

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 120

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT
3 SYSTEM SHALL BE TERMINATED FROM MEMBERSHIP IN THE SYSTEM IF THE
4 MEMBER IS CONVICTED OF EMBEZZLEMENT OR CERTAIN OTHER CRIMES; TO
5 AMEND SECTION 25-11-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
6 THE REFUND OF THE ACCUMULATED CONTRIBUTIONS OF ANY MEMBER WHO IS
7 CONVICTED OF ANY SUCH CRIME; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 25-11-105, Mississippi Code of 1972, is
10 amended as follows:

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

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

14 (a) All persons who shall become employees in the state
15 service after January 31, 1953, and whose wages are subject to
16 payroll taxes and are lawfully reported on IRS Form W-2, except
17 those specifically excluded, or as to whom election is provided in
18 Articles 1 and 3, shall become members of the retirement system as
19 a condition of their employment.

20 (b) All persons who shall become employees in the state
21 service after January 31, 1953, except those specifically excluded
22 or as to whom election is provided in Articles 1 and 3, unless
23 they shall file with the board prior to the lapse of sixty (60)
24 days of employment or sixty (60) days after the effective date of
25 the cited articles, whichever is later, on a form prescribed by
26 the board, a notice of election not to be covered by the
27 membership of the retirement system and a duly executed waiver of
28 all present and prospective benefits which would otherwise inure

29 to them on account of their participation in the system, shall
30 become members of the retirement system; provided, however, that
31 no credit for prior service will be granted to members until they
32 have contributed to Article 3 of the retirement system for a
33 minimum period of at least four (4) years. Such members shall
34 receive credit for services performed prior to January 1, 1953, in
35 employment now covered by Article 3, but no credit shall be
36 granted for retroactive services between January 1, 1953, and the
37 date of their entry into the retirement system unless the employee
38 pays into the retirement system both the employer's and the
39 employee's contributions on wages paid him during the period from
40 January 31, 1953, to the date of his becoming a contributing
41 member, together with interest at the rate determined by the board
42 of trustees. Members reentering after withdrawal from service
43 shall qualify for prior service under the provisions of Section
44 25-11-117. From and after July 1, 1998, upon eligibility as noted
45 above, the member may receive credit for such retroactive service
46 provided:

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

50 (2) The member shall pay to the retirement system
51 on the date he or she is eligible for such credit or at any time
52 thereafter prior to the date of retirement the actuarial cost for
53 each year of such creditable service. The provisions of this
54 subparagraph (2) shall be subject to the limitations of Section
55 415 of the Internal Revenue Code and regulations promulgated
56 thereunder.

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

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

66 such other system.

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

74 (e) All persons who are employees in the state service
75 on January 31, 1953, and who under existing laws are members of
76 any fund operated for the retirement of employees by the State of
77 Mississippi, or any of its departments or agencies, shall not be
78 entitled to membership in this retirement system unless, before
79 February 1, 1953, any such person shall indicate by a notice filed
80 with the board, on a form prescribed by the board, his individual
81 election and choice to participate in this system, but no such
82 person shall receive prior service credit unless he becomes a
83 member on or before February 1, 1953.

84 (f) Each political subdivision of the state and each
85 instrumentality of the state or a political subdivision, or both,
86 is hereby authorized to submit, for approval by the board of
87 trustees, a plan for extending the benefits of this article to
88 employees of any such political subdivision or instrumentality.
89 Each such plan or any amendment to the plan for extending benefits
90 thereof shall be approved by the board of trustees if it finds
91 that such plan, or such plan as amended, is in conformity with
92 such requirements as are provided in Articles 1 and 3; however,
93 upon approval of such plan or any such plan heretofore approved by
94 the board of trustees, the approved plan shall not be subject to
95 cancellation or termination by the political subdivision or
96 instrumentality. No such plan shall be approved unless:

97 (1) It provides that all services which constitute
98 employment as defined in Section 25-11-5 and are performed in the

99 employ of the political subdivision or instrumentality, by any
100 employees thereof, shall be covered by the plan; with the
101 exception of municipal employees who are already covered by
102 existing retirement plans; provided, however, those employees in
103 this class may elect to come under the provisions of this article;

104 (2) It specifies the source or sources from which
105 the funds necessary to make the payments required by subsection
106 (d) of Section 25-11-123 and of subsections (f)(5)b and c of this
107 section are expected to be derived and contains reasonable
108 assurance that such sources will be adequate for such purpose;

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

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

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

124 A. The board of trustees shall not finally
125 refuse to approve a plan submitted under subsection (f), and shall
126 not terminate an approved plan without reasonable notice and
127 opportunity for hearing to each political subdivision or
128 instrumentality affected thereby. The board's decision in any
129 such case shall be final, conclusive and binding unless an appeal
130 be taken by the political subdivision or instrumentality aggrieved
131 thereby to the Circuit Court of Hinds County, Mississippi, in

132 accordance with the provisions of law with respect to civil causes
133 by certiorari.

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

141 C. Every political subdivision or
142 instrumentality required to make payments under subsection (f)(5)b
143 hereof is authorized, in consideration of the employees' retention
144 in or entry upon employment after enactment of Articles 1 and 3,
145 to impose upon its employees, as to services which are covered by
146 an approved plan, a contribution with respect to wages (as defined
147 in Section 25-11-5) not exceeding the amount provided in Section
148 25-11-123(d) if such services constituted employment within the
149 meaning of Articles 1 and 3, and to deduct the amount of such
150 contribution from the wages as and when paid. Contributions so
151 collected shall be paid into the contribution fund as partial
152 discharge of the liability of such political subdivisions or
153 instrumentality under subsection (f)(5)b hereof. Failure to
154 deduct such contribution shall not relieve the employee or
155 employer of liability thereof.

156 D. Any state agency, school, political
157 subdivision, instrumentality or any employer that is required to
158 submit contribution payments or wage reports under any section of
159 this chapter shall be assessed interest on delinquent payments or
160 wage reports as determined by the board of trustees in accordance
161 with rules and regulations adopted by the board and such assessed
162 interest may be recovered by action in a court of competent
163 jurisdiction against such reporting agency liable therefor or may,
164 upon due certification of delinquency and at the request of the

165 board of trustees, be deducted from any other monies payable to
166 such reporting agency by any department or agency of the state.

167 E. Each political subdivision of the state
168 and each instrumentality of the state or a political subdivision
169 or subdivisions which submits a plan for approval of the board, as
170 provided in this section, shall reimburse the board for coverage
171 into the expense account, its pro rate share of the total expense
172 of administering Articles 1 and 3 as provided by regulations of
173 said board.

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

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

186 (i) In the event any member of this system should
187 change his employment to any agency of the state having an
188 actuarially funded retirement system, the board of trustees may
189 authorize the transfer of the member's creditable service and of
190 the present value of the member's employer's accumulation account
191 and of the present value of the member's accumulated membership
192 contributions to such other system, provided the employee agrees
193 to the transfer of his accumulated membership contributions and
194 provided such other system is authorized to receive and agrees to
195 make such transfer.

196 In the event any member of any other actuarially funded
197 system maintained by an agency of the state changes his employment

198 to an agency covered by this system, the board of trustees may
199 authorize the receipt of the transfer of the member's creditable
200 service and of the present value of the member's employer's
201 accumulation account and of the present value of the member's
202 accumulated membership contributions from such other system,
203 provided the employee agrees to the transfer of his accumulated
204 membership contributions to this system and provided the other
205 system is authorized and agrees to make such transfer.

206 (j) Wherever herein state employment is referred to, it
207 shall include joint employment by state and federal agencies of
208 all kinds.

209 (k) Employees of a political subdivision or
210 instrumentality who were employed by such political subdivision or
211 instrumentality prior to an agreement between such entity and the
212 Public Employees' Retirement System to extend the benefits of this
213 article to its employees, and which agreement provides for the
214 establishment of retroactive service credit, and who have been
215 members of the retirement system and have remained contributors to
216 the retirement system for four (4) years, may receive credit for
217 such retroactive service with such political subdivision or
218 instrumentality, provided the employee and/or employer, as
219 provided under the terms of the modification of the joinder
220 agreement in allowing such coverage, pay into the retirement
221 system the employer's and employee's contributions on wages paid
222 the member during such previous employment, together with interest
223 or actuarial cost as determined by the board covering the period
224 from the date the service was rendered until the payment for the
225 credit for such service was made. Such wages shall be verified by
226 the Social Security Administration or employer payroll records.
227 Effective July 1, 1998, upon eligibility as noted above, a member
228 may receive credit for such retroactive service with such
229 political subdivision or instrumentality provided:

230 (1) The member shall furnish proof satisfactory to

231 the board of trustees of certification of such services from the
232 political subdivision or instrumentality where the services were
233 rendered or verification by the Social Security Administration;
234 and

235 (2) The member shall pay to the retirement system
236 on the date he or she is eligible for such credit or at any time
237 thereafter prior to the date of retirement the actuarial cost for
238 each year of such creditable service. The provisions of this
239 subparagraph (2) shall be subject to the limitations of Section
240 415 of the Internal Revenue Code and regulations promulgated
241 thereunder.

242 Nothing contained in this paragraph (k) shall be construed to
243 limit the authority of the board to allow the correction of
244 reporting errors or omissions based on the payment of employee and
245 employer contributions plus applicable interest. Payment for such
246 time shall be made in increments of not less than one-quarter
247 (1/4) year of creditable service beginning with the most recent
248 service. Upon the payment of all or part of such required
249 contributions, plus interest or the actuarial cost as provided
250 above, the member shall receive credit for the period of
251 creditable service for which full payment has been made to the
252 retirement system.

253 (1) Through June 30, 1998, any state service eligible
254 for retroactive service credit, no part of which has ever been
255 reported, and requiring the payment of employee and employer
256 contributions plus interest, or, from and after July 1, 1998, any
257 state service eligible for retroactive service credit, no part of
258 which has ever been reported to the retirement system, and
259 requiring the payment of the actuarial cost for such creditable
260 service, may, at the member's option, be purchased in quarterly
261 increments as provided above at such time as its purchase is
262 otherwise allowed.

263 (m) All rights to purchase retroactive service credit

264 or repay a refund as provided in Section 25-11-101 et seq. shall
265 terminate upon retirement.

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

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

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

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

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

278 **III. TERMINATION OF MEMBERSHIP**

279 Membership in this system shall cease by:

280 (a) A member withdrawing his accumulated
281 contributions; * * *

282 (b) A member withdrawing from active service with a
283 retirement allowance; * * *

284 (c) A member's death; or

285 (d) A member's conviction of embezzlement in connection
286 with the member's employment in the state service or any other
287 crime that involved the member's employment in the state service.
288 Any member who is terminated from the system because of any such
289 conviction shall have his contributions plus any accrued interest
290 refunded in accordance with Section 25-11-117.

291 SECTION 2. Section 25-11-117, Mississippi Code of 1972, is
292 amended as follows:

293 25-11-117. (1) A member may be paid a refund of the amount
294 of accumulated contributions to the credit of the member in the
295 annuity savings account provided the member has withdrawn from
296 state service and further provided the member has not returned to

297 state service on the date the refund of the accumulated
298 contributions would be paid. Such refund of the contributions to
299 the credit of the member in the annuity savings account shall be
300 paid within ninety (90) days from receipt in the office of the
301 retirement system of the properly completed form requesting such
302 payment. The accumulated contributions of any member who is
303 terminated from membership in the system because of conviction of
304 a crime, as provided for under Section 25-11-105 III(d), shall be
305 refunded to the member within ninety (90) days from the date that
306 the retirement system receives notice of the conviction. In the
307 event of death prior to retirement of any member whose spouse
308 and/or children are not entitled to a retirement allowance, the
309 accumulated contributions to the credit of the deceased member in
310 the annuity savings account shall be paid to the designated
311 beneficiary on file in writing in the office of executive director
312 of the board of trustees within ninety (90) days from receipt of a
313 properly completed form requesting such payment. If there is no
314 such designated beneficiary on file for such deceased member in
315 the office of the system, upon the filing of a proper request with
316 the board, the contributions to the credit of the deceased member
317 in the annuity savings account shall be refunded to the estate of
318 the deceased member. The payment of the said refund shall
319 discharge all obligations of the retirement system to the said
320 member on account of any creditable service rendered by the member
321 prior to the receipt of the refund. By the acceptance of the
322 refund, the member shall waive and relinquish all accrued rights
323 in the system.

324 (2) Pursuant to the Unemployment Compensation Amendments of
325 1992 (P.L. 102-318 (UCA)), a member or eligible beneficiary
326 eligible for a refund under this section may elect on a form
327 prescribed by the board under rules and regulations established by
328 the board, to have an eligible rollover distribution of
329 accumulated contributions payable under this section paid directly

330 to an eligible retirement plan or individual retirement account.
331 If the member or eligible beneficiary makes such election and
332 specifies the eligible retirement plan or individual retirement
333 account to which such distribution is to be paid, the distribution
334 will be made in the form of a direct trustee-to-trustee transfer
335 to the specified eligible retirement plan. Flexible rollovers
336 under this subsection shall not be considered assignments under
337 Section 25-11-129.

338 (3) If any person who has received a refund reenters the
339 state service and again becomes a member of the system and remains
340 a contributor for two (2) years, the member may repay all or part
341 of the amounts previously received as a refund, together with
342 regular interest covering the period from the date of refund to
343 the date of repayment; provided, however, that the amounts that
344 are repaid by the member and the creditable service related
345 thereto shall not be used in any benefit calculation or
346 determination until the member has remained a contributor to the
347 system for a period of at least four (4) years subsequent to such
348 member's reentry into state service. Repayment for such time
349 shall be made in increments of not less than one-quarter (1/4)
350 year of creditable service beginning with the most recent service
351 for which refund has been made. Upon the repayment of all or part
352 of such refund and interest, the member shall again receive credit
353 for the period of creditable service for which full repayment has
354 been made to the system.

355 SECTION 3. This act shall take effect and be in force from
356 and after July 1, 1999.