S. B. No. 2771

SENATE BILL NO. 2771

AN ACT TO CREATE A CORRECTIONAL OFFICERS' RETIREMENT SYSTEM; TO DEFINE MEMBERSHIP AND OTHER TERMS; TO ESTABLISH BENEFITS FOR DEATH, SUPERANNUATION AND DISABILITY RETIREMENT; TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TRANSFER OF MEMBERSHIP FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) A retirement system is hereby established, which shall be under the jurisdiction and management of the Board of Trustees of the Public Employees' Retirement System of Mississippi, for the purpose of providing retirement allowances and other benefits for the correctional officers employed by the Department of Corrections and their beneficiaries.

(2) This system shall have all the powers and privileges of a corporation, and is hereby designated a distinct and separate corporation, and shall be known as the "Correctional Officers' Retirement System of Mississippi"; and its business shall be transacted and all of its funds and other property held by such name.

SECTION 2. (1) The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to the individual member account, together with regular interest thereon.

(b) "Actuarial equivalent" means a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables.
as shall be adopted by the board of trustees, and regular
interest.

(c) "Average compensation" means the average of the
four (4) highest years of earned compensation reported in a fiscal
or calendar year period, or combination thereof, which do not
overlap, or the last forty-eight (48) consecutive months of earned
compensation reported. The four (4) years need not be successive
or joined years of service.

(d) "Beneficiary" means any person entitled to receive
a retirement allowance, an annuity or other benefit as provided by
this act. In the event of the death prior to retirement of any
member whose spouse and/or children are not entitled to a
retirement allowance, the lawful spouse of a member at the time of
the death of such member shall be the beneficiary of such member
unless the member has designated another beneficiary subsequent to
the date of marriage in writing and filed such writing in the
office of the executive director of the board of trustees. No
designation or change of beneficiary shall be made in any other
manner.

(e) "Board" means the board of trustees as provided in

(f) "Creditable service" means "prior service" plus
"membership service" for which credit is allowable.

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

(h) "Earned compensation" means the full amount earned
by an employee for a given pay period and proportionately for less
than one (1) year of service. Earned compensation shall be
limited to the regular periodic compensation paid, exclusive of
litigation fees, bond fees and other similar extraordinary nonrecurring payments. The amount by which salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5, Mississippi Code of 1972, shall be included as earned compensation under this paragraph, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations thereunder, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

(i) "Employer" means the Department of Corrections.

(j) "Fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

(k) "Medical board" means the board of physicians or any governmental or nongovernmental disability determination service designated by the board of trustees that is qualified to make disability determinations as provided for in Section 25-11-119, Mississippi Code of 1972.

(l) "Member" means any person included in the membership of the system as provided.

(m) "Membership service" means service rendered while a member of the retirement system in the position of correctional officer.

(n) "Prior service" means service rendered prior to the first day of the month of the effective date of the system in the position of a correctional officer.

(o) "Regular interest" means interest compounded annually at such a rate as shall be determined by the board in accordance with Section 25-11-121, Mississippi Code of 1972.

(p) "Retirement allowance" means an annuity for life, payable each year in twelve (12) equal monthly installments beginning as of the date fixed by the board. The retirement allowance shall be calculated in accordance with this act.
(q) "System" means the Correctional Officers' Retirement System of Mississippi established and described by this act.

(r) "State" means the State of Mississippi.

(s) "Service" means all employment as a correctional officer.

(t) "Withdrawal from service" means complete severance of employment with the employer by resignation, dismissal or discharge.

(2) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 3. (1) The general administration and responsibility for the proper operation of the system and for making effective the provisions hereof are hereby vested in the Board of Trustees of the Public Employees' Retirement System of Mississippi.

(2) The board shall invest all funds in accordance with Section 25-11-121, Mississippi Code of 1972.

(3) The board shall designate an actuary who shall be the technical advisor of the board on matters regarding the operation of the system and shall perform such other duties as are required in connection therewith.

(4) At least once in each two-year period following the date of establishment, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the system and shall make a valuation of the contingent assets and liabilities of the system. The board, after taking into account the results of such investigations and valuations, shall adopt for the system such mortality, service and other tables as shall be deemed necessary.
(5) On the basis of regular interest and tables last adopted by the board, the actuary shall make biannual valuation of the contingent assets and liabilities of the system.

(6) The board shall keep such data as shall be necessary for the actuarial valuation of the contingent assets and liabilities of the system and for checking the experience of the system.

(7) The board shall determine from time to time the rate of regular interest for use in all calculations.

(8) Subject to the limitations hereof, the board shall, from time to time, establish rules and regulations for the administration of the system and for the transaction of business.

(9) The board shall keep a record of all its proceedings under this act which shall be open to public inspection.

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

SECTION 4. (1) All correctional officers who are in the full-time employment of the Department of Corrections on the effective date of the system shall become members of the system as of such date; except that, within fifteen (15) days from such date, any such correctional officer may irrevocably elect in writing to the board not to be a member of the system.

(2) All correctional officers employed on or after the effective date of the system shall become members of the system as a condition of their employment provided the correctional officer is under the age of sixty (60) years at the time of such employment.

(3) Membership in the system shall include all service in the position of correctional officer, and any funds contributed by a member prior to the effective date of this system to the Public Employees' Retirement System of Mississippi shall be transferred to the member's credit in this system.
SECTION 5. (1) Under such rules and regulations as the board shall adopt, each person who becomes a member of this system shall receive credit for prior service rendered prior to the effective date of this system. To receive such credit, such member shall file a detailed certificate of all service rendered by the member prior to the effective date of this system.

(2) In the computation of membership service or prior service under the provisions of this system, the following schedule shall govern:

(a) Ten (10) or more months of service during any fiscal year shall constitute a year of service;

(b) Service less than ten (10) months shall be taken into account on a quarterly basis based on the fractional part of the year.

(3) In the computation of any retirement allowance or any annuity or benefit provided in this system, any fractional period of service of less than one (1) year shall be taken into account and a proportionate amount of such retirement allowance, annuity or benefit shall be granted for any such fractional period of service.

(4) Subject to the above restrictions and to such other rules and regulations as the board may adopt, the board shall verify, as soon as practicable after the filing of such statements of service, the services therein claimed.

(5) Upon verification of the certification of prior service, the board shall issue a prior service certificate certifying to each member the length of prior service for which credit shall have been allowed on the basis of his certification of service. So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided that any member may, within one (1) year from the date of issuance or modification of such certificate, request
the board of trustees to modify or correct his prior service

certificate.

(6) Creditable service at retirement, on which the
retirement allowance of a member shall be based, shall consist of
the membership rendered by him since he became a member, and also,
if he has a prior service certificate which is in full force and
effect, the amount of the service certified on his prior service

certificate.

(7) Anything in this act to the contrary notwithstanding,
any member who served on active duty in the Armed Forces of the
United States, or who served in maritime service during periods of
hostility in World War II, shall be entitled to creditable service
for his service on active duty in the armed forces or in such
maritime service, provided he became a correctional officer after
his discharge from the armed forces or became a correctional
officer after he completed such maritime service. The maximum
period for such creditable service for all military service shall
not exceed four (4) years unless positive proof can be furnished
by such person that he was retained in the armed forces during
World War II or in maritime service during World War II by causes
beyond his control and without opportunity of discharge. The
member shall furnish proof satisfactory to the board of trustees
of certification of military service or maritime service records
showing dates of entrance into active duty service and the date of
discharge. No creditable service shall be granted for any
military service or maritime service to a member who qualifies for
a retirement allowance in another public retirement system
administered by the Board of Trustees of the Public Employees'
Retirement System based in whole or in part on such military or
maritime service. In no case shall the member receive creditable
service if the member received a dishonorable discharge from the
Armed Forces of the United States.
SECTION 6. (1) There shall be established by the board a fund for the Correctional Officers' Retirement System of Mississippi which shall be maintained as a separate fund, separate from all other funds held by the board, and which shall be used only for the payment of benefits provided for by this system.

(2) The board shall act as custodian of the funds for members of the system, and shall receive to the credit of such fund all donations, bequests, appropriations and all funds available as employer's contributions thereto from any source whatsoever.

(3) From the funds credited to this account, the board of trustees shall pay retirements, disability benefits, survivors' benefits, expenses and shall refund contributions as provided.

(4) Beginning October 1, 2003, the employer shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, five percent (5%) of earned compensation. Future contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation.

(5) Beginning October 1, 2003, on account of each member, there shall be paid monthly into the fund for members by the employer from funds available an amount equal to a certain percentage of the compensation of each member to be known as the "normal contributions," and an additional amount equal to the percentage of his compensation to be known as the "accrued liability contributions." The percentage rate of such contributions shall be fixed by the board on the basis of the liabilities of the system for the various allowances and benefits as shown by the actuarial valuation. Until changed by the board, the contribution rate shall be two percent (2%) of the earned compensation of all members.
(6) The board is hereby authorized to deduct two percent (2%) of all employers' contributions paid into the fund for members of the system to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the cost of administering this fund.

SECTION 7. (1) In the event of a withdrawal from service of a member, he shall be refunded the amount of his total contributions under the provisions of this system, including any credit transferred to his account in the system from any other system, at his request; and should he die before retirement, such amount may be refunded to any beneficiary he may name, at the request of the beneficiary.

(2) If any member who shall receive a refund reenters and again becomes a member of the system and remains a contributor for four (4) years, he may repay all amounts previously received by him as a refund, together with regular interest covering the period from the date of the refund to the date of repayment. Upon such repayment, the member shall again receive credit for the entire period of creditable service which he forfeited upon the receipt of the refund.

SECTION 8. (1) Upon application of a member or his employer, an active member in service as a correctional officer who has not attained the age of fifty-five (55) years may be retired by the board after date of termination of employment as of the date of filing such application, on a disability retirement allowance, provided that the medical board, after a medical examination, shall certify that he is mentally or physically incapacitated for the performance of duty and that such incapacity is likely to be permanent, and that such sickness or injury was caused or sustained as a direct result of duty as a correctional officer after the effective date of this act.

(2) Upon retirement for disability, a member shall receive a disability benefit equal to fifty percent (50%) of the earned
compensation for the year immediately preceding retirement, but not less than any retirement benefits for which the member may be eligible at the date disability is granted.

(3) Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every period of three (3) years thereafter, the board may require any disability beneficiary who has not yet attained the age of fifty-five (55) years to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by the medical board. Should any disability beneficiary who has not yet attained the age of fifty-five (55) years refuse to submit to any medical examination provided for herein, the allowance may be discontinued until the withdrawal of such refusal; and, should the refusal continue for one (1) year, all rights in that part of the disability benefit provided by employer contributions shall be revoked.

(4) If the medical board reports and certifies to the board that such disability beneficiary is engaged in, or is able to engage in, a gainful occupation paying more than the difference between the disability benefit and the earned compensation, and if the board concurs in such report, the disability benefit shall be reduced to the amount which, together with the amount earnable, shall equal the amount of earned compensation. If the earning capacity be later changed, the amount of the benefit may be further modified; provided, that the revised benefit shall not exceed the amount originally granted nor an amount which, when added to the amount earnable by the beneficiary, equals the amount of earned compensation.

(5) Should a disability beneficiary under the age of fifty-five (55) years be restored to active service at a compensation not less than the earned compensation, the disability benefit shall cease.
SECTION 9. (1) Any member upon withdrawal from service, upon or after attainment of the age of fifty-five (55) years, who shall have completed at least five (5) years of creditable service, or any member upon withdrawal from service upon or after attainment of the age of forty-five (45) years, who shall have completed at least twenty (20) years of creditable service, or any member upon withdrawal from service, regardless of age, who shall have completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance which shall be payable the first of the month following receipt of the member's application in the Office of the Executive Director of the Public Employees' Retirement System, but in no event before withdrawal from service.

Any member whose withdrawal from service occurs prior to attaining the age of fifty-five (55) years, who shall have completed more than five (5) years of creditable service and shall not have received a refund of the member's accumulated contributions, shall be entitled to receive a retirement allowance beginning upon his attaining the age of fifty-five (55) years of the amount earned and accrued at the date of withdrawal from service.

(2) The annual amount of the retirement allowance shall consist of:

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

   (b) An employer's annuity which, together with the member's annuity provided above, shall be equal to two and one-half percent (2-1/2%) of the average compensation.

   (c) A prior service annuity equal to two and one-half percent (2-1/2%) of the average compensation for each year of prior service for which the member is allowed credit.
(d) In the case of retirement of any member prior to attaining the age of fifty-five (55) years, the retirement allowance shall be computed in accordance with the formula hereinabove set forth in this section, except that the employer's annuity and prior service annuity above described shall be reduced three percent (3%) for each year of age below fifty-five (55) years, or three percent (3%) for each year of service below twenty-five (25) years of creditable service, whichever is lesser.

(3) Upon retiring from service, a member shall be eligible to obtain retirement benefits, as computed above, for life, except that the aggregate amount of the employer's annuity and prior service annuity above described shall not exceed more than eighty-five percent (85%) of the average compensation regardless of the years of service.

SECTION 10. (1) Members who have retired and who on December 1 of each year are receiving a retirement allowance for service or disability retirement, or their beneficiaries, shall receive in one (1) additional payment an amount equal to the annual percentage increase in each fiscal year of the Consumer Price Index set by the United States government in each fiscal year, not exceeding two and one-half percent (2-1/2%) for any fiscal year, times the amount of the annual retirement allowance. The percentage provided in this subsection for any particular year shall not be less than the percentage provided for the previous year.

(2) Persons who on December 1 of each year are receiving a retirement allowance for service or disability retirement, or their beneficiaries, may receive, in addition to the amount provided in subsection (1) of this section, a payment, as determined by the board, calculated in increments of one-fourth of one percent (1/4 of 1%), not to exceed one and one-half percent (1-1/2%) of the annual retirement allowance, for each full year of retirement, provided that any such payment shall be contingent
upon the reserve for annuities in force for retired members and
beneficiaries providing sufficient investment gains in excess of
the accrued actuarial liabilities for the previous fiscal year as
certified by the actuary and determined by the board.

(3) The percentages in this section shall be based on each
full fiscal year that the retired member or beneficiary has
actually drawn retirement payments from the date of retirement, or
the date of last retirement if there is more than one (1)
retirement date.

(4) Persons eligible to receive the payments provided in
subsections (1) and (2) of this section shall receive such
payments in one (1) additional payment, except that such person
may elect by an irrevocable agreement on a form prescribed by the
board of trustees to receive such payments in not less than equal
monthly installments not to exceed six (6) months during the
remaining months of the current fiscal year. In the event of the
death of a person or a beneficiary thereof receiving monthly
benefits, any remaining amounts shall be paid in a lump sum to the
designated beneficiary.

SECTION 11. (1) Upon the death of any member who has
retired for service or disability and who has not elected any
other option under Section 12, his widow shall receive one-half
(1/2) the benefit which he was receiving and each child not having
attained his nineteenth birthday shall receive one-fourth (1/4) of
his benefit, but not more than one-half (1/2) of the benefits
shall be paid for the support and maintenance of two (2) or more
children. Upon each child’s attaining the age of nineteen (19)
years, the child shall no longer be eligible for such benefit, and
when all of such children have attained their nineteenth birthday,
only the widow shall be eligible for one-half (1/2) the amount of
his benefit. She shall continue to be eligible for such benefit
in the amount of fifty percent (50%) of his retirement benefit so
long as she may live and until she remarries. In the event of her
remarriage at any time, her eligibility for the fifty percent (50%) benefits shall cease and terminate, but she will be eligible to continue to receive benefits for their children until the last child attains his or her nineteenth birthday in the manner aforesaid.

(2) Upon the death of any member who has served the minimum retirement period required for eligibility for such retirement system, his spouse and family shall receive all the benefits payable to his beneficiaries as if he had retired at the time of his death. Such benefits cease as to the spouse upon remarriage but continue to be payable to each child until he reaches the age of nineteen (19) years. Such benefits are payable on a monthly basis.

(3) The spouse and/or the dependent children of an active member who is killed in the line of performance of duty or dies as a direct result of an accident occurring in the line of performance of duty shall qualify, on approval of the board, for a retirement allowance on the first of the month following the date of death, but not before receipt of application by the board. The spouse shall receive a retirement allowance equal to one-half (1/2) of the average compensation of the deceased member. In addition to the retirement allowance for the spouse, or if there is no surviving spouse, a retirement allowance shall be paid in the amount of one-fourth (1/4) of the average compensation for the support and maintenance of one (1) child or in the amount of one-half (1/2) of the average compensation for the support and maintenance of two (2) or more children. Such benefits shall cease to be paid for the support and maintenance of each child upon such child attaining the age of nineteen (19) years; however, the spouse shall continue to be eligible for the aforesaid retirement allowance. Benefits may be paid to a surviving parent or lawful custodian of such children for the use and benefit of the children without the necessity of appointment as guardian.
Such retirement allowance shall cease to be paid to the spouse upon remarriage but continue to be payable for each dependent child until the age of nineteen (19) years.

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

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

SECTION 12. (1) Upon application for superannuation or disability retirement, any member may elect to receive his benefit pursuant to the provisions of Sections 9 and 11 or may elect to receive his benefit in a retirement allowance payable throughout life with no further payments to anyone at his death, except that
in the event his total retirement payments under this act do not
equal his total contributions under this act, his named
beneficiary shall receive the difference in cash at his death. Or
he may elect upon retirement, or upon becoming eligible for
retirement, to receive the actuarial equivalent of his retirement
allowance in a reduced retirement allowance payable throughout
life with the provision that:

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

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

**Option 3.** Upon his death, one-half (1/2) of his reduced
retirement allowance shall be continued throughout the life of,
and paid to, such person as he shall have nominated by written
designation duly acknowledged and filed with the board of trustees
at the time of his retirement, and the other one-half (1/2) of his
reduced retirement allowance to some other designated beneficiary.

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

**Option 4-B.** A reduced retirement allowance shall be
continued throughout the life of the retirant, but with the
further guarantee of payments to the named beneficiary,
beneficiaries or to the estate for a specified number of years
certain. If the retired member or the last designated beneficiary
receiving annuity payments dies prior to receiving all guaranteed payments due, the actuarial equivalent of the remaining payments would be paid to the estate of the retired member as intestate property.

Option 4-C. Such retirement allowance otherwise payable may be converted into a retirement allowance of equivalent actuarial value in such an amount that, with the member's benefit under Title II of the federal Social Security Act, the member will receive, so far as possible, approximately the same amount annually before and after the earliest age at which the member becomes eligible to receive a social security benefit.

Option 5. With the added provision under Option 2 or Option 4-A that in the event the designated beneficiary predeceased the member, the retirement allowance payable to the member after the death of the designated beneficiary shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(2) No change in the option selected shall be permitted after the member's death or after the member has received his first retirement check. Should a member retired on disability be returned to active service, the option previously selected shall be null and void. Upon subsequent retirement a new option may be selected.

(3) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of such option and furnishing necessary proof of age. Such option, once selected, may be changed at any time prior to actual retirement or death, but upon the death or retirement of the member, the optional
settlement shall be placed in effect upon proper notification to
the executive director.

(4) For purposes of this section:

(a) "Beneficiary" means any person designated to
receive a retirement allowance, an annuity or other benefit as
provided by this act. Such designation shall be in writing filed
in the Office of the Executive Director of the Board of Trustees
of the Public Employees' Retirement System, and no designation or
change of beneficiary shall be made in any other manner; however,
notwithstanding any provision of this act to the contrary, the
lawful spouse of a member at the time of the death of a member
shall be the beneficiary of such member unless the member has
designated another beneficiary subsequent to the date of marriage.

(b) "Actuarial equivalent" means a benefit of equal
value to the accumulated contributions, annuity or benefit, as the
case may be, when computed upon the basis of such mortality tables
as shall be adopted by the board of trustees, and regular
interest.

(c) "Actuarial tables" means such tables of mortality
and rates of interest as shall be adopted by the board in
accordance with the recommendation of the actuary.

SECTION 13. The right of a person to an annuity, a
retirement allowance or benefit, or to the return of
contributions, or to any optional benefits or any other right
accrued or accruing to any person under the provisions of this
act, the system and the monies in the system, are hereby exempt
from any state, county or municipal ad valorem taxes, income
taxes, premium taxes, privilege taxes, property taxes, sales and
use taxes or other taxes not so named, notwithstanding any other
provision of law to the contrary, and exempt from levy and sale,
garnishment, attachment, or any other process whatsoever, and
shall be unassignable except as specifically otherwise provided.
SECTION 14. (1) The maintenance of actuarial reserves for the various allowances and benefits under this system, and the payment of all annuities, retirement allowances, refunds and other benefits granted hereunder are hereby made obligations of the fund. All income, interest and dividends derived from deposits and investments authorized by this act shall be used for the payment of the obligations of the system.

(2) In the event of the termination of the system, all members of the system as of the date of termination of the system shall be deemed to have a vested right to benefits to the extent and in the same manner that rights would be vested under the statute existing as of the date of termination of the system; except that any member who, because of a termination of the system has not fulfilled the requirements for length of service, shall be entitled to compensation as of the date that such member would otherwise be eligible, with such compensation to be computed on the basis of time actually a member of the system and compensation actually earned during the time as a member, in the manner now provided by statute.

(3) In the event of a deficit in the availability of funds for payment due under the provisions of the system, an appropriation shall hereinafter be made sufficient for the payment thereof as an obligation of the State of Mississippi.

SECTION 15. In case a member of this system withdraws from service and does not have at least five (5) years of creditable service and the member becomes a member of the Public Employees' Retirement System of Mississippi, the required amount of employer and member contributions plus interest as determined by the board may be transferred to the Public Employees' Retirement System of Mississippi to receive creditable service for service in the Correctional Officers' Retirement System of Mississippi. The difference between the member contributions required to transfer the member to the Public Employees' Retirement System of Mississippi...
Mississippi shall be refunded to the member at the time of transfer.

**SECTION 16.** No person who is being paid a retirement allowance from this system shall serve or be paid for any service as a correctional officer. Should any retired member under this act return to service as a correctional officer, the retirement allowance shall cease and the member shall become a contributing member of the system and shall be credited with all creditable service at the time of the previous withdrawal of service on a retirement allowance. The retirement allowance payable upon subsequent retirement shall be based on the total creditable service rendered before and after return to service. The total retirement allowance paid to the retired member in his previous retirement shall be deducted from his retirement reserve and taken into consideration in recalculating the retirement allowance.

**SECTION 17.** Any person or corporation who shall receive and retain any payment after the death of a member or after the death of the beneficiary of any member, which amount is not lawfully due, shall be liable for the repayment of such amount to the system plus interest thereon at ten percent (10%) per annum plus all costs of collection. Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor if the amount obtained or attempted to be obtained does not exceed the amount of Five Hundred Dollars ($500.00), and, upon conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or imprisonment in the county jail not exceeding six (6) months, or both; if such amount obtained or attempted to be obtained shall exceed the sum of Five Hundred Dollars ($500.00), such person or persons shall be guilty of a felony and, upon conviction thereof by any court of competent jurisdiction, shall be punished by a
fine not exceeding Ten Thousand Dollars ($10,000.00) or by
commitment to the custody of the State Department of Corrections
for not more than five (5) years, or both.

Should any change or error in the records result in any
member or beneficiary receiving from the retirement system more or
less than he would have been entitled to receive had the records
been correct, the board of trustees shall correct such error and,
as far as practicable, adjust the payment in such a manner that
the actuarial equivalent of the benefit to which such member or
beneficiary was correctly entitled shall be paid.

SECTION 18. Each employer shall withhold the member
contributions required from all compensation earned and the
contributions so withheld shall be treated as employer
contributions in determining tax treatment under the United States
Internal Revenue Code and the Mississippi Income Tax Code. These
contributions shall not be included as gross income of the member
until such time as they are distributed or made available. The
employer shall pay these member contributions from the same source
of funds which is used in paying earnings to the member. The
employer may withhold member contributions by a reduction in the
cash salary of the member, or by an offset against a future salary
increase, or by a combination of a reduction in salary and offset
against a future salary increase. The member contributions so
withheld shall be treated for all purposes in the same manner and
to the same extent as member contributions.

SECTION 19. 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
those specifically excluded, or as to whom election is provided in Articles 1 and 3, 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 membership 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) In the event any member of this system is a correctional officer employed by the Department of Corrections and such member elects to become a member of the Correctional Officers' Retirement System of Mississippi or by virtue of his employment becomes a member of such system, the board shall transfer the member's creditable service and the present value of the member's employer's accumulation account and the present value of the member's accumulated membership contribution to such system.

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

(1) 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.
(m) 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, may, at the member's option, be purchased in quarterly increments as provided above at such time as its purchase is otherwise allowed.

(n) 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 20. This act shall take effect and be in force from and after July 1, 2003.