

By: Representative Mayo

To: Appropriations

HOUSE BILL NO. 1096

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 OR  
4 APPOINTED TO A PUBLIC OFFICE IN A POLITICAL SUBDIVISION OR  
5 INSTRUMENTALITY THEREOF AFTER RETIREMENT, AND PERSONS WHO ARE  
6 ELECTED OR APPOINTED OFFICIALS IN A PUBLIC OFFICE IN A POLITICAL  
7 SUBDIVISION OR INSTRUMENTALITY THEREOF ON THE EFFECTIVE DATE OF  
8 THIS ACT WHO BECOME ELIGIBLE TO RECEIVE A RETIREMENT ALLOWANCE  
9 FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHILE HOLDING THAT  
10 OFFICE, MAY RECEIVE A RETIREMENT ALLOWANCE FROM THE SYSTEM WHILE  
11 HOLDING THAT OFFICE IN ADDITION TO RECEIVING TWO-THIRDS OF THE  
12 REGULAR COMPENSATION FOR THAT OFFICE; TO PROVIDE THAT THOSE  
13 PERSONS SHALL NOT BE ACTIVE MEMBERS OF THE RETIREMENT SYSTEM AND  
14 SHALL NOT RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING  
15 WHICH THEY RECEIVE A RETIREMENT ALLOWANCE WHILE HOLDING OFFICE; TO  
16 PROVIDE THAT EMPLOYEE CONTRIBUTIONS SHALL BE DEDUCTED AND EMPLOYER  
17 CONTRIBUTIONS SHALL BE MADE FOR THOSE PERSONS FOR THE PERIOD  
18 DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE WHILE HOLDING  
19 OFFICE; TO AMEND SECTIONS 25-11-103, 25-11-105 AND 25-11-127,  
20 MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF  
21 THIS ACT; TO AMEND SECTION 25-11-117, MISSISSIPPI CODE OF 1972, TO  
22 PROVIDE THAT ANY PERSON WHO RECEIVED A RETIREMENT ALLOWANCE WHILE  
23 HOLDING OFFICE IN A POLITICAL SUBDIVISION OR INSTRUMENTALITY  
24 THEREOF MAY NOT RECEIVE A REFUND OF EMPLOYEE CONTRIBUTIONS THAT  
25 WERE MADE DURING THAT PERIOD OF SERVICE; AND FOR RELATED PURPOSES.

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

27 SECTION 1. The following shall be codified as Section  
28 25-11-126, Mississippi Code of 1972:

29 25-11-126. (1) Any person who is receiving a retirement  
30 allowance under this article and who is elected or appointed after  
31 retirement to a public office in a political subdivision or  
32 instrumentality thereof, and any person who is an elected or  
33 appointed official in a public office in a political subdivision  
34 or instrumentality thereof on the effective date of House Bill No.  
35 \_\_\_\_\_, 2001 Regular Session, who becomes eligible to receive a  
36 retirement allowance under this article while holding that office,

37 may choose to receive or continue to receive a retirement  
38 allowance under this article while holding that office in addition  
39 to receiving two-thirds (2/3) of the regular compensation for that  
40 office in the manner provided in this section.

41 (2) Any person who is receiving a retirement allowance and  
42 who is elected or appointed to a public office in a political  
43 subdivision or instrumentality thereof after retirement shall  
44 notify the executive director of the system before taking office  
45 of his or her choice about continuing to receive the retirement  
46 allowance while holding that office. If the person chooses not to  
47 continue receiving the retirement allowance while holding that  
48 office, the retirement allowance shall cease on the day that he or  
49 she begins serving in the office. After leaving the office, in  
50 order to begin receiving a retirement allowance under this article  
51 again, the person shall make application to the executive director  
52 of the system, and the retirement allowance shall begin on the  
53 first of the month following the date that the application is  
54 received by the executive director.

55 (3) Any person who is an elected or appointed official in a  
56 public office in a political subdivision or instrumentality  
57 thereof on the effective date of House Bill No. \_\_\_\_, 2001 Regular  
58 Session, who becomes eligible to receive a retirement allowance  
59 while holding that office and who chooses to receive a retirement  
60 allowance while holding that office shall make application to the  
61 executive director of the system and the retirement allowance  
62 shall begin on the first of the month following the date that the  
63 application is received by the executive director. Those elected  
64 or appointed officials shall not be required to withdraw from  
65 service in order to receive the retirement allowance.

66 (4) Any person to whom this section applies who receives or  
67 continues to receive a retirement allowance under this article  
68 while holding office in a political subdivision or instrumentality  
69 thereof shall not be an active member of the retirement system and

70 shall not receive any creditable service for the period during  
71 which he or she receives a retirement allowance while holding  
72 office in a political subdivision or instrumentality thereof.  
73 However, the employer shall deduct employee contributions for the  
74 person and shall make employer contributions on behalf of the  
75 person in the same manner as provided in Section 25-11-123 for  
76 active members, for the period during which he or she receives a  
77 retirement allowance while holding office in a political  
78 subdivision or instrumentality thereof, and the employer shall pay  
79 the contributions to the retirement system.

80 (5) Any person to whom this section applies who chooses not  
81 to receive a retirement allowance while holding office in a  
82 political subdivision or instrumentality thereof shall be an  
83 active and contributing member of the retirement system and shall  
84 receive creditable service for the period during which he or she  
85 holds office in a political subdivision or instrumentality thereof  
86 without receiving a retirement allowance. If the person has  
87 previously received a retirement allowance under this article and  
88 holds office for more than six (6) months without receiving a  
89 retirement allowance, the person shall have his or her allowance  
90 recomputed when he or she retires again, which shall include the  
91 service after the person again became a contributing member of the  
92 retirement system.

93 (6) This section shall apply to officials who are elected to  
94 office and officials who are appointed to office in a political  
95 subdivision or instrumentality thereof for a specified term or for  
96 the will and pleasure of the appointing authority, but shall not  
97 apply to persons in other positions of employment in the state  
98 service.

99 SECTION 2. Section 25-11-103, Mississippi Code of 1972, is  
100 amended as follows:

101           25-11-103. The following words and phrases as used in  
102 Articles 1 and 3, unless a different meaning is plainly required  
103 by the context, shall have the following meanings:

104           (a) "Accumulated contributions" shall mean the sum of  
105 all the amounts deducted from the compensation of a member and  
106 credited to his individual account in the annuity savings account,  
107 together with regular interest thereon as provided in Section  
108 25-11-123.

109           (b) "Actuarial cost" shall mean the amount of funds  
110 presently required to provide future benefits as determined by the  
111 board based on applicable tables and formulas provided by the  
112 actuary.

113           (c) "Actuarial equivalent" shall mean a benefit of  
114 equal value to the accumulated contributions, annuity or benefit,  
115 as the case may be, when computed upon the basis of such mortality  
116 tables as shall be adopted by the board of trustees, and regular  
117 interest.

118           (d) "Actuarial tables" shall mean such tables of  
119 mortality and rates of interest as shall be adopted by the board  
120 in accordance with the recommendation of the actuary.

121           (e) "Agency" shall mean any governmental body employing  
122 persons in the state service.

123           (f) "Average compensation" shall mean the average of  
124 the four (4) highest years of earned compensation reported for an  
125 employee in a fiscal or calendar year period, or combination  
126 thereof which do not overlap, or the last forty-eight (48)  
127 consecutive months of earned compensation reported for an  
128 employee. The four (4) years need not be successive or joined  
129 years of service. In no case shall the average compensation so  
130 determined be in excess of One Hundred Twenty-five Thousand  
131 Dollars (\$125,000.00). In computing the average compensation, any  
132 amount paid in a lump sum for personal leave shall be included in  
133 the calculation to the extent that such amount does not exceed an

134 amount which is equal to thirty (30) days of earned compensation  
135 and to the extent that it does not cause the employees' earned  
136 compensation to exceed the maximum reportable amount specified in  
137 Section 25-11-103(k); provided, however, that such thirty-day  
138 limitation shall not prevent the inclusion in the calculation of  
139 leave earned under federal regulations prior to July 1, 1976, and  
140 frozen as of that date as referred to in Section 25-3-99. Only  
141 the amount of lump sum pay for personal leave due and paid upon  
142 the death of a member attributable for up to one hundred fifty  
143 (150) days shall be used in the deceased member's average  
144 compensation calculation in determining the beneficiary's  
145 benefits. In computing the average compensation, no amounts shall  
146 be used which are in excess of the amount on which contributions  
147 were required and paid. If any member who is or has been granted  
148 any increase in annual salary or compensation of more than eight  
149 percent (8%) retires within twenty-four (24) months from the date  
150 that such increase becomes effective, then the board shall exclude  
151 that part of the increase in salary or compensation that exceeds  
152 eight percent (8%) in calculating that member's average  
153 compensation for retirement purposes. The board may enforce this  
154 provision by rule or regulation. However, increases in  
155 compensation in excess of eight percent (8%) per year granted  
156 within twenty-four (24) months of the date of retirement may be  
157 included in such calculation of average compensation if  
158 satisfactory proof is presented to the board showing that the  
159 increase in compensation was the result of an actual change in the  
160 position held or services rendered, or that such compensation  
161 increase was authorized by the State Personnel Board or was  
162 increased as a result of statutory enactment, and the employer  
163 furnishes an affidavit stating that such increase granted within  
164 the last twenty-four (24) months was not contingent on a promise  
165 or agreement of the employee to retire. Nothing in Section  
166 25-3-31 shall affect the calculation of the average compensation

167 of any member for the purposes of this article. The average  
168 compensation of any member who retires before July 1, 1992, shall  
169 not exceed the annual salary of the Governor.

170 (g) "Beneficiary" shall mean any person entitled to  
171 receive a retirement allowance, an annuity or other benefit as  
172 provided by Articles 1 and 3. In the event of the death prior to  
173 retirement of any member whose spouse and/or children are not  
174 entitled to a retirement allowance on the basis that the member  
175 has less than four (4) years of service credit and/or has not been  
176 married for a minimum of one (1) year or the spouse has waived his  
177 or her entitlement to a retirement allowance pursuant to Section  
178 25-11-114, the lawful spouse of a member at the time of the death  
179 of such member shall be the beneficiary of such member unless the  
180 member has designated another beneficiary subsequent to the date  
181 of marriage in writing, and filed such writing in the office of  
182 the executive director of the board of trustees. No designation  
183 or change of beneficiary shall be made in any other manner.

184 (h) "Board" shall mean the board of trustees provided  
185 in Section 25-11-15 to administer the retirement system herein  
186 created.

187 (i) "Creditable service" shall mean "prior service,"  
188 "retroactive service" and all lawfully credited unused leave not  
189 exceeding the accrual rates and limitations provided in Section  
190 25-3-91 et seq., as of the date of withdrawal from service plus  
191 "membership service" for which credit is allowable as provided in  
192 Section 25-11-109. Except to limit creditable service reported to  
193 the system for the purpose of computing an employee's retirement  
194 allowance or annuity or benefits provided in this article, nothing  
195 in this paragraph shall limit or otherwise restrict the power of  
196 the governing authority of a municipality or other political  
197 subdivision of the state to adopt such vacation and sick leave  
198 policies as it deems necessary.

199           (j) "Child" means either a natural child of the member,  
200 a child that has been made a child of the member by applicable  
201 court action before the death of the member, or a child under the  
202 permanent care of the member at the time of the latter's death,  
203 which permanent care status shall be determined by evidence  
204 satisfactory to the board.

205           (k) "Earned compensation" shall mean the full amount  
206 earned by an employee for a given pay period including any  
207 maintenance furnished up to a maximum of One Hundred Twenty-five  
208 Thousand Dollars (\$125,000.00) per year, and proportionately for  
209 less than one (1) year of service. The value of such maintenance  
210 when not paid in money shall be fixed by the employing state  
211 agency, and, in case of doubt, by the board of trustees as defined  
212 in Section 25-11-15. In any case, earned compensation shall be  
213 limited to the regular periodic compensation paid, exclusive of  
214 litigation fees, bond fees, and other similar extraordinary  
215 nonrecurring payments. In addition, any member in a covered  
216 position, as defined by Public Employees' Retirement System laws  
217 and regulations, who is also employed by another covered agency or  
218 political subdivision shall have the earnings of that additional  
219 employment reported to the Public Employees' Retirement System  
220 regardless of whether the additional employment is sufficient in  
221 itself to be a covered position. In the case of fee officials,  
222 the net earnings from their office after deduction of expenses  
223 shall apply, except that in no case shall earned compensation be  
224 less than the total direct payments made by the state or  
225 governmental subdivisions to the official, and employer and  
226 employee contributions shall be paid thereon. In the case of  
227 members of the state Legislature, all remuneration or amounts  
228 paid, except mileage allowance, shall apply. The amount by which  
229 an eligible employee's salary is reduced pursuant to a salary  
230 reduction agreement authorized under Section 25-17-5 shall be  
231 included as earned compensation under this paragraph, provided

232 this inclusion does not conflict with federal law, including  
233 federal regulations and federal administrative interpretations  
234 thereunder, pertaining to the Federal Insurance Contributions Act  
235 or to Internal Revenue Code Section 125 cafeteria plans.  
236 Compensation in addition to an employee's base salary that is paid  
237 to the employee pursuant to the vacation and sick leave policies  
238 of a municipality or other political subdivision of the state that  
239 employs him which exceeds the maximums authorized by Section  
240 25-3-91 et seq., shall be excluded from the calculation of earned  
241 compensation under this article. The maximum salary applicable  
242 for retirement purposes before July 1, 1992, shall be the salary  
243 of the Governor. Nothing in Section 25-3-31 shall affect the  
244 determination of the earned compensation of any member for the  
245 purposes of this article.

246 (l) "Employee" means any person legally occupying a  
247 position in the state service, and shall include the employees of  
248 the retirement system created hereunder.

249 (m) "Employer" shall mean the State of Mississippi or  
250 any of its departments, agencies or subdivisions from which any  
251 employee receives his compensation.

252 (n) "Executive director" shall mean the secretary to  
253 the board of trustees, as provided in Section 25-11-15(9), and the  
254 administrator of the Public Employees' Retirement System and all  
255 systems under the management of the board of trustees. Wherever  
256 the term "Executive Secretary of the Public Employees' Retirement  
257 System" or "executive secretary" appears in this article or in any  
258 other provision of law, it shall be construed to mean the  
259 Executive Director of the Public Employees' Retirement System.

260 (o) "Fiscal year" shall mean the period beginning on  
261 July 1 of any year and ending on June 30 of the next succeeding  
262 year.

263 (p) "Medical board" shall mean the board of physicians  
264 or any governmental or nongovernmental disability determination



265 service designated by the board of trustees that is qualified to  
266 make disability determinations as provided for in Section  
267 25-11-119.

268 (q) "Member" shall mean any person included in the  
269 membership of the system as provided in Section 25-11-105.

270 (r) "Membership service" shall mean service as an  
271 employee rendered while a member of the retirement system.

272 (s) "Position" means any office or any employment in  
273 the state service, or two (2) or more of them, the duties of which  
274 call for services to be rendered by one (1) person, including  
275 positions jointly employed by federal and state agencies  
276 administering federal and state funds. The employer shall  
277 determine upon initial employment and during the course of  
278 employment of an employee who does not meet the criteria for  
279 coverage in the Public Employees' Retirement System based on the  
280 position held, whether the employee is or becomes eligible for  
281 coverage in the Public Employees' Retirement System based upon any  
282 other employment in a covered agency or political subdivision. If  
283 or when the employee meets the eligibility criteria for coverage  
284 in such other position, then the employer must withhold  
285 contributions and report wages from the noncovered position in  
286 accordance with the provisions for reporting of earned  
287 compensation. Failure to deduct and report those contributions  
288 shall not relieve the employee or employer of liability thereof.  
289 The board shall adopt such rules and regulations as necessary to  
290 implement and enforce this provision.

291 (t) "Prior service" shall mean service rendered before  
292 February 1, 1953, for which credit is allowable under Sections  
293 25-11-105 and 25-11-109, and which shall allow prior service for  
294 any person who is now or becomes a member of the Public Employees'  
295 Retirement System and who does contribute to the system for a  
296 minimum period of four (4) years.

297 (u) "Regular interest" shall mean interest compounded  
298 annually at such a rate as shall be determined by the board in  
299 accordance with Section 25-11-121.

300 (v) "Retirement allowance" shall mean an annuity for  
301 life as provided in this article, payable each year in twelve (12)  
302 equal monthly installments beginning as of the date fixed by the  
303 board. The retirement allowance shall be calculated in accordance  
304 with Section 25-11-111. Provided, any spouse who received a  
305 spouse retirement benefit in accordance with Section 25-11-111(d)  
306 prior to March 31, 1971, and said benefits were terminated because  
307 of eligibility for a social security benefit, may again receive  
308 his spouse retirement benefit from and after making application  
309 with the board of trustees to reinstate such spouse retirement  
310 benefit.

311 (w) "Retroactive service" shall mean service rendered  
312 after February 1, 1953, for which credit is allowable under  
313 Section 25-11-105(b) and Section 25-11-105(k).

314 (x) "System" shall mean the Public Employees'  
315 Retirement System of Mississippi established and described in  
316 Section 25-11-101.

317 (y) "State" shall mean the State of Mississippi or any  
318 political subdivision thereof or instrumentality thereof.

319 (z) "State service" shall mean all offices and  
320 positions of trust or employment in the employ of the state, or  
321 any political subdivision or instrumentality thereof, which elect  
322 to participate as provided by Section 25-11-105(f), including the  
323 position of elected or fee officials of the counties and their  
324 deputies and employees performing public services or any  
325 department, independent agency, board or commission thereof, and  
326 shall also include all offices and positions of trust or  
327 employment in the employ of joint state and federal agencies  
328 administering state and federal funds and service rendered by  
329 employees of the public schools. Effective July 1, 1973, all

330 nonprofessional public school employees, such as bus drivers,  
331 janitors, maids, maintenance workers and cafeteria employees,  
332 shall have the option to become members in accordance with Section  
333 25-11-105(b), and shall be eligible to receive credit for services  
334 prior to July 1, 1973, provided the contributions and interest are  
335 paid by the employee in accordance with said section; provided,  
336 further, that the county or municipal separate school district may  
337 pay the employer contribution and pro rata share of interest of  
338 the retroactive service from available funds. From and after July  
339 1, 1998, retroactive service credit shall be purchased at the  
340 actuarial cost in accordance with Section 25-11-105(b).

341 (aa) "Withdrawal from service" shall mean complete  
342 severance of employment in the state service of any member by  
343 resignation, dismissal or discharge, except in the case of elected  
344 or appointed officials who become eligible to receive a retirement  
345 allowance under this article while holding office and who choose  
346 to receive the retirement allowance while holding office as  
347 authorized by Section 25-11-126.

348 (bb) The masculine pronoun, wherever used, shall  
349 include the feminine pronoun.

350 SECTION 3. Section 25-11-105, Mississippi Code of 1972, is  
351 amended as follows:

352 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

355 (a) All persons who shall become employees in the state  
356 service after January 31, 1953, and whose wages are subject to  
357 payroll taxes and are lawfully reported on IRS Form W-2, except  
358 (i) those persons who are specifically excluded, (ii) those  
359 persons to whom election is provided in Articles 1 and 3, and  
360 (iii) those elected or appointed officials who choose to receive  
361 or continue to receive a retirement allowance while holding office

362 as authorized by Section 25-11-126, shall become members of the  
363 retirement system as a condition of their employment.

364 (b) All persons who shall become employees in the state  
365 service after January 31, 1953, except those specifically excluded  
366 or as to whom election is provided in Articles 1 and 3, unless  
367 they shall file with the board prior to the lapse of sixty (60)  
368 days of employment or sixty (60) days after the effective date of  
369 the cited articles, whichever is later, on a form prescribed by  
370 the board, a notice of election not to be covered by the  
371 membership of the retirement system and a duly executed waiver of  
372 all present and prospective benefits which would otherwise inure  
373 to them on account of their participation in the system, shall  
374 become members of the retirement system; provided, however, that  
375 no credit for prior service will be granted to members until they  
376 have contributed to Article 3 of the retirement system for a  
377 minimum period of at least four (4) years. Such members shall  
378 receive credit for services performed prior to January 1, 1953, in  
379 employment now covered by Article 3, but no credit shall be  
380 granted for retroactive services between January 1, 1953, and the  
381 date of their entry into the retirement system unless the employee  
382 pays into the retirement system both the employer's and the  
383 employee's contributions on wages paid him during the period from  
384 January 31, 1953, to the date of his becoming a contributing  
385 member, together with interest at the rate determined by the board  
386 of trustees. Members reentering after withdrawal from service  
387 shall qualify for prior service under the provisions of Section  
388 25-11-117. From and after July 1, 1998, upon eligibility as noted  
389 above, the member may receive credit for such retroactive service  
390 provided:

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

394                   (2) The member shall pay to the retirement system  
395 on the date he or she is eligible for such credit or at any time  
396 thereafter prior to the date of retirement the actuarial cost for  
397 each year of such creditable service. The provisions of this  
398 subparagraph (2) shall be subject to the limitations of Section  
399 415 of the Internal Revenue Code and regulations promulgated  
400 thereunder.

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

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

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

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

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

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

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

455 (2) It specifies the source or sources from which  
456 the funds necessary to make the payments required by paragraph (d)  
457 of Section 25-11-123 and of paragraph (f)(5)b and c of this

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

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

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

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

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

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

490 in the amounts and at the rates specified in the applicable  
491 agreement entered into by the board.

492 C. Every political subdivision or  
493 instrumentality required to make payments under paragraph (f)(5)B  
494 hereof is authorized, in consideration of the employees' retention  
495 in or entry upon employment after enactment of Articles 1 and 3,  
496 to impose upon its employees, as to services which are covered by  
497 an approved plan, a contribution with respect to wages (as defined  
498 in Section 25-11-5) not exceeding the amount provided in Section  
499 25-11-123(d) if such services constituted employment within the  
500 meaning of Articles 1 and 3, and to deduct the amount of such  
501 contribution from the wages as and when paid. Contributions so  
502 collected shall be paid into the contribution fund as partial  
503 discharge of the liability of such political subdivisions or  
504 instrumentalities under paragraph (f)(5)B hereof. Failure to  
505 deduct such contribution shall not relieve the employee or  
506 employer of liability thereof.

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

518 E. Each political subdivision of the state  
519 and each instrumentality of the state or a political subdivision  
520 or subdivisions which submits a plan for approval of the board, as  
521 provided in this section, shall reimburse the board for coverage  
522 into the expense account, its pro rata share of the total expense



523 of administering Articles 1 and 3 as provided by regulations of  
524 said board.

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

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

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

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

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

557 (j) Wherever herein state employment is referred to, it  
558 shall include joint employment by state and federal agencies of  
559 all kinds.

560 (k) Employees of a political subdivision or  
561 instrumentality who were employed by such political subdivision or  
562 instrumentality prior to an agreement between such entity and the  
563 Public Employees' Retirement System to extend the benefits of this  
564 article to its employees, and which agreement provides for the  
565 establishment of retroactive service credit, and who have been  
566 members of the retirement system and have remained contributors to  
567 the retirement system for four (4) years, may receive credit for  
568 such retroactive service with such political subdivision or  
569 instrumentality, provided the employee and/or employer, as  
570 provided under the terms of the modification of the joinder  
571 agreement in allowing such coverage, pay into the retirement  
572 system the employer's and employee's contributions on wages paid  
573 the member during such previous employment, together with interest  
574 or actuarial cost as determined by the board covering the period  
575 from the date the service was rendered until the payment for the  
576 credit for such service was made. Such wages shall be verified by  
577 the Social Security Administration or employer payroll records.  
578 Effective July 1, 1998, upon eligibility as noted above, a member  
579 may receive credit for such retroactive service with such  
580 political subdivision or instrumentality provided:

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

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

588 thereafter prior to the date of retirement the actuarial cost for  
589 each year of such creditable service. The provisions of this  
590 subparagraph (2) shall be subject to the limitations of Section  
591 415 of the Internal Revenue Code and regulations promulgated  
592 thereunder.

593 Nothing contained in this paragraph (k) shall be construed to  
594 limit the authority of the board to allow the correction of  
595 reporting errors or omissions based on the payment of employee and  
596 employer contributions plus applicable interest. Payment for such  
597 time shall be made in increments of not less than one-quarter  
598 (1/4) year of creditable service beginning with the most recent  
599 service. Upon the payment of all or part of such required  
600 contributions, plus interest or the actuarial cost as provided  
601 above, the member shall receive credit for the period of  
602 creditable service for which full payment has been made to the  
603 retirement system.

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

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

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

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

621 (a) Patient or inmate help in state charitable, penal  
622 or correctional institutions;

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

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

629 **III. TERMINATION OF MEMBERSHIP**

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

634 SECTION 4. Section 25-11-117, Mississippi Code of 1972, is  
635 amended as follows:

636 25-11-117. (1) A member may be paid a refund of the amount  
637 of accumulated contributions to the credit of the member in the  
638 annuity savings account provided the member has withdrawn from  
639 state service and further provided the member has not returned to  
640 state service on the date the refund of the accumulated  
641 contributions would be paid. However, a member may not receive a  
642 refund of the amount of employee contributions, or interest earned  
643 on those contributions, that were made during any period when he  
644 or she received a retirement allowance during his or her  
645 employment as authorized by Section 25-11-126. Such refund of the  
646 contributions to the credit of the member in the annuity savings  
647 account shall be paid within ninety (90) days from receipt in the  
648 office of the retirement system of the properly completed form  
649 requesting such payment. In the event of death prior to  
650 retirement of any member whose spouse and/or children are not  
651 entitled to a retirement allowance, the accumulated contributions  
652 to the credit of the deceased member in the annuity savings  
653 account shall be paid to the designated beneficiary on file in

654 writing in the office of executive director of the board of  
655 trustees within ninety (90) days from receipt of a properly  
656 completed form requesting such payment. If there is no such  
657 designated beneficiary on file for such deceased member in the  
658 office of the system, upon the filing of a proper request with the  
659 board, the contributions to the credit of the deceased member in  
660 the annuity savings account shall be refunded pursuant to Section  
661 25-11-117.1(1). The payment of the refund shall discharge all  
662 obligations of the retirement system to the member on account of  
663 any creditable service rendered by the member prior to the receipt  
664 of the refund. By the acceptance of the refund, the member shall  
665 waive and relinquish all accrued rights in the system.

666 (2) Pursuant to the Unemployment Compensation Amendments of  
667 1992 (Public Law 102-318 (UCA)), a member or eligible beneficiary  
668 eligible for a refund under this section may elect on a form  
669 prescribed by the board under rules and regulations established by  
670 the board to have an eligible rollover distribution of accumulated  
671 contributions payable under this section paid directly to an  
672 eligible retirement plan or individual retirement account. If the  
673 member or eligible beneficiary makes such election and specifies  
674 the eligible retirement plan or individual retirement account to  
675 which such distribution is to be paid, the distribution will be  
676 made in the form of a direct trustee-to-trustee transfer to the  
677 specified eligible retirement plan. Flexible rollovers under this  
678 subsection shall not be considered assignments under Section  
679 25-11-129.

680 (3) If any person who has received a refund reenters the  
681 state service and again becomes a member of the system, the member  
682 may repay all or part of the amounts previously received as a  
683 refund, together with regular interest covering the period from  
684 the date of refund to the date of repayment; provided, however,  
685 that the amounts that are repaid by the member and the creditable  
686 service related thereto shall not be used in any benefit

687 calculation or determination until the member has remained a  
688 contributor to the system for a period of at least four (4) years  
689 subsequent to such member's reentry into state service. Repayment  
690 for such time shall be made in increments of not less than  
691 one-quarter (1/4) year of creditable service beginning with the  
692 most recent service for which refund has been made. Upon the  
693 repayment of all or part of such refund and interest, the member  
694 shall again receive credit for the period of creditable service  
695 for which full repayment has been made to the system.

696 SECTION 5. Section 25-11-127, Mississippi Code of 1972, is  
697 amended as follows:

698 25-11-127. (1) No person who is being paid a retirement  
699 allowance or a pension after retirement under this article shall  
700 be employed or paid for any service by the State of Mississippi,  
701 except as provided in this section or in Section 25-11-126. This  
702 section shall not apply to any pensioner who has been elected to  
703 public office after retirement, nor to any person employed because  
704 of special knowledge or experience. This section shall not be  
705 construed to mean that any person employed or elected under the  
706 above exceptions shall become a member under Article 3 of the  
707 retirement system, nor shall any retiree of this retirement system  
708 who is reemployed or is reelected to office after retirement  
709 continue to draw retirement benefits while so reemployed or  
710 reelected except those elected or appointed officials who choose  
711 to continue to receive a retirement allowance while holding office  
712 as authorized by Section 25-11-126.

713 (2) Any person who has been retired under the provisions of  
714 Articles 1 and 3 and who is later reemployed in service covered by  
715 this article shall cease to receive benefits under this article  
716 and shall again become a contributing member of the retirement  
717 system. When the person retires again \* \* \*, if the reemployment  
718 exceeds six (6) months, the person shall have his or her benefit  
719 recomputed, including service after again becoming a member,

720 provided \* \* \* that the total retirement allowance paid to the  
721 retired member in his or her previous retirement shall be deducted  
722 from the member's retirement reserve and taken into consideration  
723 in recalculating the retirement allowance under a new option  
724 selected.

725 (3) Nothing contained in this section shall be construed as  
726 prohibiting any county or city not a member of the Public  
727 Employees' Retirement System from employing persons up to the age  
728 of seventy-three (73). In addition, through June 30, 1988,  
729 nothing contained in this section shall be construed as  
730 prohibiting any governmental unit that is a member from employing  
731 persons up to the age of seventy-three (73) who are not eligible  
732 for membership at the time of employment under Article 3.

733 (4) The board of trustees of the retirement system shall  
734 have the right to prescribe rules and regulations for \* \* \*  
735 carrying out of the provisions of this section.

736 (5) The provisions of this section shall not be construed to  
737 prohibit any retiree, regardless of age, from being employed  
738 and \* \* \* drawing a retirement allowance either:

739 (a) For a period of time not to exceed one hundred  
740 twenty (120) days in any fiscal year, but less than one-half (1/2)  
741 of the normal working days for the position in any fiscal year, or

742 (b) For a period of time in any fiscal year sufficient  
743 in length to permit a retiree to earn not in excess of twenty-five  
744 percent (25%) of retiree's average compensation or the current  
745 rate of the salary in effect for the regular position filled.

746 Notice shall be given in writing to the executive director of  
747 the system, setting forth the facts upon which the \* \* \*  
748 employment is being made, and the notice shall be given within  
749 five (5) days from the date of employment and also from the date  
750 of termination of the employment. \* \* \*

751 (6) Any member who has attained seventy (70) years of age  
752 and who has forty (40) or more years of creditable service may

753 continue in office or employment or be reemployed or elected,  
754 provided that the person files annually, in writing, in the office  
755 of the employer and the office of the executive director of the  
756 system before those services, a waiver of all salary or  
757 compensation and elects to receive in lieu of that salary or  
758 compensation a retirement allowance as provided in this section,  
759 in which event no salary or compensation shall thereafter be due  
760 or payable for those services. However, any such officer or  
761 employee may receive, in addition to the retirement allowance, any  
762 per diem, office expense allowance, mileage or travel expense  
763 authorized by any statute of the State of Mississippi.

764 (7) Any \* \* \* member may continue in municipal or county  
765 office or employment or be reemployed \* \* \* in a municipality or  
766 county, provided that the person files annually, in writing, in  
767 the office of the employer and the office of the executive  
768 director of the system before those services, a waiver of all  
769 salary or compensation and elects to receive in lieu of that  
770 salary or compensation a retirement allowance as provided in this  
771 section, in which event no salary or compensation shall thereafter  
772 be due or payable for those services. However, any such officer  
773 or employee may receive, in addition to the retirement allowance,  
774 any per diem, office expense allowance, mileage or travel expense  
775 authorized by any statute of the State of Mississippi.

776 SECTION 6. The Attorney General of the State of Mississippi  
777 shall submit this act, immediately upon approval by the Governor,  
778 or upon approval by the Legislature subsequent to a veto, to the  
779 Attorney General of the United States or to the United States  
780 District Court for the District of Columbia in accordance with the  
781 provisions of the Voting Rights Act of 1965, as amended and  
782 extended.

783 SECTION 7. This act shall take effect and be in force from  
784 and after July 1, 2001, if it is effectuated on or before that  
785 date under Section 5 of the Voting Rights Act of 1965, as amended



786 and extended. If it is effectuated under Section 5 of the Voting  
787 Rights Act of 1965, as amended and extended, after July 1, 2001,  
788 this act shall take effect and be in force from and after the date  
789 it is effectuated under Section 5 of the Voting Rights Act of  
790 1965, as amended and extended.