

By: Senator(s) Harden

To: Education; Finance

SENATE BILL NO. 2766

1 AN ACT TO AMEND SECTION 37-7-301, MISSISSIPPI CODE OF 1972,  
 2 TO AUTHORIZE LOCAL SCHOOL DISTRICTS TO CONTRACT WITH PRIVATE  
 3 ENTITIES TO PROVIDE INSTRUCTIONAL SERVICES TO PUPILS; TO AMEND  
 4 SECTIONS 25-11-103 AND 25-11-127, MISSISSIPPI CODE OF 1972, TO  
 5 PROVIDE THAT FOR PURPOSES OF THE RETIREMENT SYSTEM, EMPLOYEES OF  
 6 SUCH PRIVATE ENTITIES SHALL NOT BE CONSIDERED IN STATE SERVICE AND  
 7 SHALL NOT BE PROHIBITED FROM RECEIVING RETIREMENT BENEFITS; AND  
 8 FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 37-7-301, Mississippi Code of 1972, is  
 11 amended as follows:

12 37-7-301. The school boards of all school districts shall  
 13 have the following powers, authority and duties in addition to all  
 14 others imposed or granted by law, to wit:

15 (a) To organize and operate the schools of the district  
 16 and to make such division between the high school grades and  
 17 elementary grades as, in their judgment, will serve the best  
 18 interests of the school;

19 (b) To introduce public school music, art, manual  
 20 training and other special subjects into either the elementary or  
 21 high school grades, as the board shall deem proper;

22 (c) To be the custodians of real and personal school  
 23 property and to manage, control and care for same, both during the  
 24 school term and during vacation;

25 (d) To have responsibility for the erection, repairing  
 26 and equipping of school facilities and the making of necessary  
 27 school improvements;

28 (e) To suspend or to expel a pupil or to change the  
 29 placement of a pupil to the school district's alternative school  
 30 or home-bound program for misconduct in the school or on school



31 property, as defined in Section 37-11-29, on the road to and from  
32 school, or at any school-related activity or event, or for conduct  
33 occurring on property other than school property or other than at  
34 a school-related activity or event when such conduct by a pupil,  
35 in the determination of the school superintendent or principal,  
36 renders that pupil's presence in the classroom a disruption to the  
37 educational environment of the school or a detriment to the best  
38 interest and welfare of the pupils and teacher of such class as a  
39 whole, and to delegate such authority to the appropriate officials  
40 of the school district;

41 (f) To visit schools in the district, in their  
42 discretion, in a body for the purpose of determining what can be  
43 done for the improvement of the school in a general way;

44 (g) To support, within reasonable limits, the  
45 superintendent, principal and teachers where necessary for the  
46 proper discipline of the school;

47 (h) To exclude from the schools students with what  
48 appears to be infectious or contagious diseases; provided,  
49 however, such student may be allowed to return to school upon  
50 presenting a certificate from a public health officer, duly  
51 licensed physician or nurse practitioner that the student is free  
52 from such disease;

53 (i) To require those vaccinations specified by the  
54 State Health Officer as provided in Section 41-23-37, Mississippi  
55 Code of 1972;

56 (j) To see that all necessary utilities and services  
57 are provided in the schools at all times when same are needed;

58 (k) To authorize the use of the school buildings and  
59 grounds for the holding of public meetings and gatherings of the  
60 people under such regulations as may be prescribed by said board;

61 (l) To prescribe and enforce rules and regulations not  
62 inconsistent with law or with the regulations of the State Board  
63 of Education for their own government and for the government of



64 the schools, and to transact their business at regular and special  
65 meetings called and held in the manner provided by law;

66 (m) To maintain and operate all of the schools under  
67 their control for such length of time during the year as may be  
68 required;

69 (n) To enforce in the schools the courses of study and  
70 the use of the textbooks prescribed by the proper authorities;

71 (o) To make orders directed to the superintendent of  
72 schools for the issuance of pay certificates for lawful purposes  
73 on any available funds of the district and to have full control of  
74 the receipt, distribution, allotment and disbursement of all funds  
75 provided for the support and operation of the schools of such  
76 school district whether such funds be derived from state  
77 appropriations, local ad valorem tax collections, or otherwise;

78 (p) To select all school district personnel in the  
79 manner provided by law, and to provide for such employee fringe  
80 benefit programs, including accident reimbursement plans, as may  
81 be deemed necessary and appropriate by the board;

82 (q) To provide athletic programs and other school  
83 activities and to regulate the establishment and operation of such  
84 programs and activities;

85 (r) To join, in their discretion, any association of  
86 school boards and other public school-related organizations, and  
87 to pay from local funds other than minimum foundation funds, any  
88 membership dues;

89 (s) To expend local school activity funds, or other  
90 available school district funds, other than minimum education  
91 program funds, for the purposes prescribed under this paragraph.  
92 "Activity funds" shall mean all funds received by school officials  
93 in all school districts paid or collected to participate in any  
94 school activity, such activity being part of the school program  
95 and partially financed with public funds or supplemented by public  
96 funds. The term "activity funds" shall not include any funds



97 raised and/or expended by any organization unless commingled in a  
98 bank account with existing activity funds, regardless of whether  
99 the funds were raised by school employees or received by school  
100 employees during school hours or using school facilities, and  
101 regardless of whether a school employee exercises influence over  
102 the expenditure or disposition of such funds. Organizations shall  
103 not be required to make any payment to any school for the use of  
104 any school facility if, in the discretion of the local school  
105 governing board, the organization's function shall be deemed to be  
106 beneficial to the official or extracurricular programs of the  
107 school. For the purposes of this provision, the term  
108 "organization" shall not include any organization subject to the  
109 control of the local school governing board. Activity funds may  
110 only be expended for any necessary expenses or travel costs,  
111 including advances, incurred by students and their chaperons in  
112 attending any in-state or out-of-state school-related programs,  
113 conventions or seminars and/or any commodities, equipment, travel  
114 expenses, purchased services or school supplies which the local  
115 school governing board, in its discretion, shall deem beneficial  
116 to the official or extracurricular programs of the district,  
117 including items which may subsequently become the personal  
118 property of individuals, including yearbooks, athletic apparel,  
119 book covers and trophies. Activity funds may be used to pay  
120 travel expenses of school district personnel. The local school  
121 governing board shall be authorized and empowered to promulgate  
122 rules and regulations specifically designating for what purposes  
123 school activity funds may be expended. The local school governing  
124 board shall provide (i) that such school activity funds shall be  
125 maintained and expended by the principal of the school generating  
126 the funds in individual bank accounts, or (ii) that such school  
127 activity funds shall be maintained and expended by the  
128 superintendent of schools in a central depository approved by the  
129 board. The local school governing board shall provide that such



130 school activity funds be audited as part of the annual audit  
131 required in Section 37-9-18. The State Auditor shall prescribe a  
132 uniform system of accounting and financial reporting for all  
133 school activity fund transactions;

134 (t) To contract, on a shared savings, lease or  
135 lease-purchase basis, for energy efficiency services and/or  
136 equipment as provided for in Section 31-7-14, not to exceed ten  
137 (10) years;

138 (u) To maintain accounts and issue pay certificates on  
139 school food service bank accounts;

140 (v) (i) To lease a school building from an individual,  
141 partnership, nonprofit corporation or a private for-profit  
142 corporation for the use of such school district, and to expend  
143 funds therefor as may be available from any nonminimum program  
144 sources. The school board of the school district desiring to  
145 lease a school building shall declare by resolution that a need  
146 exists for a school building and that the school district cannot  
147 provide the necessary funds to pay the cost or its proportionate  
148 share of the cost of a school building required to meet the  
149 present needs. The resolution so adopted by the school board  
150 shall be published once each week for three (3) consecutive weeks  
151 in a newspaper having a general circulation in the school district  
152 involved, with the first publication thereof to be made not less  
153 than thirty (30) days prior to the date upon which the school  
154 board is to act on the question of leasing a school building. If  
155 no petition requesting an election is filed prior to such meeting  
156 as hereinafter provided, then the school board may, by resolution  
157 spread upon its minutes, proceed to lease a school building. If  
158 at any time prior to said meeting a petition signed by not less  
159 than twenty percent (20%) or fifteen hundred (1500), whichever is  
160 less, of the qualified electors of the school district involved  
161 shall be filed with the school board requesting that an election  
162 be called on the question, then the school board shall, not later



163 than the next regular meeting, adopt a resolution calling an  
164 election to be held within such school district upon the question  
165 of authorizing the school board to lease a school building. Such  
166 election shall be called and held, and notice thereof shall be  
167 given, in the same manner for elections upon the questions of the  
168 issuance of the bonds of school districts, and the results thereof  
169 shall be certified to the school board. If at least three-fifths  
170 (3/5) of the qualified electors of the school district who voted  
171 in such election shall vote in favor of the leasing of a school  
172 building, then the school board shall proceed to lease a school  
173 building. The term of the lease contract shall not exceed twenty  
174 (20) years, and the total cost of such lease shall be either the  
175 amount of the lowest and best bid accepted by the school board  
176 after advertisement for bids or an amount not to exceed the  
177 current fair market value of the lease as determined by the  
178 averaging of at least two (2) appraisals by certified general  
179 appraisers licensed by the State of Mississippi. The term "school  
180 building" as used in this item (v) shall be construed to mean any  
181 building or buildings used for classroom purposes in connection  
182 with the operation of schools and shall include the site therefor,  
183 necessary support facilities, and the equipment thereof and  
184 appurtenances thereto such as heating facilities, water supply,  
185 sewage disposal, landscaping, walks, drives and playgrounds. The  
186 term "lease" as used in this item (v) (i) may include a  
187 lease/purchase contract;

188 (ii) If two (2) or more school districts propose  
189 to enter into a lease contract jointly, then joint meetings of the  
190 school boards having control may be held but no action taken shall  
191 be binding on any such school district unless the question of  
192 leasing a school building is approved in each participating school  
193 district under the procedure hereinabove set forth in item (v) (i).  
194 All of the provisions of item (v) (i) regarding the term and amount  
195 of the lease contract shall apply to the school boards of school



196 districts acting jointly. Any lease contract executed by two (2)  
197 or more school districts as joint lessees shall set out the amount  
198 of the aggregate lease rental to be paid by each, which may be  
199 agreed upon, but there shall be no right of occupancy by any  
200 lessee unless the aggregate rental is paid as stipulated in the  
201 lease contract. All rights of joint lessees under the lease  
202 contract shall be in proportion to the amount of lease rental paid  
203 by each;

204 (w) To employ all noninstructional and noncertificated  
205 employees and fix the duties and compensation of such personnel  
206 deemed necessary pursuant to the recommendation of the  
207 superintendent of schools;

208 (x) To employ and fix the duties and compensation of  
209 such legal counsel as deemed necessary;

210 (y) Subject to rules and regulations of the State Board  
211 of Education, to purchase, own and operate trucks, vans and other  
212 motor vehicles, which shall bear the proper identification  
213 required by law;

214 (z) To expend funds for the payment of substitute  
215 teachers and to adopt reasonable regulations for the employment  
216 and compensation of such substitute teachers;

217 (aa) To acquire in its own name by purchase all real  
218 property which shall be necessary and desirable in connection with  
219 the construction, renovation or improvement of any public school  
220 building or structure. Whenever the purchase price for such real  
221 property is greater than Fifty Thousand Dollars (\$50,000.00), the  
222 school board shall not purchase the property for an amount  
223 exceeding the fair market value of such property as determined by  
224 the average of at least two (2) independent appraisals by  
225 certified general appraisers licensed by the State of Mississippi.  
226 If the board shall be unable to agree with the owner of any such  
227 real property in connection with any such project, the board shall  
228 have the power and authority to acquire any such real property by



229 condemnation proceedings pursuant to Section 11-27-1 et seq.,  
230 Mississippi Code of 1972, and for such purpose, the right of  
231 eminent domain is hereby conferred upon and vested in said board.  
232 Provided further, that the local school board is authorized to  
233 grant an easement for ingress and egress over sixteenth section  
234 land or lieu land in exchange for a similar easement upon  
235 adjoining land where the exchange of easements affords substantial  
236 benefit to the sixteenth section land; provided, however, the  
237 exchange must be based upon values as determined by a competent  
238 appraiser, with any differential in value to be adjusted by cash  
239 payment. Any easement rights granted over sixteenth section land  
240 under such authority shall terminate when the easement ceases to  
241 be used for its stated purpose. No sixteenth section or lieu land  
242 which is subject to an existing lease shall be burdened by any  
243 such easement except by consent of the lessee or unless the school  
244 district shall acquire the unexpired leasehold interest affected  
245 by the easement;

246 (bb) To charge reasonable fees related to the  
247 educational programs of the district, in the manner prescribed in  
248 Section 37-7-335;

249 (cc) Subject to rules and regulations of the State  
250 Board of Education, to purchase relocatable classrooms for the use  
251 of such school district, in the manner prescribed in Section  
252 37-1-13;

253 (dd) Enter into contracts or agreements with other  
254 school districts, political subdivisions or governmental entities  
255 to carry out one or more of the powers or duties of the school  
256 board, or to allow more efficient utilization of limited resources  
257 for providing services to the public;

258 (ee) To provide for in-service training for employees  
259 of the district. Until June 30, 1994, the school boards may  
260 designate two (2) days of the minimum school term, as defined in  
261 Section 37-19-1, for employee in-service training for





262 implementation of the new statewide testing system as developed by  
263 the State Board of Education. Such designation shall be subject  
264 to approval by the State Board of Education pursuant to uniform  
265 rules and regulations;

266 (ff) As part of their duties to prescribe the use of  
267 textbooks, to provide that parents and legal guardians shall be  
268 responsible for the textbooks and for the compensation to the  
269 school district for any books which are not returned to the proper  
270 schools upon the withdrawal of their dependent child. If a  
271 textbook is lost or not returned by any student who drops out of  
272 the public school district, the parent or legal guardian shall  
273 also compensate the school district for the fair market value of  
274 the textbooks;

275 (gg) To conduct fund-raising activities on behalf of  
276 the school district that the local school board, in its  
277 discretion, deems appropriate or beneficial to the official or  
278 extracurricular programs of the district; provided that:

279 (i) Any proceeds of the fund-raising activities  
280 shall be treated as "activity funds" and shall be accounted for as  
281 are other activity funds under this section; and

282 (ii) Fund-raising activities conducted or  
283 authorized by the board for the sale of school pictures, the  
284 rental of caps and gowns or the sale of graduation invitations for  
285 which the school board receives a commission, rebate or fee shall  
286 contain a disclosure statement advising that a portion of the  
287 proceeds of the sales or rentals shall be contributed to the  
288 student activity fund;

289 (hh) To allow individual lessons for music, art and  
290 other curriculum-related activities for academic credit or  
291 nonacademic credit during school hours and using school equipment  
292 and facilities, subject to uniform rules and regulations adopted  
293 by the school board;



294 (ii) To charge reasonable fees for participating in an  
295 extracurricular activity for academic or nonacademic credit for  
296 necessary and required equipment such as safety equipment, band  
297 instruments and uniforms;

298 (jj) To conduct or participate in any fund-raising  
299 activities on behalf of or in connection with a tax-exempt  
300 charitable organization;

301 (kk) To exercise such powers as may be reasonably  
302 necessary to carry out the provisions of this section; and

303 (ll) To expend funds for the services of nonprofit arts  
304 organizations or other such nonprofit organizations who provide  
305 performances or other services for the students of the school  
306 district.

307 (mm) To contract with private entities to lease  
308 employees to provide instructional services to pupils.

309 **SECTION 2.** Section 25-11-103, Mississippi Code of 1972, is  
310 amended as follows:

311 25-11-103. The following words and phrases as used in  
312 Articles 1 and 3, unless a different meaning is plainly required  
313 by the context, shall have the following meanings:

314 (a) "Accumulated contributions" shall mean the sum of  
315 all the amounts deducted from the compensation of a member and  
316 credited to his individual account in the annuity savings account,  
317 together with regular interest thereon as provided in Section  
318 25-11-123.

319 (b) "Actuarial cost" shall mean the amount of funds  
320 presently required to provide future benefits as determined by the  
321 board based on applicable tables and formulas provided by the  
322 actuary.

323 (c) "Actuarial equivalent" shall mean a benefit of  
324 equal value to the accumulated contributions, annuity or benefit,  
325 as the case may be, when computed upon the basis of such mortality



326 tables as shall be adopted by the board of trustees, and regular  
327 interest.

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

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

333 (f) "Average compensation" shall mean the average of  
334 the four (4) highest years of earned compensation reported for an  
335 employee in a fiscal or calendar year period, or combination  
336 thereof which do not overlap, or the last forty-eight (48)  
337 consecutive months of earned compensation reported for an  
338 employee. The four (4) years need not be successive or joined  
339 years of service. In no case shall the average compensation so  
340 determined be in excess of One Hundred Fifty Thousand Dollars  
341 (\$150,000.00). In computing the average compensation, any amount  
342 paid in a lump sum for personal leave shall be included in the  
343 calculation to the extent that such amount does not exceed an  
344 amount which is equal to thirty (30) days of earned compensation  
345 and to the extent that it does not cause the employees' earned  
346 compensation to exceed the maximum reportable amount specified in  
347 Section 25-11-103(k); however, this thirty-day limitation shall  
348 not prevent the inclusion in the calculation of leave earned under  
349 federal regulations prior to July 1, 1976, and frozen as of that  
350 date as referred to in Section 25-3-99. Only the amount of lump  
351 sum pay for personal leave due and paid upon the death of a member  
352 attributable for up to one hundred fifty (150) days shall be used  
353 in the deceased member's average compensation calculation in  
354 determining the beneficiary's benefits. In computing the average  
355 compensation, no amounts shall be used which are in excess of the  
356 amount on which contributions were required and paid. If any  
357 member who is or has been granted any increase in annual salary or  
358 compensation of more than eight percent (8%) retires within



359 twenty-four (24) months from the date that such increase becomes  
360 effective, then the board shall exclude that part of the increase  
361 in salary or compensation that exceeds eight percent (8%) in  
362 calculating that member's average compensation for retirement  
363 purposes. The board may enforce this provision by rule or  
364 regulation. However, increases in compensation in excess of eight  
365 percent (8%) per year granted within twenty-four (24) months of  
366 the date of retirement may be included in such calculation of  
367 average compensation if satisfactory proof is presented to the  
368 board showing that the increase in compensation was the result of  
369 an actual change in the position held or services rendered, or  
370 that such compensation increase was authorized by the State  
371 Personnel Board or was increased as a result of statutory  
372 enactment, and the employer furnishes an affidavit stating that  
373 such increase granted within the last twenty-four (24) months was  
374 not contingent on a promise or agreement of the employee to  
375 retire. Nothing in Section 25-3-31 shall affect the calculation  
376 of the average compensation of any member for the purposes of this  
377 article. The average compensation of any member who retires  
378 before July 1, 1992, shall not exceed the annual salary of the  
379 Governor.

380 (g) "Beneficiary" shall mean any person entitled to  
381 receive a retirement allowance, an annuity or other benefit as  
382 provided by Articles 1 and 3. In the event of the death prior to  
383 retirement of any member whose spouse and/or children are not  
384 entitled to a retirement allowance on the basis that the member  
385 has less than four (4) years of service credit and/or has not been  
386 married for a minimum of one (1) year or the spouse has waived his  
387 or her entitlement to a retirement allowance pursuant to Section  
388 25-11-114, the lawful spouse of a member at the time of the death  
389 of such member shall be the beneficiary of such member unless the  
390 member has designated another beneficiary subsequent to the date  
391 of marriage in writing, and filed such writing in the office of



392 the executive director of the board of trustees. No designation  
393 or change of beneficiary shall be made in any other manner.

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

397 (i) "Creditable service" shall mean "prior service,"  
398 "retroactive service" and all lawfully credited unused leave not  
399 exceeding the accrual rates and limitations provided in Section  
400 25-3-91 et seq., as of the date of withdrawal from service plus  
401 "membership service" for which credit is allowable as provided in  
402 Section 25-11-109. Except to limit creditable service reported to  
403 the system for the purpose of computing an employee's retirement  
404 allowance or annuity or benefits provided in this article, nothing  
405 in this paragraph shall limit or otherwise restrict the power of  
406 the governing authority of a municipality or other political  
407 subdivision of the state to adopt such vacation and sick leave  
408 policies as it deems necessary.

409 (j) "Child" means either a natural child of the member,  
410 a child that has been made a child of the member by applicable  
411 court action before the death of the member, or a child under the  
412 permanent care of the member at the time of the latter's death,  
413 which permanent care status shall be determined by evidence  
414 satisfactory to the board.

415 (k) "Earned compensation" shall mean the full amount  
416 earned by an employee for a given pay period including any  
417 maintenance furnished up to a maximum of One Hundred Fifty  
418 Thousand Dollars (\$150,000.00) per year, and proportionately for  
419 less than one (1) year of service. The value of such maintenance  
420 when not paid in money shall be fixed by the employing state  
421 agency, and, in case of doubt, by the board of trustees as defined  
422 in Section 25-11-15. In any case, earned compensation shall be  
423 limited to the regular periodic compensation paid, exclusive of  
424 litigation fees, bond fees, and other similar extraordinary



425 nonrecurring payments. In addition, any member in a covered  
426 position, as defined by Public Employees' Retirement System laws  
427 and regulations, who is also employed by another covered agency or  
428 political subdivision shall have the earnings of that additional  
429 employment reported to the Public Employees' Retirement System  
430 regardless of whether the additional employment is sufficient in  
431 itself to be a covered position. In addition, computation of  
432 earned compensation shall be governed by the following:

433 (i) In the case of constables, the net earnings  
434 from their office after deduction of expenses shall apply, except  
435 that in no case shall earned compensation be less than the total  
436 direct payments made by the state or governmental subdivisions to  
437 the official.

438 (ii) In the case of chancery or circuit clerks,  
439 the net earnings from their office after deduction of expenses  
440 shall apply as expressed in Section 25-11-123(f)(4).

441 (iii) In the case of members of the State  
442 Legislature, all remuneration or amounts paid, except mileage  
443 allowance, shall apply.

444 (iv) The amount by which an eligible employee's  
445 salary is reduced pursuant to a salary reduction agreement  
446 authorized under Section 25-17-5 shall be included as earned  
447 compensation under this paragraph, provided this inclusion does  
448 not conflict with federal law, including federal regulations and  
449 federal administrative interpretations thereunder, pertaining to  
450 the Federal Insurance Contributions Act or to Internal Revenue  
451 Code Section 125 cafeteria plans.

452 (v) Compensation in addition to an employee's base  
453 salary that is paid to the employee pursuant to the vacation and  
454 sick leave policies of a municipality or other political  
455 subdivision of the state that employs him which exceeds the  
456 maximums authorized by Section 25-3-91 et seq. shall be excluded  
457 from the calculation of earned compensation under this article.



458 (vi) The maximum salary applicable for retirement  
459 purposes before July 1, 1992, shall be the salary of the Governor.

460 (vii) Nothing in Section 25-3-31 shall affect the  
461 determination of the earned compensation of any member for the  
462 purposes of this article.

463 (l) "Employee" means any person legally occupying a  
464 position in the state service, and shall include the employees of  
465 the retirement system created hereunder. The term "employee"  
466 shall not include any employee of a private entity which leases  
467 staff to a local school board to provide instructional services  
468 pursuant to Section 37-7-301(mm).

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

472 (n) "Executive director" shall mean the secretary to  
473 the board of trustees, as provided in Section 25-11-15(9), and the  
474 administrator of the Public Employees' Retirement System and all  
475 systems under the management of the board of trustees. Wherever  
476 the term "Executive Secretary of the Public Employees' Retirement  
477 System" or "executive secretary" appears in this article or in any  
478 other provision of law, it shall be construed to mean the  
479 Executive Director of the Public Employees' Retirement System.

480 (o) "Fiscal year" shall mean the period beginning on  
481 July 1 of any year and ending on June 30 of the next succeeding  
482 year.

483 (p) "Medical board" shall mean the board of physicians  
484 or any governmental or nongovernmental disability determination  
485 service designated by the board of trustees that is qualified to  
486 make disability determinations as provided for in Section  
487 25-11-119.

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



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

492           (s) "Position" means any office or any employment in  
493 the state service, or two (2) or more of them, the duties of which  
494 call for services to be rendered by one (1) person, including  
495 positions jointly employed by federal and state agencies  
496 administering federal and state funds. The employer shall  
497 determine upon initial employment and during the course of  
498 employment of an employee who does not meet the criteria for  
499 coverage in the Public Employees' Retirement System based on the  
500 position held, whether the employee is or becomes eligible for  
501 coverage in the Public Employees' Retirement System based upon any  
502 other employment in a covered agency or political subdivision. If  
503 or when the employee meets the eligibility criteria for coverage  
504 in such other position, then the employer must withhold  
505 contributions and report wages from the noncovered position in  
506 accordance with the provisions for reporting of earned  
507 compensation. Failure to deduct and report those contributions  
508 shall not relieve the employee or employer of liability thereof.  
509 The board shall adopt such rules and regulations as necessary to  
510 implement and enforce this provision.

511           (t) "Prior service" shall mean service rendered before  
512 February 1, 1953, for which credit is allowable under Sections  
513 25-11-105 and 25-11-109, and which shall allow prior service for  
514 any person who is now or becomes a member of the Public Employees'  
515 Retirement System and who does contribute to the system for a  
516 minimum period of four (4) years.

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

520           (v) "Retirement allowance" shall mean an annuity for  
521 life as provided in this article, payable each year in twelve (12)  
522 equal monthly installments beginning as of the date fixed by the





523 board. The retirement allowance shall be calculated in accordance  
524 with Section 25-11-111. However, any spouse who received a spouse  
525 retirement benefit in accordance with Section 25-11-111(d) before  
526 March 31, 1971, and those benefits were terminated because of  
527 eligibility for a social security benefit, may again receive his  
528 spouse retirement benefit from and after making application with  
529 the board of trustees to reinstate the spouse retirement benefit.

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

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

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

538 (z) "State service" shall mean all offices and  
539 positions of trust or employment in the employ of the state, or  
540 any political subdivision or instrumentality thereof, which elect  
541 to participate as provided by Section 25-11-105(f), including the  
542 position of elected or fee officials of the counties and their  
543 deputies and employees performing public services or any  
544 department, independent agency, board or commission thereof, and  
545 shall also include all offices and positions of trust or  
546 employment in the employ of joint state and federal agencies  
547 administering state and federal funds and service rendered by  
548 employees of the public schools. Effective July 1, 1973, all  
549 nonprofessional public school employees, such as bus drivers,  
550 janitors, maids, maintenance workers and cafeteria employees,  
551 shall have the option to become members in accordance with Section  
552 25-11-105(b), and shall be eligible to receive credit for services  
553 before July 1, 1973, provided that the contributions and interest  
554 are paid by the employee in accordance with that section; in  
555 addition, the county or municipal separate school district may pay



556 the employer contribution and pro rata share of interest of the  
557 retroactive service from available funds. From and after July 1,  
558 1998, retroactive service credit shall be purchased at the  
559 actuarial cost in accordance with Section 25-11-105(b).

560 (aa) "Withdrawal from service" or "termination from  
561 service" shall mean complete severance of employment in the state  
562 service of any member by resignation, dismissal or discharge.

563 (bb) The masculine pronoun, wherever used, shall  
564 include the feminine pronoun.

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

567 25-11-127. (1) (a) No person who is being paid a  
568 retirement allowance or a pension after retirement under this  
569 article shall be employed or paid for any service by the State of  
570 Mississippi, except as provided in this section.

571 (b) No retiree of this retirement system who is  
572 reemployed or is reelected to office after retirement shall  
573 continue to draw retirement benefits while so reemployed, except  
574 as provided in this section.

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

578 (2) Any person who has been retired under the provisions of  
579 Article 3 and who is later reemployed in service covered by this  
580 article shall cease to receive benefits under this article and  
581 shall again become a contributing member of the retirement system.  
582 When the person retires again, if the reemployment exceeds six (6)  
583 months, the person shall have his or her benefit recomputed,  
584 including service after again becoming a member, provided that the  
585 total retirement allowance paid to the retired member in his or  
586 her previous retirement shall be deducted from the member's  
587 retirement reserve and taken into consideration in recalculating  
588 the retirement allowance under a new option selected.



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

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

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

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

602 To determine the normal working days for a position under  
603 paragraph (a) of this subsection, the employer shall determine the  
604 required number of working days for the position on a full-time  
605 basis and the equivalent number of hours representing the  
606 full-time position. The retiree then may work up to one-half  
607 (1/2) of the required number of working days or up to one-half  
608 (1/2) of the equivalent number of hours and receive up to one-half  
609 (1/2) of the salary for the position. In the case of employment  
610 with multiple employers, the limitation shall equal one-half (1/2)  
611 of the number of days or hours for a single full-time position.

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

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

620 (a) Files annually, in writing, in the office of the  
621 employer and the office of the executive director of the system



622 before the person takes office or as soon as possible after  
623 retirement, a waiver of all salary or compensation and elects to  
624 receive in lieu of that salary or compensation a retirement  
625 allowance as provided in this section, in which event no salary or  
626 compensation shall thereafter be due or payable for those  
627 services; however, any such officer or employee may receive, in  
628 addition to the retirement allowance, office expense allowance,  
629 mileage or travel expense authorized by any statute of the State  
630 of Mississippi; or

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

641 (6) This section shall not apply to any employee of a  
642 private entity which leases staff to local school boards to  
643 provide instructional services as authorized in Section  
644 37-7-301(mm).

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

