

By: Senator(s) Cuevas

To: Finance

SENATE BILL NO. 2806

1 AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF  
2 1972, TO PROVIDE THAT PERSONS RECEIVING A RETIREMENT ALLOWANCE  
3 FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE ELECTED OR  
4 APPOINTED TO PUBLIC OFFICE IN A POLITICAL SUBDIVISION OR  
5 INSTRUMENTALITY THEREOF AFTER RETIREMENT, AND ELECTED OR APPOINTED  
6 OFFICIALS IN A POLITICAL SUBDIVISION OR INSTRUMENTALITY THEREOF  
7 WHO BECOME ELIGIBLE TO RECEIVE A RETIREMENT ALLOWANCE FROM THE  
8 PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHILE HOLDING OFFICE, MAY  
9 RECEIVE A RETIREMENT ALLOWANCE FROM THE SYSTEM WHILE HOLDING  
10 OFFICE IN ADDITION TO RECEIVING THE REGULAR COMPENSATION FOR SUCH  
11 OFFICE; TO PROVIDE THAT THOSE PERSONS SHALL NOT BE ACTIVE MEMBERS  
12 OF THE RETIREMENT SYSTEM AND SHALL NOT RECEIVE ANY CREDITABLE  
13 SERVICE FOR THE PERIOD DURING WHICH THEY RECEIVE A RETIREMENT  
14 ALLOWANCE WHILE HOLDING OFFICE; TO PROVIDE THAT EMPLOYEE  
15 CONTRIBUTIONS SHALL BE DEDUCTED AND EMPLOYER CONTRIBUTIONS SHALL  
16 BE MADE FOR THOSE PERSONS FOR THE PERIOD DURING WHICH THEY RECEIVE  
17 A RETIREMENT ALLOWANCE WHILE HOLDING OFFICE; TO AMEND SECTIONS  
18 25-11-103, 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN  
19 CONFORMITY WITH THE PROVISIONS OF THIS ACT; TO AMEND SECTION  
20 25-11-117, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON  
21 WHO RECEIVED A RETIREMENT ALLOWANCE WHILE HOLDING OFFICE IN A  
22 POLITICAL SUBDIVISION OR INSTRUMENTALITY THEREOF MAY NOT RECEIVE A  
23 REFUND OF EMPLOYEE CONTRIBUTIONS THAT WERE MADE DURING THAT PERIOD  
24 OF SERVICE; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** The following shall be codified as Section  
27 25-11-126, Mississippi Code of 1972:

28 25-11-126. (1) Any person who is receiving a retirement  
29 allowance under this article and who is elected or appointed after  
30 retirement to an office in a political subdivision or  
31 instrumentality thereof, and any elected or appointed official in  
32 a political subdivision or instrumentality thereof who becomes  
33 eligible to receive a retirement allowance under this article  
34 while holding such office, may choose to receive or continue to  
35 receive a retirement allowance under this article while holding  
36 such office in addition to receiving the regular compensation for  
37 such office in the manner provided in this section.



38           (2) Any person who is receiving a retirement allowance and  
39 who is elected or appointed to office in a political subdivision  
40 or instrumentality thereof after retirement shall notify the  
41 executive director of the system before taking office of his  
42 choice about continuing to receive the retirement allowance while  
43 holding such office. If the person chooses not to continue  
44 receiving the retirement allowance while holding such office, the  
45 retirement allowance shall cease on the day that he begins serving  
46 in the office. After leaving the office, in order to begin  
47 receiving a retirement allowance under this article again, such  
48 person shall make application to the executive director of the  
49 system, and the retirement allowance shall begin on the first of  
50 the month following the date that the application is received by  
51 the executive director.

52           (3) Any elected or appointed official of a political  
53 subdivision or instrumentality thereof who becomes eligible to  
54 receive a retirement allowance while holding office and who  
55 chooses to receive a retirement allowance while holding office  
56 shall make application to the executive director of the system and  
57 the retirement allowance shall begin on the first of the month  
58 following the date that the application is received by the  
59 executive director. Such elected or appointed officials shall not  
60 be required to withdraw from service in order to receive the  
61 retirement allowance.

62           (4) Any person to whom this section applies who receives or  
63 continues to receive a retirement allowance under this article  
64 while holding office in a political subdivision or instrumentality  
65 thereof shall not be an active member of the retirement system and  
66 shall not receive any creditable service for the period during  
67 which he receives a retirement allowance while holding office in a  
68 political subdivision or instrumentality thereof. However, the  
69 employer shall deduct employee contributions for the person and  
70 shall make employer contributions on behalf of the person in the



71 same manner as provided in Section 25-11-123 for active members,  
72 for the period during which he receives a retirement allowance  
73 while holding office in a political subdivision or instrumentality  
74 thereof, and the employer shall pay the contributions to the  
75 retirement system.

76 (5) Any person to whom this section applies who chooses not  
77 to receive a retirement allowance while holding office in a  
78 political subdivision or instrumentality thereof shall be an  
79 active and contributing member of the retirement system and shall  
80 receive creditable service for the period during which he holds  
81 office in a political subdivision or instrumentality thereof  
82 without receiving a retirement allowance. If the person has  
83 previously received a retirement allowance under this article and  
84 holds office for more than six (6) months without receiving a  
85 retirement allowance, he shall have his allowance recomputed when  
86 he retires again, which shall include the service after he again  
87 became a contributing member of the retirement system.

88 (6) This section shall apply to officials who are elected to  
89 office and officials who are appointed to office in a political  
90 subdivision or instrumentality thereof for a specified term or for  
91 the will and pleasure of the appointing authority, but shall not  
92 apply to persons in other positions of employment in the state  
93 service.

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

96 25-11-103. The following words and phrases as used in  
97 Articles 1 and 3, unless a different meaning is plainly required  
98 by the context, shall have the following meanings:

99 (a) "Accumulated contributions" shall mean the sum of  
100 all the amounts deducted from the compensation of a member and  
101 credited to his individual account in the annuity savings account,  
102 together with regular interest thereon as provided in Section  
103 25-11-123.



104           (b) "Actuarial cost" shall mean the amount of funds  
105 presently required to provide future benefits as determined by the  
106 board based on applicable tables and formulas provided by the  
107 actuary.

108           (c) "Actuarial equivalent" shall mean a benefit of  
109 equal value to the accumulated contributions, annuity or benefit,  
110 as the case may be, when computed upon the basis of such mortality  
111 tables as shall be adopted by the board of trustees, and regular  
112 interest.

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

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

118           (f) "Average compensation" shall mean the average of  
119 the four (4) highest years of earned compensation reported for an  
120 employee in a fiscal or calendar year period, or combination  
121 thereof which do not overlap, or the last forty-eight (48)  
122 consecutive months of earned compensation reported for an  
123 employee. The four (4) years need not be successive or joined  
124 years of service. In no case shall the average compensation so  
125 determined be in excess of One Hundred Twenty-five Thousand  
126 Dollars (\$125,000.00). In computing the average compensation, any  
127 amount paid in a lump sum for personal leave shall be included in  
128 the calculation to the extent that such amount does not exceed an  
129 amount which is equal to thirty (30) days of earned compensation  
130 and to the extent that it does not cause the employees' earned  
131 compensation to exceed the maximum reportable amount specified in  
132 Section 25-11-103(k); provided, however, that such thirty-day  
133 limitation shall not prevent the inclusion in the calculation of  
134 leave earned under federal regulations prior to July 1, 1976, and  
135 frozen as of that date as referred to in Section 25-3-99. Only  
136 the amount of lump sum pay for personal leave due and paid upon



137 the death of a member attributable for up to one hundred fifty  
138 (150) days shall be used in the deceased member's average  
139 compensation calculation in determining the beneficiary's  
140 benefits. In computing the average compensation, no amounts shall  
141 be used which are in excess of the amount on which contributions  
142 were required and paid. If any member who is or has been granted  
143 any increase in annual salary or compensation of more than eight  
144 percent (8%) retires within twenty-four (24) months from the date  
145 that such increase becomes effective, then the board shall exclude  
146 that part of the increase in salary or compensation that exceeds  
147 eight percent (8%) in calculating that member's average  
148 compensation for retirement purposes. The board may enforce this  
149 provision by rule or regulation. However, increases in  
150 compensation in excess of eight percent (8%) per year granted  
151 within twenty-four (24) months of the date of retirement may be  
152 included in such calculation of average compensation if  
153 satisfactory proof is presented to the board showing that the  
154 increase in compensation was the result of an actual change in the  
155 position held or services rendered, or that such compensation  
156 increase was authorized by the State Personnel Board or was  
157 increased as a result of statutory enactment, and the employer  
158 furnishes an affidavit stating that such increase granted within  
159 the last twenty-four (24) months was not contingent on a promise  
160 or agreement of the employee to retire. Nothing in Section  
161 25-3-31 shall affect the calculation of the average compensation  
162 of any member for the purposes of this article. The average  
163 compensation of any member who retires before July 1, 1992, shall  
164 not exceed the annual salary of the Governor.

165 (g) "Beneficiary" shall mean any person entitled to  
166 receive a retirement allowance, an annuity or other benefit as  
167 provided by Articles 1 and 3. In the event of the death prior to  
168 retirement of any member whose spouse and/or children are not  
169 entitled to a retirement allowance on the basis that the member



170 has less than four (4) years of service credit and/or has not been  
171 married for a minimum of one (1) year or the spouse has waived his  
172 or her entitlement to a retirement allowance pursuant to Section  
173 25-11-114, the lawful spouse of a member at the time of the death  
174 of such member shall be the beneficiary of such member unless the  
175 member has designated another beneficiary subsequent to the date  
176 of marriage in writing, and filed such writing in the office of  
177 the executive director of the board of trustees. No designation  
178 or change of beneficiary shall be made in any other manner.

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

182 (i) "Creditable service" shall mean "prior service,"  
183 "retroactive service" and all lawfully credited unused leave not  
184 exceeding the accrual rates and limitations provided in Section  
185 25-3-91 et seq., as of the date of withdrawal from service plus  
186 "membership service" for which credit is allowable as provided in  
187 Section 25-11-109. Except to limit creditable service reported to  
188 the system for the purpose of computing an employee's retirement  
189 allowance or annuity or benefits provided in this article, nothing  
190 in this paragraph shall limit or otherwise restrict the power of  
191 the governing authority of a municipality or other political  
192 subdivision of the state to adopt such vacation and sick leave  
193 policies as it deems necessary.

194 (j) "Child" means either a natural child of the member,  
195 a child that has been made a child of the member by applicable  
196 court action before the death of the member, or a child under the  
197 permanent care of the member at the time of the latter's death,  
198 which permanent care status shall be determined by evidence  
199 satisfactory to the board.

200 (k) "Earned compensation" shall mean the full amount  
201 earned by an employee for a given pay period including any  
202 maintenance furnished up to a maximum of One Hundred Twenty-five



203 Thousand Dollars (\$125,000.00) per year, and proportionately for  
204 less than one (1) year of service. The value of such maintenance  
205 when not paid in money shall be fixed by the employing state  
206 agency, and, in case of doubt, by the board of trustees as defined  
207 in Section 25-11-15. In any case, earned compensation shall be  
208 limited to the regular periodic compensation paid, exclusive of  
209 litigation fees, bond fees, and other similar extraordinary  
210 nonrecurring payments. In addition, any member in a covered  
211 position, as defined by Public Employees' Retirement System laws  
212 and regulations, who is also employed by another covered agency or  
213 political subdivision shall have the earnings of that additional  
214 employment reported to the Public Employees' Retirement System  
215 regardless of whether the additional employment is sufficient in  
216 itself to be a covered position. In the case of fee officials,  
217 the net earnings from their office after deduction of expenses  
218 shall apply, except that in no case shall earned compensation be  
219 less than the total direct payments made by the state or  
220 governmental subdivisions to the official, and employer and  
221 employee contributions shall be paid thereon. In the case of  
222 members of the state Legislature, all remuneration or amounts  
223 paid, except mileage allowance, shall apply. The amount by which  
224 an eligible employee's salary is reduced pursuant to a salary  
225 reduction agreement authorized under Section 25-17-5 shall be  
226 included as earned compensation under this paragraph, provided  
227 this inclusion does not conflict with federal law, including  
228 federal regulations and federal administrative interpretations  
229 thereunder, pertaining to the Federal Insurance Contributions Act  
230 or to Internal Revenue Code Section 125 cafeteria plans.  
231 Compensation in addition to an employee's base salary that is paid  
232 to the employee pursuant to the vacation and sick leave policies  
233 of a municipality or other political subdivision of the state that  
234 employs him which exceeds the maximums authorized by Section  
235 25-3-91 et seq., shall be excluded from the calculation of earned



236 compensation under this article. The maximum salary applicable  
237 for retirement purposes before July 1, 1992, shall be the salary  
238 of the Governor. Nothing in Section 25-3-31 shall affect the  
239 determination of the earned compensation of any member for the  
240 purposes of this article.

241 (l) "Employee" means any person legally occupying a  
242 position in the state service, and shall include the employees of  
243 the retirement system created hereunder.

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

247 (n) "Executive director" shall mean the secretary to  
248 the board of trustees, as provided in Section 25-11-15(9), and the  
249 administrator of the Public Employees' Retirement System and all  
250 systems under the management of the board of trustees. Wherever  
251 the term "Executive Secretary of the Public Employees' Retirement  
252 System" or "executive secretary" appears in this article or in any  
253 other provision of law, it shall be construed to mean the  
254 Executive Director of the Public Employees' Retirement System.

255 (o) "Fiscal year" shall mean the period beginning on  
256 July 1 of any year and ending on June 30 of the next succeeding  
257 year.

258 (p) "Medical board" shall mean the board of physicians  
259 or any governmental or nongovernmental disability determination  
260 service designated by the board of trustees that is qualified to  
261 make disability determinations as provided for in Section  
262 25-11-119.

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

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

267 (s) "Position" means any office or any employment in  
268 the state service, or two (2) or more of them, the duties of which





269 call for services to be rendered by one (1) person, including  
270 positions jointly employed by federal and state agencies  
271 administering federal and state funds. The employer shall  
272 determine upon initial employment and during the course of  
273 employment of an employee who does not meet the criteria for  
274 coverage in the Public Employees' Retirement System based on the  
275 position held, whether the employee is or becomes eligible for  
276 coverage in the Public Employees' Retirement System based upon any  
277 other employment in a covered agency or political subdivision. If  
278 or when the employee meets the eligibility criteria for coverage  
279 in such other position, then the employer must withhold  
280 contributions and report wages from the noncovered position in  
281 accordance with the provisions for reporting of earned  
282 compensation. Failure to deduct and report those contributions  
283 shall not relieve the employee or employer of liability thereof.  
284 The board shall adopt such rules and regulations as necessary to  
285 implement and enforce this provision.

286 (t) "Prior service" shall mean service rendered before  
287 February 1, 1953, for which credit is allowable under Sections  
288 25-11-105 and 25-11-109, and which shall allow prior service for  
289 any person who is now or becomes a member of the Public Employees'  
290 Retirement System and who does contribute to the system for a  
291 minimum period of four (4) years.

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

295 (v) "Retirement allowance" shall mean an annuity for  
296 life as provided in this article, payable each year in twelve (12)  
297 equal monthly installments beginning as of the date fixed by the  
298 board. The retirement allowance shall be calculated in accordance  
299 with Section 25-11-111. Provided, any spouse who received a  
300 spouse retirement benefit in accordance with Section 25-11-111(d)  
301 prior to March 31, 1971, and said benefits were terminated because



302 of eligibility for a social security benefit, may again receive  
303 his spouse retirement benefit from and after making application  
304 with the board of trustees to reinstate such spouse retirement  
305 benefit.

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

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

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

314 (z) "State service" shall mean all offices and  
315 positions of trust or employment in the employ of the state, or  
316 any political subdivision or instrumentality thereof, which elect  
317 to participate as provided by Section 25-11-105(f), including the  
318 position of elected or fee officials of the counties and their  
319 deputies and employees performing public services or any  
320 department, independent agency, board or commission thereof, and  
321 shall also include all offices and positions of trust or  
322 employment in the employ of joint state and federal agencies  
323 administering state and federal funds and service rendered by  
324 employees of the public schools. Effective July 1, 1973, all  
325 nonprofessional public school employees, such as bus drivers,  
326 janitors, maids, maintenance workers and cafeteria employees,  
327 shall have the option to become members in accordance with Section  
328 25-11-105(b), and shall be eligible to receive credit for services  
329 prior to July 1, 1973, provided the contributions and interest are  
330 paid by the employee in accordance with said section; provided,  
331 further, that the county or municipal separate school district may  
332 pay the employer contribution and pro rata share of interest of  
333 the retroactive service from available funds. From and after July



334 1, 1998, retroactive service credit shall be purchased at the  
335 actuarial cost in accordance with Section 25-11-105(b).

336 (aa) "Withdrawal from service" shall mean complete  
337 severance of employment in the state service of any member by  
338 resignation, dismissal or discharge, except in the case of elected  
339 or appointed officials who become eligible to receive a retirement  
340 allowance under this article while holding office and who choose  
341 to receive the retirement allowance while holding office as  
342 authorized by Section 25-11-126.

343 (bb) The masculine pronoun, wherever used, shall  
344 include the feminine pronoun.

345 **SECTION 3.** Section 25-11-105, Mississippi Code of 1972, is  
346 amended as follows:

347 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

348 The membership of this retirement system shall be composed as  
349 follows:

350 (a) All persons who shall become employees in the state  
351 service after January 31, 1953, and whose wages are subject to  
352 payroll taxes and are lawfully reported on IRS Form W-2, except  
353 those specifically excluded, those to whom election is provided in  
354 Articles 1 and 3, and those elected officials who choose to  
355 receive or continue to receive a retirement allowance while  
356 holding office as authorized by Section 25-11-126, shall become  
357 members of the retirement system as a condition of their  
358 employment.

359 (b) All persons who shall become employees in the state  
360 service after January 31, 1953, except those specifically excluded  
361 or as to whom election is provided in Articles 1 and 3, unless  
362 they shall file with the board prior to the lapse of sixty (60)  
363 days of employment or sixty (60) days after the effective date of  
364 the cited articles, whichever is later, on a form prescribed by  
365 the board, a notice of election not to be covered by the  
366 membership of the retirement system and a duly executed waiver of



367 all present and prospective benefits which would otherwise inure  
368 to them on account of their participation in the system, shall  
369 become members of the retirement system; provided, however, that  
370 no credit for prior service will be granted to members until they  
371 have contributed to Article 3 of the retirement system for a  
372 minimum period of at least four (4) years. Such members shall  
373 receive credit for services performed prior to January 1, 1953, in  
374 employment now covered by Article 3, but no credit shall be  
375 granted for retroactive services between January 1, 1953, and the  
376 date of their entry into the retirement system unless the employee  
377 pays into the retirement system both the employer's and the  
378 employee's contributions on wages paid him during the period from  
379 January 31, 1953, to the date of his becoming a contributing  
380 member, together with interest at the rate determined by the board  
381 of trustees. Members reentering after withdrawal from service  
382 shall qualify for prior service under the provisions of Section  
383 25-11-117. From and after July 1, 1998, upon eligibility as noted  
384 above, the member may receive credit for such retroactive service  
385 provided:

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

389 (2) The member shall pay to the retirement system  
390 on the date he or she is eligible for such credit or at any time  
391 thereafter prior to the date of retirement the actuarial cost for  
392 each year of such creditable service. The provisions of this  
393 subparagraph (2) shall be subject to the limitations of Section  
394 415 of the Internal Revenue Code and regulations promulgated  
395 thereunder.

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



400           (c) All persons who shall become employees in the state  
401 service after January 31, 1953, and who are eligible for  
402 membership in any other retirement system shall become members of  
403 this retirement system as a condition of their employment unless  
404 they elect at the time of their employment to become a member of  
405 such other system.

406           (d) All persons who are employees in the state service  
407 on January 31, 1953, and who are members of any nonfunded  
408 retirement system operated by the State of Mississippi, or any of  
409 its departments or agencies, shall become members of this system  
410 with prior service credit unless, before February 1, 1953, they  
411 shall file a written notice with the board of trustees that they  
412 do not elect to become members.

413           (e) All persons who are employees in the state service  
414 on January 31, 1953, and who under existing laws are members of  
415 any fund operated for the retirement of employees by the State of  
416 Mississippi, or any of its departments or agencies, shall not be  
417 entitled to membership in this retirement system unless, before  
418 February 1, 1953, any such person shall indicate by a notice filed  
419 with the board, on a form prescribed by the board, his individual  
420 election and choice to participate in this system, but no such  
421 person shall receive prior service credit unless he becomes a  
422 member on or before February 1, 1953.

423           (f) Each political subdivision of the state and each  
424 instrumentality of the state or a political subdivision, or both,  
425 is hereby authorized to submit, for approval by the board of  
426 trustees, a plan for extending the benefits of this article to  
427 employees of any such political subdivision or instrumentality.  
428 Each such plan or any amendment to the plan for extending benefits  
429 thereof shall be approved by the board of trustees if it finds  
430 that such plan, or such plan as amended, is in conformity with  
431 such requirements as are provided in Articles 1 and 3; however,  
432 upon approval of such plan or any such plan heretofore approved by



433 the board of trustees, the approved plan shall not be subject to  
434 cancellation or termination by the political subdivision or  
435 instrumentality, except that any community hospital serving a  
436 municipality that joined the Public Employees' Retirement System  
437 as of November 1, 1956, to offer social security coverage for its  
438 employees and subsequently extended retirement annuity coverage to  
439 its employees as of December 1, 1965, may, upon documentation of  
440 extreme financial hardship, have future retirement annuity  
441 coverage cancelled or terminated at the discretion of the board of  
442 trustees. No such plan shall be approved unless:

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

450           (2) It specifies the source or sources from which  
451 the funds necessary to make the payments required by paragraph (d)  
452 of Section 25-11-123 and of paragraph (f) (5)B and C of this  
453 section are expected to be derived and contains reasonable  
454 assurance that such sources will be adequate for such purpose;

455           (3) It provides for such methods of administration  
456 of the plan by the political subdivision or instrumentality as are  
457 found by the board of trustees to be necessary for the proper and  
458 efficient administration thereof;

459           (4) It provides that the political subdivision or  
460 instrumentality will make such reports, in such form and  
461 containing such information, as the board of trustees may from  
462 time to time require;

463           (5) It authorizes the board of trustees to  
464 terminate the plan in its entirety in the discretion of the board  
465 if it finds that there has been a failure to comply substantially



466 with any provision contained in such plan, such termination to  
467 take effect at the expiration of such notice and on such  
468 conditions as may be provided by regulations of the board and as  
469 may be consistent with applicable federal law.

470           A. The board of trustees shall not finally  
471 refuse to approve a plan submitted under paragraph (f), and shall  
472 not terminate an approved plan without reasonable notice and  
473 opportunity for hearing to each political subdivision or  
474 instrumentality affected thereby. The board's decision in any  
475 such case shall be final, conclusive and binding unless an appeal  
476 be taken by the political subdivision or instrumentality aggrieved  
477 thereby to the Circuit Court of Hinds County, Mississippi, in  
478 accordance with the provisions of law with respect to civil causes  
479 by certiorari.

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

487           C. Every political subdivision or  
488 instrumentality required to make payments under paragraph (f) (5) B  
489 hereof is authorized, in consideration of the employees' retention  
490 in or entry upon employment after enactment of Articles 1 and 3,  
491 to impose upon its employees, as to services which are covered by  
492 an approved plan, a contribution with respect to wages (as defined  
493 in Section 25-11-5) not exceeding the amount provided in Section  
494 25-11-123(d) if such services constituted employment within the  
495 meaning of Articles 1 and 3, and to deduct the amount of such  
496 contribution from the wages as and when paid. Contributions so  
497 collected shall be paid into the contribution fund as partial  
498 discharge of the liability of such political subdivisions or



499 instrumentalities under paragraph (f) (5)B hereof. Failure to  
500 deduct such contribution shall not relieve the employee or  
501 employer of liability thereof.

502           D. Any state agency, school, political  
503 subdivision, instrumentality or any employer that is required to  
504 submit contribution payments or wage reports under any section of  
505 this chapter shall be assessed interest on delinquent payments or  
506 wage reports as determined by the board of trustees in accordance  
507 with rules and regulations adopted by the board and such assessed  
508 interest may be recovered by action in a court of competent  
509 jurisdiction against such reporting agency liable therefor or may,  
510 upon due certification of delinquency and at the request of the  
511 board of trustees, be deducted from any other monies payable to  
512 such reporting agency by any department or agency of the state.

513           E. Each political subdivision of the state  
514 and each instrumentality of the state or a political subdivision  
515 or subdivisions which submits a plan for approval of the board, as  
516 provided in this section, shall reimburse the board for coverage  
517 into the expense account, its pro rata share of the total expense  
518 of administering Articles 1 and 3 as provided by regulations of  
519 said board.

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

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





532           (i) In the event any member of this system should  
533 change his employment to any agency of the state having an  
534 actuarially funded retirement system, the board of trustees may  
535 authorize the transfer of the member's creditable service and of  
536 the present value of the member's employer's accumulation account  
537 and of the present value of the member's accumulated membership  
538 contributions to such other system, provided the employee agrees  
539 to the transfer of his accumulated membership contributions and  
540 provided such other system is authorized to receive and agrees to  
541 make such transfer.

542           In the event any member of any other actuarially funded  
543 system maintained by an agency of the state changes his employment  
544 to an agency covered by this system, the board of trustees may  
545 authorize the receipt of the transfer of the member's creditable  
546 service and of the present value of the member's employer's  
547 accumulation account and of the present value of the member's  
548 accumulated membership contributions from such other system,  
549 provided the employee agrees to the transfer of his accumulated  
550 membership contributions to this system and provided the other  
551 system is authorized and agrees to make such transfer.

552           (j) Wherever herein state employment is referred to, it  
553 shall include joint employment by state and federal agencies of  
554 all kinds.

555           (k) Employees of a political subdivision or  
556 instrumentality who were employed by such political subdivision or  
557 instrumentality prior to an agreement between such entity and the  
558 Public Employees' Retirement System to extend the benefits of this  
559 article to its employees, and which agreement provides for the  
560 establishment of retroactive service credit, and who have been  
561 members of the retirement system and have remained contributors to  
562 the retirement system for four (4) years, may receive credit for  
563 such retroactive service with such political subdivision or  
564 instrumentality, provided the employee and/or employer, as



565 provided under the terms of the modification of the joinder  
566 agreement in allowing such coverage, pay into the retirement  
567 system the employer's and employee's contributions on wages paid  
568 the member during such previous employment, together with interest  
569 or actuarial cost as determined by the board covering the period  
570 from the date the service was rendered until the payment for the  
571 credit for such service was made. Such wages shall be verified by  
572 the Social Security Administration or employer payroll records.  
573 Effective July 1, 1998, upon eligibility as noted above, a member  
574 may receive credit for such retroactive service with such  
575 political subdivision or instrumentality provided:

576 (1) The member shall furnish proof satisfactory to  
577 the board of trustees of certification of such services from the  
578 political subdivision or instrumentality where the services were  
579 rendered or verification by the Social Security Administration;  
580 and

581 (2) The member shall pay to the retirement system  
582 on the date he or she is eligible for such credit or at any time  
583 thereafter prior to the date of retirement the actuarial cost for  
584 each year of such creditable service. The provisions of this  
585 subparagraph (2) shall be subject to the limitations of Section  
586 415 of the Internal Revenue Code and regulations promulgated  
587 thereunder.

588 Nothing contained in this paragraph (k) shall be construed to  
589 limit the authority of the board to allow the correction of  
590 reporting errors or omissions based on the payment of employee and  
591 employer contributions plus applicable interest. Payment for such  
592 time shall be made in increments of not less than one-quarter  
593 (1/4) year of creditable service beginning with the most recent  
594 service. Upon the payment of all or part of such required  
595 contributions, plus interest or the actuarial cost as provided  
596 above, the member shall receive credit for the period of



597 creditable service for which full payment has been made to the  
598 retirement system.

599 (l) Through June 30, 1998, any state service eligible  
600 for retroactive service credit, no part of which has ever been  
601 reported, and requiring the payment of employee and employer  
602 contributions plus interest, or, from and after July 1, 1998, any  
603 state service eligible for retroactive service credit, no part of  
604 which has ever been reported to the retirement system, and  
605 requiring the payment of the actuarial cost for such creditable  
606 service, may, at the member's option, be purchased in quarterly  
607 increments as provided above at such time as its purchase is  
608 otherwise allowed.

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

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

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

616 (a) Patient or inmate help in state charitable, penal  
617 or correctional institutions;

618 (b) Students of any state educational institution  
619 employed by any agency of the state for temporary, part-time or  
620 intermittent work;

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

624 **III. TERMINATION OF MEMBERSHIP**

625 Membership in this system shall cease by a member withdrawing  
626 his accumulated contributions, or by a member withdrawing from  
627 active service with a retirement allowance, or by a member's  
628 death.



629           **SECTION 4.** Section 25-11-117, Mississippi Code of 1972, is  
630 amended as follows:

631           25-11-117. (1) A member may be paid a refund of the amount  
632 of accumulated contributions to the credit of the member in the  
633 annuity savings account provided the member has withdrawn from  
634 state service and further provided the member has not returned to  
635 state service on the date the refund of the accumulated  
636 contributions would be paid. However, a member may not receive a  
637 refund of the amount of employee contributions, or interest earned  
638 on those contributions, that were made during any period when he  
639 received a retirement allowance during his employment as  
640 authorized by Section 25-11-126. Such refund of the contributions  
641 to the credit of the member in the annuity savings account shall  
642 be paid within ninety (90) days from receipt in the office of the  
643 retirement system of the properly completed form requesting such  
644 payment. In the event of death prior to retirement of any member  
645 whose spouse and/or children are not entitled to a retirement  
646 allowance, the accumulated contributions to the credit of the  
647 deceased member in the annuity savings account shall be paid to  
648 the designated beneficiary on file in writing in the office of the  
649 executive director of the board of trustees within ninety (90)  
650 days from receipt of a properly completed form requesting such  
651 payment. If there is no such designated beneficiary on file for  
652 such deceased member in the office of the system, upon the filing  
653 of a proper request with the board, the contributions to the  
654 credit of the deceased member in the annuity savings account shall  
655 be refunded pursuant to Section 25-11-117.1(1). The payment of  
656 the refund shall discharge all obligations of the retirement  
657 system to the member on account of any creditable service rendered  
658 by the member prior to the receipt of the refund. By the  
659 acceptance of the refund, the member shall waive and relinquish  
660 all accrued rights in the system.



661           (2) Pursuant to the Unemployment Compensation Amendments of  
662 1992 (Public Law 102-318 (UCA)), a member or the spouse of a  
663 member who is an eligible beneficiary entitled to a refund under  
664 this section may elect, on a form prescribed by the board under  
665 rules and regulations established by the board, to have an  
666 eligible rollover distribution of accumulated contributions  
667 payable under this section paid directly to an eligible retirement  
668 plan or individual retirement account. If the member or the  
669 spouse of a member who is an eligible beneficiary makes such  
670 election and specifies the eligible retirement plan or individual  
671 retirement account to which such distribution is to be paid, the  
672 distribution will be made in the form of a direct  
673 trustee-to-trustee transfer to the specified eligible retirement  
674 plan. Flexible rollovers under this subsection shall not be  
675 considered assignments under Section 25-11-129.

676           (3) If any person who has received a refund reenters the  
677 state service and again becomes a member of the system, the member  
678 may repay all or part of the amounts previously received as a  
679 refund, together with regular interest covering the period from  
680 the date of refund to the date of repayment; provided, however,  
681 that the amounts that are repaid by the member and the creditable  
682 service related thereto shall not be used in any benefit  
683 calculation or determination until the member has remained a  
684 contributor to the system for a period of at least four (4) years  
685 subsequent to such member's reentry into state service. Repayment  
686 for such time shall be made in increments of not less than  
687 one-quarter (1/4) year of creditable service beginning with the  
688 most recent service for which refund has been made. Upon the  
689 repayment of all or part of such refund and interest, the member  
690 shall again receive credit for the period of creditable service  
691 for which full repayment has been made to the system.

692           **SECTION 5.** Section 25-11-127, Mississippi Code of 1972, is  
693 amended as follows:



694           25-11-127. (1) No person who is being paid a retirement  
695 allowance or a pension after retirement under this article shall  
696 be employed or paid for any service by the State of Mississippi,  
697 except as provided in this section or in Section 25-11-126. This  
698 section shall not apply to any pensioner who has been elected to  
699 public office after retirement, nor to any person employed because  
700 of special knowledge or experience. This section shall not be  
701 construed to mean that any person employed or elected under the  
702 above exceptions shall become a member under Article 3 of the  
703 retirement system, nor shall any retiree of this retirement system  
704 who is reemployed or is reelected to office after retirement  
705 continue to draw retirement benefits while so reemployed or  
706 reelected except those elected or appointed officials who choose  
707 to continue to receive a retirement allowance while holding office  
708 as authorized by Section 25-11-126.

709           (2) Any person who has been retired under the provisions of  
710 Articles 1 and 3 and who is later reemployed in service covered by  
711 this article shall cease to receive benefits under this article  
712 and shall again become a contributing member of the retirement  
713 system. When the person retires again, if the reemployment  
714 exceeds six (6) months, the person shall have his or her benefit  
715 recomputed, including service after again becoming a member,  
716 provided that the total retirement allowance paid to the retired  
717 member in his or her previous retirement shall be deducted from  
718 the member's retirement reserve and taken into consideration in  
719 recalculating the retirement allowance under a new option  
720 selected.

721           (3) Nothing contained in this section shall be construed as  
722 prohibiting any county or city not a member of the Public  
723 Employees' Retirement System from employing persons up to the age  
724 of seventy-three (73). In addition, through June 30, 1988,  
725 nothing contained in this section shall be construed as  
726 prohibiting any governmental unit that is a member from employing



727 persons up to the age of seventy-three (73) who are not eligible  
728 for membership at the time of employment under Article 3.

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

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

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

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

743 To determine the normal working days for a position under  
744 paragraph (a) of this subsection, the employer shall determine the  
745 required number of working days for the position on a full-time  
746 basis and the equivalent number of hours representing the  
747 full-time position. The retiree then may work up to one-half  
748 (1/2) of the required number of working days or up to one-half  
749 (1/2) of the equivalent number of hours and receive up to one-half  
750 (1/2) of the salary for the position. In the case of employment  
751 with multiple employers, the limitation shall equal one-half (1/2)  
752 of the number of days or hours for a single full-time position.

753 Notice shall be given in writing to the executive director of  
754 the system, setting forth the facts upon which the employment is  
755 being made, and the notice shall be given within five (5) days  
756 from the date of employment and also from the date of termination  
757 of the employment.

758 (6) Any member who has attained seventy (70) years of age  
759 and who has forty (40) or more years of creditable service may



760 continue in office or employment or be reemployed or elected,  
761 provided that the person files annually, in writing, in the office  
762 of the employer and the office of the executive director of the  
763 system before those services, a waiver of all salary or  
764 compensation and elects to receive in lieu of that salary or  
765 compensation a retirement allowance as provided in this section,  
766 in which event no salary or compensation shall thereafter be due  
767 or payable for those services. However, any such officer or  
768 employee may receive, in addition to the retirement allowance, any  
769 per diem, office expense allowance, mileage or travel expense  
770 authorized by any statute of the State of Mississippi.

771 (7) Any member may continue in municipal or county office or  
772 employment or be reemployed or elected in a municipality or  
773 county, provided that the person files annually, in writing, in  
774 the office of the employer and the office of the executive  
775 director of the system before those services, a waiver of all  
776 salary or compensation and elects to receive in lieu of that  
777 salary or compensation a retirement allowance as provided in this  
778 section, in which event no salary or compensation shall thereafter  
779 be due or payable for those services. However, any such officer  
780 or employee may receive, in addition to the retirement allowance,  
781 any per diem, office expense allowance, mileage or travel expense  
782 authorized by any statute of the State of Mississippi.

783 **SECTION 6.** The Attorney General of the State of Mississippi  
784 shall submit this act, immediately upon approval by the Governor,  
785 or upon approval by the Legislature subsequent to a veto, to the  
786 Attorney General of the United States or to the United States  
787 District Court for the District of Columbia in accordance with the  
788 provisions of the Voting Rights Act of 1965, as amended and  
789 extended.

790 **SECTION 7.** This act shall take effect and be in force from  
791 and after July 1, 2002, if it is effectuated on or before that  
792 date under Section 5 of the Voting Rights Act of 1965, as amended





793 and extended. If it is effectuated under Section 5 of the Voting  
794 Rights Act of 1965, as amended and extended, after July 1, 2002,  
795 this act shall take effect and be in force from and after the date  
796 it is effectuated under Section 5 of the Voting Rights Act of  
797 1965, as amended and extended.

