To:  Finance

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001

By:  Senator(s) Johnson (38th)                       To:  Finance

SENATE BILL NO. 2755

AN ACT TO AUTHORIZE CERTAIN MEMBERS OF THE PUBLIC EMPLOYEE'S
RETIREMENT SYSTEM TO PARTICIPATE IN A DEFERRED OPTION PLAN IN LIEU
OF TERMINATING REEMPLOYMENT AND ACCEPTING A RETIREMENT ALLOWANCE;
TO PROVIDE THAT AN ELECTION TO PARTICIPATE IN THE PLAN MAY BE MADE
ONLY ONCE FOR A SPECIFIED PERIOD NOT TO EXCEED THREE YEARS; TO
PROVIDE THAT A MEMBER PARTICIPATING IN THE PLAN MAY NOT TERMINATE
PARTICIPATION PRIOR TO THE END OF THE SELECTED DURATION WITHOUT
TERMINATING EMPLOYMENT; TO PROVIDE THAT DURING PARTICIPATION IN
THE DEFERRED OPTION PLAN THE PARTICIPANT SHALL REMAIN A MEMBER OF
THE SYSTEM BUT EMPLOYER AND EMPLOYEE CONTRIBUTIONS SHALL NOT BE
PAYABLE; TO PROVIDE THAT THE RETIREMENT BENEFITS WHICH OTHERWISE
WOULD HAVE BEEN DUE THE PARTICIPANT SHALL, DURING THE PERIOD OF
PARTICIPATION IN THE PLAN, BE CREDITED TO THE DEFERRED RETIREMENT
OPTION PLAN ACCOUNT; TO REQUIRE THE PUBLIC EMPLOYEES' RETIREMENT
SYSTEM TO ESTABLISH A DEFERRED RETIREMENT OPTION PLAN ACCOUNT AND
TO MAINTAIN SUBACCOUNTS WITHIN THIS ACCOUNT REFLECTING THE CREDITS
ATTRIBUTED TO EACH PARTICIPANT IN THE PLAN; TO PROVIDE THAT UPON
TERMINATION OR PARTICIPATION IN THE PLAN AND EMPLOYMENT, A
PARTICIPANT SHALL RECEIVE A LUMP SUM PAYMENT FROM THE ACCOUNT OR
SYSTEMATIC DISBURSEMENTS FROM HIS INDIVIDUAL SUBACCOUNT IN ANY
MANNER APPROVED BY THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, AND BEGIN TO RECEIVE MONTHLY RETIREMENT
BENEFITS BASED ON THE OPTION SELECTED AT THE TIME OF PARTICIPATION
IN THE PLAN; TO PROVIDE THAT THE ELECTION TO PARTICIPATE IN THE PLAN IS IRREVOCABLE ONCE MADE; TO AMEND SECTIONS 25-11-105,
25-11-117 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO, AND FOR RELATED PURPOSES.

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

SECTION 1. (1) In lieu of terminating employment and
accepting a retirement allowance, any member of the Public
Employees' Retirement System who has thirty (30) years of
creditable service at any age, twenty-five (25) years of
creditable service and is at least age fifty-five (55) or has
twenty (20) years of creditable service exclusive of military
service and is at least age sixty-five (65), may elect to
participate in the Deferred Retirement Option Plan.
(2) An election to participate in the plan may be made only once, for a specified period not to exceed three (3) years. The three-year period begins within sixty (60) calendar days after the first time the member reaches one (1) of the eligibility requirements of subsection (1) of this section. The participation period must end not more than three (3) years and sixty (60) calendar days from the date the member first becomes eligible under any of the eligibility requirements of subsection (1) of this section, and in no case may the actual participation in the plan exceed three (3) years. Once specified, the period of participation may not be extended. A member participating in the plan may not terminate participation prior to the end of the selected duration without terminating employment. A member who chooses to participate in the plan shall elect a retirement plan option at the beginning of the participation period and such election shall be irrevocable once the participation period begins.

(3) For purposes of this plan, sick and annual leave may not be converted for purposes of establishing eligibility.

SECTION 2. (1) (a) During participation in the Deferred Retirement Option Plan, although the member shall remain a member of this retirement system, neither regular member nor employer contributions to the regular plan shall be payable.

(b) Any member who is a participant of the Deferred Retirement Option Plan shall not be subject to any change in his seniority status or other related benefits to which he is entitled as a condition of employment.

(2) For purposes of this act, average compensation and creditable service shall remain fixed as they existed on the date of commencement of participation in the plan. Creditable service shall not include conversion of sick and annual leave.

(3) Retirement benefits based on average compensation and creditable service as established under subsection (2) of this
section and which otherwise would have been due the participant shall, during the period of participation in the plan, be credited to the Deferred Retirement Option Plan Account.

(4) Individuals who participate in the Deferred Retirement Option Plan shall not receive the benefit of any cost-of-living adjustments granted during participation while employed and for a period of one (1) year following termination of employment.

SECTION 3. (1) The system shall establish a Deferred Retirement Option Plan Account which shall be a part of the system fund. This account shall not be subject to any fees, costs or expenses of any kind.

(2) The system shall maintain subaccounts within this account reflecting the credits attributed to each participant in the plan, but the monies in the account shall remain a part of the fund until disbursed to a participant in accordance with the plan provisions.

(3) Interest shall not be credited to a participant's subaccount during the period of participation. All amounts which remain credited to the individual's subaccount after termination of participation in the plan shall be credited with interest after the end of each fiscal year at a rate equal to the realized return on the system's portfolio for that fiscal year as certified by the system actuary in his actuarial report, less one-half of one percent (1/2-1%).

SECTION 4. (1) Upon termination of participation in both the plan and employment, a participant shall:

(a) At the participant's option, receive either a lump sum payment from the account equal to the amount then credited to his individual subaccount or systematic disbursements based on his individual subaccount in any manner approved by the Board of Trustees of the Public Employees' Retirement System.
(b) Begin to receive monthly retirement benefits based on the option selected at the time of election to participate in the plan, as adjusted pursuant to subsection (4) of this section.

(2) Upon termination of participation in the plan but not employment, credits to the account shall cease, and no retirement benefits shall be paid to the participant until employment is terminated. No payment shall be made based on credits in the account until employment is terminated. Employer and employee contributions shall resume.

(3) If a participant dies while still employed, his credits and benefits, if any, shall be payable in accordance with Section 25-11-117.

(4) Monthly retirement benefits payable to a participant after termination of participation in the plan and employment shall be calculated as follows:

(a) There shall be a "base benefit" which shall equal the participant's monthly credit to the account plus conversion of sick and annual leave, if any, based on the average compensation rate used to calculate the monthly credit.

(b) If the participant does not continue employment after termination of participation in the plan, his monthly retirement benefit shall equal his base benefit.

(c) If the participant continues employment after termination of participation in the plan for a period of less than thirty-six (36) months, his monthly retirement benefit shall equal his base benefit plus an amount based upon the service credit for the additional employment, together with conversion of the net amount of sick and annual leave accumulated during that period of employment, based upon the average compensation used to calculate the monthly credit.

(d) If the participant continues employment after termination of participation in the plan for a period of thirty-six (36) months or more, his monthly retirement benefit
shall equal his base benefit plus an amount based upon the service 
credit for the additional employment, together with conversion of 
the net amount of sick and annual leave accumulated during that 
period of employment, based upon the average compensation for the 
period of employment after termination of participation in the 
plan.

SECTION 5. Once participation in the plan commences, the 
election to participate is irrevocable and the term of 
participation may not be extended. Only one (1) period of 
participation is permitted. Average compensation and election of 
option, if any, are fixed upon commencement of participation.

SECTION 6. (1) Any member who retires from the Public 
Employees' Retirement System of Mississippi and terminates 
employment, who participated in the Deferred Retirement Option 
Plan and becomes employed or reemployed by any employer, shall 
have his total benefit suspended for the duration of such 
employment.

(2) During the period of his return to active service, the 
retiree and his employer shall make contributions to the 
retirement system, but the retiree shall receive no additional 
service credit or accrue any additional retirement benefits in the 
retirement system. Upon termination of such active service the 
member shall, upon application, be refunded the employee 
contributions paid since reemployment. The refund shall be 
without interest. The retirement system shall retain the employer 
contributions.

SECTION 7. 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 in Sections 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. **Creditable service shall not consist of any service rendered while participating in the Deferred Retirement Option Plan.**

(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.
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.

(7) 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.

(8) 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 such service.
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.
SECTION 8. Section 25-11-117, Mississippi Code of 1972, is amended as follows:

25-11-117. (1) A member may be paid a refund of the amount of accumulated contributions to the credit of the member in the annuity savings account provided the member has withdrawn from state service and further provided the member has not returned to state service on the date the refund of the accumulated contributions would be paid. Such refund of the contributions to the credit of the member in the annuity savings account shall be paid within ninety (90) days from receipt in the office of the retirement system of the properly completed form requesting such payment. In the event of death prior to retirement of any member whose spouse and/or children are not entitled to a retirement allowance, the accumulated contributions to the credit of the deceased member in the annuity savings account or Deferred Retirement Option Plan Account shall be paid to the designated beneficiary on file in writing in the office of executive director of the board of trustees within ninety (90) days from receipt of a properly completed form requesting such payment. If there is no such designated beneficiary on file for such deceased member in the office of the system, upon the filing of a proper request with the board, the contributions to the credit of the deceased member in the annuity savings account or Deferred Retirement Option Plan Account shall be refunded pursuant to Section 25-11-117.1(1). The payment of the refund shall discharge all obligations of the retirement system to the member on account of any creditable service rendered by the member prior to the receipt of the refund. By the acceptance of the refund, the member shall waive and relinquish all accrued rights in the system.

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

(3) If any person who has received a refund reenters the state service and again becomes a member of the system, the member may repay all or part of the amounts previously received as a refund, together with regular interest covering the period from the date of refund to the date of repayment; provided, however, that the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least four (4) years subsequent to such member's reentry into state service. Repayment 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 for which refund has been made. Upon the repayment of all or part of such refund and interest, the member shall again receive credit for the period of creditable service for which full repayment has been made to the system.

SECTION 9. Section 25-11-127, Mississippi Code of 1972, is amended as follows:

25-11-127. No person who is being paid a retirement allowance, or a pension after retirement under this article, shall be employed or paid for any service by the State of Mississippi, except as provided in this section, unless such person was a participant in the Deferred Retirement Option Plan, in which case...
Section 6 of Senate Bill No. 2755, 2001 Regular Session, shall also apply. This section shall not apply to any pensioner who has been elected to public office after retirement, nor to any person employed because of special knowledge or experience. This section shall not be construed to mean that any person employed or elected under the above exceptions shall become a member under Article 3 of the retirement system, nor shall any retirant of this retirement system who is reemployed or is reelected to office, after retirement continue to draw retirement benefits while so reemployed. Any person who has been retired under the provisions of Articles 1 and 3 and who is later reemployed in service covered by this article shall cease to receive benefits hereunder and shall again become a contributing member of the retirement system; and upon again retiring, if his reemployment exceeds six (6) months, shall have his benefit recomputed, including service after again becoming a member. Provided, further, that the total retirement allowance paid to the retired member in his previous retirement shall be deducted from his retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected. Nothing contained in this section shall be construed as prohibiting any county or city not a member of the Public Employees' Retirement System from employing persons up to the age of seventy-three (73); and provided further that, through June 30, 1988, nothing contained in this section shall be construed as prohibiting any governmental unit which is a member from employing persons up to the age of seventy-three (73) who are not eligible for membership at the time of employment under Article 3.

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

The provisions of this section shall not be construed to prohibit any retirant regardless of age from being employed and
from drawing retirement allowance either (a) for a period of time not to exceed one hundred twenty (120) days in any fiscal year, but less than one-half (1/2) of the normal working days for the position in any fiscal year, or (b) for a period of time in any fiscal year sufficient in length to permit a retirant to earn not in excess of twenty-five percent (25%) of retirant's average compensation or the current rate of the salary in effect for the regular position filled. Notice shall be given in writing to the executive secretary of the system, setting forth the facts upon which the emergency employment is being made, and such notice shall be given within five (5) days from the date of employment and also from the date of termination of said employment. It is further provided that any member who has attained seventy (70) years of age and who has forty (40) or more years of creditable service may continue in office or employment or be reemployed or elected provided such person files annually, in writing, in the office of the employer and the office of the executive secretary of the system prior to such services, a waiver of all salary or compensation and elects to receive in lieu of such salary or compensation a retirement allowance as provided in this section, in which event no salary or compensation shall thereafter be due or payable for such services and provided, further, that any such officer or employee may receive in addition to such retirement allowance any per diem, office expense allowance, mileage or travel expense authorized by any statute of the State of Mississippi. Any other member may continue in municipal or county office or employment or be reemployed or elected in a municipality or county provided such person files annually, in writing, in the office of the employer and the office of the executive secretary of the system prior to such services, a waiver of all salary or compensation and elects to receive in lieu of such salary or compensation a retirement allowance as provided in this section, in which event no salary or compensation shall thereafter be due.
or payable for such services and provided, further, that any such officer or employee may receive in addition to such retirement allowance any per diem, office expense allowance, mileage or travel expense authorized by any statute of the State of Mississippi.

SECTION 10. This act shall take effect and be in force from and after July 1, 2001.