

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 268

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO REVISE REQUIREMENTS FOR REFILEING CLAIMS FOR DISABILITY
3 RETIREMENT ALLOWANCES UNDER THE PUBLIC EMPLOYEES' RETIREMENT
4 SYSTEM; AND FOR RELATED PURPOSES.

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

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

8 25-11-113. (1) (a) Upon the application of a member or his
9 employer, any active member in state service who has at least four
10 (4) years of membership service credit may be retired by the board
11 of trustees on the first of the month following the date of filing
12 such application on a disability retirement allowance, but in no
13 event shall the disability retirement allowance commence before
14 termination of state service, provided that the medical board,
15 after an evaluation of medical evidence that may or may not
16 include an actual physical examination by the medical board, shall
17 certify that the member is mentally or physically incapacitated
18 for the further performance of duty, that such incapacity is
19 likely to be permanent, and that the member should be retired;
20 however, the board of trustees may accept a disability medical
21 determination from the Social Security Administration in lieu of a
22 certification from the medical board. For the purposes of
23 disability determination, the medical board shall apply the
24 following definition of disability: the inability to perform the
25 usual duties of employment or the incapacity to perform such
26 lesser duties, if any, as the employer, in its discretion, may
27 assign without material reduction in compensation, or the
28 incapacity to perform the duties of any employment covered by the

29 Public Employees' Retirement System (Section 25-11-101 et seq.)
30 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) Any member who is or becomes eligible for service
46 retirement benefits under Section 25-11-111 while pursuing a
47 disability retirement allowance under this section or Section
48 25-11-114 may elect to receive a service retirement allowance
49 pending a final determination on eligibility for a disability
50 retirement allowance or withdrawal of the application for the
51 disability retirement allowance. In such a case, an application
52 for a disability retirement allowance must be on file with the
53 system before the commencement of a service retirement allowance.
54 If the application is approved, the option selected and
55 beneficiary designated on the retirement application shall be used
56 to determine the disability retirement allowance. If the
57 application is not approved or if the application is withdrawn,
58 the service retirement allowance shall continue to be paid in
59 accordance with the option selected. No person may apply for a
60 disability retirement allowance after the person begins to receive
61 a service retirement allowance.

62 (d) If the medical board certifies that the member is
63 not mentally or physically incapacitated for the future
64 performance of duty, the member may request, within sixty (60)
65 days, a hearing before the hearing officer as provided in Section
66 25-11-120. All hearings shall be held in accordance with rules
67 and regulations adopted by the board to govern such hearings.
68 Such hearing may be closed upon the request of the member.

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

74 (f) If the board denies an application for disability
75 retirement allowance, the member may refile his application for
76 disability retirement one hundred twenty (120) days after such
77 denial if:

78 (i) The member did not appeal the determination
79 denying the disability retirement allowance; and

80 (ii) The member's disability continues or worsens.

81 (2) Allowance on disability retirement.

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

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

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

93 (ii) An employer's annuity equal to the amount
94 that would have been payable as a retirement allowance for both

95 membership service and prior service had the member continued in
96 service to the age of sixty (60) years, which shall apply to the
97 allowance for disability retirement paid to retirees receiving
98 such allowance upon and after April 12, 1977. This employer's
99 annuity shall be computed on the basis of the average "earned
100 compensation" as defined in Section 25-11-103.

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

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

113	Age at Disability	Duration
114	60 and earlier	to age 65
115	61	to age 66
116	62	to age 66
117	63	to age 67
118	64	to age 67
119	65	to age 68
120	66	to age 68
121	67	to age 69
122	68	to age 70
123	69 and over	one year

124 The deferred allowance shall commence when the temporary
125 allowance ceases and shall be payable for life. The deferred
126 allowance shall equal the greater of (i) the allowance that would
127 have been payable had the member continued in service to the

128 termination age of the temporary allowance, but no more than forty
129 percent (40%) of average compensation, or (ii) the accrued benefit
130 based on actual service at the time of disability. The deferred
131 allowance as determined at the time of disability shall be
132 adjusted in accordance with Section 25-11-112 for the period
133 during which the temporary annuity is payable. In no case shall a
134 member receive less than Ten Dollars (\$10.00) per month for each
135 year of service and proportionately for each quarter year thereof
136 reduced for the option selected.

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

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

147 (3) Reexamination of retirees retired on account of
148 disability. Except as otherwise provided in this section, once
149 each year during the first five (5) years following retirement of
150 a member on a disability retirement allowance, and once in every
151 period of three (3) years thereafter, the board of trustees may,
152 and upon his application shall, require any disability retiree who
153 has not yet attained the age of sixty (60) years or the
154 termination age of the temporary allowance under paragraph (2)(c)
155 of this section to undergo a medical examination, such examination
156 to be made at the place of residence of the retiree or other place
157 mutually agreed upon by a physician or physicians designated by
158 the board. The board, however, in its discretion, may authorize
159 the medical board to establish reexamination schedules appropriate
160 to the medical condition of individual disability retirees.

161 Should any disability retiree who has not yet attained the age of
162 sixty (60) years or the termination age of the temporary allowance
163 under paragraph (2)(c) of this section refuse to submit to any
164 medical examination provided herein, his allowance may be
165 discontinued until his withdrawal of such refusal; and should his
166 refusal continue for one (1) year, all his rights to a disability
167 benefit shall be revoked by the board of trustees.

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

183 (5) Should a disability retiree under the age of sixty (60)
184 years or the termination age of the temporary allowance under
185 paragraph (2)(c) of this section be restored to active service at
186 a compensation not less than his average compensation, his
187 disability benefit shall cease, he shall again become a member of
188 the retirement system, and contributions shall be withheld and
189 reported. Any such prior service certificate, on the basis of
190 which his service was computed at the time of retirement, shall be
191 restored to full force and effect. In addition, upon his
192 subsequent retirement he shall be credited with all creditable
193 service as a member, but the total retirement allowance paid to

194 the retired member in his previous retirement shall be deducted
195 from his retirement reserve and taken into consideration in
196 recalculating the retirement allowance under a new option
197 selected.

198 (6) If following reexamination in accordance with the
199 provisions contained in this section, the medical board determines
200 that a retiree retired on account of disability is physically and
201 mentally able to return to the employment from which he is
202 retired, the board of trustees, upon certification of such
203 findings from the medical board, shall, after a reasonable period
204 of time, terminate the disability allowance, whether or not the
205 retiree is reemployed or seeks such reemployment. In addition, if
206 the board of trustees determines that the retiree is no longer
207 sustaining a loss of income as established by documented evidence
208 of the retiree's earned income, the eligibility for a disability
209 allowance shall terminate and the allowance terminated within a
210 reasonable period of time. In the event the retirement allowance
211 is terminated under the provisions of this section, the retiree
212 may subsequently qualify for a retirement allowance under Section
213 25-11-111 based on actual years of service credit plus credit for
214 the period during which a disability allowance was paid.

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

221 **SECTION 2.** This act shall take effect and be in force from
222 and after July 1, 2004.