

By: Representative Eads

To: Appropriations

HOUSE BILL NO. 1242

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
 2 25-11-126, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN
 3 PERSONS RECEIVING A RETIREMENT ALLOWANCE FROM THE PUBLIC
 4 EMPLOYEES' RETIREMENT SYSTEM WHO ARE EMPLOYED IN STATE SERVICE IN
 5 ANOTHER AGENCY OR IN A DIFFERENT AGENCY AFTER THEIR RETIREMENT,
 6 MAY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT IN
 7 STATE SERVICE IN ADDITION TO RECEIVING A SALARY; TO PROVIDE THAT
 8 THOSE PERSONS SHALL NOT BE CONTRIBUTING MEMBERS OF THE RETIREMENT
 9 SYSTEM NOR RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING
 10 WHICH THEY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT;
 11 TO AMEND SECTIONS 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF
 12 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR
 13 RELATED PURPOSES.

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

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

17 25-11-126. (1) (a) Any person who has completed
 18 twenty-five (25) or more years of creditable service and who has
 19 received a retirement allowance under this article for at least
 20 one (1) month, may choose to continue receiving the retirement
 21 allowance under this article and be employed:

22 (i) In state service by a different agency than
 23 the one from which he retired, or

24 (ii) By the agency from which he retired in a
 25 position different from the one he held at the time of his
 26 retirement.

27 (2) Any person described in subsection (1) of this section
 28 shall notify the executive director of the retirement system,
 29 before being employed, about his choice on continuing to receive
 30 the retirement allowance during his employment. If the person
 31 chooses not to continue receiving the retirement allowance during
 32 his employment, the retirement allowance shall cease on the day



33 that he begins employment after his retirement. After the person
34 leaves employment that he began after his retirement, in order to
35 begin receiving a retirement allowance under this article again,
36 the person shall make application to the executive director of the
37 retirement system, and the retirement allowance shall begin on the
38 first of the month following the date that the application is
39 received by the executive director.

40 (3) Any person to whom this section applies who continues to
41 receive a retirement allowance under this article during his
42 employment shall not be a contributing member of the retirement
43 system nor receive any creditable service for the period during
44 which he receives a retirement allowance during his employment.
45 Any person to whom this section applies who chooses not to receive
46 a retirement allowance during his employment shall be a
47 contributing member of the retirement system and shall receive
48 creditable service for the period during which he is employed as a
49 teacher without receiving a retirement allowance. If the person
50 has previously received a retirement allowance under this article
51 and he is employed for more than six (6) months without receiving
52 a retirement allowance, he shall have his allowance recomputed
53 when he retires again, which shall include the service after he
54 again became a contributing member of the retirement system.

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

57 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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



66 during their employment as authorized by Section 25-11-126, shall
67 become members of the retirement system as a condition of their
68 employment.

69 (b) All persons who shall become employees in the state
70 service after January 31, 1953, except those specifically excluded
71 or as to whom election is provided in Articles 1 and 3, unless
72 they shall file with the board prior to the lapse of sixty (60)
73 days of employment or sixty (60) days after the effective date of
74 the cited articles, whichever is later, on a form prescribed by
75 the board, a notice of election not to be covered by the
76 membership of the retirement system and a duly executed waiver of
77 all present and prospective benefits which would otherwise inure
78 to them on account of their participation in the system, shall
79 become members of the retirement system; provided, however, that
80 no credit for prior service will be granted to members until they
81 have contributed to Article 3 of the retirement system for a
82 minimum period of at least four (4) years. Such members shall
83 receive credit for services performed prior to January 1, 1953, in
84 employment now covered by Article 3, but no credit shall be
85 granted for retroactive services between January 1, 1953, and the
86 date of their entry into the retirement system unless the employee
87 pays into the retirement system both the employer's and the
88 employee's contributions on wages paid him during the period from
89 January 31, 1953, to the date of his becoming a contributing
90 member, together with interest at the rate determined by the board
91 of trustees. Members reentering after withdrawal from service
92 shall qualify for prior service under the provisions of Section
93 25-11-117. From and after July 1, 1998, upon eligibility as noted
94 above, the member may receive credit for such retroactive service
95 provided:

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



99 (2) The member shall pay to the retirement system
100 on the date he or she is eligible for such credit or at any time
101 thereafter prior to the date of retirement the actuarial cost for
102 each year of such creditable service. The provisions of this
103 subparagraph (2) shall be subject to the limitations of Section
104 415 of the Internal Revenue Code and regulations promulgated
105 thereunder.

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

110 (c) All persons who shall become employees in the state
111 service after January 31, 1953, and who are eligible for
112 membership in any other retirement system shall become members of
113 this retirement system as a condition of their employment unless
114 they elect at the time of their employment to become a member of
115 such other system.

116 (d) All persons who are employees in the state service
117 on January 31, 1953, and who are members of any nonfunded
118 retirement system operated by the State of Mississippi, or any of
119 its departments or agencies, shall become members of this system
120 with prior service credit unless, before February 1, 1953, they
121 shall file a written notice with the board of trustees that they
122 do not elect to become members.

123 (e) All persons who are employees in the state service
124 on January 31, 1953, and who under existing laws are members of
125 any fund operated for the retirement of employees by the State of
126 Mississippi, or any of its departments or agencies, shall not be
127 entitled to membership in this retirement system unless, before
128 February 1, 1953, any such person shall indicate by a notice filed
129 with the board, on a form prescribed by the board, his individual
130 election and choice to participate in this system, but no such



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

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

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

160 (2) It specifies the source or sources from which
161 the funds necessary to make the payments required by paragraph (d)
162 of Section 25-11-123 and of paragraph (f) (5)B and C of this



163 section are expected to be derived and contains reasonable
164 assurance that such sources will be adequate for such purpose;

165 (3) It provides for such methods of administration
166 of the plan by the political subdivision or instrumentality as are
167 found by the board of trustees to be necessary for the proper and
168 efficient administration thereof;

169 (4) It provides that the political subdivision or
170 instrumentality will make such reports, in such form and
171 containing such information, as the board of trustees may from
172 time to time require;

173 (5) It authorizes the board of trustees to
174 terminate the plan in its entirety in the discretion of the board
175 if it finds that there has been a failure to comply substantially
176 with any provision contained in such plan, such termination to
177 take effect at the expiration of such notice and on such
178 conditions as may be provided by regulations of the board and as
179 may be consistent with applicable federal law.

180 A. The board of trustees shall not finally
181 refuse to approve a plan submitted under paragraph (f), and shall
182 not terminate an approved plan without reasonable notice and
183 opportunity for hearing to each political subdivision or
184 instrumentality affected thereby. The board's decision in any
185 such case shall be final, conclusive and binding unless an appeal
186 be taken by the political subdivision or instrumentality aggrieved
187 thereby to the Circuit Court of Hinds County, Mississippi, in
188 accordance with the provisions of law with respect to civil causes
189 by certiorari.

190 B. Each political subdivision or
191 instrumentality as to which a plan has been approved under this
192 section shall pay into the contribution fund, with respect to
193 wages (as defined in Section 25-11-5), at such time or times as
194 the board of trustees may by regulation prescribe, contributions



195 in the amounts and at the rates specified in the applicable
196 agreement entered into by the board.

197 C. Every political subdivision or
198 instrumentality required to make payments under paragraph (f) (5)B
199 hereof is authorized, in consideration of the employees' retention
200 in or entry upon employment after enactment of Articles 1 and 3,
201 to impose upon its employees, as to services which are covered by
202 an approved plan, a contribution with respect to wages (as defined
203 in Section 25-11-5) not exceeding the amount provided in Section
204 25-11-123(d) if such services constituted employment within the
205 meaning of Articles 1 and 3, and to deduct the amount of such
206 contribution from the wages as and when paid. Contributions so
207 collected shall be paid into the contribution fund as partial
208 discharge of the liability of such political subdivisions or
209 instrumentalities under paragraph (f) (5)B hereof. Failure to
210 deduct such contribution shall not relieve the employee or
211 employer of liability thereof.

212 D. Any state agency, school, political
213 subdivision, instrumentality or any employer that is required to
214 submit contribution payments or wage reports under any section of
215 this chapter shall be assessed interest on delinquent payments or
216 wage reports as determined by the board of trustees in accordance
217 with rules and regulations adopted by the board and such assessed
218 interest may be recovered by action in a court of competent
219 jurisdiction against such reporting agency liable therefor or may,
220 upon due certification of delinquency and at the request of the
221 board of trustees, be deducted from any other monies payable to
222 such reporting agency by any department or agency of the state.

223 E. Each political subdivision of the state
224 and each instrumentality of the state or a political subdivision
225 or subdivisions which submits a plan for approval of the board, as
226 provided in this section, shall reimburse the board for coverage
227 into the expense account, its pro rata share of the total expense



228 of administering Articles 1 and 3 as provided by regulations of
229 said board.

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

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

242 (i) In the event any member of this system should
243 change his employment to any agency of the state having an
244 actuarially funded retirement system, the board of trustees may
245 authorize the transfer of the member's creditable service and of
246 the present value of the member's employer's accumulation account
247 and of the present value of the member's accumulated membership
248 contributions to such other system, provided the employee agrees
249 to the transfer of his accumulated membership contributions and
250 provided such other system is authorized to receive and agrees to
251 make such transfer.

252 In the event any member of any other actuarially funded
253 system maintained by an agency of the state changes his employment
254 to an agency covered by this system, the board of trustees may
255 authorize the receipt of the transfer of the member's creditable
256 service and of the present value of the member's employer's
257 accumulation account and of the present value of the member's
258 accumulated membership contributions from such other system,
259 provided the employee agrees to the transfer of his accumulated



260 membership contributions to this system and provided the other
261 system is authorized and agrees to make such transfer.

262 (j) Wherever herein state employment is referred to, it
263 shall include joint employment by state and federal agencies of
264 all kinds.

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

286 (1) The member shall furnish proof satisfactory to
287 the board of trustees of certification of such services from the
288 political subdivision or instrumentality where the services were
289 rendered or verification by the Social Security Administration;
290 and

291 (2) The member shall pay to the retirement system
292 on the date he or she is eligible for such credit or at any time



293 thereafter prior to the date of retirement the actuarial cost for
294 each year of such creditable service. The provisions of this
295 subparagraph (2) shall be subject to the limitations of Section
296 415 of the Internal Revenue Code and regulations promulgated
297 thereunder.

298 Nothing contained in this paragraph (k) shall be construed to
299 limit the authority of the board to allow the correction of
300 reporting errors or omissions based on the payment of employee and
301 employer contributions plus applicable interest. Payment for such
302 time shall be made in increments of not less than one-quarter
303 (1/4) year of creditable service beginning with the most recent
304 service. Upon the payment of all or part of such required
305 contributions, plus interest or the actuarial cost as provided
306 above, the member shall receive credit for the period of
307 creditable service for which full payment has been made to the
308 retirement system.

309 (l) Through June 30, 1998, any state service eligible
310 for retroactive service credit, no part of which has ever been
311 reported, and requiring the payment of employee and employer
312 contributions plus interest, or, from and after July 1, 1998, any
313 state service eligible for retroactive service credit, no part of
314 which has ever been reported to the retirement system, and
315 requiring the payment of the actuarial cost for such creditable
316 service, may, at the member's option, be purchased in quarterly
317 increments as provided above at such time as its purchase is
318 otherwise allowed.

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

322 II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

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



326 (a) Patient or inmate help in state charitable, penal
327 or correctional institutions;

328 (b) Students of any state educational institution
329 employed by any agency of the state for temporary, part-time or
330 intermittent work;

331 (c) Participants of Comprehensive Employment and
332 Training Act of 1973 (CETA) being Public Law 93-203, who enroll on
333 or after July 1, 1979.

334 **III. TERMINATION OF MEMBERSHIP**

335 Membership in this system shall cease by a member withdrawing
336 his accumulated contributions, or by a member withdrawing from
337 active service with a retirement allowance, or by a member's
338 death.

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

341 25-11-127. (1) No person who is being paid a retirement
342 allowance or a pension after retirement under this article shall
343 be employed or paid for any service by the State of Mississippi,
344 except as provided in this section or in Section 25-11-126. This
345 section shall not apply to any pensioner who has been elected to
346 public office after retirement, nor to any person employed because
347 of special knowledge or experience. This section shall not be
348 construed to mean that any person employed or elected under the
349 above exceptions shall become a member under Article 3 of the
350 retirement system, nor shall any retiree of this retirement system
351 who is reemployed or is reelected to office after retirement
352 continue to draw retirement benefits while so reemployed except as
353 provided in Section 25-11-126.

354 (2) Any person who has been retired under the provisions of
355 Articles 1 and 3 and who is later reemployed in service covered by
356 this article shall cease to receive benefits under this article,
357 unless he chooses to receive a retirement allowance as authorized
358 by Section 25-11-126, and the person shall again become a



359 contributing member of the retirement system. When the person
360 retires again, if he has been a contributing member of the
361 retirement system during his reemployment and the reemployment
362 exceeds six (6) months, the person shall have his or her benefits
363 recomputed, including service after again becoming a member,
364 provided that the total retirement allowance paid to the retired
365 member in his or her previous retirement shall be deducted from
366 the member's retirement reserve and taken into consideration in
367 recalculating the retirement allowance under a new option
368 selected.

369 (3) Nothing contained in this section shall be construed as
370 prohibiting any county or city not a member of the Public
371 Employees' Retirement System from employing persons up to the age
372 of seventy-three (73). In addition, through June 30, 1988,
373 nothing contained in this section shall be construed as
374 prohibiting any governmental unit that is a member from employing
375 persons up to the age of seventy-three (73) who are not eligible
376 for membership at the time of employment under Article 3.

377 (4) The board of trustees of the retirement system shall
378 have the right to prescribe rules and regulations for carrying out
379 the provisions of this section.

380 (5) The provisions of this section shall not be construed to
381 prohibit any retiree, regardless of age, from being employed and
382 drawing a retirement allowance either:

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

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



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

401 Notice shall be given in writing to the executive director of
402 the system, setting forth the facts upon which the employment is
403 being made, and the notice shall be given within five (5) days
404 from the date of employment and also from the date of termination
405 of the employment.

406 (6) Any member who has attained seventy (70) years of age
407 and who has forty (40) or more years of creditable service may
408 continue in office or employment or be reemployed or elected,
409 provided that the person files annually, in writing, in the office
410 of the employer and the office of the executive director of the
411 system before those services, a waiver of all salary or
412 compensation and elects to receive in lieu of that salary or
413 compensation a retirement allowance as provided in this section,
414 in which event no salary or compensation shall thereafter be due
415 or payable for those services. However, any such officer or
416 employee may receive, in addition to the retirement allowance, any
417 per diem, office expense allowance, mileage or travel expense
418 authorized by any statute of the State of Mississippi.

419 (7) Any member may continue in municipal or county office or
420 employment or be reemployed or elected in a municipality or
421 county, provided that the person files annually, in writing, in
422 the office of the employer and the office of the executive
423 director of the system before those services, a waiver of all



424 salary or compensation and elects to receive in lieu of that
425 salary or compensation a retirement allowance as provided in this
426 section, in which event no salary or compensation shall thereafter
427 be due or payable for those services. However, any such officer
428 or employee may receive, in addition to the retirement allowance,
429 any per diem, office expense allowance, mileage or travel expense
430 authorized by any statute of the State of Mississippi.

431 **SECTION 4.** This act shall take effect and be in force from
432 and after July 1, 2002.

