

By: Senator(s) Thomas

To: Finance

SENATE BILL NO. 2072

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,  
2 TO AUTHORIZE A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
3 WHOSE APPLICATION FOR DISABILITY RETIREMENT IS DENIED TO REFILE  
4 HIS APPLICATION FOR DISABILITY RETIREMENT IF THE MEMBER'S  
5 DISABILITY WORSENS AFTER SUCH DENIAL; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** Section 25-11-113, Mississippi Code of 1972, is  
8 amended as follows:

9 25-11-113. (1) (a) Upon the application of a member or his  
10 employer, any active member in state service who has at least four  
11 (4) years of membership service credit may be retired by the board  
12 of trustees on the first of the month following the date of filing  
13 such application on a disability retirement allowance, but in no  
14 event shall the disability retirement allowance commence before  
15 termination of state service, provided that the medical board,  
16 after an evaluation of medical evidence that may or may not  
17 include an actual physical examination by the medical board, shall  
18 certify that the member is mentally or physically incapacitated  
19 for the further performance of duty, that such incapacity is  
20 likely to be permanent, and that the member should be retired;  
21 however, the board of trustees may accept a disability medical  
22 determination from the Social Security Administration in lieu of a  
23 certification from the medical board. For the purposes of  
24 disability determination, the medical board shall apply the  
25 following definition of disability: the inability to perform the  
26 usual duties of employment or the incapacity to perform such  
27 lesser duties, if any, as the employer, in its discretion, may  
28 assign without material reduction in compensation, or the

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

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

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

61 disability retirement allowance after the person begins to receive  
62 a service retirement allowance.

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

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

75 (f) If a member's application for a disability  
76 retirement allowance is denied, the member may refile his  
77 application for disability retirement if the member's disability  
78 worsens after such denial.

79 (2) Allowance on disability retirement.

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

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

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

91 (ii) An employer's annuity equal to the amount  
92 that would have been payable as a retirement allowance for both  
93 membership service and prior service had the member continued in

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

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

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

111	Age at Disability	Duration
112	60 and earlier	to age 65
113	61	to age 66
114	62	to age 66
115	63	to age 67
116	64	to age 67
117	65	to age 68
118	66	to age 68
119	67	to age 69
120	68	to age 70
121	69 and over	one year

122 The deferred allowance shall commence when the temporary  
123 allowance ceases and shall be payable for life. The deferred  
124 allowance shall equal the greater of (i) the allowance that would  
125 have been payable had the member continued in service to the  
126 termination age of the temporary allowance, but no more than forty

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

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

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

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

160 sixty (60) years or the termination age of the temporary allowance  
161 under paragraph (2)(c) of this section refuse to submit to any  
162 medical examination provided herein, his allowance may be  
163 discontinued until his withdrawal of such refusal; and should his  
164 refusal continue for one (1) year, all his rights to a disability  
165 benefit shall be revoked by the board of trustees.

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

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

193 from his retirement reserve and taken into consideration in  
194 recalculating the retirement allowance under a new option  
195 selected.

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

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

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