

By: Senator(s) Jackson (32nd)

To: Finance

SENATE BILL NO. 2728

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 subsection (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 subsection (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 subsection (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 subsection (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, 2007.