

By: Representative Banks

To: Appropriations

HOUSE BILL NO. 1189

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A FINDING OF TOTAL DISABILITY BY THE SOCIAL
3 SECURITY ADMINISTRATION WILL CREATE A REBUTTABLE PRESUMPTION OF
4 DISABILITY UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO
5 PROVIDE THAT CLEAR AND CONVINCING EVIDENCE IS NEEDED TO OVERCOME
6 THE PRESUMPTION; 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 the application on a disability retirement allowance, but in no
15 event shall the disability retirement allowance begin before
16 termination of state service, provided that the medical board,
17 after a medical examination, * * * certifies that the member is
18 mentally or physically incapacitated for the further performance
19 of duty, that the incapacity is likely to be permanent, and that
20 the member should be retired; however, the board of trustees may
21 accept a disability medical determination from the Social Security
22 Administration in lieu of a certification from the medical board.
23 A finding of total disability by the Social Security
24 Administration will create a rebuttable presumption of disability;
25 however, the presumption may be overcome by clear and convincing
26 evidence. For the purposes of disability determination, the
27 medical board shall apply the following definition of disability:
28 the inability to perform the usual duties of employment or the
29 incapacity to perform such lesser duties, if any, as the employer,



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

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43 membership service credit, who has withdrawn from active state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

49 (c) If the medical board certifies that the member is
50 not mentally or physically incapacitated for the future
51 performance of duty, the member may request, within sixty (60)
52 days, a hearing before the hearing officer as provided in Section
53 25-11-120. All hearings shall be held in accordance with rules
54 and regulations adopted by the board of trustees to govern those
55 hearings. The hearing may be closed upon the request of the
56 member.

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

62 (2) Allowance on disability retirement.



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

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

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

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

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

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

94 Age at Disability	Duration
95 60 and earlier	to age 65



96	61	to age 66
97	62	to age 66
98	63	to age 67
99	64	to age 67
100	65	to age 68
101	66	to age 68
102	67	to age 69
103	68	to age 70
104	69 and over	one year

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

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

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



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

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



161 disability benefit who is restored to active service at a salary
162 less than the average compensation shall not become a member of
163 the retirement system.

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

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



194 25-11-111 based on actual years of service credit plus credit for
195 the period during which a disability allowance was paid.

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

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

