AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972, TO REQUIRE THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO ACCEPT A FINDING OF TOTAL DISABILITY BY THE SOCIAL SECURITY ADMINISTRATION IN DETERMINING THE ELIGIBILITY OF A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR DISABILITY RETIREMENT; 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 such application on a disability retirement allowance, but in no event shall the disability retirement allowance commence before termination of state service, provided that the medical board, after an evaluation of medical evidence that may or may not include an actual physical examination by the medical board, shall certify that the member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that the member should be retired; however, the board of trustees shall accept a finding of total disability by the Social Security Administration in lieu of a certification from the medical board. 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 which 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membership service credit, who has withdrawn from active state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) Any member who is or becomes eligible for service
retirement benefits under Section 25-11-111 while pursuing a
disability retirement allowance under this section or Section
25-11-114 may elect to receive a service retirement allowance
pending a final determination on eligibility for a disability
retirement allowance or withdrawal of the application for the
disability retirement allowance. In such a case, an application
for a disability retirement allowance must be on file with the
system before the commencement of a service retirement allowance.
If the application is approved, the option selected and
beneficiary designated on the retirement application shall be used
to determine the disability retirement allowance. If the
application is not approved or if the application is withdrawn,
the service retirement allowance shall continue to be paid in
accordance with the option selected. No person may apply for a
disability retirement allowance after the person begins to receive
a service retirement allowance.

(d) 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 to govern such hearings.
Such hearing may be closed upon the request of the member.

(e) 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 had the member continued in
service to the age of sixty (60) years, which shall apply to the
allowance for disability retirement paid to retirees receiving
such 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:

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<thead>
<tr>
<th>Age at Disability</th>
<th>Duration</th>
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<tbody>
<tr>
<td>60 and earlier</td>
<td>to age 65</td>
</tr>
<tr>
<td>61</td>
<td>to age 66</td>
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<tr>
<td>62</td>
<td>to age 66</td>
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<td>63</td>
<td>to age 67</td>
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<td>67</td>
<td>to age 69</td>
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<tr>
<td>68</td>
<td>to age 70</td>
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<tr>
<td>69 and over</td>
<td>one year</td>
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</table>

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) Should a disability retiree who has not selected an
option under Section 25-11-115 die 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, such 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.
Should 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 refuse to submit to any
medical examination provided herein, his allowance may be
discontinued until his withdrawal of such refusal; and should his refusal continue 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 such 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 such report, the disability benefit shall be reduced to an amount which, together with the amount earnable by him, shall equal the amount of his average compensation. If his earning capacity be 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) Should 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 be 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 such findings from the medical board, shall, after a reasonable period of time, terminate the disability allowance, whether or not the retiree is reemployed or seeks such reemployment. 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. In the event the retirement allowance is terminated under the provisions of this section, the retiree may subsequently qualify for a retirement allowance under Section 25-11-111 based on actual years of service credit plus credit for the period during which a disability allowance was paid.

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.