

By: Howell

To: Appropriations

HOUSE BILL NO. 1355
(As Sent to Governor)

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.