

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 14

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) (i) All persons who shall become employees in the  
15 state service after January 31, 1953, and whose wages are subject  
16 to 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 (ii) From and after July 1, 2002, any individual  
21 who is employed by a governmental entity to perform professional  
22 services shall become a member of the system if the individual is  
23 paid regular periodic compensation for those services that is  
24 subject to payroll taxes, is provided all other employee benefits  
25 and meets the membership criteria established by the regulations  
26 adopted by the board of trustees that apply to all other members  
27 of the system; however, any active member employed in such a  
28 position on July 1, 2002, will continue to be an active member for  
29 as long as they are employed in any such position.



30 (b) All persons who shall become employees in the state  
31 service after January 31, 1953, except those specifically excluded  
32 or as to whom election is provided in Articles 1 and 3, unless  
33 they shall file with the board prior to the lapse of sixty (60)  
34 days of employment or sixty (60) days after the effective date of  
35 the cited articles, whichever is later, on a form prescribed by  
36 the board, a notice of election not to be covered by the  
37 membership of the retirement system and a duly executed waiver of  
38 all present and prospective benefits which would otherwise inure  
39 to them on account of their participation in the system, shall  
40 become members of the retirement system; however, no credit for  
41 prior service will be granted to members until they have  
42 contributed to Article 3 of the retirement system for a minimum  
43 period of at least four (4) years. Such members shall receive  
44 credit for services performed prior to January 1, 1953, in  
45 employment now covered by Article 3, but no credit shall be  
46 granted for retroactive services between January 1, 1953, and the  
47 date of their entry into the retirement system unless the employee  
48 pays into the retirement system both the employer's and the  
49 employee's contributions on wages paid him during the period from  
50 January 31, 1953, to the date of his becoming a contributing  
51 member, together with interest at the rate determined by the board  
52 of trustees. Members reentering after withdrawal from service  
53 shall qualify for prior service under the provisions of Section  
54 25-11-117. From and after July 1, 1998, upon eligibility as noted  
55 above, the member may receive credit for such retroactive service  
56 provided:

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

60 (2) The member shall pay to the retirement system  
61 on the date he or she is eligible for such credit or at any time  
62 thereafter prior to the date of retirement the actuarial cost for



63 each year of such creditable service. The provisions of this  
64 subparagraph (2) shall be subject to the limitations of Section  
65 415 of the Internal Revenue Code and regulations promulgated  
66 thereunder.

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

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

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

84 (e) All persons who are employees in the state service  
85 on January 31, 1953, and who under existing laws are members of  
86 any fund operated for the retirement of employees by the State of  
87 Mississippi, or any of its departments or agencies, shall not be  
88 entitled to membership in this retirement system unless, before  
89 February 1, 1953, any such person shall indicate by a notice filed  
90 with the board, on a form prescribed by the board, his individual  
91 election and choice to participate in this system, but no such  
92 person shall receive prior service credit unless he becomes a  
93 member on or before February 1, 1953.

94 (f) Each political subdivision of the state and each  
95 instrumentality of the state or a political subdivision, or both,



96 is hereby authorized to submit, for approval by the board of  
97 trustees, a plan for extending the benefits of this article to  
98 employees of any such political subdivision or instrumentality.  
99 Each such plan or any amendment to the plan for extending benefits  
100 thereof shall be approved by the board of trustees if it finds  
101 that such plan, or such plan as amended, is in conformity with  
102 such requirements as are provided in Articles 1 and 3; however,  
103 upon approval of such plan or any such plan heretofore approved by  
104 the board of trustees, the approved plan shall not be subject to  
105 cancellation or termination by the political subdivision or  
106 instrumentality, except that any community hospital serving a  
107 municipality that joined the Public Employees' Retirement System  
108 as of November 1, 1956, to offer social security coverage for its  
109 employees and subsequently extended retirement annuity coverage to  
110 its employees as of December 1, 1965, may, upon documentation of  
111 extreme financial hardship, have future retirement annuity  
112 coverage cancelled or terminated at the discretion of the board of  
113 trustees. No such plan shall be approved unless:

114           (1) It provides that all services which constitute  
115 employment as defined in Section 25-11-5 and are performed in the  
116 employ of the political subdivision or instrumentality, by any  
117 employees thereof, shall be covered by the plan; with the  
118 exception of municipal employees who are already covered by  
119 existing retirement plans; however, those employees in this class  
120 may elect to come under the provisions of this article;

121           (2) It specifies the source or sources from which  
122 the funds necessary to make the payments required by paragraph (d)  
123 of Section 25-11-123 and of paragraph (f) (5)B and C of this  
124 section are expected to be derived and contains reasonable  
125 assurance that such sources will be adequate for such purpose;

126           (3) It provides for such methods of administration  
127 of the plan by the political subdivision or instrumentality as are



128 found by the board of trustees to be necessary for the proper and  
129 efficient administration thereof;

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

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

141 A. The board of trustees shall not finally  
142 refuse to approve a plan submitted under paragraph (f), and shall  
143 not terminate an approved plan without reasonable notice and  
144 opportunity for hearing to each political subdivision or  
145 instrumentality affected thereby. The board's decision in any  
146 such case shall be final, conclusive and binding unless an appeal  
147 be taken by the political subdivision or instrumentality aggrieved  
148 thereby to the Circuit Court of Hinds County, Mississippi, in  
149 accordance with the provisions of law with respect to civil causes  
150 by certiorari.

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

158 C. Every political subdivision or  
159 instrumentality required to make payments under paragraph (f)(5)B  
160 hereof is authorized, in consideration of the employees' retention



161 in or entry upon employment after enactment of Articles 1 and 3,  
162 to impose upon its employees, as to services which are covered by  
163 an approved plan, a contribution with respect to wages (as defined  
164 in Section 25-11-5) not exceeding the amount provided in Section  
165 25-11-123(d) if such services constituted employment within the  
166 meaning of Articles 1 and 3, and to deduct the amount of such  
167 contribution from the wages as and when paid. Contributions so  
168 collected shall be paid into the contribution fund as partial  
169 discharge of the liability of such political subdivisions or  
170 instrumentalities under paragraph (f)(5)B hereof. Failure to  
171 deduct such contribution shall not relieve the employee or  
172 employer of liability thereof.

173 D. Any state agency, school, political  
174 subdivision, instrumentality or any employer that is required to  
175 submit contribution payments or wage reports under any section of  
176 this chapter shall be assessed interest on delinquent payments or  
177 wage reports as determined by the board of trustees in accordance  
178 with rules and regulations adopted by the board and such assessed  
179 interest may be recovered by action in a court of competent  
180 jurisdiction against such reporting agency liable therefor or may,  
181 upon due certification of delinquency and at the request of the  
182 board of trustees, be deducted from any other monies payable to  
183 such reporting agency by any department or agency of the state.

184 E. Each political subdivision of the state  
185 and each instrumentality of the state or a political subdivision  
186 or subdivisions which submits a plan for approval of the board, as  
187 provided in this section, shall reimburse the board for coverage  
188 into the expense account, its pro rata share of the total expense  
189 of administering Articles 1 and 3 as provided by regulations of  
190 the board.

191 (g) The board may, in its discretion, deny the right of  
192 membership in this system to any class of employees whose  
193 compensation is only partly paid by the state or who are occupying



194 positions on a part-time or intermittent basis. The board may, in  
195 its discretion, make optional with employees in any such classes  
196 their individual entrance into this system.

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

203 (i) In the event any member of this system should  
204 change his employment to any agency of the state having an  
205 actuarially funded retirement system, the board of trustees may  
206 authorize the transfer of the member's creditable service and of  
207 the present value of the member's employer's accumulation account  
208 and of the present value of the member's accumulated membership  
209 contributions to such other system, provided the employee agrees  
210 to the transfer of his accumulated membership contributions and  
211 provided such other system is authorized to receive and agrees to  
212 make such transfer.

213 In the event any member of any other actuarially funded  
214 system maintained by an agency of the state changes his employment  
215 to an agency covered by this system, the board of trustees may  
216 authorize the receipt of the transfer of the member's creditable  
217 service and of the present value of the member's employer's  
218 accumulation account and of the present value of the member's  
219 accumulated membership contributions from such other system,  
220 provided the employee agrees to the transfer of his accumulated  
221 membership contributions to this system and provided the other  
222 system is authorized and agrees to make such transfer.

223 (j) Wherever herein state employment is referred to, it  
224 shall include joint employment by state and federal agencies of  
225 all kinds.



226 (k) Employees of a political subdivision or  
227 instrumentality who were employed by such political subdivision or  
228 instrumentality prior to an agreement between such entity and the  
229 Public Employees' Retirement System to extend the benefits of this  
230 article to its employees, and which agreement provides for the  
231 establishment of retroactive service credit, and who have been  
232 members of the retirement system and have remained contributors to  
233 the retirement system for four (4) years, may receive credit for  
234 such retroactive service with such political subdivision or  
235 instrumentality, provided the employee and/or employer, as  
236 provided under the terms of the modification of the joinder  
237 agreement in allowing such coverage, pay into the retirement  
238 system the employer's and employee's contributions on wages paid  
239 the member during such previous employment, together with interest  
240 or actuarial cost as determined by the board covering the period  
241 from the date the service was rendered until the payment for the  
242 credit for such service was made. Such wages shall be verified by  
243 the Social Security Administration or employer payroll records.  
244 Effective July 1, 1998, upon eligibility as noted above, a member  
245 may receive credit for such retroactive service with such  
246 political subdivision or instrumentality provided:

247 (1) The member shall furnish proof satisfactory to  
248 the board of trustees of certification of such services from the  
249 political subdivision or instrumentality where the services were  
250 rendered or verification by the Social Security Administration;  
251 and

252 (2) The member shall pay to the retirement system  
253 on the date he or she is eligible for such credit or at any time  
254 thereafter prior to the date of retirement the actuarial cost for  
255 each year of such creditable service. The provisions of this  
256 subparagraph (2) shall be subject to the limitations of Section  
257 415 of the Internal Revenue Code and regulations promulgated  
258 thereunder.



259           Nothing contained in this paragraph (k) shall be construed to  
260 limit the authority of the board to allow the correction of  
261 reporting errors or omissions based on the payment of employee and  
262 employer contributions plus applicable interest. Payment for such  
263 time shall be made in increments of not less than one-quarter  
264 (1/4) year of creditable service beginning with the most recent  
265 service. Upon the payment of all or part of such required  
266 contributions, plus interest or the actuarial cost as provided  
267 above, the member shall receive credit for the period of  
268 creditable service for which full payment has been made to the  
269 retirement system.

270           (1) Through June 30, 1998, any state service eligible  
271 for retroactive service credit, no part of which has ever been  
272 reported, and requiring the payment of employee and employer  
273 contributions plus interest, or, from and after July 1, 1998, any  
274 state service eligible for retroactive service credit, no part of  
275 which has ever been reported to the retirement system, and  
276 requiring the payment of the actuarial cost for such creditable  
277 service, may, at the member's option, be purchased in quarterly  
278 increments as provided above at such time as its purchase is  
279 otherwise allowed.

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

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

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

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

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



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

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

299 **III. TERMINATION OF MEMBERSHIP**

300 Membership in this system shall cease by:

301 (a) A member withdrawing his or her accumulated  
302 contributions;

303 (b) A member withdrawing from active service with a  
304 retirement allowance;

305 (c) A member's death; or

306 (d) A member's conviction of embezzlement in connection  
307 with the member's employment in the state service or any other  
308 crime that involved the member's employment in the state service.  
309 Any member who is terminated from the system because of any such  
310 conviction shall have his or her contributions plus any accrued  
311 interest refunded in accordance with Section 25-11-117.

312 **SECTION 2.** Section 25-11-117, Mississippi Code of 1972, is  
313 amended as follows:

314 25-11-117. (1) A member may be paid a refund of the amount  
315 of accumulated contributions to the credit of the member in the  
316 annuity savings account provided the member has withdrawn from  
317 state service and further provided the member has not returned to  
318 state service on the date the refund of the accumulated  
319 contributions would be paid. Such refund of the contributions to  
320 the credit of the member in the annuity savings account shall be  
321 paid within ninety (90) days from receipt in the office of the  
322 retirement system of the properly completed form requesting such  
323 payment. The accumulated contributions of any member who is  
324 terminated from membership in the system because of conviction of



325 a crime, as provided for under Section 25-11-105 III(d), shall be  
326 refunded to the member within ninety (90) days from the date that  
327 the retirement system receives notice of the conviction. In the  
328 event of death prior to retirement of any member whose spouse  
329 and/or children are not entitled to a retirement allowance, the  
330 accumulated contributions to the credit of the deceased member in  
331 the annuity savings account shall be paid to the designated  
332 beneficiary on file in writing in the office of the executive  
333 director of the board of trustees within ninety (90) days from  
334 receipt of a properly completed form requesting such payment. If  
335 there is no such designated beneficiary on file for such deceased  
336 member in the office of the system, upon the filing of a proper  
337 request with the board, the contributions to the credit of the  
338 deceased member in the annuity savings account shall be refunded  
339 pursuant to Section 25-11-117.1(1). The payment of the refund  
340 shall discharge all obligations of the retirement system to the  
341 member on account of any creditable service rendered by the member  
342 prior to the receipt of the refund. By the acceptance of the  
343 refund, the member shall waive and relinquish all accrued rights  
344 in the system.

345 (2) Pursuant to the Unemployment Compensation Amendments of  
346 1992 (Public Law 102-318 (UCA)), a member or the spouse of a  
347 member who is an eligible beneficiary entitled to a refund under  
348 this section may elect, on a form prescribed by the board under  
349 rules and regulations established by the board, to have an  
350 eligible rollover distribution of accumulated contributions  
351 payable under this section paid directly to an eligible retirement  
352 plan, as defined under applicable federal law, or an individual  
353 retirement account. If the member or the spouse of a member who  
354 is an eligible beneficiary makes such election and specifies the  
355 eligible retirement plan or individual retirement account to which  
356 such distribution is to be paid, the distribution will be made in  
357 the form of a direct trustee-to-trustee transfer to the specified



358 eligible retirement plan. Flexible rollovers under this  
359 subsection shall not be considered assignments under Section  
360 25-11-129.

361 (3) If any person who has received a refund reenters the  
362 state service and again becomes a member of the system, the member  
363 may repay all or part of the amounts previously received as a  
364 refund, together with regular interest covering the period from  
365 the date of refund to the date of repayment; provided, however,  
366 that the amounts that are repaid by the member and the creditable  
367 service related thereto shall not be used in any benefit  
368 calculation or determination until the member has remained a  
369 contributor to the system for a period of at least four (4) years  
370 subsequent to such member's reentry into state service. Repayment  
371 for such time shall be made in increments of not less than  
372 one-quarter (1/4) year of creditable service beginning with the  
373 most recent service for which refund has been made. Upon the  
374 repayment of all or part of such refund and interest, the member  
375 shall again receive credit for the period of creditable service  
376 for which full repayment has been made to the system.

377 **SECTION 3.** This act shall take effect and be in force from  
378 and after July 1, 2003.

