

By: Senator(s) Simmons

To: Finance

SENATE BILL NO. 2027

1 AN ACT TO CREATE A CORRECTIONAL OFFICERS' RETIREMENT SYSTEM;  
2 TO DEFINE MEMBERSHIP AND OTHER TERMS; TO ESTABLISH BENEFITS FOR  
3 DEATH, SUPERANNUATION AND DISABILITY RETIREMENT; TO AMEND SECTION  
4 25-11-105, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TRANSFER  
5 OF MEMBERSHIP FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND  
6 FOR RELATED PURPOSES.

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

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

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

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

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

27 (b) "Actuarial equivalent" means a benefit of equal  
28 value to the accumulated contributions, annuity or benefit, as the  
29 case may be, when computed upon the basis of such mortality tables

30 as shall be adopted by the board of trustees, and regular  
31 interest.

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

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

49 (e) "Board" means the board of trustees as provided in  
50 Section 25-11-15, Mississippi Code of 1972.

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

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

59 (h) "Earned compensation" means the full amount earned  
60 by an employee for a given pay period and proportionately for less  
61 than one (1) year of service. Earned compensation shall be  
62 limited to the regular periodic compensation paid, exclusive of

63 litigation fees, bond fees and other similar extraordinary  
64 nonrecurring payments. The amount by which salary is reduced  
65 pursuant to a salary reduction agreement authorized under Section  
66 25-17-5, Mississippi Code of 1972, shall be included as earned  
67 compensation under this paragraph, provided this inclusion does  
68 not conflict with federal law, including federal regulations and  
69 federal administrative interpretations thereunder, pertaining to  
70 the Federal Insurance Contributions Act or to Internal Revenue  
71 Code Section 125 cafeteria plans.

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

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

75 (k) "Medical board" means the board of physicians or  
76 any governmental or nongovernmental disability determination  
77 service designated by the board of trustees that is qualified to  
78 make disability determinations as provided for in Section  
79 25-11-119, Mississippi Code of 1972.

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

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

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

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

91 (p) "Retirement allowance" means an annuity for life,  
92 payable each year in twelve (12) equal monthly installments  
93 beginning as of the date fixed by the board. The retirement  
94 allowance shall be calculated in accordance with this act.

95 (q) "System" means the Correctional Officers'  
96 Retirement System of Mississippi established and described by this  
97 act.

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

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

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

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

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

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

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

117 (4) At least once in each two-year period following the date  
118 of establishment, the actuary shall make an actuarial  
119 investigation into the mortality, service and compensation  
120 experience of the members and beneficiaries of the system and  
121 shall make a valuation of the contingent assets and liabilities of  
122 the system. The board, after taking into account the results of  
123 such investigations and valuations, shall adopt for the system  
124 such mortality, service and other tables as shall be deemed  
125 necessary.

126 (5) On the basis of regular interest and tables last adopted  
127 by the board, the actuary shall make biannual valuation of the  
128 contingent assets and liabilities of the system.

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

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

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

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

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

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

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

153 (3) Membership in the system shall include all service in  
154 the position of correctional officer, and any funds contributed by  
155 a member prior to the effective date of this system to the Public  
156 Employees' Retirement System of Mississippi shall be transferred  
157 to the member's credit in this system.

158           SECTION 5. (1) Under such rules and regulations as the  
159 board shall adopt, each person who becomes a member of this system  
160 shall receive credit for prior service rendered prior to the  
161 effective date of this system. To receive such credit, such  
162 member shall file a detailed certificate of all service rendered  
163 by the member prior to the effective date of this system.

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

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

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

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

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

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

190 the board of trustees to modify or correct his prior service  
191 certificate.

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

198 (7) Anything in this act to the contrary notwithstanding,  
199 any member who served on active duty in the Armed Forces of the  
200 United States, or who served in maritime service during periods of  
201 hostility in World War II, shall be entitled to creditable service  
202 for his service on active duty in the armed forces or in such  
203 maritime service, provided he became a correctional officer after  
204 his discharge from the armed forces or became a correctional  
205 officer after he completed such maritime service. The maximum  
206 period for such creditable service for all military service shall  
207 not exceed four (4) years unless positive proof can be furnished  
208 by such person that he was retained in the armed forces during  
209 World War II or in maritime service during World War II by causes  
210 beyond his control and without opportunity of discharge. The  
211 member shall furnish proof satisfactory to the board of trustees  
212 of certification of military service or maritime service records  
213 showing dates of entrance into active duty service and the date of  
214 discharge. No creditable service shall be granted for any  
215 military service or maritime service to a member who qualifies for  
216 a retirement allowance in another public retirement system  
217 administered by the Board of Trustees of the Public Employees'  
218 Retirement System based in whole or in part on such military or  
219 maritime service. In no case shall the member receive creditable  
220 service if the member received a dishonorable discharge from the  
221 Armed Forces of the United States.

222           SECTION 6. (1) There shall be established by the board a  
223 fund for the Correctional Officers' Retirement System of  
224 Mississippi which shall be maintained as a separate fund, separate  
225 from all other funds held by the board, and which shall be used  
226 only for the payment of benefits provided for by this system.

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

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

235           (4) Beginning October 1, 2004, the employer shall cause to  
236 be deducted from the salary of each member, on each and every  
237 payroll of such employer for each and every payroll period, five  
238 percent (5%) of earned compensation. Future contributions shall  
239 be fixed biennially by the board on the basis of the liabilities  
240 of the retirement system for the various allowances and benefits  
241 as shown by actuarial valuation.

242           (5) Beginning October 1, 2004, on account of each member,  
243 there shall be paid monthly into the fund for members by the  
244 employer from funds available an amount equal to a certain  
245 percentage of the compensation of each member to be known as the  
246 "normal contributions," and an additional amount equal to the  
247 percentage of his compensation to be known as the "accrued  
248 liability contributions." The percentage rate of such  
249 contributions shall be fixed by the board on the basis of the  
250 liabilities of the system for the various allowances and benefits  
251 as shown by the actuarial valuation. Until changed by the board,  
252 the contribution rate shall be two percent (2%) of the earned  
253 compensation of all members.

254 (6) The board is hereby authorized to deduct two percent  
255 (2%) of all employers' contributions paid into the fund for  
256 members of the system to be transferred to the expense fund of the  
257 Public Employees' Retirement System of Mississippi to defray the  
258 cost of administering this fund.

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

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

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

285 (2) Upon retirement for disability, a member shall receive a  
286 disability benefit equal to fifty percent (50%) of the earned

287 compensation for the year immediately preceding retirement, but  
288 not less than any retirement benefits for which the member may be  
289 eligible at the date disability is granted.

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

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

316 (5) Should a disability beneficiary under the age of  
317 fifty-five (55) years be restored to active service at a  
318 compensation not less than the earned compensation, the disability  
319 benefit shall cease.

320           SECTION 9. (1) Any member upon withdrawal from service,  
321 upon or after attainment of the age of fifty-five (55) years, who  
322 shall have completed at least five (5) years of creditable  
323 service, or any member upon withdrawal from service upon or after  
324 attainment of the age of forty-five (45) years, who shall have  
325 completed at least twenty (20) years of creditable service, or any  
326 member upon withdrawal from service, regardless of age, who shall  
327 have completed at least twenty-five (25) years of creditable  
328 service, shall be entitled to receive a retirement allowance which  
329 shall be payable the first of the month following receipt of the  
330 member's application in the Office of the Executive Director of  
331 the Public Employees' Retirement System, but in no event before  
332 withdrawal from service.

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

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

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

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

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

353 (d) In the case of retirement of any member prior to  
354 attaining the age of fifty-five (55) years, the retirement  
355 allowance shall be computed in accordance with the formula  
356 hereinabove set forth in this section, except that the employer's  
357 annuity and prior service annuity above described shall be reduced  
358 three percent (3%) for each year of age below fifty-five (55)  
359 years, or three percent (3%) for each year of service below  
360 twenty-five (25) years of creditable service, whichever is lesser.

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

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

378 (2) Persons who on December 1 of each year are receiving a  
379 retirement allowance for service or disability retirement, or  
380 their beneficiaries, may receive, in addition to the amount  
381 provided in subsection (1) of this section, a payment, as  
382 determined by the board, calculated in increments of one-fourth of  
383 one percent (1/4 of 1%), not to exceed one and one-half percent  
384 (1-1/2%) of the annual retirement allowance, for each full year of  
385 retirement, provided that any such payment shall be contingent

386 upon the reserve for annuities in force for retired members and  
387 beneficiaries providing sufficient investment gains in excess of  
388 the accrued actuarial liabilities for the previous fiscal year as  
389 certified by the actuary and determined by the board.

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

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

405 **SECTION 11.** (1) Upon the death of any member who has  
406 retired for service or disability and who has not elected any  
407 other option under Section 12, his widow shall receive one-half  
408 (1/2) the benefit which he was receiving and each child not having  
409 attained his nineteenth birthday shall receive one-fourth (1/4) of  
410 his benefit, but not more than one-half (1/2) of the benefits  
411 shall be paid for the support and maintenance of two (2) or more  
412 children. Upon each child's attaining the age of nineteen (19)  
413 years, the child shall no longer be eligible for such benefit, and  
414 when all of such children have attained their nineteenth birthday,  
415 only the widow shall be eligible for one-half (1/2) the amount of  
416 his benefit. She shall continue to be eligible for such benefit  
417 in the amount of fifty percent (50%) of his retirement benefit so  
418 long as she may live and until she remarries. In the event of her

419 remarriage at any time, her eligibility for the fifty percent  
420 (50%) benefits shall cease and terminate, but she will be eligible  
421 to continue to receive benefits for their children until the last  
422 child attains his or her nineteenth birthday in the manner  
423 aforesaid.

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

432 (3) The spouse and/or the dependent children of an active  
433 member who is killed in the line of performance of duty or dies as  
434 a direct result of an accident occurring in the line of  
435 performance of duty shall qualify, on approval of the board, for a  
436 retirement allowance on the first of the month following the date  
437 of death, but not before receipt of application by the board. The  
438 spouse shall receive a retirement allowance equal to one-half  
439 (1/2) of the average compensation of the deceased member. In  
440 addition to the retirement allowance for the spouse, or if there  
441 is no surviving spouse, a retirement allowance shall be paid in  
442 the amount of one-fourth (1/4) of the average compensation for the  
443 support and maintenance of one (1) child or in the amount of  
444 one-half (1/2) of the average compensation for the support and  
445 maintenance of two (2) or more children. Such benefits shall  
446 cease to be paid for the support and maintenance of each child  
447 upon such child attaining the age of nineteen (19) years; however,  
448 the spouse shall continue to be eligible for the aforesaid  
449 retirement allowance. Benefits may be paid to a surviving parent  
450 or lawful custodian of such children for the use and benefit of  
451 the children without the necessity of appointment as guardian.

452 Such retirement allowance shall cease to be paid to the spouse  
453 upon remarriage but continue to be payable for each dependent  
454 child until the age of nineteen (19) years.

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

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

480 **SECTION 12.** (1) Upon application for superannuation or  
481 disability retirement, any member may elect to receive his benefit  
482 pursuant to the provisions of Sections 9 and 11 or may elect to  
483 receive his benefit in a retirement allowance payable throughout  
484 life with no further payments to anyone at his death, except that

485 in the event his total retirement payments under this act do not  
486 equal his total contributions under this act, his named  
487 beneficiary shall receive the difference in cash at his death. Or  
488 he may elect upon retirement, or upon becoming eligible for  
489 retirement, to receive the actuarial equivalent of his retirement  
490 allowance in a reduced retirement allowance payable throughout  
491 life with the provision that:

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

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

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

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

513 **Option 4-B.** A reduced retirement allowance shall be  
514 continued throughout the life of the retirant, but with the  
515 further guarantee of payments to the named beneficiary,  
516 beneficiaries or to the estate for a specified number of years  
517 certain. If the retired member or the last designated beneficiary

518 receiving annuity payments dies prior to receiving all guaranteed  
519 payments due, the actuarial equivalent of the remaining payments  
520 would be paid to the estate of the retired member as intestate  
521 property.

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

529       **Option 5.** With the added provision under Option 2 or Option  
530 4-A that in the event the designated beneficiary predeceased the  
531 member, the retirement allowance payable to the member after the  
532 death of the designated beneficiary shall be equal to the  
533 retirement allowance which would have been payable had the member  
534 not elected the option.

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

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

550 settlement shall be placed in effect upon proper notification to  
551 the executive director.

552 (4) For purposes of this section:

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

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

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

571 **SECTION 13.** The right of a person to an annuity, a  
572 retirement allowance or benefit, or to the return of  
573 contributions, or to any optional benefits or any other right  
574 accrued or accruing to any person under the provisions of this  
575 act, the system and the monies in the system, are hereby exempt  
576 from any state, county or municipal ad valorem taxes, income  
577 taxes, premium taxes, privilege taxes, property taxes, sales and  
578 use taxes or other taxes not so named, notwithstanding any other  
579 provision of law to the contrary, and exempt from levy and sale,  
580 garnishment, attachment, or any other process whatsoever, and  
581 shall be unassignable except as specifically otherwise provided.

582           **SECTION 14.** (1) The maintenance of actuarial reserves for  
583 the various allowances and benefits under this system, and the  
584 payment of all annuities, retirement allowances, refunds and other  
585 benefits granted hereunder are hereby made obligations of the  
586 fund. All income, interest and dividends derived from deposits  
587 and investments authorized by this act shall be used for the  
588 payment of the obligations of the system.

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

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

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

615 Mississippi shall be refunded to the member at the time of  
616 transfer.

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

630       **SECTION 17.** Any person or corporation who shall receive and  
631 retain any payment after the death of a member or after the death  
632 of the beneficiary of any member, which amount is not lawfully  
633 due, shall be liable for the repayment of such amount to the  
634 system plus interest thereon at ten percent (10%) per annum plus  
635 all costs of collection. Any person who shall knowingly make any  
636 false statement or shall falsify or permit to be falsified any  
637 record or records of the system in any attempt to defraud such  
638 system as a result of such act shall be guilty of a misdemeanor if  
639 the amount obtained or attempted to be obtained does not exceed  
640 the amount of Five Hundred Dollars (\$500.00), and, upon conviction  
641 thereof by any court of competent jurisdiction, shall be punished  
642 by a fine not exceeding Five Hundred Dollars (\$500.00) or  
643 imprisonment in the county jail not exceeding six (6) months, or  
644 both; if such amount obtained or attempted to be obtained shall  
645 exceed the sum of Five Hundred Dollars (\$500.00), such person or  
646 persons shall be guilty of a felony and, upon conviction thereof  
647 by any court of competent jurisdiction, shall be punished by a

648 fine not exceeding Ten Thousand Dollars (\$10,000.00) or by  
649 commitment to the custody of the State Department of Corrections  
650 for not more than five (5) years, or both.

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

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

673 **SECTION 19.** Section 25-11-105, Mississippi Code of 1972, is  
674 amended as follows:

675 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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

681 those specifically excluded, or as to whom election is provided in  
682 Articles 1 and 3, shall become members of the retirement system as  
683 a condition of their employment.

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

694 (b) All persons who shall become employees in the state  
695 service after January 31, 1953, except those specifically excluded  
696 or as to whom election is provided in Articles 1 and 3, unless  
697 they shall file with the board prior to the lapse of sixty (60)  
698 days of employment or sixty (60) days after the effective date of  
699 the cited articles, whichever is later, on a form prescribed by  
700 the board, a notice of election not to be covered by the  
701 membership of the retirement system and a duly executed waiver of  
702 all present and prospective benefits which would otherwise inure  
703 to them on account of their participation in the system, shall  
704 become members of the retirement system; however, no credit for  
705 prior service will be granted to members until they have  
706 contributed to Article 3 of the retirement system for a minimum  
707 period of at least four (4) years. Such members shall receive  
708 credit for services performed prior to January 1, 1953, in  
709 employment now covered by Article 3, but no credit shall be  
710 granted for retroactive services between January 1, 1953, and the  
711 date of their entry into the retirement system unless the employee  
712 pays into the retirement system both the employer's and the  
713 employee's contributions on wages paid him during the period from

714 January 31, 1953, to the date of his becoming a contributing  
715 member, together with interest at the rate determined by the board  
716 of trustees. Members reentering after withdrawal from service  
717 shall qualify for prior service under the provisions of Section  
718 25-11-117. From and after July 1, 1998, upon eligibility as noted  
719 above, the member may receive credit for such retroactive service  
720 provided:

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

724 (2) The member shall pay to the retirement system  
725 on the date he or she is eligible for such credit or at any time  
726 thereafter prior to the date of retirement the actuarial cost for  
727 each year of such creditable service. The provisions of this  
728 subparagraph (2) shall be subject to the limitations of Section  
729 415 of the Internal Revenue Code and regulations promulgated  
730 thereunder.

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

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

741 (d) All persons who are employees in the state service  
742 on January 31, 1953, and who are members of any nonfunded  
743 retirement system operated by the State of Mississippi, or any of  
744 its departments or agencies, shall become members of this system  
745 with prior service credit unless, before February 1, 1953, they

746 shall file a written notice with the board of trustees that they  
747 do not elect to become members.

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

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

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

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

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

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

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

805                   A. The board of trustees shall not finally  
806 refuse to approve a plan submitted under paragraph (f), and shall  
807 not terminate an approved plan without reasonable notice and  
808 opportunity for hearing to each political subdivision or  
809 instrumentality affected thereby. The board's decision in any  
810 such case shall be final, conclusive and binding unless an appeal

811 be taken by the political subdivision or instrumentality aggrieved  
812 thereby to the Circuit Court of Hinds County, Mississippi, in  
813 accordance with the provisions of law with respect to civil causes  
814 by certiorari.

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

822                   C. Every political subdivision or  
823 instrumentality required to make payments under paragraph (f)(5)B  
824 hereof is authorized, in consideration of the employees' retention  
825 in or entry upon employment after enactment of Articles 1 and 3,  
826 to impose upon its employees, as to services which are covered by  
827 an approved plan, a contribution with respect to wages (as defined  
828 in Section 25-11-5) not exceeding the amount provided in Section  
829 25-11-123(d) if such services constituted employment within the  
830 meaning of Articles 1 and 3, and to deduct the amount of such  
831 contribution from the wages as and when paid. Contributions so  
832 collected shall be paid into the contribution fund as partial  
833 discharge of the liability of such political subdivisions or  
834 instrumentalities under paragraph (f)(5)B hereof. Failure to  
835 deduct such contribution shall not relieve the employee or  
836 employer of liability thereof.

837                   D. Any state agency, school, political  
838 subdivision, instrumentality or any employer that is required to  
839 submit contribution payments or wage reports under any section of  
840 this chapter shall be assessed interest on delinquent payments or  
841 wage reports as determined by the board of trustees in accordance  
842 with rules and regulations adopted by the board and such assessed  
843 interest may be recovered by action in a court of competent

844 jurisdiction against such reporting agency liable therefor or may,  
845 upon due certification of delinquency and at the request of the  
846 board of trustees, be deducted from any other monies payable to  
847 such reporting agency by any department or agency of the state.

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

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

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

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

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

887           (j) In the event any member of this system is a  
888 correctional officer employed by the Department of Corrections and  
889 such member elects to become a member of the Correctional  
890 Officers' Retirement System of Mississippi or by virtue of his  
891 employment becomes a member of such system, the board shall  
892 transfer the member's creditable service and the present value of  
893 the member's employer's accumulation account and the present value  
894 of the member's accumulated membership contribution to such  
895 system.

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

899           (l) Employees of a political subdivision or  
900 instrumentality who were employed by such political subdivision or  
901 instrumentality prior to an agreement between such entity and the  
902 Public Employees' Retirement System to extend the benefits of this  
903 article to its employees, and which agreement provides for the  
904 establishment of retroactive service credit, and who have been  
905 members of the retirement system and have remained contributors to  
906 the retirement system for four (4) years, may receive credit for  
907 such retroactive service with such political subdivision or  
908 instrumentality, provided the employee and/or employer, as  
909 provided under the terms of the modification of the joinder

910 agreement in allowing such coverage, pay into the retirement  
911 system the employer's and employee's contributions on wages paid  
912 the member during such previous employment, together with interest  
913 or actuarial cost as determined by the board covering the period  
914 from the date the service was rendered until the payment for the  
915 credit for such service was made. Such wages shall be verified by  
916 the Social Security Administration or employer payroll records.  
917 Effective July 1, 1998, upon eligibility as noted above, a member  
918 may receive credit for such retroactive service with such  
919 political subdivision or instrumentality provided:

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

925                   (2) The member shall pay to the retirement system  
926 on the date he or she is eligible for such credit or at any time  
927 thereafter prior to the date of retirement the actuarial cost for  
928 each year of such creditable service. The provisions of this  
929 subparagraph (2) shall be subject to the limitations of Section  
930 415 of the Internal Revenue Code and regulations promulgated  
931 thereunder.

932           Nothing contained in this paragraph (1) shall be construed to  
933 limit the authority of the board to allow the correction of  
934 reporting errors or omissions based on the payment of employee and  
935 employer contributions plus applicable interest. Payment for such  
936 time shall be made in increments of not less than one-quarter  
937 (1/4) year of creditable service beginning with the most recent  
938 service. Upon the payment of all or part of such required  
939 contributions, plus interest or the actuarial cost as provided  
940 above, the member shall receive credit for the period of  
941 creditable service for which full payment has been made to the  
942 retirement system.

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

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

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

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

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

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

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

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

972           **III. TERMINATION OF MEMBERSHIP**

973           Membership in this system shall cease by a member withdrawing  
974 his accumulated contributions, or by a member withdrawing from

975 active service with a retirement allowance, or by a member's  
976 death.

977           **SECTION 20.** This act shall take effect and be in force from  
978 and after July 1, 2004.