

By: Representatives Cummings, Dedeaux,
Montgomery (15th), Moss, Robinson (84th),
Rushing, Smith (35th)

To: Appropriations

HOUSE BILL NO. 1186

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	Age at Disability	Duration
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, 2001.