

By: Representative Johnson

To: Appropriations

HOUSE BILL NO. 1106

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

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

57 (2) The member shall pay to the retirement system
58 on the date he or she is eligible for that credit or at any time
59 thereafter before the date of retirement the actuarial cost for
60 each year of that creditable service. The provisions of this

61 subparagraph (2) shall be subject to the limitations of Section
62 415 of the Internal Revenue Code and regulations promulgated under
63 Section 415.

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

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

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

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

91 (f) Each political subdivision of the state and each
92 instrumentality of the state or a political subdivision, or both,
93 is authorized to submit, for approval by the board of trustees, a

94 plan for extending the benefits of this article to employees of
95 any such political subdivision or instrumentality. Each such plan
96 or any amendment to the plan for extending benefits thereof shall
97 be approved by the board of trustees if it finds that the plan, or
98 the plan as amended, is in conformity with such requirements as
99 are provided in Articles 1 and 3; however, upon approval of the
100 plan or any such plan previously approved by the board of
101 trustees, the approved plan shall not be subject to cancellation
102 or termination by the political subdivision or instrumentality,
103 except that any community hospital serving a municipality that
104 joined the Public Employees' Retirement System as of November 1,
105 1956, to offer social security coverage for its employees and
106 subsequently extended retirement annuity coverage to its employees
107 as of December 1, 1965, and any community hospital serving a
108 county that joined the Public Employees' Retirement System as of
109 June 1, 1965, to offer social security coverage for its employees
110 and subsequently first extended retirement annuity coverage to its
111 employees as of January 1, 1975, may, upon documentation of
112 extreme financial hardship, have future retirement annuity
113 coverage cancelled or terminated at the discretion of the board of
114 trustees. No such plan shall be approved unless:

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

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

127 (3) It provides for such methods of administration
128 of the plan by the political subdivision or instrumentality as are
129 found by the board of trustees to be necessary for the proper and
130 efficient administration thereof;

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

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

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

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

159 C. Every political subdivision or
160 instrumentality required to make payments under paragraph (f)(5)B
161 of this section is authorized, in consideration of the employees'
162 retention in or entry upon employment after enactment of Articles
163 1 and 3, to impose upon its employees, as to services that are
164 covered by an approved plan, a contribution with respect to wages
165 (as defined in Section 25-11-5) not exceeding the amount provided
166 in Section 25-11-123(d) if those services constituted employment
167 within the meaning of Articles 1 and 3, and to deduct the amount
168 of the contribution from the wages as and when paid.
169 Contributions so collected shall be paid into the contribution
170 fund as partial discharge of the liability of the political
171 subdivisions or instrumentalities under paragraph (f)(5)B of this
172 section. Failure to deduct the contribution shall not relieve the
173 employee or employer of liability for the contribution.

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

187 E. Each political subdivision of the state
188 and each instrumentality of the state or a political subdivision
189 or subdivisions that submit a plan for approval of the board, as
190 provided in this section, shall reimburse the board for coverage
191 into the expense account, its pro rata share of the total expense

192 of administering Articles 1 and 3 as provided by regulations of
193 the board.

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

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

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

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

225 (j) Wherever state employment is referred to in this
226 section, it includes joint employment by state and federal
227 agencies of all kinds.

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

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

254 (2) The member shall pay to the retirement system
255 on the date he or she is eligible for that credit or at any time
256 thereafter before the date of retirement the actuarial cost for
257 each year of that creditable service. The provisions of this

258 subparagraph (2) shall be subject to the limitations of Section
259 415 of the Internal Revenue Code and regulations promulgated under
260 Section 415.

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

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

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

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

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

289 (a) Patient or inmate help in state charitable, penal
290 or correctional institutions;

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

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

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

301 **III. TERMINATION OF MEMBERSHIP**

302 Membership in this system shall cease by a member withdrawing
303 his accumulated contributions, or by a member withdrawing from
304 active service with a retirement allowance, or by a member's
305 death.

306 **SECTION 2.** This act shall take effect and be in force from
307 and after its passage.