

By: Representative Cummings

To: Appropriations

HOUSE BILL NO. 1519

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT CERTIFICATIONS OF DISABILITY UNDER THE PUBLIC
3 EMPLOYEES' RETIREMENT SYSTEM SHALL BE MADE BY A DISABILITY HEARING
4 OFFICER INSTEAD OF BY A MEDICAL BOARD; TO PROVIDE THAT A FINDING
5 OF TOTAL DISABILITY BY THE SOCIAL SECURITY ADMINISTRATION WILL
6 CREATE A REBUTTABLE PRESUMPTION OF DISABILITY UNDER THE PUBLIC
7 EMPLOYEES' RETIREMENT SYSTEM; TO PROVIDE THAT CLEAR AND CONVINCING
8 EVIDENCE IS NEEDED TO OVERCOME THE PRESUMPTION; TO AMEND SECTION
9 25-11-120, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS
10 AGGRIEVED BY A DETERMINATION OF THE DISABILITY HEARING OFFICER MAY
11 REQUEST A HEARING BEFORE A DISABILITY APPEALS OFFICER; TO AMEND
12 SECTIONS 25-11-103, 25-11-114 AND 25-11-119, MISSISSIPPI CODE OF
13 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED
14 PURPOSES.

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

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

18 25-11-113. (1) (a) Upon the application of a member or his
19 employer, any active member in state service who has at least four
20 (4) years of membership service credit may be retired by the board
21 of trustees on the first of the month following the date of filing
22 the application on a disability retirement allowance, but in no
23 event shall the disability retirement allowance begin before
24 termination of state service, provided that the disability hearing
25 officer, after an evaluation of medical evidence that may or may
26 not include an actual physical examination, certifies that the
27 member is mentally or physically incapacitated for the further
28 performance of duty, that the incapacity is likely to be
29 permanent, and that the member should be retired; however, the
30 board of trustees may accept a disability medical determination
31 from the Social Security Administration in lieu of a certification
32 from the disability hearing officer. A finding of total
33 disability by the Social Security Administration will create a

34 rebuttable presumption of disability; however, the presumption may
35 be overcome by clear and convincing evidence. For the purposes of
36 disability determination, the disability hearing officer shall
37 apply the following definition of disability: the inability to
38 perform the usual duties of employment or the incapacity to
39 perform such lesser duties, if any, as the employer, in its
40 discretion, may assign without material reduction in compensation,
41 or the incapacity to perform the duties of any employment covered
42 by the Public Employees' Retirement System (Section 25-11-101 et
43 seq.) that is actually offered and is within the same general
44 territorial work area, without material reduction in compensation.
45 The employer shall be required to furnish the job description and
46 duties of the member. The employer shall further certify whether
47 the employer has offered the member other duties and has complied
48 with the applicable provisions of the Americans With Disabilities
49 Act in affording reasonable accommodations that would allow the
50 employee to continue employment. If a member is required or
51 ordered to have a medical examination under this section, the
52 member shall not be required to travel more than one hundred (100)
53 miles from his or her home to receive the medical examination.

54 (b) The disability hearing officer under this section
55 shall be a hearing officer of the State Personnel Board who is an
56 attorney, and the Public Employees' Retirement System shall pay
57 the disability hearing officer for his services.

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

65 (d) Any member who is or becomes eligible for service
66 retirement benefits under Section 25-11-111 while pursuing a

67 disability retirement allowance under this section or Section
68 25-11-114 may elect to receive a service retirement allowance
69 pending a final determination on eligibility for a disability
70 retirement allowance or withdrawal of the application for the
71 disability retirement allowance. In such a case, an application
72 for a disability retirement allowance must be on file with the
73 system before the beginning of a service retirement allowance. If
74 the application is approved, the option selected and beneficiary
75 designated on the retirement application shall be used to
76 determine the disability retirement allowance. If the application
77 is not approved or if the application is withdrawn, the service
78 retirement allowance shall continue to be paid in accordance with
79 the option selected. No person may apply for a disability
80 retirement allowance after the person begins to receive a service
81 retirement allowance.

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

90 (f) The disability hearing officer may request
91 additional medical evidence and/or other physicians to conduct an
92 evaluation of the member's condition. If the disability hearing
93 officer requests additional medical evidence and the member
94 refuses the request, the application shall be considered void.

95 (2) Allowance on disability retirement.

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

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

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

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

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

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

Age at Disability	Duration
60 and earlier	to age 65
61	to age 66
62	to age 66
63	to age 67

132	64	to age 67
133	65	to age 68
134	66	to age 68
135	67	to age 69
136	68	to age 70
137	69 and over	one year

138 The deferred allowance shall commence when the temporary
139 allowance ceases and shall be payable for life. The deferred
140 allowance shall equal the greater of (i) the allowance that would
141 have been payable had the member continued in service to the
142 termination age of the temporary allowance, but no more than forty
143 percent (40%) of average compensation, or (ii) the accrued benefit
144 based on actual service at the time of disability. The deferred
145 allowance as determined at the time of disability shall be
146 adjusted in accordance with Section 25-11-112 for the period
147 during which the temporary annuity is payable. In no case shall a
148 member receive less than Ten Dollars (\$10.00) per month for each
149 year of service and proportionately for each quarter year thereof
150 reduced for the option selected.

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

155 (e) If a disability retiree who has not selected an
156 option under Section 25-11-115 dies before being repaid in
157 disability benefits the sum of his total contributions, then his
158 named beneficiary shall receive the difference in cash, which
159 shall apply to all deceased disability retirees from and after
160 January 1, 1953.

161 (3) Reexamination of retirees retired on account of
162 disability. Except as otherwise provided in this section, once
163 each year during the first five (5) years following retirement of
164 a member on a disability retirement allowance, and once in every

165 period of three (3) years thereafter, the board of trustees may,
166 and upon his application shall, require any disability retiree who
167 has not yet attained the age of sixty (60) years or the
168 termination age of the temporary allowance under paragraph (2)(c)
169 of this section to undergo a medical examination, the examination
170 to be made at the place of residence of the retiree or other place
171 mutually agreed upon by a physician or physicians designated by
172 the board. The board, however, in its discretion, may authorize
173 the disability hearing officer to establish reexamination
174 schedules appropriate to the medical condition of individual
175 disability retirees. If any disability retiree who has not yet
176 attained the age of sixty (60) years or the termination age of the
177 temporary allowance under paragraph (2)(c) of this section refuses
178 to submit to any medical examination provided in this subsection,
179 his allowance may be discontinued until his withdrawal of that
180 refusal; and if his refusal continues for one (1) year, all his
181 rights to a disability benefit shall be revoked by the board of
182 trustees.

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

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

213 (6) If following reexamination in accordance with the
214 provisions contained in this section, the disability hearing
215 officer determines that a retiree retired on account of disability
216 is physically and mentally able to return to the employment from
217 which he is retired, the board of trustees, upon certification of
218 those findings from the disability hearing officer, shall, after a
219 reasonable period of time, terminate the disability allowance,
220 whether or not the retiree is reemployed or seeks that
221 reemployment. In addition, if the board of trustees determines
222 that the retiree is no longer sustaining a loss of income as
223 established by documented evidence of the retiree's earned income,
224 the eligibility for a disability allowance shall terminate and the
225 allowance terminated within a reasonable period of time. If the
226 retirement allowance is terminated under the provisions of this
227 section, the retiree may later qualify for a retirement allowance
228 under Section 25-11-111 based on actual years of service credit
229 plus credit for the period during which a disability allowance was
230 paid.

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

237 **SECTION 2.** Section 25-11-120, Mississippi Code of 1972, is
238 amended as follows:

239 25-11-120. (1) Any individual aggrieved by an
240 administrative determination * * * relating to the eligibility for
241 or payment of benefits other than disability benefits, or the
242 calculation of creditable service or other similar matters
243 relating to the Public Employees' Retirement System or any other
244 retirement system or program administered by the board, may
245 request a hearing before a hearing officer designated by the
246 board. Those hearings shall be conducted in accordance with rules
247 and regulations adopted by the board and formal rules of evidence
248 shall not apply. The hearing officer is authorized to administer
249 oaths, hear testimony of witnesses and receive documentary and
250 other evidence. * * * After the hearing and the receipt of any
251 additional medical evidence requested by the hearing officer, the
252 hearing officer shall certify the record to the board, which shall
253 include the hearing officer's proposed statement of facts,
254 conclusions of law and recommendation. The record may include a
255 taped recording of the proceedings of the hearing in lieu of a
256 transcribed copy of the proceedings. The board shall receive the
257 record and make its determination based solely on matters
258 contained in the record.

259 (2) Any individual aggrieved by a determination of the
260 disability hearing officer under Section 25-11-113 may request a
261 hearing before the disability appeals officer. The disability
262 appeals officer shall be a hearing officer of the Employee Appeals
263 Board of the State Personnel Board who is an attorney, and the

264 Public Employees' Retirement System shall pay the disability
265 appeals officer for his services. Those hearings shall be
266 conducted in accordance with rules and regulations adopted by the
267 board and formal rules of evidence shall not apply. The
268 disability appeals officer is authorized to administer oaths, hear
269 testimony of witnesses and receive documentary and other evidence.
270 The disability appeals officer shall have the authority to defer a
271 decision in order to request a medical evaluation or test or
272 additional existing medical records not previously furnished by
273 the claimant. After the hearing and the receipt of any additional
274 medical evidence requested by the disability appeals officer, the
275 disability appeals officer shall certify the record to the board,
276 which shall include the disability appeals officer's proposed
277 statement of facts, conclusions of law and recommendation. The
278 record may include a taped recording of the proceedings of the
279 hearing in lieu of a transcribed copy of the proceedings. The
280 board shall receive the record and make its determination based
281 solely on matters contained in the record.

282 (3) Any individual aggrieved by the determination of the
283 board may appeal to the Circuit Court of the First Judicial
284 District of Hinds County, Mississippi, in accordance with the
285 Uniform Circuit Court Rules governing appeals to the circuit court
286 in civil cases. That appeal shall be made solely on the record
287 before the board and this procedure shall be the exclusive method
288 of appealing determinations of the board.

289 (3) The board is authorized to appoint a committee of the
290 board to serve as hearing officer under subsection (1) of this
291 section or to employ or contract with qualified personnel to
292 perform the duties of hearing officer and court reporter as may be
293 necessary for conducting, recording and transcribing those
294 hearings. The board may assess and collect fees to offset costs
295 related to the hearings under subsection (1) or (2) of this

296 section. Those fees shall be deposited to the credit of the
297 Public Employees' Retirement System.

298 **SECTION 3.** Section 25-11-103, Mississippi Code of 1972, is
299 amended as follows:

300 25-11-103. The following words and phrases as used in
301 Articles 1 and 3, unless a different meaning is plainly required
302 by the context, * * * have the following meanings:

303 (a) "Accumulated contributions" * * * means the sum of
304 all the amounts deducted from the compensation of a member and
305 credited to his individual account in the annuity savings account,
306 together with regular interest thereon as provided in Section
307 25-11-123.

308 (b) "Actuarial cost" * * * means the amount of funds
309 presently required to provide future benefits as determined by the
310 board based on applicable tables and formulas provided by the
311 actuary.

312 (c) "Actuarial equivalent" * * * means a benefit of
313 equal value to the accumulated contributions, annuity or benefit,
314 as the case may be, when computed upon the basis of such mortality
315 tables as * * * adopted by the board of trustees, and regular
316 interest.

317 (d) "Actuarial tables" * * * means such tables of
318 mortality and rates of interest as * * * adopted by the board in
319 accordance with the recommendation of the actuary.

320 (e) "Agency" * * * means any governmental body
321 employing persons in the state service.

322 (f) "Average compensation" * * * means the average of
323 the four (4) highest years of earned compensation reported for an
324 employee in a fiscal or calendar year period, or combination
325 thereof that do not overlap, or the last forty-eight (48)
326 consecutive months of earned compensation reported for an
327 employee. The four (4) years need not be successive or joined
328 years of service. In no case shall the average compensation so

329 determined be in excess of One Hundred Fifty Thousand Dollars
330 (\$150,000.00). In computing the average compensation, any amount
331 paid in a lump sum for personal leave shall be included in the
332 calculation to the extent that the amount does not exceed an
333 amount that is equal to thirty (30) days of earned compensation
334 and to the extent that it does not cause the employees' earned
335 compensation to exceed the maximum reportable amount specified in
336 Section 25-11-103(k); however, this thirty-day limitation shall
337 not prevent the inclusion in the calculation of leave earned under
338 federal regulations before July 1, 1976, and frozen as of that
339 date as referred to in Section 25-3-99. Only the amount of lump
340 sum pay for personal leave due and paid upon the death of a member
341 attributable for up to one hundred fifty (150) days shall be used
342 in the deceased member's average compensation calculation in
343 determining the beneficiary's benefits. In computing the average
344 compensation, no amounts shall be used that are in excess of the
345 amount on which contributions were required and paid. If any
346 member who is or has been granted any increase in annual salary or
347 compensation of more than eight percent (8%) retires within
348 twenty-four (24) months from the date that the increase becomes
349 effective, then the board shall exclude that part of the increase
350 in salary or compensation that exceeds eight percent (8%) in
351 calculating that member's average compensation for retirement
352 purposes. The board may enforce this provision by rule or
353 regulation. However, increases in compensation in excess of eight
354 percent (8%) per year granted within twenty-four (24) months of
355 the date of retirement may be included in the calculation of
356 average compensation if satisfactory proof is presented to the
357 board showing that the increase in compensation was the result of
358 an actual change in the position held or services rendered, or
359 that the compensation increase was authorized by the State
360 Personnel Board or was increased as a result of statutory
361 enactment, and the employer furnishes an affidavit stating that

362 the increase granted within the last twenty-four (24) months was
363 not contingent on a promise or agreement of the employee to
364 retire. Nothing in Section 25-3-31 shall affect the calculation
365 of the average compensation of any member for the purposes of this
366 article. The average compensation of any member who retires
367 before July 1, 1992, shall not exceed the annual salary of the
368 Governor.

369 (g) "Beneficiary" * * * means any person entitled to
370 receive a retirement allowance, an annuity or other benefit as
371 provided by Articles 1 and 3. In the event of the death * * *
372 before retirement of any member whose spouse and/or children are
373 not entitled to a retirement allowance on the basis that the
374 member has less than four (4) years of service credit and/or has
375 not been married for a minimum of one (1) year or the spouse has
376 waived his or her entitlement to a retirement allowance under
377 Section 25-11-114, the lawful spouse of a member at the time of
378 the death of the member shall be the beneficiary of the member
379 unless the member has designated another beneficiary after the
380 date of marriage in writing, and filed that writing in the office
381 of the executive director of the board of trustees. No
382 designation or change of beneficiary shall be made in any other
383 manner.

384 (h) "Board" * * * means the board of trustees provided
385 in Section 25-11-15 to administer the retirement system * * *
386 created under this article.

387 (i) "Creditable service" * * * means "prior service,"
388 "retroactive service" and all lawfully credited unused leave not
389 exceeding the accrual rates and limitations provided in Section
390 25-3-91 et seq., as of the date of withdrawal from service plus
391 "membership service" for which credit is allowable as provided in
392 Section 25-11-109. Except to limit creditable service reported to
393 the system for the purpose of computing an employee's retirement
394 allowance or annuity or benefits provided in this article, nothing

395 in this paragraph shall limit or otherwise restrict the power of
396 the governing authority of a municipality or other political
397 subdivision of the state to adopt such vacation and sick leave
398 policies as it deems necessary.

399 (j) "Child" means either a natural child of the member,
400 a child that has been made a child of the member by applicable
401 court action before the death of the member, or a child under the
402 permanent care of the member at the time of the latter's death,
403 which permanent care status shall be determined by evidence
404 satisfactory to the board.

405 (k) "Earned compensation" * * * means the full amount
406 earned by an employee for a given pay period including any
407 maintenance furnished up to a maximum of One Hundred Fifty
408 Thousand Dollars (\$150,000.00) per year, and proportionately for
409 less than one (1) year of service. The value of that maintenance
410 when not paid in money shall be fixed by the employing state
411 agency, and, in case of doubt, by the board of trustees as defined
412 in Section 25-11-15. In any case, earned compensation shall be
413 limited to the regular periodic compensation paid, exclusive of
414 litigation fees, bond fees, and other similar extraordinary
415 nonrecurring payments. In addition, any member in a covered
416 position, as defined by Public Employees' Retirement System laws
417 and regulations, who is also employed by another covered agency or
418 political subdivision shall have the earnings of that additional
419 employment reported to the Public Employees' Retirement System
420 regardless of whether the additional employment is sufficient in
421 itself to be a covered position. In addition, computation of
422 earned compensation shall be governed by the following:

423 (i) In the case of constables, the net earnings
424 from their office after deduction of expenses shall apply, except
425 that in no case shall earned compensation be less than the total
426 direct payments made by the state or governmental subdivisions to
427 the official.

431 (iii) In the case of members of the State
432 Legislature, all remuneration or amounts paid, except mileage
433 allowance, shall apply.

434 (iv) The amount by which an eligible employee's
435 salary is reduced under a salary reduction agreement authorized
436 under Section 25-17-5 shall be included as earned compensation
437 under this paragraph, provided this inclusion does not conflict
438 with federal law, including federal regulations and federal
439 administrative interpretations under the federal law, pertaining
440 to the Federal Insurance Contributions Act or to Internal Revenue
441 Code Section 125 cafeteria plans.

448 (vi) The maximum salary applicable for retirement
449 purposes before July 1, 1992, shall be the salary of the Governor.

450 (vii) Nothing in Section 25-3-31 shall affect the
451 determination of the earned compensation of any member for the
452 purposes of this article.

453 (1) "Employee" means any person legally occupying a
454 position in the state service, and shall include the employees of
455 the retirement system created under this article.

461 administrator of the Public Employees' Retirement System and all
462 systems under the management of the board of trustees. Wherever
463 the term "Executive Secretary of the Public Employees' Retirement
464 System" or "executive secretary" appears in this article or in any
465 other provision of law, it shall be construed to mean the
466 Executive Director of the Public Employees' Retirement System.

467 (o) "Fiscal year" * * * means the period beginning on
468 July 1 of any year and ending on June 30 of the next succeeding
469 year.

470 * * *

471 (p) "Member" * * * means any person included in the
472 membership of the system as provided in Section 25-11-105.

473 (q) "Membership service" * * * means service as an
474 employee rendered while a member of the retirement system.

475 (r) "Position" means any office or any employment in
476 the state service, or two (2) or more of them, the duties of which
477 call for services to be rendered by one (1) person, including
478 positions jointly employed by federal and state agencies
479 administering federal and state funds. The employer shall
480 determine upon initial employment and during the course of
481 employment of an employee who does not meet the criteria for
482 coverage in the Public Employees' Retirement System based on the
483 position held, whether the employee is or becomes eligible for
484 coverage in the Public Employees' Retirement System based upon any
485 other employment in a covered agency or political subdivision. If
486 or when the employee meets the eligibility criteria for coverage
487 in the other position, then the employer must withhold
488 contributions and report wages from the noncovered position in
489 accordance with the provisions for reporting of earned
490 compensation. Failure to deduct and report those contributions
491 shall not relieve the employee or employer of liability thereof.
492 The board shall adopt such rules and regulations as necessary to
493 implement and enforce this provision.

494 (s) "Prior service" * * * means service rendered before
495 February 1, 1953, for which credit is allowable under Sections
496 25-11-105 and 25-11-109, and which shall allow prior service for
497 any person who is now or becomes a member of the Public Employees'
498 Retirement System and who does contribute to the system for a
499 minimum period of four (4) years.

500 (t) "Regular interest" * * * means interest compounded
501 annually at such a rate as * * * determined by the board in
502 accordance with Section 25-11-121.

503 (u) "Retirement allowance" * * * means an annuity for
504 life as provided in this article, payable each year in twelve (12)
505 equal monthly installments beginning as of the date fixed by the
506 board. The retirement allowance shall be calculated in accordance
507 with Section 25-11-111. However, any spouse who received a spouse
508 retirement benefit in accordance with Section 25-11-111(d) before
509 March 31, 1971, and those benefits were terminated because of
510 eligibility for a social security benefit, may again receive his
511 spouse retirement benefit from and after making application with
512 the board of trustees to reinstate the spouse retirement benefit.

513 (v) "Retroactive service" * * * means service rendered
514 after February 1, 1953, for which credit is allowable under
515 Section 25-11-105(b) and Section 25-11-105(k).

516 (w) "System" * * * means the Public Employees'
517 Retirement System of Mississippi established and described in
518 Section 25-11-101.

519 (x) "State" * * * means the State of Mississippi or any
520 political subdivision thereof or instrumentality of the state.

521 (y) "State service" * * * means all offices and
522 positions of trust or employment in the employ of the state, or
523 any political subdivision or instrumentality of the state, that
524 elect to participate as provided by Section 25-11-105(f),
525 including the position of elected or fee officials of the counties
526 and their deputies and employees performing public services or any

527 department, independent agency, board or commission thereof, and
528 * * * also includes all offices and positions of trust or
529 employment in the employ of joint state and federal agencies
530 administering state and federal funds and service rendered by
531 employees of the public schools. Effective July 1, 1973, all
532 nonprofessional public school employees, such as bus drivers,
533 janitors, maids, maintenance workers and cafeteria employees,
534 shall have the option to become members in accordance with Section
535 25-11-105(b), and shall be eligible to receive credit for services
536 before July 1, 1973, provided that the contributions and interest
537 are paid by the employee in accordance with that section; in
538 addition, the county or municipal separate school district may pay
539 the employer contribution and pro rata share of interest of the
540 retroactive service from available funds. From and after July 1,
541 1998, retroactive service credit shall be purchased at the
542 actuarial cost in accordance with Section 25-11-105(b).

543 (z) "Withdrawal from service" or "termination from
544 service" * * * means complete severance of employment in the state
545 service of any member by resignation, dismissal or discharge.

546 (aa) The masculine pronoun, wherever used, * * *
547 includes the feminine pronoun.

548 **SECTION 4.** Section 25-11-114, Mississippi Code of 1972, is
549 amended as follows:

550 25-11-114. (1) The applicable benefits provided in
551 subsections (2) and (3) of this section shall be paid to eligible
552 beneficiaries of any member who has completed four (4) or more
553 years of creditable service and who dies before retirement and who
554 has not filed a Pre-Retirement Optional Retirement Form as
555 provided in Section 25-11-111.

556 (2) (a) The member's surviving spouse who has been married
557 to the member for not less than one (1) year immediately preceding
558 his death shall receive an annuity computed in accordance with
559 paragraph (d) of this subsection (2) as if the member:

560 (i) Had retired on the date of his death with
561 entitlement to an annuity provided for in Section 25-11-111,
562 notwithstanding that he might not have attained age sixty (60) or
563 acquired twenty-five (25) years of creditable service;

564 (ii) Had nominated his spouse as beneficiary; and

565 (b) If, at the time of the member's death, there are no
566 dependent children, and the surviving spouse, who otherwise would
567 receive the annuity under this subsection (2), has filed with the
568 system a signed written waiver of his or her rights to the annuity
569 and that waiver was in effect at the time of the member's death, a
570 lump sum distribution of the deceased member's accumulated
571 contributions shall be refunded in accordance with Section
572 25-11-117.

573 (c) The spouse annuity shall begin on the first day of
574 the month following the date of the member's death, but in case of
575 late filing, retroactive payments will be made for a period of not
576 more than one (1) year.

577 (d) The spouse annuity shall be the greater of twenty
578 percent (20%) of the deceased member's average compensation as
579 defined in Section 25-11-103 at the time of death or Fifty Dollars
580 (\$50.00) monthly. If the spouse dies or if the spouse remarries
581 before age sixty (60), the spouse annuity shall terminate.

590 Any member who has completed four (4) or more years of
591 creditable service and who dies before retirement and leaves a
592 spouse who has been married to the member for not less than one

593 (1) year immediately preceding his death and has not exercised any
594 other option shall be deemed to have exercised Option 2 under
595 Section 25-11-115 for the benefit of his spouse, which spouse
596 shall be paid Option 2 settlement benefits under this article
597 beginning on the first of the month following the date of death,
598 but in case of late filing, retroactive payments will be made for
599 a period of not more than one (1) year. The method of calculating
600 the retirement benefits shall be on the same basis as provided in
601 Section 25-11-111(d). However, if the member dies before being
602 qualified for full unreduced benefits, then the benefits shall be
603 reduced by three percent (3%) per year for the lesser of either
604 the years of service or age required for full unreduced benefits
605 in Section 25-11-111(d).

606 (3) (a) Subject to the maximum limitation provided in this
607 paragraph, the member's dependent children each shall receive an
608 annuity of the greater of ten percent (10%) of the member's
609 average compensation as defined in Section 25-11-103 at the time
610 of the death of the member or Fifty Dollars (\$50.00) monthly;
611 however, if there are more than three (3) dependent children, each
612 dependent child shall receive an equal share of a total annuity
613 equal to thirty percent (30%) of the member's average
614 compensation, provided that the total annuity shall not be less
615 than One Hundred Fifty Dollars (\$150.00) per month for all
616 children.

617 (b) A child shall be considered to be a dependent child
618 until marriage, or the attainment of age nineteen (19), whichever
619 comes first; however, this age limitation shall be extended beyond
620 age nineteen (19), but in no event beyond the attainment of age
621 twenty-three (23), as long as the child is a student regularly
622 pursuing a full-time course of resident study or training in an
623 accredited high school, trade school, technical or vocational
624 institute, junior or community college, college, university or
625 comparable recognized educational institution duly licensed by a

626 state. A student child whose birthday falls during the school
627 year (September 1 through June 30) is considered not to reach age
628 twenty-three (23) until the July 1 following the actual
629 twenty-third birthday. A full-time course of resident study or
630 training means a day or evening noncorrespondence course that
631 includes school attendance at the rate of at least thirty-six (36)
632 weeks per academic year or other applicable period with a subject
633 load sufficient, if successfully completed, to attain the
634 educational or training objective within the period generally
635 accepted as minimum for completion, by a full-time day student, of
636 the academic or training program concerned. Any child who is
637 physically or mentally incompetent, as adjudged by either a
638 Mississippi court of competent jurisdiction or by the board, shall
639 receive benefits for as long as the incompetency exists.

640 (c) If there are more than three (3) dependent
641 children, upon a child's ceasing to be a dependent child, his
642 annuity shall terminate and there shall be a redetermination of
643 the amounts payable to any remaining dependent children.

644 (d) Annuities payable under this subsection (3) shall
645 begin the first day of the month following the date of the
646 member's death or in case of late filing, retroactive payments
647 will be made for a period of not more than one (1) year. Those
648 benefits may be paid to a surviving parent or the lawful custodian
649 of a dependent child for the use and benefit of the child without
650 the necessity of appointment as guardian.

651 (4) (a) Death benefits in the line of duty. Regardless of
652 the number of years of the member's creditable service, the spouse
653 and/or the dependent children of an active member who is killed in
654 the line of performance of duty or dies as a direct result of an
655 accident occurring in the line of performance of duty shall
656 qualify, on approval of the board, for a retirement allowance on
657 the first of the month following the date of death, but in the
658 case of late filing, retroactive payments will be made for a

659 period of not more than one (1) year. The spouse shall receive a
660 retirement allowance equal to one-half (1/2) of the average
661 compensation as defined in Section 25-11-103. In addition to the
662 retirement allowance for the spouse, or if there is no surviving
663 spouse, the member's dependent child shall receive a retirement
664 allowance in the amount of one-fourth (1/4) of the member's
665 average compensation as defined in Section 25-11-103; however, if
666 there are two (2) or more dependent children, each dependent child
667 shall receive an equal share of a total annuity equal to one-half
668 (1/2) of the member's average compensation. If there are more
669 than two (2) dependent children, upon a child's ceasing to be a
670 dependent child, his annuity shall terminate and there shall be a
671 redetermination of the amounts payable to any remaining dependent
672 children. Those benefits shall cease to be paid for the support
673 and maintenance of each child upon the child attaining the age of
674 nineteen (19) years; however, the spouse shall continue to be
675 eligible for the aforesaid retirement allowance. Those benefits
676 may be paid to a surviving parent or lawful custodian of the
677 children for the use and benefit of the children without the
678 necessity of appointment as guardian. The retirement allowance
679 shall cease to the spouse upon remarriage but continue to be
680 payable for each dependent child until the age of nineteen (19)
681 years.

682 (b) A child shall be considered to be a dependent child
683 until marriage, or the attainment of age nineteen (19), whichever
684 comes first; however, this age limitation shall be extended beyond
685 age nineteen (19), but in no event beyond the attainment of age
686 twenty-three (23), as long as the child is a student regularly
687 pursuing a full-time course of resident study or training in an
688 accredited high school, trade school, technical or vocational
689 institute, junior or community college, college, university or
690 comparable recognized educational institution duly licensed by a
691 state. A student child whose birthday falls during the school

692 year (September 1 through June 30) is considered not to reach age
693 twenty-three (23) until the July 1 following the actual
694 twenty-third birthday. A full-time course of resident study or
695 training means a day or evening noncorrespondence course that
696 includes school attendance at the rate of at least thirty-six (36)
697 weeks per academic year or other applicable period with a subject
698 load sufficient, if successfully completed, to attain the
699 educational or training objective within the period generally
700 accepted as minimum for completion, by a full-time day student, of
701 the academic or training program concerned. Any child who is
702 physically or mentally incompetent, as adjudged by either a
703 Mississippi court of competent jurisdiction or by the board, shall
704 receive benefits for as long as the incompetency exists.

705 (5) If all the annuities provided for in this section
706 payable on account of the death of a member terminate before there
707 has been paid an aggregate amount equal to the member's
708 accumulated contributions standing to the member's credit in the
709 annuity savings account at the time of the member's death, the
710 difference between the accumulated contributions and the aggregate
711 amount of annuity payments shall be paid to the person that the
712 member has nominated by written designation duly executed and
713 filed with the board. If there is no designated beneficiary
714 surviving at termination of benefits, the difference shall be
715 payable pursuant to Section 25-11-117.1(1).

716 (6) Regardless of the number of years of creditable service
717 upon the application of a member or employer, any active member
718 who becomes disabled as a direct result of an accident or
719 traumatic event resulting in a physical injury occurring in the
720 line of performance of duty, provided that the disability hearing
721 officer under Section 25-11-113, after a medical examination,
722 certifies that the member is mentally or physically incapacitated
723 for the further performance of duty and the incapacity is likely
724 to be permanent, may be retired by the board of trustees on the

725 first of the month following the date of filing the application,
726 but in no event shall the retirement allowance begin before the
727 termination of state service. The member shall not be required to
728 travel more than one hundred (100) miles from his or her home to
729 receive the medical examination required by this subsection. The
730 retirement allowance shall equal the allowance on disability
731 retirement as provided in Section 25-11-113, but shall not be less
732 than fifty percent (50%) of average compensation.

733 Permanent and total disability resulting from a
734 cardiovascular, pulmonary or musculo-skeletal condition that was
735 not a direct result of a traumatic event occurring in the
736 performance of duty shall be deemed an ordinary disability. A
737 mental disability based exclusively on employment duties occurring
738 on an ongoing basis shall be deemed an ordinary disability.

739 (7) If the deceased or disabled member has less than four
740 (4) years of creditable service, the average compensation as
741 defined in Section 25-11-103 shall be the average of all annual
742 earned compensation in state service for the purposes of benefits
743 provided in this section.

744 (8) In case of death or total and permanent disability under
745 subsection (4) or subsection (6) of this section and before the
746 board shall consider any application for a retirement allowance,
747 the employer must certify to the board that the member's death or
748 disability was a direct result of an accident or a traumatic event
749 occurring during and as a result of the performance of the regular
750 and assigned duties of the employee and that the death or
751 disability was not the result of the willful negligence of the
752 employee.

753 (9) The application for the retirement allowance must be
754 filed within one (1) year after death of an active member who is
755 killed in the line of performance of duty or dies as a direct
756 result of an accident occurring in the line of performance of duty
757 or traumatic event; but the board of trustees may consider an

758 application for disability filed after the one-year period if it
759 can be factually demonstrated to the satisfaction of the board of
760 trustees that the disability is due to the accident and that the
761 filing was not accomplished within the one-year period due to a
762 delayed manifestation of the disability or to circumstances beyond
763 the control of the member. However, in case of late filing,
764 retroactive payments will be made for a period of not more than
765 one (1) year only.

766 (10) Notwithstanding any other section of this article and
767 in lieu of any payments to a designated beneficiary for a refund
768 of contributions under Section 25-11-117, the spouse and/or
769 children shall be eligible for the benefits payable under this
770 section, and the spouse may elect, for both the spouse and/or
771 children, to receive benefits in accordance with either
772 subsections (2) and (3) or subsection (4) of this section;
773 otherwise, the contributions to the credit of the deceased member
774 shall be refunded in accordance with Section 25-11-117.

775 (11) If the member has previously received benefits from the
776 system to which he was not entitled and has not repaid in full all
777 amounts payable by him to the system, the annuity amounts
778 otherwise provided by this section shall be withheld and used to
779 effect repayment until the total of the withholdings repays in
780 full all amounts payable by him to the system.

781 **SECTION 5.** Section 25-11-119, Mississippi Code of 1972, is
782 amended as follows:

783 25-11-119. (1) The board shall keep such data as * * *
784 necessary for actuarial valuation of the assets and liabilities of
785 the system and for checking its operating experience.

786 (2) The board shall keep minutes, which shall be open to
787 public inspection. It shall have the accounts of the system
788 audited annually by the State Audit Department and shall publish
789 as of the end of each fiscal year a report showing the fiscal
790 transactions of the system for the preceding fiscal year, the

791 amount of the accumulated cash and securities of the system, a
792 statement of income and expenditures, a statement of investments
793 acquired and disposed of, and a balance sheet showing the
794 financial condition of the system by means of an actuarial
795 valuation of its assets and liabilities. It shall also publish a
796 synopsis of the report.

797 (3) The board shall establish a general office for the
798 meeting of the board and for the administrative personnel; provide
799 for the installation of an adequate system of books, accounts, and
800 records that will give effect to all requirements of Articles 1
801 and 3; and credit all assets received by the funds according to
802 the purposes for which they are held. All books, accounts and
803 records shall be kept in the general office of the board and shall
804 be public records except for individual member records. The
805 system shall not disclose the name, address or contents of any
806 individual member records without the prior written consent of the
807 individual to whom the record pertains.

808 (4) The board shall hold regular meetings at least quarterly
809 in each year and such special meetings as may be deemed necessary.
810 All meetings shall be open to the public.

811 (5) The board shall have power to make contracts, and to sue
812 and be sued, under the name of the Board of Trustees of the Public
813 Employees' Retirement System of Mississippi.

814 (6) Legal advisor. The Attorney General shall be the legal
815 advisor of the board; and the board may employ counsel when
816 needed.

817 * * *

818 (7) Duties of actuary. The board of trustees shall
819 designate an actuary who shall be the technical advisor of the
820 board on matters regarding the operation of the system, and shall
821 perform such other duties as are required in connection with the
822 operation of the system.

823 (8) At least once in each two-year period, the actuary shall
824 make an actuarial survey of the mortality, service, withdrawal and
825 compensation experience of the members and beneficiaries of the
826 retirement system, and shall make a valuation of the assets and
827 liabilities of the system. Taking into account the result of
828 that investigation and valuation, the board of trustees shall
829 adopt for the retirement system such mortality, service, and other
830 tables as * * * deemed necessary. On the basis of such tables as
831 the board of trustees * * * adopts, the actuary shall make
832 valuations of the assets and liabilities of the funds of the
833 system.

834 **SECTION 6.** This act shall take effect and be in force from
835 and after July 1, 2004.