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To: Appropriations

## HOUSE BILL NO. 1232

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT A FINDING OF TOTAL DISABILITY BY THE SOCIAL  
3 SECURITY ADMINISTRATION WILL CREATE A REBUTTABLE PRESUMPTION OF  
4 DISABILITY UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO  
5 PROVIDE THAT CLEAR AND CONVINCING EVIDENCE IS NEEDED TO OVERCOME  
6 THE PRESUMPTION; TO PROVIDE THAT ANY DETERMINATION OF DISABILITY  
7 BY THE RETIREMENT SYSTEM MUST BE SUPPORTED BY SUBSTANTIAL  
8 EVIDENCE; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

66 (2) Allowance on disability retirement.

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

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

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

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

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

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

| 98 <b>Age at Disability</b> | <b>Duration</b> |
|-----------------------------|-----------------|
| 99 60 and earlier           | to age 65       |

|     |             |           |
|-----|-------------|-----------|
| 100 | 61          | to age 66 |
| 101 | 62          | to age 66 |
| 102 | 63          | to age 67 |
| 103 | 64          | to age 67 |
| 104 | 65          | to age 68 |
| 105 | 66          | to age 68 |
| 106 | 67          | to age 69 |
| 107 | 68          | to age 70 |
| 108 | 69 and over | one year  |

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

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

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

132           (3) Reexamination of retirees retired on account of

133 disability. Except as otherwise provided in this section, once  
134 each year during the first five (5) years following retirement of  
135 a member on a disability retirement allowance, and once in every  
136 period of three (3) years thereafter, the board of trustees may,  
137 and upon his application shall, require any disability retiree who  
138 has not yet attained the age of sixty (60) years or the  
139 termination age of the temporary allowance under paragraph (2)(c)  
140 of this section to undergo a medical examination, such examination  
141 to be made at the place of residence of said retiree or other  
142 place mutually agreed upon by a physician or physicians designated  
143 by the board. The board, however, in its discretion, may  
144 authorize the medical board to establish reexamination schedules  
145 appropriate to the medical condition of individual disability  
146 retirees. Should any disability retiree who has not yet attained  
147 the age of sixty (60) years or the termination age of the  
148 temporary allowance under paragraph (2)(c) of this section refuse  
149 to submit to any medical examination provided herein, his  
150 allowance may be discontinued until his withdrawal of such  
151 refusal; and should his refusal continue for one (1) year, all his  
152 rights to a disability benefit shall be revoked by the board of  
153 trustees.

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

166 disability benefit who is restored to active service at a salary  
167 less than the average compensation shall not become a member of  
168 the retirement system.

169 (5) Should a disability retiree under the age of sixty (60)  
170 years or the termination age of the temporary allowance under  
171 paragraph (2)(c) of this section be restored to active service at  
172 a compensation not less than his average compensation, his  
173 disability benefit shall cease, he shall again become a member of  
174 the retirement system, and contributions shall be withheld and  
175 reported. Any such prior service certificate, on the basis of  
176 which his service was computed at the time of retirement, shall be  
177 restored to full force and effect. In addition, upon his  
178 subsequent retirement he shall be credited with all creditable  
179 service as a member, but the total retirement allowance paid to  
180 the retired member in his previous retirement shall be deducted  
181 from his retirement reserve and taken into consideration in  
182 recalculating the retirement allowance under a new option  
183 selected.

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

199 25-11-111 based on actual years of service credit plus credit for  
200 the period during which a disability allowance was paid.

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

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