HOUSE BILL NO. 768

AN ACT TO AMEND SECTION 25-11-109, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT STUDENTS EMPLOYED AT PUBLIC COLLEGES AND UNIVERSITIES IN MISSISSIPPI TO TEACH CLASSES WHILE PURSUING THEIR STUDIES SHALL RECEIVE CREDITABLE SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR THE TIME THEY TEACH SUCH CLASSES; TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 25-11-109, Mississippi Code of 1972, is amended as follows:

25-11-109. (1) Under such rules and regulations as the board of trustees shall adopt, each person who becomes a member of this retirement system, as provided in Section 25-11-105, on or prior to July 1, 1953, or who becomes a member and contributes to the system for a minimum period of four (4) years, shall receive credit for all state service rendered before February 1, 1953. To receive such credit, such member shall file a detailed statement of all services as an employee rendered by him in the state service before February 1, 1953. For any member who joined the system after July 1, 1953, any creditable service for which the member is not required to make contributions shall not be credited to the member until the member has contributed to the system for a minimum period of at least four (4) years.

(2) In the computation of membership service or prior service under the provisions of this article, the total months of accumulative service during any fiscal year shall be calculated in accordance with the schedule as follows: ten (10) or more months of creditable service during any fiscal year shall constitute a year of creditable service; seven (7) months to nine (9) months
inclusive, three-quarters (3/4) of a year of creditable service; four (4) months to six (6) months inclusive, one-half-year of creditable service; one (1) month to three (3) months inclusive, one-quarter (1/4) of a year of creditable service. In no case shall credit be allowed for any period of absence without compensation except for disability while in receipt of a disability retirement allowance, nor shall less than fifteen (15) days of service in any month, or service less than the equivalent of one-half (1/2) of the normal working load for the position and less than one-half (1/2) of the normal compensation for the position in any month, constitute a month of creditable service, nor shall more than one (1) year of service be creditable for all services rendered in any one (1) fiscal year; provided that for a school employee, substantial completion of the legal school term when and where the service was rendered shall constitute a year of service credit for both prior service and membership service. Any state or local elected official shall be deemed a full-time employee for the purpose of creditable service for prior service or membership service. However, an appointed or elected official compensated on a per diem basis only shall not be allowed creditable service for terms of office.

In the computation of any retirement allowance or any annuity or benefits provided in this article, any fractional period of service of less than one (1) year shall be taken into account and a proportionate amount of such retirement allowance, annuity or benefit shall be granted for any such fractional period of service.

In the computation of unused leave for creditable service authorized in Section 25-11-103, the following shall govern: twenty-one (21) days of unused leave shall constitute one (1) month of creditable service and in no case shall credit be allowed for any period of unused leave of less than fifteen (15) days.

The number of months of unused leave shall determine the number of
quarters or years of creditable service in accordance with the
above schedule for membership and prior service. In order for the
member to receive creditable service for the number of days of
unused leave, the system must receive certification from the
governing authority.

For the purpose of this subsection, for members of the system
who are elected officers and who retire on or after July 1, 1987,
the following shall govern:

(a) For service prior to July 1, 1984, the members
shall receive credit for leave (combined personal and major
medical) for service as an elected official prior to that date at
the rate of thirty (30) days per year.

(b) For service on and after July 1, 1984, the member
shall receive credit for personal and major medical leave
beginning July 1, 1984, at the rates authorized in Sections
25-3-93 and 25-3-95, computed as a full-time employee.

(3) Subject to the above restrictions and to such other
rules and regulations as the board may adopt, the board shall
verify, as soon as practicable after the filing of such statements
of service, the services therein claimed.

(4) Upon verification of the statement of prior service, the
board shall issue a prior service certificate certifying to each
member the length of prior service for which credit shall have
been allowed on the basis of his statement of service. So long as
membership continues, a prior service certificate shall be final
and conclusive for retirement purposes as to such service,
provided that any member may within five (5) years from the date
of issuance or modification of such certificate request the board
of trustees to modify or correct his prior service certificate.
Any modification or correction authorized shall only apply
prospectively.

When membership ceases, such prior service certificates shall
become void. Should the employee again become a member, he shall
enter the system as an employee not entitled to prior service credit except as provided inSections 25-11-105(I), 25-11-113 and 25-11-117.

(5) Creditable service at retirement, on which the retirement allowance of a member shall be based, shall consist of the membership service rendered by him since he last became a member, and also, if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate.

(6) Anything in this article to the contrary notwithstanding, any member who served on active duty in the Armed Forces of the United States, or who served in maritime service during periods of hostility in World War II, shall be entitled to creditable service for his service on active duty in the armed forces or in such maritime service, provided he entered state service after his discharge from the armed forces or entered state service after he completed such maritime service. The maximum period for such creditable service for all military service shall not exceed four (4) years unless positive proof can be furnished by such person that he was retained in the armed forces during World War II or in maritime service during World War II by causes beyond his control and without opportunity of discharge. The member shall furnish proof satisfactory to the board of trustees of certification of military service or maritime service records showing dates of entrance into active duty service and the date of discharge. From and after July 1, 1993, no creditable service shall be granted for any military service or maritime service to a member who qualifies for a retirement allowance in another public retirement system administered by the Board of Trustees of the Public Employees' Retirement System based in whole or in part on such military or maritime service. In no case shall the member receive creditable service if the member received a dishonorable discharge from the Armed Forces of the United States.
Any member of the Public Employees' Retirement System who has at least four (4) years of membership service credit shall be entitled to receive a maximum of five (5) years creditable service for service rendered in another state as a public employee of such other state, or a political subdivision, public education system or other governmental instrumentality thereof, or service rendered as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States residing in areas outside the continental United States, provided that:

(a) The member shall furnish proof satisfactory to the board of trustees of certification of such services from the state, public education system, political subdivision or retirement system of the state where the services were performed or the governing entity of the American overseas dependent school where the services were performed; and

(b) The member is not receiving or will not be entitled to receive from the public retirement system of the other state or from any other retirement plan, including optional retirement plans, sponsored by the employer, a retirement allowance including such services; and

(c) The member shall pay to the retirement system on the date he or she is eligible for credit for such out-of-state service or at any time thereafter prior to date of retirement the actuarial cost as determined by the actuary for each year of out-of-state creditable service. The provisions of this subsection are subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder.

Any member of the Public Employees' Retirement System who has at least four (4) years of membership service credit and who receives, or has received, professional leave without compensation for professional purposes directly related to the
employment in state service shall receive creditable service for the period of professional leave without compensation provided:

(a) The professional leave is performed with a public institution or public agency of this state, or another state or federal agency;

(b) The employer approves the professional leave showing the reason for granting the leave and makes a determination that the professional leave will benefit the employee and employer;

(c) Such professional leave shall not exceed two (2) years during any ten-year period of state service;

(d) The employee shall serve the employer on a full-time basis for a period of time equivalent to the professional leave period granted immediately following the termination of the leave period;

(e) The contributing member shall pay to the retirement system the actuarial cost as determined by the actuary for each year of professional leave. The provisions of this subsection are subject to the regulations of the Internal Revenue Code limitations;

(f) Such other rules and regulations consistent herewith as the board may adopt and in case of question, the board shall have final power to decide the questions.

Any actively contributing member participating in the School Administrator Sabbatical Program established in Section 37-9-77 shall qualify for continued participation under this subsection (8).

(9) Any member of the Public Employees’ Retirement System who has at least four (4) years of credited membership service shall be entitled to receive a maximum of ten (10) years creditable service for:

(a) Any service rendered as an employee of any political subdivision of this state, or any instrumentality
thereof, which does not participate in the Public Employees' Retirement System; or

(b) Any service rendered as an employee of any political subdivision of this state, or any instrumentality thereof, which participates in the Public Employees' Retirement System but did not elect retroactive coverage; or

(c) Any service rendered as an employee of any political subdivision of this state, or any instrumentality thereof, for which coverage of the employee's position was or is excluded; provided that the member pays into the retirement system the actuarial cost as determined by the actuary for each year, or portion thereof, of such service. Payment for such service may be made in increments of one-quarter-year of creditable service.

After a member has made full payment to the retirement system for all or any part of such service, the member shall receive creditable service for the period of such service for which full payment has been made to the retirement system.

(10) Any student who is employed by a state institution of higher learning in Mississippi to teach classes at the institution while the student is enrolled and pursuing studies at the institution shall receive creditable service for any periods of time that the student teaches such classes at the institution.

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 those specifically excluded, or as to whom election is provided in Articles 1 and 3, 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 becomes 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 contributions 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 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 membership contributions to this system and provided the other system is authorized and agrees to make such transfer.

(j) Wherever herein state employment is referred to, it shall include joint employment by state and federal agencies of all kinds.
(k) Employees of a political subdivision or instrumentality who were employed by such political subdivision or instrumentality prior to an agreement between such entity and the Public Employees' Retirement System to extend the benefits of this article to its employees, and which agreement provides for the establishment of retroactive service credit, and who have been 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, except for those students described in Section
25-11-109(10), who shall be members of the system and receive creditable service for their 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. This act shall take effect and be in force from and after July 1, 2001.