

By: Representative Endt

To: Appropriations

HOUSE BILL NO. 193

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE DISABILITY ALLOWANCE OF A RETIRED MEMBER OF
3 THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM SHALL BE REDUCED IF THE
4 RETIREE'S FORMER EMPLOYER OFFERS HIM OR HER A JOB HAVING
5 COMPENSATION THAT IS LESS THAN THE COMPENSATION FOR THE JOB FROM
6 WHICH HE IS RETIRED AND THE RETIREE IS ABLE TO PERFORM THE DUTIES
7 OF THE OFFERED JOB; TO PROVIDE THAT THE AMOUNT OF THE RETIREE'S
8 DISABILITY ALLOWANCE AFTER THE REDUCTION SHALL BE AN AMOUNT WHICH,
9 TOGETHER WITH THE AMOUNT EARNABLE BY THE RETIREE IN THE OFFERED
10 JOB, WILL EQUAL THE AMOUNT OF THE RETIREE'S AVERAGE COMPENSATION;
11 TO PROVIDE THAT THE REDUCTION IN THE RETIREE'S DISABILITY
12 ALLOWANCE SHALL BE MADE WHETHER OR NOT THE RETIREE ACCEPTS THE
13 EMPLOYER'S OFFER OF THE JOB; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 SECTION 1. Section 25-11-113, Mississippi Code of 1972, is
16 amended as follows:

17 25-11-113. (1) (a) Upon the application of a member or his
18 employer, any active member in state service who has at least four
19 (4) years of membership service credit may be retired by the board
20 of trustees on the first of the month following the date of filing
21 such application on a disability retirement allowance, but in no
22 event shall the disability retirement allowance commence before
23 termination of state service, provided that the medical board,
24 after a medical examination, shall certify that the member is
25 mentally or physically incapacitated for the further performance
26 of duty, that such incapacity is likely to be permanent, and that
27 the member should be retired; however, the board of trustees may
28 accept a disability medical determination from the Social Security
29 Administration in lieu of a certification from the medical board.

30 For the purposes of disability determination, the medical board
31 shall apply the following definition of disability: the inability

32 to perform the usual duties of employment or the incapacity to
33 perform such lesser duties, if any, as the employer, in its
34 discretion, may assign without material reduction in compensation,
35 or the incapacity to perform the duties of any employment covered
36 by the Public Employees' Retirement System (Section 25-11-101
37 et seq.) that is actually offered and is within the same general
38 territorial work area, without material reduction in compensation.
39 The employer shall be required to furnish the job description and
40 duties of the member. The employer shall further certify whether
41 the employer has offered the member other duties and has complied
42 with the applicable provisions of the Americans With Disabilities
43 Act in affording reasonable accommodations which would allow the
44 employee to continue employment.

45 (b) Any inactive member with four (4) or more years of
46 membership service credit, who has withdrawn from active state
47 service, is not eligible for a disability retirement allowance
48 unless the disability occurs within six (6) months of the
49 termination of active service and unless satisfactory proof is
50 presented to the board of trustees that the disability was the
51 direct cause of withdrawal from state service.

52 (c) If the medical board certifies that the member is
53 not mentally or physically incapacitated for the future
54 performance of duty, the member may request, within sixty (60)
55 days, a hearing before the hearing officer as provided in Section
56 25-11-120. All hearings shall be held in accordance with rules
57 and regulations adopted by the board of trustees to govern such
58 hearings. Such hearing may be closed upon the request of the
59 member.

60 (d) The medical board may request additional medical
61 evidence and/or other physicians to conduct an evaluation of the
62 member's condition. If the medical board requests additional
63 medical evidence and the member refuses the request, the
64 application shall be considered void.

65 (2) Allowance on disability retirement.

66 (a) Upon retirement for disability, an eligible member
67 shall receive a retirement allowance if he has attained the age of
68 sixty (60) years.

69 (b) Except as provided in paragraph (c) of this
70 subsection (2), an eligible member who is retired for disability
71 and who has not attained sixty (60) years of age shall receive a
72 disability benefit as computed in Section 25-11-111(d)(1) through
73 (d)(4) which shall consist of:

74 (i) A member's annuity which shall be the
75 actuarial equivalent of his accumulated contributions at the time
76 of retirement; and

77 (ii) An employer's annuity equal to the amount
78 that would have been payable as a retirement allowance for both
79 membership service and prior service had the member continued in
80 service to the age of sixty (60) years, which shall apply to the
81 allowance for disability retirement paid to retirees receiving
82 such allowance upon and after April 12, 1977. This employer's
83 annuity shall be computed on the basis of the average "earned
84 compensation" as defined in Section 25-11-103.

85 (c) For persons who become members after June 30, 1992,
86 and for active members on June 30, 1992, who elect benefits under
87 this paragraph (c) instead of those provided under paragraph (b)
88 of this subsection (2), the disability allowance shall consist of
89 two (2) parts: a temporary allowance and a deferred allowance.

90 The temporary allowance shall equal the greater of (i) forty
91 percent (40%) of average compensation at the time of disability,
92 plus ten percent (10%) of average compensation for each of the
93 first two (2) dependent children, as defined in Sections 25-11-103
94 and 25-11-114, or (ii) the accrued benefit based on actual
95 service. It shall be payable for a period of time based on the
96 member's age at disability, as follows:

97	Age at Disability	Duration
98	60 and earlier	to age 65
99	61	to age 66
100	62	to age 66
101	63	to age 67

102	64	to age 67
103	65	to age 68
104	66	to age 68
105	67	to age 69
106	68	to age 70
107	69 and over	one year

108 The deferred allowance shall commence when the temporary
109 allowance ceases and shall be payable for life. The deferred
110 allowance shall equal the greater of (i) the allowance that would
111 have been payable had the member continued in service to the
112 termination age of the temporary allowance, but no more than forty
113 percent (40%) of average compensation, or (ii) the accrued benefit
114 based on actual service at the time of disability. The deferred
115 allowance as determined at the time of disability shall be
116 adjusted in accordance with Section 25-11-112 for the period
117 during which the temporary annuity is payable. In no case shall a
118 member receive less than Ten Dollars (\$10.00) per month for each
119 year of service and proportionately for each quarter year thereof
120 reduced for the option selected.

121 (d) The member may elect to receive the actuarial
122 equivalent of the disability retirement allowance in a reduced
123 allowance payable throughout life under any of the provisions of
124 the options provided under Section 25-11-115.

125 (e) Should a disability retiree who has not selected an
126 option under Section 25-11-115 die before being repaid in
127 disability benefits the sum of his total contributions, then his
128 named beneficiary shall receive the difference in cash, which
129 shall apply to all deceased disability retirees from and after
130 January 1, 1953.

131 (3) Reexamination of retirees retired on account of
132 disability. Except as otherwise provided in this section, once
133 each year during the first five (5) years following retirement of
134 a member on a disability retirement allowance, and once in every

135 period of three (3) years thereafter, the board of trustees may,
136 and upon his application shall, require any disability retiree who
137 has not yet attained the age of sixty (60) years or the
138 termination age of the temporary allowance under paragraph (2)(c)
139 of this section to undergo a medical examination, such examination
140 to be made at the place of residence of the retiree or other place
141 mutually agreed upon by a physician or physicians designated by
142 the board. The board, however, in its discretion, may authorize
143 the medical board to establish reexamination schedules appropriate
144 to the medical condition of individual disability retirees.
145 Should any disability retiree who has not yet attained the age of
146 sixty (60) years or the termination age of the temporary allowance
147 under paragraph (2)(c) of this section refuse to submit to any
148 medical examination provided herein, his allowance may be
149 discontinued until his withdrawal of such refusal; and should his
150 refusal continue for one (1) year, all his rights to a disability
151 benefit shall be revoked by the board of trustees.

152 (4) If the medical board reports and certifies to the board
153 of trustees, after a comparable job analysis or other similar
154 study, that such disability retiree is engaged in, or is able to
155 engage in, a gainful occupation paying more than the difference
156 between his disability allowance, exclusive of cost of living
157 adjustments, and the average compensation, and if the board of
158 trustees concurs in such report, the disability benefit shall be
159 reduced to an amount which, together with the amount earnable by
160 him, shall equal the amount of his average compensation. If his
161 earning capacity be later changed, the amount of the * * * benefit
162 may be further modified, provided that the revised benefit shall
163 not exceed the amount originally granted. A retiree receiving a
164 disability benefit who is restored to active service at a salary
165 less than the average compensation shall not become a member of
166 the retirement system.

167 (5) (a) The board of trustees shall reduce the

168 disability allowance of any unemployed retiree whose former
169 employer offers him or her an employment position having
170 compensation that is less than the compensation for the position
171 from which he or she is retired, if the medical board determines
172 that the retiree is physically and mentally able to perform the
173 duties of the offered position and the board of trustees concurs
174 in the medical board's determination.

175 (b) The amount of the retiree's disability allowance
176 after the reduction shall be an amount which, together with the
177 amount earnable by the retiree in the offered position, will equal
178 the amount of the retiree's average compensation.

179 (c) The reduction in the retiree's disability allowance
180 shall be made whether or not the retiree accepts the employer's
181 offer of the position.

182 (6) Should a disability retiree under the age of sixty (60)
183 years or the termination age of the temporary allowance under
184 paragraph (2)(c) of this section be restored to active service at
185 a compensation not less than his average compensation, his
186 disability benefit shall cease, he shall again become a member of
187 the retirement system, and contributions shall be withheld and
188 reported. Any such prior service certificate, on the basis of
189 which his service was computed at the time of retirement, shall be
190 restored to full force and effect. In addition, upon his
191 subsequent retirement he shall be credited with all creditable
192 service as a member, but the total retirement allowance paid to
193 the retired member in his previous retirement shall be deducted
194 from his retirement reserve and taken into consideration in
195 recalculating the retirement allowance under a new option
196 selected.

197 (7) If following reexamination in accordance with the
198 provisions contained in this section, the medical board determines
199 that a retiree retired on account of disability is physically and
200 mentally able to return to the employment from which he is

201 retired, the board of trustees, upon certification of such
202 findings from the medical board, shall, after a reasonable period
203 of time, terminate the disability allowance, whether or not the
204 retiree is reemployed or seeks such re-employment. In addition,
205 if the board of trustees determines that the retiree is no longer
206 sustaining a loss of income as established by documented evidence
207 of the retiree's earned income, the eligibility for a disability
208 allowance shall terminate and the allowance terminated within a
209 reasonable period of time. In the event the retirement allowance
210 is terminated under the provisions of this section, the retiree
211 may subsequently qualify for a retirement allowance under Section
212 25-11-111 based on actual years of service credit plus credit for
213 the period during which a disability allowance was paid.

214 (8) Any current member as of June 30, 1992, who retires on a
215 disability retirement allowance after June 30, 1992, and who has
216 not elected to receive benefits under paragraph (2)(c) of this
217 section, shall relinquish all rights under the Age Discrimination
218 in Employment Act of 1967, as amended, with regard to the benefits
219 payable under this section.

220 SECTION 2. This act shall take effect and be in force from
221 and after July 1, 1999.