

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 412

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 a medical examination, shall certify that the member is
16 mentally or physically incapacitated for the further performance
17 of duty, that such incapacity is likely to be permanent, and that
18 the member should be retired; however, the board of trustees may
19 accept a disability medical determination from the Social Security
20 Administration in lieu of a certification from the medical board.
21 For the purposes of disability determination, the medical board
22 shall apply the following definition of disability: the inability
23 to perform the usual duties of employment or the incapacity to
24 perform such lesser duties, if any, as the employer, in its
25 discretion, may assign without material reduction in compensation,
26 or the incapacity to perform the duties of any employment covered
27 by the Public Employees' Retirement System (Section 25-11-101 et
28 seq.) that is actually offered and is within the same general



29 territorial work area, without material reduction in compensation.
30 The employer shall be required to furnish the job description and
31 duties of the member. The employer shall further certify whether
32 the employer has offered the member other duties and has complied
33 with the applicable provisions of the Americans With Disabilities
34 Act in affording reasonable accommodations which would allow the
35 employee to continue employment.

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37 membership service credit, who has withdrawn from active state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

43 (c) If the medical board certifies that the member is
44 not mentally or physically incapacitated for the future
45 performance of duty, the member may request, within sixty (60)
46 days, a hearing before the hearing officer as provided in Section
47 25-11-120. All hearings shall be held in accordance with rules
48 and regulations adopted by the board of trustees to govern such
49 hearings. Such hearing may be closed upon the request of the
50 member.

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

56 (e) If the board denies an application for disability
57 retirement allowance, the member may refile his application for
58 disability retirement one hundred twenty (120) days after such
59 denial if:

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



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

63 (2) Allowance on disability retirement.

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

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

72 (i) A member's annuity which shall be the
73 actuarial equivalent of his accumulated contributions at the time
74 of retirement; and

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

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

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



	Age at Disability	Duration
95		
96	60 and earlier	to age 65
97	61	to age 66
98	62	to age 66
99	63	to age 67
100	64	to age 67
101	65	to age 68
102	66	to age 68
103	67	to age 69
104	68	to age 70
105	69 and over	one year

106 The deferred allowance shall commence when the temporary
107 allowance ceases and shall be payable for life. The deferred
108 allowance shall equal the greater of (i) the allowance that would
109 have been payable had the member continued in service to the
110 termination age of the temporary allowance, but no more than forty
111 percent (40%) of average compensation, or (ii) the accrued benefit
112 based on actual service at the time of disability. The deferred
113 allowance as determined at the time of disability shall be
114 adjusted in accordance with Section 25-11-112 for the period
115 during which the temporary annuity is payable. In no case shall a
116 member receive less than Ten Dollars (\$10.00) per month for each
117 year of service and proportionately for each quarter year thereof
118 reduced for the option selected.

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

123 (e) Should a disability retiree who has not selected an
124 option under Section 25-11-115 die before being repaid in
125 disability benefits the sum of his total contributions, then his
126 named beneficiary shall receive the difference in cash, which



127 shall apply to all deceased disability retirees from and after
128 January 1, 1953.

129 (3) Reexamination of retirees retired on account of
130 disability. Except as otherwise provided in this section, once
131 each year during the first five (5) years following retirement of
132 a member on a disability retirement allowance, and once in every
133 period of three (3) years thereafter, the board of trustees may,
134 and upon his application shall, require any disability retiree who
135 has not yet attained the age of sixty (60) years or the
136 termination age of the temporary allowance under paragraph (2)(c)
137 of this section to undergo a medical examination, such examination
138 to be made at the place of residence of said retiree or other
139 place mutually agreed upon by a physician or physicians designated
140 by the board. The board, however, in its discretion, may
141 authorize the medical board to establish reexamination schedules
142 appropriate to the medical condition of individual disability
143 retirees. Should any disability retiree who has not yet attained
144 the age of sixty (60) years or the termination age of the
145 temporary allowance under paragraph (2)(c) of this section refuse
146 to submit to any medical examination provided herein, his
147 allowance may be discontinued until his withdrawal of such
148 refusal; and should his refusal continue for one (1) year, all his
149 rights to a disability benefit shall be revoked by the board of
150 trustees.

151 (4) If the medical board reports and certifies to the board
152 of trustees, after a comparable job analysis or other similar
153 study, that such disability retiree is engaged in, or is able to
154 engage in, a gainful occupation paying more than the difference
155 between his disability allowance, exclusive of cost of living
156 adjustments, and the average compensation, and if the board of
157 trustees concurs in such report, the disability benefit shall be
158 reduced to an amount which, together with the amount earnable by
159 him, shall equal the amount of his average compensation. If his



160 earning capacity be later changed, the amount of the said benefit
161 may be further modified, provided that the revised benefit shall
162 not exceed the amount originally granted. A retiree receiving a
163 disability benefit who is restored to active service at a salary
164 less than the average compensation shall not become a member of
165 the retirement system.

166 (5) Should a disability retiree under the age of sixty (60)
167 years or the termination age of the temporary allowance under
168 paragraph (2)(c) of this section be restored to active service at
169 a compensation not less than his average compensation, his
170 disability benefit shall cease, he shall again become a member of
171 the retirement system, and contributions shall be withheld and
172 reported. Any such prior service certificate, on the basis of
173 which his service was computed at the time of retirement, shall be
174 restored to full force and effect. In addition, upon his
175 subsequent retirement he shall be credited with all creditable
176 service as a member, but the total retirement allowance paid to
177 the retired member in his previous retirement shall be deducted
178 from his retirement reserve and taken into consideration in
179 recalculating the retirement allowance under a new option
180 selected.

181 (6) If following reexamination in accordance with the
182 provisions contained in this section, the medical board determines
183 that a retiree retired on account of disability is physically and
184 mentally able to return to the employment from which he is
185 retired, the board of trustees, upon certification of such
186 findings from the medical board, shall, after a reasonable period
187 of time, terminate the disability allowance, whether or not the
188 retiree is re-employed or seeks such re-employment. In addition,
189 if the board of trustees determines that the retiree is no longer
190 sustaining a loss of income as established by documented evidence
191 of the retiree's earned income, the eligibility for a disability
192 allowance shall terminate and the allowance terminated within a



193 reasonable period of time. In the event the retirement allowance
194 is terminated under the provisions of this section, the retiree
195 may subsequently qualify for a retirement allowance under Section
196 25-11-111 based on actual years of service credit plus credit for
197 the period during which a disability allowance was paid.

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

204 **SECTION 2.** This act shall take effect and be in force from
205 and after July 1, 2002.

