

By: Representative Brown

To: Education;  
Appropriations

HOUSE BILL NO. 1367

1 AN ACT TO AMEND SECTION 37-7-301, MISSISSIPPI CODE OF 1972,  
2 TO AUTHORIZE LOCAL SCHOOL DISTRICTS TO CONTRACT WITH PRIVATE  
3 ENTITIES TO PROVIDE INSTRUCTIONAL SERVICES PRIMARILY BY RETIRED  
4 TEACHERS TO PUPILS; TO AMEND SECTIONS 25-11-103 AND 25-11-127,  
5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR PURPOSES OF THE  
6 PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS), EMPLOYEES OF SUCH  
7 PRIVATE ENTITIES SHALL NOT BE CONSIDERED IN STATE SERVICE AND  
8 SHALL NOT BE PROHIBITED FROM RECEIVING PERS BENEFITS BASED UPON  
9 THEIR SERVICE BEFORE RETIREMENT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 37-7-301, Mississippi Code of 1972, is  
12 amended as follows:

13 37-7-301. The school boards of all school districts shall  
14 have the following powers, authority and duties in addition to all  
15 others imposed or granted by law, to wit:

16 (a) To organize and operate the schools of the district  
17 and to make such division between the high school grades and  
18 elementary grades as, in their judgment, will serve the best  
19 interests of the school;

20 (b) To introduce public school music, art, manual  
21 training and other special subjects into either the elementary or  
22 high school grades, as the board shall deem proper;

23 (c) To be the custodians of real and personal school  
24 property and to manage, control and care for same, both during the  
25 school term and during vacation;

26 (d) To have responsibility for the erection, repairing  
27 and equipping of school facilities and the making of necessary  
28 school improvements;

29 (e) To suspend or to expel a pupil or to change the  
30 placement of a pupil to the school district's alternative school



31 or home-bound program for misconduct in the school or on school  
32 property, as defined in Section 37-11-29, on the road to and from  
33 school, or at any school-related activity or event, or for conduct  
34 occurring on property other than school property or other than at  
35 a school-related activity or event when such conduct by a pupil,  
36 in the determination of the school superintendent or principal,  
37 renders that pupil's presence in the classroom a disruption to the  
38 educational environment of the school or a detriment to the best  
39 interest and welfare of the pupils and teacher of such class as a  
40 whole, and to delegate such authority to the appropriate officials  
41 of the school district;

42 (f) To visit schools in the district, in their  
43 discretion, in a body for the purpose of determining what can be  
44 done for the improvement of the school in a general way;

45 (g) To support, within reasonable limits, the  
46 superintendent, principal and teachers where necessary for the  
47 proper discipline of the school;

48 (h) To exclude from the schools students with what  
49 appears to be infectious or contagious diseases; provided,  
50 however, such student may be allowed to return to school upon  
51 presenting a certificate from a public health officer, duly  
52 licensed physician or nurse practitioner that the student is free  
53 from such disease;

54 (i) To require those vaccinations specified by the  
55 State Health Officer as provided in Section 41-23-37, Mississippi  
56 Code of 1972;

57 (j) To see that all necessary utilities and services  
58 are provided in the schools at all times when same are needed;

59 (k) To authorize the use of the school buildings and  
60 grounds for the holding of public meetings and gatherings of the  
61 people under such regulations as may be prescribed by said board;

62 (l) To prescribe and enforce rules and regulations not  
63 inconsistent with law or with the regulations of the State Board



64 of Education for their own government and for the government of  
65 the schools, and to transact their business at regular and special  
66 meetings called and held in the manner provided by law;

67 (m) To maintain and operate all of the schools under  
68 their control for such length of time during the year as may be  
69 required;

70 (n) To enforce in the schools the courses of study and  
71 the use of the textbooks prescribed by the proper authorities;

72 (o) To make orders directed to the superintendent of  
73 schools for the issuance of pay certificates for lawful purposes  
74 on any available funds of the district and to have full control of  
75 the receipt, distribution, allotment and disbursement of all funds  
76 provided for the support and operation of the schools of such  
77 school district whether such funds be derived from state  
78 appropriations, local ad valorem tax collections, or otherwise;

79 (p) To select all school district personnel in the  
80 manner provided by law, and to provide for such employee fringe  
81 benefit programs, including accident reimbursement plans, as may  
82 be deemed necessary and appropriate by the board;

83 (q) To provide athletic programs and other school  
84 activities and to regulate the establishment and operation of such  
85 programs and activities;

86 (r) To join, in their discretion, any association of  
87 school boards and other public school-related organizations, and  
88 to pay from local funds other than minimum foundation funds, any  
89 membership dues;

90 (s) To expend local school activity funds, or other  
91 available school district funds, other than minimum education  
92 program funds, for the purposes prescribed under this paragraph.  
93 "Activity funds" shall mean all funds received by school officials  
94 in all school districts paid or collected to participate in any  
95 school activity, such activity being part of the school program  
96 and partially financed with public funds or supplemented by public



97 funds. The term "activity funds" shall not include any funds  
98 raised and/or expended by any organization unless commingled in a  
99 bank account with existing activity funds, regardless of whether  
100 the funds were raised by school employees or received by school  
101 employees during school hours or using school facilities, and  
102 regardless of whether a school employee exercises influence over  
103 the expenditure or disposition of such funds. Organizations shall  
104 not be required to make any payment to any school for the use of  
105 any school facility if, in the discretion of the local school  
106 governing board, the organization's function shall be deemed to be  
107 beneficial to the official or extracurricular programs of the  
108 school. For the purposes of this provision, the term  
109 "organization" shall not include any organization subject to the  
110 control of the local school governing board. Activity funds may  
111 only be expended for any necessary expenses or travel costs,  
112 including advances, incurred by students and their chaperons in  
113 attending any in-state or out-of-state school-related programs,  
114 conventions or seminars and/or any commodities, equipment, travel  
115 expenses, purchased services or school supplies which the local  
116 school governing board, in its discretion, shall deem beneficial  
117 to the official or extracurricular programs of the district,  
118 including items which may subsequently become the personal  
119 property of individuals, including yearbooks, athletic apparel,  
120 book covers and trophies. Activity funds may be used to pay  
121 travel expenses of school district personnel. The local school  
122 governing board shall be authorized and empowered to promulgate  
123 rules and regulations specifically designating for what purposes  
124 school activity funds may be expended. The local school governing  
125 board shall provide (a) that such school activity funds shall be  
126 maintained and expended by the principal of the school generating  
127 the funds in individual bank accounts, or (b) that such school  
128 activity funds shall be maintained and expended by the  
129 superintendent of schools in a central depository approved by the



130 board. The local school governing board shall provide that such  
131 school activity funds be audited as part of the annual audit  
132 required in Section 37-9-18. The State Auditor shall prescribe a  
133 uniform system of accounting and financial reporting for all  
134 school activity fund transactions;

135 (t) To contract, on a shared savings, lease or  
136 lease-purchase basis, for energy efficiency services and/or  
137 equipment as provided for in Section 31-7-14, not to exceed ten  
138 (10) years;

139 (u) To maintain accounts and issue pay certificates on  
140 school food service bank accounts;

141 (v) (i) To lease a school building from an individual,  
142 partnership, nonprofit corporation or a private for-profit  
143 corporation for the use of such school district, and to expend  
144 funds therefor as may be available from any nonminimum program  
145 sources. The school board of the school district desiring to  
146 lease a school building shall declare by resolution that a need  
147 exists for a school building and that the school district cannot  
148 provide the necessary funds to pay the cost or its proportionate  
149 share of the cost of a school building required to meet the  
150 present needs. The resolution so adopted by the school board  
151 shall be published once each week for three (3) consecutive weeks  
152 in a newspaper having a general circulation in the school district  
153 involved, with the first publication thereof to be made not less  
154 than thirty (30) days prior to the date upon which the school  
155 board is to act on the question of leasing a school building. If  
156 no petition requesting an election is filed prior to such meeting  
157 as hereinafter provided, then the school board may, by resolution  
158 spread upon its minutes, proceed to lease a school building. If  
159 at any time prior to said meeting a petition signed by not less  
160 than twenty percent (20%) or fifteen hundred (1500), whichever is  
161 less, of the qualified electors of the school district involved  
162 shall be filed with the school board requesting that an election



163 be called on the question, then the school board shall, not later  
164 than the next regular meeting, adopt a resolution calling an  
165 election to be held within such school district upon the question  
166 of authorizing the school board to lease a school building. Such  
167 election shall be called and held, and notice thereof shall be  
168 given, in the same manner for elections upon the questions of the  
169 issuance of the bonds of school districts, and the results thereof  
170 shall be certified to the school board. If at least three-fifths  
171 (3/5) of the qualified electors of the school district who voted  
172 in such election shall vote in favor of the leasing of a school  
173 building, then the school board shall proceed to lease a school  
174 building. The term of the lease contract shall not exceed twenty  
175 (20) years, and the total cost of such lease shall be either the  
176 amount of the lowest and best bid accepted by the school board  
177 after advertisement for bids or an amount not to exceed the  
178 current fair market value of the lease as determined by the  
179 averaging of at least two (2) appraisals by certified general  
180 appraisers licensed by the State of Mississippi. The term "school  
181 building" as used in this item (v) shall be construed to mean any  
182 building or buildings used for classroom purposes in connection  
183 with the operation of schools and shall include the site therefor,  
184 necessary support facilities, and the equipment thereof and  
185 appurtenances thereto such as heating facilities, water supply,  
186 sewage disposal, landscaping, walks, drives and playgrounds. The  
187 term "lease" as used in this item (v)(i) may include a  
188 lease/purchase contract;

189 (ii) If two (2) or more school districts propose  
190 to enter into a lease contract jointly, then joint meetings of the  
191 school boards having control may be held but no action taken shall  
192 be binding on any such school district unless the question of  
193 leasing a school building is approved in each participating school  
194 district under the procedure hereinabove set forth in item (v)(i).  
195 All of the provisions of item (v)(i) regarding the term and amount



196 of the lease contract shall apply to the school boards of school  
197 districts acting jointly. Any lease contract executed by two (2)  
198 or more school districts as joint lessees shall set out the amount  
199 of the aggregate lease rental to be paid by each, which may be  
200 agreed upon, but there shall be no right of occupancy by any  
201 lessee unless the aggregate rental is paid as stipulated in the  
202 lease contract. All rights of joint lessees under the lease  
203 contract shall be in proportion to the amount of lease rental paid  
204 by each;

205 (w) To employ all noninstructional and noncertificated  
206 employees and fix the duties and compensation of such personnel  
207 deemed necessary pursuant to the recommendation of the  
208 superintendent of schools;

209 (x) To employ and fix the duties and compensation of  
210 such legal counsel as deemed necessary;

211 (y) Subject to rules and regulations of the State Board  
212 of Education, to purchase, own and operate trucks, vans and other  
213 motor vehicles, which shall bear the proper identification  
214 required by law;

215 (z) To expend funds for the payment of substitute  
216 teachers and to adopt reasonable regulations for the employment  
217 and compensation of such substitute teachers;

218 (aa) To acquire in its own name by purchase all real  
219 property which shall be necessary and desirable in connection with  
220 the construction, renovation or improvement of any public school  
221 building or structure. Whenever the purchase price for such real  
222 property is greater than Fifty Thousand Dollars (\$50,000.00), the  
223 school board shall not purchase the property for an amount  
224 exceeding the fair market value of such property as determined by  
225 the average of at least two (2) independent appraisals by  
226 certified general appraisers licensed by the State of Mississippi.  
227 If the board shall be unable to agree with the owner of any such  
228 real property in connection with any such project, the board shall



229 have the power and authority to acquire any such real property by  
230 condemnation proceedings pursuant to Section 11-27-1 et seq., and  
231 for such purpose, the right of eminent domain is hereby conferred  
232 upon and vested in said board. Provided further, that the local  
233 school board is authorized to grant an easement for ingress and  
234 egress over sixteenth section land or lieu land in exchange for a  
235 similar easement upon adjoining land where the exchange of  
236 easements affords substantial benefit to the sixteenth section  
237 land; provided, however, the exchange must be based upon values as  
238 determined by a competent appraiser, with any differential in  
239 value to be adjusted by cash payment. Any easement rights granted  
240 over sixteenth section land under such authority shall terminate  
241 when the easement ceases to be used for its stated purpose. No  
242 sixteenth section or lieu land which is subject to an existing  
243 lease shall be burdened by any such easement except by consent of  
244 the lessee or unless the school district shall acquire the  
245 unexpired leasehold interest affected by the easement;

246 (bb) To charge reasonable fees related to the  
247 educational programs of the district, in the manner prescribed in  
248 Section 37-7-335;

249 (cc) Subject to rules and regulations of the State  
250 Board of Education, to purchase relocatable classrooms for the use  
251 of such school district, in the manner prescribed in Section  
252 37-1-13;

253 (dd) Enter into contracts or agreements with other  
254 school districts, political subdivisions or governmental entities  
255 to carry out one or more of the powers or duties of the school  
256 board, or to allow more efficient utilization of limited resources  
257 for providing services to the public;

258 (ee) To provide for in-service training for employees  
259 of the district. Until June 30, 1994, the school boards may  
260 designate two (2) days of the minimum school term, as defined in  
261 Section 37-19-1, for employee in-service training for





262 implementation of the new statewide testing system as developed by  
263 the State Board of Education. Such designation shall be subject  
264 to approval by the State Board of Education pursuant to uniform  
265 rules and regulations;

266 (ff) As part of their duties to prescribe the use of  
267 textbooks, to provide that parents and legal guardians shall be  
268 responsible for the textbooks and for the compensation to the  
269 school district for any books which are not returned to the proper  
270 schools upon the withdrawal of their dependent child. If a  
271 textbook is lost or not returned by any student who drops out of  
272 the public school district, the parent or legal guardian shall  
273 also compensate the school district for the fair market value of  
274 the textbooks;

275 (gg) To conduct fund-raising activities on behalf of  
276 the school district that the local school board, in its  
277 discretion, deems appropriate or beneficial to the official or  
278 extracurricular programs of the district; provided that:

279 (i) Any proceeds of the fund-raising activities  
280 shall be treated as "activity funds" and shall be accounted for as  
281 are other activity funds under this section; and

282 (ii) Fund-raising activities conducted or  
283 authorized by the board for the sale of school pictures, the  
284 rental of caps and gowns or the sale of graduation invitations for  
285 which the school board receives a commission, rebate or fee shall  
286 contain a disclosure statement advising that a portion of the  
287 proceeds of the sales or rentals shall be contributed to the  
288 student activity fund;

289 (hh) To allow individual lessons for music, art and  
290 other curriculum-related activities for academic credit or  
291 nonacademic credit during school hours and using school equipment  
292 and facilities, subject to uniform rules and regulations adopted  
293 by the school board;



294 (ii) To charge reasonable fees for participating in an  
295 extracurricular activity for academic or nonacademic credit for  
296 necessary and required equipment such as safety equipment, band  
297 instruments and uniforms;

298 (jj) To conduct or participate in any fund-raising  
299 activities on behalf of or in connection with a tax-exempt  
300 charitable organization;

301 (kk) To exercise such powers as may be reasonably  
302 necessary to carry out the provisions of this section; \* \* \*

303 (ll) To expend funds for the services of nonprofit arts  
304 organizations or other such nonprofit organizations who provide  
305 performances or other services for the students of the school  
306 district; and

307 (mm) To contract with private entities to lease  
308 employees to provide instructional services to pupils.

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

311 25-11-103. The following words and phrases as used in  
312 Articles 1 and 3, unless a different meaning is plainly required  
313 by the context, shall have the following meanings:

314 (a) "Accumulated contributions" shall mean the sum of  
315 all the amounts deducted from the compensation of a member and  
316 credited to his individual account in the annuity savings account,  
317 together with regular interest thereon as provided in Section  
318 25-11-123.

319 (b) "Actuarial cost" shall mean the amount of funds  
320 presently required to provide future benefits as determined by the  
321 board based on applicable tables and formulas provided by the  
322 actuary.

323 (c) "Actuarial equivalent" shall mean a benefit of  
324 equal value to the accumulated contributions, annuity or benefit,  
325 as the case may be, when computed upon the basis of such mortality



326 tables as shall be adopted by the board of trustees, and regular  
327 interest.

328 (d) "Actuarial tables" shall mean such tables of  
329 mortality and rates of interest as shall be adopted by the board  
330 in accordance with the recommendation of the actuary.

331 (e) "Agency" shall mean any governmental body employing  
332 persons in the state service.

333 (f) "Average compensation" shall mean the average of  
334 the four (4) highest years of earned compensation reported for an  
335 employee in a fiscal or calendar year period, or combination  
336 thereof which do not overlap, or the last forty-eight (48)  
337 consecutive months of earned compensation reported for an  
338 employee. The four (4) years need not be successive or joined  
339 years of service. In no case shall the average compensation so  
340 determined be in excess of One Hundred Twenty-five Thousand  
341 Dollars (\$125,000.00). In computing the average compensation, any  
342 amount paid in a lump sum for personal leave shall be included in  
343 the calculation to the extent that such amount does not exceed an  
344 amount which is equal to thirty (30) days of earned compensation  
345 and to the extent that it does not cause the employees' earned  
346 compensation to exceed the maximum reportable amount specified in  
347 Section 25-11-103(k); provided, however, that such thirty-day  
348 limitation shall not prevent the inclusion in the calculation of  
349 leave earned under federal regulations prior to July 1, 1976, and  
350 frozen as of that date as referred to in Section 25-3-99. Only  
351 the amount of lump sum pay for personal leave due and paid upon  
352 the death of a member attributable for up to one hundred fifty  
353 (150) days shall be used in the deceased member's average  
354 compensation calculation in determining the beneficiary's  
355 benefits. In computing the average compensation, no amounts shall  
356 be used which are in excess of the amount on which contributions  
357 were required and paid. If any member who is or has been granted  
358 any increase in annual salary or compensation of more than eight



359 percent (8%) retires within twenty-four (24) months from the date  
360 that such increase becomes effective, then the board shall exclude  
361 that part of the increase in salary or compensation that exceeds  
362 eight percent (8%) in calculating that member's average  
363 compensation for retirement purposes. The board may enforce this  
364 provision by rule or regulation. However, increases in  
365 compensation in excess of eight percent (8%) per year granted  
366 within twenty-four (24) months of the date of retirement may be  
367 included in such calculation of average compensation if  
368 satisfactory proof is presented to the board showing that the  
369 increase in compensation was the result of an actual change in the  
370 position held or services rendered, or that such compensation  
371 increase was authorized by the State Personnel Board or was  
372 increased as a result of statutory enactment, and the employer  
373 furnishes an affidavit stating that such increase granted within  
374 the last twenty-four (24) months was not contingent on a promise  
375 or agreement of the employee to retire. Nothing in Section  
376 25-3-31 shall affect the calculation of the average compensation  
377 of any member for the purposes of this article. The average  
378 compensation of any member who retires before July 1, 1992, shall  
379 not exceed the annual salary of the Governor.

380 (g) "Beneficiary" shall mean any person entitled to  
381 receive a retirement allowance, an annuity or other benefit as  
382 provided by Articles 1 and 3. In the event of the death prior to  
383 retirement of any member whose spouse and/or children are not  
384 entitled to a retirement allowance on the basis that the member  
385 has less than four (4) years of service credit and/or has not been  
386 married for a minimum of one (1) year or the spouse has waived his  
387 or her entitlement to a retirement allowance pursuant to Section  
388 25-11-114, the lawful spouse of a member at the time of the death  
389 of such member shall be the beneficiary of such member unless the  
390 member has designated another beneficiary subsequent to the date  
391 of marriage in writing, and filed such writing in the office of



392 the executive director of the board of trustees. No designation  
393 or change of beneficiary shall be made in any other manner.

394 (h) "Board" shall mean the board of trustees provided  
395 in Section 25-11-15 to administer the retirement system herein  
396 created.

397 (i) "Creditable service" shall mean "prior service,"  
398 "retroactive service" and all lawfully credited unused leave not  
399 exceeding the accrual rates and limitations provided in Section  
400 25-3-91 et seq., as of the date of withdrawal from service plus  
401 "membership service" for which credit is allowable as provided in  
402 Section 25-11-109. Except to limit creditable service reported to  
403 the system for the purpose of computing an employee's retirement  
404 allowance or annuity or benefits provided in this article, nothing  
405 in this paragraph shall limit or otherwise restrict the power of  
406 the governing authority of a municipality or other political  
407 subdivision of the state to adopt such vacation and sick leave  
408 policies as it deems necessary.

409 (j) "Child" means either a natural child of the member,  
410 a child that has been made a child of the member by applicable  
411 court action before the death of the member, or a child under the  
412 permanent care of the member at the time of the latter's death,  
413 which permanent care status shall be determined by evidence  
414 satisfactory to the board.

415 (k) "Earned compensation" shall mean the full amount  
416 earned by an employee for a given pay period including any  
417 maintenance furnished up to a maximum of One Hundred Twenty-five  
418 Thousand Dollars (\$125,000.00) per year, and proportionately for  
419 less than one (1) year of service. The value of such maintenance  
420 when not paid in money shall be fixed by the employing state  
421 agency, and, in case of doubt, by the board of trustees as defined  
422 in Section 25-11-15. In any case, earned compensation shall be  
423 limited to the regular periodic compensation paid, exclusive of  
424 litigation fees, bond fees, and other similar extraordinary



425 nonrecurring payments. In addition, any member in a covered  
426 position, as defined by Public Employees' Retirement System laws  
427 and regulations, who is also employed by another covered agency or  
428 political subdivision shall have the earnings of that additional  
429 employment reported to the Public Employees' Retirement System  
430 regardless of whether the additional employment is sufficient in  
431 itself to be a covered position. In the case of fee officials,  
432 the net earnings from their office after deduction of expenses  
433 shall apply, except that in no case shall earned compensation be  
434 less than the total direct payments made by the state or  
435 governmental subdivisions to the official, and employer and  
436 employee contributions shall be paid thereon. In the case of  
437 members of the state Legislature, all remuneration or amounts  
438 paid, except mileage allowance, shall apply. The amount by which  
439 an eligible employee's salary is reduced pursuant to a salary  
440 reduction agreement authorized under Section 25-17-5 shall be  
441 included as earned compensation under this paragraph, provided  
442 this inclusion does not conflict with federal law, including  
443 federal regulations and federal administrative interpretations  
444 thereunder, pertaining to the Federal Insurance Contributions Act  
445 or to Internal Revenue Code Section 125 cafeteria plans.  
446 Compensation in addition to an employee's base salary that is paid  
447 to the employee pursuant to the vacation and sick leave policies  
448 of a municipality or other political subdivision of the state that  
449 employs him which exceeds the maximums authorized by Section  
450 25-3-91 et seq., shall be excluded from the calculation of earned  
451 compensation under this article. The maximum salary applicable  
452 for retirement purposes before July 1, 1992, shall be the salary  
453 of the Governor. Nothing in Section 25-3-31 shall affect the  
454 determination of the earned compensation of any member for the  
455 purposes of this article.

456 (1) "Employee" means any person legally occupying a  
457 position in the state service, and shall include the employees of



458 the retirement system created hereunder. The term "employee" does  
459 not include any employee of a private entity that leases staff to  
460 a local school board to provide instructional services pursuant to  
461 Section 37-7-301(mm).

462 (m) "Employer" shall mean the State of Mississippi or  
463 any of its departments, agencies or subdivisions from which any  
464 employee receives his compensation.

465 (n) "Executive director" shall mean the secretary to  
466 the board of trustees, as provided in Section 25-11-15(9), and the  
467 administrator of the Public Employees' Retirement System and all  
468 systems under the management of the board of trustees. Wherever  
469 the term "Executive Secretary of the Public Employees' Retirement  
470 System" or "executive secretary" appears in this article or in any  
471 other provision of law, it shall be construed to mean the  
472 Executive Director of the Public Employees' Retirement System.

473 (o) "Fiscal year" shall mean the period beginning on  
474 July 1 of any year and ending on June 30 of the next succeeding  
475 year.

476 (p) "Medical board" shall mean the board of physicians  
477 or any governmental or nongovernmental disability determination  
478 service designated by the board of trustees that is qualified to  
479 make disability determinations as provided for in Section  
480 25-11-119.

481 (q) "Member" shall mean any person included in the  
482 membership of the system as provided in Section 25-11-105.

483 (r) "Membership service" shall mean service as an  
484 employee rendered while a member of the retirement system.

485 (s) "Position" means any office or any employment in  
486 the state service, or two (2) or more of them, the duties of which  
487 call for services to be rendered by one (1) person, including  
488 positions jointly employed by federal and state agencies  
489 administering federal and state funds. The employer shall  
490 determine upon initial employment and during the course of



491 employment of an employee who does not meet the criteria for  
492 coverage in the Public Employees' Retirement System based on the  
493 position held, whether the employee is or becomes eligible for  
494 coverage in the Public Employees' Retirement System based upon any  
495 other employment in a covered agency or political subdivision. If  
496 or when the employee meets the eligibility criteria for coverage  
497 in such other position, then the employer must withhold  
498 contributions and report wages from the noncovered position in  
499 accordance with the provisions for reporting of earned  
500 compensation. Failure to deduct and report those contributions  
501 shall not relieve the employee or employer of liability thereof.  
502 The board shall adopt such rules and regulations as necessary to  
503 implement and enforce this provision.

504 (t) "Prior service" shall mean service rendered before  
505 February 1, 1953, for which credit is allowable under Sections  
506 25-11-105 and 25-11-109, and which shall allow prior service for  
507 any person who is now or becomes a member of the Public Employees'  
508 Retirement System and who does contribute to the system for a  
509 minimum period of four (4) years.

510 (u) "Regular interest" shall mean interest compounded  
511 annually at such a rate as shall be determined by the board in  
512 accordance with Section 25-11-121.

513 (v) "Retirement allowance" shall mean an annuity for  
514 life as provided in this article, payable each year in twelve (12)  
515 equal monthly installments beginning as of the date fixed by the  
516 board. The retirement allowance shall be calculated in accordance  
517 with Section 25-11-111. Provided, any spouse who received a  
518 spouse retirement benefit in accordance with Section 25-11-111(d)  
519 prior to March 31, 1971, and said benefits were terminated because  
520 of eligibility for a social security benefit, may again receive  
521 his spouse retirement benefit from and after making application  
522 with the board of trustees to reinstate such spouse retirement  
523 benefit.





524 (w) "Retroactive service" shall mean service rendered  
525 after February 1, 1953, for which credit is allowable under  
526 Section 25-11-105(b) and Section 25-11-105(k).

527 (x) "System" shall mean the Public Employees'  
528 Retirement System of Mississippi established and described in  
529 Section 25-11-101.

530 (y) "State" shall mean the State of Mississippi or any  
531 political subdivision thereof or instrumentality thereof.

532 (z) "State service" shall mean all offices and  
533 positions of trust or employment in the employ of the state, or  
534 any political subdivision or instrumentality thereof, which elect  
535 to participate as provided by Section 25-11-105(f), including the  
536 position of elected or fee officials of the counties and their  
537 deputies and employees performing public services or any  
538 department, independent agency, board or commission thereof, and  
539 shall also include all offices and positions of trust or  
540 employment in the employ of joint state and federal agencies  
541 administering state and federal funds and service rendered by  
542 employees of the public schools. Effective July 1, 1973, all  
543 nonprofessional public school employees, such as bus drivers,  
544 janitors, maids, maintenance workers and cafeteria employees,  
545 shall have the option to become members in accordance with Section  
546 25-11-105(b), and shall be eligible to receive credit for services  
547 prior to July 1, 1973, provided the contributions and interest are  
548 paid by the employee in accordance with said section; provided,  
549 further, that the county or municipal separate school district may  
550 pay the employer contribution and pro rata share of interest of  
551 the retroactive service from available funds. From and after July  
552 1, 1998, retroactive service credit shall be purchased at the  
553 actuarial cost in accordance with Section 25-11-105(b).

554 (aa) "Withdrawal from service" shall mean complete  
555 severance of employment in the state service of any member by  
556 resignation, dismissal or discharge.



557 (bb) The masculine pronoun, wherever used, shall  
558 include the feminine pronoun.

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

561 25-11-127. (1) No person who is being paid a retirement  
562 allowance or a pension after retirement under this article shall  
563 be employed or paid for any service by the State of Mississippi,  
564 except as provided in this section. This section shall not apply  
565 to any pensioner who has been elected to public office after  
566 retirement, nor to any person employed because of special  
567 knowledge or experience. This section shall not be construed to  
568 mean that any person employed or elected under the above  
569 exceptions shall become a member under Article 3 of the retirement  
570 system, nor shall any retiree of this retirement system who is  
571 reemployed or is reelected to office after retirement continue to  
572 draw retirement benefits while so reemployed.

573 (2) Any person who has been retired under the provisions of  
574 Articles 1 and 3 and who is later reemployed in service covered by  
575 this article shall cease to receive benefits under this article  
576 and shall again become a contributing member of the retirement  
577 system. When the person retires again, if the reemployment  
578 exceeds six (6) months, the person shall have his or her benefit  
579 recomputed, including service after again becoming a member,  
580 provided that the total retirement allowance paid to the retired  
581 member in his or her previous retirement shall be deducted from  
582 the member's retirement reserve and taken into consideration in  
583 recalculating the retirement allowance under a new option  
584 selected.

585 (3) Nothing contained in this section shall be construed as  
586 prohibiting any county or city not a member of the Public  
587 Employees' Retirement System from employing persons up to the age  
588 of seventy-three (73). In addition, through June 30, 1988,  
589 nothing contained in this section shall be construed as



590 prohibiting any governmental unit that is a member from employing  
591 persons up to the age of seventy-three (73) who are not eligible  
592 for membership at the time of employment under Article 3. This  
593 section does not apply to any employee of a private entity that  
594 leases staff to a local school board to provide instructional  
595 services as authorized under Section 37-7-301(mm).

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

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

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

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

610 To determine the normal working days for a position under  
611 paragraph (a) of this subsection, the employer shall determine the  
612 required number of working days for the position on a full-time  
613 basis and the equivalent number of hours representing the  
614 full-time position. The retiree then may work up to one-half  
615 (1/2) of the required number of working days or up to one-half  
616 (1/2) of the equivalent number of hours and receive up to one-half  
617 (1/2) of the salary for the position. In the case of employment  
618 with multiple employers, the limitation shall equal one-half (1/2)  
619 of the number of days or hours for a single full-time position.

620 Notice shall be given in writing to the executive director of  
621 the system, setting forth the facts upon which the employment is  
622 being made, and the notice shall be given within five (5) days



623 from the date of employment and also from the date of termination  
624 of the employment.

625 (6) Any member who has attained seventy (70) years of age  
626 and who has forty (40) or more years of creditable service may  
627 continue in office or employment or be reemployed or elected,  
628 provided that the person files annually, in writing, in the office  
629 of the employer and the office of the executive director of the  
630 system before those services, a waiver of all salary or  
631 compensation and elects to receive in lieu of that salary or  
632 compensation a retirement allowance as provided in this section,  
633 in which event no salary or compensation shall thereafter be due  
634 or payable for those services. However, any such officer or  
635 employee may receive, in addition to the retirement allowance, any  
636 per diem, office expense allowance, mileage or travel expense  
637 authorized by any statute of the State of Mississippi.

638 (7) Any member may continue in municipal or county office or  
639 employment or be reemployed or elected in a municipality or  
640 county, provided that the person files annually, in writing, in  
641 the office of the employer and the office of the executive  
642 director of the system before those services, a waiver of all  
643 salary or compensation and elects to receive in lieu of that  
644 salary or compensation a retirement allowance as provided in this  
645 section, in which event no salary or compensation shall thereafter  
646 be due or payable for those services. However, any such officer  
647 or employee may receive, in addition to the retirement allowance,  
648 any per diem, office expense allowance, mileage or travel expense  
649 authorized by any statute of the State of Mississippi.

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

