HOUSE BILL NO. 1189

AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A FINDING OF TOTAL DISABILITY BY THE SOCIAL SECURITY ADMINISTRATION WILL CREATE A REBUTTABLE PRESUMPTION OF DISABILITY UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO PROVIDE THAT CLEAR AND CONVINCING EVIDENCE IS NEEDED TO OVERCOME THE PRESUMPTION; AND FOR RELATED PURPOSES.

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

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

25-11-113. (1) (a) Upon the application of a member or his employer, any active member in state service who has at least four (4) years of membership service credit may be retired by the board of trustees on the first of the month following the date of filing the application on a disability retirement allowance, but in no event shall the disability retirement allowance begin before termination of state service, provided that the medical board, after a medical examination, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; however, the board of trustees may accept a disability medical determination from the Social Security Administration in lieu of a certification from the medical board. A finding of total disability by the Social Security Administration will create a rebuttable presumption of disability; however, the presumption may be overcome by clear and convincing evidence. For the purposes of disability determination, the medical board shall apply the following definition of disability: the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer,
in its discretion, may assign without material reduction in
compensation, or the incapacity to perform the duties of any
employment covered by the Public Employees' Retirement System
(Section 25-11-101 et seq.) that is actually offered and is within
the same general territorial work area, without material reduction
in compensation. The employer shall be required to furnish the
job description and duties of the member. The employer shall
further certify whether the employer has offered the member other
duties and has complied with the applicable provisions of the
Americans With Disabilities Act in affording reasonable
accommodations that would allow the employee to continue
employment.

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

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

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

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

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

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

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

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

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

<table>
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<tr>
<th>Age at Disability</th>
<th>Duration</th>
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<td>60 and earlier</td>
<td>to age 65</td>
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The deferred allowance shall commence when the temporary allowance ceases and shall be payable for life. The deferred allowance shall equal the greater of (i) the allowance that would have been payable had the member continued in service to the termination age of the temporary allowance, but no more than forty percent (40%) of average compensation, or (ii) the accrued benefit based on actual service at the time of disability. The deferred allowance as determined at the time of disability shall be adjusted in accordance with Section 25-11-112 for the period during which the temporary annuity is payable. In no case shall a member receive less than Ten Dollars ($10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected.

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

(e) If a disability retiree who has not selected an option under Section 25-11-115 dies before being repaid in disability benefits the sum of his total contributions, then his named beneficiary shall receive the difference in cash, which shall apply to all deceased disability retirees from and after January 1, 1953.
(3) Reexamination of retirees retired on account of disability. Except as otherwise provided in this section, once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every period of three (3) years thereafter, the board of trustees may, and upon his application shall, require any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under paragraph (2)(c) of this section to undergo a medical examination, the examination to be made at the place of residence of the retiree or other place mutually agreed upon by a physician or physicians designated by the board. The board, however, in its discretion, may authorize the medical board to establish reexamination schedules appropriate to the medical condition of individual disability retirees. If any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under paragraph (2)(c) of this section refuses to submit to any medical examination provided in this subsection, his allowance may be discontinued until his withdrawal of that refusal; and if his refusal continues for one (1) year, all his rights to a disability benefit shall be revoked by the board of trustees.

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

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

(6) If following reexamination in accordance with the provisions contained in this section, the medical board determines that a retiree retired on account of disability is physically and mentally able to return to the employment from which he is retired, the board of trustees, upon certification of those findings from the medical board, shall, after a reasonable period of time, terminate the disability allowance, whether or not the retiree is re-employed or seeks that re-employment. In addition, if the board of trustees determines that the retiree is no longer sustaining a loss of income as established by documented evidence of the retiree's earned income, the eligibility for a disability allowance shall terminate and the allowance terminated within a reasonable period of time. If the retirement allowance is terminated under the provisions of this section, the retiree may subsequently qualify for a retirement allowance under Section
ST: Disability; Social Security
Administration's finding of disability creates rebuttable presumption of under PERS.