

By: Representative Bentz

To: Appropriations

HOUSE BILL NO. 1249

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
2 25-11-126, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON
3 RECEIVING A RETIREMENT ALLOWANCE FROM THE PUBLIC EMPLOYEES'
4 RETIREMENT SYSTEM WHO WAS A LAW ENFORCEMENT OFFICER AT THE TIME OF
5 RETIREMENT MAY CONTINUE RECEIVING THE RETIREMENT ALLOWANCE AND BE
6 EMPLOYED IN STATE SERVICE AS A LAW ENFORCEMENT OFFICER BY A
7 DIFFERENT AGENCY THAN THE ONE FROM WHICH THE PERSON RETIRED; TO
8 PROVIDE THAT THOSE PERSONS SHALL NOT BE CONTRIBUTING MEMBERS OF
9 THE RETIREMENT SYSTEM NOR RECEIVE ANY CREDITABLE SERVICE FOR THE
10 PERIOD DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE DURING
11 THEIR EMPLOYMENT; TO AMEND SECTIONS 25-11-105 AND 25-11-127,
12 MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF
13 THIS ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
16 25-11-126, Mississippi Code of 1972:

17 25-11-126. (1) Any person who is receiving a retirement
18 allowance under this article who was a law enforcement officer at
19 the time of retirement may choose to continue receiving the
20 retirement allowance under this article and be employed in state
21 service as a law enforcement officer by a different agency than
22 the one from which the person retired.

23 (2) Any person described in subsection (1) of this section
24 shall notify the executive director of the retirement system,
25 before being employed, about his or her choice on continuing to
26 receive the retirement allowance during the person's employment.
27 If the person chooses not to continue receiving the retirement
28 allowance during his or her employment, the retirement allowance
29 shall cease on the day that the person begins employment after
30 retirement. After the person leaves employment that he or she
31 began after retirement, in order to begin receiving a retirement
32 allowance under this article again, the person shall make

33 application to the executive director of the retirement system,
34 and the retirement allowance shall begin on the first of the month
35 following the date that the application is received by the
36 executive director.

37 (3) Any person to whom this section applies who continues to
38 receive a retirement allowance under this article during his or
39 her employment shall not be a contributing member of the
40 retirement system nor receive any creditable service for the
41 period during which the person receives a retirement allowance
42 during his or her employment. Any person to whom this section
43 applies who chooses not to receive a retirement allowance during
44 his or her employment shall be a contributing member of the
45 retirement system and shall receive creditable service for the
46 period during which the person is employed without receiving a
47 retirement allowance. If the person has previously received a
48 retirement allowance under this article and he or she is employed
49 for more than six (6) months without receiving a retirement
50 allowance, the person shall have his or her allowance recomputed
51 when he or she retires again, which shall include the service
52 after the person again became a contributing member of the
53 retirement system.

54 (4) For the purpose of this section, "law enforcement
55 officer" means municipal police officers and narcotics agents,
56 sheriffs, deputy sheriffs, constables, conservation officers,
57 enforcement officers of the Department of Marine Resources, agents
58 and inspectors of the Alcoholic Beverage Control Division of the
59 State Tax Commission, inspection station employees, enforcement
60 officers and inspectors of the Mississippi Department of
61 Transportation, state correctional facility guards and enforcement
62 officers of the Department of Corrections, and any other full-time
63 officer or employee of the state or any agency, department,
64 institution or county thereof who is authorized to carry a firearm
65 while in the performance of his official duties and who has met

66 the minimum educational and training standards established by the
67 Board on Law Enforcement Officer Standards and Training for
68 permanent, full-time law enforcement officers and has received a
69 certificate from that board.

70 **SECTION 2.** Section 25-11-105, Mississippi Code of 1972, is
71 amended as follows:

72 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

73 The membership of this retirement system shall be composed as
74 follows:

75 (a) (i) All persons who become employees in the state
76 service after January 31, 1953, and whose wages are subject to
77 payroll taxes and are lawfully reported on IRS Form W-2, except 1.
78 those persons who are specifically excluded, 2. those persons as
79 to whom election is provided in Articles 1 and 3, or 3. those
80 persons who choose to receive a retirement allowance during their
81 employment as authorized by Section 25-11-126, shall become
82 members of the retirement system as a condition of their
83 employment.

84 (ii) From and after July 1, 2002, any individual
85 who is employed by a governmental entity to perform professional
86 services shall become a member of the system if the individual is
87 paid regular periodic compensation for those services that is
88 subject to payroll taxes, is provided all other employee benefits
89 and meets the membership criteria established by the regulations
90 adopted by the board of trustees that apply to all other members
91 of the system; however, any active member employed in such a
92 position on July 1, 2002, will continue to be an active member for
93 as long as they are employed in any such position.

94 (b) All persons who become employees in the state
95 service after January 31, 1953, except those specifically excluded
96 or as to whom election is provided in Articles 1 and 3, unless
97 they file with the board before the lapse of sixty (60) days of
98 employment or sixty (60) days after the effective date of the

99 cited articles, whichever is later, on a form prescribed by the
100 board, a notice of election not to be covered by the membership of
101 the retirement system and a duly executed waiver of all present
102 and prospective benefits that would otherwise inure to them on
103 account of their participation in the system, shall become members
104 of the retirement system; however, no credit for prior service
105 will be granted to members until they have contributed to Article
106 3 of the retirement system for a minimum period of at least four
107 (4) years. Those members shall receive credit for services
108 performed before January 1, 1953, in employment now covered by
109 Article 3, but no credit shall be granted for retroactive services
110 between January 1, 1953, and the date of their entry into the
111 retirement system, unless the employee pays into the retirement
112 system both the employer's and the employee's contributions on
113 wages paid him during the period from January 31, 1953, to the
114 date of his becoming a contributing member, together with interest
115 at the rate determined by the board of trustees. Members
116 reentering after withdrawal from service shall qualify for prior
117 service under the provisions of Section 25-11-117. From and after
118 July 1, 1998, upon eligibility as noted above, the member may
119 receive credit for such retroactive service provided:

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

123 (2) The member shall pay to the retirement system
124 on the date he or she is eligible for that credit or at any time
125 thereafter before the date of retirement the actuarial cost for
126 each year of that creditable service. The provisions of this
127 subparagraph (2) shall be subject to the limitations of Section
128 415 of the Internal Revenue Code and regulations promulgated under
129 Section 415.

130 Nothing contained in this paragraph (b) shall be construed to
131 limit the authority of the board to allow the correction of

132 reporting errors or omissions based on the payment of the employee
133 and employer contributions plus applicable interest.

134 (c) All persons who become employees in the state
135 service after January 31, 1953, and who are eligible for
136 membership in any other retirement system shall become members of
137 this retirement system as a condition of their employment, unless
138 they elect at the time of their employment to become a member of
139 that other system.

140 (d) All persons who are employees in the state service
141 on January 31, 1953, and who are members of any nonfunded
142 retirement system operated by the State of Mississippi, or any of
143 its departments or agencies, shall become members of this system
144 with prior service credit unless, before February 1, 1953, they
145 file a written notice with the board of trustees that they do not
146 elect to become members.

147 (e) All persons who are employees in the state service
148 on January 31, 1953, and who under existing laws are members of
149 any fund operated for the retirement of employees by the State of
150 Mississippi, or any of its departments or agencies, shall not be
151 entitled to membership in this retirement system unless, before
152 February 1, 1953, any such person indicates by a notice filed with
153 the board, on a form prescribed by the board, his individual
154 election and choice to participate in this system, but no such
155 person shall receive prior service credit unless he becomes a
156 member on or before February 1, 1953.

157 (f) Each political subdivision of the state and each
158 instrumentality of the state or a political subdivision, or both,
159 is authorized to submit, for approval by the board of trustees, a
160 plan for extending the benefits of this article to employees of
161 any such political subdivision or instrumentality. Each such plan
162 or any amendment to the plan for extending benefits thereof shall
163 be approved by the board of trustees if it finds that the plan, or
164 the plan as amended, is in conformity with such requirements as

165 are provided in Articles 1 and 3; however, upon approval of the
166 plan or any such plan previously approved by the board of
167 trustees, the approved plan shall not be subject to cancellation
168 or termination by the political subdivision or instrumentality,
169 except that any community hospital serving a municipality that
170 joined the Public Employees' Retirement System as of November 1,
171 1956, to offer social security coverage for its employees and
172 subsequently extended retirement annuity coverage to its employees
173 as of December 1, 1965, may, upon documentation of extreme
174 financial hardship, have future retirement annuity coverage
175 cancelled or terminated at the discretion of the board of
176 trustees. No such plan shall be approved unless:

177 (1) It provides that all services that constitute
178 employment as defined in Section 25-11-5 and are performed in the
179 employ of the political subdivision or instrumentality, by any
180 employees thereof, shall be covered by the plan, with the
181 exception of municipal employees who are already covered by
182 existing retirement plans; however, those employees in this class
183 may elect to come under the provisions of this article;

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

189 (3) It provides for such methods of administration
190 of the plan by the political subdivision or instrumentality as are
191 found by the board of trustees to be necessary for the proper and
192 efficient administration thereof;

193 (4) It provides that the political subdivision or
194 instrumentality will make such reports, in such form and
195 containing such information, as the board of trustees may from
196 time to time require;

197 (5) It authorizes the board of trustees to
198 terminate the plan in its entirety in the discretion of the board
199 if it finds that there has been a failure to comply substantially
200 with any provision contained in the plan, the termination to take
201 effect at the expiration of such notice and on such conditions as
202 may be provided by regulations of the board and as may be
203 consistent with applicable federal law.

204 A. The board of trustees shall not finally
205 refuse to approve a plan submitted under paragraph (f), and shall
206 not terminate an approved plan without reasonable notice and
207 opportunity for hearing to each political subdivision or
208 instrumentality affected by the board's decision. The board's
209 decision in any such case shall be final, conclusive and binding
210 unless an appeal is taken by the political subdivision or
211 instrumentality aggrieved by the decision to the Circuit Court of
212 Hinds County, Mississippi, in accordance with the provisions of
213 law with respect to civil causes by certiorari.

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

221 C. Every political subdivision or
222 instrumentality required to make payments under paragraph (f)(5)B
223 of this section is authorized, in consideration of the employees'
224 retention in or entry upon employment after enactment of Articles
225 1 and 3, to impose upon its employees, as to services that are
226 covered by an approved plan, a contribution with respect to wages
227 (as defined in Section 25-11-5) not exceeding the amount provided
228 in Section 25-11-123(d) if those services constituted employment
229 within the meaning of Articles 1 and 3, and to deduct the amount

230 of the contribution from the wages as and when paid.
231 Contributions so collected shall be paid into the contribution
232 fund as partial discharge of the liability of the political
233 subdivisions or instrumentalities under paragraph (f)(5)B of this
234 section. Failure to deduct the contribution shall not relieve the
235 employee or employer of liability for the contribution.

236 D. Any state agency, school, political
237 subdivision, instrumentality or any employer that is required to
238 submit contribution payments or wage reports under any section of
239 this chapter shall be assessed interest on delinquent payments or
240 wage reports as determined by the board of trustees in accordance
241 with rules and regulations adopted by the board and delinquent
242 payments, assessed interest and any other amount certified by the
243 board as owed by an employer, may be recovered by action in a
244 court of competent jurisdiction against the reporting agency
245 liable therefor or may, upon due certification of delinquency and
246 at the request of the board of trustees, be deducted from any
247 other monies payable to the reporting agency by any department or
248 agency of the state.

249 E. Each political subdivision of the state
250 and each instrumentality of the state or a political subdivision
251 or subdivisions that submit a plan for approval of the board, as
252 provided in this section, shall reimburse the board for coverage
253 into the expense account, its pro rata share of the total expense
254 of administering Articles 1 and 3 as provided by regulations of
255 the board.

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

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

268 (i) If any member of this system changes his employment
269 to any agency of the state having an actuarially funded retirement
270 system, the board of trustees may authorize the transfer of the
271 member's creditable service and of the present value of the
272 member's employer's accumulation account and of the present value
273 of the member's accumulated membership contributions to that other
274 system, provided that the employee agrees to the transfer of his
275 accumulated membership contributions and provided that the other
276 system is authorized to receive and agrees to make the transfer.

277 If any member of any other actuarially funded system
278 maintained by an agency of the state changes his employment to an
279 agency covered by this system, the board of trustees may authorize
280 the receipt of the transfer of the member's creditable service and
281 of the present value of the member's employer's accumulation
282 account and of the present value of the member's accumulated
283 membership contributions from the other system, provided that the
284 employee agrees to the transfer of his accumulated membership
285 contributions to this system and provided that the other system is
286 authorized and agrees to make the transfer.

287 (j) Wherever state employment is referred to in this
288 section, it includes joint employment by state and federal
289 agencies of all kinds.

290 (k) Employees of a political subdivision or
291 instrumentality who were employed by the political subdivision or
292 instrumentality before an agreement between the entity and the
293 Public Employees' Retirement System to extend the benefits of this
294 article to its employees, and which agreement provides for the

295 establishment of retroactive service credit, and who have been
296 members of the retirement system and have remained contributors to
297 the retirement system for four (4) years, may receive credit for
298 that retroactive service with the political subdivision or
299 instrumentality, provided that the employee and/or employer, as
300 provided under the terms of the modification of the joinder
301 agreement in allowing that coverage, pay into the retirement
302 system the employer's and employee's contributions on wages paid
303 the member during the previous employment, together with interest
304 or actuarial cost as determined by the board covering the period
305 from the date the service was rendered until the payment for the
306 credit for the service was made. Those wages shall be verified by
307 the Social Security Administration or employer payroll records.
308 Effective July 1, 1998, upon eligibility as noted above, a member
309 may receive credit for that retroactive service with the political
310 subdivision or instrumentality provided:

311 (1) The member shall furnish proof satisfactory to
312 the board of trustees of certification of those services from the
313 political subdivision or instrumentality where the services were
314 rendered or verification by the Social Security Administration;
315 and

316 (2) The member shall pay to the retirement system
317 on the date he or she is eligible for that credit or at any time
318 thereafter before the date of retirement the actuarial cost for
319 each year of that creditable service. The provisions of this
320 subparagraph (2) shall be subject to the limitations of Section
321 415 of the Internal Revenue Code and regulations promulgated under
322 Section 415.

323 Nothing contained in this paragraph (k) shall be construed to
324 limit the authority of the board to allow the correction of
325 reporting errors or omissions based on the payment of employee and
326 employer contributions plus applicable interest. Payment for that
327 time shall be made in increments of not less than one-quarter

328 (1/4) year of creditable service beginning with the most recent
329 service. Upon the payment of all or part of the required
330 contributions, plus interest or the actuarial cost as provided
331 above, the member shall receive credit for the period of
332 creditable service for which full payment has been made to the
333 retirement system.

334 (1) Through June 30, 1998, any state service eligible
335 for retroactive service credit, no part of which has ever been
336 reported, and requiring the payment of employee and employer
337 contributions plus interest, or, from and after July 1, 1998, any
338 state service eligible for retroactive service credit, no part of
339 which has ever been reported to the retirement system, and
340 requiring the payment of the actuarial cost for that creditable
341 service, may, at the member's option, be purchased in quarterly
342 increments as provided above at the time that its purchase is
343 otherwise allowed.

344 (m) All rights to purchase retroactive service credit
345 or repay a refund as provided in Section 25-11-101 et seq. shall
346 terminate upon retirement.

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

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

351 (a) Patient or inmate help in state charitable, penal
352 or correctional institutions;

353 (b) Students of any state educational institution
354 employed by any agency of the state for temporary, part-time or
355 intermittent work;

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

359 (d) From and after July 1, 2002, individuals who are
360 employed by a governmental entity to perform professional service

361 on less than a full-time basis who do not meet the criteria
362 established in I(a)(ii) of this section.

363 **III. TERMINATION OF MEMBERSHIP**

364 Membership in this system shall cease by a member withdrawing
365 his accumulated contributions, or by a member withdrawing from
366 active service with a retirement allowance, or by a member's
367 death.

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

370 25-11-127. (1) (a) No person who is being paid a
371 retirement allowance or a pension after retirement under this
372 article shall be employed or paid for any service by the State of
373 Mississippi, except as provided in this section or in Section
374 25-11-126.

375 (b) No retiree of this retirement system who is
376 reemployed or is reelected to office after retirement shall
377 continue to draw retirement benefits while so reemployed or
378 reelected, except as provided in this section or in Section
379 25-11-126.

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

383 (2) Any person who has been retired under the provisions of
384 Article 3 and who is later reemployed in service covered by this
385 article shall cease to receive benefits under this article, unless
386 the person chooses to receive a retirement allowance as authorized
387 by Section 25-11-126, and the person shall again become a
388 contributing member of the retirement system. When the person
389 retires again, if the person has been a contributing member of the
390 retirement system during his or her reemployment and the
391 reemployment exceeds six (6) months, the person shall have his or
392 her benefits recomputed, including service after again becoming a
393 member, provided that the total retirement allowance paid to the

394 retired member in his or her previous retirement shall be deducted
395 from the member's retirement reserve and taken into consideration
396 in recalculating the retirement allowance under a new option
397 selected.

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

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

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

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

411 To determine the normal working days for a position under
412 paragraph (a) of this subsection, the employer shall determine the
413 required number of working days for the position on a full-time
414 basis and the equivalent number of hours representing the
415 full-time position. The retiree then may work up to one-half
416 (1/2) of the required number of working days or up to one-half
417 (1/2) of the equivalent number of hours and receive up to one-half
418 (1/2) of the salary for the position. In the case of employment
419 with multiple employers, the limitation shall equal one-half (1/2)
420 of the number of days or hours for a single full-time position.

421 Notice shall be given in writing to the executive director,
422 setting forth the facts upon which the employment is being made,
423 and the notice shall be given within five (5) days from the date
424 of employment and also from the date of termination of the
425 employment.

426 (5) Any member may continue in municipal or county elected
427 office or be elected to a municipal or county office, provided
428 that the person:

429 (a) Files annually, in writing, in the office of the
430 employer and the office of the executive director of the system
431 before the person takes office or as soon as possible after
432 retirement, a waiver of all salary or compensation and elects to
433 receive in lieu of that salary or compensation a retirement
434 allowance as provided in this section, in which event no salary or
435 compensation shall thereafter be due or payable for those
436 services; however, any such officer or employee may receive, in
437 addition to the retirement allowance, office expense allowance,
438 mileage or travel expense authorized by any statute of the State
439 of Mississippi; or

440 (b) Elects to receive compensation for that elective
441 office in an amount not to exceed twenty-five percent (25%) of the
442 retiree's average compensation. As used in this paragraph, the
443 term "compensation" shall not include office expense allowance,
444 mileage or travel expense authorized by a statute of the State of
445 Mississippi. In order to receive compensation as allowed in this
446 paragraph, the member shall file annually, in writing, in the
447 office of the employer and the office of the executive director of
448 the system, an election to receive, in addition to a retirement
449 allowance, compensation as allowed in this paragraph.

450 **SECTION 4.** This act shall take effect and be in force from
451 and after July 1, 2006.