

By: Senator(s) White

To: Finance

## SENATE BILL NO. 2902

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 CHIEF OF POLICE OR SHERIFF AT THE TIME  
5 OF RETIREMENT MAY CONTINUE RECEIVING THE RETIREMENT ALLOWANCE AND  
6 BE 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 chief of police or sheriff  
19 at 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 **SECTION 2.** Section 25-11-105, Mississippi Code of 1972, is  
55 amended as follows:

56 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

57 The membership of this retirement system shall be composed as  
58 follows:

59 (a) (i) All persons who become employees in the state  
60 service after January 31, 1953, and whose wages are subject to  
61 payroll taxes and are lawfully reported on IRS Form W-2, except 1.  
62 those persons who are specifically excluded, 2. those persons as  
63 to whom election is provided in Articles 1 and 3, or 3. those  
64 persons who choose to receive a retirement allowance during their  
65 employment as authorized by Section 25-11-126, shall become

66 members of the retirement system as a condition of their  
67 employment.

68 (ii) From and after July 1, 2002, any individual  
69 who is employed by a governmental entity to perform professional  
70 services shall become a member of the system if the individual is  
71 paid regular periodic compensation for those services that is  
72 subject to payroll taxes, is provided all other employee benefits  
73 and meets the membership criteria established by the regulations  
74 adopted by the board of trustees that apply to all other members  
75 of the system; however, any active member employed in such a  
76 position on July 1, 2002, will continue to be an active member for  
77 as long as they are employed in any such position.

78 (b) All persons who become employees in the state  
79 service after January 31, 1953, except those specifically excluded  
80 or as to whom election is provided in Articles 1 and 3, unless  
81 they file with the board before the lapse of sixty (60) days of  
82 employment or sixty (60) days after the effective date of the  
83 cited articles, whichever is later, on a form prescribed by the  
84 board, a notice of election not to be covered by the membership of  
85 the retirement system and a duly executed waiver of all present  
86 and prospective benefits that would otherwise inure to them on  
87 account of their participation in the system, shall become members  
88 of the retirement system; however, no credit for prior service  
89 will be granted to members until they have contributed to Article  
90 3 of the retirement system for a minimum period of at least four  
91 (4) years. Those members shall receive credit for services  
92 performed before January 1, 1953, in employment now covered by  
93 Article 3, but no credit shall be granted for retroactive services  
94 between January 1, 1953, and the date of their entry into the  
95 retirement system, unless the employee pays into the retirement  
96 system both the employer's and the employee's contributions on  
97 wages paid him during the period from January 31, 1953, to the  
98 date of his becoming a contributing member, together with interest

99 at the rate determined by the board of trustees. Members  
100 reentering after withdrawal from service shall qualify for prior  
101 service under the provisions of Section 25-11-117. From and after  
102 July 1, 1998, upon eligibility as noted above, the member may  
103 receive credit for such retroactive service provided:

104           (i) The member shall furnish proof satisfactory to  
105 the board of trustees of certification of that service from the  
106 covered employer where the services were performed; and

107           (ii) The member shall pay to the retirement system  
108 on the date he or she is eligible for that credit or at any time  
109 thereafter before the date of retirement the actuarial cost for  
110 each year of that creditable service. The provisions of this  
111 subparagraph (ii) shall be subject to the limitations of Section  
112 415 of the Internal Revenue Code and regulations promulgated under  
113 Section 415.

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

118           (c) All persons who become employees in the state  
119 service after January 31, 1953, and who are eligible for  
120 membership in any other retirement system shall become members of  
121 this retirement system as a condition of their employment, unless  
122 they elect at the time of their employment to become a member of  
123 that other system.

124           (d) All persons who are employees in the state service  
125 on January 31, 1953, and who are members of any nonfunded  
126 retirement system operated by the State of Mississippi, or any of  
127 its departments or agencies, shall become members of this system  
128 with prior service credit unless, before February 1, 1953, they  
129 file a written notice with the board of trustees that they do not  
130 elect to become members.

131           (e) All persons who are employees in the state service  
132 on January 31, 1953, and who under existing laws are members of  
133 any fund operated for the retirement of employees by the State of  
134 Mississippi, or any of its departments or agencies, shall not be  
135 entitled to membership in this retirement system unless, before  
136 February 1, 1953, any such person indicates by a notice filed with  
137 the board, on a form prescribed by the board, his individual  
138 election and choice to participate in this system, but no such  
139 person shall receive prior service credit unless he becomes a  
140 member on or before February 1, 1953.

141           (f) Each political subdivision of the state and each  
142 instrumentality of the state or a political subdivision, or both,  
143 is authorized to submit, for approval by the board of trustees, a  
144 plan for extending the benefits of this article to employees of  
145 any such political subdivision or instrumentality. Each such plan  
146 or any amendment to the plan for extending benefits thereof shall  
147 be approved by the board of trustees if it finds that the plan, or  
148 the plan as amended, is in conformity with such requirements as  
149 are provided in Articles 1 and 3; however, upon approval of the  
150 plan or any such plan previously approved by the board of  
151 trustees, the approved plan shall not be subject to cancellation  
152 or termination by the political subdivision or instrumentality,  
153 except that any community hospital serving a municipality that  
154 joined the Public Employees' Retirement System as of November 1,  
155 1956, to offer social security coverage for its employees and  
156 subsequently extended retirement annuity coverage to its employees  
157 as of December 1, 1965, may, upon documentation of extreme  
158 financial hardship, have future retirement annuity coverage  
159 cancelled or terminated at the discretion of the board of  
160 trustees. No such plan shall be approved unless:

161           (i) It provides that all services that constitute  
162 employment as defined in Section 25-11-5 and are performed in the  
163 employ of the political subdivision or instrumentality, by any

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

168           (ii) It specifies the source or sources from which  
169 the funds necessary to make the payments required by paragraph (d)  
170 of Section 25-11-123 and of paragraph (f)(v)2 and 3 of this  
171 section are expected to be derived and contains reasonable  
172 assurance that those sources will be adequate for that purpose;

173           (iii) It provides for such methods of  
174 administration of the plan by the political subdivision or  
175 instrumentality as are found by the board of trustees to be  
176 necessary for the proper and efficient administration thereof;

177           (iv) It provides that the political subdivision or  
178 instrumentality will make such reports, in such form and  
179 containing such information, as the board of trustees may from  
180 time to time require;

181           (v) It authorizes the board of trustees to  
182 terminate the plan in its entirety in the discretion of the board  
183 if it finds that there has been a failure to comply substantially  
184 with any provision contained in the plan, the termination to take  
185 effect at the expiration of such notice and on such conditions as  
186 may be provided by regulations of the board and as may be  
187 consistent with applicable federal law.

188           1. The board of trustees shall not finally  
189 refuse to approve a plan submitted under paragraph (f), and shall  
190 not terminate an approved plan without reasonable notice and  
191 opportunity for hearing to each political subdivision or  
192 instrumentality affected by the board's decision. The board's  
193 decision in any such case shall be final, conclusive and binding  
194 unless an appeal is taken by the political subdivision or  
195 instrumentality aggrieved by the decision to the Circuit Court of

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

198           2. Each political subdivision or  
199 instrumentality as to which a plan has been approved under this  
200 section shall pay into the contribution fund, with respect to  
201 wages (as defined in Section 25-11-5), at such time or times as  
202 the board of trustees may by regulation prescribe, contributions  
203 in the amounts and at the rates specified in the applicable  
204 agreement entered into by the board.

205           3. Every political subdivision or  
206 instrumentality required to make payments under paragraph (f)(v)2  
207 of this section is authorized, in consideration of the employees'  
208 retention in or entry upon employment after enactment of Articles  
209 1 and 3, to impose upon its employees, as to services that are  
210 covered by an approved plan, a contribution with respect to wages  
211 (as defined in Section 25-11-5) not exceeding the amount provided  
212 in Section 25-11-123(d) if those services constituted employment  
213 within the meaning of Articles 1 and 3, and to deduct the amount  
214 of the contribution from the wages as and when paid.  
215 Contributions so collected shall be paid into the contribution  
216 fund as partial discharge of the liability of the political  
217 subdivisions or instrumentalities under paragraph (f)(v)2 of this  
218 section. Failure to deduct the contribution shall not relieve the  
219 employee or employer of liability for the contribution.

220           4. Any state agency, school, political  
221 subdivision, instrumentality or any employer that is required to  
222 submit contribution payments or wage reports under any section of  
223 this chapter shall be assessed interest on delinquent payments or  
224 wage reports as determined by the board of trustees in accordance  
225 with rules and regulations adopted by the board and delinquent  
226 payments, assessed interest and any other amount certified by the  
227 board as owed by an employer, may be recovered by action in a  
228 court of competent jurisdiction against the reporting agency

229 liable therefor or may, upon due certification of delinquency and  
230 at the request of the board of trustees, be deducted from any  
231 other monies payable to the reporting agency by any department or  
232 agency of the state.

233           5. Each political subdivision of the state  
234 and each instrumentality of the state or a political subdivision  
235 or subdivisions that submit a plan for approval of the board, as  
236 provided in this section, shall reimburse the board for coverage  
237 into the expense account, its pro rata share of the total expense  
238 of administering Articles 1 and 3 as provided by regulations of  
239 the board.

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

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

252           (i) If any member of this system changes his employment  
253 to any agency of the state having an actuarially funded retirement  
254 system, the board of trustees may authorize the transfer of the  
255 member's creditable service and of the present value of the  
256 member's employer's accumulation account and of the present value  
257 of the member's accumulated membership contributions to that other  
258 system, provided that the employee agrees to the transfer of his  
259 accumulated membership contributions and provided that the other  
260 system is authorized to receive and agrees to make the transfer.



261           If any member of any other actuarially funded system  
262 maintained by an agency of the state changes his employment to an  
263 agency covered by this system, the board of trustees may authorize  
264 the receipt of the transfer of the member's creditable service and  
265 of the present value of the member's employer's accumulation  
266 account and of the present value of the member's accumulated  
267 membership contributions from the other system, provided that the  
268 employee agrees to the transfer of his accumulated membership  
269 contributions to this system and provided that the other system is  
270 authorized and agrees to make the transfer.

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

274           (k) Employees of a political subdivision or  
275 instrumentality who were employed by the political subdivision or  
276 instrumentality before an agreement between the entity and the  
277 Public Employees' Retirement System to extend the benefits of this  
278 article to its employees, and which agreement provides for the  
279 establishment of retroactive service credit, and who have been  
280 members of the retirement system and have remained contributors to  
281 the retirement system for four (4) years, may receive credit for  
282 that retroactive service with the political subdivision or  
283 instrumentality, provided that the employee and/or employer, as  
284 provided under the terms of the modification of the joinder  
285 agreement in allowing that coverage, pay into the retirement  
286 system the employer's and employee's contributions on wages paid  
287 the member during the previous employment, together with interest  
288 or actuarial cost as determined by the board covering the period  
289 from the date the service was rendered until the payment for the  
290 credit for the service was made. Those wages shall be verified by  
291 the Social Security Administration or employer payroll records.  
292 Effective July 1, 1998, upon eligibility as noted above, a member

293 may receive credit for that retroactive service with the political  
294 subdivision or instrumentality provided:

295           (i) The member shall furnish proof satisfactory to  
296 the board of trustees of certification of those services from the  
297 political subdivision or instrumentality where the services were  
298 rendered or verification by the Social Security Administration;  
299 and

300           (ii) The member shall pay to the retirement system  
301 on the date he or she is eligible for that credit or at any time  
302 thereafter before the date of retirement the actuarial cost for  
303 each year of that creditable service. The provisions of this  
304 subparagraph (ii) shall be subject to the limitations of Section  
305 415 of the Internal Revenue Code and regulations promulgated under  
306 Section 415.

307           Nothing contained in this paragraph (k) shall be construed to  
308 limit the authority of the board to allow the correction of  
309 reporting errors or omissions based on the payment of employee and  
310 employer contributions plus applicable interest. Payment for that  
311 time shall be made in increments of not less than one-quarter  
312 (1/4) year of creditable service beginning with the most recent  
313 service. Upon the payment of all or part of the required  
314 contributions, plus interest or the actuarial cost as provided  
315 above, the member shall receive credit for the period of  
316 creditable service for which full payment has been made to the  
317 retirement system.

318           (1) Through June 30, 1998, any state service eligible  
319 for retroactive service credit, no part of which has ever been  
320 reported, and requiring the payment of employee and employer  
321 contributions plus interest, or, from and after July 1, 1998, any  
322 state service eligible for retroactive service credit, no part of  
323 which has ever been reported to the retirement system, and  
324 requiring the payment of the actuarial cost for that creditable  
325 service, may, at the member's option, be purchased in quarterly

326 increments as provided above at the time that its purchase is  
327 otherwise allowed.

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

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

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

335 (a) Patient or inmate help in state charitable, penal  
336 or correctional institutions;

337 (b) Students of any state educational institution  
338 employed by any agency of the state for temporary, part-time or  
339 intermittent work;

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

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

347 **III. TERMINATION OF MEMBERSHIP**

348 Membership in this system shall cease by a member withdrawing  
349 his accumulated contributions, or by a member withdrawing from  
350 active service with a retirement allowance, or by a member's  
351 death.

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

354 25-11-127. (1) (a) No person who is being paid a  
355 retirement allowance or a pension after retirement under this  
356 article shall be employed or paid for any service by the State of  
357 Mississippi, except as provided in this section or in Section  
358 25-11-126.

359 (b) No retiree of this retirement system who is  
360 reemployed or is reelected to office after retirement shall  
361 continue to draw retirement benefits while so reemployed or  
362 reelected, except as provided in this section or in Section  
363 25-11-126.

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

367 (2) Any person who has been retired under the provisions of  
368 Article 3 and who is later reemployed in service covered by this  
369 article shall cease to receive benefits under this article, unless  
370 the person chooses to receive a retirement allowance as authorized  
371 by Section 25-11-126, and the person shall again become a  
372 contributing member of the retirement system. When the person  
373 retires again, if the person has been a contributing member of the  
374 retirement system during his or her reemployment and the  
375 reemployment exceeds six (6) months, the person shall have his or  
376 her benefits recomputed, including service after again becoming a  
377 member, provided that the total retirement allowance paid to the  
378 retired member in his or her previous retirement shall be deducted  
379 from the member's retirement reserve and taken into consideration  
380 in recalculating the retirement allowance under a new option  
381 selected.

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

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

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

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

395           To determine the normal working days for a position under  
396 paragraph (a) of this subsection, the employer shall determine the  
397 required number of working days for the position on a full-time  
398 basis and the equivalent number of hours representing the  
399 full-time position. The retiree then may work up to one-half  
400 (1/2) of the required number of working days or up to one-half  
401 (1/2) of the equivalent number of hours and receive up to one-half  
402 (1/2) of the salary for the position. In the case of employment  
403 with multiple employers, the limitation shall equal one-half (1/2)  
404 of the number of days or hours for a single full-time position.

405           Notice shall be given in writing to the executive director,  
406 setting forth the facts upon which the employment is being made,  
407 and the notice shall be given within five (5) days from the date  
408 of employment and also from the date of termination of the  
409 employment.

410           (5) Any member may continue in municipal or county elected  
411 office or be elected to a municipal or county office, provided  
412 that the person:

413           (a) Files annually, in writing, in the office of the  
414 employer and the office of the executive director of the system  
415 before the person takes office or as soon as possible after  
416 retirement, a waiver of all salary or compensation and elects to  
417 receive in lieu of that salary or compensation a retirement  
418 allowance as provided in this section, in which event no salary or  
419 compensation shall thereafter be due or payable for those  
420 services; however, any such officer or employee may receive, in  
421 addition to the retirement allowance, office expense allowance,  
422 mileage or travel expense authorized by any statute of the State  
423 of Mississippi; or

424           (b) Elects to receive compensation for that elective  
425 office in an amount not to exceed twenty-five percent (25%) of the  
426 retiree's average compensation. As used in this paragraph, the  
427 term "compensation" shall not include office expense allowance,  
428 mileage or travel expense authorized by a statute of the State of  
429 Mississippi. In order to receive compensation as allowed in this  
430 paragraph, the member shall file annually, in writing, in the  
431 office of the employer and the office of the executive director of  
432 the system, an election to receive, in addition to a retirement  
433 allowance, compensation as allowed in this paragraph.

434           **SECTION 4.** This act shall take effect and be in force from  
435 and after July 1, 2007.