

By: Senator(s) Jackson

To: Finance

SENATE BILL NO. 2836

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES'  
3 RETIREMENT SYSTEM TO ACCEPT A FINDING OF TOTAL DISABILITY BY THE  
4 SOCIAL SECURITY ADMINISTRATION IN DETERMINING THE ELIGIBILITY OF A  
5 MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR DISABILITY  
6 RETIREMENT; AND FOR RELATED PURPOSES.

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

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

10 25-11-113. (1) (a) Upon the application of a member or his  
11 employer, any active member in state service who has at least four  
12 (4) years of membership service credit may be retired by the board  
13 of trustees on the first of the month following the date of filing  
14 such application on a disability retirement allowance, but in no  
15 event shall the disability retirement allowance commence before  
16 termination of state service, provided that the medical board,  
17 after a medical examination, shall certify that the member is  
18 mentally or physically incapacitated for the further performance  
19 of duty, that such incapacity is likely to be permanent, and that  
20 the member should be retired; however, the board of trustees shall  
21 accept a finding of total disability \* \* \* by the Social Security  
22 Administration in lieu of a certification from the medical board.  
23 For the purposes of disability determination, the medical board  
24 shall apply the following definition of disability: the inability  
25 to 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 reemployed or seeks such reemployment. In addition, if  
184 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, 2002.

