H. B. No. 1134

HOUSE BILL NO. 1134

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

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

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

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

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

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

(2) Any person described in subsection (1) of this section shall notify the executive director of the retirement system, before being employed, about his or her choice on continuing to receive the retirement allowance during the person's employment. If the person chooses not to continue receiving the retirement allowance during his or her employment, the retirement allowance...
shall cease on the day that the person begins employment after
retirement. After the person leaves employment that he or she
began after retirement, in order to begin receiving a retirement
allowance under this article again, the person shall make
application to the executive director of the retirement system,
and the retirement allowance shall begin on the first of the month
following the date that the application is received by the
executive director.

(3) Any person to whom this section applies who continues to
receive a retirement allowance under this article during his or
her employment shall not be a contributing member of the
retirement system nor receive any creditable service for the
period during which the person receives a retirement allowance
during his or her employment. Any person to whom this section
applies who chooses not to receive a retirement allowance during
his or her employment shall be a contributing member of the
retirement system and shall receive creditable service for the
period during which the person is employed without receiving a
retirement allowance. If the person has previously received a
retirement allowance under this article and he or she is employed
for more than six (6) months without receiving a retirement
allowance, the person shall have his or her allowance recomputed
when he or she retires again, which shall include the service
after the person again became a contributing member of the
retirement system.

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

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

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

(a) (i) All persons who shall become employees in the
state service after January 31, 1953, and whose wages are subject
to payroll taxes and are lawfully reported on IRS Form W-2, except
1. those persons who are specifically excluded, or 2. those persons as to whom election is provided in Articles 1 and 3, or 3. those persons who choose to receive a retirement allowance during their employment as authorized by Section 25-11-126, shall become members of the retirement system as a condition of their employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

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

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

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

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

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

III. TERMINATION OF MEMBERSHIP

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

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

25-11-127. (1) (a) 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 or in Section 25-11-126.

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

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

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

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

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

(a) For a period of time not to exceed one-half (1/2) of the normal working days for the position in any fiscal year during which the retiree will receive no more than one-half (1/2)
of the salary in effect for the position at the time of
employment, or

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

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

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

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

(a) Files annually, in writing, in the office of the
employer and the office of the executive director of the system
before the person takes office or as soon as possible after
retirement, a waiver of all salary or compensation and elects to
receive in lieu of that 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 those
services; however, any such officer or employee may receive, in
addition to the retirement allowance, office expense allowance,
mileage or travel expense authorized by any statute of the State of Mississippi; or

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

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