes of this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title.

(c)

Every recipient of disability benefits shall, annually on a date determined by the retirement board, file with the state treasurer a statement certifying, under penalty of perjury and in such form as the retirement board shall prescribe, the full amount of his or her earnings from earned income during the preceding calendar year. The state treasurer may request, and the beneficiary shall provide within 360 days of such request, additional financial information and records pertinent to the beneficiary's earned income. The beneficiary's statement and accompanying forms and schedules, and any other financial information and records provided by the beneficiary to the state treasurer shall be confidential. In the event that a beneficiary fails to submit the certification or any required or requested financial information or records pertinent to the beneficiary's earned income, the beneficiary's retirement allowance shall be suspended until all such information and records have been submitted, and in the event that the failure continues for one year, all the beneficiary's rights in and to his or her pension and any pending reemployment rights under this section may be revoked by the board. Notwithstanding any provision of this section 462, if the beneficiary's earned income for the preceding year exceeded the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary shall refund the portion of the

preceding year's retirement allowance that is equal to the amount of the reduction specified in subsection (b), and the refund amount may be offset against the beneficiary's monthly pension benefits. Prior to suspension or revocation of the beneficiary's retirement allowance or reemployment rights or inception of any offset under this subsection (c), the retirement board shall provide the beneficiary with written notice and an opportunity to be heard.

Title 3, Chapter 16

§ 463. Reinstatement

(a)

~~Should a disability beneficiary be restored to service and should his or her annual earnable compensation then or at any time thereafter be equal to or greater than his or her average final compensation at retirement, or should any other beneficiary be restored to service, his or her retirement allowance shall cease, and the beneficiary shall again become a member of the retirement system, and he or she shall contribute thereafter at the same rate he or she paid prior to retirement.~~ Anything in this subchapter to the contrary notwithstanding, upon his or her subsequent retirement, he or she shall be credited with all the service creditable to him or her at the time of his or her former retirement. However, if such beneficiary is restored to membership after the attainment of the age of 55 years, his or her pension upon subsequent retirement shall not exceed the sum of the pension which he or she was receiving immediately prior to his or her last restoration to membership and the pension that may have accrued on account of membership service since his or her last restoration to membership, provided that the rate percent of his or her total pension on his or her subsequent retirement shall not exceed the rate he or she would have received had he or she remained in service during the period of prior retirement.

(b)

A member who has been reemployed is entitled to prior service credit upon depositing in the fund the contributions which would have been deducted from the member's compensation had he or she remained a member with interest as set forth in subdivision 473(c)(1) of this title. The member in order to qualify for the prior service credit must also deposit in the fund a sum equal to the contributions which would have been contributed by the state had he or she remained a member with interest as set forth in subdivision 473(c)(1) of this title.

Passed by Senate
4.14.15

H. 304.

An act relating to making miscellaneous amendments to Vermont's retirement laws.

Reported favorably with recommendation of proposal of amendment by Senator Collamore for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By inserting a new Sec. 11 to read as follows:

Sec. 11. 3 V.S.A. § 462 is amended to read:

§ 462. REEXAMINATION OF DISABILITY BENEFICIARY

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(b) Should the medical board report and certify to the retirement board that any disability beneficiary has a residual functional capacity which might enable the beneficiary to return to work, and should the retirement board reasonably conclude that the beneficiary is engaged in or is, as a result of specific findings made by a certified vocational counselor, able to engage in a gainful occupation paying more than the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary's pension shall be reduced to an amount which, together with his or her annuity and the amount earnable by him or her, shall equal the beneficiary's average final compensation at retirement, adjusted for inflation each year following retirement on the same basis as for beneficiaries as provided in section 470 of this title. ~~Should the beneficiary's earning capacity be later changed, his or her pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his or her annuity, equals the beneficiary's average final compensation at retirement. For the purposes of this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title. provided that:~~

(1) The retirement board shall provide written notice and an opportunity to be heard to the beneficiary prior to any reduction of the beneficiary's pension under this subsection (b).

(2) If the beneficiary has engaged in a gainful occupation subsequent to receiving disability retirement, the retirement board in its discretion may reject in whole or in part a vocational assessment of the beneficiary's ability to engage in a more gainful occupation and may rely in whole or in part on evidence of the beneficiary's actual earnings in determining the amount

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earnable by the beneficiary. In addition, if the retirement board's determination is based in whole or in part on a vocational assessment of ability to engage in a gainful occupation, the beneficiary shall be notified of his or her entitlement to the same reemployment rights as are available to State employees under the existing collective bargaining agreement entered into between the State and the applicable bargaining representative, or extension of such contractual benefits. Such rights shall commence as of the date of the determination and shall be based upon the reemployment rights the beneficiary would have had at the time he or she retired from State service. The reduction of pension amount will be held in abeyance until the reemployment rights have expired. In the event that the beneficiary is subsequently reemployed by the State, the beneficiary's retirement allowance shall cease, effective on the date when reemployment commences. In the event that the beneficiary is not subsequently reemployed by the State, the reduction of the beneficiary's pension shall commence the month following the month in which the beneficiary's reemployment rights expired.

(3) In the event that a beneficiary's pension has been reduced and should the beneficiary's earning capability later change, his or her pension may be further modified; provided that no reemployment rights shall be afforded to the beneficiary in connection with any later change and provided further that the new pension amount, together with the amount earnable by him or her, shall not exceed the beneficiary's average final compensation at retirement, adjusted for inflation.

(4) As used in this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title.

(c) Every recipient of disability benefits shall, annually on a date determined by the retirement board, file with the State Treasurer a statement certifying, under penalty of perjury and in such form as the retirement board shall prescribe, the full amount of his or her earnings from earned income during the preceding calendar year. The State Treasurer may request, and the beneficiary shall provide within 60 days of such request, additional financial information and records pertinent to the beneficiary's earned income. The beneficiary's statement and accompanying forms and schedules, and any other financial information and records provided by the beneficiary to the State Treasurer shall be confidential. In the event that a beneficiary fails to submit the certification or any required or requested financial information or records pertinent to the beneficiary's earned income, the beneficiary's retirement allowance shall be suspended until all such information and records have been submitted, and in the event that the failure continues for one year, all the beneficiary's rights in and to his or her pension and any pending reemployment rights under this section may be revoked by the board. Notwithstanding any

provision of this section to the contrary, if the beneficiary's earned income for the preceding year exceeded the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary shall refund the portion of the preceding year's retirement allowance that is equal to the amount of the reduction specified in subsection (b), and the refund amount may be offset against the beneficiary's monthly pension benefits. Prior to suspension or revocation of the beneficiary's retirement allowance, reemployment rights, or inception of any offset under this subsection (c), the retirement board shall provide the beneficiary with written notice and an opportunity to be heard.

Second: By inserting a new section to be Sec. 12 to read as follows:

Sec. 12. 3 V.S.A. § 463 is amended to read:

§ 463. REINSTATEMENT

(a) ~~Should a disability beneficiary be restored to service and should his or her annual earnable compensation then or at any time thereafter be equal to or greater than his or her average final compensation at retirement, or should any other beneficiary be restored to service, his or her retirement allowance shall cease, and he or she shall contribute thereafter at the same rate he or she paid prior to retirement.~~ Should a disability beneficiary be restored to service, his or her retirement allowance shall cease, and the beneficiary shall again become a member of the retirement system, and he or she shall contribute thereafter at the same rate he or she paid prior to retirement. Anything in this subchapter to the contrary notwithstanding, upon his or her subsequent retirement, he or she shall be credited with all the service creditable to him or her at the time of his or her former retirement. However, if such beneficiary is restored to membership after the attainment of ~~the age of 55 years~~ of age, his or her pension upon subsequent retirement shall not exceed the sum of the pension which he or she was receiving immediately prior to his or her last restoration to membership and the pension that may have accrued on account of membership service since his or her last restoration to membership, provided that the rate percent of his or her total pension on his or her subsequent retirement shall not exceed the rate he or she would have received had he or she remained in service during the period of prior retirement.

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Third: By renumbering Sec. 11 (effective date) to be Sec. 13.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2015, page 426)

NEW BUSINESS

Third Reading

H. 128.

An act relating to the use of results-based accountability common language in Vermont law.

H. 320.

An act relating to technical corrections.

Second Reading

Favorable

H. 268.

An act relating to approval of the adoption and the codification of the charter of the Town of Franklin and of the merger of Franklin Fire District No. 1 into the Town.

Reported favorably by Senator Collamore for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

H. 310.

An act relating to limited liability companies.

Reported favorably by Senator Mullin for the Committee on Economic Development, Housing & General Affairs.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 18, 2015, page 518 and March 19, 2015, page 607)

H. 478.

An act relating to approval of the adoption and codification of the charter of the Town of Royalton.

Reported favorably by Senator Collamore for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)