

By: Chism, Nicholson, Smith (39th)

To: Appropriations

## HOUSE BILL NO. 753

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES'  
3 RETIREMENT SYSTEM SHALL ACCEPT A DETERMINATION BY THE SOCIAL  
4 SECURITY ADMINISTRATION THAT A MEMBER IS TOTALLY DISABLED, FOR THE  
5 PURPOSES OF DISABILITY RETIREMENT UNDER THE RETIREMENT SYSTEM; AND  
6 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:[RF1]

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 a medical examination, shall certify that the member is  
18 mentally or physically incapacitated for the further performance  
19 of duty, that such incapacity is likely to be permanent, and that  
20 the member should be retired; however, if the Social Security  
21 Administration determines that the member is totally disabled, the  
22 board of trustees shall accept that disability \* \* \* determination  
23 from the Social Security Administration in lieu of a certification

24 from the medical board. For the purposes of disability  
25 determination, the medical board shall apply the following  
26 definition of disability: the inability to perform the usual  
27 duties of employment or the incapacity to perform such lesser  
28 duties, if any, as the employer, in its discretion, may assign  
29 without material reduction in compensation, or the incapacity to  
30 perform the duties of any employment covered by the Public  
31 Employees' Retirement System (Section 25-11-101 et seq.) that is  
32 actually offered and is within the same general territorial work  
33 area, without material reduction in compensation. The employer  
34 shall be required to furnish the job description and duties of the  
35 member. The employer shall further certify whether the employer  
36 has offered the member other duties and has complied with the  
37 applicable provisions of the Americans With Disabilities Act in  
38 affording reasonable accommodations which would allow the employee  
39 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) If the medical board certifies that the member is  
48 not mentally or physically incapacitated for the future  
49 performance of duty, the member may request, within sixty (60)  
50 days, a hearing before the hearing officer as provided in Section  
51 25-11-120. All hearings shall be held in accordance with rules  
52 and regulations adopted by the board of trustees to govern such  
53 hearings. Such hearing may be closed upon the request of the  
54 member.

55           (d) The medical board may request additional medical  
56 evidence and/or other physicians to conduct an evaluation of the  
57 member's condition. If the medical board requests additional  
58 medical evidence and the member refuses the request, the  
59 application shall be considered void.

60           (2) Allowance on disability retirement.

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

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

69           (i) A member's annuity which shall be the  
70 actuarial equivalent of his accumulated contributions at the time  
71 of retirement; and

72           (ii) An employer's annuity equal to the amount  
73 that would have been payable as a retirement allowance for both  
74 membership service and prior service had the member continued in  
75 service to the age of sixty (60) years, which shall apply to the  
76 allowance for disability retirement paid to retirees receiving  
77 such allowance upon and after April 12, 1977. This employer's  
78 annuity shall be computed on the basis of the average "earned  
79 compensation" as defined in Section 25-11-103.

80           (c) For persons who become members after June 30, 1992,  
81 and for active members on June 30, 1992, who elect benefits under  
82 this paragraph (c) instead of those provided under paragraph (b)

83 of this subsection (2), the disability allowance shall consist of  
84 two (2) parts: a temporary allowance and a deferred allowance.

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

92	Age at Disability	Duration
93	60 and earlier	to age 65
94	61	to age 66
95	62	to age 66
96	63	to age 67
97	64	to age 67
98	65	to age 68
99	66	to age 68
100	67	to age 69
101	68	to age 70
102	69 and over	one year

103 The deferred allowance shall commence when the temporary  
104 allowance ceases and shall be payable for life. The deferred  
105 allowance shall equal the greater of (i) the allowance that would  
106 have been payable had the member continued in service to the  
107 termination age of the temporary allowance, but no more than forty  
108 percent (40%) of average compensation, or (ii) the accrued benefit  
109 based on actual service at the time of disability. The deferred  
110 allowance as determined at the time of disability shall be

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

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

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

126 (3) Reexamination of retirees retired on account of  
127 disability. Except as otherwise provided in this section, once  
128 each year during the first five (5) years following retirement of  
129 a member on a disability retirement allowance, and once in every  
130 period of three (3) years thereafter, the board of trustees may,  
131 and upon his application shall, require any disability retiree who  
132 has not yet attained the age of sixty (60) years or the  
133 termination age of the temporary allowance under paragraph (2)(c)  
134 of this section to undergo a medical examination, such examination  
135 to be made at the place of residence of said retiree or other  
136 place mutually agreed upon by a physician or physicians designated  
137 by the board. The board, however, in its discretion, may  
138 authorize the medical board to establish reexamination schedules

139 appropriate to the medical condition of individual disability  
140 retirees. Should any disability retiree who has not yet attained  
141 the age of sixty (60) years or the termination age of the  
142 temporary allowance under paragraph (2)(c) of this section refuse  
143 to submit to any medical examination provided herein, his  
144 allowance may be discontinued until his withdrawal of such  
145 refusal; and should his refusal continue for one (1) year, all his  
146 rights to a disability benefit shall be revoked by the board of  
147 trustees.

148 (4) If the medical board reports and certifies to the board  
149 of trustees, after a comparable job analysis or other similar  
150 study, that such disability retiree is engaged in, or is able to  
151 engage in, a gainful occupation paying more than the difference  
152 between his disability allowance, exclusive of cost of living  
153 adjustments, and the average compensation, and if the board of  
154 trustees concurs in such report, the disability benefit shall be  
155 reduced to an amount which, together with the amount earnable by  
156 him, shall equal the amount of his average compensation. If his  
157 earning capacity be later changed, the amount of the said benefit  
158 may be further modified, provided that the revised benefit shall  
159 not exceed the amount originally granted. A retiree receiving a  
160 disability benefit who is restored to active service at a salary  
161 less than the average compensation shall not become a member of  
162 the retirement system.

163 (5) Should a disability retiree under the age of sixty (60)  
164 years or the termination age of the temporary allowance under  
165 paragraph (2)(c) of this section be restored to active service at  
166 a compensation not less than his average compensation, his

167 disability benefit shall cease, he shall again become a member of  
168 the retirement system, and contributions shall be withheld and  
169 reported. Any such prior service certificate, on the basis of  
170 which his service was computed at the time of retirement, shall be  
171 restored to full force and effect. In addition, upon his  
172 subsequent retirement he shall be credited with all creditable  
173 service as a member, but the total retirement allowance paid to  
174 the retired member in his previous retirement shall be deducted  
175 from his retirement reserve and taken into consideration in  
176 recalculating the retirement allowance under a new option  
177 selected.

178 (6) If following reexamination in accordance with the  
179 provisions contained in this section, the medical board determines  
180 that a retiree retired on account of disability is physically and  
181 mentally able to return to the employment from which he is  
182 retired, the board of trustees, upon certification of such  
183 findings from the medical board, shall, after a reasonable period  
184 of time, terminate the disability allowance, whether or not the  
185 retiree is reemployed or seeks such reemployment. In addition, if  
186 the board of trustees determines that the retiree is no longer  
187 sustaining a loss of income as established by documented evidence  
188 of the retiree's earned income, the eligibility for a disability  
189 allowance shall terminate and the allowance terminated within a  
190 reasonable period of time. In the event the retirement allowance  
191 is terminated under the provisions of this section, the retiree  
192 may subsequently qualify for a retirement allowance under Section  
193 25-11-111 based on actual years of service credit plus credit for  
194 the period during which a disability allowance was paid.

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

201           SECTION 2. This act shall take effect and be in force from  
202 and after July 1, 2000.