

By: Senator(s) Simmons

To: Finance

SENATE BILL NO. 2851

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

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

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

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

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

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

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

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

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

777 (1) It provides that all services that constitute
778 employment as defined in Section 25-11-5 and are performed in the
779 employ of the political subdivision or instrumentality, by any

780 employees thereof, shall be covered by the plan, with the
781 exception of municipal employees who are already covered by
782 existing retirement plans; however, those employees in this class
783 may elect to come under the provisions of this article;

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

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

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

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

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

812 Hinds County, Mississippi, in accordance with the provisions of
813 law with respect to civil causes by certiorari.

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

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

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

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

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

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

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

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

877 If any member of any other actuarially funded system
878 maintained by an agency of the state changes his employment to an
879 agency covered by this system, the board of trustees may authorize
880 the receipt of the transfer of the member's creditable service and
881 of the present value of the member's employer's accumulation
882 account and of the present value of the member's accumulated
883 membership contributions from the other system, provided that the
884 employee agrees to the transfer of his accumulated membership
885 contributions to this system and provided that the other system is
886 authorized and agrees to make the 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 state employment is referred to in this
897 section, it includes joint employment by state and federal
898 agencies of all kinds.

899 (l) Employees of a political subdivision or
900 instrumentality who were employed by the political subdivision or
901 instrumentality before an agreement between the 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 that retroactive service with the political subdivision or
908 instrumentality, provided that the employee and/or employer, as
909 provided under the terms of the modification of the joinder

910 agreement in allowing that coverage, pay into the retirement
911 system the employer's and employee's contributions on wages paid
912 the member during the 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 the service was made. Those 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 that retroactive service with the political
919 subdivision or instrumentality provided:

920 (1) The member shall furnish proof satisfactory to
921 the board of trustees of certification of those 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 that credit or at any time
927 thereafter before the date of retirement the actuarial cost for
928 each year of that 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 under
931 Section 415.

932 Nothing contained in this paragraph (k) 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 that
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 the 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 that creditable
950 service, may, at the member's option, be purchased in quarterly
951 increments as provided above at the time that 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, 2005.