

By: Horne, Robinson (84th)

To: Appropriations

HOUSE BILL NO. 872

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A FINDING OF TOTAL DISABILITY BY ANY STATE OR
3 FEDERAL GOVERNMENTAL AGENCY SHALL BE ACCEPTED AS TOTAL DISABILITY
4 BY THE BOARD OF TRUSTEES FOR THE PUBLIC EMPLOYEES' RETIREMENT
5 SYSTEM; AND FOR RELATED PURPOSES.

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

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

9 25-11-113. (1) (a) Upon the application of a member or his
10 employer, any active member in state service who has at least four
11 (4) years of membership service credit may be retired by the board
12 of trustees on the first of the month following the date of filing
13 such application on a disability retirement allowance, but in no
14 event shall the disability retirement allowance commence before
15 termination of state service, provided that the medical board,
16 after a medical examination, shall certify that the member is
17 mentally or physically incapacitated for the further performance
18 of duty, that such incapacity is likely to be permanent, and that
19 the member should be retired; however, the board of trustees shall
20 accept a finding of total disability * * * from the Social
21 Security Administration or any state or federal governmental
22 agency in lieu of a certification from the medical board. For the
23 purposes of disability determination, the medical board shall
24 apply the following definition of disability: the inability to
25 perform the usual duties of employment or the incapacity to
26 perform such lesser duties, if any, as the employer, in its
27 discretion, may assign without material reduction in compensation,

28 or the incapacity to perform the duties of any employment covered
29 by the Public Employees' Retirement System (Section 25-11-101 et
30 seq.) that is actually offered and is within the same general
31 territorial work area, without material reduction in compensation.
32 The employer shall be required to furnish the job description and
33 duties of the member. The employer shall further certify whether
34 the employer has offered the member other duties and has complied
35 with the applicable provisions of the Americans With Disabilities
36 Act in affording reasonable accommodations which would allow the
37 employee to continue employment.

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

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

53 (d) The medical board may request additional medical
54 evidence and/or other physicians to conduct an evaluation of the
55 member's condition. If the medical board requests additional
56 medical evidence and the member refuses the request, the
57 application shall be considered void.

58 (2) Allowance on disability retirement.

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

62 (b) Except as provided in paragraph (c) of this
63 subsection (2), an eligible member who is retired for disability
64 and who has not attained sixty (60) years of age shall receive a

65 disability benefit as computed in Section 25-11-111(d)(1) through
66 (d)(4) which shall consist of:

67 (i) A member's annuity which shall be the
68 actuarial equivalent of his accumulated contributions at the time
69 of retirement; and

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

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

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

90	Age at Disability	Duration
91	60 and earlier	to age 65
92	61	to age 66
93	62	to age 66
94	63	to age 67
95	64	to age 67
96	65	to age 68
97	66	to age 68

98 67 to age 69
99 68 to age 70
100 69 and over one year

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

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

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

124 (3) Reexamination of retirees retired on account of
125 disability. Except as otherwise provided in this section, once
126 each year during the first five (5) years following retirement of
127 a member on a disability retirement allowance, and once in every
128 period of three (3) years thereafter, the board of trustees may,
129 and upon his application shall, require any disability retiree who
130 has not yet attained the age of sixty (60) years or the

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

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

161 (5) Should a disability retiree under the age of sixty (60)
162 years or the termination age of the temporary allowance under
163 paragraph (2)(c) of this section be restored to active service at

164 a compensation not less than his average compensation, his
165 disability benefit shall cease, he shall again become a member of
166 the retirement system, and contributions shall be withheld and
167 reported. Any such prior service certificate, on the basis of
168 which his service was computed at the time of retirement, shall be
169 restored to full force and effect. In addition, upon his
170 subsequent retirement he shall be credited with all creditable
171 service as a member, but the total retirement allowance paid to
172 the retired member in his previous retirement shall be deducted
173 from his retirement reserve and taken into consideration in
174 recalculating the retirement allowance under a new option
175 selected.

176 (6) If following reexamination in accordance with the
177 provisions contained in this section, the medical board determines
178 that a retiree retired on account of disability is physically and
179 mentally able to return to the employment from which he is
180 retired, the board of trustees, upon certification of such
181 findings from the medical board, shall, after a reasonable period
182 of time, terminate the disability allowance, whether or not the
183 retiree is re-employed or seeks such re-employment. In addition,
184 if the board of trustees determines that the retiree is no longer
185 sustaining a loss of income as established by documented evidence
186 of the retiree's earned income, the eligibility for a disability
187 allowance shall terminate and the allowance terminated within a
188 reasonable period of time. In the event the retirement allowance
189 is terminated under the provisions of this section, the retiree
190 may subsequently qualify for a retirement allowance under Section
191 25-11-111 based on actual years of service credit plus credit for
192 the period during which a disability allowance was paid.

193 (7) Any current member as of June 30, 1992, who retires on a
194 disability retirement allowance after June 30, 1992, and who has
195 not elected to receive benefits under paragraph (2)(c) of this
196 section, shall relinquish all rights under the Age Discrimination

197 in Employment Act of 1967, as amended, with regard to the benefits
198 payable under this section.

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