

By: Senator(s) Burton

To: Education

SENATE BILL NO. 2047

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 NONINSTRUCTIONAL SERVICES TO PUPILS; TO AMEND  
 4 SECTIONS 25-11-103 AND 25-11-127, MISSISSIPPI CODE OF 1972, TO  
 5 PROVIDE THAT FOR PURPOSES OF THE RETIREMENT SYSTEM, EMPLOYEES OF  
 6 SUCH PRIVATE ENTITIES SHALL NOT BE CONSIDERED IN STATE SERVICE AND  
 7 SHALL BE PROHIBITED FROM RECEIVING RETIREMENT BENEFITS; AND FOR  
 8 RELATED PURPOSES.

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

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

12 37-7-301. The school boards of all school districts shall  
 13 have the following powers, authority and duties in addition to all  
 14 others imposed or granted by law, to wit:

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

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

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

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

28 (e) To suspend or to expel a pupil or to change the  
 29 placement of a pupil to the school district's alternative school  
 30 or home-bound program for misconduct in the school or on school

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

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

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

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

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

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

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

61 (l) To prescribe and enforce rules and regulations not  
62 inconsistent with law or with the regulations of the State Board  
63 of Education for their own government and for the government of

64 the schools, and to transact their business at regular and special  
65 meetings called and held in the manner provided by law;

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

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

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

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

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

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

89 (s) To expend local school activity funds, or other  
90 available school district funds, other than minimum education  
91 program funds, for the purposes prescribed under this paragraph.  
92 "Activity funds" shall mean all funds received by school officials  
93 in all school districts paid or collected to participate in any  
94 school activity, such activity being part of the school program  
95 and partially financed with public funds or supplemented by public  
96 funds. The term "activity funds" shall not include any funds

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

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

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

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

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

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

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

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

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

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

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

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

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

229 condemnation proceedings pursuant to Section 11-27-1 et seq.,  
230 Mississippi Code of 1972, and for such purpose, the right of  
231 eminent domain is hereby conferred upon and vested in said board.  
232 Provided further, that the local school board is authorized to  
233 grant an easement for ingress and egress over sixteenth section  
234 land or lieu land in exchange for a similar easement upon  
235 adjoining land where the exchange of easements affords substantial  
236 benefit to the sixteenth section land; provided, however, the  
237 exchange must be based upon values as determined by a competent  
238 appraiser, with any differential in value to be adjusted by cash  
239 payment. Any easement rights granted over sixteenth section land  
240 under such authority shall terminate when the easement ceases to  
241 be used for its stated purpose. No sixteenth section or lieu land  
242 which is subject to an existing lease shall be burdened by any  
243 such easement except by consent of the lessee or unless the school  
244 district shall acquire the unexpired leasehold interest affected  
245 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;

307           (mm) To expend federal No Child Left Behind Act funds,  
308 or any other available funds that are expressly designated and  
309 authorized for that use, to pay training, educational expenses,  
310 salary incentives and salary supplements to employees of local  
311 school districts; except that incentives shall not be considered  
312 part of the local supplement as defined in Section 37-151-5(o),  
313 nor shall incentives be considered part of the local supplement  
314 paid to an individual teacher for the purposes of Section  
315 37-19-7(1). Mississippi Adequate Education Program funds or any  
316 other state funds may not be used for salary incentives or salary  
317 supplements as provided in this paragraph (mm);

318           (nn) To use any available funds, not appropriated or  
319 designated for any other purpose, for reimbursement to the  
320 state-licensed employees from both in-state and out-of-state, who  
321 enter into a contract for employment in a school district, for the  
322 expense of moving when the employment necessitates the relocation  
323 of the licensed employee to a different geographical area than  
324 that in which the licensed employee resides before entering into  
325 the contract. The reimbursement shall not exceed One Thousand  
326 Dollars (\$1,000.00) for the documented actual expenses incurred in

327 the course of relocating, including the expense of any  
328 professional moving company or persons employed to assist with the  
329 move, rented moving vehicles or equipment, mileage in the amount  
330 authorized for county and municipal employees under Section  
331 25-3-41 if the licensed employee used his personal vehicle or  
332 vehicles for the move, meals and such other expenses associated  
333 with the relocation. No licensed employee may be reimbursed for  
334 moving expenses under this section on more than one (1) occasion  
335 by the same school district. Nothing in this section shall be  
336 construed to require the actual residence to which the licensed  
337 employee relocates to be within the boundaries of the school  
338 district that has executed a contract for employment in order for  
339 the licensed employee to be eligible for reimbursement for the  
340 moving expenses. However, the licensed employee must relocate  
341 within the boundaries of the State of Mississippi. Any individual  
342 receiving relocation assistance through the Critical Teacher  
343 Shortage Act as provided in Section 37-159-5 shall not be eligible  
344 to receive additional relocation funds as authorized in this  
345 paragraph;

346 (oo) To use any available funds, not appropriated or  
347 designated for any other purpose, to reimburse persons who  
348 interview for employment as a licensed employee with the district  
349 for the mileage and other actual expenses incurred in the course  
350 of travel to and from the interview at the rate authorized for  
351 county and municipal employees under Section 25-3-41;

352 (pp) Consistent with the report of the Task Force to  
353 Conduct a Best Financial Management Practices Review, to improve  
354 school district management and use of resources and identify cost  
355 savings as established in Section 8 of Chapter 610, Laws of 2002,  
356 local school boards are encouraged to conduct independent reviews  
357 of the management and efficiency of schools and school districts.  
358 Such management and efficiency reviews shall provide state and  
359 local officials and the public with the following:

360 (i) An assessment of a school district's  
361 governance and organizational structure;

362 (ii) An assessment of the school district's  
363 financial and personnel management;

364 (iii) An assessment of revenue levels and sources;

365 (iv) An assessment of facilities utilization,  
366 planning and maintenance;

367 (v) An assessment of food services, transportation  
368 and safety/security systems;

369 (vi) An assessment of instructional and  
370 administrative technology;

371 (vii) A review of the instructional management and  
372 the efficiency and effectiveness of existing instructional  
373 programs; and

374 (viii) Recommended methods for increasing  
375 efficiency and effectiveness in providing educational services to  
376 the public;

377 (qq) To enter into agreements with other local school  
378 boards for the establishment of an educational service agency  
379 (ESA) to provide for the cooperative needs of the region in which  
380 the school district is located, as provided in Section 37-7-345.  
381 This paragraph shall repeal on July 1, 2007;

382 (rr) To implement a financial literacy program for  
383 students in Grades 10 and 11. The board may review the national  
384 programs and obtain free literature from various nationally  
385 recognized programs. After review of the different programs, the  
386 board may certify a program that is most appropriate for the  
387 school districts' needs. If a district implements a financial  
388 literacy program, then any student in Grade 10 or 11 may  
389 participate in the program. The financial literacy program shall  
390 include, but is not limited to, instruction in the same areas of  
391 personal business and finance as required under Section  
392 37-1-3(2)(b). The school board may coordinate with volunteer

393 teachers from local community organizations, including, but not  
394 limited to, the following: United States Department of  
395 Agriculture Rural Development, United States Department of Housing  
396 and Urban Development, Junior Achievement, bankers and other  
397 nonprofit organizations. Nothing in this paragraph shall be  
398 construed as to require school boards to implement a financial  
399 literacy program;

400 (ss) To collaborate with the State Board of Education,  
401 Community Action Agencies or the Department of Human Services to  
402 develop and implement a voluntary program to provide services for  
403 a full day prekindergarten program that addresses the cognitive,  
404 social, and emotional needs of four-year-old and three-year-old  
405 children. The school board may utilize nonstate source special  
406 funds, grants, donations or gifts to fund the voluntary program;  
407 and

408 (tt) To contract with private entities to lease  
409 employees to provide noninstructional services to pupils. The  
410 receipt of compensation shall not entitle any such contract  
411 employee to receive or be eligible for any local school district  
412 or state group insurance, retirement or other fringe benefits.

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

415 25-11-103. The following words and phrases as used in  
416 Articles 1 and 3, unless a different meaning is plainly required  
417 by the context, have the following meanings:

418 (a) "Accumulated contributions" means the sum of all  
419 the amounts deducted from the compensation of a member and  
420 credited to his individual account in the annuity savings account,  
421 together with regular interest as provided in Section 25-11-123.

422 (b) "Actuarial cost" means the amount of funds  
423 presently required to provide future benefits as determined by the  
424 board based on applicable tables and formulas provided by the  
425 actuary.

426 (c) "Actuarial equivalent" means a benefit of equal  
427 value to the accumulated contributions, annuity or benefit, as the  
428 case may be, when computed upon the basis of such mortality tables  
429 as adopted by the board of trustees, and regular interest.

430 (d) "Actuarial tables" means such tables of mortality  
431 and rates of interest as adopted by the board in accordance with  
432 the recommendation of the actuary.

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

435 (f) "Average compensation" means the average of the  
436 four (4) highest years of earned compensation reported for an  
437 employee in a fiscal or calendar year period, or combination  
438 thereof that do not overlap, or the last forty-eight (48)  
439 consecutive months of earned compensation reported for an  
440 employee. The four (4) years need not be successive or joined  
441 years of service. In no case shall the average compensation so  
442 determined be in excess of One Hundred Fifty Thousand Dollars  
443 (\$150,000.00). In computing the average compensation, any amount  
444 lawfully paid in a lump sum for personal leave or major medical  
445 leave shall be included in the calculation to the extent that the  
446 amount does not exceed an amount that is equal to thirty (30) days  
447 of earned compensation and to the extent that it does not cause  
448 the employees' earned compensation to exceed the maximum  
449 reportable amount specified in Section 25-11-103(k); however, this  
450 thirty-day limitation shall not prevent the inclusion in the  
451 calculation of leave earned under federal regulations before July  
452 1, 1976, and frozen as of that date as referred to in Section  
453 25-3-99. Only the amount of lump-sum pay for personal leave due  
454 and paid upon the death of a member attributable for up to one  
455 hundred fifty (150) days shall be used in the deceased member's  
456 average compensation calculation in determining the beneficiary's  
457 benefits. In computing the average compensation, no amounts shall  
458 be used that are in excess of the amount on which contributions

459 were required and paid, and no nontaxable amounts paid by the  
460 employer for health or life insurance premiums for the employee  
461 shall be used. If any member who is or has been granted any  
462 increase in annual salary or compensation of more than eight  
463 percent (8%) retires within twenty-four (24) months from the date  
464 that the increase becomes effective, then the board shall exclude  
465 that part of the increase in salary or compensation that exceeds  
466 eight percent (8%) in calculating that member's average  
467 compensation for retirement purposes. The board may enforce this  
468 provision by rule or regulation. However, increases in  
469 compensation in excess of eight percent (8%) per year granted  
470 within twenty-four (24) months of the date of retirement may be  
471 included in the calculation of average compensation if  
472 satisfactory proof is presented to the board showing that the  
473 increase in compensation was the result of an actual change in the  
474 position held or services rendered, or that the compensation  
475 increase was authorized by the State Personnel Board or was  
476 increased as a result of statutory enactment, and the employer  
477 furnishes an affidavit stating that the increase granted within  
478 the last twenty-four (24) months was not contingent on a promise  
479 or agreement of the employee to retire. Nothing in Section  
480 25-3-31 shall affect the calculation of the average compensation  
481 of any member for the purposes of this article. The average  
482 compensation of any member who retires before July 1, 1992, shall  
483 not exceed the annual salary of the Governor.

484 (g) "Beneficiary" means any person entitled to receive  
485 a retirement allowance, an annuity or other benefit as provided by  
486 Articles 1 and 3. The term "beneficiary" may also include an  
487 organization, estate, trust or entity; however, a beneficiary  
488 designated or entitled to receive monthly payments under an  
489 optional settlement based on life contingency or pursuant to a  
490 statutory monthly benefit may only be a natural person. In the  
491 event of the death before retirement of any member whose spouse

492 and/or children are not entitled to a retirement allowance on the  
493 basis that the member has less than four (4) years of service  
494 credit and/or has not been married for a minimum of one (1) year  
495 or the spouse has waived his or her entitlement to a retirement  
496 allowance under Section 25-11-114, the lawful spouse of a member  
497 at the time of the death of the member shall be the beneficiary of  
498 the member unless the member has designated another beneficiary  
499 after the date of marriage in writing, and filed that writing in  
500 the office of the executive director of the board of trustees. No  
501 designation or change of beneficiary shall be made in any other  
502 manner.

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

506           (i) "Creditable service" means "prior service,"  
507 "retroactive service" and all lawfully credited unused leave not  
508 exceeding the accrual rates and limitations provided in Section  
509 25-3-91 et seq., as of the date of withdrawal from service plus  
510 "membership service" for which credit is allowable as provided in  
511 Section 25-11-109. Except to limit creditable service reported to  
512 the system for the purpose of computing an employee's retirement  
513 allowance or annuity or benefits provided in this article, nothing  
514 in this paragraph shall limit or otherwise restrict the power of  
515 the governing authority of a municipality or other political  
516 subdivision of the state to adopt such vacation and sick leave  
517 policies as it deems necessary.

518           (j) "Child" means either a natural child of the member,  
519 a child that has been made a child of the member by applicable  
520 court action before the death of the member, or a child under the  
521 permanent care of the member at the time of the latter's death,  
522 which permanent care status shall be determined by evidence  
523 satisfactory to the board.



524           (k) "Earned compensation" means the full amount earned  
525 by an employee for a given pay period including any maintenance  
526 furnished up to a maximum of One Hundred Fifty Thousand Dollars  
527 (\$150,000.00) per year, and proportionately for less than one (1)  
528 year of service. The value of that maintenance when not paid in  
529 money shall be fixed by the employing state agency, and, in case  
530 of doubt, by the board of trustees as defined in Section 25-11-15.  
531 Earned compensation shall not include any nontaxable amounts paid  
532 by the employer for health or life insurance premiums for an  
533 employee. In any case, earned compensation shall be limited to  
534 the regular periodic compensation paid, exclusive of litigation  
535 fees, bond fees, and other similar extraordinary nonrecurring  
536 payments. In addition, any member in a covered position, as  
537 defined by Public Employees' Retirement System laws and  
538 regulations, who is also employed by another covered agency or  
539 political subdivision shall have the earnings of that additional  
540 employment reported to the Public Employees' Retirement System  
541 regardless of whether the additional employment is sufficient in  
542 itself to be a covered position. In addition, computation of  
543 earned compensation shall be governed by the following:

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

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

552           (iii) In the case of members of the State  
553 Legislature, all remuneration or amounts paid, except mileage  
554 allowance, shall apply.

555           (iv) The amount by which an eligible employee's  
556 salary is reduced under a salary reduction agreement authorized

557 under Section 25-17-5 shall be included as earned compensation  
558 under this paragraph, provided this inclusion does not conflict  
559 with federal law, including federal regulations and federal  
560 administrative interpretations under the federal law, pertaining  
561 to the Federal Insurance Contributions Act or to Internal Revenue  
562 Code Section 125 cafeteria plans.

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

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

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

574 (1) "Employee" means any person legally occupying a  
575 position in the state service, and shall include the employees of  
576 the retirement system created under this article. The term  
577 "employee" shall not include any employee of a private entity  
578 which leases staff to a local school board to provide  
579 noninstructional services pursuant to Section 37-7-301(tt).

580 (m) "Employer" means the State of Mississippi or any of  
581 its departments, agencies or subdivisions from which any employee  
582 receives his compensation.

583 (n) "Executive director" means the secretary to the  
584 board of trustees, as provided in Section 25-11-15(9), and the  
585 administrator of the Public Employees' Retirement System and all  
586 systems under the management of the board of trustees. Wherever  
587 the term "Executive Secretary of the Public Employees' Retirement  
588 System" or "executive secretary" appears in this article or in any

589 other provision of law, it shall be construed to mean the  
590 Executive Director of the Public Employees' Retirement System.

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

593 (p) "Medical board" means the board of physicians or  
594 any governmental or nongovernmental disability determination  
595 service designated by the board of trustees that is qualified to  
596 make disability determinations as provided for in Section  
597 25-11-119.

598 (q) "Member" means any person included in the  
599 membership of the system as provided in Section 25-11-105.

600 (r) "Membership service" means service as an employee  
601 rendered while a member of the retirement system.

602 (s) "Position" means any office or any employment in  
603 the state service, or two (2) or more of them, the duties of which  
604 call for services to be rendered by one (1) person, including  
605 positions jointly employed by federal and state agencies  
606 administering federal and state funds. The employer shall  
607 determine upon initial employment and during the course of  
608 employment of an employee who does not meet the criteria for  
609 coverage in the Public Employees' Retirement System based on the  
610 position held, whether the employee is or becomes eligible for  
611 coverage in the Public Employees' Retirement System based upon any  
612 other employment in a covered agency or political subdivision. If  
613 or when the employee meets the eligibility criteria for coverage  
614 in the other position, then the employer must withhold  
615 contributions and report wages from the noncovered position in  
616 accordance with the provisions for reporting of earned  
617 compensation. Failure to deduct and report those contributions  
618 shall not relieve the employee or employer of liability thereof.  
619 The board shall adopt such rules and regulations as necessary to  
620 implement and enforce this provision.

621           (t) "Prior service" means service rendered before  
622 February 1, 1953, for which credit is allowable under Sections  
623 25-11-105 and 25-11-109, and which shall allow prior service for  
624 any person who is now or becomes a member of the Public Employees'  
625 Retirement System and who does contribute to the system for a  
626 minimum period of four (4) years.

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

630           (v) "Retirement allowance" means an annuity for life as  
631 provided in this article, payable each year in twelve (12) equal  
632 monthly installments beginning as of the date fixed by the board.  
633 The retirement allowance shall be calculated in accordance with  
634 Section 25-11-111. However, any spouse who received a spouse  
635 retirement benefit in accordance with Section 25-11-111(d) before  
636 March 31, 1971, and those benefits were terminated because of  
637 eligibility for a social security benefit, may again receive his  
638 spouse retirement benefit from and after making application with  
639 the board of trustees to reinstate the spouse retirement benefit.

640           (w) "Retroactive service" means service rendered after  
641 February 1, 1953, for which credit is allowable under Section  
642 25-11-105(b) and Section 25-11-105(k).

643           (x) "System" means the Public Employees' Retirement  
644 System of Mississippi established and described in Section  
645 25-11-101.

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

648           (z) "State service" means all offices and positions of  
649 trust or employment in the employ of the state, or any political  
650 subdivision or instrumentality of the state, that elect to  
651 participate as provided by Section 25-11-105(f), including the  
652 position of elected or fee officials of the counties and their  
653 deputies and employees performing public services or any

654 department, independent agency, board or commission thereof, and  
655 also includes all offices and positions of trust or employment in  
656 the employ of joint state and federal agencies administering state  
657 and federal funds and service rendered by employees of the public  
658 schools. Effective July 1, 1973, all nonprofessional public  
659 school employees, such as bus drivers, janitors, maids,  
660 maintenance workers and cafeteria employees, shall have the option  
661 to become members in accordance with Section 25-11-105(b), and  
662 shall be eligible to receive credit for services before July 1,  
663 1973, provided that the contributions and interest are paid by the  
664 employee in accordance with that section; in addition, the county  
665 or municipal separate school district may pay the employer  
666 contribution and pro rata share of interest of the retroactive  
667 service from available funds. From and after July 1, 1998,  
668 retroactive service credit shall be purchased at the actuarial  
669 cost in accordance with Section 25-11-105(b).

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

673 (bb) The masculine pronoun, wherever used, includes the  
674 feminine pronoun.

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

677 25-11-127. (1) (a) No person who is being paid a  
678 retirement allowance or a pension after retirement under this  
679 article shall be employed or paid for any service by the State of  
680 Mississippi, except as provided in this section.

681 (b) No retiree of this retirement system who is  
682 reemployed or is reelected to office after retirement shall  
683 continue to draw retirement benefits while so reemployed, except  
684 as provided in this section.

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

688 (2) Any person who has been retired under the provisions of  
689 Article 3 and who is later reemployed in service covered by this  
690 article shall cease to receive benefits under this article and  
691 shall again become a contributing member of the retirement system.  
692 When the person retires again, if the reemployment exceeds six (6)  
693 months, the person shall have his or her benefit recomputed,  
694 including service after again becoming a member, provided that the  
695 total retirement allowance paid to the retired member in his or  
696 her previous retirement shall be deducted from the member's  
697 retirement reserve and taken into consideration in recalculating  
698 the retirement allowance under a new option selected.

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

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

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

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

712 To determine the normal working days for a position under  
713 paragraph (a) of this subsection, the employer shall determine the  
714 required number of working days for the position on a full-time  
715 basis and the equivalent number of hours representing the  
716 full-time position. The retiree then may work up to one-half  
717 (1/2) of the required number of working days or up to one-half

718 (1/2) of the equivalent number of hours and receive up to one-half  
719 (1/2) of the salary for the position. In the case of employment  
720 with multiple employers, the limitation shall equal one-half (1/2)  
721 of the number of days or hours for a single full-time position.

722 Notice shall be given in writing to the executive director,  
723 setting forth the facts upon which the employment is being made,  
724 and the notice shall be given within five (5) days from the date  
725 of employment and also from the date of termination of the  
726 employment.

727 (5) Any member may continue in municipal or county elected  
728 office or be elected to a municipal or county office, provided  
729 that the person:

730 (a) Files annually, in writing, in the office of the  
731 employer and the office of the executive director of the system  
732 before the person takes office or as soon as possible after  
733 retirement, a waiver of all salary or compensation and elects to  
734 receive in lieu of that salary or compensation a retirement  
735 allowance as provided in this section, in which event no salary or  
736 compensation shall thereafter be due or payable for those  
737 services; however, any such officer or employee may receive, in  
738 addition to the retirement allowance, office expense allowance,  
739 mileage or travel expense authorized by any statute of the State  
740 of Mississippi; or

741 (b) Elects to receive compensation for that elective  
742 office in an amount not to exceed twenty-five percent (25%) of the  
743 retiree's average compensation. As used in this paragraph, the  
744 term "compensation" shall not include office expense allowance,  
745 mileage or travel expense authorized by a statute of the State of  
746 Mississippi. In order to receive compensation as allowed in this  
747 paragraph, the member shall file annually, in writing, in the  
748 office of the employer and the office of the executive director of  
749 the system, an election to receive, in addition to a retirement  
750 allowance, compensation as allowed in this paragraph.

751        This section shall not be construed to mean that any employee  
752 of a private entity which leases staff to local school boards to  
753 provide noninstructional services as authorized in Section  
754 37-7-301(tt) shall become a member of the retirement system.

755        **SECTION 4.** This act shall take effect and be in force from  
756 and after July 1, 2005.