

By: Representative Deweese

To: Appropriations C

HOUSE BILL NO. 1618

1 AN ACT TO AMEND SECTIONS 25-11-5 AND 25-11-103, MISSISSIPPI
 2 CODE OF 1972, TO DEFINE THE TERM "INSTRUMENTALITY" FOR THE PURPOSE
 3 OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM LAWS AND INCLUDE HEALTH
 4 CARE COLLABORATIVES IN THE DEFINITION; TO AMEND SECTION 25-11-127,
 5 MISSISSIPPI CODE OF 1972, TO EXEMPT CERTAIN PEOPLE EMPLOYED BY OR
 6 PAID FOR ANY SERVICE BY A HEALTH CARE COLLABORATIVE OR OTHER
 7 ORGANIZATION; TO BRING FORWARD SECTION 25-11-105, MISSISSIPPI CODE
 8 OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** Section 25-11-5, Mississippi Code of 1972, is
 12 amended as follows:

13 25-11-5. For the purposes of this article:

14 (a) The term "wages" means all remuneration for
 15 employment as defined herein, including the cash value of all
 16 remuneration paid in any medium other than cash, except that such
 17 term shall not include that part of such remuneration which, even
 18 if it were for "employment" within the meaning of the Federal
 19 Insurance Contributions Act, would not constitute "wages" within
 20 the meaning of that act. The amount by which an eligible
 21 employee's salary is reduced pursuant to a salary reduction



22 agreement authorized under Section 25-17-5 shall be excluded from
23 the term "wages", provided such exclusion does not conflict with
24 federal law, including federal regulations and federal
25 administrative interpretations thereunder, pertaining to the
26 Federal Insurance Contributions Act or to Internal Revenue Code
27 Section 125 cafeteria plans. If any salary reduction amounts
28 excluded from "wages" under the prior sentence are determined to
29 be "wages" by the Social Security Administration or the Internal
30 Revenue Service and payroll tax deficiencies are assessed, the
31 deficiencies shall be borne by the eligible employee and the
32 adopting state agency or local governmental entity and not by the
33 Public Employees' Retirement System of Mississippi as state
34 administrator.

35 (b) The term "employment" means any service performed
36 by an employee in the employ of the state, any political
37 subdivision thereof, or any instrumentality of either for such
38 employer, except (i) service which in the absence of an agreement
39 entered into under this article would constitute "employment" as
40 defined in the Social Security Act; or (ii) service which under
41 applicable federal law may not be included in an agreement between
42 the state and the Secretary of Health, Education and Welfare
43 entered into under this article; or (iii) service in positions
44 covered by a retirement system established by the state or by a
45 political subdivision or an instrumentality of either on the date
46 the agreement referred to in Section 25-11-7 or any modification



47 of such agreement is made applicable to the coverage group (as
48 defined in Section 218(b) (5) of the Social Security Act) to which
49 the employee performing such services belongs. Service which
50 under the Social Security Act may be included in an agreement only
51 upon certification by the Governor in accordance with Section
52 218(d) (3) of that act shall be included in the term "employment"
53 if and when the Governor issues, with respect to such service, a
54 certificate to the Secretary of Health, Education and Welfare
55 pursuant to Section 25-11-11(5) of this article.

56 Services, the compensation for which is on a fee basis, may,
57 to the extent permitted by applicable federal law, be excluded in
58 any plan or agreement approved under or authorized by this
59 article.

60 (c) The term "employee," in addition to its usual
61 meaning, includes an officer of a state, a political subdivision
62 thereof, or an instrumentality of either, and all school
63 employees.

64 (d) The term "board" means the Board of Trustees of the
65 Public Employees' Retirement System of Mississippi as provided by
66 Section 25-11-15 of this article.

67 (e) The term "Secretary of Health, Education and
68 Welfare" includes any individual to whom the Secretary of Health,
69 Education and Welfare has delegated any functions under the Social
70 Security Act with respect to coverage under such act of employees
71 of states and their political subdivisions and, with respect to



72 any action taken prior to April 11, 1953, includes the federal
73 security administrator or any individual to whom he had delegated
74 any such function.

75 (f) The term "political subdivision" includes any
76 county, municipality, or other political subdivision within the
77 State of Mississippi to which has been delegated certain functions
78 of local government, and employees thereof who are eligible to
79 become a coverage group under the terms of the Social Security
80 Act.

81 (g) The term "instrumentality," when referring to an
82 instrumentality of the state or political subdivision, includes
83 only a juristic entity which is legally separate and distinct from
84 the state or such subdivision and whose employees are not by
85 virtue of their relation to such entity employees of the state or
86 such subdivision. A health care collaborative or other
87 organization formed pursuant to the authority of Sections
88 37-115-50 through 37-115-50.3 shall be considered as an
89 instrumentality of the state.

90 (h) The term "applicable federal law" refers to such
91 provisions of federal law (including federal regulations and
92 requirements issued pursuant thereto), as provide for extending
93 the benefits of Title II of the Social Security Act to employees
94 of states, political subdivisions, and their instrumentalities.

95 (i) The term "Social Security Act" means the Act of
96 Congress approved August 14, 1935, Chapter 531, 49 Stat 620,



97 officially cited as "The Social Security Act," as such act has
98 been and may from time to time be amended.

99 (j) The term "Federal Insurance Contribution Act" means
100 subchapter A of Chapter 9 of the Federal Internal Revenue Code of
101 1939 and subchapters A and B of Chapter 21 of the Federal Internal
102 Revenue Code of 1954, as such Codes have been and may from time to
103 time be amended; and the term "employee tax" means the tax imposed
104 by Section 1400 of such Code of 1939 and Section 3101 of such Code
105 of 1954.

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

108 25-11-103. (1) The following words and phrases as used in
109 Articles 1 and 3, unless a different meaning is plainly required
110 by the context, have the following meanings:

111 (a) "Accumulated contributions" means the sum of all
112 the amounts deducted from the compensation of a member and
113 credited to his or her individual account in the annuity savings
114 account, together with regular interest as provided in Section
115 25-11-123.

116 (b) "Actuarial cost" means the amount of funds
117 presently required to provide future benefits as determined by the
118 board based on applicable tables and formulas provided by the
119 actuary.

120 (c) "Actuarial equivalent" means a benefit of equal
121 value to the accumulated contributions, annuity or benefit, as the



122 case may be, when computed upon the basis of such mortality tables
123 as adopted by the board of trustees, and regular interest.

124 (d) "Actuarial tables" mean such tables of mortality
125 and rates of interest as adopted by the board in accordance with
126 the recommendation of the actuary.

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

129 (f) "Average compensation" means the average of the
130 four (4) highest years of earned compensation reported for an
131 employee in a fiscal or calendar year period, or combination
132 thereof that do not overlap, or the last forty-eight (48)
133 consecutive months of earned compensation reported for an
134 employee. The four (4) years need not be successive or joined
135 years of service. In computing the average compensation for
136 retirement, disability or survivor benefits, any amount lawfully
137 paid in a lump sum for personal leave or major medical leave shall
138 be included in the calculation to the extent that the amount does
139 not exceed an amount that is equal to thirty (30) days of earned
140 compensation and to the extent that it does not cause the
141 employee's earned compensation to exceed the maximum reportable
142 amount specified in paragraph (k) of this subsection; however,
143 this thirty-day limitation shall not prevent the inclusion in the
144 calculation of leave earned under federal regulations before July
145 1, 1976, and frozen as of that date as referred to in Section
146 25-3-99. In computing the average compensation, no amounts shall



147 be used that are in excess of the amount on which contributions
148 were required and paid, and no nontaxable amounts paid by the
149 employer for health or life insurance premiums for the employee
150 shall be used. If any member who is or has been granted any
151 increase in annual salary or compensation of more than eight
152 percent (8%) retires within twenty-four (24) months from the date
153 that the increase becomes effective, then the board shall exclude
154 that part of the increase in salary or compensation that exceeds
155 eight percent (8%) in calculating that member's average
156 compensation for retirement purposes. The board may enforce this
157 provision by rule or regulation. However, increases in
158 compensation in excess of eight percent (8%) per year granted
159 within twenty-four (24) months of the date of retirement may be
160 included in the calculation of average compensation if
161 satisfactory proof is presented to the board showing that the
162 increase in compensation was the result of an actual change in the
163 position held or services rendered, or that the compensation
164 increase was authorized by the State Personnel Board or was
165 increased as a result of statutory enactment, and the employer
166 furnishes an affidavit stating that the increase granted within
167 the last twenty-four (24) months was not contingent on a promise
168 or agreement of the employee to retire. Nothing in Section
169 25-3-31 shall affect the calculation of the average compensation
170 of any member for the purposes of this article. The average



171 compensation of any member who retires before July 1, 1992, shall
172 not exceed the annual salary of the Governor.

173 (g) "Beneficiary" means any person entitled to receive
174 a retirement allowance, an annuity or other benefit as provided by
175 Articles 1 and 3. The term "beneficiary" may also include an
176 organization, estate, trust or entity; however, a beneficiary
177 designated or entitled to receive monthly payments under an
178 optional settlement based on life contingency or under a statutory
179 monthly benefit may only be a natural person. In the event of the
180 death before retirement of any member who became a member of the
181 system before July 1, 2007, and whose spouse and/or children are
182 not entitled to a retirement allowance on the basis that the
183 member has less than four (4) years of membership service credit,
184 or who became a member of the system on or after July 1, 2007, and
185 whose spouse and/or children are not entitled to a retirement
186 allowance on the basis that the member has less than eight (8)
187 years of membership service credit, and/or has not been married
188 for a minimum of one (1) year or the spouse has waived his or her
189 entitlement to a retirement allowance under Section 25-11-114, the
190 lawful spouse of a member at the time of the death of the member
191 shall be the beneficiary of the member unless the member has
192 designated another beneficiary after the date of marriage in
193 writing, and filed that writing in the office of the executive
194 director of the board of trustees. No designation or change of
195 beneficiary shall be made in any other manner.



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

199 (i) "Creditable service" means "prior service,"
200 "retroactive service" and all lawfully credited unused leave not
201 exceeding the accrual rates and limitations provided in Section
202 25-3-91 et seq., as of the date of withdrawal from service plus
203 "membership service" and other service for which credit is
204 allowable as provided in Section 25-11-109. Except to limit
205 creditable service reported to the system for the purpose of
206 computing an employee's retirement allowance or annuity or
207 benefits provided in this article, nothing in this paragraph shall
208 limit or otherwise restrict the power of the governing authority
209 of a municipality or other political subdivision of the state to
210 adopt such vacation and sick leave policies as it deems necessary.

211 (j) "Child" means either a natural child of the member,
212 a child that has been made a child of the member by applicable
213 court action before the death of the member, or a child under the
214 permanent care of the member at the time of the latter's death,
215 which permanent care status shall be determined by evidence
216 satisfactory to the board. For purposes of this paragraph, a
217 natural child of the member is a child of the member that is
218 conceived before the death of the member.

219 (k) "Earned compensation" means the full amount earned
220 during a fiscal year by an employee not to exceed the employee



221 compensation limit set pursuant to Section 401(a) (17) of the
222 Internal Revenue Code for the calendar year in which the fiscal
223 year begins and proportionately for less than one (1) year of
224 service. Except as otherwise provided in this paragraph, the
225 value of maintenance furnished to an employee shall not be
226 included in earned compensation. Earned compensation shall not
227 include any amounts paid by the employer for health or life
228 insurance premiums for an employee. Earned compensation shall be
229 limited to the regular periodic compensation paid, exclusive of
230 litigation fees, bond fees, performance-based incentive payments,
231 and other similar extraordinary nonrecurring payments. In
232 addition, any member in a covered position, as defined by Public
233 Employees' Retirement System laws and regulations, who is also
234 employed by another covered agency or political subdivision shall
235 have the earnings of that additional employment reported to the
236 Public Employees' Retirement System regardless of whether the
237 additional employment is sufficient in itself to be a covered
238 position. In addition, computation of earned compensation shall
239 be governed by the following:

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



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

248 (iii) In the case of members of the State
249 Legislature, all remuneration or amounts paid, except mileage
250 allowance, shall apply.

251 (iv) The amount by which an eligible employee's
252 salary is reduced under a salary reduction agreement authorized
253 under Section 25-17-5 shall be included as earned compensation
254 under this paragraph, provided this inclusion does not conflict
255 with federal law, including federal regulations and federal
256 administrative interpretations under the federal law, pertaining
257 to the Federal Insurance Contributions Act or to Internal Revenue
258 Code Section 125 cafeteria plans.

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

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

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



270 (viii) The value of maintenance furnished to an
271 employee before July 1, 2013, for which the proper amount of
272 employer and employee contributions have been paid, shall be
273 included in earned compensation. From and after July 1, 2013, the
274 value of maintenance furnished to an employee shall be reported as
275 earned compensation only if the proper amount of employer and
276 employee contributions have been paid on the maintenance and the
277 employee was receiving maintenance and having maintenance reported
278 to the system as of June 30, 2013. The value of maintenance when
279 not paid in money shall be fixed by the employing state agency,
280 and, in case of doubt, by the board of trustees as defined in
281 Section 25-11-15.

282 (ix) Except as otherwise provided in this
283 paragraph, the value of any in-kind benefits provided by the
284 employer shall not be included in earned compensation. As used in
285 this subparagraph, "in-kind benefits" shall include, but not be
286 limited to, group life insurance premiums, health or dental
287 insurance premiums, nonpaid major medical and personal leave,
288 employer contributions for social security and retirement, tuition
289 reimbursement or educational funding, day care or transportation
290 benefits.

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



294 (m) "Employer" means the State of Mississippi or any of
295 its departments, agencies or subdivisions from which any employee
296 receives his or her compensation.

297 (n) "Executive director" means the secretary to the
298 board of trustees, as provided in Section 25-11-15(9), and the
299 administrator of the Public Employees' Retirement System and all
300 systems under the management of the board of trustees. Wherever
301 the term "Executive Secretary of the Public Employees' Retirement
302 System" or "executive secretary" appears in this article or in any
303 other provision of law, it shall be construed to mean the
304 Executive Director of the Public Employees' Retirement System.

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

307 (p) "Medical board" means the board of physicians or
308 any governmental or nongovernmental disability determination
309 service designated by the board of trustees that is qualified to
310 make disability determinations as provided for in Section
311 25-11-119.

312 (q) "Member" means any person included in the
313 membership of the system as provided in Section 25-11-105. For
314 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,
315 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the
316 system withdrew from state service and received a refund of the
317 amount of the accumulated contributions to the credit of the
318 member in the annuity savings account before July 1, 2007, and the



319 person reenters state service and becomes a member of the system
320 again on or after July 1, 2007, and repays all or part of the
321 amount received as a refund and interest in order to receive
322 creditable service for service rendered before July 1, 2007, the
323 member shall be considered to have become a member of the system
324 on or after July 1, 2007, subject to the eight-year membership
325 service requirement, as applicable in those sections. For
326 purposes of Sections 25-11-103, 25-11-111, 25-11-114 and
327 25-11-115, if a member of the system withdrew from state service
328 and received a refund of the amount of the accumulated
329 contributions to the credit of the member in the annuity savings
330 account before July 1, 2011, and the person reenters state service
331 and becomes a member of the system again on or after July 1, 2011,
332 and repays all or part of the amount received as a refund and
333 interest in order to receive creditable service for service
334 rendered before July 1, 2011, the member shall be considered to
335 have become a member of the system on or after July 1, 2011.

336 (r) "Membership service" means service as an employee
337 in a covered position rendered while a contributing member of the
338 retirement system.

339 (s) "Position" means any office or any employment in
340 the state service, or two (2) or more of them, the duties of which
341 call for services to be rendered by one (1) person, including
342 positions jointly employed by federal and state agencies
343 administering federal and state funds. The employer shall



344 determine upon initial employment and during the course of
345 employment of an employee who does not meet the criteria for
346 coverage in the Public Employees' Retirement System based on the
347 position held, whether the employee is or becomes eligible for
348 coverage in the Public Employees' Retirement System based upon any
349 other employment in a covered agency or political subdivision. If
350 or when the employee meets the eligibility criteria for coverage
351 in the other position, then the employer must withhold
352 contributions and report wages from the noncovered position in
353 accordance with the provisions for reporting of earned
354 compensation. Failure to deduct and report those contributions
355 shall not relieve the employee or employer of liability thereof.
356 The board shall adopt such rules and regulations as necessary to
357 implement and enforce this provision.

358 (t) "Prior service" means:

359 (i) For persons who became members of the system
360 before July 1, 2007, service rendered before February 1, 1953, for
361 which credit is allowable under Sections 25-11-105 and 25-11-109,
362 and which shall allow prior service for any person who is now or
363 becomes a member of the Public Employees' Retirement System and
364 who does contribute to the system for a minimum period of four (4)
365 years.

366 (ii) For persons who became members of the system
367 on or after July 1, 2007, service rendered before February 1,
368 1953, for which credit is allowable under Sections 25-11-105 and



369 25-11-109, and which shall allow prior service for any person who
370 is now or becomes a member of the Public Employees' Retirement
371 System and who does contribute to the system for a minimum period
372 of eight (8) years.

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

376 (v) "Retirement allowance" means an annuity for life as
377 provided in this article, payable each year in twelve (12) equal
378 monthly installments beginning as of the date fixed by the board.
379 The retirement allowance shall be calculated in accordance with
380 Section 25-11-111. However, any spouse who received a spouse
381 retirement benefit in accordance with Section 25-11-111(d) before
382 March 31, 1971, and those benefits were terminated because of
383 eligibility for a social security benefit, may again receive his
384 or her spouse retirement benefit from and after making application
385 with the board of trustees to reinstate the spouse retirement
386 benefit.

387 (w) "Retroactive service" means service rendered after
388 February 1, 1953, for which credit is allowable under Section
389 25-11-105(b) and Section 25-11-105(k).

390 (x) "System" means the Public Employees' Retirement
391 System of Mississippi established and described in Section
392 25-11-101.



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

395 (z) "State service" means all offices and positions of
396 trust or employment in the employ of the state, or any political
397 subdivision or instrumentality of the state, that elect to
398 participate as provided by Section 25-11-105(f), including the
399 position of elected or fee officials of the counties and their
400 deputies and employees performing public services or any
401 department, independent agency, board or commission thereof, and
402 also includes all offices and positions of trust or employment in
403 the employ of joint state and federal agencies administering state
404 and federal funds and service rendered by employees of the public
405 schools. Effective July 1, 1973, all nonprofessional public
406 school employees, such as bus drivers, janitors, maids,
407 maintenance workers and cafeteria employees, shall have the option
408 to become members in accordance with Section 25-11-105(b), and
409 shall be eligible to receive credit for services before July 1,
410 1973, provided that the contributions and interest are paid by the
411 employee in accordance with that section; in addition, the county
412 or municipal separate school district may pay the employer
413 contribution and pro rata share of interest of the retroactive
414 service from available funds. "State service" shall not include
415 the President of the Mississippi Lottery Corporation and personnel
416 employed by the Mississippi Lottery Corporation. From and after



417 July 1, 1998, retroactive service credit shall be purchased at the
418 actuarial cost in accordance with Section 25-11-105(b).

419 (aa) "Withdrawal from service" or "termination from
420 service" means complete severance of employment in the state
421 service of any member by resignation, dismissal or discharge.

422 (bb) The masculine pronoun, wherever used, includes the
423 feminine pronoun.

424 (2) For purposes of this article, the term "political
425 subdivision" shall have the meaning ascribed to such term in
426 Section 25-11-5 and shall also include public charter schools.

427 (3) For purposes of this article, the term "instrumentality"
428 shall have the meaning as defined in Section 25-11-5 and
429 membership in this retirement system shall not extend to any
430 person employed by or paid for any service by a health care
431 collaborative or other organization formed pursuant to the
432 authority of Sections 37-115-50 through 37-115-50.3, unless the
433 health care collaborative or other organization elects to
434 participate in the retirement system, as provided for by Section
435 25-11-105(f).

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

438 25-11-127. (1) (a) No person who is being paid a
439 retirement allowance or a pension after retirement under this
440 article shall be employed or paid for any service by the State of
441 Mississippi, including services as an employee, contract worker,



442 contractual employee or independent contractor, until the retired
443 person has been retired for not less than ninety (90) consecutive
444 days from his or her effective date of retirement. After the
445 person has been retired for not less than ninety (90) consecutive
446 days from his or her effective date of retirement or such later
447 date as established by the board, he or she may be reemployed
448 while being paid a retirement allowance under the terms and
449 conditions provided in this section.

450 (b) No retiree of this retirement system who is
451 reemployed or is reelected to office after retirement shall
452 continue to draw retirement benefits while so reemployed, except
453 as provided in this section.

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

457 (2) Any person who has been retired under the provisions of
458 Article 3 and who is later reemployed in service covered by this
459 article shall cease to receive benefits under this article and
460 shall again become a contributing member of the retirement system.
461 When the person retires again, if the reemployment exceeds six (6)
462 months, the person shall have his or her benefit recomputed,
463 including service after again becoming a member, provided that the
464 total retirement allowance paid to the retired member in his or
465 her previous retirement shall be deducted from the member's



466 retirement reserve and taken into consideration in recalculating
467 the retirement allowance under a new option selected.

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

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

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

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

481 To determine the normal working days for a position under
482 paragraph (a) of this subsection, the employer shall determine the
483 required number of working days for the position on a full-time
484 basis and the equivalent number of hours representing the
485 full-time position. The retiree then may work up to one-half
486 (1/2) of the required number of working days or up to one-half
487 (1/2) of the equivalent number of hours and receive up to one-half
488 (1/2) of the salary for the position. In the case of employment
489 with multiple employers, the limitation shall equal one-half (1/2)
490 of the number of days or hours for a single full-time position.



491 Notice shall be given in writing to the executive director,
492 setting forth the facts upon which the employment is being made,
493 and the notice shall be given within five (5) days from the date
494 of employment and also from the date of termination of the
495 employment.

496 (5) Except as otherwise provided in subsection (6) of this
497 section, the employer of any person who is receiving a retirement
498 allowance and who is employed in service covered by subsection (4)
499 of this section as an employee or a contractual employee shall pay
500 to the board the full amount of the employer's contribution on the
501 amount of compensation received by the retiree for his or her
502 employment in accordance with regulations prescribed by the board.
503 The retiree shall not receive any additional creditable service in
504 the retirement system as a result of the payment of the employer's
505 contribution. This subsection does not apply to persons who are
506 receiving a retirement allowance and who contract with an employer
507 to provide services as a true independent contractor, as defined
508 by the board through regulation.

509 (6) (a) A member may retire and continue in municipal or
510 county elective office provided that the member has reached the
511 age and/or service requirement that will not result in a
512 prohibited in-service distribution as defined by the Internal
513 Revenue Service, or a retiree may be elected to a municipal or
514 county office, provided that the person:



515 (i) Files annually, in writing, in the office of
516 the employer and the office of the executive director of the
517 system before the person takes office or as soon as possible after
518 retirement, a waiver of all salary or compensation and elects to
519 receive in lieu of that salary or compensation a retirement
520 allowance as provided in this section, in which event no salary or
521 compensation shall thereafter be due or payable for those
522 services; however, any such officer or employee may receive, in
523 addition to the retirement allowance, office expense allowance,
524 mileage or travel expense authorized by any statute of the State
525 of Mississippi; or

526 (ii) Elects to receive compensation for that
527 elective office in an amount not to exceed twenty-five percent
528 (25%) of the retiree's average compensation. In order to receive
529 compensation as allowed in this subparagraph, the retiree shall
530 file annually, in writing, in the office of the employer and the
531 office of the executive director of the system, an election to
532 receive, in addition to a retirement allowance, compensation as
533 allowed in this subparagraph.

534 (b) The municipality or county in which the retired
535 person holds elective office shall pay to the board the amount of
536 the employer's contributions on the full amount of the regular
537 compensation for the elective office that the retired person
538 holds.



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

542 (7) Notwithstanding the foregoing and any other provision of
543 law to the contrary, this section shall not apply to any person
544 who has been retired under this article for ninety (90)
545 consecutive days or more from his or her effective date of
546 retirement from the retirement system if employed by or paid for
547 any service by a health care collaborative or other organization
548 formed pursuant to the authority of Sections 37-115-50 through
549 37-115-50.3, unless the health care collaborative or other
550 organization elects to participate in the retirement system, as
551 provided for by Section 25-11-105(f).

552 **SECTION 4.** Section 25-11-105, Mississippi Code of 1972, is
553 brought forward as follows:

554 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

555 The membership of this retirement system shall be composed as
556 follows:

557 (a) (i) All persons who become employees in the state
558 service after January 31, 1953, and whose wages are subject to
559 payroll taxes and are lawfully reported on IRS Form W-2, except
560 those specifically excluded, or as to whom election is provided in
561 Articles 1 and 3, shall become members of the retirement system as
562 a condition of their employment.



563 (ii) From and after July 1, 2002, any individual
564 who is employed by a governmental entity to perform professional
565 services shall become a member of the system if the individual is
566 paid regular periodic compensation for those services that is
567 subject to payroll taxes, is provided all other employee benefits
568 and meets the membership criteria established by the regulations
569 adopted by the board of trustees that apply to all other members
570 of the system; however, any active member employed in such a
571 position on July 1, 2002, will continue to be an active member for
572 as long as they are employed in any such position.

573 (b) All persons who become employees in the state
574 service after January 31, 1953, except those specifically excluded
575 or as to whom election is provided in Articles 1 and 3, unless
576 they file with the board before the lapse of sixty (60) days of
577 employment or sixty (60) days after the effective date of the
578 cited articles, whichever is later, on a form prescribed by the
579 board, a notice of election not to be covered by the membership of
580 the retirement system and a duly executed waiver of all present
581 and prospective benefits that would otherwise inure to them on
582 account of their participation in the system, shall become members
583 of the retirement system; however, no credit for prior service
584 will be granted to members who became members of the system before
585 July 1, 2007, until they have contributed to Article 3 of the
586 retirement system for a minimum period of at least four (4) years,
587 or to members who became members of the system on or after July 1,



588 2007, until they have contributed to Article 3 of the retirement
589 system for a minimum period of at least eight (8) years. Those
590 members shall receive credit for services performed before January
591 1, 1953, in employment now covered by Article 3, but no credit
592 shall be granted for retroactive services between January 1, 1953,
593 and the date of their entry into the retirement system, unless the
594 employee pays into the retirement system both the employer's and
595 the employee's contributions on wages paid him during the period
596 from January 31, 1953, to the date of his becoming a contributing
597 member, together with interest at the rate determined by the board
598 of trustees. Members reentering after withdrawal from service
599 shall qualify for prior service under the provisions of Section
600 25-11-117. From and after July 1, 1998, upon eligibility as noted
601 above, the member may receive credit for such retroactive service
602 provided:

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

606 (ii) The member shall pay to the retirement system
607 on the date he or she is eligible for that credit or at any time
608 thereafter before the date of retirement the actuarial cost for
609 each year of that creditable service. The provisions of this
610 subparagraph (ii) shall be subject to the limitations of Section
611 415 of the Internal Revenue Code and regulations promulgated under
612 Section 415.



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

617 (c) All persons who become employees in the state
618 service after January 31, 1953, and who are eligible for
619 membership in any other retirement system shall become members of
620 this retirement system as a condition of their employment, unless
621 they elect at the time of their employment to become a member of
622 that other system.

623 (d) All persons who are employees in the state service
624 on January 31, 1953, and who are members of any nonfunded
625 retirement system operated by the State of Mississippi, or any of
626 its departments or agencies, shall become members of this system
627 with prior service credit unless, before February 1, 1953, they
628 file a written notice with the board of trustees that they do not
629 elect to become members.

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



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

640 (f) Each political subdivision of the state and each
641 instrumentality of the state or a political subdivision, or both,
642 is authorized to submit, for approval by the board of trustees, a
643 plan for extending the benefits of this article to employees of
644 any such political subdivision or instrumentality. Each such plan
645 or any amendment to the plan for extending benefits thereof shall
646 be approved by the board of trustees if it finds that the plan, or
647 the plan as amended, is in conformity with such requirements as
648 are provided in Articles 1 and 3; however, upon approval of the
649 plan or any such plan previously approved by the board of
650 trustees, the approved plan shall not be subject to cancellation
651 or termination by the political subdivision or instrumentality.
652 No such plan shall be approved unless:

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

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



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

665 (iii) It provides for such methods of
666 administration of the plan by the political subdivision or
667 instrumentality as are found by the board of trustees to be
668 necessary for the proper and efficient administration thereof;

669 (iv) It provides that the political subdivision or
670 instrumentality will make such reports, in such form and
671 containing such information, as the board of trustees may from
672 time to time require;

673 (v) It authorizes the board of trustees to
674 terminate the plan in its entirety in the discretion of the board
675 if it finds that there has been a failure to comply substantially
676 with any provision contained in the plan, the termination to take
677 effect at the expiration of such notice and on such conditions as
678 may be provided by regulations of the board and as may be
679 consistent with applicable federal law.

680 1. The board of trustees shall not finally
681 refuse to approve a plan submitted under paragraph (f), and shall
682 not terminate an approved plan without reasonable notice and
683 opportunity for hearing to each political subdivision or
684 instrumentality affected by the board's decision. The board's
685 decision in any such case shall be final, conclusive and binding
686 unless an appeal is taken by the political subdivision or
687 instrumentality aggrieved by the decision to the Circuit Court of



688 the First Judicial District of Hinds County, Mississippi, in
689 accordance with the provisions of law with respect to civil causes
690 by certiorari.

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

698 3. Every political subdivision or
699 instrumentality required to make payments under paragraph (f)(v)2
700 of this section is authorized, in consideration of the employees'
701 retention in or entry upon employment after enactment of Articles
702 1 and 3, to impose upon its employees, as to services that are
703 covered by an approved plan, a contribution with respect to wages
704 (as defined in Section 25-11-5) not exceeding the amount provided
705 in Section 25-11-123(d) if those services constituted employment
706 within the meaning of Articles 1 and 3, and to deduct the amount
707 of the contribution from the wages as and when paid.
708 Contributions so collected shall be paid into the contribution
709 fund as partial discharge of the liability of the political
710 subdivisions or instrumentalities under paragraph (f)(v)2 of this
711 section. Failure to deduct the contribution shall not relieve the
712 employee or employer of liability for the contribution.



713 4. Any state agency, school, political
714 subdivision, instrumentality or any employer that is required to
715 submit contribution payments or wage reports under any section of
716 this chapter shall be assessed interest on delinquent payments or
717 wage reports as determined by the board of trustees in accordance
718 with rules and regulations adopted by the board and delinquent
719 payments, assessed interest and any other amount certified by the
720 board as owed by an employer, may be recovered by action in a
721 court of competent jurisdiction against the reporting agency
722 liable therefor or may, upon due certification of delinquency and
723 at the request of the board of trustees, be deducted from any
724 other monies payable to the reporting agency by any department or
725 agency of the state.

726 5. Each political subdivision of the state
727 and each instrumentality of the state or a political subdivision
728 or subdivisions that submit a plan for approval of the board, as
729 provided in this section, shall reimburse the board for coverage
730 into the expense account, its pro rata share of the total expense
731 of administering Articles 1 and 3 as provided by regulations of
732 the board.

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



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

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

745 (i) If any member of this system changes his employment
746 to any agency of the state having an actuarially funded retirement
747 system, the board of trustees may authorize the transfer of the
748 member's creditable service and of the present value of the
749 member's employer's accumulation account and of the present value
750 of the member's accumulated membership contributions to that other
751 system, provided that the employee agrees to the transfer of his
752 accumulated membership contributions and provided that the other
753 system is authorized to receive and agrees to make the transfer.

754 If any member of any other actuarially funded system
755 maintained by an agency of the state changes his employment to an
756 agency covered by this system, the board of trustees may authorize
757 the receipt of the transfer of the member's creditable service and
758 of the present value of the member's employer's accumulation
759 account and of the present value of the member's accumulated
760 membership contributions from the other system, provided that the
761 employee agrees to the transfer of his accumulated membership



762 contributions to this system and provided that the other system is
763 authorized and agrees to make the transfer.

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

767 (k) Employees of a political subdivision or
768 instrumentality who were employed by the political subdivision or
769 instrumentality before an agreement between the entity and the
770 Public Employees' Retirement System to extend the benefits of this
771 article to its employees, and which agreement provides for the
772 establishment of retroactive service credit, and who became
773 members of the retirement system before July 1, 2007, and have
774 remained contributors to the retirement system for four (4) years,
775 or who became members of the retirement system on or after July 1,
776 2007, and have remained contributors to the retirement system for
777 eight (8) years, may receive credit for that retroactive service
778 with the political subdivision or instrumentality, provided that
779 the employee and/or employer, as provided under the terms of the
780 modification of the joinder agreement in allowing that coverage,
781 pay into the retirement system the employer's and employee's
782 contributions on wages paid the member during the previous
783 employment, together with interest or actuarial cost as determined
784 by the board covering the period from the date the service was
785 rendered until the payment for the credit for the service was
786 made. Those wages shall be verified by the Social Security



787 Administration or employer payroll records. Effective July 1,
788 1998, upon eligibility as noted above, a member may receive credit
789 for that retroactive service with the political subdivision or
790 instrumentality provided:

791 (i) The member shall furnish proof satisfactory to
792 the board of trustees of certification of those services from the
793 political subdivision or instrumentality where the services were
794 rendered or verification by the Social Security Administration;
795 and

796 (ii) The member shall pay to the retirement system
797 on the date he or she is eligible for that credit or at any time
798 thereafter before the date of retirement the actuarial cost for
799 each year of that creditable service. The provisions of this
800 subparagraph (ii) shall be subject to the limitations of Section
801 415 of the Internal Revenue Code and regulations promulgated under
802 Section 415.

803 Nothing contained in this paragraph (k) shall be construed to
804 limit the authority of the board to allow the correction of
805 reporting errors or omissions based on the payment of employee and
806 employer contributions plus applicable interest. Payment for that
807 time shall be made beginning with the most recent service. Upon
808 the payment of all or part of the required contributions, plus
809 interest or the actuarial cost as provided above, the member shall
810 receive credit for the period of creditable service for which full
811 payment has been made to the retirement system.



812 (1) Through June 30, 1998, any state service eligible
813 for retroactive service credit, no part of which has ever been
814 reported, and requiring the payment of employee and employer
815 contributions plus interest, or, from and after July 1, 1998, any
816 state service eligible for retroactive service credit, no part of
817 which has ever been reported to the retirement system, and
818 requiring the payment of the actuarial cost for that creditable
819 service, may, at the member's option, be purchased in quarterly
820 increments as provided above at the time that its purchase is
821 otherwise allowed.

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

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

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

829 (a) Patient or inmate help in state charitable, penal
830 or correctional institutions;

831 (b) Students of any state educational institution
832 employed by any agency of the state for temporary, part-time or
833 intermittent work;

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



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

841 **III. TERMINATION OF MEMBERSHIP**

842 Membership in this system shall cease by a member withdrawing
843 his accumulated contributions, or by a member withdrawing from
844 active service with a retirement allowance, or by a member's
845 death.

846 **SECTION 5.** This act shall take effect and be in force from
847 and after its passage.

