

By: Barnett (92nd)

To: Appropriations

HOUSE BILL NO. 1177

1 AN ACT TO CREATE A SEPARATE RETIREMENT SYSTEM FOR SHERIFFS;
2 TO PROVIDE THAT THE SYSTEM SHALL BE ADMINISTERED BY THE BOARD OF
3 TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO DEFINE
4 ELIGIBILITY FOR MEMBERSHIP IN THE SYSTEM; TO PROVIDE FOR EMPLOYEE
5 AND EMPLOYER CONTRIBUTIONS TO FUND THE SYSTEM; TO ESTABLISH
6 BENEFITS FOR DISABILITY AND SUPERANNUATION RETIREMENT AND
7 ESTABLISH DEATH BENEFITS; TO AMEND SECTION 25-11-105, MISSISSIPPI
8 CODE OF 1972, TO PROVIDE FOR THE TRANSFER OF MEMBERSHIP FROM THE
9 PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO THE SHERIFFS' RETIREMENT
10 SYSTEM; AND FOR RELATED PURPOSES.

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

12 SECTION 1. There is established and placed under the
13 management of the Board of Trustees of the Public Employees'
14 Retirement System a retirement system for the purpose of providing
15 retirement allowances and other benefits under the provisions of
16 this act for the county sheriffs and their beneficiaries. This
17 retirement system shall be known as the "Sheriffs' Retirement
18 System." The retirement system shall go into operation on October
19 1, 2000, when contributions by members shall begin and benefits
20 shall become payable. This retirement system is designed to
21 supplement and is in addition to the provisions of Section 25-11-1
22 et seq. Under the terms of this act, sheriffs shall retain all
23 social security benefits under Article I of the Public Employees'
24 Retirement Law of 1952 but shall not be eligible for benefits
25 under Article III of that law. This act is a substitute for and
26 in lieu of Article III of that law, and is designed to provide
27 more liberal benefits for sheriffs by reason of the dangerous
28 nature of and special risk involved in the duties of their office.

29 SECTION 2. (1) For the purposes of this act, the
30 definitions in Section 25-11-5 and Section 25-11-103 shall apply

31 unless a different meaning is plainly expressed by the context.

32 (2) As used in this act:

33 (a) "Board" means the Board of Trustees of the Public
34 Employees' Retirement System.

35 (b) "Sheriff" means each duly elected county sheriff
36 and each county sheriff appointed to office to fill a vacancy.

37 (c) "Member" means any person included in the
38 membership of the system as provided in Section 4 of this act.

39 (d) "System" means the Sheriffs' Retirement System
40 established by Section 1 of this act.

41 SECTION 3. (1) The general administration and
42 responsibility for the proper operation of the system and for
43 making effective the provisions hereof are vested in the Board of
44 Trustees of the Public Employees' Retirement System.

45 (2) The board shall invest all funds of the system in
46 accordance with Section 25-11-121.

47 (3) The board shall designate an actuary who shall be the
48 technical advisor of the board on matters regarding the operation
49 of the system and shall perform such other duties as are required
50 in connection therewith.

51 (4) At least once in each two-year period following October
52 1, 2000, the actuary shall make an actuarial investigation into
53 the mortality, service, withdrawal and compensation experience of
54 the members and beneficiaries of the system, and shall make a
55 valuation of the assets and liabilities of the system. Taking
56 into account the result of the investigation and valuation, the
57 board shall adopt for the retirement system such mortality,
58 service, and other tables as shall be deemed necessary. On the
59 basis of those tables that the board adopts, the actuary shall
60 make biennial valuations of the assets and liabilities of the
61 funds of the system.

62 (5) The board shall keep such data as shall be necessary for
63 the actuarial valuation of the contingent assets and liabilities

64 of the system and for checking the experience of the system.

65 (6) The board shall determine from time to time the rate of
66 regular interest for use in all calculations, with the rate of
67 five percent (5%) per annum applicable unless changed by the
68 board.

69 (7) Subject to the limitations hereof, the board from time
70 to time shall establish rules and regulations for the
71 administration of the system and for the transaction of business.

72 (8) The board shall keep a record of all its proceedings
73 under this act. All books, accounts and records shall be kept in
74 the general office of the Public Employees' Retirement System and
75 shall be public records except for individual member records. The
76 Public Employees' Retirement System shall not disclose the name,
77 address or contents of any individual member records without the
78 prior written consent of the individual to whom the record
79 pertains.

80 (9) The Executive Director of the Public Employees'
81 Retirement System shall serve as the executive director of this
82 system.

83 SECTION 4. (1) The membership of the system shall be
84 composed of sheriffs. Membership in the system shall not include
85 deputy sheriffs and secretarial, clerical, stenographic or
86 administrative employees of the office of the sheriff.

87 (2) All sheriffs eligible for membership in the system as
88 provided in this section who are serving in that capacity on
89 October 1, 2000, shall become members of the system on that date,
90 unless they file with the board within thirty (30) days after
91 October 1, 2000, on a form prescribed by the board, a notice of
92 election not to be covered in the membership of the system and a
93 duly executed waiver of all present and prospective benefits that
94 otherwise would inure to them on account of their membership in
95 the system.

96 (3) All sheriffs eligible for membership in the system as

97 provided in this section who are elected or appointed after
98 October 31, 2000, shall become members of the system as a
99 condition of holding that office, provided that the sheriff is
100 under the age of fifty-five (55) years at the time of taking
101 office.

102 (4) Membership in the system shall cease by a member
103 withdrawing his accumulated contributions, or by a member
104 withdrawing from active service with a retirement allowance, or by
105 death of the member.

106 SECTION 5. (1) Creditable service on which a member's
107 service or disability retirement benefit is based shall consist of
108 prior service and membership service. Prior service means service
109 performed before October 1, 2000, for which contributions were
110 made to the Public Employees' Retirement System, and membership
111 service means all service for which credit may be allowed under
112 this act after October 31, 2000, and all lawfully credited unused
113 leave as of the date of withdrawal from service, as certified by
114 the employer.

115 (2) In computing the period of service of a member of the
116 system, anything in this act to the contrary notwithstanding, any
117 member who served on active duty in the Armed Forces of the United
118 States, or who served in maritime service during periods of
119 hostility in World War II, shall be entitled to creditable service
120 for his service on active duty in the Armed Forces or in such
121 maritime service, provided he entered state service after his
122 discharge from the Armed Forces or entered state service after he
123 completed such maritime service. The maximum period for
124 creditable service for all military service shall not exceed four
125 (4) years unless positive proof can be furnished by the person
126 that he was retained in the Armed Forces during World War II or in
127 maritime service during World War II by causes beyond his control
128 and without opportunity of discharge. The member shall furnish
129 proof satisfactory to the board of certification of military

130 service or maritime service records showing dates of entrance into
131 service and the date of discharge. In no case shall the member
132 receive creditable service if the member received a dishonorable
133 discharge from the Armed Forces of the United States.

134 SECTION 6. (1) The board shall act as custodian of the
135 system, and shall receive to the credit of the system all
136 donations, bequests, appropriations, and all funds available as an
137 employer's contribution thereto from any source whatsoever.

138 (2) Beginning October 1, 2000, the employers shall cause to
139 be deducted each month from the earned compensation of each member
140 seven and one-fourth percent (7-1/4%) thereof, and shall pay the
141 amount so deducted to the board to be credited to the system. The
142 board may vary the percentage of future employee contribution
143 biennially on the basis of the liabilities of the system for the
144 various allowances and benefits as shown by actuarial valuation.
145 From the funds credited to this account, the board shall pay
146 retirements, disability benefits, survivors benefits, expenses and
147 shall refund contributions as provided in this act. The funds of
148 the system shall be maintained as a separate fund, separate from
149 all other funds held by the board and shall be used only for the
150 payment of benefits provided for by this act or amendments
151 thereto.

152 (3) Beginning October 1, 2000, on account of each member the
153 employers shall pay monthly into the system from funds available
154 an amount equal to a certain percentage of the earned compensation
155 of each member to be known as the "normal contributions," and an
156 additional amount equal to a percentage of his earned compensation
157 to be known as the "accrued liability contribution." The
158 percentage rate of those contributions shall be nine and
159 three-fourths percent (9-3/4%). The percentage rate of those
160 contributions in the future shall be fixed biennially by the board
161 on the basis of the liabilities of the system for the various
162 allowances and benefits as shown by the actuarial valuation.

163 (4) The board is authorized to deduct two percent (2%) of
164 all employer contributions paid into the system to be transferred
165 to the expense fund of the Public Employees' Retirement System to
166 defray the cost of administering the system.

167 SECTION 7. The employers shall pick up the member
168 contributions required by Section 6 of this act for all
169 compensation earned after October 31, 2000. The contributions so
170 picked up shall be treated as employer contributions in
171 determining tax treatment under the United States Internal Revenue
172 Code and Mississippi Income Tax Code. However, the employer shall
173 continue to withhold federal and state income taxes based upon
174 these contributions until the Internal Revenue Service or federal
175 courts rule that pursuant to Section 414(h) of the United States
176 Internal Revenue Code, these contributions shall not be included
177 as gross income of the member until such time as they are
178 distributed or made available. The employer shall pay these
179 member contributions from the same source of funds that is used in
180 paying earnings to the member. The employer may pick up these
181 contributions by a reduction in the cash salary of the member or
182 by an offset against a future salary increase or by a combination
183 of a reduction in salary and offset against a future salary
184 increase. If member contributions are picked up, they shall be
185 treated for all purposes of this act in the same manner and to the
186 same extent as member contributions made before to the date picked
187 up.

188 SECTION 8. (1) Upon application of a member or his
189 employer, any active member who has not attained the age of
190 fifty-five (55) years may be retired by the board, not less than
191 thirty (30) and not more than ninety (90) days next following the
192 date of filing the application, on a disability retirement
193 allowance, if the medical board of the Public Employees'
194 Retirement System or other designated governmental agency, after a
195 medical examination, certifies that he is mentally or physically

196 incapacitated for the performance of duty, that the incapacity is
197 likely to be permanent, and that the sickness or injury was caused
198 or sustained as a direct result of duty as a sheriff after October
199 31, 2000.

200 Upon the application of a member or his employer, any member
201 who is not yet eligible for service retirement benefits and who
202 has had at least ten (10) years of creditable service may be
203 retired by the board, not less than thirty (30) and not more than
204 ninety (90) days next following the date of filing the
205 application, on a disability retirement allowance, if the medical
206 board or other designated governmental agency, after a medical
207 examination, certifies that he is mentally or physically
208 incapacitated for the further performance of duty, that the
209 incapacity is likely to be permanent, and that he should be
210 retired. This disability need not be service connected.

211 (2) Upon retirement for disability, a member shall receive a
212 disability benefit equal to fifty percent (50%) of his average
213 compensation for the two (2) years immediately preceding his
214 retirement, but not less than any retirement benefits for which he
215 may be eligible at the date he is granted disability.

216 (3) Once each year during the first five (5) years following
217 retirement of a member on a disability retirement allowance, and
218 once in every period of three (3) years thereafter, the board may,
219 and upon his application shall, require any disability retiree who
220 has not yet attained the age of fifty-five (55) years to undergo a
221 medical examination. The examination shall be made at the place
222 of residence of the retiree or other place mutually agreed upon by
223 the medical board or other designated governmental agency. If any
224 disability retiree who has not yet attained the age of fifty-five
225 (55) years refuses to submit to any medical examination provided
226 for in this subsection, his allowance may be discontinued until
227 his withdrawal of his refusal, and if his refusal continues for
228 one (1) year, all his rights in that part of the disability

229 benefit provided by employer contributions shall be revoked by the
230 board.

231 (4) If the medical board or other designated governmental
232 agency reports and certifies to the board, after a comparable job
233 analysis or other similar study, that the disability retiree is
234 engaged in, or is able to engage in, a gainful occupation paying
235 more than the difference between his disability benefit and his
236 average compensation, and if the board concurs in the report, the
237 disability benefit shall be reduced to an amount that, together
238 with the amount earnable by him, equals the amount of his average
239 compensation. If his earning capacity is later changed, the
240 amount of the benefit may be further modified, but the revised
241 benefit shall not exceed the amount originally granted nor an
242 amount that, when added to the amount earnable by the retiree,
243 together with the member's annuity, equals the amount of his
244 average compensation.

245 (5) If a disability retiree under the age of fifty-five (55)
246 years is restored to active service at a compensation not less
247 than his average compensation, his disability benefit shall cease,
248 he shall again become a member of the retirement system, and he
249 shall contribute thereafter at the same rate he paid before
250 disability. Any such prior service certificate on the basis of
251 which his service was computed at the time of retirement shall be
252 restored to full force and effect. In addition, upon his
253 subsequent retirement he shall be credited with all creditable
254 service as a member, including the period for which he was paid
255 disability benefits.

256 SECTION 9. (1) Any member upon withdrawal from service upon
257 or after attainment of the age of fifty-five (55) years who has
258 completed at least four (4) years of creditable service, or any
259 member upon withdrawal from service upon or after attainment of
260 the age of forty-five (45) years who has completed at least twenty
261 (20) years of creditable service, or any member upon withdrawal

262 from service regardless of age who has completed at least
263 twenty-five (25) years of creditable service, shall be entitled to
264 receive a retirement allowance that shall be payable the first of
265 the month following receipt of the member's application in the
266 office of the executive director of the system, but in no event
267 before withdrawal from service.

268 (2) Any member whose withdrawal from service occurs before
269 attaining the age of fifty-five (55) years who has completed four
270 (4) or more years of creditable service and has not received a
271 refund of the member's accumulated contributions shall be entitled
272 to receive a retirement allowance of the amount earned and accrued
273 at the date of withdrawal from service, beginning upon his
274 attaining the age of fifty-five (55) years.

275 (3) The annual amount of the retirement allowance shall
276 consist of:

277 (a) A member's annuity, which shall be the actuarial
278 equivalent of the accumulated contributions of the member at the
279 time of retirement, computed according to the actuarial table in
280 use by the system.

281 (b) An employer's annuity, which, together with the
282 member's annuity provided above, shall be equal to two and
283 one-half percent (2-1/2%) of the average compensation for each
284 year of membership service.

285 (c) A prior service annuity equal to two and one-half
286 percent (2-1/2%) of the average compensation for each year of
287 prior service for which the member is allowed credit.

288 (d) In the case of retirement of any member before
289 attaining the age of fifty-five (55) years, the retirement
290 allowance shall be computed in accordance with the formula set
291 forth above in this section, except that the employer's annuity
292 and prior service annuity shall be reduced by three percent (3%)
293 for each year of age below fifty-five (55) years, or three percent
294 (3%) for each year of service below twenty-five (25) years of

295 creditable service, whichever is lesser.

296 (e) Upon retiring for service, a member shall be
297 eligible to obtain retirement benefits, as computed above, for
298 life, except that the aggregate amount of the employer's annuity
299 and prior service annuity shall not exceed more than eighty-five
300 percent (85%) of the average compensation regardless of the years
301 of service.

302 SECTION 10. (1) Retired members who on December 1 of each
303 year, or July 1 of each year as provided for in subsection (5) of
304 this section, are receiving a retirement allowance for service or
305 disability retirement, or their beneficiaries, shall receive in
306 one (1) additional payment an amount equal to a cumulative
307 percentage of the annual percentage increase in the Consumer Price
308 Index set by the United States Government for the calendar year
309 ending during each fiscal year for each full fiscal year of
310 retirement, not exceeding two and one-half percent (2-1/2%) for
311 any fiscal year, times the amount of the annual retirement
312 allowance. The cumulative percentage provided in this subsection
313 for any particular year shall not be less than the cumulative
314 percentage provided for the previous year.

315 (2) Retired members who on December 1 of each year are
316 receiving a retirement allowance for service or disability
317 retirement, or their beneficiaries, may receive, in addition to
318 the cumulative percentage provided in subsection (1) of this
319 section, a payment as determined by the board, calculated in
320 increments of one-quarter of one percent (1/4 of 1%), not to
321 exceed one and one-half percent (1-1/2%) of the annual retirement
322 allowance, for each full fiscal year of retirement, but any such
323 payment shall be contingent upon the reserve for annuities in
324 force for retired members and beneficiaries providing sufficient
325 investment gains in excess of the accrued actuarial liabilities
326 for the previous fiscal year as certified by the actuary and
327 determined by the board.

328 (3) The percentages in this section shall be based on each
329 full fiscal year that the retired member or beneficiary has
330 actually drawn retirement payments from the date of retirement, or
331 the date of last retirement if there is more than one (1)
332 retirement date.

333 (4) Persons eligible to receive the payments provided in
334 this section shall receive the payments in one (1) additional
335 payment, except that the person may elect by an irrevocable
336 agreement on a form prescribed by the board to receive the
337 payments in not less than equal monthly installments not to exceed
338 six (6) months during the remaining months of the current fiscal
339 year. In the event of death of a person or a beneficiary
340 receiving monthly benefits, any remaining amounts shall be paid in
341 a lump sum to the designated beneficiary.

342 (5) Retired members or beneficiaries thereof who on July 1
343 of any fiscal year are receiving a retirement allowance may elect
344 by an irrevocable agreement in writing filed in the office of the
345 Public Employees' Retirement System no less than thirty (30) days
346 before July 1 of the appropriate year, to begin receiving the
347 payments provided for in subsection (1) of this section in twelve
348 (12) equal installments beginning on July 1. This irrevocable
349 agreement shall be binding on the member and subsequent
350 beneficiaries. The cumulative percentage provided in subsection
351 (1) of this section and paid in twelve (12) equal installments for
352 any particular year shall not be less than the cumulative
353 percentage provided for the previous year. However, payment of
354 the installments shall not extend beyond the month in which a
355 retirement allowance is due and payable. Any additional amounts
356 approved by the board under subsection (2) of this section shall
357 be paid in one (1) lump sum payment to retirees and beneficiaries
358 in accordance with subsection (2) of this section.

359 SECTION 11. (1) Upon the death of any member who has
360 retired for service or disability and who has not elected any

361 other option under Section 12 of this act, the member's spouse
362 shall receive one-half (1/2) the benefit that the member was
363 receiving and each child not having attained the age of nineteen
364 (19) years shall receive one-fourth (1/4) of the member's benefit,
365 but not more than one-half (1/2) of the benefits shall be paid for
366 the support and maintenance of two (2) or more children. Upon
367 each child's attaining the age of nineteen (19) years, the child
368 shall no longer be eligible for the benefit, and when all of the
369 children have attained the age of nineteen (19) years, only the
370 spouse shall be eligible for one-half (1/2) of the amount of the
371 member's benefit. The spouse shall continue to be eligible for
372 the benefit in the amount of fifty percent (50%) of the member's
373 retirement benefit as long as the spouse may live or until
374 remarriage. Upon remarriage of the spouse at any time, the
375 spouse's eligibility for the fifty percent (50%) benefits shall
376 end, but the spouse will be eligible to continue to receive
377 benefits for their children until the last child attains the age
378 of nineteen (19) years.

379 (2) Upon the death of any member who has served the minimum
380 period required for eligibility for retirement, the member's
381 spouse and family shall receive all the benefits payable to the
382 member's beneficiaries as if the member had retired at the time of
383 death. Those benefits shall cease as to the spouse upon
384 remarriage but shall continue to be payable to each child until he
385 reaches the age of nineteen (19) years. The benefits are payable
386 on a monthly basis.

387 (3) The spouse and/or the dependent children of an active
388 member who is killed in the line of performance of duty or dies as
389 a direct result of an accident occurring in the line of
390 performance of duty shall qualify, on approval of the board, for a
391 retirement allowance on the first of the month following the date
392 of the member's death, but not before receipt of application by
393 the board. The spouse shall receive a retirement allowance equal

394 to one-half (1/2) of the average compensation of the deceased
395 member. In addition to the retirement allowance for the spouse,
396 or if there is no surviving spouse, a retirement allowance shall
397 be paid in the amount of one-fourth (1/4) of the average
398 compensation for the support and maintenance of one (1) child or
399 in the amount of one-half (1/2) of the average compensation for
400 the support and maintenance of two (2) or more children. Those
401 benefits shall cease to be paid for the support and maintenance of
402 each child upon the child attaining the age of nineteen (19)
403 years; however, the spouse shall continue to be eligible for the
404 retirement allowance provided for the spouse. Benefits may be
405 paid to a surviving parent or lawful custodian of the children for
406 the use and benefit of the children without the necessity of
407 appointment as guardian. That retirement allowance shall cease to
408 the spouse upon remarriage but continue to be payable for each
409 dependent child until the age of nineteen (19) years.

410 (4) All benefits accruing to any child under the provisions
411 of this act shall be paid to the parent custodian of the children
412 or the legal guardian.

413 (5) Children receiving the benefits provided in this section
414 who are permanently or totally disabled shall continue to receive
415 the benefits for as long as the medical board or other designated
416 governmental agency certifies that the disability continues. The
417 age limitation for benefits payable to a child under any provision
418 of this section shall be extended beyond age nineteen (19), but in
419 no event beyond the attainment of age twenty-three (23), as long
420 as the child is a student regularly pursuing a full-time course of
421 resident study or training in an accredited high school, trade
422 school, technical or vocational institute, junior or community
423 college, college, university or comparable recognized educational
424 institution duly licensed by a state. A student child whose
425 birthday falls during the school year (September 1 through June
426 30) is considered not to reach age twenty-three (23) until the

427 July 1 following the actual twenty-third birthday. A full-time
428 course of resident study or training means a day or evening
429 noncorrespondence course that includes school attendance at the
430 rate of a least thirty-six (36) weeks, per academic year or other
431 applicable period with a subject load sufficient, if successfully
432 completed, to attain the educational or training objective within
433 the period generally accepted as minimum for completion, by a
434 full-time day student, of the academic or training program
435 concerned.

436 SECTION 12. (1) Upon application for superannuation or
437 disability retirement, any member may elect to receive his benefit
438 pursuant to the provisions of Sections 9 and 11 of this act or may
439 elect to receive his benefit in a retirement allowance payable
440 throughout life with no further payments to anyone at his death,
441 except that if his total retirement payments under this act do not
442 equal his total contributions under this act, his named
443 beneficiary shall receive the difference in cash at his death. As
444 an alternative, he may elect upon retirement, or upon becoming
445 eligible for retirement, to receive the actuarial equivalent of
446 his retirement allowance in a reduced retirement allowance payable
447 throughout life with the provision that:

448 **Option 1.** If he dies before he has received in annuity
449 payment the value of the member's annuity as it was at the time of
450 his retirement, the balance shall be paid to his legal
451 representative or to such person as he has nominated by written
452 designation duly acknowledged and filed with the board; or

453 **Option 2.** Upon his death, his reduced retirement allowance
454 shall be continued throughout the life of, and paid to, such
455 person as he has nominated by written designation duly
456 acknowledged and filed with the board at the time of his
457 retirement; or

458 **Option 3.** Upon his death, one half (1/2) of his reduced
459 retirement allowance shall be continued throughout the life of,

460 and paid to, such person as he has nominated by written
461 designation duly acknowledged and filed with the board at the time
462 of his retirement, and the other one half (1/2) of his reduced
463 retirement allowance to some other designated beneficiary; or

464 **Option 4-A.** Upon his death, one half (1/2) of his reduced
465 retirement allowance, or such other specified amount, shall be
466 continued throughout the life of, and paid to, such person as he
467 has nominated by written designation duly acknowledged and filed
468 with the board at the time of his retirement; or

469 **Option 4-B.** A reduced retirement allowance shall be
470 continued throughout the life of the retirant, but with the
471 further guarantee of payments to the named beneficiary,
472 beneficiaries or to the estate for a specified number of years
473 certain. If the retired member or the last designated beneficiary
474 receiving annuity payments dies before receiving all guaranteed
475 payments due, the actuarial equivalent of the remaining payments
476 will be paid to the estate of the retired member as intestate
477 property.

478 **Option 4-C.** The retirement allowance otherwise payable may
479 be converted into a retirement allowance of equivalent actuarial
480 value in such an amount that, with the member's benefit under
481 Title II of the Federal Social Security Act, the member will
482 receive, so far as possible, approximately the same amount
483 annually before and after the earliest age at which the member
484 becomes eligible to receive a social security benefit.

485 (2) Any member in service who has qualified for retirement
486 benefits may select any optional method of settlement of
487 retirement benefits by notifying the executive director of the
488 system in writing, on a form prescribed by the board, of the
489 option he has selected and by naming the beneficiary of the option
490 and furnishing necessary proof of age. The option, once selected,
491 may be changed at any time before actual retirement or death, but
492 upon the death or retirement of the member, the optional

493 settlement shall be placed in effect upon proper notification to
494 the executive director.

495 (3) No change in the option selected shall be permitted
496 after the member's death or after the member has received his
497 first retirement check, except as provided in subsections (4) and
498 (5) of this section and in Section 16 of this act.

499 (4) Any retired member who is receiving a reduced retirement
500 allowance under Option 2 or Option 4-A whose designated
501 beneficiary predeceases him, or whose marriage to a spouse who is
502 his designated beneficiary is terminated by divorce or other
503 dissolution, may elect to cancel his reduced retirement allowance
504 and receive the maximum retirement allowance for life in an amount
505 equal to the amount that would have been payable if the member had
506 not elected Option 2 or Option 4-A. The election must be made in
507 writing to the office of the executive director of the system on a
508 form prescribed by the board. Any such election shall be
509 effective the first of the month following the date the election
510 is received by the system.

511 (5) Any retired member who is receiving the maximum
512 retirement allowance for life, or a retirement allowance under
513 Option 1, and who marries after his retirement may elect to cancel
514 his maximum retirement allowance or Option 1 retirement allowance
515 and receive a reduced retirement allowance under Option 2 or
516 Option 4-A to provide continuing lifetime benefits to his spouse.
517 The election must be made in writing to the office of the
518 executive director of the system on a form prescribed by the board
519 not earlier than the date of the marriage. Any such election
520 shall be effective the first of the month following the date the
521 election is received by the system. The amount of the reduced
522 retirement allowance shall be the actuarial equivalent, taking
523 into account that the member received the maximum retirement
524 allowance or Option 1 retirement allowance for a period of time
525 before electing to receive a reduced retirement allowance.

526 (6) If the election of an optional benefit is made after the
527 member has attained the age of sixty-five (65) years, the
528 actuarial equivalent factor shall be used to compute the reduced
529 retirement allowance as if the election had been made on his
530 sixty-fifth birthday. However, if a retiree marries or remarries
531 after retirement, and elects either Option 2 or Option 4-A as
532 provided in subsection (5) of this section, the actuarial
533 equivalent factor used to compute the reduced retirement allowance
534 shall be the factor for the age of the retiree and his or her
535 beneficiary at the time that the election for recalculation of
536 benefits is made.

537 (7) If a retirant and his eligible beneficiary, if any, both
538 die before they have received in annuity payments a total amount
539 equal to the accumulated contributions standing to the retirant's
540 credit in the annuity savings account at the time of his
541 retirement, the difference between the accumulated contributions
542 and the total amount of annuities received by them shall be paid
543 to such persons as the retirant has nominated by written
544 designation duly executed and filed in the office of the executive
545 director. If no designated person survives the retirant and his
546 beneficiary, the difference, if any, shall be paid to the estate
547 of the survivor of the retirant and his beneficiary.

548 SECTION 13. (1) All persons who are covered under the terms
549 of this act on October 1, 2000, and who become members of the
550 retirement system established by this act shall cease to be
551 members of the Public Employees' Retirement System under the
552 provisions of Section 25-11-101 et seq. upon October 1, 2000, and
553 shall become members of this retirement system with full credit
554 for all prior service performed before October 1, 2000, for which
555 contributions were made to the Public Employees' Retirement
556 System.

557 (2) In any case in which a sheriff has been a member of the
558 Public Employees' Retirement System under Section 25-11-101 et

559 seq. and has made contributions thereto, all employee's
560 contributions, plus interest credited thereto, inuring to the
561 credit of that person shall be transferred by the Public
562 Employees' Retirement System to the credit of the person in the
563 retirement system established by this act, and shall be considered
564 an asset to the credit of that person in this retirement system.

565 SECTION 14. If a member of the retirement system ceases to
566 work as a sheriff for any reason other than occupational disease
567 contracted or for any accident sustained by the member by reason
568 of his service or discharge of his duties as a sheriff, and if the
569 member is not eligible for retirement either for service or
570 disability, he shall be refunded the amount of his total
571 contributions under the provisions of this act, including any
572 credit transferred to his account in this system from any other
573 system, at his request, and if he dies before retirement, those
574 funds shall be refunded to any beneficiary that he has named.

575 If any member who receives a refund reenters service as a
576 sheriff and again becomes a member of the system and remains a
577 contributor for four (4) years, he may repay all amounts
578 previously received by him as a refund, together with regular
579 interest covering the period from the date of refund to the date
580 of repayment. Upon that repayment, the member again shall receive
581 credit for the entire period of creditable service that he
582 forfeited upon the receipt of the refund.

583 SECTION 15. Regular interest shall be credited annually to
584 the mean amount of the employee reserve account for the preceding
585 year. This credit shall be made annually from interest and other
586 earnings on the invested assets of the system. Any additional
587 amount required to meet the regular interest on the funds of the
588 system shall be charged to the employer's accumulation account,
589 and any excess of earnings over the regular interest required
590 shall be credited to the employer's accumulation account. Regular
591 interest shall mean such percentage rate of interest compounded

592 annually as determined by the board on the basis of the interest
593 earnings of the system for the preceding year. Once that interest
594 is credited it shall be added to the sum of all amounts deducted
595 from the compensation of a member and shall be included in
596 determining his total contributions.

597 SECTION 16. No person who is being paid a retirement
598 allowance from this system shall serve or be paid for any service
599 as a sheriff. If any member retired under this act returns to
600 service as a sheriff, the retirement allowance shall cease and the
601 member shall become a contributing member of the system and shall
602 be credited with all creditable service at the time of the
603 previous withdrawal of service on a retirement allowance. The
604 retirement allowance payable upon subsequent retirement shall be
605 based on the total creditable service rendered before and after
606 return to service. The total retirement allowance paid to the
607 retired member in his previous retirement shall be deducted from
608 his retirement reserve and taken into consideration in
609 recalculating the retirement allowance.

610 SECTION 17. The right of a person to an annuity, a
611 retirement allowance or benefit, or to the return of
612 contributions, or to any optional benefits or any other right
613 accrued or accruing to any person under the provisions of this
614 act, the system and the moneys in the system created by this act,
615 are exempt from any state, county or municipal ad valorem taxes,
616 income taxes, premium taxes, privilege taxes, property taxes,
617 sales and use taxes or other taxes not so named, notwithstanding
618 any other provision of law to the contrary, and exempt from levy
619 and sale, garnishment, attachment, or any other process
620 whatsoever, and shall be unassignable except as specifically
621 provided otherwise in this act.

622 SECTION 18. (1) The maintenance of actuarial reserves for
623 the various allowances and benefits under this act, and the
624 payment of all annuities, retirement allowances, refunds and other

625 benefits granted under this act are made obligation of the system.
626 All income, interest and dividends derived from deposits and
627 investments authorized by this act shall be used for the payment
628 of the obligations of the system.

629 (2) If the system is terminated, all members of the system
630 as of the date of termination of the system shall be deemed to
631 have a vested right to benefits to the extent and in the same
632 manner that rights would be vested under the laws existing as of
633 the date of termination of the system. However, any member who
634 has not fulfilled the requirements for length of service because
635 of a termination of the system shall be entitled to compensation
636 as of the date that the member would otherwise be eligible. That
637 compensation shall be computed on the basis of the time he was
638 actually a member of the system and the compensation he actually
639 earned during the time he was a member, in the manner provided by
640 this act.

641 If there is a deficit in the availability of funds for
642 payment due under the provisions of the system, an appropriation
643 shall be made that is sufficient for the payment thereof, as an
644 obligation of the State of Mississippi.

645 (3) Notwithstanding any provisions of this section or this
646 act to the contrary, the maximum annual retirement allowance
647 attributable to the employer contributions payable by the system
648 to a member shall be subject to the limitations set forth in
649 Section 415 of the Internal Revenue Code and any regulations
650 issued thereunder as applicable to governmental plans as that term
651 is defined under Section 414(d) of the Internal Revenue Code. If
652 a member is a participant in any qualified defined contribution
653 plan required to be taken into account for purposes of applying
654 the combined plan limitations contained in Section 415(e) of the
655 Internal Revenue Code, then for any year the sum of the defined
656 benefit plan fraction and the defined contribution plan fraction,
657 as those terms are defined in Section 415(e), shall not exceed one

658 (1.0). If for any year the foregoing combined plan limitation
659 would be exceeded, the benefit provided under this plan shall be
660 reduced to the extent necessary to meet that limitation.

661 (4) Notwithstanding any other provision of this plan, all
662 distributions from this plan shall conform to the regulations
663 issued under Section 401(a)(9) of the Internal Revenue Code,
664 applicable to governmental plans, as defined in Section 414(d) of
665 the Internal Revenue Code, including the incidental death benefit
666 provisions of Section 401(a)(9)(G) of the Internal Revenue Code.
667 Further, those regulations shall override any plan provision that
668 is inconsistent with Section 401(a)(9) of the Internal Revenue
669 Code.

670 (5) The actuarial assumptions used to convert a retirement
671 allowance from the normal form of payment to an optional form of
672 payment shall be an appendix to this act and subject to approval
673 by the board of trustees based upon certification by the actuary.

674 (6) Notwithstanding any other provision of this plan, the
675 maximum compensation that can be considered for all plan purposes
676 is One Hundred Fifty Thousand Dollars (\$150,000.00) per year,
677 adjusted annually to reflect changes in the cost of living to
678 conform to the regulations issued under Section 401(a)(17) of the
679 Internal Revenue Code.

680 SECTION 19. Section 25-11-105, Mississippi Code of 1972, is
681 amended as follows:[RF1]

682 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

683 The membership of this retirement system shall be composed as
684 follows:

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

691 (b) All persons who shall become employees in the state
692 service after January 31, 1953, except those specifically excluded
693 or as to whom election is provided in Articles 1 and 3, unless
694 they shall file with the board prior to the lapse of sixty (60)
695 days of employment or sixty (60) days after the effective date of
696 the cited articles, whichever is later, on a form prescribed by
697 the board, a notice of election not to be covered by the
698 membership of the retirement system and a duly executed waiver of
699 all present and prospective benefits which would otherwise inure
700 to them on account of their participation in the system, shall
701 become members of the retirement system; provided, however, that
702 no credit for prior service will be granted to members until they
703 have contributed to Article 3 of the retirement system for a
704 minimum period of at least four (4) years. Such members shall
705 receive credit for services performed prior to January 1, 1953, in
706 employment now covered by Article 3, but no credit shall be
707 granted for retroactive services between January 1, 1953, and the
708 date of their entry into the retirement system unless the employee
709 pays into the retirement system both the employer's and the
710 employee's contributions on wages paid him during the period from
711 January 31, 1953, to the date of his becoming a contributing
712 member, together with interest at the rate determined by the board
713 of trustees. Members reentering after withdrawal from service
714 shall qualify for prior service under the provisions of Section
715 25-11-117. From and after July 1, 1998, upon eligibility as noted
716 above, the member may receive credit for such retroactive service
717 provided:

718 (1) The member shall furnish proof satisfactory to
719 the board of trustees of certification of such service from the
720 covered employer where the services were performed; and

721 (2) The member shall pay to the retirement system
722 on the date he or she is eligible for such credit or at any time
723 thereafter prior to the date of retirement the actuarial cost for

724 each year of such creditable service. The provisions of this
725 subparagraph (2) shall be subject to the limitations of Section
726 415 of the Internal Revenue Code and regulations promulgated
727 thereunder.

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

732 (c) All persons who shall become employees in the state
733 service after January 31, 1953, and who are eligible for
734 membership in any other retirement system shall become members of
735 this retirement system as a condition of their employment unless
736 they elect at the time of their employment to become a member of
737 such other system.

738 (d) All persons who are employees in the state service
739 on January 31, 1953, and who are members of any nonfunded
740 retirement system operated by the State of Mississippi, or any of
741 its departments or agencies, shall become members of this system
742 with prior service credit unless, before February 1, 1953, they
743 shall file a written notice with the board of trustees that they
744 do not elect to become members.

745 (e) All persons who are employees in the state service
746 on January 31, 1953, and who under existing laws are members of
747 any fund operated for the retirement of employees by the State of
748 Mississippi, or any of its departments or agencies, shall not be
749 entitled to membership in this retirement system unless, before
750 February 1, 1953, any such person shall indicate by a notice filed
751 with the board, on a form prescribed by the board, his individual
752 election and choice to participate in this system, but no such
753 person shall receive prior service credit unless he becomes a
754 member on or before February 1, 1953.

755 (f) Each political subdivision of the state and each
756 instrumentality of the state or a political subdivision, or both,

757 is hereby authorized to submit, for approval by the board of
758 trustees, a plan for extending the benefits of this article to
759 employees of any such political subdivision or instrumentality.
760 Each such plan or any amendment to the plan for extending benefits
761 thereof shall be approved by the board of trustees if it finds
762 that such plan, or such plan as amended, is in conformity with
763 such requirements as are provided in Articles 1 and 3; however,
764 upon approval of such plan or any such plan heretofore approved by
765 the board of trustees, the approved plan shall not be subject to
766 cancellation or termination by the political subdivision or
767 instrumentality. No such plan shall be approved unless:

768 (1) It provides that all services which constitute
769 employment as defined in Section 25-11-5 and are performed in the
770 employ of the political subdivision or instrumentality, by any
771 employees thereof, shall be covered by the plan; with the
772 exception of municipal employees who are already covered by
773 existing retirement plans; provided, however, those employees in
774 this class may elect to come under the provisions of this article;

775 (2) It specifies the source or sources from which
776 the funds necessary to make the payments required by subsection
777 (d) of Section 25-11-123 and of subsections (f)(5)b and c of this
778 section are expected to be derived and contains reasonable
779 assurance that such sources will be adequate for such purpose;

780 (3) It provides for such methods of administration
781 of the plan by the political subdivision or instrumentality as are
782 found by the board of trustees to be necessary for the proper and
783 efficient administration thereof;

784 (4) It provides that the political subdivision or
785 instrumentality will make such reports, in such form and
786 containing such information, as the board of trustees may from
787 time to time require;

788 (5) It authorizes the board of trustees to
789 terminate the plan in its entirety in the discretion of the board

790 if it finds that there has been a failure to comply substantially
791 with any provision contained in such plan, such termination to
792 take effect at the expiration of such notice and on such
793 conditions as may be provided by regulations of the board and as
794 may be consistent with applicable federal law.

795 A. The board of trustees shall not finally
796 refuse to approve a plan submitted under subsection (f), and shall
797 not terminate an approved plan without reasonable notice and
798 opportunity for hearing to each political subdivision or
799 instrumentality affected thereby. The board's decision in any
800 such case shall be final, conclusive and binding unless an appeal
801 be taken by the political subdivision or instrumentality aggrieved
802 thereby to the Circuit Court of Hinds County, Mississippi, in
803 accordance with the provisions of law with respect to civil causes
804 by certiorari.

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

812 C. Every political subdivision or
813 instrumentality required to make payments under subsection (f)(5)b
814 hereof is authorized, in consideration of the employees' retention
815 in or entry upon employment after enactment of Articles 1 and 3,
816 to impose upon its employees, as to services which are covered by
817 an approved plan, a contribution with respect to wages (as defined
818 in Section 25-11-5) not exceeding the amount provided in Section
819 25-11-123(d) if such services constituted employment within the
820 meaning of Articles 1 and 3, and to deduct the amount of such
821 contribution from the wages as and when paid. Contributions so
822 collected shall be paid into the contribution fund as partial

823 discharge of the liability of such political subdivisions or
824 instrumentality under subsection (f)(5)b hereof. Failure to
825 deduct such contribution shall not relieve the employee or
826 employer of liability thereof.

827 D. Any state agency, school, political
828 subdivision, instrumentality or any employer that is required to
829 submit contribution payments or wage reports under any section of
830 this chapter shall be assessed interest on delinquent payments or
831 wage reports as determined by the board of trustees in accordance
832 with rules and regulations adopted by the board and such assessed
833 interest may be recovered by action in a court of competent
834 jurisdiction against such reporting agency liable therefor or may,
835 upon due certification of delinquency and at the request of the
836 board of trustees, be deducted from any other monies payable to
837 such reporting agency by any department or agency of the state.

838 E. Each political subdivision of the state
839 and each instrumentality of the state or a political subdivision
840 or subdivisions which submits a plan for approval of the board, as
841 provided in this section, shall reimburse the board for coverage
842 into the expense account, its pro rate share of the total expense
843 of administering Articles 1 and 3 as provided by regulations of
844 said board.

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

851 (h) An employee whose membership in this system is
852 contingent on his own election, and who elects not to become a
853 member, may thereafter apply for and be admitted to membership;
854 but no such employee shall receive prior service credit unless he
855 becomes a member prior to July 1, 1953, except as provided in

856 subsection (b).

857 (i) In the event any member of this system should
858 change his employment to any agency of the state having an
859 actuarially funded retirement system, the board of trustees may
860 authorize the transfer of the member's creditable service and of
861 the present value of the member's employer's accumulation account
862 and of the present value of the member's accumulated membership
863 contributions to such other system, provided the employee agrees
864 to the transfer of his accumulated membership contributions and
865 provided such other system is authorized to receive and agrees to
866 make such transfer.

867 In the event any member of any other actuarially funded
868 system maintained by an agency of the state changes his employment
869 to an agency covered by this system, the board of trustees may
870 authorize the receipt of the transfer of the member's creditable
871 service and of the present value of the member's employer's
872 accumulation account and of the present value of the member's
873 accumulated membership contributions from such other system,
874 provided the employee agrees to the transfer of his accumulated
875 membership contributions to this system and provided the other
876 system is authorized and agrees to make such transfer.

877 (j) If any member of this system is a sheriff who
878 elects to become a member of the Sheriffs' Retirement System or by
879 virtue of his elective office becomes a member of the Sheriffs'
880 Retirement System, the board shall transfer the member's
881 creditable service and the present value of the member's
882 employer's accumulation account and the present value of the
883 member's accumulated membership contribution to the Sheriffs'
884 Retirement System.

885 (k) Wherever herein state employment is referred to, it
886 shall include joint employment by state and federal agencies of
887 all kinds.

888 (l) Employees of a political subdivision or

889 instrumentality who were employed by such political subdivision or
890 instrumentality prior to an agreement between such entity and the
891 Public Employees' Retirement System to extend the benefits of this
892 article to its employees, and which agreement provides for the
893 establishment of retroactive service credit, and who have been
894 members of the retirement system and have remained contributors to
895 the retirement system for four (4) years, may receive credit for
896 such retroactive service with such political subdivision or
897 instrumentality, provided the employee and/or employer, as
898 provided under the terms of the modification of the joinder
899 agreement in allowing such coverage, pay into the retirement
900 system the employer's and employee's contributions on wages paid
901 the member during such previous employment, together with interest
902 or actuarial cost as determined by the board covering the period
903 from the date the service was rendered until the payment for the
904 credit for such service was made. Such wages shall be verified by
905 the Social Security Administration or employer payroll records.
906 Effective July 1, 1998, upon eligibility as noted above, a member
907 may receive credit for such retroactive service with such
908 political subdivision or instrumentality provided:

909 (1) The member shall furnish proof satisfactory to
910 the board of trustees of certification of such services from the
911 political subdivision or instrumentality where the services were
912 rendered or verification by the Social Security Administration;
913 and

914 (2) The member shall pay to the retirement system
915 on the date he or she is eligible for such credit or at any time
916 thereafter prior to the date of retirement the actuarial cost for
917 each year of such creditable service. The provisions of this
918 subparagraph (2) shall be subject to the limitations of Section
919 415 of the Internal Revenue Code and regulations promulgated
920 thereunder.

921 Nothing contained in this paragraph (k) shall be construed to

922 limit the authority of the board to allow the correction of
923 reporting errors or omissions based on the payment of employee and
924 employer contributions plus applicable interest. Payment for such
925 time shall be made in increments of not less than one-quarter
926 (1/4) year of creditable service beginning with the most recent
927 service. Upon the payment of all or part of such required
928 contributions, plus interest or the actuarial cost as provided
929 above, the member shall receive credit for the period of
930 creditable service for which full payment has been made to the
931 retirement system.

932 (m) Through June 30, 1998, any state service eligible
933 for retroactive service credit, no part of which has ever been
934 reported, and requiring the payment of employee and employer
935 contributions plus interest, or, from and after July 1, 1998, any
936 state service eligible for retroactive service credit, no part of
937 which has ever been reported to the retirement system, and
938 requiring the payment of the actuarial cost for such creditable
939 service, may, at the member's option, be purchased in quarterly
940 increments as provided above at such time as its purchase is
941 otherwise allowed.

942 (n) All rights to purchase retroactive service credit
943 or repay a refund as provided in Section 25-11-101 et seq. shall
944 terminate upon retirement.

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

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

949 (a) Patient or inmate help in state charitable, penal
950 or correctional institutions;

951 (b) Students of any state educational institution
952 employed by any agency of the state for temporary, part-time or
953 intermittent work;

954 (c) Participants of Comprehensive Employment and

955 Training Act of 1973 (CETA) being Public Law 93-203, who enroll on
956 or after July 1, 1979.

957 **III. TERMINATION OF MEMBERSHIP**

958 Membership in this system shall cease by a member withdrawing
959 his accumulated contributions, or by a member withdrawing from
960 active service with a retirement allowance, or by a member's
961 death.

962 SECTION 20. This act shall take effect and be in force from
963 and after October 1, 2000.