

By: Representative Guice

To: Appropriations

HOUSE BILL NO. 348

1 AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF
 2 1972, TO PROVIDE THAT PERSONS RECEIVING A RETIREMENT ALLOWANCE
 3 FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE ELECTED TO
 4 THE OFFICE OF COUNCILMAN OR ALDERMAN OF A MUNICIPALITY AFTER
 5 RETIREMENT MAY RECEIVE A RETIREMENT ALLOWANCE FROM THE SYSTEM
 6 WHILE HOLDING THE OFFICE IN ADDITION TO RECEIVING THE REGULAR
 7 COMPENSATION FOR THE OFFICE; TO PROVIDE THAT THOSE PERSONS WILL
 8 NOT BE CONTRIBUTING MEMBERS OF THE RETIREMENT SYSTEM OR RECEIVE
 9 ANY CREDITABLE SERVICE FOR THE PERIOD DURING WHICH THEY RECEIVE A
 10 RETIREMENT ALLOWANCE WHILE HOLDING THE OFFICE; TO AMEND SECTIONS
 11 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN CONFORMITY
 12 WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

14 SECTION 1. The following shall be codified as Section
 15 25-11-126, Mississippi Code of 1972:

16 25-11-126. (1) Any person who is receiving a retirement
 17 allowance under this article and who is elected to the office of
 18 councilman or alderman of a municipality after retirement may
 19 continue receiving his or her retirement allowance while holding
 20 the office in addition to receiving the regular compensation for
 21 the office, as provided in this section.

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



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

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

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

55 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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



66 members of the retirement system as a condition of their
67 employment.

68 (b) All persons who shall become employees in the state
69 service after January 31, 1953, except those specifically excluded
70 or as to whom election is provided in Articles 1 and 3, unless
71 they shall file with the board prior to the lapse of sixty (60)
72 days of employment or sixty (60) days after the effective date of
73 the cited articles, whichever is later, on a form prescribed by
74 the board, a notice of election not to be covered by the
75 membership of the retirement system and a duly executed waiver of
76 all present and prospective benefits which would otherwise inure
77 to them on account of their participation in the system, shall
78 become members of the retirement system; provided, however, that
79 no credit for prior service will be granted to members until they
80 have contributed to Article 3 of the retirement system for a
81 minimum period of at least four (4) years. Such members shall
82 receive credit for services performed prior to January 1, 1953, in
83 employment now covered by Article 3, but no credit shall be
84 granted for retroactive services between January 1, 1953, and the
85 date of their entry into the retirement system unless the employee
86 pays into the retirement system both the employer's and the
87 employee's contributions on wages paid him during the period from
88 January 31, 1953, to the date of his becoming a contributing
89 member, together with interest at the rate determined by the board
90 of trustees. Members reentering after withdrawal from service
91 shall qualify for prior service under the provisions of Section
92 25-11-117. From and after July 1, 1998, upon eligibility as noted
93 above, the member may receive credit for such retroactive service
94 provided:

95 (1) The member shall furnish proof satisfactory to
96 the board of trustees of certification of such service from the
97 covered employer where the services were performed; and



98 (2) The member shall pay to the retirement system
99 on the date he or she is eligible for such credit or at any time
100 thereafter prior to the date of retirement the actuarial cost for
101 each year of such creditable service. The provisions of this
102 subparagraph (2) shall be subject to the limitations of Section
103 415 of the Internal Revenue Code and regulations promulgated
104 thereunder.

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

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

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

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



130 person shall receive prior service credit unless he becomes a
131 member on or before February 1, 1953.

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

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

159 (2) It specifies the source or sources from which
160 the funds necessary to make the payments required by paragraph (d)
161 of Section 25-11-123 and of paragraph (f) (5)B and C of this



162 section are expected to be derived and contains reasonable
163 assurance that such sources will be adequate for such purpose;

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

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

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

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

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



194 in the amounts and at the rates specified in the applicable
195 agreement entered into by the board.

196 C. Every political subdivision or
197 instrumentality required to make payments under paragraph (f) (5)B
198 hereof is authorized, in consideration of the employees' retention
199 in or entry upon employment after enactment of Articles 1 and 3,
200 to impose upon its employees, as to services which are covered by
201 an approved plan, a contribution with respect to wages (as defined
202 in Section 25-11-5) not exceeding the amount provided in Section
203 25-11-123(d) if such services constituted employment within the
204 meaning of Articles 1 and 3, and to deduct the amount of such
205 contribution from the wages as and when paid. Contributions so
206 collected shall be paid into the contribution fund as partial
207 discharge of the liability of such political subdivisions or
208 instrumentalities under paragraph (f) (5)B hereof. Failure to
209 deduct such contribution shall not relieve the employee or
210 employer of liability thereof.

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

222 E. Each political subdivision of the state
223 and each instrumentality of the state or a political subdivision
224 or subdivisions which submits a plan for approval of the board, as
225 provided in this section, shall reimburse the board for coverage
226 into the expense account, its pro rata share of the total expense



227 of administering Articles 1 and 3 as provided by regulations of
228 said board.

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

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

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

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



259 membership contributions to this system and provided the other
260 system is authorized and agrees to make such transfer.

261 (j) Wherever herein state employment is referred to, it
262 shall include joint employment by state and federal agencies of
263 all kinds.

264 (k) Employees of a political subdivision or
265 instrumentality who were employed by such political subdivision or
266 instrumentality prior to an agreement between such entity and the
267 Public Employees' Retirement System to extend the benefits of this
268 article to its employees, and which agreement provides for the
269 establishment of retroactive service credit, and who have been
270 members of the retirement system and have remained contributors to
271 the retirement system for four (4) years, may receive credit for
272 such retroactive service with such political subdivision or
273 instrumentality, provided the employee and/or employer, as
274 provided under the terms of the modification of the joinder
275 agreement in allowing such coverage, pay into the retirement
276 system the employer's and employee's contributions on wages paid
277 the member during such previous employment, together with interest
278 or actuarial cost as determined by the board covering the period
279 from the date the service was rendered until the payment for the
280 credit for such service was made. Such wages shall be verified by
281 the Social Security Administration or employer payroll records.
282 Effective July 1, 1998, upon eligibility as noted above, a member
283 may receive credit for such retroactive service with such
284 political subdivision or instrumentality provided:

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

290 (2) The member shall pay to the retirement system
291 on the date he or she is eligible for such credit or at any time



292 thereafter prior to the date of retirement the actuarial cost for
293 each year of such creditable service. The provisions of this
294 subparagraph (2) shall be subject to the limitations of Section
295 415 of the Internal Revenue Code and regulations promulgated
296 thereunder.

297 Nothing contained in this paragraph (k) shall be construed to
298 limit the authority of the board to allow the correction of
299 reporting errors or omissions based on the payment of employee and
300 employer contributions plus applicable interest. Payment for such
301 time shall be made in increments of not less than one-quarter
302 (1/4) year of creditable service beginning with the most recent
303 service. Upon the payment of all or part of such required
304 contributions, plus interest or the actuarial cost as provided
305 above, the member shall receive credit for the period of
306 creditable service for which full payment has been made to the
307 retirement system.

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

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

321 **II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP**

322 The following classes of employees and officers shall not
323 become members of this retirement system, any other provisions of
324 Articles 1 and 3 to the contrary notwithstanding:



325 (a) Patient or inmate help in state charitable, penal
326 or correctional institutions;

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

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

333 **III. TERMINATION OF MEMBERSHIP**

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

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

340 25-11-127. No person who is being paid a retirement
341 allowance or a pension after retirement under this article shall
342 be employed or paid for any service by the State of Mississippi,
343 except as provided in this section or in Section 25-11-126. This
344 section shall not apply to any pensioner who has been elected to
345 public office after retirement, nor to any person employed because
346 of special knowledge or experience. This section shall not be
347 construed to mean that any person employed or elected under the
348 above exceptions shall become a member under Article 3 of the
349 retirement system, nor shall any retirant of this retirement
350 system who is reemployed or is reelected to office after
351 retirement continue to draw retirement benefits while so
352 reemployed or reelected, except those persons who continue
353 receiving their retirement allowance while holding the office of
354 councilman or alderman of a municipality as authorized by Section
355 25-11-126. Any person who has been retired under the provisions
356 of Articles 1 and 3 and who is later reemployed in service covered
357 by this article, except for those persons who continue receiving



358 their retirement allowance while holding the office of councilman
359 or alderman of a municipality as authorized by Section 25-11-126,
360 shall cease to receive benefits under this article and shall again
361 become a contributing member of the retirement system. When the
362 person retires again, if the reemployment exceeds six (6) months,
363 the person shall have his or her benefit recomputed, including
364 service after again becoming a member, provided * * * that the
365 total retirement allowance paid to the retired member in his or
366 her previous retirement shall be deducted from the member's
367 retirement reserve and taken into consideration in recalculating
368 the retirement allowance under a new option selected. Nothing
369 contained in this section shall be construed as prohibiting any
370 county or city not a member of the Public Employees' Retirement
371 System from employing persons up to the age of seventy-three (73).
372 In addition, through June 30, 1988, nothing contained in this
373 section shall be construed as prohibiting any governmental unit
374 that is a member from employing persons up to the age of
375 seventy-three (73) who are not eligible for membership at the time
376 of employment under Article 3.

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

380 The provisions of this section shall not be construed to
381 prohibit any retirant, regardless of age, from being employed and
382 from drawing retirement allowance either (a) for a period of time
383 not to exceed one hundred twenty (120) days in any fiscal year,
384 but less than one-half (1/2) of the normal working days for the
385 position in any fiscal year, or (b) for a period of time in any
386 fiscal year sufficient in length to permit a retirant to earn not
387 in excess of twenty-five percent (25%) of retirant's average
388 compensation or the current rate of the salary in effect for the
389 regular position filled. Notice shall be given in writing to the
390 executive director of the system, setting forth the facts upon



391 which the * * * employment is being made, and the notice shall be
392 given within five (5) days from the date of employment and also
393 from the date of termination of the employment.

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

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

422 SECTION 4. The Attorney General of the State of Mississippi
423 shall submit this act, immediately upon approval by the Governor,



424 or upon approval by the Legislature subsequent to a veto, to the
425 Attorney General of the United States or to the United States
426 District Court for the District of Columbia in accordance with the
427 provisions of the Voting Rights Act of 1965, as amended and
428 extended.

429 SECTION 5. This act shall take effect and be in force from
430 and after July 1, 2001, if it is effectuated on or before that
431 date under Section 5 of the Voting Rights Act of 1965, as amended
432 and extended. If it is effectuated under Section 5 of the Voting
433 Rights Act of 1965, as amended and extended, after July 1, 2001,
434 this act shall take effect and be in force from and after the date
435 it is effectuated under Section 5 of the Voting Rights Act of
436 1965, as amended and extended.

