

By: Representative Eads

To: Appropriations

HOUSE BILL NO. 1134

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION  
 2 25-11-126, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN  
 3 PERSONS RECEIVING A RETIREMENT ALLOWANCE FROM THE PUBLIC  
 4 EMPLOYEES' RETIREMENT SYSTEM WHO ARE EMPLOYED IN STATE SERVICE IN  
 5 ANOTHER AGENCY OR IN A DIFFERENT AGENCY AFTER THEIR RETIREMENT,  
 6 MAY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT IN  
 7 STATE SERVICE IN ADDITION TO RECEIVING A SALARY; TO PROVIDE THAT  
 8 THOSE PERSONS SHALL NOT BE CONTRIBUTING MEMBERS OF THE RETIREMENT  
 9 SYSTEM NOR RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING  
 10 WHICH THEY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT;  
 11 TO AMEND SECTIONS 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF  
 12 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR  
 13 RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section  
 16 25-11-126, Mississippi Code of 1972:

17 25-11-126. (1) Any person who has completed  
 18 twenty-five (25) or more years of creditable service and who has  
 19 received a retirement allowance under this article for at least  
 20 one (1) month, may choose to continue receiving the retirement  
 21 allowance under this article and be employed:

22 (a) In state service by a different agency than the one  
 23 from which the person retired, or

24 (b) By the agency from which the person retired in a  
 25 position different from the one he or she held at the time of  
 26 retirement.

27 (2) Any person described in subsection (1) of this section  
 28 shall notify the executive director of the retirement system,  
 29 before being employed, about his or her choice on continuing to  
 30 receive the retirement allowance during the person's employment.  
 31 If the person chooses not to continue receiving the retirement  
 32 allowance during his or her employment, the retirement allowance



33 shall cease on the day that the person begins employment after  
34 retirement. After the person leaves employment that he or she  
35 began after retirement, in order to begin receiving a retirement  
36 allowance under this article again, the person shall make  
37 application to the executive director of the retirement system,  
38 and the retirement allowance shall begin on the first of the month  
39 following the date that the application is received by the  
40 executive director.

41 (3) Any person to whom this section applies who continues to  
42 receive a retirement allowance under this article during his or  
43 her employment shall not be a contributing member of the  
44 retirement system nor receive any creditable service for the  
45 period during which the person receives a retirement allowance  
46 during his or her employment. Any person to whom this section  
47 applies who chooses not to receive a retirement allowance during  
48 his or her employment shall be a contributing member of the  
49 retirement system and shall receive creditable service for the  
50 period during which the person is employed without receiving a  
51 retirement allowance. If the person has previously received a  
52 retirement allowance under this article and he or she is employed  
53 for more than six (6) months without receiving a retirement  
54 allowance, the person shall have his or her allowance recomputed  
55 when he or she retires again, which shall include the service  
56 after the person again became a contributing member of the  
57 retirement system.

58 **SECTION 2.** Section 25-11-105, Mississippi Code of 1972, is  
59 amended as follows:

60 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

61 The membership of this retirement system shall be composed as  
62 follows:

63 (a) (i) All persons who shall become employees in the  
64 state service after January 31, 1953, and whose wages are subject  
65 to payroll taxes and are lawfully reported on IRS Form W-2, except



66 1. those persons who are specifically excluded, or 2. those  
67 persons as to whom election is provided in Articles 1 and 3, or 3.  
68 those persons who choose to receive a retirement allowance during  
69 their employment as authorized by Section 25-11-126, shall become  
70 members of the retirement system as a condition of their  
71 employment.

72 (ii) From and after July 1, 2002, any individual  
73 who is employed by a governmental entity to perform professional  
74 services shall become a member of the system if the individual is  
75 paid regular periodic compensation for those services that is  
76 subject to payroll taxes, is provided all other employee benefits  
77 and meets the membership criteria established by the regulations  
78 adopted by the board of trustees that apply to all other members  
79 of the system; however, any active member employed in such a  
80 position on July 1, 2002, will continue to be an active member for  
81 as long as they are employed in any such position.

82 (b) All persons who shall become employees in the state  
83 service after January 31, 1953, except those specifically excluded  
84 or as to whom election is provided in Articles 1 and 3, unless  
85 they shall file with the board prior to the lapse of sixty (60)  
86 days of employment or sixty (60) days after the effective date of  
87 the cited articles, whichever is later, on a form prescribed by  
88 the board, a notice of election not to be covered by the  
89 membership of the retirement system and a duly executed waiver of  
90 all present and prospective benefits which would otherwise inure  
91 to them on account of their participation in the system, shall  
92 become members of the retirement system; however, no credit for  
93 prior service will be granted to members until they have  
94 contributed to Article 3 of the retirement system for a minimum  
95 period of at least four (4) years. Such members shall receive  
96 credit for services performed prior to January 1, 1953, in  
97 employment now covered by Article 3, but no credit shall be  
98 granted for retroactive services between January 1, 1953, and the



99 date of their entry into the retirement system unless the employee  
100 pays into the retirement system both the employer's and the  
101 employee's contributions on wages paid him during the period from  
102 January 31, 1953, to the date of his becoming a contributing  
103 member, together with interest at the rate determined by the board  
104 of trustees. Members reentering after withdrawal from service  
105 shall qualify for prior service under the provisions of Section  
106 25-11-117. From and after July 1, 1998, upon eligibility as noted  
107 above, the member may receive credit for such retroactive service  
108 provided:

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

112 (2) The member shall pay to the retirement system  
113 on the date he or she is eligible for such credit or at any time  
114 thereafter prior to the date of retirement the actuarial cost for  
115 each year of such creditable service. The provisions of this  
116 subparagraph (2) shall be subject to the limitations of Section  
117 415 of the Internal Revenue Code and regulations promulgated  
118 thereunder.

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

123 (c) All persons who shall become employees in the state  
124 service after January 31, 1953, and who are eligible for  
125 membership in any other retirement system shall become members of  
126 this retirement system as a condition of their employment unless  
127 they elect at the time of their employment to become a member of  
128 such other system.

129 (d) All persons who are employees in the state service  
130 on January 31, 1953, and who are members of any nonfunded  
131 retirement system operated by the State of Mississippi, or any of



132 its departments or agencies, shall become members of this system  
133 with prior service credit unless, before February 1, 1953, they  
134 shall file a written notice with the board of trustees that they  
135 do not elect to become members.

136 (e) All persons who are employees in the state service  
137 on January 31, 1953, and who under existing laws are members of  
138 any fund operated for the retirement of employees by the State of  
139 Mississippi, or any of its departments or agencies, shall not be  
140 entitled to membership in this retirement system unless, before  
141 February 1, 1953, any such person shall indicate by a notice filed  
142 with the board, on a form prescribed by the board, his individual  
143 election and choice to participate in this system, but no such  
144 person shall receive prior service credit unless he becomes a  
145 member on or before February 1, 1953.

146 (f) Each political subdivision of the state and each  
147 instrumentality of the state or a political subdivision, or both,  
148 is hereby authorized to submit, for approval by the board of  
149 trustees, a plan for extending the benefits of this article to  
150 employees of any such political subdivision or instrumentality.  
151 Each such plan or any amendment to the plan for extending benefits  
152 thereof shall be approved by the board of trustees if it finds  
153 that such plan, or such plan as amended, is in conformity with  
154 such requirements as are provided in Articles 1 and 3; however,  
155 upon approval of such plan or any such plan heretofore approved by  
156 the board of trustees, the approved plan shall not be subject to  
157 cancellation or termination by the political subdivision or  
158 instrumentality, except that any community hospital serving a  
159 municipality that joined the Public Employees' Retirement System  
160 as of November 1, 1956, to offer social security coverage for its  
161 employees and subsequently extended retirement annuity coverage to  
162 its employees as of December 1, 1965, may, upon documentation of  
163 extreme financial hardship, have future retirement annuity



164 coverage cancelled or terminated at the discretion of the board of  
165 trustees. No such plan shall be approved unless:

166 (1) It provides that all services which constitute  
167 employment as defined in Section 25-11-5 and are performed in the  
168 employ of the political subdivision or instrumentality, by any  
169 employees thereof, shall be covered by the plan; with the  
170 exception of municipal employees who are already covered by  
171 existing retirement plans; however, those employees in this class  
172 may elect to come under the provisions of this article;

173 (2) It specifies the source or sources from which  
174 the funds necessary to make the payments required by paragraph (d)  
175 of Section 25-11-123 and of paragraph (f) (5)B and C of this  
176 section are expected to be derived and contains reasonable  
177 assurance that such sources will be adequate for such purpose;

178 (3) It provides for such methods of administration  
179 of the plan by the political subdivision or instrumentality as are  
180 found by the board of trustees to be necessary for the proper and  
181 efficient administration thereof;

182 (4) It provides that the political subdivision or  
183 instrumentality will make such reports, in such form and  
184 containing such information, as the board of trustees may from  
185 time to time require;

186 (5) It authorizes the board of trustees to  
187 terminate the plan in its entirety in the discretion of the board  
188 if it finds that there has been a failure to comply substantially  
189 with any provision contained in such plan, such termination to  
190 take effect at the expiration of such notice and on such  
191 conditions as may be provided by regulations of the board and as  
192 may be consistent with applicable federal law.

193 A. The board of trustees shall not finally  
194 refuse to approve a plan submitted under paragraph (f), and shall  
195 not terminate an approved plan without reasonable notice and  
196 opportunity for hearing to each political subdivision or



197 instrumentality affected thereby. The board's decision in any  
198 such case shall be final, conclusive and binding unless an appeal  
199 be taken by the political subdivision or instrumentality aggrieved  
200 thereby to the Circuit Court of Hinds County, Mississippi, in  
201 accordance with the provisions of law with respect to civil causes  
202 by certiorari.

203                   B. Each political subdivision or  
204 instrumentality as to which a plan has been approved under this  
205 section shall pay into the contribution fund, with respect to  
206 wages (as defined in Section 25-11-5), at such time or times as  
207 the board of trustees may by regulation prescribe, contributions  
208 in the amounts and at the rates specified in the applicable  
209 agreement entered into by the board.

210                   C. Every political subdivision or  
211 instrumentality required to make payments under paragraph (f)(5)B  
212 hereof is authorized, in consideration of the employees' retention  
213 in or entry upon employment after enactment of Articles 1 and 3,  
214 to impose upon its employees, as to services which are covered by  
215 an approved plan, a contribution with respect to wages (as defined  
216 in Section 25-11-5) not exceeding the amount provided in Section  
217 25-11-123(d) if such services constituted employment within the  
218 meaning of Articles 1 and 3, and to deduct the amount of such  
219 contribution from the wages as and when paid. Contributions so  
220 collected shall be paid into the contribution fund as partial  
221 discharge of the liability of such political subdivisions or  
222 instrumentalities under paragraph (f)(5)B hereof. Failure to  
223 deduct such contribution shall not relieve the employee or  
224 employer of liability thereof.

225                   D. Any state agency, school, political  
226 subdivision, instrumentality or any employer that is required to  
227 submit contribution payments or wage reports under any section of  
228 this chapter shall be assessed interest on delinquent payments or  
229 wage reports as determined by the board of trustees in accordance



230 with rules and regulations adopted by the board and such assessed  
231 interest may be recovered by action in a court of competent  
232 jurisdiction against such reporting agency liable therefor or may,  
233 upon due certification of delinquency and at the request of the  
234 board of trustees, be deducted from any other monies payable to  
235 such reporting agency by any department or agency of the state.

236 E. Each political subdivision of the state  
237 and each instrumentality of the state or a political subdivision  
238 or subdivisions which submits a plan for approval of the board, as  
239 provided in this section, shall reimburse the board for coverage  
240 into the expense account, its pro rata share of the total expense  
241 of administering Articles 1 and 3 as provided by regulations of  
242 the board.

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

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

255 (i) In the event any member of this system should  
256 change his employment to any agency of the state having an  
257 actuarially funded retirement system, the board of trustees may  
258 authorize the transfer of the member's creditable service and of  
259 the present value of the member's employer's accumulation account  
260 and of the present value of the member's accumulated membership  
261 contributions to such other system, provided the employee agrees  
262 to the transfer of his accumulated membership contributions and





263 provided such other system is authorized to receive and agrees to  
264 make such transfer.

265 In the event any member of any other actuarially funded  
266 system maintained by an agency of the state changes his employment  
267 to an agency covered by this system, the board of trustees may  
268 authorize the receipt of the transfer of the member's creditable  
269 service and of the present value of the member's employer's  
270 accumulation account and of the present value of the member's  
271 accumulated membership contributions from such other system,  
272 provided the employee agrees to the transfer of his accumulated  
273 membership contributions to this system and provided the other  
274 system is authorized and agrees to make such transfer.

275 (j) Wherever herein state employment is referred to, it  
276 shall include joint employment by state and federal agencies of  
277 all kinds.

278 (k) Employees of a political subdivision or  
279 instrumentality who were employed by such political subdivision or  
280 instrumentality prior to an agreement between such entity and the  
281 Public Employees' Retirement System to extend the benefits of this  
282 article to its employees, and which agreement provides for the  
283 establishment of retroactive service credit, and who have been  
284 members of the retirement system and have remained contributors to  
285 the retirement system for four (4) years, may receive credit for  
286 such retroactive service with such political subdivision or  
287 instrumentality, provided the employee and/or employer, as  
288 provided under the terms of the modification of the joinder  
289 agreement in allowing such coverage, pay into the retirement  
290 system the employer's and employee's contributions on wages paid  
291 the member during such previous employment, together with interest  
292 or actuarial cost as determined by the board covering the period  
293 from the date the service was rendered until the payment for the  
294 credit for such service was made. Such wages shall be verified by  
295 the Social Security Administration or employer payroll records.



296 Effective July 1, 1998, upon eligibility as noted above, a member  
297 may receive credit for such retroactive service with such  
298 political subdivision or instrumentality provided:

299 (1) The member shall furnish proof satisfactory to  
300 the board of trustees of certification of such services from the  
301 political subdivision or instrumentality where the services were  
302 rendered or verification by the Social Security Administration;  
303 and

304 (2) The member shall pay to the retirement system  
305 on the date he or she is eligible for such credit or at any time  
306 thereafter prior to the date of retirement the actuarial cost for  
307 each year of such creditable service. The provisions of this  
308 subparagraph (2) shall be subject to the limitations of Section  
309 415 of the Internal Revenue Code and regulations promulgated  
310 thereunder.

311 Nothing contained in this paragraph (k) shall be construed to  
312 limit the authority of the board to allow the correction of  
313 reporting errors or omissions based on the payment of employee and  
314 employer contributions plus applicable interest. Payment for such  
315 time shall be made in increments of not less than one-quarter  
316 (1/4) year of creditable service beginning with the most recent  
317 service. Upon the payment of all or part of such required  
318 contributions, plus interest or the actuarial cost as provided  
319 above, the member shall receive credit for the period of  
320 creditable service for which full payment has been made to the  
321 retirement system.

322 (1) Through June 30, 1998, any state service eligible  
323 for retroactive service credit, no part of which has ever been  
324 reported, and requiring the payment of employee and employer  
325 contributions plus interest, or, from and after July 1, 1998, any  
326 state service eligible for retroactive service credit, no part of  
327 which has ever been reported to the retirement system, and  
328 requiring the payment of the actuarial cost for such creditable



329 service, may, at the member's option, be purchased in quarterly  
330 increments as provided above at such time as its purchase is  
331 otherwise allowed.

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

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

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

339 (a) Patient or inmate help in state charitable, penal  
340 or correctional institutions;

341 (b) Students of any state educational institution  
342 employed by any agency of the state for temporary, part-time or  
343 intermittent work;

344 (c) Participants of Comprehensive Employment and  
345 Training Act of 1973 (CETA) being Public Law 93-203, who enroll on  
346 or after July 1, 1979;

347 (d) From and after July 1, 2002, individuals who are  
348 employed by a governmental entity to perform professional service  
349 on less than a full-time basis who do not meet the criteria  
350 established in I(a)(ii) of this section.

351 **III. TERMINATION OF MEMBERSHIP**

352 Membership in this system shall cease by a member withdrawing  
353 his accumulated contributions, or by a member withdrawing from  
354 active service with a retirement allowance, or by a member's  
355 death.

356 **SECTION 3.** Section 25-11-127, Mississippi Code of 1972, is  
357 amended as follows:

358 25-11-127. (1) (a) No person who is being paid a  
359 retirement allowance or a pension after retirement under this  
360 article shall be employed or paid for any service by the State of



361 Mississippi, except as provided in this section or in Section  
362 25-11-126.

363 (b) No retiree of this retirement system who is  
364 reemployed or is reelected to office after retirement shall  
365 continue to draw retirement benefits while so reemployed or  
366 reelected, except as provided in this section or in Section  
367 25-11-126.

368 (c) No person employed or elected under the exceptions  
369 provided for in this section shall become a member under Article 3  
370 of the retirement system.

371 (2) Any person who has been retired under the provisions of  
372 Article 3 and who is later reemployed in service covered by this  
373 article shall cease to receive benefits under this article, unless  
374 the person chooses to receive a retirement allowance as authorized  
375 by Section 25-11-126, and the person shall again become a  
376 contributing member of the retirement system. When the person  
377 retires again, if the person has been a contributing member of the  
378 retirement system during his or her reemployment and the  
379 reemployment exceeds six (6) months, the person shall have his or  
380 her benefits recomputed, including service after again becoming a  
381 member, provided that the total retirement allowance paid to the  
382 retired member in his or her previous retirement shall be deducted  
383 from the member's retirement reserve and taken into consideration  
384 in recalculating the retirement allowance under a new option  
385 selected.

386 (3) The board shall have the right to prescribe rules and  
387 regulations for carrying out the provisions of this section.

388 (4) The provisions of this section shall not be construed to  
389 prohibit any retiree, regardless of age, from being employed and  
390 drawing a retirement allowance either:

391 (a) For a period of time not to exceed one-half (1/2)  
392 of the normal working days for the position in any fiscal year  
393 during which the retiree will receive no more than one-half (1/2)



394 of the salary in effect for the position at the time of  
395 employment, or

396 (b) For a period of time in any fiscal year sufficient  
397 in length to permit a retiree to earn not in excess of twenty-five  
398 percent (25%) of retiree's average compensation.

399 To determine the normal working days for a position under  
400 paragraph (a) of this subsection, the employer shall determine the  
401 required number of working days for the position on a full-time  
402 basis and the equivalent number of hours representing the  
403 full-time position. The retiree then may work up to one-half  
404 (1/2) of the required number of working days or up to one-half  
405 (1/2) of the equivalent number of hours and receive up to one-half  
406 (1/2) of the salary for the position. In the case of employment  
407 with multiple employers, the limitation shall equal one-half (1/2)  
408 of the number of days or hours for a single full-time position.

409 Notice shall be given in writing to the executive director,  
410 setting forth the facts upon which the employment is being made,  
411 and the notice shall be given within five (5) days from the date  
412 of employment and also from the date of termination of the  
413 employment.

414 (5) Any member may continue in municipal or county elected  
415 office or be elected to a municipal or county office, provided  
416 that the person:

417 (a) Files annually, in writing, in the office of the  
418 employer and the office of the executive director of the system  
419 before the person takes office or as soon as possible after  
420 retirement, a waiver of all salary or compensation and elects to  
421 receive in lieu of that salary or compensation a retirement  
422 allowance as provided in this section, in which event no salary or  
423 compensation shall thereafter be due or payable for those  
424 services; however, any such officer or employee may receive, in  
425 addition to the retirement allowance, office expense allowance,



426 mileage or travel expense authorized by any statute of the State  
427 of Mississippi; or

428           (b) Elects to receive compensation for that elective  
429 office in an amount not to exceed twenty-five percent (25%) of the  
430 retiree's average compensation. As used in this paragraph, the  
431 term "compensation" shall not include office expense allowance,  
432 mileage or travel expense authorized by a statute of the State of  
433 Mississippi. In order to receive compensation as allowed in this  
434 paragraph, the member shall file annually, in writing, in the  
435 office of the employer and the office of the executive director of  
436 the system, an election to receive, in addition to a retirement  
437 allowance, compensation as allowed in this paragraph.

438           **SECTION 4.** This act shall take effect and be in force from  
439 and after July 1, 2003.

