

By: Representatives Banks, Hines

To: Appropriations

## HOUSE BILL NO. 1291

1 AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF  
2 1972, TO PROVIDE THAT PERSONS RECEIVING A RETIREMENT ALLOWANCE  
3 FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE ELECTED TO  
4 PUBLIC OFFICE IN THE STATE SERVICE AFTER RETIREMENT, AND ELECTED  
5 OFFICIALS IN THE STATE SERVICE WHO BECOME ELIGIBLE TO RECEIVE A  
6 RETIREMENT ALLOWANCE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
7 WHILE HOLDING OFFICE, MAY RECEIVE A RETIREMENT ALLOWANCE FROM THE  
8 SYSTEM WHILE HOLDING OFFICE IN ADDITION TO RECEIVING THE REGULAR  
9 COMPENSATION FOR THAT OFFICE; TO PROVIDE THAT THOSE PERSONS SHALL  
10 NOT BE ACTIVE MEMBERS OF THE RETIREMENT SYSTEM AND SHALL NOT  
11 RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING WHICH THEY  
12 RECEIVE A RETIREMENT ALLOWANCE WHILE HOLDING OFFICE; TO PROVIDE  
13 THAT EMPLOYEE CONTRIBUTIONS SHALL BE DEDUCTED AND EMPLOYER  
14 CONTRIBUTIONS SHALL BE MADE FOR THOSE PERSONS FOR THE PERIOD  
15 DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE WHILE HOLDING  
16 OFFICE; TO AMEND SECTIONS 25-11-103, 25-11-105 AND 25-11-127,  
17 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS  
18 ACT; TO AMEND SECTION 25-11-117, MISSISSIPPI CODE OF 1972, TO  
19 PROVIDE THAT ANY PERSON WHO RECEIVED A RETIREMENT ALLOWANCE WHILE  
20 HOLDING OFFICE IN THE STATE SERVICE MAY NOT RECEIVE A REFUND OF  
21 EMPLOYEE CONTRIBUTIONS THAT WERE MADE DURING THAT PERIOD OF  
22 SERVICE; AND FOR RELATED PURPOSES.

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

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

26 25-11-126. (1) Any person who is receiving a retirement  
27 allowance under this article and who is elected after retirement  
28 to an office in the state service, and any elected official in the  
29 state service who becomes eligible to receive a retirement  
30 allowance under this article while holding that office, may choose  
31 to receive or continue to receive a retirement allowance under  
32 this article while holding that office in addition to receiving  
33 the regular compensation for that office in the manner provided in  
34 this section.

35 (2) Any person who is receiving a retirement allowance and  
36 who is elected to office in the state service after retirement  
37 shall notify the executive director of the system before taking

38 office of his or her choice about continuing to receive the  
39 retirement allowance while holding that office. If the person  
40 chooses not to continue receiving the retirement allowance while  
41 holding that office, the retirement allowance shall cease on the  
42 day that he or she begins serving in the office. After leaving  
43 the office, in order to begin receiving a retirement allowance  
44 under this article again, the person shall make application to the  
45 executive director of the system, and the retirement allowance  
46 shall begin on the first of the month following the date that the  
47 application is received by the executive director.

48 (3) Any elected official in the state service who becomes  
49 eligible to receive a retirement allowance while holding office  
50 and who chooses to receive a retirement allowance while holding  
51 office shall make application to the executive director of the  
52 system and the retirement allowance shall begin on the first of  
53 the month following the date that the application is received by  
54 the executive director. The elected official shall not be  
55 required to withdraw from service in order to receive the  
56 retirement allowance.

57 (4) Any person to whom this section applies who receives or  
58 continues to receive a retirement allowance under this article  
59 while holding office in the state service shall not be an active  
60 member of the retirement system and shall not receive any  
61 creditable service for the period during which he or she receives  
62 a retirement allowance while holding office in the state service.  
63 However, the employer shall deduct employee contributions for the  
64 person and shall make employer contributions on behalf of the  
65 person in the same manner as provided in Section 25-11-123 for  
66 active members, for the period during which he or she receives a  
67 retirement allowance while holding office in the state service,  
68 and the employer shall pay the contributions to the retirement  
69 system.

70           (5) Any person to whom this section applies who chooses not  
71 to receive a retirement allowance while holding office in the  
72 state service shall be an active and contributing member of the  
73 retirement system and shall receive creditable service for the  
74 period during which he or she holds office in the state service  
75 without receiving a retirement allowance. If the person has  
76 previously received a retirement allowance under this article and  
77 holds office for more than six (6) months without receiving a  
78 retirement allowance, the person shall have his or her allowance  
79 recomputed when he or she retires again, which shall include the  
80 service after he or she again became a contributing member of the  
81 retirement system.

82           (6) This section shall apply to officials who are elected to  
83 office in the state service for a specified term, but shall not  
84 apply to persons in other positions of employment in the state  
85 service.

86           **SECTION 2.** Section 25-11-103, Mississippi Code of 1972, is  
87 amended as follows:

88           25-11-103. The following words and phrases as used in  
89 Articles 1 and 3, unless a different meaning is plainly required  
90 by the context, have the following meanings:

91           (a) "Accumulated contributions" means the sum of all  
92 the amounts deducted from the compensation of a member and  
93 credited to his individual account in the annuity savings account,  
94 together with regular interest as provided in Section 25-11-123.

95           (b) "Actuarial cost" means the amount of funds  
96 presently required to provide future benefits as determined by the  
97 board based on applicable tables and formulas provided by the  
98 actuary.

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

103           (d) "Actuarial tables" means such tables of mortality  
104 and rates of interest as adopted by the board in accordance with  
105 the recommendation of the actuary.

106           (e) "Agency" means any governmental body employing  
107 persons in the state service.

108           (f) "Average compensation" means the average of the  
109 four (4) highest years of earned compensation reported for an  
110 employee in a fiscal or calendar year period, or combination  
111 thereof that do not overlap, or the last forty-eight (48)  
112 consecutive months of earned compensation reported for an  
113 employee. The four (4) years need not be successive or joined  
114 years of service. In no case shall the average compensation so  
115 determined be in excess of One Hundred Fifty Thousand Dollars  
116 (\$150,000.00). In computing the average compensation, any amount  
117 lawfully paid in a lump sum for personal leave or major medical  
118 leave shall be included in the calculation to the extent that the  
119 amount does not exceed an amount that is equal to thirty (30) days  
120 of earned compensation and to the extent that it does not cause  
121 the employees' earned compensation to exceed the maximum  
122 reportable amount specified in Section 25-11-103(k); however, this  
123 thirty-day limitation shall not prevent the inclusion in the  
124 calculation of leave earned under federal regulations before July  
125 1, 1976, and frozen as of that date as referred to in Section  
126 25-3-99. Only the amount of lump-sum pay for personal leave due  
127 and paid upon the death of a member attributable for up to one  
128 hundred fifty (150) days shall be used in the deceased member's  
129 average compensation calculation in determining the beneficiary's  
130 benefits. In computing the average compensation, no amounts shall  
131 be used that are in excess of the amount on which contributions  
132 were required and paid, and no nontaxable amounts paid by the  
133 employer for health or life insurance premiums for the employee  
134 shall be used. If any member who is or has been granted any  
135 increase in annual salary or compensation of more than eight

136 percent (8%) retires within twenty-four (24) months from the date  
137 that the increase becomes effective, then the board shall exclude  
138 that part of the increase in salary or compensation that exceeds  
139 eight percent (8%) in calculating that member's average  
140 compensation for retirement purposes. The board may enforce this  
141 provision by rule or regulation. However, increases in  
142 compensation in excess of eight percent (8%) per year granted  
143 within twenty-four (24) months of the date of retirement may be  
144 included in the calculation of average compensation if  
145 satisfactory proof is presented to the board showing that the  
146 increase in compensation was the result of an actual change in the  
147 position held or services rendered, or that the compensation  
148 increase was authorized by the State Personnel Board or was  
149 increased as a result of statutory enactment, and the employer  
150 furnishes an affidavit stating that the increase granted within  
151 the last twenty-four (24) months was not contingent on a promise  
152 or agreement of the employee to retire. Nothing in Section  
153 25-3-31 shall affect the calculation of the average compensation  
154 of any member for the purposes of this article. The average  
155 compensation of any member who retires before July 1, 1992, shall  
156 not exceed the annual salary of the Governor.

157 (g) "Beneficiary" means any person entitled to receive  
158 a retirement allowance, an annuity or other benefit as provided by  
159 Articles 1 and 3. The term "beneficiary" may also include an  
160 organization, estate, trust or entity; however, a beneficiary  
161 designated or entitled to receive monthly payments under an  
162 optional settlement based on life contingency or pursuant to a  
163 statutory monthly benefit may only be a natural person. In the  
164 event of the death before retirement of any member whose spouse  
165 and/or children are not entitled to a retirement allowance on the  
166 basis that the member has less than four (4) years of service  
167 credit and/or has not been married for a minimum of one (1) year  
168 or the spouse has waived his or her entitlement to a retirement

169 allowance under Section 25-11-114, the lawful spouse of a member  
170 at the time of the death of the member shall be the beneficiary of  
171 the member unless the member has designated another beneficiary  
172 after the date of marriage in writing, and filed that writing in  
173 the office of the executive director of the board of trustees. No  
174 designation or change of beneficiary shall be made in any other  
175 manner.

176 (h) "Board" means the board of trustees provided in  
177 Section 25-11-15 to administer the retirement system created under  
178 this article.

179 (i) "Creditable service" means "prior service,"  
180 "retroactive service" and all lawfully credited unused leave not  
181 exceeding the accrual rates and limitations provided in Section  
182 25-3-91 et seq., as of the date of withdrawal from service plus  
183 "membership service" for which credit is allowable as provided in  
184 Section 25-11-109. Except to limit creditable service reported to  
185 the system for the purpose of computing an employee's retirement  
186 allowance or annuity or benefits provided in this article, nothing  
187 in this paragraph shall limit or otherwise restrict the power of  
188 the governing authority of a municipality or other political  
189 subdivision of the state to adopt such vacation and sick leave  
190 policies as it deems necessary.

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

197 (k) "Earned compensation" means the full amount earned  
198 by an employee for a given pay period including any maintenance  
199 furnished up to a maximum of One Hundred Fifty Thousand Dollars  
200 (\$150,000.00) per year, and proportionately for less than one (1)  
201 year of service. The value of that maintenance when not paid in

202 money shall be fixed by the employing state agency, and, in case  
203 of doubt, by the board of trustees as defined in Section 25-11-15.  
204 Earned compensation shall not include any nontaxable amounts paid  
205 by the employer for health or life insurance premiums for an  
206 employee. In any case, earned compensation shall be limited to  
207 the regular periodic compensation paid, exclusive of litigation  
208 fees, bond fees, and other similar extraordinary nonrecurring  
209 payments. In addition, any member in a covered position, as  
210 defined by Public Employees' Retirement System laws and  
211 regulations, who is also employed by another covered agency or  
212 political subdivision shall have the earnings of that additional  
213 employment reported to the Public Employees' Retirement System  
214 regardless of whether the additional employment is sufficient in  
215 itself to be a covered position. In addition, computation of  
216 earned compensation shall be governed by the following:

217           (i) In the case of constables, the net earnings  
218 from their office after deduction of expenses shall apply, except  
219 that in no case shall earned compensation be less than the total  
220 direct payments made by the state or governmental subdivisions to  
221 the official.

222           (ii) In the case of chancery or circuit clerks,  
223 the net earnings from their office after deduction of expenses  
224 shall apply as expressed in Section 25-11-123(f)(4).

225           (iii) In the case of members of the State  
226 Legislature, all remuneration or amounts paid, except mileage  
227 allowance, shall apply.

228           (iv) The amount by which an eligible employee's  
229 salary is reduced under a salary reduction agreement authorized  
230 under Section 25-17-5 shall be included as earned compensation  
231 under this paragraph, provided this inclusion does not conflict  
232 with federal law, including federal regulations and federal  
233 administrative interpretations under the federal law, pertaining

234 to the Federal Insurance Contributions Act or to Internal Revenue  
235 Code Section 125 cafeteria plans.

236 (v) Compensation in addition to an employee's base  
237 salary that is paid to the employee under the vacation and sick  
238 leave policies of a municipality or other political subdivision of  
239 the state that employs him that exceeds the maximums authorized by  
240 Section 25-3-91 et seq. shall be excluded from the calculation of  
241 earned compensation under this article.

242 (vi) The maximum salary applicable for retirement  
243 purposes before July 1, 1992, shall be the salary of the Governor.

244 (vii) Nothing in Section 25-3-31 shall affect the  
245 determination of the earned compensation of any member for the  
246 purposes of this article.

247 (1) "Employee" means any person legally occupying a  
248 position in the state service, and shall include the employees of  
249 the retirement system created under this article.

250 (m) "Employer" means the State of Mississippi or any of  
251 its departments, agencies or subdivisions from which any employee  
252 receives his compensation.

253 (n) "Executive director" means the secretary to the  
254 board of trustees, as provided in Section 25-11-15(9), and the  
255 administrator of the Public Employees' Retirement System and all  
256 systems under the management of the board of trustees. Wherever  
257 the term "Executive Secretary of the Public Employees' Retirement  
258 System" or "executive secretary" appears in this article or in any  
259 other provision of law, it shall be construed to mean the  
260 Executive Director of the Public Employees' Retirement System.

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

263 (p) "Medical board" means the board of physicians or  
264 any governmental or nongovernmental disability determination  
265 service designated by the board of trustees that is qualified to

266 make disability determinations as provided for in Section  
267 25-11-119.

268 (q) "Member" means any person included in the  
269 membership of the system as provided in Section 25-11-105.

270 (r) "Membership service" means service as an employee  
271 rendered while a member of the retirement system.

272 (s) "Position" means any office or any employment in  
273 the state service, or two (2) or more of them, the duties of which  
274 call for services to be rendered by one (1) person, including  
275 positions jointly employed by federal and state agencies  
276 administering federal and state funds. The employer shall  
277 determine upon initial employment and during the course of  
278 employment of an employee who does not meet the criteria for  
279 coverage in the Public Employees' Retirement System based on the  
280 position held, whether the employee is or becomes eligible for  
281 coverage in the Public Employees' Retirement System based upon any  
282 other employment in a covered agency or political subdivision. If  
283 or when the employee meets the eligibility criteria for coverage  
284 in the other position, then the employer must withhold  
285 contributions and report wages from the noncovered position in  
286 accordance with the provisions for reporting of earned  
287 compensation. Failure to deduct and report those contributions  
288 shall not relieve the employee or employer of liability thereof.  
289 The board shall adopt such rules and regulations as necessary to  
290 implement and enforce this provision.

291 (t) "Prior service" means service rendered before  
292 February 1, 1953, for which credit is allowable under Sections  
293 25-11-105 and 25-11-109, and which shall allow prior service for  
294 any person who is now or becomes a member of the Public Employees'  
295 Retirement System and who does contribute to the system for a  
296 minimum period of four (4) years.

297 (u) "Regular interest" means interest compounded  
298 annually at such a rate as determined by the board in accordance  
299 with Section 25-11-121.

300 (v) "Retirement allowance" means an annuity for life as  
301 provided in this article, payable each year in twelve (12) equal  
302 monthly installments beginning as of the date fixed by the board.  
303 The retirement allowance shall be calculated in accordance with  
304 Section 25-11-111. However, any spouse who received a spouse  
305 retirement benefit in accordance with Section 25-11-111(d) before  
306 March 31, 1971, and those benefits were terminated because of  
307 eligibility for a social security benefit, may again receive his  
308 spouse retirement benefit from and after making application with  
309 the board of trustees to reinstate the spouse retirement benefit.

310 (w) "Retroactive service" means service rendered after  
311 February 1, 1953, for which credit is allowable under Section  
312 25-11-105(b) and Section 25-11-105(k).

313 (x) "System" means the Public Employees' Retirement  
314 System of Mississippi established and described in Section  
315 25-11-101.

316 (y) "State" means the State of Mississippi or any  
317 political subdivision thereof or instrumentality of the state.

318 (z) "State service" means all offices and positions of  
319 trust or employment in the employ of the state, or any political  
320 subdivision or instrumentality of the state, that elect to  
321 participate as provided by Section 25-11-105(f), including the  
322 position of elected or fee officials of the counties and their  
323 deputies and employees performing public services or any  
324 department, independent agency, board or commission thereof, and  
325 also includes all offices and positions of trust or employment in  
326 the employ of joint state and federal agencies administering state  
327 and federal funds and service rendered by employees of the public  
328 schools. Effective July 1, 1973, all nonprofessional public  
329 school employees, such as bus drivers, janitors, maids,

330 maintenance workers and cafeteria employees, shall have the option  
331 to become members in accordance with Section 25-11-105(b), and  
332 shall be eligible to receive credit for services before July 1,  
333 1973, provided that the contributions and interest are paid by the  
334 employee in accordance with that section; in addition, the county  
335 or municipal separate school district may pay the employer  
336 contribution and pro rata share of interest of the retroactive  
337 service from available funds. From and after July 1, 1998,  
338 retroactive service credit shall be purchased at the actuarial  
339 cost in accordance with Section 25-11-105(b).

340 (aa) "Withdrawal from service" or "termination from  
341 service" means complete severance of employment in the state  
342 service of any member by resignation, dismissal or discharge,  
343 except in the case of elected officials who become eligible to  
344 receive a retirement allowance under this article while holding  
345 office and who choose to receive the retirement allowance while  
346 holding office as authorized by Section 25-11-126.

347 (bb) The masculine pronoun, wherever used, includes the  
348 feminine pronoun.

349 **SECTION 3.** Section 25-11-105, Mississippi Code of 1972, is  
350 amended as follows:

351 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

352 The membership of this retirement system shall be composed as  
353 follows:

354 (a) (i) All persons who become employees in the state  
355 service after January 31, 1953, and whose wages are subject to  
356 payroll taxes and are lawfully reported on IRS Form W-2, except  
357 those who are specifically excluded, those to whom election is  
358 provided in Articles 1 and 3, and those elected officials who  
359 choose to receive or continue to receive a retirement allowance  
360 while holding office as authorized by Section 25-11-126, shall  
361 become members of the retirement system as a condition of their  
362 employment.

363                   (ii) From and after July 1, 2002, any individual  
364 who is employed by a governmental entity to perform professional  
365 services shall become a member of the system if the individual is  
366 paid regular periodic compensation for those services that is  
367 subject to payroll taxes, is provided all other employee benefits  
368 and meets the membership criteria established by the regulations  
369 adopted by the board of trustees that apply to all other members  
370 of the system; however, any active member employed in such a  
371 position on July 1, 2002, will continue to be an active member for  
372 as long as they are employed in any such position.

373                   (b) All persons who become employees in the state  
374 service after January 31, 1953, except those specifically excluded  
375 or as to whom election is provided in Articles 1 and 3, unless  
376 they file with the board before the lapse of sixty (60) days of  
377 employment or sixty (60) days after the effective date of the  
378 cited articles, whichever is later, on a form prescribed by the  
379 board, a notice of election not to be covered by the membership of  
380 the retirement system and a duly executed waiver of all present  
381 and prospective benefits that would otherwise inure to them on  
382 account of their participation in the system, shall become members  
383 of the retirement system; however, no credit for prior service  
384 will be granted to members until they have contributed to Article  
385 3 of the retirement system for a minimum period of at least four  
386 (4) years. Those members shall receive credit for services  
387 performed before January 1, 1953, in employment now covered by  
388 Article 3, but no credit shall be granted for retroactive services  
389 between January 1, 1953, and the date of their entry into the  
390 retirement system, unless the employee pays into the retirement  
391 system both the employer's and the employee's contributions on  
392 wages paid him during the period from January 31, 1953, to the  
393 date of his becoming a contributing member, together with interest  
394 at the rate determined by the board of trustees. Members  
395 reentering after withdrawal from service shall qualify for prior

396 service under the provisions of Section 25-11-117. From and after  
397 July 1, 1998, upon eligibility as noted above, the member may  
398 receive credit for such retroactive service provided:

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

402 (2) The member shall pay to the retirement system  
403 on the date he or she is eligible for that credit or at any time  
404 thereafter before the date of retirement the actuarial cost for  
405 each year of that creditable service. The provisions of this  
406 subparagraph (2) shall be subject to the limitations of Section  
407 415 of the Internal Revenue Code and regulations promulgated under  
408 Section 415.

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

413 (c) All persons who become employees in the state  
414 service after January 31, 1953, and who are eligible for  
415 membership in any other retirement system shall become members of  
416 this retirement system as a condition of their employment, unless  
417 they elect at the time of their employment to become a member of  
418 that other system.

419 (d) All persons who are employees in the state service  
420 on January 31, 1953, and who are members of any nonfunded  
421 retirement system operated by the State of Mississippi, or any of  
422 its departments or agencies, shall become members of this system  
423 with prior service credit unless, before February 1, 1953, they  
424 file a written notice with the board of trustees that they do not  
425 elect to become members.

426 (e) All persons who are employees in the state service  
427 on January 31, 1953, and who under existing laws are members of  
428 any fund operated for the retirement of employees by the State of

429 Mississippi, or any of its departments or agencies, shall not be  
430 entitled to membership in this retirement system unless, before  
431 February 1, 1953, any such person indicates by a notice filed with  
432 the board, on a form prescribed by the board, his individual  
433 election and choice to participate in this system, but no such  
434 person shall receive prior service credit unless he becomes a  
435 member on or before February 1, 1953.

436 (f) Each political subdivision of the state and each  
437 instrumentality of the state or a political subdivision, or both,  
438 is authorized to submit, for approval by the board of trustees, a  
439 plan for extending the benefits of this article to employees of  
440 any such political subdivision or instrumentality. Each such plan  
441 or any amendment to the plan for extending benefits thereof shall  
442 be approved by the board of trustees if it finds that the plan, or  
443 the plan as amended, is in conformity with such requirements as  
444 are provided in Articles 1 and 3; however, upon approval of the  
445 plan or any such plan previously approved by the board of  
446 trustees, the approved plan shall not be subject to cancellation  
447 or termination by the political subdivision or instrumentality,  
448 except that any community hospital serving a municipality that  
449 joined the Public Employees' Retirement System as of November 1,  
450 1956, to offer social security coverage for its employees and  
451 subsequently extended retirement annuity coverage to its employees  
452 as of December 1, 1965, may, upon documentation of extreme  
453 financial hardship, have future retirement annuity coverage  
454 cancelled or terminated at the discretion of the board of  
455 trustees. No such plan shall be approved unless:

456 (1) It provides that all services that constitute  
457 employment as defined in Section 25-11-5 and are performed in the  
458 employ of the political subdivision or instrumentality, by any  
459 employees thereof, shall be covered by the plan, with the  
460 exception of municipal employees who are already covered by

461 existing retirement plans; however, those employees in this class  
462 may elect to come under the provisions of this article;

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

468           (3) It provides for such methods of administration  
469 of the plan by the political subdivision or instrumentality as are  
470 found by the board of trustees to be necessary for the proper and  
471 efficient administration thereof;

472           (4) It provides that the political subdivision or  
473 instrumentality will make such reports, in such form and  
474 containing such information, as the board of trustees may from  
475 time to time require;

476           (5) It authorizes the board of trustees to  
477 terminate the plan in its entirety in the discretion of the board  
478 if it finds that there has been a failure to comply substantially  
479 with any provision contained in the plan, the termination to take  
480 effect at the expiration of such notice and on such conditions as  
481 may be provided by regulations of the board and as may be  
482 consistent with applicable federal law.

483           A. The board of trustees shall not finally  
484 refuse to approve a plan submitted under paragraph (f), and shall  
485 not terminate an approved plan without reasonable notice and  
486 opportunity for hearing to each political subdivision or  
487 instrumentality affected by the board's decision. The board's  
488 decision in any such case shall be final, conclusive and binding  
489 unless an appeal is taken by the political subdivision or  
490 instrumentality aggrieved by the decision to the Circuit Court of  
491 Hinds County, Mississippi, in accordance with the provisions of  
492 law with respect to civil causes by certiorari.

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

500                   C. Every political subdivision or  
501 instrumentality required to make payments under paragraph (f)(5)B  
502 of this section is authorized, in consideration of the employees'  
503 retention in or entry upon employment after enactment of Articles  
504 1 and 3, to impose upon its employees, as to services that are  
505 covered by an approved plan, a contribution with respect to wages  
506 (as defined in Section 25-11-5) not exceeding the amount provided  
507 in Section 25-11-123(d) if those services constituted employment  
508 within the meaning of Articles 1 and 3, and to deduct the amount  
509 of the contribution from the wages as and when paid.  
510 Contributions so collected shall be paid into the contribution  
511 fund as partial discharge of the liability of the political  
512 subdivisions or instrumentalities under paragraph (f)(5)B of this  
513 section. Failure to deduct the contribution shall not relieve the  
514 employee or employer of liability for the contribution.

515                   D. Any state agency, school, political  
516 subdivision, instrumentality or any employer that is required to  
517 submit contribution payments or wage reports under any section of  
518 this chapter shall be assessed interest on delinquent payments or  
519 wage reports as determined by the board of trustees in accordance  
520 with rules and regulations adopted by the board and delinquent  
521 payments, assessed interest and any other amount certified by the  
522 board as owed by an employer, may be recovered by action in a  
523 court of competent jurisdiction against the reporting agency  
524 liable therefor or may, upon due certification of delinquency and  
525 at the request of the board of trustees, be deducted from any

526 other monies payable to the reporting agency by any department or  
527 agency of the state.

528           E. Each political subdivision of the state  
529 and each instrumentality of the state or a political subdivision  
530 or subdivisions that submit a plan for approval of the board, as  
531 provided in this section, shall reimburse the board for coverage  
532 into the expense account, its pro rata share of the total expense  
533 of administering Articles 1 and 3 as provided by regulations of  
534 the board.

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

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

547           (i) If any member of this system changes his employment  
548 to any agency of the state having an actuarially funded retirement  
549 system, the board of trustees may authorize the transfer of the  
550 member's creditable service and of the present value of the  
551 member's employer's accumulation account and of the present value  
552 of the member's accumulated membership contributions to that other  
553 system, provided that the employee agrees to the transfer of his  
554 accumulated membership contributions and provided that the other  
555 system is authorized to receive and agrees to make the transfer.

556           If any member of any other actuarially funded system  
557 maintained by an agency of the state changes his employment to an  
558 agency covered by this system, the board of trustees may authorize

559 the receipt of the transfer of the member's creditable service and  
560 of the present value of the member's employer's accumulation  
561 account and of the present value of the member's accumulated  
562 membership contributions from the other system, provided that the  
563 employee agrees to the transfer of his accumulated membership  
564 contributions to this system and provided that the other system is  
565 authorized and agrees to make the transfer.

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

569 (k) Employees of a political subdivision or  
570 instrumentality who were employed by the political subdivision or  
571 instrumentality before an agreement between the entity and the  
572 Public Employees' Retirement System to extend the benefits of this  
573 article to its employees, and which agreement provides for the  
574 establishment of retroactive service credit, and who have been  
575 members of the retirement system and have remained contributors to  
576 the retirement system for four (4) years, may receive credit for  
577 that retroactive service with the political subdivision or  
578 instrumentality, provided that the employee and/or employer, as  
579 provided under the terms of the modification of the joinder  
580 agreement in allowing that coverage, pay into the retirement  
581 system the employer's and employee's contributions on wages paid  
582 the member during the previous employment, together with interest  
583 or actuarial cost as determined by the board covering the period  
584 from the date the service was rendered until the payment for the  
585 credit for the service was made. Those wages shall be verified by  
586 the Social Security Administration or employer payroll records.  
587 Effective July 1, 1998, upon eligibility as noted above, a member  
588 may receive credit for that retroactive service with the political  
589 subdivision or instrumentality provided:

590 (1) The member shall furnish proof satisfactory to  
591 the board of trustees of certification of those services from the

592 political subdivision or instrumentality where the services were  
593 rendered or verification by the Social Security Administration;  
594 and

595                   (2) The member shall pay to the retirement system  
596 on the date he or she is eligible for that credit or at any time  
597 thereafter before the date of retirement the actuarial cost for  
598 each year of that creditable service. The provisions of this  
599 subparagraph (2) shall be subject to the limitations of Section  
600 415 of the Internal Revenue Code and regulations promulgated under  
601 Section 415.

602           Nothing contained in this paragraph (k) shall be construed to  
603 limit the authority of the board to allow the correction of  
604 reporting errors or omissions based on the payment of employee and  
605 employer contributions plus applicable interest. Payment for that  
606 time shall be made in increments of not less than one-quarter  
607 (1/4) year of creditable service beginning with the most recent  
608 service. Upon the payment of all or part of the required  
609 contributions, plus interest or the actuarial cost as provided  
610 above, the member shall receive credit for the period of  
611 creditable service for which full payment has been made to the  
612 retirement system.

613                   (1) Through June 30, 1998, any state service eligible  
614 for retroactive service credit, no part of which has ever been  
615 reported, and requiring the payment of employee and employer  
616 contributions plus interest, or, from and after July 1, 1998, any  
617 state service eligible for retroactive service credit, no part of  
618 which has ever been reported to the retirement system, and  
619 requiring the payment of the actuarial cost for that creditable  
620 service, may, at the member's option, be purchased in quarterly  
621 increments as provided above at the time that its purchase is  
622 otherwise allowed.

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

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

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

630 (a) Patient or inmate help in state charitable, penal  
631 or correctional institutions;

632 (b) Students of any state educational institution  
633 employed by any agency of the state for temporary, part-time or  
634 intermittent work;

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

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

642 **III. TERMINATION OF MEMBERSHIP**

643 Membership in this system shall cease by a member withdrawing  
644 his accumulated contributions, or by a member withdrawing from  
645 active service with a retirement allowance, or by a member's  
646 death.

647 **SECTION 4.** Section 25-11-117, Mississippi Code of 1972, is  
648 amended as follows:

649 25-11-117. (1) A member may be paid a refund of the amount  
650 of accumulated contributions to the credit of the member in the  
651 annuity savings account, provided that the member has withdrawn  
652 from state service and has not returned to state service on the  
653 date the refund of the accumulated contributions would be paid.

654 However, a member may not receive a refund of the amount of  
655 employee contributions, or interest earned on those contributions,

656 that were made during any period when he or she received a  
657 retirement allowance while holding office as authorized by Section  
658 25-11-126. That refund of the contributions to the credit of the  
659 member in the annuity savings account shall be paid within ninety  
660 (90) days from receipt in the office of the retirement system of  
661 the properly completed form requesting the payment. In the event  
662 of death before retirement of any member whose spouse and/or  
663 children are not entitled to a retirement allowance, the  
664 accumulated contributions to the credit of the deceased member in  
665 the annuity savings account shall be paid to the designated  
666 beneficiary on file in writing in the office of the executive  
667 director of the board of trustees within ninety (90) days from  
668 receipt of a properly completed form requesting the payment. If  
669 there is no such designated beneficiary on file for the deceased  
670 member in the office of the system, upon the filing of a proper  
671 request with the board, the contributions to the credit of the  
672 deceased member in the annuity savings account shall be refunded  
673 pursuant to Section 25-11-117.1(1). The payment of the refund  
674 shall discharge all obligations of the retirement system to the  
675 member on account of any creditable service rendered by the member  
676 prior to the receipt of the refund. By the acceptance of the  
677 refund, the member shall waive and relinquish all accrued rights  
678 in the system.

679 (2) Under the Unemployment Compensation Amendments of 1992  
680 (Public Law 102-318 (UCA)), a member or the spouse of a member who  
681 is an eligible beneficiary entitled to a refund under this section  
682 may elect, on a form prescribed by the board under rules and  
683 regulations established by the board, to have an eligible rollover  
684 distribution of accumulated contributions payable under this  
685 section paid directly to an eligible retirement plan, as defined  
686 under applicable federal law, or an individual retirement account.  
687 If the member or the spouse of a member who is an eligible  
688 beneficiary makes that election and specifies the eligible

689 retirement plan or individual retirement account to which the  
690 distribution is to be paid, the distribution will be made in the  
691 form of a direct trustee-to-trustee transfer to the specified  
692 eligible retirement plan. Flexible rollovers under this  
693 subsection shall not be considered assignments under Section  
694 25-11-129.

695 (3) If any person who has received a refund reenters the  
696 state service and again becomes a member of the system, the member  
697 may repay all or part of the amounts previously received as a  
698 refund, together with regular interest covering the period from  
699 the date of refund to the date of repayment; however, the amounts  
700 that are repaid by the member and the creditable service related  
701 thereto shall not be used in any benefit calculation or  
702 determination until the member has remained a contributor to the  
703 system for a period of at least four (4) years after the member's  
704 reentry into state service. Repayment for that time shall be made  
705 in increments of not less than one-quarter (1/4) year of  
706 creditable service beginning with the most recent service for  
707 which refund has been made. Upon the repayment of all or part of  
708 that refund and interest, the member shall again receive credit  
709 for the period of creditable service for which full repayment has  
710 been made to the system.

711 (4) (a) In order to provide a source of income to members  
712 who have applied for disability benefits under Section 25-11-113  
713 or 25-11-114, the board may provide, at the employee's election, a  
714 temporary benefit to be paid from the member's accumulated  
715 contributions, if any, without forfeiting the right to pursue  
716 disability benefits, provided that the member has exhausted all  
717 personal and medical leave and has terminated his or her  
718 employment. The board may prescribe rules and regulations for  
719 carrying out the provisions of this subsection (4).

720 (b) If a member who has elected to receive temporary  
721 benefits under this subsection later applies for a refund of his

722 or her accumulated contributions, all amounts paid under this  
723 subsection shall be deducted from the accumulated contributions  
724 and the balance will be paid to the member. If a member who has  
725 elected to receive temporary benefits under this subsection is  
726 later approved for a disability retirement allowance, and a  
727 service retirement allowance or survivor benefits are paid on the  
728 account, the board shall adjust the benefits in such a manner that  
729 no more than the actuarial equivalent of the benefits to which the  
730 member or beneficiary was or is entitled shall be paid.

731 (c) The board may study, develop and propose a  
732 disability benefit structure, including short and long term  
733 disability benefits, provided that it is the actuarial equivalent  
734 of the benefits currently provided in Section 25-11-113 or  
735 25-11-114.

736 **SECTION 5.** Section 25-11-127, Mississippi Code of 1972, is  
737 amended as follows:

738 25-11-127. (1) (a) No person who is being paid a  
739 retirement allowance or a pension after retirement under this  
740 article shall be employed or paid for any service by the State of  
741 Mississippi, except as provided in this section or in Section  
742 25-11-126.

743 (b) No retiree of this retirement system who is  
744 reemployed or is reelected to office after retirement shall  
745 continue to draw retirement benefits while so reemployed, except  
746 as provided in this section or in Section 25-11-126.

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

750 (2) Any person who has been retired under the provisions of  
751 Article 3 and who is later reemployed in service covered by this  
752 article shall cease to receive benefits under this article unless  
753 the person continues to receive a retirement allowance while  
754 holding office under the authority of Section 25-11-126, and the

755 person shall again become a contributing member of the retirement  
756 system. When the person retires again, if that person has been a  
757 contributing member of the retirement system during reemployment  
758 and the reemployment exceeds six (6) months, the person shall have  
759 his or her benefit recomputed, including service after again  
760 becoming a member, provided that the total retirement allowance  
761 paid to the retired member in his or her previous retirement shall  
762 be deducted from the member's retirement reserve and taken into  
763 consideration in recalculating the retirement allowance under a  
764 new option selected.

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

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

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

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

778 To determine the normal working days for a position under  
779 paragraph (a) of this subsection, the employer shall determine the  
780 required number of working days for the position on a full-time  
781 basis and the equivalent number of hours representing the  
782 full-time position. The retiree then may work up to one-half  
783 (1/2) of the required number of working days or up to one-half  
784 (1/2) of the equivalent number of hours and receive up to one-half  
785 (1/2) of the salary for the position. In the case of employment  
786 with multiple employers, the limitation shall equal one-half (1/2)  
787 of the number of days or hours for a single full-time position.

788 Notice shall be given in writing to the executive director,  
789 setting forth the facts upon which the employment is being made,  
790 and the notice shall be given within five (5) days from the date  
791 of employment and also from the date of termination of the  
792 employment.

793 \* \* \*

794 **SECTION 6.** The Attorney General of the State of Mississippi  
795 shall submit this act, immediately upon approval by the Governor,  
796 or upon approval by the Legislature subsequent to a veto, to the  
797 Attorney General of the United States or to the United States  
798 District Court for the District of Columbia in accordance with the  
799 provisions of the Voting Rights Act of 1965, as amended and  
800 extended.

801 **SECTION 7.** This act shall take effect and be in force from  
802 and after July 1, 2006, if it is effectuated on or before that  
803 date under Section 5 of the Voting Rights Act of 1965, as amended  
804 and extended. If it is effectuated under Section 5 of the Voting  
805 Rights Act of 1965, as amended and extended, after July 1, 2006,  
806 this act shall take effect and be in force from and after the date  
807 it is effectuated under Section 5 of the Voting Rights Act of  
808 1965, as amended and extended.