

By: Howell

To: Appropriations

HOUSE BILL NO. 1355  
(As Passed the House)

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,  
2 TO ALLOW CERTAIN COMMUNITY HOSPITALS TO WITHDRAW FROM THE PUBLIC  
3 EMPLOYEES' RETIREMENT SYSTEM UPON DOCUMENTATION OF EXTREME  
4 FINANCIAL HARDSHIP AND IN THE DISCRETION OF THE BOARD OF TRUSTEES  
5 OF THE SYSTEM; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 25-11-105, Mississippi Code of 1972, is  
8 amended as follows:[RF1]

9 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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

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

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

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

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

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

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

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

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

82           (f) Each political subdivision of the state and each  
83 instrumentality of the state or a political subdivision, or both,  
84 is hereby authorized to submit, for approval by the board of  
85 trustees, a plan for extending the benefits of this article to  
86 employees of any such political subdivision or instrumentality.  
87 Each such plan or any amendment to the plan for extending benefits  
88 thereof shall be approved by the board of trustees if it finds  
89 that such plan, or such plan as amended, is in conformity with  
90 such requirements as are provided in Articles 1 and 3; however,  
91 upon approval of such plan or any such plan heretofore approved by  
92 the board of trustees, the approved plan shall not be subject to  
93 cancellation or termination by the political subdivision or  
94 instrumentality, except that any community hospital serving a  
95 municipality that joined the Public Employees' Retirement System  
96 as of November 1, 1956, to offer social security coverage for its  
97 employees and subsequently extended retirement annuity coverage to

98 its employees as of December 1, 1965, may, upon documentation of  
99 extreme financial hardship, have future retirement annuity  
100 coverage cancelled or terminated at the discretion of the board of  
101 trustees. No such plan shall be approved unless:

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

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

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

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

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

129 A. The board of trustees shall not finally  
130 refuse to approve a plan submitted under subsection (f), and shall

131 not terminate an approved plan without reasonable notice and  
132 opportunity for hearing to each political subdivision or  
133 instrumentality affected thereby. The board's decision in any  
134 such case shall be final, conclusive and binding unless an appeal  
135 be taken by the political subdivision or instrumentality aggrieved  
136 thereby to the Circuit Court of Hinds County, Mississippi, in  
137 accordance with the provisions of law with respect to civil causes  
138 by certiorari.

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

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

161           D. Any state agency, school, political  
162 subdivision, instrumentality or any employer that is required to  
163 submit contribution payments or wage reports under any section of

164 this chapter shall be assessed interest on delinquent payments or  
165 wage reports as determined by the board of trustees in accordance  
166 with rules and regulations adopted by the board and such assessed  
167 interest may be recovered by action in a court of competent  
168 jurisdiction against such reporting agency liable therefor or may,  
169 upon due certification of delinquency and at the request of the  
170 board of trustees, be deducted from any other monies payable to  
171 such reporting agency by any department or agency of the state.

172 E. Each political subdivision of the state  
173 and each instrumentality of the state or a political subdivision  
174 or subdivisions which submits a plan for approval of the board, as  
175 provided in this section, shall reimburse the board for coverage  
176 into the expense account, its pro rata share of the total expense  
177 of administering Articles 1 and 3 as provided by regulations of  
178 said board.

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

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

191 (i) In the event any member of this system should  
192 change his employment to any agency of the state having an  
193 actuarially funded retirement system, the board of trustees may  
194 authorize the transfer of the member's creditable service and of  
195 the present value of the member's employer's accumulation account  
196 and of the present value of the member's accumulated membership

197 contributions to such other system, provided the employee agrees  
198 to the transfer of his accumulated membership contributions and  
199 provided such other system is authorized to receive and agrees to  
200 make such transfer.

201 In the event any member of any other actuarially funded  
202 system maintained by an agency of the state changes his employment  
203 to an agency covered by this system, the board of trustees may  
204 authorize the receipt of the transfer of the member's creditable  
205 service and of the present value of the member's employer's  
206 accumulation account and of the present value of the member's  
207 accumulated membership contributions from such other system,  
208 provided the employee agrees to the transfer of his accumulated  
209 membership contributions to this system and provided the other  
210 system is authorized and agrees to make such transfer.

211 (j) Wherever herein state employment is referred to, it  
212 shall include joint employment by state and federal agencies of  
213 all kinds.

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

230 credit for such service was made. Such wages shall be verified by  
231 the Social Security Administration or employer payroll records.  
232 Effective July 1, 1998, upon eligibility as noted above, a member  
233 may receive credit for such retroactive service with such  
234 political subdivision or instrumentality provided:

235 (1) The member shall furnish proof satisfactory to  
236 the board of trustees of certification of such services from the  
237 political subdivision or instrumentality where the services were  
238 rendered or verification by the Social Security Administration;  
239 and

240 (2) The member shall pay to the retirement system  
241 on the date he or she is eligible for such credit or at any time  
242 thereafter prior to the date of retirement the actuarial cost for  
243 each year of such creditable service. The provisions of this  
244 subparagraph (2) shall be subject to the limitations of Section  
245 415 of the Internal Revenue Code and regulations promulgated  
246 thereunder.

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

258 (1) Through June 30, 1998, any state service eligible  
259 for retroactive service credit, no part of which has ever been  
260 reported, and requiring the payment of employee and employer  
261 contributions plus interest, or, from and after July 1, 1998, any  
262 state service eligible for retroactive service credit, no part of



263 which has ever been reported to the retirement system, and  
264 requiring the payment of the actuarial cost for such creditable  
265 service, may, at the member's option, be purchased in quarterly  
266 increments as provided above at such time as its purchase is  
267 otherwise allowed.

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

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

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

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

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

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

283 **III. TERMINATION OF MEMBERSHIP**

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

288 SECTION 2. This act shall take effect and be in force from  
289 and after July 1, 2000.