

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 21

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

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

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39 membership service credit, who has withdrawn from active state  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

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

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

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

74 (f) If the board denies an application for disability  
75 retirement allowance, the member may refile his application for  
76 disability retirement one hundred twenty (120) days after such  
77 denial if:

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

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

81 (2) Allowance on disability retirement.

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

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

90 (i) A member's annuity which shall be the  
91 actuarial equivalent of his accumulated contributions at the time  
92 of retirement; and

93 (ii) An employer's annuity equal to the amount  
94 that would have been payable as a retirement allowance for both

95 membership service and prior service had the member continued in  
96 service to the age of sixty (60) years, which shall apply to the  
97 allowance for disability retirement paid to retirees receiving  
98 such allowance upon and after April 12, 1977. This employer's  
99 annuity shall be computed on the basis of the average "earned  
100 compensation" as defined in Section 25-11-103.

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

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

113	Age at Disability	Duration
114	60 and earlier	to age 65
115	61	to age 66
116	62	to age 66
117	63	to age 67
118	64	to age 67
119	65	to age 68
120	66	to age 68
121	67	to age 69
122	68	to age 70
123	69 and over	one year

124 The deferred allowance shall commence when the temporary  
125 allowance ceases and shall be payable for life. The deferred  
126 allowance shall equal the greater of (i) the allowance that would  
127 have been payable had the member continued in service to the

128 termination age of the temporary allowance, but no more than forty  
129 percent (40%) of average compensation, or (ii) the accrued benefit  
130 based on actual service at the time of disability. The deferred  
131 allowance as determined at the time of disability shall be  
132 adjusted in accordance with Section 25-11-112 for the period  
133 during which the temporary annuity is payable. In no case shall a  
134 member receive less than Ten Dollars (\$10.00) per month for each  
135 year of service and proportionately for each quarter year thereof  
136 reduced for the option selected.

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

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

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

161 Should any disability retiree who has not yet attained the age of  
162 sixty (60) years or the termination age of the temporary allowance  
163 under paragraph (2)(c) of this section refuse to submit to any  
164 medical examination provided herein, his allowance may be  
165 discontinued until his withdrawal of such refusal; and should his  
166 refusal continue for one (1) year, all his rights to a disability  
167 benefit shall be revoked by the board of trustees.

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

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

194 the retired member in his previous retirement shall be deducted  
195 from his retirement reserve and taken into consideration in  
196 recalculating the retirement allowance under a new option  
197 selected.

198 (6) If following reexamination in accordance with the  
199 provisions contained in this section, the medical board determines  
200 that a retiree retired on account of disability is physically and  
201 mentally able to return to the employment from which he is  
202 retired, the board of trustees, upon certification of such  
203 findings from the medical board, shall, after a reasonable period  
204 of time, terminate the disability allowance, whether or not the  
205 retiree is reemployed or seeks such reemployment. In addition, if  
206 the board of trustees determines that the retiree is no longer  
207 sustaining a loss of income as established by documented evidence  
208 of the retiree's earned income, the eligibility for a disability  
209 allowance shall terminate and the allowance terminated within a  
210 reasonable period of time. In the event the retirement allowance  
211 is terminated under the provisions of this section, the retiree  
212 may subsequently qualify for a retirement allowance under Section  
213 25-11-111 based on actual years of service credit plus credit for  
214 the period during which a disability allowance was paid.

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

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