HOUSE BILL NO. 348

AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS RECEIVING A RETIREMENT ALLOWANCE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE ELECTED TO THE OFFICE OF COUNCILMAN OR ALDERMAN OF A MUNICIPALITY AFTER RETIREMENT MAY RECEIVE A RETIREMENT ALLOWANCE FROM THE SYSTEM WHILE HOLDING THE OFFICE IN ADDITION TO RECEIVING THE REGULAR COMPENSATION FOR THE OFFICE; TO PROVIDE THAT THOSE PERSONS WILL NOT BE CONTRIBUTING MEMBERS OF THE RETIREMENT SYSTEM OR RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE WHILE HOLDING THE OFFICE; TO AMEND SECTIONS 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 25-11-126, Mississippi Code of 1972:

25-11-126. (1) Any person who is receiving a retirement allowance under this article and who is elected to the office of councilman or alderman of a municipality after retirement may continue receiving his or her retirement allowance while holding the office in addition to receiving the regular compensation for the office, as provided in this section.

(2) Any person who is receiving a retirement allowance and who is elected to the office of councilman or alderman of a municipality after retirement must notify the executive director of the system before taking office whether the person chooses to continue receiving his or her retirement allowance while holding the office. If the person chooses not to continue receiving his or her retirement allowance while holding the office, the person's retirement allowance will cease on the day that he or she begins serving in the office. After leaving the office, in order to begin receiving a retirement allowance under this article again, the person must make application to the executive director of the


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system, and the person's retirement allowance will begin on the first of the month following the date that the application is received by the executive director.

(3) Any person who chooses to continue receiving his or her retirement allowance while holding the office of councilman or alderman of a municipality will not be a contributing member of the retirement system or receive any creditable service for the period during which he or she receives a retirement allowance while holding the office. Any such person who chooses not to continue receiving his or her retirement allowance while holding the office will be a contributing member of the retirement system and will receive creditable service for the period during which he or she holds the office without receiving a retirement allowance. If the person has previously received a retirement allowance under this article and he or she holds the office for more than six (6) months without receiving a retirement allowance, the person's retirement allowance will be recomputed when he or she retires again, and the recomputed retirement allowance will include the creditable service that the person earned during the period of holding the office.

SECTION 2. Section 25-11-105, Mississippi Code of 1972, is amended as follows:

25-11-105. I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP

The membership of this retirement system shall be composed as follows:

(a) All persons who shall become employees in the state service after January 31, 1953, and whose wages are subject to payroll taxes and are lawfully reported on IRS Form W-2, except (i) those persons who are specifically excluded, (ii) those persons to whom election is provided in Articles 1 and 3, and (iii) those persons who continue receiving their retirement allowance while holding the office of councilman or alderman of a municipality as authorized by Section 25-11-126, shall become...
members of the retirement system as a condition of their employment.

(b) All persons who shall become employees in the state service after January 31, 1953, except those specifically excluded or as to whom election is provided in Articles 1 and 3, unless they shall file with the board prior to the lapse of sixty (60) days of employment or sixty (60) days after the effective date of the cited articles, whichever is later, on a form prescribed by the board, a notice of election not to be covered by the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the system, shall become members of the retirement system; provided, however, that no credit for prior service will be granted to members until they have contributed to Article 3 of the retirement system for a minimum period of at least four (4) years. Such members shall receive credit for services performed prior to January 1, 1953, in employment now covered by Article 3, but no credit shall be granted for retroactive services between January 1, 1953, and the date of their entry into the retirement system unless the employee pays into the retirement system both the employer's and the employee's contributions on wages paid him during the period from January 31, 1953, to the date of his becoming a contributing member, together with interest at the rate determined by the board of trustees. Members reentering after withdrawal from service shall qualify for prior service under the provisions of Section 25-11-117. From and after July 1, 1998, upon eligibility as noted above, the member may receive credit for such retroactive service provided:

(1) The member shall furnish proof satisfactory to the board of trustees of certification of such service from the covered employer where the services were performed; and
(2) The member shall pay to the retirement system on the date he or she is eligible for such credit or at any time thereafter prior to the date of retirement the actuarial cost for each year of such creditable service. The provisions of this subparagraph (2) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder.

Nothing contained in this paragraph (b) shall be construed to limit the authority of the board to allow the correction of reporting errors or omissions based on the payment of the employee and employer contributions plus applicable interest.

(c) All persons who shall become employees in the state service after January 31, 1953, and who are eligible for membership in any other retirement system shall become members of this retirement system as a condition of their employment unless they elect at the time of their employment to become a member of such other system.

(d) All persons who are employees in the state service on January 31, 1953, and who are members of any nonfunded retirement system operated by the State of Mississippi, or any of its departments or agencies, shall become members of this system with prior service credit unless, before February 1, 1953, they shall file a written notice with the board of trustees that they do not elect to become members.

(e) All persons who are employees in the state service on January 31, 1953, and who under existing laws are members of any fund operated for the retirement of employees by the State of Mississippi, or any of its departments or agencies, shall not be entitled to membership in this retirement system unless, before February 1, 1953, any such person shall indicate by a notice filed with the board, on a form prescribed by the board, his individual election and choice to participate in this system, but no such
person shall receive prior service credit unless he becomes a member on or before February 1, 1953.

(f) Each political subdivision of the state and each instrumentality of the state or a political subdivision, or both, is hereby authorized to submit, for approval by the board of trustees, a plan for extending the benefits of this article to employees of any such political subdivision or instrumentality. Each such plan or any amendment to the plan for extending benefits thereof shall be approved by the board of trustees if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in Articles 1 and 3; however, upon approval of such plan or any such plan heretofore approved by the board of trustees, the approved plan shall not be subject to cancellation or termination by the political subdivision or instrumentality, except that any community hospital serving a municipality that joined the Public Employees' Retirement System as of November 1, 1956, to offer social security coverage for its employees and subsequently extended retirement annuity coverage to its employees as of December 1, 1965, may, upon documentation of extreme financial hardship, have future retirement annuity coverage cancelled or terminated at the discretion of the board of trustees. No such plan shall be approved unless:

(1) It provides that all services which constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan; with the exception of municipal employees who are already covered by existing retirement plans; provided, however, those employees in this class may elect to come under the provisions of this article;

(2) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (d) of Section 25-11-123 and of paragraph (f)(5)B and C of this
section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(3) It provides for such methods of administration of the plan by the political subdivision or instrumentality as are found by the board of trustees to be necessary for the proper and efficient administration thereof;

(4) It provides that the political subdivision or instrumentality will make such reports, in such form and containing such information, as the board of trustees may from time to time require;

(5) It authorizes the board of trustees to terminate the plan in its entirety in the discretion of the board if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the board and as may be consistent with applicable federal law.

A. The board of trustees shall not finally refuse to approve a plan submitted under paragraph (f), and shall not terminate an approved plan without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected thereby. The board's decision in any such case shall be final, conclusive and binding unless an appeal be taken by the political subdivision or instrumentality aggrieved thereby to the Circuit Court of Hinds County, Mississippi, in accordance with the provisions of law with respect to civil causes by certiorari.

B. Each political subdivision or instrumentality as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in Section 25-11-5), at such time or times as the board of trustees may by regulation prescribe, contributions...
in the amounts and at the rates specified in the applicable agreement entered into by the board.

C. Every political subdivision or instrumentality required to make payments under paragraph (f)(5)B hereof is authorized, in consideration of the employees' retention in or entry upon employment after enactment of Articles 1 and 3, to impose upon its employees, as to services which are covered by an approved plan, a contribution with respect to wages (as defined in Section 25-11-5) not exceeding the amount provided in Section 25-11-123(d) if such services constituted employment within the meaning of Articles 1 and 3, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund as partial discharge of the liability of such political subdivisions or instrumentalities under paragraph (f)(5)B hereof. Failure to deduct such contribution shall not relieve the employee or employer of liability thereof.

D. Any state agency, school, political subdivision, instrumentality or any employer that is required to submit contribution payments or wage reports under any section of this chapter shall be assessed interest on delinquent payments or wage reports as determined by the board of trustees in accordance with rules and regulations adopted by the board and such assessed interest may be recovered by action in a court of competent jurisdiction against such reporting agency liable therefor or may, upon due certification of delinquency and at the request of the board of trustees, be deducted from any other monies payable to such reporting agency by any department or agency of the state.

E. Each political subdivision of the state and each instrumentality of the state or a political subdivision or subdivisions which submits a plan for approval of the board, as provided in this section, shall reimburse the board for coverage into the expense account, its pro rata share of the total expense...
of administering Articles 1 and 3 as provided by regulations of
said board.

(g) The board may, in its discretion, deny the right of
membership in this system to any class of employees whose
compensation is only partly paid by the state or who are occupying
positions on a part-time or intermittent basis. The board may, in
its discretion, make optional with employees in any such classes
their individual entrance into this system.

(h) An employee whose membership in this system is
contingent on his own election, and who elects not to become a
member, may thereafter apply for and be admitted to membership;
but no such employee shall receive prior service credit unless he
comes a member prior to July 1, 1953, except as provided in
paragraph (b).

(i) In the event any member of this system should
change his employment to any agency of the state having an
actuarially funded retirement system, the board of trustees may
authorize the transfer of the member's creditable service and of
the present value of the member's employer's accumulation account
and of the present value of the member's accumulated membership
collections to such other system, provided the employee agrees
to the transfer of his accumulated membership contributions and
provided such other system is authorized to receive and agrees to
make such transfer.

In the event any member of any other actuarially funded
system maintained by an agency of the state changes his employment
to an agency covered by this system, the board of trustees may
authorize the receipt of the transfer of the member's creditable
service and of the present value of the member's employer's
accumulation account and of the present value of the member's
accumulated membership contributions from such other system,
provided the employee agrees to the transfer of his accumulated

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members of the retirement system and have remained contributors to the retirement system for four (4) years, may receive credit for such retroactive service with such political subdivision or instrumentality, provided the employee and/or employer, as provided under the terms of the modification of the joinder agreement in allowing such coverage, pay into the retirement system the employer's and employee's contributions on wages paid the member during such previous employment, together with interest or actuarial cost as determined by the board covering the period from the date the service was rendered until the payment for the credit for such service was made. Such wages shall be verified by the Social Security Administration or employer payroll records.

Effective July 1, 1998, upon eligibility as noted above, a member may receive credit for such retroactive service with such political subdivision or instrumentality provided:

(1) The member shall furnish proof satisfactory to the board of trustees of certification of such services from the political subdivision or instrumentality where the services were rendered or verification by the Social Security Administration; and

(2) The member shall pay to the retirement system on the date he or she is eligible for such credit or at any time
thereafter prior to the date of retirement the actuarial cost for
each year of such creditable service. The provisions of this
subparagraph (2) shall be subject to the limitations of Section
415 of the Internal Revenue Code and regulations promulgated
thereunder.

Nothing contained in this paragraph (k) shall be construed to
limit the authority of the board to allow the correction of
reporting errors or omissions based on the payment of employee and
employer contributions plus applicable interest. Payment for such
time shall be made in increments of not less than one-quarter
(1/4) year of creditable service beginning with the most recent
service. Upon the payment of all or part of such required
contributions, plus interest or the actuarial cost as provided
above, the member shall receive credit for the period of
creditable service for which full payment has been made to the
retirement system.

(l) Through June 30, 1998, any state service eligible
for retroactive service credit, no part of which has ever been
reported, and requiring the payment of employee and employer
contributions plus interest, or, from and after July 1, 1998, any
state service eligible for retroactive service credit, no part of
which has ever been reported to the retirement system, and
requiring the payment of the actuarial cost for such creditable
service, may, at the member's option, be purchased in quarterly
increments as provided above at such time as its purchase is
otherwise allowed.

(m) All rights to purchase retroactive service credit
or repay a refund as provided in Section 25-11-101 et seq. shall
terminate upon retirement.

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

The following classes of employees and officers shall not
become members of this retirement system, any other provisions of

Articles 1 and 3 to the contrary notwithstanding:
(a) Patient or inmate help in state charitable, penal or correctional institutions;

(b) Students of any state educational institution employed by any agency of the state for temporary, part-time or intermittent work;

(c) Participants of Comprehensive Employment and Training Act of 1973 (CETA) being Public Law 93-203, who enroll on or after July 1, 1979.

### III. TERMINATION OF MEMBERSHIP

Membership in this system shall cease by a member withdrawing his accumulated contributions, or by a member withdrawing from active service with a retirement allowance, or by a member's death.

**SECTION 3.** Section 25-11-127, Mississippi Code of 1972, is amended as follows:

25-11-127. No person who is being paid a retirement allowance or a pension after retirement under this article shall be employed or paid for any service by the State of Mississippi, except as provided in this section or in Section 25-11-126. This section shall not apply to any pensioner who has been elected to public office after retirement, nor to any person employed because of special knowledge or experience. This section shall not be construed to mean that any person employed or elected under the above exceptions shall become a member under Article 3 of the retirement system, nor shall any retirant of this retirement system who is reemployed or is reelectioned to office after retirement continue to draw retirement benefits while so reemployed or reelectioned, except those persons who continue receiving their retirement allowance while holding the office of councilman or alderman of a municipality as authorized by Section 25-11-126. Any person who has been retired under the provisions of Articles 1 and 3 and who is later reemployed in service covered by this article, except for those persons who continue receiving...
their retirement allowance while holding the office of councilman or alderman of a municipality as authorized by Section 25-11-126, shall cease to receive benefits under this article and shall again become a contributing member of the retirement system. When the person retires again, if the reemployment exceeds six (6) months, the person shall have his or her benefit recomputed, including service after again becoming a member provided that the total retirement allowance paid to the retired member in his or her previous retirement shall be deducted from the member's retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected. Nothing contained in this section shall be construed as prohibiting any county or city not a member of the Public Employees' Retirement System from employing persons up to the age of seventy-three (73).

In addition, through June 30, 1988, nothing contained in this section shall be construed as prohibiting any governmental unit that is a member from employing persons up to the age of seventy-three (73) who are not eligible for membership at the time of employment under Article 3.

The board of trustees of the retirement system shall have the right to prescribe rules and regulations for the carrying out of this provision.

The provisions of this section shall not be construed to prohibit any retirant, regardless of age, from being employed and from drawing retirement allowance either (a) for a period of time not to exceed one hundred twenty (120) days in any fiscal year, but less than one-half (1/2) of the normal working days for the position in any fiscal year, or (b) for a period of time in any fiscal year sufficient in length to permit a retirant to earn not in excess of twenty-five percent (25%) of retirant's average compensation or the current rate of the salary in effect for the regular position filled. Notice shall be given in writing to the executive director of the system, setting forth the facts upon
which the * * * employment is being made, and the notice shall be
given within five (5) days from the date of employment and also
from the date of termination of the employment.

* * * Any member who is not eligible to exercise the
provisions of Section 25-11-126 who has attained seventy (70)
years of age and who has forty (40) or more years of creditable
service may continue in office or employment or be reemployed or
elected provided that the person files annually, in writing, in
the office of the employer and the office of the executive
director of the system before those services, a waiver of all
salary or compensation and elects to receive in lieu of that
salary or compensation a retirement allowance as provided in this
section, in which event no salary or compensation shall thereafter
be due or payable for those services. However, any such officer
or employee may receive in addition to the retirement allowance,
any per diem, office expense allowance, mileage or travel expense
authorized by any statute of the State of Mississippi.

Any * * * member who is not eligible to exercise the
provisions of Section 25-11-126 may continue in municipal or
county office or employment or be reemployed or elected in a
municipality or county provided that the person files annually,
in writing, in the office of the employer and the office of the
executive director of the system before those services, a waiver
of all salary or compensation and elects to receive in lieu of
that salary or compensation a retirement allowance as provided in
this section, in which event no salary or compensation shall
thereafter be due or payable for those services. However, any
such officer or employee may receive in addition to the
retirement allowance, any per diem, office expense allowance,
mileage or travel expense authorized by any statute of the State
of Mississippi.

SECTION 4. The Attorney General of the State of Mississippi
shall submit this act, immediately upon approval by the Governor,
ST: Retirement; retired PERS members may hold office as city councilmen and receive retirement and salary.