

By: Representative Barnett

To: Appropriations

HOUSE BILL NO. 1093

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:

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

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

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

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

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

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

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

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

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

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

94 is hereby authorized to submit, for approval by the board of
95 trustees, a plan for extending the benefits of this article to
96 employees of any such political subdivision or instrumentality.
97 Each such plan or any amendment to the plan for extending benefits
98 thereof shall be approved by the board of trustees if it finds
99 that such plan, or such plan as amended, is in conformity with
100 such requirements as are provided in Articles 1 and 3; however,
101 upon approval of such plan or any such plan heretofore approved by
102 the board of trustees, the approved plan shall not be subject to
103 cancellation or termination by the political subdivision or
104 instrumentality, except that any community hospital serving a
105 county that joined the Public Employees' Retirement System as of
106 September 1, 1954, to offer social security coverage for its
107 employees and subsequently extended retirement annuity coverage to
108 its employees as of August 1, 1990, may, upon documentation of
109 extreme financial hardship, have future retirement annuity
110 coverage cancelled or terminated at the discretion of the board of
111 trustees. No such plan shall be approved unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

297 **III. TERMINATION OF MEMBERSHIP**

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

302 **SECTION 2.** This act shall take effect and be in force from
303 and after July 1, 2004.