

By: Representative Janus

To: Appropriations

HOUSE BILL NO. 322

1 AN ACT TO CREATE A SEPARATE RETIREMENT SYSTEM FOR LAW
 2 ENFORCEMENT OFFICERS; TO PROVIDE THAT THE SYSTEM SHALL BE
 3 ADMINISTERED BY THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES'
 4 RETIREMENT SYSTEM; TO DEFINE ELIGIBILITY FOR MEMBERSHIP IN THE
 5 SYSTEM; TO PROVIDE FOR EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO FUND
 6 THE SYSTEM; TO ESTABLISH BENEFITS FOR DISABILITY AND
 7 SUPERANNUATION RETIREMENT AND ESTABLISH DEATH BENEFITS; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** There is established and placed under the
 11 management of the Board of Trustees of the Public Employees'
 12 Retirement System a retirement system for the purpose of providing
 13 retirement allowances and other benefits under the provisions of
 14 this act for law enforcement officers and their beneficiaries.
 15 This retirement system shall be known as the "Law Enforcement
 16 Officers' Retirement System." The retirement system shall go into
 17 operation on July 1, 2003, when contributions by members shall
 18 begin and benefits shall become payable. This retirement system
 19 is designed to supplement and is in addition to the provisions of
 20 Section 25-11-1 et seq. Under the terms of this act, law
 21 enforcement officers shall retain all social security benefits
 22 under Article I of the Public Employees' Retirement Law of 1952
 23 but shall not be eligible for benefits under Article III of that
 24 law. This act is a substitute for and in lieu of Article III of
 25 that law, and is designed to provide more liberal benefits for law
 26 enforcement officers by reason of the dangerous nature of and
 27 special risk involved in their employment.

28 **SECTION 2.** (1) For the purposes of this act, the
 29 definitions in Section 25-11-5 and Section 25-11-103 shall apply
 30 unless a different meaning is plainly expressed by the context.



31 (2) As used in this act:

32 (a) "Board" means the Board of Trustees of the Public
33 Employees' Retirement System.

34 (b) "Law enforcement officer" means municipal police
35 officers and narcotics agents, sheriffs, deputy sheriffs,
36 constables, conservation officers, enforcement officers of the
37 Department of Marine Resources, agents and inspectors of the
38 Alcoholic Beverage Control Division of the State Tax Commission,
39 inspection station employees and field inspectors of the
40 Mississippi Department of Transportation, state correctional
41 facility guards and enforcement officers of the Department of
42 Corrections, enforcement officers of the Public Service
43 Commission, and any other full-time officer or employee of the
44 state or any agency, department, institution or county thereof who
45 is authorized to carry a firearm while in the performance of his
46 official duties and who has met the minimum educational and
47 training standards established by the Board on Law Enforcement
48 Officer Standards and Training for permanent, full-time law
49 enforcement officers and has received a certificate from that
50 board.

51 (c) "Member" means any person included in the
52 membership of the system as provided in Section 4 of this act.

53 (d) "System" means the Law Enforcement Officers'
54 Retirement System established by Section 1 of this act.

55 **SECTION 3.** (1) The general administration and
56 responsibility for the proper operation of the system and for
57 making the provisions of this act effective are vested in the
58 Board of Trustees of the Public Employees' Retirement System.

59 (2) The board shall invest all funds of the system in
60 accordance with Section 25-11-121.

61 (3) The board shall designate an actuary who shall be the
62 technical advisor of the board on matters regarding the operation



63 of the system and shall perform such other duties as are required
64 in connection with the system.

65 (4) At least once in each two-year period following July 1,
66 2003, the actuary shall make an actuarial investigation into the
67 mortality, service, withdrawal and compensation experience of the
68 members and beneficiaries of the system, and shall make a
69 valuation of the assets and liabilities of the system. Taking
70 into account the result of the investigation and valuation, the
71 board shall adopt for the retirement system such mortality,
72 service, and other tables as shall be deemed necessary. On the
73 basis of those tables that the board adopts, the actuary shall
74 make biennial valuations of the assets and liabilities of the
75 funds of the system.

76 (5) The board shall keep such data as necessary for the
77 actuarial valuation of the contingent assets and liabilities of
78 the system and for checking the experience of the system.

79 (6) The board shall determine from time to time the rate of
80 regular interest for use in all calculations, with the rate of
81 five percent (5%) per annum applicable unless changed by the
82 board.

83 (7) The board shall make payments of retirement benefits
84 under this act to members, and to the beneficiaries of those
85 members, by means of direct deposit to an account with a financial
86 institution that is a participant of the Automated Clearing House
87 designated by the member or beneficiary, unless the member or
88 beneficiary can demonstrate that payment by means of direct
89 deposit will cause the member or beneficiary undue hardship.

90 (8) Subject to the limitations of this act, the board from
91 time to time shall establish rules and regulations for the
92 administration of the system and for the transaction of business.

93 (9) The board shall keep a record of all its proceedings
94 under this act. All books, accounts and records shall be kept in
95 the general office of the Public Employees' Retirement System and



96 shall be public records except for individual member records. The
97 Public Employees' Retirement System shall not disclose the name,
98 address or contents of any individual member records without the
99 prior written consent of the individual to whom the record
100 pertains.

101 (10) The Executive Director of the Public Employees'
102 Retirement System shall serve as the executive director of this
103 system.

104 **SECTION 4.** (1) The membership of the system shall be
105 composed as follows:

106 (a) All duly elected or appointed police officers and
107 narcotics agents in the full-time employment of a municipality
108 that has elected to include its police officers and narcotics
109 agents in the membership of the system under subsection (3) of
110 this section, who are actually engaged in the enforcement of the
111 laws of this state and the municipality, except police officers
112 and narcotic agents who are members of any retirement system
113 created under Section 21-29-101 et seq. or Section 21-29-201 et
114 seq., but not auxiliary officers or officers who are engaged only
115 in administrative or civil duties.

116 (b) All duly elected sheriffs and all duly appointed
117 deputy sheriffs in the full-time employment of a county who are
118 actually engaged in the enforcement of the laws of this state and
119 the county, but not deputy sheriffs who are engaged only in
120 administrative or civil duties.

121 (c) All duly elected constables.

122 (d) All duly appointed conservation officers of the
123 Department of Wildlife, Fisheries and Parks who are actually
124 engaged in the enforcement of the game and fish laws of this state
125 (Section 49-7-1 et seq.).

126 (e) All duly appointed enforcement officers of the
127 Department of Marine Resources who are actually engaged in the



128 enforcement of the seafood laws of this state (Section 49-15-1 et
129 seq.) .

130 (f) All duly appointed agents and inspectors of the
131 Alcoholic Beverage Control Division of the State Tax Commission
132 who are actually engaged in the enforcement of the alcoholic
133 beverage control laws of this state (Section 67-1-1 et seq.) .

134 (g) All duly appointed or employed inspection station
135 employees, field inspectors and railroad inspectors of the
136 Mississippi Department of Transportation who are actually engaged
137 in the enforcement of the laws specified in Section 27-5-71 or
138 other laws of this state administered and enforced by the
139 Department of Transportation.

140 (h) All duly appointed or employed state correctional
141 facility guards and enforcement officers of the Department of
142 Corrections whose official duties are to insure the custody,
143 security and control of any offenders under their supervision.

144 (i) All duly appointed or employed enforcement officers
145 and inspectors of the Public Service Commission who are actually
146 engaged in the enforcement of the provisions of Section 77-7-1 et
147 seq. or other laws of this state administered and enforced by the
148 Public Service Commission.

149 (j) All full-time officers and employees of the state
150 or any agency, department, institution or county thereof, not
151 listed in paragraphs (a) through (i) of this subsection, who are
152 authorized to carry firearms while in the performance of their
153 official duties and who have met the minimum educational and
154 training standards established by the Board on Law Enforcement
155 Officer Standards and Training for permanent, full-time law
156 enforcement officers and have received a certificate from that
157 board.

158 (2) Membership in the system shall not include any
159 secretarial, clerical, stenographic or administrative employees.



160 (3) (a) The governing authorities of any municipality are
161 authorized, in their discretion, to elect to include in the
162 membership of the system the full-time police officers and
163 narcotics agents of the municipality who are actually engaged in
164 the enforcement of the laws of this state and the municipality,
165 except police officers and narcotics agents who are members of any
166 retirement system created under Section 21-29-101 et seq. or
167 Section 21-29-201 et seq., by adopting a resolution to that effect
168 and transmitting the resolution to the board.

169 (b) When any municipality elects to include its police
170 officers and narcotics agents in the membership of the system:

171 (i) All such persons serving in that capacity on
172 the date that the governing authorities adopt the resolution,
173 except police officers and narcotics agents who are members of any
174 retirement system created under Section 21-29-101 et seq. or
175 Section 21-29-201 et seq., shall become members of the system on
176 the first day of the month following the date that the board
177 receives the resolution, unless they file with the board within
178 thirty (30) days after the date that the board receives the
179 resolution, on a form prescribed by the board, a notice of
180 election not to be covered in the membership of the system and a
181 duly executed waiver of all present and prospective benefits that
182 would otherwise inure to them on account of their membership in
183 the system; and

184 (ii) All such persons who are elected, appointed
185 or employed after the date that the governing authorities adopt
186 the resolution shall become members of the system as a condition
187 of their office, appointment or employment.

188 (c) After a municipality has elected to include its
189 police officers and narcotics agents in the membership of the
190 system, the municipality shall not be authorized to withdraw from
191 the system or to cancel or preclude membership in the system for



192 any such person elected, appointed or employed on or after the
193 date that the municipality made the election.

194 (4) Except as otherwise provided for municipalities in
195 subsection (3) of this section, all law enforcement officers
196 eligible for membership in the system as provided in this section
197 who are serving in that capacity on July 1, 2003, shall become
198 members of the system on that date, unless they file with the
199 board before August 1, 2003, on a form prescribed by the board, a
200 notice of election not to be covered in the membership of the
201 system and a duly executed waiver of all present and prospective
202 benefits that otherwise would inure to them on account of their
203 membership in the system.

204 (5) Except as otherwise provided for municipalities in
205 subsection (3) of this section, all law enforcement officers
206 eligible for membership in the system as provided in this section
207 who are elected or appointed after June 30, 2003, shall become
208 members of the system as a condition of their office or
209 employment.

210 (6) Membership in the system shall cease by a member
211 withdrawing his accumulated contributions, or by a member
212 withdrawing from active service with a retirement allowance, or by
213 death of the member.

214 **SECTION 5.** (1) Creditable service on which a member's
215 service or disability retirement benefit is based shall consist of
216 prior service and membership service. Except as otherwise
217 provided for municipalities in this subsection, prior service
218 means service performed before July 1, 2003, for which
219 contributions were made to the Public Employees' Retirement
220 System, and membership service means all service for which credit
221 may be allowed under this act after June 30, 2003, and all
222 lawfully credited unused leave as of the date of withdrawal from
223 service, as certified by the employer. For police officers and
224 narcotics agents of municipalities that have elected to include



225 those persons in the membership of the system, prior service means
226 service performed before the date that they became members of the
227 system for which contributions were made to the Public Employees'
228 Retirement System, and membership service means all service for
229 which credit may be allowed under this act on or after the date
230 that they became members of the system and all lawfully credited
231 unused leave as of the date of withdrawal from service, as
232 certified by the municipality.

233 (2) In computing the period of service of a member of the
234 system, any member who served on active duty in the Armed Forces
235 of the United States, or who served in maritime service during
236 periods of hostility in World War II, shall be entitled to
237 creditable service at no cost for his service on active duty in
238 the Armed Forces or in such maritime service, provided he entered
239 state service after his discharge from the Armed Forces or entered
240 state service after he completed such maritime service. The
241 maximum period for creditable service for all military service as
242 defined in this subsection (2) shall not exceed four (4) years
243 unless positive proof can be furnished by the person that he was
244 retained in the Armed Forces during World War II or in maritime
245 service during World War II by causes beyond his control and
246 without opportunity of discharge. The member shall furnish proof
247 satisfactory to the board of certification of military service or
248 maritime service records showing dates of entrance into service
249 and the date of discharge. No creditable service shall be granted
250 for any military service or maritime service to a member who
251 qualifies for a retirement allowance in another public retirement
252 system administered by the board based in whole or in part on that
253 military or maritime service. In no case shall the member receive
254 creditable service if the member received a dishonorable discharge
255 from the Armed Forces of the United States.

256 (3) (a) Any member of the system whose membership service
257 is interrupted as a result of qualified military service within



258 the meaning of Section 414(u) (5) of the Internal Revenue Code, and
259 who has received the maximum service credit available under
260 subsection (2) of this section, shall receive creditable service
261 for the period of qualified military service that does not qualify
262 as creditable service under subsection (2) of this section upon
263 reentering membership service in an amount not to exceed five (5)
264 years if:

265 (i) The member pays the contributions he would
266 have made to the system if he had remained in membership service
267 for the period of qualified military service based upon his salary
268 at the time his membership service was interrupted;

269 (ii) The member returns to membership service
270 within ninety (90) days of the end of his qualified military
271 service; and

272 (iii) The employer at the time the member's
273 service was interrupted and to which employment the member returns
274 pays the contributions it would have made into the retirement
275 system for that period based on the member's salary at the time
276 the service was interrupted.

277 (b) The payments required to be made in paragraph
278 (a) (i) of this subsection may be made over a period beginning with
279 the date of return to membership service and not exceeding three
280 (3) times the member's qualified military service; however, in no
281 event shall that period exceed five (5) years.

282 (c) The member shall furnish proof satisfactory to the
283 board of certification of military service showing dates of
284 entrance into qualified service and the date of discharge, as well
285 as proof that the member has returned to active employment within
286 the time specified.

287 **SECTION 6.** (1) The board shall act as custodian of the
288 system, and shall receive to the credit of the system all
289 appropriations and other funds available as an employer's
290 contribution to the system, from any source whatsoever.



291 (2) The employers shall deduct each month from the salary of
292 each member seven and one-fourth percent (7-1/4%) of earned
293 compensation, and shall pay the amount so deducted to the board to
294 be credited to the system. Notwithstanding the employee
295 contribution rates specified in this subsection, the board may
296 vary the percentage of employee contribution biennially on the
297 basis of the liabilities of the system for the various allowances
298 and benefits as shown by actuarial valuation. From the funds
299 credited to this account, the board shall pay retirements,
300 disability benefits, survivors' benefits, expenses and shall
301 refund contributions as provided in this act. The funds of the
302 system shall be maintained as a separate fund, separate from all
303 other funds held by the board and shall be used only for the
304 payment of benefits provided for by this act or amendments to this
305 act.

306 (3) On account of each member the employers shall pay
307 monthly into the system from funds available an amount equal to a
308 certain percentage of the compensation of each member to be known
309 as the "normal contributions," and an additional amount equal to a
310 percentage of his compensation to be known as the "accrued
311 liability contribution." The percentage rate of those
312 contributions shall be fixed biennially by the board on the basis
313 of the liabilities of the system for the various allowances and
314 benefits as shown by the actuarial valuation.

315 (4) The board is authorized to deduct two percent (2%) of
316 all employer contributions paid into the system to be transferred
317 to the expense fund of the Public Employees' Retirement System to
318 defray the cost of administering the system.

319 **SECTION 7.** Each employer shall withhold the member
320 contributions required by Section 6 of this act from all
321 compensation earned after June 30, 2003, or in the case of police
322 officers and narcotics agents of municipalities that have elected
323 to include those persons in the membership of the system, from all



324 compensation earned on and after the date that they became members
325 of the system. The contributions so withheld shall be treated as
326 employer contributions in determining tax treatment under the
327 United States Internal Revenue Code and Mississippi Income Tax
328 Code. These contributions shall not be included as gross income
329 of the member until such time as they are distributed or made
330 available. The employer shall pay these member contributions from
331 the same source of funds that is used in paying earnings to the
332 member. The employer may withhold member contributions by a
333 reduction in the cash salary of the member, or by an offset
334 against a future salary increase, or by a combination of a
335 reduction in salary and offset against a future salary increase.
336 The member contributions so withheld shall be treated for all
337 purposes in the same manner and to the same extent as member
338 contributions.

339 **SECTION 8.** (1) Upon application of a member or his
340 employer, but in no event before termination of state service, any
341 member who has not attained the age of fifty-five (55) years may
342 be retired by the board, not less than thirty (30) and not more
343 than ninety (90) days next following the date of filing the
344 application, on a disability retirement allowance, if the medical
345 board of the Public Employees' Retirement System, after an
346 evaluation of medical evidence, which may include a physical
347 examination by the medical board, certifies that he is mentally or
348 physically incapacitated for the performance of duty, that the
349 incapacity is likely to be permanent, and that the sickness or
350 injury was caused or sustained as a direct result of duty as a law
351 enforcement officer after June 30, 2003, or in the case of a
352 police officer or narcotics agent of a municipality that has
353 elected to include those persons in the membership of the system,
354 on or after the date that the person became a member of the
355 system.



356 Upon the application of a member or his employer, any member
357 who is not yet eligible for service retirement benefits and who
358 has had at least five (5) years of creditable service may be
359 retired by the board, not less than thirty (30) and not more than
360 ninety (90) days next following the date of filing the
361 application, on a disability retirement allowance, if the medical
362 board, after an evaluation of medical evidence, which may include
363 a physical examination by the medical board, certifies that he is
364 mentally or physically incapacitated for the further performance
365 of duty, that the incapacity is likely to be permanent, and that
366 he should be retired. This disability need not be service
367 connected.

368 (2) Upon retirement for disability, a member shall receive a
369 disability benefit equal to fifty percent (50%) of his average
370 compensation for the two (2) years immediately preceding his
371 retirement, but not less than any retirement benefits for which he
372 may be eligible at the date he is granted disability.

373 (3) Once each year during the first five (5) years following
374 retirement of a member on a disability retirement allowance, and
375 once in every period of three (3) years thereafter, the board may,
376 and upon his application shall, require any disability retiree who
377 has not yet attained the age of fifty-five (55) years to undergo a
378 medical examination. The examination shall be made at the place
379 of residence of the retiree or other place mutually agreed upon by
380 the medical board. If any disability retiree who has not yet
381 attained the age of fifty-five (55) years refuses to submit to any
382 medical examination provided for in this subsection, his allowance
383 may be discontinued until his withdrawal of that refusal, and if
384 his refusal continues for one (1) year, all his rights in that
385 part of the disability benefit provided by employer contributions
386 shall be revoked by the board.

387 (4) If the medical board reports and certifies to the board
388 that the disability retiree is engaged in, or is able to engage



389 in, a gainful occupation paying more than the difference between
390 his disability benefit and his average compensation, and if the
391 board concurs in the report, the disability benefit shall be
392 reduced to an amount that, together with the amount earnable by
393 him, equals the amount of his average compensation. If his
394 earning capacity is later changed, the amount of the benefit may
395 be further modified. However, the revised benefit shall not
396 exceed the amount originally granted or an amount that, when added
397 to the amount earnable by the retiree, together with the member's
398 annuity, equals the amount of his average compensation.

399 (5) If a disability retiree under the age of fifty-five (55)
400 years is restored to active service at a compensation not less
401 than his average compensation, his disability benefit shall cease,
402 he shall again become a member of the retirement system, and he
403 shall contribute thereafter at the same rate he paid before
404 disability. Any such prior service certificate on the basis of
405 which his service was computed at the time of retirement shall be
406 restored to full force and effect. In addition, upon his
407 subsequent retirement he shall be credited with all creditable
408 service as a member, including the period for which he was paid
409 disability benefits.

410 **SECTION 9.** (1) Any member upon withdrawal from service upon
411 or after attainment of the age of fifty-five (55) years who has
412 completed at least four (4) years of creditable service, or any
413 member upon withdrawal from service upon or after attainment of
414 the age of forty-five (45) years who has completed at least twenty
415 (20) years of creditable service, or any member upon withdrawal
416 from service regardless of age who has completed at least
417 twenty-five (25) years of creditable service, shall be entitled to
418 receive a retirement allowance that shall be payable the first of
419 the month following receipt of the member's application in the
420 office of the executive director of the system, but in no event
421 before withdrawal from service.



422 (2) Any member whose withdrawal from service occurs before
423 attaining the age of fifty-five (55) years who has completed four
424 (4) or more years of creditable service and has not received a
425 refund of the member's accumulated contributions shall be entitled
426 to receive a retirement allowance of the amount earned and accrued
427 at the date of withdrawal from service, beginning upon his
428 attaining the age of fifty-five (55) years.

429 (3) The annual amount of the retirement allowance shall
430 consist of:

431 (a) A member's annuity, which shall be the actuarial
432 equivalent of the accumulated contributions of the member at the
433 time of retirement, computed according to the actuarial table in
434 use by the system.

435 (b) An employer's annuity, which, together with the
436 member's annuity provided above, shall be equal to two and
437 one-half percent (2-1/2%) of the average compensation for each
438 year of membership service.

439 (c) A prior service annuity equal to two and one-half
440 percent (2-1/2%) of the average compensation for each year of
441 prior service for which the member is allowed credit.

442 (d) In the case of retirement of any member before
443 attaining the age of fifty-five (55) years, the retirement
444 allowance shall be computed in accordance with the formula set
445 forth above in this section, except that the employer's annuity
446 and prior service annuity shall be reduced by three percent (3%)
447 for each year of age below fifty-five (55) years, or three percent
448 (3%) for each year of service below twenty-five (25) years of
449 creditable service, whichever is lesser.

450 (e) Upon retiring for service, a member shall be
451 eligible to obtain retirement benefits, as computed above, for
452 life, except that the aggregate amount of the employer's annuity
453 and prior service annuity shall not exceed more than one hundred



454 percent (100%) of the average compensation regardless of the years
455 of service.

456 (f) Any member of the system who attains the age of
457 sixty (60) years shall be immediately retired.

458 **SECTION 10.** (1) Any member who is receiving a retirement
459 allowance for service or disability retirement, or any beneficiary
460 thereof, who has received a monthly benefit for at least one (1)
461 full fiscal year, shall be eligible to receive an additional
462 benefit, on December 1 or July 1 of the year as provided in
463 subsection (4) or (5) of this section, equal to the sum of:

464 (a) An amount equal to three percent (3%) of the annual
465 retirement allowance multiplied by the number of full fiscal years
466 in retirement before the fiscal year in which the member reaches
467 age fifty-five (55), plus

468 (b) An additional amount equal to three percent (3%)
469 compounded by the number of full fiscal years in retirement
470 beginning with the fiscal year in which the member reaches age
471 fifty-five (55), multiplied by the amount of the annual retirement
472 allowance.

473 (2) The calculation of the beneficiary's additional benefit
474 provided in this section shall be based on the member's age and
475 full fiscal years in retirement as if the member had lived.

476 (3) If a retiree who is receiving a retirement allowance
477 that will terminate upon the retiree's death is receiving the
478 additional benefit in one (1) payment and dies on or after July 1
479 but before December 1, the beneficiary designated on the
480 retirement application, if any, shall receive in a single payment
481 a fractional part of the additional benefit based on the number of
482 months in which a retirement allowance was received during the
483 fiscal year. If there is no surviving beneficiary, payment shall
484 be made in accordance with Section 15(1) of this act. Any similar
485 remaining payments of the additional benefit payable under this
486 section to a deceased beneficiary who was receiving a monthly



487 benefit shall be payable in accordance with the provisions of
488 Section 15(2) of this act. If the additional benefit is being
489 received in one (1) payment each year, the additional benefit
490 shall be prorated based on the number of months in which a
491 retirement allowance was received during the fiscal year when (i)
492 the monthly benefit payable to a beneficiary terminates due to the
493 expiration of an option, remarriage or cessation of dependent
494 status or due to the retiree's return to covered employment, and
495 (ii) the monthly benefit terminates on or after July 1 and before
496 December 1.

497 (4) The additional benefit provided in this section shall be
498 paid in one (1) payment in December of each year to those persons
499 who are receiving a retirement allowance on December 1 of that
500 year, unless an election is made under subsection (5) of this
501 section. The board, in its discretion, may allow a retired member
502 or a beneficiary thereof who is receiving the additional benefit
503 in one (1) payment each year to have the additional benefit paid
504 in monthly installments if the retired member or beneficiary
505 submits satisfactory documentation that the continued receipt of
506 the additional benefit in one (1) payment each year will cause a
507 financial hardship to the retired member or beneficiary.

508 (5) Retired members or beneficiaries thereof who are
509 receiving a retirement allowance may elect by an irrevocable
510 agreement in writing filed in the Office of the Public Employees'
511 Retirement System no less than thirty (30) days before July 1 of
512 any year, to begin receiving the additional benefit provided in
513 this section in twelve (12) equal monthly installments beginning
514 on July 1 of the year. This irrevocable agreement shall be
515 binding on the member and subsequent beneficiaries. Payment of
516 those monthly installments shall not extend beyond the month in
517 which a retirement allowance is due and payable. Any retired
518 member or beneficiary thereof who previously elected to receive
519 the additional annual payment in monthly installments may elect,



520 upon application on a form prescribed by the board, to have that
521 payment made in one (1) payment in December of each year. This
522 written election must be filed in the office of the Public
523 Employees' Retirement System before June 1, 2004, and shall be
524 effective for the fiscal year beginning July 1, 2004. The board,
525 in its discretion, may allow a retired member or a beneficiary
526 thereof who is receiving the additional benefit in monthly
527 installments to have the additional benefit paid in one (1)
528 payment in December of each year if the retired member or
529 beneficiary submits satisfactory documentation that the continued
530 receipt of the additional benefit in monthly installments will
531 cause financial hardship to the retired member or beneficiary.

532 (6) The additional benefit or benefits provided in this
533 section are for the fiscal year in which they are paid.

534 (7) The amount of the additional benefit provided in
535 subsection (1)(b) of this section is calculated using the
536 following formula:

537
$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

538 where n is the number of full fiscal years in retirement beginning
539 with the fiscal year in which the member reaches age fifty-five
540 (55).

541 **SECTION 11.** (1) Upon the death of any member who has
542 retired for service or disability and who has not elected any
543 other option under Section 12 of this act, the member's spouse
544 shall receive one-half (1/2) the benefit that the member was
545 receiving and each child not having attained the age of nineteen
546 (19) years shall receive one-fourth (1/4) of the member's benefit,
547 but not more than one-half (1/2) of the benefits shall be paid for
548 the support and maintenance of two (2) or more children. Upon
549 each child's attaining the age of nineteen (19) years, the child
550 shall no longer be eligible for the benefit, and when all of the
551 children have attained the age of nineteen (19) years, only the
552 spouse shall be eligible for one-half (1/2) of the amount of the



553 member's benefit. The spouse shall continue to be eligible for
554 the benefit in the amount of fifty percent (50%) of the member's
555 retirement benefit as long as the spouse may live or until
556 remarriage. Upon remarriage of the spouse at any time, the
557 spouse's eligibility for the fifty percent (50%) benefits shall
558 end, but the spouse will be eligible to continue to receive
559 benefits for their children until the last child attains the age
560 of nineteen (19) years.

561 (2) Upon the death of any member who has served the minimum
562 period required for eligibility for retirement, the member's
563 spouse and family shall receive all the benefits payable to the
564 member's beneficiaries as if the member had retired at the time of
565 death. Those benefits shall cease as to the spouse upon
566 remarriage but shall continue to be payable to each child until he
567 reaches the age of nineteen (19) years. The benefits are payable
568 on a monthly basis.

569 (3) The spouse and/or the dependent children of an active
570 member who is killed in the line of performance of duty or dies as
571 a direct result of an accident occurring in the line of
572 performance of duty shall qualify, on approval of the board, for a
573 retirement allowance on the first of the month following the date
574 of the member's death, but not before receipt of application by
575 the board. The spouse shall receive a retirement allowance equal
576 to one-half (1/2) of the average compensation of the deceased
577 member. In addition to the retirement allowance for the spouse,
578 or if there is no surviving spouse, a retirement allowance shall
579 be paid in the amount of one-fourth (1/4) of the average
580 compensation for the support and maintenance of one (1) child or
581 in the amount of one-half (1/2) of the average compensation for
582 the support and maintenance of two (2) or more children. Those
583 benefits shall cease to be paid for the support and maintenance of
584 each child upon the child attaining the age of nineteen (19)
585 years; however, the spouse shall continue to be eligible for the



586 retirement allowance provided for the spouse. Benefits may be
587 paid to a surviving parent or lawful custodian of the children for
588 the use and benefit of the children without the necessity of
589 appointment as guardian. That retirement allowance shall cease to
590 the spouse upon remarriage but continue to be payable for each
591 dependent child until the age of nineteen (19) years.

592 (4) All benefits accruing to any child under the provisions
593 of this act shall be paid to the parent custodian of the children
594 or the legal guardian.

595 (5) Children receiving the benefits provided in this section
596 who are permanently or totally disabled shall continue to receive
597 the benefits for as long as the medical board certifies that the
598 disability continues. The age limitation for benefits payable to
599 a child under any provision of this section shall be extended
600 beyond age nineteen (19), but in no event beyond the attainment of
601 age twenty-three (23), as long as the child is a student regularly
602 pursuing a full-time course of resident study or training in an
603 accredited high school, trade school, technical or vocational
604 institute, junior or community college, college, university or
605 comparable recognized educational institution duly licensed by a
606 state. A student child whose birthday falls during the school
607 year (September 1 through June 30) is considered not to reach age
608 twenty-three (23) until the July 1 following the actual
609 twenty-third birthday. A full-time course of resident study or
610 training means a day or evening noncorrespondence course that
611 includes school attendance at the rate of a least thirty-six (36)
612 weeks, per academic year or other applicable period with a subject
613 load sufficient, if successfully completed, to attain the
614 educational or training objective within the period generally
615 accepted as minimum for completion, by a full-time day student, of
616 the academic or training program concerned.

617 (6) If all the annuities provided for in this section
618 payable on the account of the death of a member terminate before



619 there has been paid an aggregate amount equal to the member's
620 accumulated contributions standing to the member's credit in the
621 annuity savings account at the time of the member's death, the
622 difference between the accumulated contributions and the aggregate
623 amount of annuity payments shall be paid to such person as the
624 member has nominated by written designation duly executed and
625 filed with the system. If there is no designated beneficiary
626 surviving at termination of benefits, the difference shall be
627 payable according to Section 15(1) of this act.

628 (7) All benefits paid to a spouse or child due to the death
629 of a member before or after retirement shall be paid in accordance
630 with the statutory provisions existing on the date of death.

631 **SECTION 12.** (1) Upon application for superannuation or
632 disability retirement, any member may elect to receive his benefit
633 under the provisions of Section 8 or 9 of this act, or he may
634 elect, upon retirement or upon becoming eligible for retirement,
635 to receive the actuarial equivalent, subject to the provisions of
636 subsection (4) of this section, of his retirement allowance in a
637 reduced retirement allowance payable throughout life with the
638 provision that:

639 **Option 1.** If he dies before he has received in annuity
640 payment the value of the member's annuity savings account as it
641 was at the time of his retirement, the balance shall be paid to
642 his legal representative or to such person as he has nominated by
643 written designation duly acknowledged and filed with the board; or

644 **Option 2.** Upon his death, his reduced retirement allowance
645 shall be continued throughout the life of, and paid to, such
646 person as he has nominated by written designation duly
647 acknowledged and filed with the board at the time of his
648 retirement; or

649 **Option 3.** Upon his death, one half (1/2) of his reduced
650 retirement allowance shall be continued throughout the life of,
651 and paid to, such person as he has nominated by written



652 designation duly acknowledged and filed with the board at the time
653 of his retirement, and the other one half (1/2) of his reduced
654 retirement allowance to some other designated beneficiary; or

655 **Option 4-A.** Upon his death, one half (1/2) of his reduced
656 retirement allowance, or such other specified amount, shall be
657 continued throughout the life of, and paid to, such person as he
658 has nominated by written designation duly acknowledged and filed
659 with the board at the time of his retirement; or

660 **Option 4-B.** A reduced retirement allowance shall be
661 continued throughout the life of the retirant, but with the
662 further guarantee of payments to the named beneficiary,
663 beneficiaries or to the estate for a specified number of years
664 certain. If the retired member or the last designated beneficiary
665 receiving annuity payments dies before receiving all guaranteed
666 payments due, the actuarial equivalent of the remaining payments
667 shall be paid according to Section 15(1) of this act; or

668 **Option 6.** Any member who is eligible to retire with an
669 unreduced benefit may select the maximum retirement benefit or an
670 optional benefit as provided in this subsection together with a
671 partial lump sum distribution. The amount of the lump sum
672 distribution under this option shall be equal to the maximum
673 monthly benefit multiplied by twelve (12), twenty-four (24) or
674 thirty-six (36) as selected by the member. The maximum retirement
675 benefit shall be actuarially reduced to reflect the amount of the
676 lump sum distribution selected and further reduced for any other
677 optional benefit selected. The annuity and lump sum distribution
678 shall be computed to result in no actuarial loss to the system.
679 The lump sum distribution shall be made as a single payment
680 payable at the time the first monthly annuity payment is paid to
681 the retiree. The amount of the lump sum distribution shall be
682 deducted from the member's annuity savings account in computing
683 what contributions remain at the death of the retiree and/or a
684 beneficiary. The lump sum distribution option may be elected only



685 once by a member upon initial retirement, and may not be elected
686 by a retiree, by members applying for a disability retirement
687 annuity or by survivors.

688 (2) Any member in service who has qualified for retirement
689 benefits may select any optional method of settlement of
690 retirement benefits by notifying the executive director of the
691 system in writing, on a form prescribed by the board, of the
692 option he has selected and by naming the beneficiary of the option
693 and furnishing necessary proof of age. The option, once selected,
694 may be changed at any time before actual retirement or death, but
695 upon the death or retirement of the member, the optional
696 settlement shall be placed in effect upon proper notification to
697 the executive director.

698 (3) No change in the option selected shall be permitted
699 after the member's death or after the member has received his
700 first retirement check, except as provided in subsections (4) and
701 (5) of this section and in Section 18 of this act. If a member
702 retired on disability is returned to active service, the option
703 previously selected shall be void, and upon subsequent retirement
704 a new option may be selected by the member.

705 (4) Any retired member who is receiving a reduced retirement
706 allowance under Option 2 or Option 4-A whose designated
707 beneficiary predeceases him, or whose marriage to a spouse who is
708 his designated beneficiary is terminated by divorce or other
709 dissolution, may elect to cancel his reduced retirement allowance
710 and receive the maximum retirement allowance for life in an amount
711 equal to the amount that would have been payable if the member had
712 not elected Option 2 or Option 4-A. The election must be made in
713 writing to the office of the executive director of the system on a
714 form prescribed by the board. Any such election shall be
715 effective the first of the month following the date the election
716 is received by the system.



717 (5) Any retired member who is receiving the maximum
718 retirement allowance for life, or a retirement allowance under
719 Option 1, and who marries after his retirement may elect to cancel
720 his maximum retirement allowance or Option 1 retirement allowance
721 and receive a reduced retirement allowance under Option 2 or
722 Option 4-A to provide continuing lifetime benefits to his spouse.
723 The election must be made in writing to the office of the
724 executive director of the system on a form prescribed by the board
725 not earlier than the date of the marriage. Any such election
726 shall be effective the first of the month following the date the
727 election is received by the system. However, if a retiree marries
728 or remarries after retirement and elects either Option 2 or Option
729 4-A as provided in subsection (3) or (5) of this section, the
730 actuarial equivalent factor used to compute the reduced retirement
731 allowance shall be the factor for the age of the retiree and his
732 or her beneficiary at the time that the election for recalculation
733 of benefits is made.

734 (6) If a retiree and his eligible beneficiary, if any, both
735 die before they have received in annuity payments a total amount
736 equal to the accumulated contributions standing to the retirant's
737 credit in the annuity savings account at the time of his
738 retirement, the difference between the accumulated contributions
739 and the total amount of annuities received by them shall be paid
740 to such persons as the retirant has nominated by written
741 designation duly executed and filed in the office of the executive
742 director. If no designated person survives the retirant and his
743 beneficiary, the difference, if any, shall be paid according to
744 Section 15(1) of this act.

745 **SECTION 13.** (1) Except as otherwise provided in this
746 subsection for municipalities, all persons who are covered under
747 the terms of this act on July 1, 2003, and who become members of
748 the retirement system established by this act shall cease to be
749 members of the Public Employees' Retirement System under the



750 provisions of Section 25-11-101 et seq. upon July 1, 2003, and
751 shall become members of this retirement system with full credit
752 for all prior service performed before July 1, 2003, for which
753 contributions were made to the Public Employees' Retirement
754 System. All police officers and narcotics agents of
755 municipalities that have elected to include those persons in the
756 membership of the retirement system established by this act who
757 become members of this retirement system shall cease to be members
758 of the Public Employees' Retirement System under the provisions of
759 Section 25-11-101 et seq. upon the date that they become members
760 of this retirement system, and shall become members of this
761 retirement system with full credit for all prior service performed
762 before the date that they become members of this retirement system
763 for which contributions were made to the Public Employees'
764 Retirement System.

765 (2) For each law enforcement officer who has been a member
766 of the Public Employees' Retirement System under Section 25-11-101
767 et seq. and has made contributions thereto, all employee's
768 contributions and interest to the credit of that person shall be
769 transferred by the Public Employees' Retirement System to the
770 credit of the person in the retirement system established by this
771 act, and shall be considered an asset to the credit of that person
772 in this retirement system.

773 **SECTION 14.** If a member of the retirement system ceases to
774 work as a law enforcement officer for any reason other than
775 occupational disease contracted or for any accident sustained by
776 the member by reason of his service or discharge of his duties as
777 a law enforcement officer, and if the member is not eligible for
778 retirement either for service or disability, he shall be refunded
779 the amount of his total contributions under the provisions of this
780 act, including any credit transferred to his account in this
781 system from any other system, at his request, and if he dies
782 before retirement, those funds shall be refunded to any



783 beneficiary that he has named. If there is no surviving
784 designated beneficiary, the contributions to the credit of the
785 deceased member shall be refunded according to Section 15(1) of
786 this act.

787 Under the Unemployment Compensation Amendments of 1992
788 (Public Law 102-218(UCA)), a member or the spouse of a member who
789 is an eligible beneficiary eligible for a refund under this
790 section may elect on a form prescribed by the board under rules
791 and regulations established by the board, to have an eligible roll
792 over distribution of accumulated contributions payable under this
793 section paid directly to an eligible retirement plan, as defined
794 under applicable federal law, or an individual retirement account.
795 If the member or the spouse of a member who is an eligible
796 beneficiary makes that election and specifies the eligible
797 retirement plan or individual retirement account to which the
798 distribution is to be paid, the distribution will be made in the
799 form of a direct trustee to trustee transfer to the specified
800 eligible retirement plan. Flexible roll overs under this
801 paragraph shall not be considered assignments under Section 19 of
802 this act.

803 If any member who receives a refund reenters service as a law
804 enforcement officer and again becomes a member of the system, he
805 may repay all amounts previously received by him as a refund,
806 together with regular interest covering the period from the date
807 of refund to the date of repayment; however, the amounts that are
808 repaid by the member and the creditable service related thereto
809 shall not be used in any benefit calculation or determination
810 until the member has remained a contributor to the system for a
811 period of at least four (4) years after such member's reentry into
812 service as a law enforcement officer. Repayment for that time
813 shall be made in increments of not less than one-quarter (1/4)
814 year of creditable service beginning with the most recent service
815 for which refund has been made. Upon the repayment of all or part



816 of that refund and interest, the member shall again receive credit
817 for the period of creditable service for which full repayment has
818 been made to the system.

819 SECTION 15. (1) Except as otherwise provided in subsection
820 (2) of this section, where benefits are payable to a designated
821 beneficiary or beneficiaries under this article and the designated
822 beneficiary or beneficiaries as provided by the member on the most
823 recent form filed with the system are deceased or otherwise
824 disqualified at the time such benefits become payable, the
825 following persons, in descending order of precedence, shall be
826 eligible to receive such benefits:

827 (a) The surviving spouse of the member or retiree;

828 (b) The children of the member or retiree or their
829 descendants, per stirpes;

830 (c) The brothers and sisters of the member or retiree
831 or their descendants, per stirpes;

832 (d) The parents of the member or retiree;

833 (e) The executor or administrator on behalf of the
834 member or retiree's estate;

835 (f) The persons entitled by law to distribution of the
836 member or retiree's estate.

837 (2) Any monthly benefits payable to a beneficiary who dies
838 before cashing his or her final check(s) and/or any additional
839 benefits payable under Section 10 of this act still payable at the
840 death of a beneficiary receiving monthly benefits shall be paid as
841 follows:

842 (a) The surviving spouse of the beneficiary;

843 (b) The children of the beneficiary or their
844 descendants, per stirpes;

845 (c) The brothers and sisters of the beneficiary or
846 their descendants, per stirpes;

847 (d) The parents of the beneficiary;



848 (e) The executor or administrator on behalf of the
849 beneficiary's estate;

850 (f) The persons entitled by law to distribution of the
851 beneficiary's estate.

852 (3) If no claim is made by any individual listed in
853 subsection (2) of this section, a distribution may be made under
854 the provisions of subsection (1) of this section.

855 (4) Payment under the provisions of this section shall bar
856 recovery by any other person of the benefits distributed. Payment
857 of benefits made to one or more members of a class of individuals
858 are made on behalf of all members of the class. Any members of
859 the class coming forward after payment is made must look to those
860 who received the payment.

861 **SECTION 16.** Subject to the rules adopted by the board, the
862 system shall accept an eligible roll over distribution or a direct
863 transfer of funds from another eligible retirement plan, as
864 defined under applicable federal law, or an individual retirement
865 account, in payment of all or a portion of the cost to purchase
866 optional service credit or to reinstate previously withdrawn
867 service credit as permitted by the system. The system may only
868 accept roll over payments in an amount equal to or less than the
869 balance due for purchase or reinstatement of service credit. The
870 rules adopted by the board shall condition the acceptance of a
871 roll over or transfer from another eligible retirement plan or an
872 individual retirement account on the receipt of information
873 necessary to enable the system to determine the eligibility of any
874 transferred funds for tax-free roll over treatment or other
875 treatment under federal income tax law.

876 **SECTION 17.** Regular interest shall be credited annually to
877 the mean amount of the employee reserve account for the preceding
878 year. This credit shall be made annually from interest and other
879 earnings on the invested assets of the system. Any additional
880 amount required to meet the regular interest on the funds of the



881 system shall be charged to the employer's accumulation account,
882 and any excess of earnings over the regular interest required
883 shall be credited to the employer's accumulation account. Regular
884 interest shall mean such percentage rate of interest compounded
885 annually as determined by the board on the basis of the interest
886 earnings of the system for the preceding year. Once that interest
887 is credited it shall be added to the sum of all amounts deducted
888 from the compensation of a member and shall be included in
889 determining his total contributions.

890 **SECTION 18.** No person who is being paid a retirement
891 allowance under this act shall serve as or be paid for any service
892 as a law enforcement officer. Any member who has been retired
893 under this act and who is later elected, appointed or employed as
894 a law enforcement officer shall cease to receive benefits under
895 this act and shall become a contributing member of the retirement
896 system again. Upon retiring again, if the member's reemployment
897 exceeds six (6) months, he shall have his benefit recomputed,
898 including service after becoming a member again. However, the
899 total retirement allowance paid to the retired member in his
900 previous retirement shall be deducted from his retirement reserve
901 and taken into consideration in recalculating the retirement
902 allowance under a new option selected.

903 **SECTION 19.** The right of a person to an annuity, a
904 retirement allowance or benefit, or to the return of
905 contributions, or to any optional benefits or any other right
906 accrued or accruing to any person under the provisions of this
907 act, the system and the moneys in the system created by this act,
908 are exempt from any state, county or municipal ad valorem taxes,
909 income taxes, premium taxes, privilege taxes, property taxes,
910 sales and use taxes or other taxes not so named, notwithstanding
911 any other provision of law to the contrary, and exempt from levy
912 and sale, garnishment, attachment, or any other process



913 whatsoever, and shall be unassignable except as specifically
914 provided otherwise in this act.

915 SECTION 20. (1) The maintenance of actuarial reserves for
916 the various allowances and benefits under this act, and the
917 payment of all annuities, retirement allowances, refunds and other
918 benefits granted under this act are made obligation of the system.
919 All income, interest and dividends derived from deposits and
920 investments authorized by this act shall be used for the payment
921 of the obligations of the system.

922 (2) If the system is terminated, all members of the system
923 as of the date of termination of the system shall be deemed to
924 have a vested right to benefits to the extent and in the same
925 manner that rights would be vested under the laws existing as of
926 the date of termination of the system. However, any member who
927 has not fulfilled the requirements for length of service because
928 of a termination of the system shall be entitled to compensation
929 as of the date that the member would otherwise be eligible. That
930 compensation shall be computed on the basis of the time he was
931 actually a member of the system and the compensation he actually
932 earned during the time he was a member, in the manner provided by
933 this act.

934 If there is a deficit in the availability of funds for
935 payment due under the provisions of the system, an appropriation
936 shall be made that is sufficient for the payment thereof, as an
937 obligation of the State of Mississippi.

938 (3) Notwithstanding any provisions of this section or this
939 act to the contrary, the maximum annual retirement allowance
940 attributable to the employer contributions payable by the system
941 to a member shall be subject to the limitations set forth in
942 Section 415 of the Internal Revenue Code and any regulations
943 issued thereunder as applicable to governmental plans as that term
944 is defined under Section 414(d) of the Internal Revenue Code.



945 (4) Notwithstanding any other provision of this plan, all
946 distributions from this plan shall conform to the regulations
947 issued under Section 401(a)(9) of the Internal Revenue Code,
948 applicable to governmental plans, as defined in Section 414(d) of
949 the Internal Revenue Code, including the incidental death benefit
950 provisions of Section 401(a)(9)(G) of the Internal Revenue Code.
951 Further, those regulations shall override any plan provision that
952 is inconsistent with Section 401(a)(9) of the Internal Revenue
953 Code.

954 (5) The actuarial assumptions used to convert a retirement
955 allowance from the normal form of payment to an optional form of
956 payment shall be an appendix to this act and subject to approval
957 by the board based upon certification by the actuary.

958 (6) Notwithstanding any other provision of this plan, the
959 maximum compensation that can be considered for all plan purposes
960 shall not be greater than that allowed under Section 401(a)(17) of
961 the Internal Revenue Code.

962 **SECTION 21.** This act shall take effect and be in force from
963 and after July 1, 2003.

