MISSISSIPPI LEGISLATURE REGULAR SESSION 2011

By: Senator(s) Jordan To: Finance

SENATE BILL NO. 2221

AN ACT TO CREATE NEW SECTION 25-11-126, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN PERSONS RECEIVING A RETIREMENT ALLOWANCE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE EMPLOYED AS TEACHERS IN THE PUBLIC SCHOOL SYSTEM AFTER THEIR RETIREMENT, AND CERTAIN PERSONS EMPLOYED AS TEACHERS IN THE PUBLIC SCHOOL SYSTEM WHO ARE ELIGIBLE TO RECEIVE A RETIREMENT ALLOWANCE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, MAY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT AS TEACHERS IN ADDITION TO RECEIVING A TEACHER'S SALARY; TO PROVIDE THAT THOSE PERSONS SHALL NOT BE CONTRIBUTING MEMBERS OF THE RETIREMENT SYSTEM NOR RECEIVE ANY CREDITABLE SERVICE FOR THE PERIOD DURING WHICH THEY RECEIVE A RETIREMENT ALLOWANCE DURING THEIR EMPLOYMENT AS TEACHERS; TO AMEND SECTIONS 25-11-103, 25-11-105 AND 25-11-127, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; TO AMEND SECTION 37-19-7, MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN LIMITATIONS ON THE SALARIES OF PERSONS WHO ARE EMPLOYED AS TEACHERS AFTER RETIREMENT AND CHOOSE TO CONTINUE RECEIVING A RETIREMENT ALLOWANCE; AND FOR RELATED PURPOSES.

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

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

25-11-126. (1) (a) Any person who has completed twenty-five (25) or more years of creditable service and is receiving a retirement allowance under this article, who was employed as a teacher in the public school system at the time of his retirement and who is employed as a teacher in the public school system after his retirement, may choose to continue receiving the retirement allowance under this article during his employment as a teacher after his retirement in addition to receiving the salary authorized under Section 37-19-7(3), in the manner provided in this section.

(b) Any person who is employed as a teacher in the public school system who completes twenty-five (25) or more years of creditable service during his employment as a teacher may

choose to receive a retirement allowance under this article during his employment as a teacher in the public school system in addition to receiving the salary authorized under Section 37-19-7(3), in the manner provided in this section.

(2) Any person described in subsection (1)(a) of this section shall notify the executive director of the retirement system, before being employed as a teacher in the public school system after his retirement, about his choice on continuing to receive the retirement allowance during his employment as a teacher. If the person chooses not to continue receiving the retirement allowance during his employment as a teacher, the retirement allowance shall cease on the day that he begins employment as a teacher after his retirement. After the person leaves employment as a teacher that he began after his retirement, in order to begin receiving a retirement allowance under this article again, the person shall make application to the executive director of the retirement system, and the retirement allowance shall begin on the first of the month following the date that the application is received by the executive director.

(3) Any person described in subsection (1)(b) who chooses to receive a retirement allowance during his employment as a teacher in the public school system shall make application to the executive director of the retirement system, and the retirement allowance shall begin on the first of the month following the date that the application is received by the executive director. Those persons shall not be required to withdraw from service in order to receive the retirement allowance.

(4) Any person to whom this section applies who receives or continues to receive a retirement allowance under this article during his employment as a teacher shall not be a contributing member of the retirement system nor receive any creditable service for the period during which he receives a retirement allowance during his employment as a teacher. Any person to whom this

section applies who chooses not to receive a retirement allowance during his employment as a teacher shall be a contributing member of the retirement system and shall receive creditable service for the period during which he is employed as a teacher without receiving a retirement allowance. If the person has previously received a retirement allowance under this article and he is employed as a teacher for more than six (6) months without receiving a retirement allowance, he shall have his allowance recomputed when he retires again, which shall include the service after he again became a contributing member of the retirement system.

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

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

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

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

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

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

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

(f) "Average compensation" means the average of the four (4) highest years of earned compensation reported for an employee in a fiscal or calendar year period, or combination thereof that do not overlap, or the last forty-eight (48) consecutive months of earned compensation reported for an employee. The four (4) years need not be successive or joined years of service. In computing the average compensation for retirement, disability or survivor benefits, any amount lawfully paid in a lump sum for personal leave or major medical leave shall be included in the calculation to the extent that the amount does not exceed an amount that is equal to thirty (30) days of earned compensation and to the extent that it does not cause the employee's earned compensation to exceed the maximum reportable amount specified in paragraph (k); however, this thirty-day limitation shall not prevent the inclusion in the calculation of leave earned under federal regulations before July 1, 1976, and frozen as of that date as referred to in Section 25-3-99. In computing the average compensation, no amounts shall be used that are in excess of the amount on which contributions were required and paid, and no nontaxable amounts paid by the employer for health or life insurance premiums for the employee shall be used. If any member who is or has been granted any increase in annual salary or compensation of more than eight percent (8%) retires within twenty-four (24) months from the date that the increase becomes effective, then the board shall exclude that part of the increase in salary or compensation that exceeds eight percent (8%) in calculating that member's average compensation for retirement purposes. The board may enforce this provision by rule or regulation. However, increases in compensation in excess of eight percent (8%) per year granted within twenty-four (24) months of the date of retirement may be included in the calculation of

average compensation if satisfactory proof is presented to the board showing that the increase in compensation was the result of an actual change in the position held or services rendered, or that the compensation increase was authorized by the State Personnel Board or was increased as a result of statutory enactment, and the employer furnishes an affidavit stating that the increase granted within the last twenty-four (24) months was not contingent on a promise or agreement of the employee to retire. Nothing in Section 25-3-31 shall affect the calculation of the average compensation of any member for the purposes of this article. The average compensation of any member who retires before July 1, 1992, shall not exceed the annual salary of the Governor.

(g) "Beneficiary" means any person entitled to receive a retirement allowance, an annuity or other benefit as provided by Articles 1 and 3. The term "beneficiary" may also include an organization, estate, trust or entity; however, a beneficiary designated or entitled to receive monthly payments under an optional settlement based on life contingency or under a statutory monthly benefit may only be a natural person. In the event of the death before retirement of any member who became a member of the system before July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than four (4) years of service credit, or who became a member of the system on or after July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than eight (8) years of service credit, and/or has not been married for a minimum of one (1) year or the spouse has waived his or her entitlement to a retirement allowance under Section 25-11-114, the lawful spouse of a member at the time of the death of the member shall be the beneficiary of the member unless the member has designated another beneficiary after the date of marriage in writing, and filed that

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

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

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

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

(k) "Earned compensation" means the full amount earned during a fiscal year by an employee including any maintenance furnished not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. The value of that maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15. Earned compensation

shall not include any nontaxable amounts paid by the employer for health or life insurance premiums for an employee. In any case, earned compensation shall be limited to the regular periodic compensation paid, exclusive of litigation fees, bond fees, and other similar extraordinary nonrecurring payments. In addition, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position. In addition, computation of earned compensation shall be governed by the following:

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

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

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

(iv) The amount by which an eligible employee's salary is reduced under a salary reduction agreement authorized under Section 25-17-5 shall be included as earned compensation under this paragraph, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations under the federal law, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

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

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

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

(l) "Employee" means any person legally occupying a position in the state service, and shall include the employees of the retirement system created under this article.

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

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

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

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

(q) "Member" means any person included in the membership of the system as provided in Section 25-11-105. For purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111, 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2007, and the person reenters state service and becomes a member of the system again on or after July 1, 2007, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2007, the member shall be considered to have become a member of the system on or after July 1, 2007, subject to the eight-year membership service requirement, as applicable in those sections. For purposes of Sections 25-11-103, 25-11-111, 25-11-114 and 25-11-115, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2011, and the person reenters state service and becomes a member of the system again on or after July 1, 2011, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2011, the member shall be considered to have become a member of the system on or after July 1, 2011.

(r) "Membership service" means service as an employee in a covered position rendered while a contributing member of the retirement system.

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

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

(t) "Prior service" means:

(i) For persons who became members of the system before July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of four (4) years.

(ii) For persons who became members of the system on or after July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of eight (8) years.

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

(v) "Retirement allowance" means an annuity for life as provided in this article, payable each year in twelve (12) equal

monthly installments beginning as of the date fixed by the board. The retirement allowance shall be calculated in accordance with Section 25-11-111. However, any spouse who received a spouse retirement benefit in accordance with Section 25-11-111(d) before March 31, 1971, and those benefits were terminated because of eligibility for a social security benefit, may again receive his or her spouse retirement benefit from and after making application with the board of trustees to reinstate the spouse retirement benefit.

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

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

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

(z) "State service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state, that elect to participate as provided by Section 25-11-105(f), including the position of elected or fee officials of the counties and their deputies and employees performing public services or any department, independent agency, board or commission thereof, and also includes all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools. Effective July 1, 1973, all nonprofessional public school employees, such as bus drivers, janitors, maids, maintenance workers and cafeteria employees, shall have the option to become members in accordance with Section 25-11-105(b), and shall be eligible to receive credit for services before July 1, 1973, provided that the contributions and interest are paid by the

employee in accordance with that section; in addition, the county or municipal separate school district may pay the employer contribution and pro rata share of interest of the retroactive service from available funds. From and after July 1, 1998, retroactive service credit shall be purchased at the actuarial cost in accordance with Section 25-11-105(b).

(aa) "Withdrawal from service" or "termination from service" means complete severance of employment in the state service of any member by resignation, dismissal or discharge, except in the case of persons who become eligible to receive a retirement allowance under this article and who choose to receive the retirement allowance during their employment as teachers as authorized by Section 25-11-126.

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

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

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

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

(a) (i) All persons who become employees in the state service after January 31, 1953, and whose wages are subject to payroll taxes and are lawfully reported on IRS Form W-2, except those who are specifically excluded, those persons as to whom election is provided in Articles 1 and 3, or those persons who choose to receive or continue receiving a retirement allowance during their employment as teachers as authorized by Section 25-11-126, shall become members of the retirement system as a condition of their employment.

(ii) From and after July 1, 2002, any individual who is employed by a governmental entity to perform professional services shall become a member of the system if the individual is paid regular periodic compensation for those services that is

subject to payroll taxes, is provided all other employee benefits and meets the membership criteria established by the regulations adopted by the board of trustees that apply to all other members of the system; however, any active member employed in such a position on July 1, 2002, will continue to be an active member for as long as they are employed in any such position.

(b) All persons who become employees in the state service after January 31, 1953, except those specifically excluded or as to whom election is provided in Articles 1 and 3, unless they file with the board before the lapse of sixty (60) days of employment or sixty (60) days after the effective date of the cited articles, whichever is later, on a form prescribed by the board, a notice of election not to be covered by the membership of the retirement system and a duly executed waiver of all present and prospective benefits that would otherwise inure to them on account of their participation in the system, shall become members of the retirement system; however, no credit for prior service will be granted to members who became members of the system before July 1, 2007, until they have contributed to Article 3 of the retirement system for a minimum period of at least four (4) years, or to members who became members of the system on or after July 1, 2007, until they have contributed to Article 3 of the retirement system for a minimum period of at least eight (8) years. Those members shall receive credit for services performed before January 1, 1953, in employment now covered by Article 3, but no credit shall be granted for retroactive services between January 1, 1953, and the date of their entry into the retirement system, unless the employee pays into the retirement system both the employer's and the employee's contributions on wages paid him during the period from January 31, 1953, to the date of his becoming a contributing member, together with interest at the rate determined by the board of trustees. Members reentering after withdrawal from service shall qualify for prior service under the provisions of Section

25-11-117. From and after July 1, 1998, upon eligibility as noted above, the member may receive credit for such retroactive service provided:

(i) The member shall furnish proof satisfactory to the board of trustees of certification of that service from the covered employer where the services were performed; and

(ii) The member shall pay to the retirement system on the date he or she is eligible for that credit or at any time thereafter before the date of retirement the actuarial cost for each year of that creditable service. The provisions of this subparagraph (ii) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated under Section 415.

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

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

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

(e) All persons who are employees in the state service on January 31, 1953, and who under existing laws are members of any fund operated for the retirement of employees by the State of

Mississippi, or any of its departments or agencies, shall not be entitled to membership in this retirement system unless, before February 1, 1953, any such person indicates by a notice filed with the board, on a form prescribed by the board, his individual election and choice to participate in this system, but no such person shall receive prior service credit unless he becomes a member on or before February 1, 1953.

(f) Each political subdivision of the state and each instrumentality of the state or a political subdivision, or both, is authorized to submit, for approval by the board of trustees, a plan for extending the benefits of this article to employees of any such political subdivision or instrumentality. Each such plan or any amendment to the plan for extending benefits thereof shall be approved by the board of trustees if it finds that the plan, or the plan as amended, is in conformity with such requirements as are provided in Articles 1 and 3; however, upon approval of the plan or any such plan previously approved by the board of trustees, the approved plan shall not be subject to cancellation or termination by the political subdivision or instrumentality, except that any community hospital serving a municipality that joined the Public Employees' Retirement System as of November 1, 1956, to offer social security coverage for its employees and later extended retirement annuity coverage to its employees as of December 1, 1965, may, upon documentation of extreme financial hardship, have future retirement annuity coverage cancelled or terminated at the discretion of the board of trustees. No such plan shall be approved unless:

(i) It provides that all services that constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan, with the exception of municipal employees who are already covered by

existing retirement plans; however, those employees in this class may elect to come under the provisions of this article;

(ii) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (d) of Section 25-11-123 and of paragraph (f)(v)2 and 3 of this section are expected to be derived and contains reasonable assurance that those sources will be adequate for that purpose;

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

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

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

1. The board of trustees shall not finally refuse to approve a plan submitted under paragraph (f), and shall not terminate an approved plan without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected by the board's decision. The board's decision in any such case shall be final, conclusive and binding unless an appeal is taken by the political subdivision or instrumentality aggrieved by the decision to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to civil causes by certiorari.

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

3. Every political subdivision or instrumentality required to make payments under paragraph (f)(v)2 of this section is authorized, in consideration of the employees' retention in or entry upon employment after enactment of Articles 1 and 3, to impose upon its employees, as to services that are covered by an approved plan, a contribution with respect to wages (as defined in Section 25-11-5) not exceeding the amount provided in Section 25-11-123(d) if those services constituted employment within the meaning of Articles 1 and 3, and to deduct the amount of the contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund as partial discharge of the liability of the political subdivisions or instrumentalities under paragraph (f)(v)2 of this section. Failure to deduct the contribution shall not relieve the employee or employer of liability for the contribution.

4. Any state agency, school, political subdivision, instrumentality or any employer that is required to submit contribution payments or wage reports under any section of this chapter shall be assessed interest on delinquent payments or wage reports as determined by the board of trustees in accordance with rules and regulations adopted by the board and delinquent payments, assessed interest and any other amount certified by the board as owed by an employer, may be recovered by action in a court of competent jurisdiction against the reporting agency liable therefor or may, upon due certification of delinquency and at the request of the board of trustees, be deducted from any

other monies payable to the reporting agency by any department or agency of the state.

5. Each political subdivision of the state and each instrumentality of the state or a political subdivision or subdivisions that submit a plan for approval of the board, as provided in this section, shall reimburse the board for coverage into the expense account, its pro rata share of the total expense of administering Articles 1 and 3 as provided by regulations of the board.

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

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

(i) If any member of this system changes his employment to any agency of the state having an actuarially funded retirement system, the board of trustees may authorize the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions to that other system, provided that the employee agrees to the transfer of his accumulated membership contributions and provided that the other system is authorized to receive and agrees to make the transfer.

If any member of any other actuarially funded system maintained by an agency of the state changes his employment to an agency covered by this system, the board of trustees may authorize

the receipt of the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions from the other system, provided that the employee agrees to the transfer of his accumulated membership contributions to this system and provided that the other system is authorized and agrees to make the transfer.

(j) Wherever state employment is referred to in this section, it includes joint employment by state and federal agencies of all kinds.

(k) Employees of a political subdivision or instrumentality who were employed by the political subdivision or instrumentality before an agreement between the entity and the Public Employees' Retirement System to extend the benefits of this article to its employees, and which agreement provides for the establishment of retroactive service credit, and who became members of the retirement system before July 1, 2007, and have remained contributors to the retirement system for four (4) years, or who became members of the retirement system on or after July 1, 2007, and have remained contributors to the retirement system for eight (8) years, may receive credit for that retroactive service with the political subdivision or instrumentality, provided that the employee and/or employer, as provided under the terms of the modification of the joinder agreement in allowing that coverage, pay into the retirement system the employer's and employee's contributions on wages paid the member during the previous employment, together with interest or actuarial cost as determined by the board covering the period from the date the service was rendered until the payment for the credit for the service was made. Those wages shall be verified by the Social Security Administration or employer payroll records. Effective July 1, 1998, upon eligibility as noted above, a member may receive credit

for that retroactive service with the political subdivision or instrumentality provided:

(i) The member shall furnish proof satisfactory to the board of trustees of certification of those services from the political subdivision or instrumentality where the services were rendered or verification by the Social Security Administration; and

(ii) The member shall pay to the retirement system on the date he or she is eligible for that credit or at any time thereafter before the date of retirement the actuarial cost for each year of that creditable service. The provisions of this subparagraph (ii) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated under Section 415.

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

(l) Through June 30, 1998, any state service eligible for retroactive service credit, no part of which has ever been reported, and requiring the payment of employee and employer contributions plus interest, or, from and after July 1, 1998, any state service eligible for retroactive service credit, no part of which has ever been reported to the retirement system, and requiring the payment of the actuarial cost for that creditable service, may, at the member's option, be purchased in quarterly

increments as provided above at the time that its purchase is otherwise allowed.

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

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

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

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

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

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

(d) From and after July 1, 2002, individuals who are employed by a governmental entity to perform professional service on less than a full-time basis who do not meet the criteria established in I(a)(ii) of this section.

III. TERMINATION OF MEMBERSHIP

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

SECTION 4. Section 25-11-127, Mississippi Code of 1972, is amended as follows:

25-11-127. (1) (a) No person who is being paid a retirement allowance or a pension after retirement under this article shall be employed or paid for any service by the State of Mississippi, including services as an employee, contract worker, contractual employee or independent contractor, until the retired

person has been retired for not less than ninety (90) consecutive days from his or her effective date of retirement. After the person has been retired for not less than ninety (90) consecutive days from his or her effective date of retirement or such later date as established by the board, he or she may be reemployed while being paid a retirement allowance under the terms and conditions provided in this section or in Section 25-11-126.

(b) No retiree of this retirement system who is reemployed or is reelected to office after retirement shall continue to draw retirement benefits while so reemployed, except as provided in this section or in Section 25-11-126.

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

(2) Except as otherwise provided in Section 25-11-126, any person who has been retired under the provisions of Article 3 and who is later reemployed in service covered by this article shall cease to receive benefits under this article and shall again become a contributing member of the retirement system. When the person retires again, if the person has been a contributing member of the retirement system during his reemployment and the reemployment exceeds six (6) months, the person shall have his or her benefit recomputed, including service after again becoming a member, provided that the total retirement allowance paid to the retired member in his or her previous retirement shall be deducted from the member's retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected.

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

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

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

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

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

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

(5) Except as otherwise provided in subsection (6) of this section, the employer of any person who is receiving a retirement allowance and who is employed in service covered by subsection (4) of this section as an employee or a contractual employee shall pay to the board the full amount of the employer's contribution on the amount of compensation received by the retiree for his or her employment in accordance with regulations prescribed by the board. The retiree shall not receive any additional creditable service in the retirement system as a result of the payment of the employer's contribution. This subsection does not apply to persons who are

receiving a retirement allowance and who contract with an employer to provide services as a true independent contractor, as defined by the board through regulation.

(6) (a) A member may retire and continue in municipal or county elective office provided that the member has reached the age and/or service requirement that will not result in a prohibited in-service distribution as defined by the Internal Revenue Service, or a retiree may be elected to a municipal or county office, provided that the person:

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

(ii) Elects to receive compensation for that elective office in an amount not to exceed twenty-five percent (25%) of the retiree's average compensation. In order to receive compensation as allowed in this subparagraph, the retiree shall file annually, in writing, in the office of the employer and the office of the executive director of the system, an election to receive, in addition to a retirement allowance, compensation as allowed in this subparagraph.

(b) The municipality or county in which the retired person holds elective office shall pay to the board the amount of the employer's contributions on the full amount of the regular compensation for the elective office that the retired person holds.

(c) As used in this subsection, the term "compensation" does not include office expense allowance, mileage or travel expense authorized by a statute of the State of Mississippi.

SECTION 5. Section 37-19-7, Mississippi Code of 1972, is amended as follows:

37-19-7. (1) This section shall be known and may be cited as the Mississippi "Teacher Opportunity Program (TOP)." The allowance in the Mississippi Adequate Education Program for teachers' salaries in each county and separate school district shall be determined and paid in accordance with the scale for teachers' salaries as provided in this subsection. For teachers holding the following types of licenses or the equivalent as determined by the State Board of Education, and the following number of years of teaching experience, the scale shall be as follows:

2007-2008 School Year and School Years Thereafter

Less Than 25 Years of Teaching Experience

AAAA	$ 35,020.00
AAA	33,990.00
AA	32,960.00
A	30,900.00

25 or More Years of Teaching Experience

AAAA	$ 37,080.00
AAA	36,050.00
AA	35,020.00
A	32,960.00

The State Board of Education shall revise the salary scale prescribed above for the 2007-2008 school year to conform to any adjustments made to the salary scale in prior fiscal years due to revenue growth over and above five percent (5%). For each one percent (1%) that the Sine Die General Fund Revenue Estimate Growth exceeds five percent (5%) for fiscal year 2006, as certified by the Legislative Budget Office to the State Board of

Education and subject to specific appropriation therefor by the Legislature, the State Board of Education shall revise the salary scale to provide an additional one percent (1%) across-the-board increase in the base salaries for each type of license.

It is the intent of the Legislature that any state funds made available for salaries of licensed personnel in excess of the funds paid for such salaries for the 1986-1987 school year shall be paid to licensed personnel pursuant to a personnel appraisal and compensation system implemented by the State Board of Education. The State Board of Education shall have the authority to adopt and amend rules and regulations as are necessary to establish, administer and maintain the system.

[Until July 1, 2012, this paragraph shall read as follows:]

All teachers employed on a full-time basis shall be paid a minimum salary in accordance with the above scale; *** * *** however, *** * *** school districts are authorized to reduce the state minimum salary by a pro rata daily amount in order to comply with the school district employee furlough provisions of Section 37-7-308.

[From and after July 1, 2012, this paragraph shall read as follows:]

All teachers employed on a full-time basis shall be paid a minimum salary in accordance with the above scale. However, no school district shall receive any funds under this section for any school year during which the local supplement paid to any individual teacher shall have been reduced to a sum less than that paid to that individual teacher for performing the same duties from local supplement during the immediately preceding school year. The amount actually spent for the purposes of group health and/or life insurance shall be considered as a part of the aggregate amount of local supplement but shall not be considered a part of the amount of individual local supplement.

Annual Increments

For teachers holding a Class AAAA license, the minimum base pay specified in this subsection shall be increased by the sum of Seven Hundred Ninety-four Dollars ($794.00) for each year of teaching experience possessed by the person holding such license until such person shall have twenty-five (25) years of teaching experience, and shall be increased by Three Hundred Ninety-seven Dollars ($397.00) for each year of teaching experience over twenty-five (25) years up to thirty-five (35) years.

For teachers holding a Class AAA license, the minimum base pay specified in this subsection shall be increased by the sum of Seven Hundred Twenty-seven Dollars ($727.00) for each year of teaching experience possessed by the person holding such license until such person shall have twenty-five (25) years of teaching experience, and shall be increased by Three Hundred Sixty-four Dollars ($364.00) for each year of teaching experience over twenty-five (25) years up to thirty-five (35) years.

For teachers holding a Class AA license, the minimum base pay specified in this subsection shall be increased by the sum of Six Hundred Sixty Dollars ($660.00) for each year of teaching experience possessed by the person holding such license until such person shall have twenty-five (25) years of teaching experience, and shall be increased by Three Hundred Thirty Dollars ($330.00) for each year of teaching experience over twenty-five (25) years up to thirty-five (35) years.

For teachers holding a Class A license, the minimum base pay specified in this subsection shall be increased by the sum of Four Hundred Ninety-five Dollars ($495.00) for each year of teaching experience possessed by the person holding such license until such person shall have twenty-four (24) years of teaching experience, and shall be increased by Two Hundred Forty-eight Dollars ($248.00) for each year of teaching experience over twenty-four (24) years up to thirty-five (35) years.

2009-2010 School Year

Annual Increments

For teachers holding a Class AAAA license, the minimum base pay specified in this subsection shall be increased by the sum of Seven Hundred Ninety-four Dollars ($794.00) for each year of teaching experience possessed by the person holding such license until such person shall have thirty-five (35) years of teaching experience.

For teachers holding a Class AAA license, the minimum base pay specified in this subsection shall be increased by the sum of Seven Hundred Twenty-seven Dollars ($727.00) for each year of teaching experience possessed by the person holding such license until such person shall have thirty-five (35) years of teaching experience.

For teachers holding a Class AA license, the minimum base pay specified in this subsection shall be increased by the sum of Six Hundred Sixty Dollars ($660.00) for each year of teaching experience possessed by the person holding such license until such person shall have thirty-five (35) years of teaching experience.

For teachers holding a Class A license, the minimum base pay specified in this subsection shall be increased by the sum of Four Hundred Ninety-five Dollars ($495.00) for each year of teaching experience possessed by the person holding such license until such person shall have thirty-five (35) years of teaching experience.

The level of professional training of each teacher to be used in establishing the salary allotment for the teachers for each year shall be determined by the type of valid teacher's license issued to those teachers on or before October 1 of the current school year. * * * however, * * * school districts are authorized, in their discretion, to negotiate the salary levels applicable to certificated employees who are receiving retirement benefits from the retirement system of another state, and the annual experience

increment provided above in Section 37-19-7 shall not be applicable to any such retired certificated employee.

Each school district shall provide an annual report to the State Department of Education on the number of certificated and noncertificated employees receiving a salary from the school district who are also receiving retirement benefits from the Public Employees' Retirement System. This report shall include the name of the employee(s), the hours per week for which the employee is under contract and the services for which the employee is under contract. Said required annual report shall be in a form and deadline promulgated by the State Board of Education. The State Department shall include this information in its annual budget request to the Legislative Budget Office.

(2) (a) The following employees shall receive an annual salary supplement in the amount of Six Thousand Dollars ($6,000.00), plus fringe benefits, in addition to any other compensation to which the employee may be entitled:

(i) Any licensed teacher who has met the requirements and acquired a Master Teacher certificate from the National Board for Professional Teaching Standards and who is employed by a local school board or the State Board of Education as a teacher and not as an administrator. Such teacher shall submit documentation to the State Department of Education that the certificate was received prior to October 15 in order to be eligible for the full salary supplement in the current school year, or the teacher shall submit such documentation to the State Department of Education prior to February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year.

(ii) A licensed nurse who has met the requirements and acquired a certificate from the National Board for Certification of School Nurses, Inc., and who is employed by a local school board or the State Board of Education as a school

nurse and not as an administrator. The licensed school nurse shall submit documentation to the State Department of Education that the certificate was received before October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed school nurse shall submit the documentation to the State Department of Education before February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year. * * * however, * * * the total number of licensed school nurses eligible for a salary supplement under this subparagraph (ii) shall not exceed thirty (30).

(iii) Any licensed school counselor who has met the requirements and acquired a National Certified School Counselor (NCSC) endorsement from the National Board of Certified Counselors and who is employed by a local school board or the State Board of Education as a counselor and not as an administrator. Such licensed school counselor shall submit documentation to the State Department of Education that the endorsement was received prior to October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed school counselor shall submit such documentation to the State Department of Education prior to February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year. However, any school counselor who started the National Board for Professional Teaching Standards process for school counselors between June 1, 2003, and June 30, 2004, and completes the requirements and acquires the Master Teacher certificate shall be entitled to the master teacher supplement, and those counselors who complete the process shall be entitled to a one-time reimbursement for the actual cost of the process as outlined in paragraph (b) of this subsection.

(iv) Any licensed speech-language pathologist and audiologist who has met the requirements and acquired a

Certificate of Clinical Competence from the American Speech-Language-Hearing Association and who is employed by a local school board or is employed by a state agency under the State Personnel Board. Such licensed speech-language pathologist and audiologist shall submit documentation to the State Department of Education that the certificate or endorsement was received prior to October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed speech-language pathologist and audiologist shall submit such documentation to the State Department of Education prior to February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year.

(b) An employee shall be reimbursed one (1) time for the actual cost of completing the process of acquiring the certificate or endorsement, excluding any costs incurred for postgraduate courses, not to exceed Five Hundred Dollars ($500.00) for a school counselor or speech-language pathologist and audiologist, regardless of whether or not the process resulted in the award of the certificate or endorsement. A local school district or any private individual or entity may pay the cost of completing the process of acquiring the certificate or endorsement for any employee of the school district described under paragraph (a), and the State Department of Education shall reimburse the school district for such cost, regardless of whether or not the process resulted in the award of the certificate or endorsement. If a private individual or entity has paid the cost of completing the process of acquiring the certificate or endorsement for an employee, the local school district may agree to directly reimburse the individual or entity for such cost on behalf of the employee.

(c) All salary supplements, fringe benefits and process reimbursement authorized under this subsection shall be paid directly by the State Department of Education to the local school

district and shall be in addition to its minimum education program allotments and not a part thereof in accordance with regulations promulgated by the State Board of Education, and subject to appropriation by the Legislature. Local school districts shall not reduce the local supplement paid to any employee receiving such salary supplement, and the employee shall receive any local supplement to which employees with similar training and experience otherwise are entitled.

(d) The State Department of Education may not pay any process reimbursement to a school district for an employee who does not complete the certification or endorsement process required to be eligible for the certificate or endorsement. If an employee for whom such cost has been paid, in full or in part, by a local school district or private individual or entity fails to complete the certification or endorsement process, the employee shall be liable to the school district or individual or entity for all amounts paid by the school district or individual or entity on behalf of that employee toward his or her certificate or endorsement.

(3) (a) Effective July 1, 2007, if funds are available for that purpose, the Legislature may authorize state funds for additional base compensation for teachers holding licenses in critical subject areas or the equivalent and who teach at least a majority of their courses in a critical subject area, as determined by the State Board of Education.

(b) Effective July 1, 2007, if funds are available for that purpose, the Legislature may authorize state funds for additional base compensation for teachers employed in a public school district located in a geographic area of the state designated as a critical teacher shortage area by the State Board of Education.

(4) (a) This section shall be known and may be cited as the "Mississippi Performance Based Pay (MPBP)" plan. In addition to

the minimum base pay described in this section, only after full funding of MAEP and if funds are available for that purpose, the State of Mississippi may provide monies from state funds to school districts for the purposes of rewarding certified teachers, administrators and nonlicensed personnel at individual schools showing improvement in student test scores. The MPBP plan shall be developed by the State Department of Education based on the following criteria:

(i) It is the express intent of this legislation that the MPBP plan shall utilize only existing standards of accreditation and assessment as established by the State Board of Education.

(ii) To ensure that all of Mississippi's teachers, administrators and nonlicensed personnel at all schools have equal access to the monies set aside in this section, the MPBP program shall be designed to calculate each school's performance as determined by the school's increase in scores from the prior school year. The MPBP program shall be based on a standardized scores rating where all levels of schools can be judged in a statistically fair and reasonable way upon implementation. At the end of each year, after all student achievement scores have been standardized, the State Department of Education shall implement the MPBP plan.

(iii) To ensure all teachers cooperate in the spirit of teamwork, individual schools shall submit a plan to the local school district to be approved before the beginning of each school year beginning July 1, 2008. The plan shall include, but not be limited to, how all teachers, regardless of subject area, and administrators will be responsible for improving student achievement for their individual school.

(b) The State Board of Education shall develop the processes and procedures for designating schools eligible to participate in the MPBP. State assessment results, growth in

student achievement at individual schools and other measures deemed appropriate in designating successful student achievement shall be used in establishing MPBP criteria. The State Board of Education shall develop the MPBP policies and procedures and report to the Legislature and Governor by December 1, 2006.

(5) (a) Beginning in the 2008-2009 school year, if funds are available for that purpose, each school in Mississippi shall have mentor teachers, as defined by Sections 37-9-201 through 37-9-213, who shall receive additional base compensation provided for by the State Legislature in the amount of One Thousand Dollars ($1,000.00) per each beginning teacher that is being mentored. The additional state compensation shall be limited to those mentor teachers that provide mentoring services to beginning teachers. For the purposes of such funding, a beginning teacher shall be defined as any teacher in any school in Mississippi that has less than one (1) year of classroom experience teaching in a public school. For the purposes of such funding, no full-time academic teacher shall mentor more than two (2) beginning teachers. The State Department of Education shall annually provide to the Legislature, no later than January 2, the number of beginning teachers in each school in Mississippi as defined in this subsection.

(b) To be eligible for this state funding, the individual school must have a classroom management program approved by the local school board.

(6) Notwithstanding any provision in this section to the contrary, any person who is receiving a retirement allowance from the Public Employees' Retirement System who is employed as a teacher after his retirement, and chooses to continue receiving the retirement allowance during his employment as a teacher after his retirement, as authorized by Section 25-11-126, shall be paid a salary equal to the amount of the salary for teachers with no experience filling similar positions. The retired member shall

not be entitled to any supplements, annual increments or other increases.

SECTION 6. This act shall take effect and be in force from and after July 1, 2011.

ST: Retired teachers; may draw retirement benefits and be reemployed as teachers if they have 25 years of creditable service.