

By: Senator(s) Thomas

To: Finance

SENATE BILL NO. 2124

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 subsection (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 subsection (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 subsection (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 subsection (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, 2007.