

By: Representative Hughes

To: Education;
Appropriations

HOUSE BILL NO. 408

1 AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF
2 1972, TO PROVIDE THAT PERSONS WHO ARE RECEIVING A RETIREMENT
3 ALLOWANCE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, WHO WERE
4 EMPLOYED AS PUBLIC SCHOOLTEACHERS AT THE TIME OF THEIR RETIREMENT
5 AND WHO ARE ELECTED AS A MEMBER OF THE LEGISLATURE AFTER
6 RETIREMENT, MAY CONTINUE RECEIVING A RETIREMENT ALLOWANCE FROM THE
7 SYSTEM WHILE SERVING AS A MEMBER OF THE LEGISLATURE IN ADDITION TO
8 RECEIVING THE REGULAR COMPENSATION FOR MEMBERS OF THE LEGISLATURE;
9 TO PROVIDE THAT THOSE PERSONS SHALL NOT BE ACTIVE MEMBERS OF THE
10 RETIREMENT SYSTEM AND SHALL NOT RECEIVE ANY CREDITABLE SERVICE FOR
11 THE PERIOD DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE WHILE
12 SERVING AS A MEMBER OF THE LEGISLATURE; TO AMEND SECTIONS
13 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN CONFORMITY
14 TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** The following shall be codified as Section
17 25-11-126, Mississippi Code of 1972:

18 25-11-126. (1) Any person who is receiving a retirement
19 allowance under this article, who was employed as a public
20 schoolteacher at the time of his or her retirement and who is
21 elected as a member of the Legislature after retirement, may
22 choose to continue to receive a retirement allowance under this
23 article while serving as a member of the Legislature in addition



24 to receiving the regular compensation for members of the
25 Legislature in the manner provided in this section.

26 (2) Any person who is eligible to receive a retirement
27 allowance under subsection (1) of this section shall notify the
28 executive director of the system before taking office as a member
29 of the Legislature of his or her choice about continuing to
30 receive a retirement allowance while serving as a member of the
31 Legislature. If the person chooses not to continue receiving a
32 retirement allowance while serving as a member of the Legislature,
33 the retirement allowance shall cease on the day that he or she
34 begins serving as a member of the Legislature. After the person
35 is no longer serving as a member of the Legislature, in order to
36 begin receiving a retirement allowance under this article again,
37 the person shall make application to the executive director of the
38 system, and the retirement allowance shall begin on the first of
39 the month following the date that the application is received by
40 the executive director.

41 (3) Any person to whom this section applies who continues to
42 receive a retirement allowance under this article while serving as
43 a member of the Legislature shall not be an active member of the
44 retirement system and shall not receive any creditable service for
45 the period during which he or she receives a retirement allowance
46 while serving as a member of the Legislature.

47 (4) Any person to whom this section applies who chooses not
48 to receive a retirement allowance while serving as a member of the



49 Legislature shall be an active and contributing member of the
50 retirement system and shall receive creditable service for the
51 period during which he or she serves as a member of the
52 Legislature without receiving a retirement allowance. If the
53 person has previously received a retirement allowance under this
54 article and serves as a member of the Legislature for more than
55 six (6) months without receiving a retirement allowance, the
56 person shall have his or her retirement allowance recomputed when
57 he or she retires again, which shall include the service after he
58 or she again became a contributing member of the retirement
59 system.

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

62 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

63 The membership of this retirement system shall be composed as
64 follows:

65 (a) (i) All persons who become employees in the state
66 service after January 31, 1953, and whose wages are subject to
67 payroll taxes and are lawfully reported on IRS Form W-2, except
68 those who are specifically excluded, * * * those as to whom
69 election is provided in Articles 1 and 3, and those persons who
70 choose to continue to receive a retirement allowance while serving
71 as a member of the Legislature as authorized by Section 25-11-126,
72 shall become members of the retirement system as a condition of
73 their employment.



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

84 (b) All persons who become employees in the state
85 service after January 31, 1953, except those specifically excluded
86 or as to whom election is provided in Articles 1 and 3, unless
87 they file with the board before the lapse of sixty (60) days of
88 employment or sixty (60) days after the effective date of the
89 cited articles, whichever is later, on a form prescribed by the
90 board, a notice of election not to be covered by the membership of
91 the retirement system and a duly executed waiver of all present
92 and prospective benefits that would otherwise inure to them on
93 account of their participation in the system, shall become members
94 of the retirement system; however, no credit for prior service
95 will be granted to members who became members of the system before
96 July 1, 2007, until they have contributed to Article 3 of the
97 retirement system for a minimum period of at least four (4) years,
98 or to members who became members of the system on or after July 1,



99 2007, until they have contributed to Article 3 of the retirement
100 system for a minimum period of at least eight (8) years. Those
101 members shall receive credit for services performed before January
102 1, 1953, in employment now covered by Article 3, but no credit
103 shall be granted for retroactive services between January 1, 1953,
104 and the date of their entry into the retirement system, unless the
105 employee pays into the retirement system both the employer's and
106 the employee's contributions on wages paid him during the period
107 from January 31, 1953, to the date of his becoming a contributing
108 member, together with interest at the rate determined by the board
109 of trustees. Members reentering after withdrawal from service
110 shall qualify for prior service under the provisions of Section
111 25-11-117. From and after July 1, 1998, upon eligibility as noted
112 above, the member may receive credit for such retroactive service
113 provided:

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

117 (ii) The member shall pay to the retirement system
118 on the date he or she is eligible for that credit or at any time
119 thereafter before the date of retirement the actuarial cost for
120 each year of that creditable service. The provisions of this
121 subparagraph (ii) shall be subject to the limitations of Section
122 415 of the Internal Revenue Code and regulations promulgated under
123 Section 415.



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

128 (c) All persons who become employees in the state
129 service after January 31, 1953, and who are eligible for
130 membership in any other retirement system shall become members of
131 this retirement system as a condition of their employment, unless
132 they elect at the time of their employment to become a member of
133 that other system.

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

141 (e) All persons who are employees in the state service
142 on January 31, 1953, and who under existing laws are members of
143 any fund operated for the retirement of employees by the State of
144 Mississippi, or any of its departments or agencies, shall not be
145 entitled to membership in this retirement system unless, before
146 February 1, 1953, any such person indicates by a notice filed with
147 the board, on a form prescribed by the board, his individual
148 election and choice to participate in this system, but no such



149 person shall receive prior service credit unless he becomes a
150 member on or before February 1, 1953.

151 (f) Each political subdivision of the state and each
152 instrumentality of the state or a political subdivision, or both,
153 is authorized to submit, for approval by the board of trustees, a
154 plan for extending the benefits of this article to employees of
155 any such political subdivision or instrumentality. Each such plan
156 or any amendment to the plan for extending benefits thereof shall
157 be approved by the board of trustees if it finds that the plan, or
158 the plan as amended, is in conformity with such requirements as
159 are provided in Articles 1 and 3; however, upon approval of the
160 plan or any such plan previously approved by the board of
161 trustees, the approved plan shall not be subject to cancellation
162 or termination by the political subdivision or instrumentality.
163 No such plan shall be approved unless:

164 (i) It provides that all services that constitute
165 employment as defined in Section 25-11-5 and are performed in the
166 employ of the political subdivision or instrumentality, by any
167 employees thereof, shall be covered by the plan, with the
168 exception of municipal employees who are already covered by
169 existing retirement plans; however, those employees in this class
170 may elect to come under the provisions of this article;

171 (ii) It specifies the source or sources from which
172 the funds necessary to make the payments required by paragraph (d)
173 of Section 25-11-123 and of paragraph (f) (v) 2 and 3 of this



174 section are expected to be derived and contains reasonable
175 assurance that those sources will be adequate for that purpose;

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

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

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

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



199 the First Judicial District of Hinds County, Mississippi, in
200 accordance with the provisions of law with respect to civil causes
201 by certiorari.

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

209 3. Every political subdivision or
210 instrumentality required to make payments under paragraph (f)(v)2
211 of this section is authorized, in consideration of the employees'
212 retention in or entry upon employment after enactment of Articles
213 1 and 3, to impose upon its employees, as to services that are
214 covered by an approved plan, a contribution with respect to wages
215 (as defined in Section 25-11-5) not exceeding the amount provided
216 in Section 25-11-123(d) if those services constituted employment
217 within the meaning of Articles 1 and 3, and to deduct the amount
218 of the contribution from the wages as and when paid.

219 Contributions so collected shall be paid into the contribution
220 fund as partial discharge of the liability of the political
221 subdivisions or instrumentalities under paragraph (f)(v)2 of this
222 section. Failure to deduct the contribution shall not relieve the
223 employee or employer of liability for the contribution.



224 4. Any state agency, school, political
225 subdivision, instrumentality or any employer that is required to
226 submit contribution payments or wage reports under any section of
227 this chapter shall be assessed interest on delinquent payments or
228 wage reports as determined by the board of trustees in accordance
229 with rules and regulations adopted by the board and delinquent
230 payments, assessed interest and any other amount certified by the
231 board as owed by an employer, may be recovered by action in a
232 court of competent jurisdiction against the reporting agency
233 liable therefor or may, upon due certification of delinquency and
234 at the request of the board of trustees, be deducted from any
235 other monies payable to the reporting agency by any department or
236 agency of the state.

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

244 (g) The board may, in its discretion, deny the right of
245 membership in this system to any class of employees whose
246 compensation is only partly paid by the state or who are occupying
247 positions on a part-time or intermittent basis. The board may, in



248 its discretion, make optional with employees in any such classes
249 their individual entrance into this system.

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

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

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



273 contributions to this system and provided that the other system is
274 authorized and agrees to make the transfer.

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

278 (k) Employees of a political subdivision or
279 instrumentality who were employed by the political subdivision or
280 instrumentality before an agreement between the entity and the
281 Public Employees' Retirement System to extend the benefits of this
282 article to its employees, and which agreement provides for the
283 establishment of retroactive service credit, and who became
284 members of the retirement system before July 1, 2007, and have
285 remained contributors to the retirement system for four (4) years,
286 or who became members of the retirement system on or after July 1,
287 2007, and have remained contributors to the retirement system for
288 eight (8) years, may receive credit for that retroactive service
289 with the political subdivision or instrumentality, provided that
290 the employee and/or employer, as provided under the terms of the
291 modification of the joinder agreement in allowing that coverage,
292 pay into the retirement system the employer's and employee's
293 contributions on wages paid the member during the previous
294 employment, together with interest or actuarial cost as determined
295 by the board covering the period from the date the service was
296 rendered until the payment for the credit for the service was
297 made. Those wages shall be verified by the Social Security



298 Administration or employer payroll records. Effective July 1,
299 1998, upon eligibility as noted above, a member may receive credit
300 for that retroactive service with the political subdivision or
301 instrumentality provided:

302 (i) The member shall furnish proof satisfactory to
303 the board of trustees of certification of those services from the
304 political subdivision or instrumentality where the services were
305 rendered or verification by the Social Security Administration;
306 and

307 (ii) The member shall pay to the retirement system
308 on the date he or she is eligible for that credit or at any time
309 thereafter before the date of retirement the actuarial cost for
310 each year of that creditable service. The provisions of this
311 subparagraph (ii) shall be subject to the limitations of Section
312 415 of the Internal Revenue Code and regulations promulgated under
313 Section 415.

314 Nothing contained in this paragraph (k) shall be construed to
315 limit the authority of the board to allow the correction of
316 reporting errors or omissions based on the payment of employee and
317 employer contributions plus applicable interest. Payment for that
318 time shall be made beginning with the most recent service. Upon
319 the payment of all or part of the required contributions, plus
320 interest or the actuarial cost as provided above, the member shall
321 receive credit for the period of creditable service for which full
322 payment has been made to the retirement system.



323 (1) Through June 30, 1998, any state service eligible
324 for retroactive service credit, no part of which has ever been
325 reported, and requiring the payment of employee and employer
326 contributions plus interest, or, from and after July 1, 1998, any
327 state service eligible for retroactive service credit, no part of
328 which has ever been reported to the retirement system, and
329 requiring the payment of the actuarial cost for that creditable
330 service, may, at the member's option, be purchased in quarterly
331 increments as provided above at the time that its purchase is
332 otherwise allowed.

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

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

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

340 (a) Patient or inmate help in state charitable, penal
341 or correctional institutions;

342 (b) Students of any state educational institution
343 employed by any agency of the state for temporary, part-time or
344 intermittent work;

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



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

352 **III. TERMINATION OF MEMBERSHIP**

353 Membership in this system shall cease by a member withdrawing
354 his accumulated contributions, or by a member withdrawing from
355 active service with a retirement allowance, or by a member's
356 death.

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

359 25-11-127. (1) (a) No person who is being paid a
360 retirement allowance or a pension after retirement under this
361 article shall be employed or paid for any service by the State of
362 Mississippi, including services as an employee, contract worker,
363 contractual employee or independent contractor, until the retired
364 person has been retired for not less than ninety (90) consecutive
365 days from his or her effective date of retirement. After the
366 person has been retired for not less than ninety (90) consecutive
367 days from his or her effective date of retirement or such later
368 date as established by the board, he or she may be reemployed
369 while being paid a retirement allowance under the terms and
370 conditions provided in this section or Section 25-11-126.

371 (b) No retiree of this retirement system who is
372 reemployed or is reelected to office after retirement shall



373 continue to draw retirement benefits while so reemployed, except
374 as provided in this section or Section 25-11-126.

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

378 (2) Any person who has been retired under the provisions of
379 Article 3 and who is later reemployed in service covered by this
380 article shall cease to receive benefits under this article unless
381 the person chooses to continue to receive a retirement allowance
382 while serving as a member of the Legislature under the authority
383 of Section 25-11-126, and the person shall again become a
384 contributing member of the retirement system. When the person
385 retires again, if that person has been a contributing member of
386 the retirement system during reemployment and the reemployment
387 exceeds six (6) months, the person shall have his or her benefit
388 recomputed, including service after again becoming a member,
389 provided that the total retirement allowance paid to the retired
390 member in his or her previous retirement shall be deducted from
391 the member's retirement reserve and taken into consideration in
392 recalculating the retirement allowance under a new option
393 selected.

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



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

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

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

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

417 Notice shall be given in writing to the executive director,
418 setting forth the facts upon which the employment is being made,
419 and the notice shall be given within five (5) days from the date



420 of employment and also from the date of termination of the
421 employment.

422 The restrictions on employment after retirement in this
423 subsection shall not apply to persons who choose to continue to
424 receive a retirement allowance under this article while serving as
425 a member of the Legislature as authorized by Section 25-11-126.

426 (5) Except as otherwise provided in subsection (6) of this
427 section, the employer of any person who is receiving a retirement
428 allowance and who is employed in service covered by subsection (4)
429 of this section as an employee or a contractual employee, and the
430 employer of any person who chooses to continue to receive a
431 retirement allowance under this article while serving as a member
432 of the Legislature as authorized by Section 25-11-126, shall pay
433 to the board the full amount of the employer's contribution on the
434 amount of compensation received by the retiree for his or her
435 employment in accordance with regulations prescribed by the board.
436 The retiree shall not receive any additional creditable service in
437 the retirement system as a result of the payment of the employer's
438 contribution. This subsection does not apply to persons who are
439 receiving a retirement allowance and who contract with an employer
440 to provide services as a true independent contractor, as defined
441 by the board through regulation.

442 (6) (a) A member may retire and continue in municipal or
443 county elective office provided that the member has reached the
444 age and/or service requirement that will not result in a



445 prohibited in-service distribution as defined by the Internal
446 Revenue Service, or a retiree may be elected to a municipal or
447 county office, provided that the person:

448 (i) Files annually, in writing, in the office of
449 the employer and the office of the executive director of the
450 system before the person takes office or as soon as possible after
451 retirement, a waiver of all salary or compensation and elects to
452 receive in lieu of that salary or compensation a retirement
453 allowance as provided in this section, in which event no salary or
454 compensation shall thereafter be due or payable for those
455 services; however, any such officer or employee may receive, in
456 addition to the retirement allowance, office expense allowance,
457 mileage or travel expense authorized by any statute of the State
458 of Mississippi; or

459 (ii) Elects to receive compensation for that
460 elective office in an amount not to exceed twenty-five percent
461 (25%) of the retiree's average compensation. In order to receive
462 compensation as allowed in this subparagraph, the retiree shall
463 file annually, in writing, in the office of the employer and the
464 office of the executive director of the system, an election to
465 receive, in addition to a retirement allowance, compensation as
466 allowed in this subparagraph.

467 (b) The municipality or county in which the retired
468 person holds elective office shall pay to the board the amount of
469 the employer's contributions on the full amount of the regular



470 compensation for the elective office that the retired person
471 holds.

472 (c) As used in this subsection, the term "compensation"
473 does not include office expense allowance, mileage or travel
474 expense authorized by a statute of the State of Mississippi.

475 **SECTION 4.** This act shall take effect and be in force from
476 and after July 1, 2018.

