

By: Green, Maples

To: Appropriations

HOUSE BILL NO. 54

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE ANY MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
3 WHO IS AGGRIEVED BY THE DECISION OF THE MEDICAL BOARD OF THE
4 RETIREMENT SYSTEM REGARDING DISABILITY BENEFITS, WHO DOES NOT
5 REQUEST A HEARING WITHIN THE REQUIRED TIME, TO REAPPLY FOR
6 DISABILITY BENEFITS AFTER 90 DAYS AFTER THE END OF THE REQUIRED
7 TIME FOR REQUESTING A HEARING; AND FOR RELATED PURPOSES.

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

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

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

24 For the purposes of disability determination, the medical board
25 shall apply the following definition of disability: the inability
26 to perform the usual duties of employment or the incapacity to
27 perform such lesser duties, if any, as the employer, in its
28 discretion, may assign without material reduction in compensation,
29 or the incapacity to perform the duties of any employment covered
30 by the Public Employees' Retirement System (Section 25-11-101 et
31 seq.) that is actually offered and is within the same general
32 territorial work area, without material reduction in compensation.
33 The employer shall be required to furnish the job description and
34 duties of the member. The employer shall further certify whether
35 the employer has offered the member other duties and has complied
36 with the applicable provisions of the Americans With Disabilities
37 Act in affording reasonable accommodations which would allow the
38 employee to continue employment.

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

46 (c) If the medical board certifies that the member is
47 not mentally or physically incapacitated for the future
48 performance of duty, the member may request, within sixty (60)
49 days, a hearing before the hearing officer as provided in Section
50 25-11-120. All hearings shall be held in accordance with rules
51 and regulations adopted by the board of trustees to govern such
52 hearings. Such hearing may be closed upon the request of the
53 member. Any member who is aggrieved by the certification of the
54 medical board that the member is not mentally or physically

55 incapacitated for the future performance of duty, who does not
56 request a hearing within sixty (60) days, may reapply for a
57 disability retirement allowance under this section after ninety
58 (90) days after the end of the sixty-day period for requesting a
59 hearing.

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	66	to age 68
104	67	to age 69
105	68	to age 70
106	69 and over	one year

107 The deferred allowance shall commence when the temporary
108 allowance ceases and shall be payable for life. The deferred
109 allowance shall equal the greater of (i) the allowance that would
110 have been payable had the member continued in service to the

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

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

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

130 (3) Reexamination of retirees retired on account of
131 disability. Except as otherwise provided in this section, once
132 each year during the first five (5) years following retirement of
133 a member on a disability retirement allowance, and once in every
134 period of three (3) years thereafter, the board of trustees may,
135 and upon his application shall, require any disability retiree who
136 has not yet attained the age of sixty (60) years or the
137 termination age of the temporary allowance under paragraph (2)(c)
138 of this section to undergo a medical examination, such examination

139 to be made at the place of residence of said retiree or other
140 place mutually agreed upon by a physician or physicians designated
141 by the board. The board, however, in its discretion, may
142 authorize the medical board to establish reexamination schedules
143 appropriate to the medical condition of individual disability
144 retirees. Should any disability retiree who has not yet attained
145 the age of sixty (60) years or the termination age of the
146 temporary allowance under paragraph (2)(c) of this section refuse
147 to submit to any medical examination provided herein, his
148 allowance may be discontinued until his withdrawal of such
149 refusal; and should his refusal continue for one (1) year, all his
150 rights to a disability benefit shall be revoked by the board of
151 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 said 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) Should a disability retiree under the age of sixty (60)
168 years or the termination age of the temporary allowance under
169 paragraph (2)(c) of this section be restored to active service at
170 a compensation not less than his average compensation, his
171 disability benefit shall cease, he shall again become a member of
172 the retirement system, and contributions shall be withheld and
173 reported. Any such prior service certificate, on the basis of
174 which his service was computed at the time of retirement, shall be
175 restored to full force and effect. In addition, upon his
176 subsequent retirement he shall be credited with all creditable
177 service as a member, but the total retirement allowance paid to
178 the retired member in his previous retirement shall be deducted
179 from his retirement reserve and taken into consideration in
180 recalculating the retirement allowance under a new option
181 selected.

182 (6) If following reexamination in accordance with the
183 provisions contained in this section, the medical board determines
184 that a retiree retired on account of disability is physically and
185 mentally able to return to the employment from which he is
186 retired, the board of trustees, upon certification of such
187 findings from the medical board, shall, after a reasonable period
188 of time, terminate the disability allowance, whether or not the
189 retiree is re-employed or seeks such re-employment. In addition,
190 if the board of trustees determines that the retiree is no longer
191 sustaining a loss of income as established by documented evidence
192 of the retiree's earned income, the eligibility for a disability
193 allowance shall terminate and the allowance terminated within a
194 reasonable period of time. In the event the retirement allowance

195 is terminated under the provisions of this section, the retiree
196 may subsequently qualify for a retirement allowance under Section
197 25-11-111 based on actual years of service credit plus credit for
198 the period during which a disability allowance was paid.

199 (7) Any current member as of June 30, 1992, who retires on a
200 disability retirement allowance after June 30, 1992, and who has
201 not elected to receive benefits under paragraph (2)(c) of this
202 section, shall relinquish all rights under the Age Discrimination
203 in Employment Act of 1967, as amended, with regard to the benefits
204 payable under this section.

205 SECTION 2. This act shall take effect and be in force from
206 and after July 1, 2000.