

By: Representative Fleming

To: Appropriations

HOUSE BILL NO. 263

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

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

10 **SECTION 1.** There is established and placed under the
11 management of the Board of Trustees of the Public Employees'
12 Retirement System a retirement system for the purpose of providing
13 retirement allowances and other benefits under the provisions of
14 this act for law enforcement officers and their beneficiaries.
15 This retirement system shall be known as the "Law Enforcement
16 Officers' Retirement System." The retirement system shall go into
17 operation on July 1, 2004, when contributions by members shall
18 begin and benefits shall become payable. This retirement system
19 is designed to supplement and is in addition to the provisions of
20 Section 25-11-1 et seq. Under the terms of this act, law
21 enforcement officers shall retain all social security benefits
22 under Article I of the Public Employees' Retirement Law of 1952
23 but shall not be eligible for benefits under Article III of that
24 law. This act is a substitute for and in lieu of Article III of
25 that law, and is designed to provide more liberal benefits for law
26 enforcement officers by reason of the dangerous nature of and
27 special risk involved in their employment.

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

31 (2) As used in this act:

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

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

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

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

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

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

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

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

65 (4) At least once in each two-year period following July 1,
66 2004, the actuary shall make an actuarial investigation into the
67 mortality, service, withdrawal and compensation experience of the
68 members and beneficiaries of the system, and shall make a
69 valuation of the assets and liabilities of the system. Taking
70 into account the result of the investigation and valuation, the
71 board shall adopt for the retirement system such mortality,
72 service, and other tables as shall be deemed necessary. On the
73 basis of those tables that the board adopts, the actuary shall
74 make biennial valuations of the assets and liabilities of the
75 funds of the system.

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

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

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

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

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

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

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

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

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

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

119 (c) All duly elected constables.

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

124 (e) All duly appointed enforcement officers of the
125 Department of Marine Resources who are actually engaged in the
126 enforcement of the seafood laws of this state (Section 49-15-1 et
127 seq.).

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

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

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

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

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

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

158 (3) All law enforcement officers eligible for membership in
159 the system as provided in this section who are serving in that
160 capacity on July 1, 2004, shall become members of the system on

161 that date, unless they file with the board before August 1, 2004,
162 on a form prescribed by the board, a notice of election not to be
163 covered in the membership of the system and a duly executed waiver
164 of all present and prospective benefits that otherwise would inure
165 to them on account of their membership in the system.

166 (4) All law enforcement officers eligible for membership in
167 the system as provided in this section who are elected or
168 appointed after June 30, 2004, shall become members of the system
169 as a condition of their office or employment.

170 (5) Membership in the system shall cease by a member
171 withdrawing his accumulated contributions, or by a member
172 withdrawing from active service with a retirement allowance, or by
173 death of the member.

174 **SECTION 5.** (1) Creditable service on which a member's
175 service or disability retirement benefit is based shall consist of
176 prior service and membership service. Prior service means service
177 performed before July 1, 2004, for which contributions were made
178 to the Public Employees' Retirement System, and membership service
179 means all service for which credit may be allowed under this act
180 after June 30, 2004, and all lawfully credited unused leave as of
181 the date of withdrawal from service, as certified by the employer.

182 (2) In computing the period of service of a member of the
183 system, any member who served on active duty in the Armed Forces
184 of the United States, or who served in maritime service during
185 periods of hostility in World War II, shall be entitled to
186 creditable service at no cost for his service on active duty in
187 the Armed Forces or in such maritime service, provided he entered
188 state service after his discharge from the Armed Forces or entered
189 state service after he completed such maritime service. The
190 maximum period for creditable service for all military service as
191 defined in this subsection (2) shall not exceed four (4) years
192 unless positive proof can be furnished by the person that he was
193 retained in the Armed Forces during World War II or in maritime

194 service during World War II by causes beyond his control and
195 without opportunity of discharge. The member shall furnish proof
196 satisfactory to the board of certification of military service or
197 maritime service records showing dates of entrance into service
198 and the date of discharge. No creditable service shall be granted
199 for any military service or maritime service to a member who
200 qualifies for a retirement allowance in another public retirement
201 system administered by the board based in whole or in part on that
202 military or maritime service. In no case shall the member receive
203 creditable service if the member received a dishonorable discharge
204 from the Armed Forces of the United States.

205 (3) (a) Any member of the system whose membership service
206 is interrupted as a result of qualified military service within
207 the meaning of Section 414(u)(5) of the Internal Revenue Code, and
208 who has received the maximum service credit available under
209 subsection (2) of this section, shall receive creditable service
210 for the period of qualified military service that does not qualify
211 as creditable service under subsection (2) of this section upon
212 reentering membership service in an amount not to exceed five (5)
213 years if:

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

218 (ii) The member returns to membership service
219 within ninety (90) days of the end of his qualified military
220 service; and

221 (iii) The employer at the time the member's
222 service was interrupted and to which employment the member returns
223 pays the contributions it would have made into the retirement
224 system for that period based on the member's salary at the time
225 the service was interrupted.

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

231 (c) The member shall furnish proof satisfactory to the
232 board of certification of military service showing dates of
233 entrance into qualified service and the date of discharge, as well
234 as proof that the member has returned to active employment within
235 the time specified.

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

240 (2) The employers shall deduct each month from the salary of
241 each member seven and one-fourth percent (7-1/4%) of earned
242 compensation, and shall pay the amount so deducted to the board to
243 be credited to the system. Notwithstanding the employee
244 contribution rates specified in this subsection, the board may
245 vary the percentage of employee contribution biennially on the
246 basis of the liabilities of the system for the various allowances
247 and benefits as shown by actuarial valuation. From the funds
248 credited to this account, the board shall pay retirements,
249 disability benefits, survivors' benefits, expenses and shall
250 refund contributions as provided in this act. The funds of the
251 system shall be maintained as a separate fund, separate from all
252 other funds held by the board and shall be used only for the
253 payment of benefits provided for by this act or amendments to this
254 act.

255 (3) On account of each member the employers shall pay
256 monthly into the system from funds available an amount equal to a
257 certain percentage of the compensation of each member to be known
258 as the "normal contributions," and an additional amount equal to a

259 percentage of his compensation to be known as the "accrued
260 liability contribution." The percentage rate of those
261 contributions shall be fixed biennially by the board on the basis
262 of the liabilities of the system for the various allowances and
263 benefits as shown by the actuarial valuation.

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

268 **SECTION 7.** Each employer shall withhold the member
269 contributions required by Section 6 of this act from all
270 compensation earned after June 30, 2004, and the contributions so
271 withheld shall be treated as employer contributions in determining
272 tax treatment under the United States Internal Revenue Code and
273 Mississippi Income Tax Code. These contributions shall not be
274 included as gross income of the member until such time as they are
275 distributed or made available. The employer shall pay these
276 member contributions from the same source of funds that is used in
277 paying earnings to the member. The employer may withhold member
278 contributions by a reduction in the cash salary of the member, or
279 by an offset against a future salary increase, or by a combination
280 of a reduction in salary and offset against a future salary
281 increase. The member contributions so withheld shall be treated
282 for all purposes in the same manner and to the same extent as
283 member contributions.

284 **SECTION 8.** (1) Upon application of a member or his
285 employer, but in no event before termination of state service, any
286 member who has not attained the age of fifty-five (55) years may
287 be retired by the board, not less than thirty (30) and not more
288 than ninety (90) days next following the date of filing the
289 application, on a disability retirement allowance, if the medical
290 board of the Public Employees' Retirement System, after an
291 evaluation of medical evidence, which may include a physical

292 examination by the medical board, certifies that he is mentally or
293 physically incapacitated for the performance of duty, that the
294 incapacity is likely to be permanent, and that the sickness or
295 injury was caused or sustained as a direct result of duty as a law
296 enforcement officer after June 30, 2004.

297 Upon the application of a member or his employer, any member
298 who is not yet eligible for service retirement benefits and who
299 has had at least five (5) years of creditable service may be
300 retired by the board, not less than thirty (30) and not more than
301 ninety (90) days next following the date of filing the
302 application, on a disability retirement allowance, if the medical
303 board, after an evaluation of medical evidence, which may include
304 a physical examination by the medical board, certifies that he is
305 mentally or physically incapacitated for the further performance
306 of duty, that the incapacity is likely to be permanent, and that
307 he should be retired. This disability need not be service
308 connected.

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

314 (3) Once each year during the first five (5) years following
315 retirement of a member on a disability retirement allowance, and
316 once in every period of three (3) years thereafter, the board may,
317 and upon his application shall, require any disability retiree who
318 has not yet attained the age of fifty-five (55) years to undergo a
319 medical examination. The examination shall be made at the place
320 of residence of the retiree or other place mutually agreed upon by
321 the medical board. If any disability retiree who has not yet
322 attained the age of fifty-five (55) years refuses to submit to any
323 medical examination provided for in this subsection, his allowance
324 may be discontinued until his withdrawal of that refusal, and if

325 his refusal continues for one (1) year, all his rights in that
326 part of the disability benefit provided by employer contributions
327 shall be revoked by the board.

328 (4) If the medical board reports and certifies to the board
329 that the disability retiree is engaged in, or is able to engage
330 in, a gainful occupation paying more than the difference between
331 his disability benefit and his average compensation, and if the
332 board concurs in the report, the disability benefit shall be
333 reduced to an amount that, together with the amount earnable by
334 him, equals the amount of his average compensation. If his
335 earning capacity is later changed, the amount of the benefit may
336 be further modified. However, the revised benefit shall not
337 exceed the amount originally granted or an amount that, when added
338 to the amount earnable by the retiree, together with the member's
339 annuity, equals the amount of his average compensation.

340 (5) If a disability retiree under the age of fifty-five (55)
341 years is restored to active service at a compensation not less
342 than his average compensation, his disability benefit shall cease,
343 he shall again become a member of the retirement system, and he
344 shall contribute thereafter at the same rate he paid before
345 disability. Any such prior service certificate on the basis of
346 which his service was computed at the time of retirement shall be
347 restored to full force and effect. In addition, upon his
348 subsequent retirement he shall be credited with all creditable
349 service as a member, including the period for which he was paid
350 disability benefits.

351 **SECTION 9.** (1) Any member upon withdrawal from service upon
352 or after attainment of the age of fifty-five (55) years who has
353 completed at least four (4) years of creditable service, or any
354 member upon withdrawal from service upon or after attainment of
355 the age of forty-five (45) years who has completed at least twenty
356 (20) years of creditable service, or any member upon withdrawal
357 from service regardless of age who has completed at least

358 twenty-five (25) years of creditable service, shall be entitled to
359 receive a retirement allowance that shall be payable the first of
360 the month following receipt of the member's application in the
361 office of the executive director of the system, but in no event
362 before withdrawal from service.

363 (2) Any member whose withdrawal from service occurs before
364 attaining the age of fifty-five (55) years who has completed four
365 (4) or more years of creditable service and has not received a
366 refund of the member's accumulated contributions shall be entitled
367 to receive a retirement allowance of the amount earned and accrued
368 at the date of withdrawal from service, beginning upon his
369 attaining the age of fifty-five (55) years.

370 (3) The annual amount of the retirement allowance shall
371 consist of:

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

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

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

383 (d) In the case of retirement of any member before
384 attaining the age of fifty-five (55) years, the retirement
385 allowance shall be computed in accordance with the formula set
386 forth above in this section, except that the employer's annuity
387 and prior service annuity shall be reduced by three percent (3%)
388 for each year of age below fifty-five (55) years, or three percent
389 (3%) for each year of service below twenty-five (25) years of
390 creditable service, whichever is lesser.

391 (e) Upon retiring for service, a member shall be
392 eligible to obtain retirement benefits, as computed above, for
393 life, except that the aggregate amount of the employer's annuity
394 and prior service annuity shall not exceed more than one hundred
395 percent (100%) of the average compensation regardless of the years
396 of service.

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

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

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

409 (b) An additional amount equal to three percent (3%)
410 compounded by the number of full fiscal years in retirement
411 beginning with the fiscal year in which the member reaches age
412 fifty-five (55), multiplied by the amount of the annual retirement
413 allowance.

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

417 (3) If a retiree who is receiving a retirement allowance
418 that will terminate upon the retiree's death is receiving the
419 additional benefit in one (1) payment and dies on or after July 1
420 but before December 1, the beneficiary designated on the
421 retirement application, if any, shall receive in a single payment
422 a fractional part of the additional benefit based on the number of
423 months in which a retirement allowance was received during the

424 fiscal year. If there is no surviving beneficiary, payment shall
425 be made in accordance with Section 15(1) of this act. Any similar
426 remaining payments of the additional benefit payable under this
427 section to a deceased beneficiary who was receiving a monthly
428 benefit shall be payable in accordance with the provisions of
429 Section 15(2) of this act. If the additional benefit is being
430 received in one (1) payment each year, the additional benefit
431 shall be prorated based on the number of months in which a
432 retirement allowance was received during the fiscal year when (i)
433 the monthly benefit payable to a beneficiary terminates due to the
434 expiration of an option, remarriage or cessation of dependent
435 status or due to the retiree's return to covered employment, and
436 (ii) the monthly benefit terminates on or after July 1 and before
437 December 1.

438 (4) The additional benefit provided in this section shall be
439 paid in one (1) payment in December of each year to those persons
440 who are receiving a retirement allowance on December 1 of that
441 year, unless an election is made under subsection (5) of this
442 section. The board, in its discretion, may allow a retired member
443 or a beneficiary thereof who is receiving the additional benefit
444 in one (1) payment each year to have the additional benefit paid
445 in monthly installments if the retired member or beneficiary
446 submits satisfactory documentation that the continued receipt of
447 the additional benefit in one (1) payment each year will cause a
448 financial hardship to the retired member or beneficiary.

449 (5) Retired members or beneficiaries thereof who are
450 receiving a retirement allowance may elect by an irrevocable
451 agreement in writing filed in the Office of the Public Employees'
452 Retirement System no less than thirty (30) days before July 1 of
453 any year, to begin receiving the additional benefit provided in
454 this section in twelve (12) equal monthly installments beginning
455 on July 1 of the year. This irrevocable agreement shall be
456 binding on the member and subsequent beneficiaries. Payment of

457 those monthly installments shall not extend beyond the month in
458 which a retirement allowance is due and payable. Any retired
459 member or beneficiary thereof who previously elected to receive
460 the additional annual payment in monthly installments may elect,
461 upon application on a form prescribed by the board, to have that
462 payment made in one (1) payment in December of each year. This
463 written election must be filed in the Office of the Public
464 Employees' Retirement System before June 1, 2005, and shall be
465 effective for the fiscal year beginning July 1, 2005. The board,
466 in its discretion, may allow a retired member or a beneficiary
467 thereof who is receiving the additional benefit in monthly
468 installments to have the additional benefit paid in one (1)
469 payment in December of each year if the retired member or
470 beneficiary submits satisfactory documentation that the continued
471 receipt of the additional benefit in monthly installments will
472 cause financial hardship to the retired member or beneficiary.

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

475 (7) The amount of the additional benefit provided in
476 subsection (1)(b) of this section is calculated using the
477 following formula:

478
$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

479 where n is the number of full fiscal years in retirement beginning
480 with the fiscal year in which the member reaches age fifty-five
481 (55).

482 **SECTION 11.** (1) Upon the death of any member who has
483 retired for service or disability and who has not elected any
484 other option under Section 12 of this act, the member's spouse
485 shall receive one-half (1/2) the benefit that the member was
486 receiving and each child not having attained the age of nineteen
487 (19) years shall receive one-fourth (1/4) of the member's benefit,
488 but not more than one-half (1/2) of the benefits shall be paid for
489 the support and maintenance of two (2) or more children. Upon

490 each child's attaining the age of nineteen (19) years, the child
491 shall no longer be eligible for the benefit, and when all of the
492 children have attained the age of nineteen (19) years, only the
493 spouse shall be eligible for one-half (1/2) of the amount of the
494 member's benefit. The spouse shall continue to be eligible for
495 the benefit in the amount of fifty percent (50%) of the member's
496 retirement benefit as long as the spouse may live or until
497 remarriage. Upon remarriage of the spouse at any time, the
498 spouse's eligibility for the fifty percent (50%) benefits shall
499 end, but the spouse will be eligible to continue to receive
500 benefits for their children until the last child attains the age
501 of nineteen (19) years.

502 (2) Upon the death of any member who has served the minimum
503 period required for eligibility for retirement, the member's
504 spouse and family shall receive all the benefits payable to the
505 member's beneficiaries as if the member had retired at the time of
506 death. Those benefits shall cease as to the spouse upon
507 remarriage but shall continue to be payable to each child until he
508 reaches the age of nineteen (19) years. The benefits are payable
509 on a monthly basis.

510 (3) The spouse and/or the dependent children of an active
511 member who is killed in the line of performance of duty or dies as
512 a direct result of an accident occurring in the line of
513 performance of duty shall qualify, on approval of the board, for a
514 retirement allowance on the first of the month following the date
515 of the member's death, but not before receipt of application by
516 the board. The spouse shall receive a retirement allowance equal
517 to one-half (1/2) of the average compensation of the deceased
518 member. In addition to the retirement allowance for the spouse,
519 or if there is no surviving spouse, a retirement allowance shall
520 be paid in the amount of one-fourth (1/4) of the average
521 compensation for the support and maintenance of one (1) child or
522 in the amount of one-half (1/2) of the average compensation for

523 the support and maintenance of two (2) or more children. Those
524 benefits shall cease to be paid for the support and maintenance of
525 each child upon the child attaining the age of nineteen (19)
526 years; however, the spouse shall continue to be eligible for the
527 retirement allowance provided for the spouse. Benefits may be
528 paid to a surviving parent or lawful custodian of the children for
529 the use and benefit of the children without the necessity of
530 appointment as guardian. That retirement allowance shall cease to
531 the spouse upon remarriage but continue to be payable for each
532 dependent child until the age of nineteen (19) years.

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

536 (5) Children receiving the benefits provided in this section
537 who are permanently or totally disabled shall continue to receive
538 the benefits for as long as the medical board certifies that the
539 disability continues. The age limitation for benefits payable to
540 a child under any provision of this section shall be extended
541 beyond age nineteen (19), but in no event beyond the attainment of
542 age twenty-three (23), as long as the child is a student regularly
543 pursuing a full-time course of resident study or training in an
544 accredited high school, trade school, technical or vocational
545 institute, junior or community college, college, university or
546 comparable recognized educational institution duly licensed by a
547 state. A student child whose birthday falls during the school
548 year (September 1 through June 30) is considered not to reach age
549 twenty-three (23) until the July 1 following the actual
550 twenty-third birthday. A full-time course of resident study or
551 training means a day or evening noncorrespondence course that
552 includes school attendance at the rate of a least thirty-six (36)
553 weeks, per academic year or other applicable period with a subject
554 load sufficient, if successfully completed, to attain the
555 educational or training objective within the period generally

556 accepted as minimum for completion, by a full-time day student, of
557 the academic or training program concerned.

558 (6) If all the annuities provided for in this section
559 payable on the account of the death of a member terminate before
560 there has been paid an aggregate amount equal to the member's
561 accumulated contributions standing to the member's credit in the
562 annuity savings account at the time of the member's death, the
563 difference between the accumulated contributions and the aggregate
564 amount of annuity payments shall be paid to such person as the
565 member has nominated by written designation duly executed and
566 filed with the system. If there is no designated beneficiary
567 surviving at termination of benefits, the difference shall be
568 payable according to Section 15(1) of this act.

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

572 **SECTION 12.** (1) Upon application for superannuation or
573 disability retirement, any member may elect to receive his benefit
574 under the provisions of Section 8 or 9 of this act, or he may
575 elect, upon retirement or upon becoming eligible for retirement,
576 to receive the actuarial equivalent, subject to the provisions of
577 subsection (4) of this section, of his retirement allowance in a
578 reduced retirement allowance payable throughout life with the
579 provision that:

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

585 **Option 2.** Upon his death, his reduced retirement allowance
586 shall be continued throughout the life of, and paid to, such
587 person as he has nominated by written designation duly

588 acknowledged and filed with the board at the time of his
589 retirement; or

590 **Option 3.** Upon his death, one half (1/2) of his reduced
591 retirement allowance shall be continued throughout the life of,
592 and paid to, such person as he has nominated by written
593 designation duly acknowledged and filed with the board at the time
594 of his retirement, and the other one half (1/2) of his reduced
595 retirement allowance to some other designated beneficiary; or

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

601 **Option 4-B.** A reduced retirement allowance shall be
602 continued throughout the life of the retirant, but with the
603 further guarantee of payments to the named beneficiary,
604 beneficiaries or to the estate for a specified number of years
605 certain. If the retired member or the last designated beneficiary
606 receiving annuity payments dies before receiving all guaranteed
607 payments due, the actuarial equivalent of the remaining payments
608 shall be paid according to Section 15(1) of this act; or

609 **Option 6.** Any member who is eligible to retire with an
610 unreduced benefit may select the maximum retirement benefit or an
611 optional benefit as provided in this subsection together with a
612 partial lump sum distribution. The amount of the lump sum
613 distribution under this option shall be equal to the maximum
614 monthly benefit multiplied by twelve (12), twenty-four (24) or
615 thirty-six (36) as selected by the member. The maximum retirement
616 benefit shall be actuarially reduced to reflect the amount of the
617 lump sum distribution selected and further reduced for any other
618 optional benefit selected. The annuity and lump sum distribution
619 shall be computed to result in no actuarial loss to the system.
620 The lump sum distribution shall be made as a single payment

621 payable at the time the first monthly annuity payment is paid to
622 the retiree. The amount of the lump sum distribution shall be
623 deducted from the member's annuity savings account in computing
624 what contributions remain at the death of the retiree and/or a
625 beneficiary. The lump sum distribution option may be elected only
626 once by a member upon initial retirement, and may not be elected
627 by a retiree, by members applying for a disability retirement
628 annuity or by survivors.

629 (2) Any member in service who has qualified for retirement
630 benefits may select any optional method of settlement of
631 retirement benefits by notifying the executive director of the
632 system in writing, on a form prescribed by the board, of the
633 option he has selected and by naming the beneficiary of the option
634 and furnishing necessary proof of age. The option, once selected,
635 may be changed at any time before actual retirement or death, but
636 upon the death or retirement of the member, the optional
637 settlement shall be placed in effect upon proper notification to
638 the executive director.

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

646 (4) Any retired member who is receiving a reduced retirement
647 allowance under Option 2 or Option 4-A whose designated
648 beneficiary predeceases him, or whose marriage to a spouse who is
649 his designated beneficiary is terminated by divorce or other
650 dissolution, may elect to cancel his reduced retirement allowance
651 and receive the maximum retirement allowance for life in an amount
652 equal to the amount that would have been payable if the member had
653 not elected Option 2 or Option 4-A. The election must be made in

654 writing to the office of the executive director of the system on a
655 form prescribed by the board. Any such election shall be
656 effective the first of the month following the date the election
657 is received by the system.

658 (5) Any retired member who is receiving the maximum
659 retirement allowance for life, or a retirement allowance under
660 Option 1, and who marries after his retirement may elect to cancel
661 his maximum retirement allowance or Option 1 retirement allowance
662 and receive a reduced retirement allowance under Option 2 or
663 Option 4-A to provide continuing lifetime benefits to his spouse.
664 The election must be made in writing to the office of the
665 executive director of the system on a form prescribed by the board
666 not earlier than the date of the marriage. Any such election
667 shall be effective the first of the month following the date the
668 election is received by the system. However, if a retiree marries
669 or remarries after retirement and elects either Option 2 or Option
670 4-A as provided in subsection (3) or (5) of this section, the
671 actuarial equivalent factor used to compute the reduced retirement
672 allowance shall be the factor for the age of the retiree and his
673 or her beneficiary at the time that the election for recalculation
674 of benefits is made.

675 (6) If a retiree and his eligible beneficiary, if any, both
676 die before they have received in annuity payments a total amount
677 equal to the accumulated contributions standing to the retirant's
678 credit in the annuity savings account at the time of his
679 retirement, the difference between the accumulated contributions
680 and the total amount of annuities received by them shall be paid
681 to such persons as the retirant has nominated by written
682 designation duly executed and filed in the office of the executive
683 director. If no designated person survives the retirant and his
684 beneficiary, the difference, if any, shall be paid according to
685 Section 15(1) of this act.

686 **SECTION 13.** (1) All persons who are covered under the terms
687 of this act on July 1, 2004, and who become members of the
688 retirement system established by this act shall cease to be
689 members of the Public Employees' Retirement System under the
690 provisions of Section 25-11-101 et seq. upon July 1, 2004, and
691 shall become members of this retirement system with full credit
692 for all prior service performed before July 1, 2004, for which
693 contributions were made to the Public Employees' Retirement
694 System.

695 (2) For each law enforcement officer who has been a member
696 of the Public Employees' Retirement System under Section 25-11-101
697 et seq. and has made contributions thereto, all employee's
698 contributions and interest to the credit of that person shall be
699 transferred by the Public Employees' Retirement System to the
700 credit of the person in the retirement system established by this
701 act, and shall be considered an asset to the credit of that person
702 in this retirement system.

703 **SECTION 14.** If a member of the retirement system ceases to
704 work as a law enforcement officer for any reason other than
705 occupational disease contracted or for any accident sustained by
706 the member by reason of his service or discharge of his duties as
707 a law enforcement officer, and if the member is not eligible for
708 retirement either for service or disability, he shall be refunded
709 the amount of his total contributions under the provisions of this
710 act, including any credit transferred to his account in this
711 system from any other system, at his request, and if he dies
712 before retirement, those funds shall be refunded to any
713 beneficiary that he has named. If there is no surviving
714 designated beneficiary, the contributions to the credit of the
715 deceased member shall be refunded according to Section 15(1) of
716 this act.

717 Under the Unemployment Compensation Amendments of 1992
718 (Public Law 102-218(UCA)), a member or the spouse of a member who

719 is an eligible beneficiary eligible for a refund under this
720 section may elect on a form prescribed by the board under rules
721 and regulations established by the board, to have an eligible roll
722 over distribution of accumulated contributions payable under this
723 section paid directly to an eligible retirement plan, as defined
724 under applicable federal law, or an individual retirement account.
725 If the member or the spouse of a member who is an eligible
726 beneficiary makes that election and specifies the eligible
727 retirement plan or individual retirement account to which the
728 distribution is to be paid, the distribution will be made in the
729 form of a direct trustee to trustee transfer to the specified
730 eligible retirement plan. Flexible roll overs under this
731 paragraph shall not be considered assignments under Section 19 of
732 this act.

733 If any member who receives a refund reenters service as a law
734 enforcement officer and again becomes a member of the system, he
735 may repay all amounts previously received by him as a refund,
736 together with regular interest covering the period from the date
737 of refund to the date of repayment; however, the amounts that are
738 repaid by the member and the creditable service related thereto
739 shall not be used in any benefit calculation or determination
740 until the member has remained a contributor to the system for a
741 period of at least four (4) years after such member's reentry into
742 service as a law enforcement officer. Repayment for that time
743 shall be made in increments of not less than one-quarter (1/4)
744 year of creditable service beginning with the most recent service
745 for which refund has been made. Upon the repayment of all or part
746 of that refund and interest, the member shall again receive credit
747 for the period of creditable service for which full repayment has
748 been made to the system.

749 **SECTION 15.** (1) Except as otherwise provided in subsection
750 (2) of this section, where benefits are payable to a designated
751 beneficiary or beneficiaries under this article and the designated

752 beneficiary or beneficiaries as provided by the member on the most
753 recent form filed with the system are deceased or otherwise
754 disqualified at the time such benefits become payable, the
755 following persons, in descending order of precedence, shall be
756 eligible to receive such benefits:

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

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

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

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

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

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

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

772 (a) The surviving spouse of the beneficiary;

773 (b) The children of the beneficiary or their
774 descendants, per stirpes;

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

777 (d) The parents of the beneficiary;

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

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

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

785 (4) Payment under the provisions of this section shall bar
786 recovery by any other person of the benefits distributed. Payment
787 of benefits made to one or more members of a class of individuals
788 are made on behalf of all members of the class. Any members of
789 the class coming forward after payment is made must look to those
790 who received the payment.

791 **SECTION 16.** Subject to the rules adopted by the board, the
792 system shall accept an eligible roll over distribution or a direct
793 transfer of funds from another eligible retirement plan, as
794 defined under applicable federal law, or an individual retirement
795 account, in payment of all or a portion of the cost to purchase
796 optional service credit or to reinstate previously withdrawn
797 service credit as permitted by the system. The system may only
798 accept roll over payments in an amount equal to or less than the
799 balance due for purchase or reinstatement of service credit. The
800 rules adopted by the board shall condition the acceptance of a
801 roll over or transfer from another eligible retirement plan or an
802 individual retirement account on the receipt of information
803 necessary to enable the system to determine the eligibility of any
804 transferred funds for tax-free roll over treatment or other
805 treatment under federal income tax law.

806 **SECTION 17.** Regular interest shall be credited annually to
807 the mean amount of the employee reserve account for the preceding
808 year. This credit shall be made annually from interest and other
809 earnings on the invested assets of the system. Any additional
810 amount required to meet the regular interest on the funds of the
811 system shall be charged to the employer's accumulation account,
812 and any excess of earnings over the regular interest required
813 shall be credited to the employer's accumulation account. Regular
814 interest shall mean such percentage rate of interest compounded
815 annually as determined by the board on the basis of the interest
816 earnings of the system for the preceding year. Once that interest
817 is credited it shall be added to the sum of all amounts deducted

818 from the compensation of a member and shall be included in
819 determining his total contributions.

820 **SECTION 18.** No person who is being paid a retirement
821 allowance under this act shall serve as or be paid for any service
822 as a law enforcement officer. Any member who has been retired
823 under this act and who is later elected, appointed or employed as
824 a law enforcement officer shall cease to receive benefits under
825 this act and shall become a contributing member of the retirement
826 system again. Upon retiring again, if the member's reemployment
827 exceeds six (6) months, he shall have his benefit recomputed,
828 including service after becoming a member again. However, the
829 total retirement allowance paid to the retired member in his
830 previous retirement shall be deducted from his retirement reserve
831 and taken into consideration in recalculating the retirement
832 allowance under a new option selected.

833 **SECTION 19.** The right of a person to an annuity, a
834 retirement allowance or benefit, or to the return of
835 contributions, or to any optional benefits or any other right
836 accrued or accruing to any person under the provisions of this
837 act, the system and the moneys in the system created by this act,
838 are exempt from any state, county or municipal ad valorem taxes,
839 income taxes, premium taxes, privilege taxes, property taxes,
840 sales and use taxes or other taxes not so named, notwithstanding
841 any other provision of law to the contrary, and exempt from levy
842 and sale, garnishment, attachment, or any other process
843 whatsoever, and shall be unassignable except as specifically
844 provided otherwise in this act.

845 **SECTION 20.** (1) The maintenance of actuarial reserves for
846 the various allowances and benefits under this act, and the
847 payment of all annuities, retirement allowances, refunds and other
848 benefits granted under this act are made obligation of the system.
849 All income, interest and dividends derived from deposits and

850 investments authorized by this act shall be used for the payment
851 of the obligations of the system.

852 (2) If the system is terminated, all members of the system
853 as of the date of termination of the system shall be deemed to
854 have a vested right to benefits to the extent and in the same
855 manner that rights would be vested under the laws existing as of
856 the date of termination of the system. However, any member who
857 has not fulfilled the requirements for length of service because
858 of a termination of the system shall be entitled to compensation
859 as of the date that the member would otherwise be eligible. That
860 compensation shall be computed on the basis of the time he was
861 actually a member of the system and the compensation he actually
862 earned during the time he was a member, in the manner provided by
863 this act.

864 If there is a deficit in the availability of funds for
865 payment due under the provisions of the system, an appropriation
866 shall be made that is sufficient for the payment thereof, as an
867 obligation of the State of Mississippi.

868 (3) Notwithstanding any provisions of this section or this
869 act to the contrary, the maximum annual retirement allowance
870 attributable to the employer contributions payable by the system
871 to a member shall be subject to the limitations set forth in
872 Section 415 of the Internal Revenue Code and any regulations
873 issued thereunder as applicable to governmental plans as that term
874 is defined under Section 414(d) of the Internal Revenue Code.

875 (4) Notwithstanding any other provision of this plan, all
876 distributions from this plan shall conform to the regulations
877 issued under Section 401(a)(9) of the Internal Revenue Code,
878 applicable to governmental plans, as defined in Section 414(d) of
879 the Internal Revenue Code, including the incidental death benefit
880 provisions of Section 401(a)(9)(G) of the Internal Revenue Code.
881 Further, those regulations shall override any plan provision that

882 is inconsistent with Section 401(a)(9) of the Internal Revenue
883 Code.

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

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

892 **SECTION 21.** This act shall take effect and be in force from
893 and after July 1, 2004.