

By: Senator(s) Jackson (32nd)

To: Finance

SENATE BILL NO. 2926

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 an evaluation of medical evidence that may or may not
18 include an actual physical examination by the medical board, shall
19 certify that the member is mentally or physically incapacitated
20 for the further performance of duty, that such incapacity is
21 likely to be permanent, and that the member should be retired;
22 however, the board of trustees shall accept a finding of total
23 disability * * * by the Social Security Administration in lieu of
24 a certification from the medical board. For the purposes of
25 disability determination, the medical board shall apply the
26 following definition of disability: the inability to perform the
27 usual duties of employment or the incapacity to perform such
28 lesser duties, if any, as the employer, in its discretion, may
29 assign without material reduction in compensation, or the

30 incapacity to perform the duties of any employment covered by the
31 Public Employees' Retirement System (Section 25-11-101 et seq.)
32 that is actually offered and is within the same general
33 territorial work area, without material reduction in compensation.
34 The employer shall be required to furnish the job description and
35 duties of the member. The employer shall further certify whether
36 the employer has offered the member other duties and has complied
37 with the applicable provisions of the Americans With Disabilities
38 Act in affording reasonable accommodations which would allow the
39 employee to continue employment.

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41 membership service credit, who has withdrawn from active state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

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

62 disability retirement allowance after the person begins to receive
63 a service retirement allowance.

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

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

76 (2) Allowance on disability retirement.

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

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

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

88 (ii) An employer's annuity equal to the amount
89 that would have been payable as a retirement allowance for both
90 membership service and prior service had the member continued in
91 service to the age of sixty (60) years, which shall apply to the
92 allowance for disability retirement paid to retirees receiving
93 such allowance upon and after April 12, 1977. This employer's

94 annuity shall be computed on the basis of the average "earned
95 compensation" as defined in Section 25-11-103.

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

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

| 108 | Age at Disability | Duration |
|-----|-------------------|-----------|
| 109 | 60 and earlier | to age 65 |
| 110 | 61 | to age 66 |
| 111 | 62 | to age 66 |
| 112 | 63 | to age 67 |
| 113 | 64 | to age 67 |
| 114 | 65 | to age 68 |
| 115 | 66 | to age 68 |
| 116 | 67 | to age 69 |
| 117 | 68 | to age 70 |
| 118 | 69 and over | one year |

119 The deferred allowance shall commence when the temporary
120 allowance ceases and shall be payable for life. The deferred
121 allowance shall equal the greater of (i) the allowance that would
122 have been payable had the member continued in service to the
123 termination age of the temporary allowance, but no more than forty
124 percent (40%) of average compensation, or (ii) the accrued benefit
125 based on actual service at the time of disability. The deferred
126 allowance as determined at the time of disability shall be

127 adjusted in accordance with Section 25-11-112 for the period
128 during which the temporary annuity is payable. In no case shall a
129 member receive less than Ten Dollars (\$10.00) per month for each
130 year of service and proportionately for each quarter year thereof
131 reduced for the option selected.

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

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

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

160 discontinued until his withdrawal of such refusal; and should his
161 refusal continue for one (1) year, all his rights to a disability
162 benefit shall be revoked by the board of trustees.

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

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

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

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

216 **SECTION 2.** This act shall take effect and be in force from
217 and after July 1, 2005.