

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2434

1 AN ACT TO AMEND SECTIONS 25-11-403, 25-11-407, 25-11-411,
 2 25-11-417 AND 25-11-419, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
 3 CONTRIBUTIONS OF PARTICIPANTS IN THE OPTIONAL RETIREMENT PROGRAM
 4 FOR STATE INSTITUTIONS OF HIGHER LEARNING TO BE INVESTED IN MUTUAL
 5 FUNDS OR SIMILAR INVESTMENT PRODUCTS; TO PROVIDE THAT COMPANIES
 6 DESIGNATED BY THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES'
 7 RETIREMENT SYSTEM TO PROVIDE INVESTMENT PRODUCTS UNDER THE PROGRAM
 8 SHALL ACT IN A FIDUCIARY CAPACITY WHEN SELECTING INVESTMENT
 9 PRODUCTS; TO REQUIRE SUCH COMPANIES TO SEEK APPROVAL OF THE BOARD
 10 OF TRUSTEES FOR INVESTMENT PRODUCTS MADE AVAILABLE UNDER THE
 11 PROGRAM; TO REQUIRE SUCH COMPANIES TO ANNUALLY REPORT TO THE BOARD
 12 OF TRUSTEES REGARDING PARTICIPANT USAGE OF SUCH PRODUCTS; TO
 13 PROVIDE THAT THE BOARD OF TRUSTEES SHALL HAVE THE RIGHT TO APPROVE
 14 THE INVESTMENT PRODUCTS OFFERED BY THE COMPANIES UNDER THE PROGRAM
 15 AND TO DISCONTINUE ANY PRODUCTS SO OFFERED; TO PROVIDE THAT THE
 16 BENEFITS OF PARTICIPANTS WHOSE FUNDS ARE INVESTED IN MUTUAL FUNDS
 17 OR SIMILAR INVESTMENT PRODUCTS SHALL BE LIMITED BY THE VALUE OF
 18 THE ACCOUNT; TO PROVIDE THAT MUTUAL FUND ACCOUNTS OR SIMILAR
 19 INVESTMENT PRODUCTS UNDER THE OPTIONAL RETIREMENT PROGRAM AND ALL
 20 RIGHTS THERETO OF A PARTICIPANT IN THE OPTIONAL RETIREMENT
 21 PROGRAM, SHALL BE EXEMPT FROM ANY STATE OR MUNICIPAL TAX EXCEPT
 22 STATE INCOME TAX AND SHALL BE UNASSIGNABLE; AND FOR RELATED
 23 PURPOSES.

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

25 **SECTION 1.** Section 25-11-403, Mississippi Code of 1972, is
 26 amended as follows:

27 25-11-403. Retirement and death benefits shall be provided
 28 to participants in the optional retirement program by contribution
 29 to annuity contracts, fixed or variable in nature, mutual fund
 30 accounts or similar investment products, or a combination thereof,
 31 at the option of the participant. The state and the participants
 32 shall contribute, in accordance with this article, toward the
 33 purchase of benefits under such contracts or accounts, which
 34 contracts or accounts shall become the property of the
 35 participants.

36 **SECTION 2.** Section 25-11-407, Mississippi Code of 1972, is
 37 amended as follows:

38 25-11-407. (1) The Board of Trustees of the Public
39 Employees' Retirement System shall designate not less than three
40 (3) nor more than five (5) companies to provide annuity
41 contracts * * *, mutual fund accounts or similar investment
42 products, and the types of investment contracts, mutual fund
43 accounts or similar investment products which may be offered by
44 the designated companies. In making such designations, the board
45 of trustees shall consider and be guided by:

46 (a) The nature and extent of the rights and benefits to
47 be provided by such contracts or accounts, or both, for
48 participants and their beneficiaries;

49 (b) The relation of such rights and benefits to the
50 amount of contributions to be made;

51 (c) The suitability of such rights and benefits to the
52 needs of the participants;

53 (d) The efficacy of the contracts or accounts, or both,
54 in the recruitment and retention of faculty and
55 administrators; * * *

56 (e) The ability and experience of the designated
57 companies in providing such suitable rights and benefits under
58 such contracts or accounts, or both; and

59 (f) The ability and experience of the designated
60 companies to provide both suitable participant investment guidance
61 and investment option.

62 (2) Companies designated pursuant to subsection (1) of this
63 section shall act in a fiduciary capacity in selecting investment
64 products that are suitable for the optional retirement program.
65 The companies shall report to the Board of Trustees of the Public
66 Employees' Retirement System and seek the approval of the board
67 for the investment products made available by the companies under
68 the optional retirement program. The companies shall annually
69 report to the board of trustees regarding participant usage of
70 products made available by the companies under the optional

71 retirement program. The board of trustees shall have the right to
72 approve the investment products offered by the companies under the
73 optional retirement program and to discontinue any product so
74 offered.

75 **SECTION 3.** Section 25-11-411, Mississippi Code of 1972, is
76 amended as follows:

77 25-11-411. Each participant shall contribute monthly to the
78 optional retirement program the same amount which he would be
79 required to contribute to the Public Employees' Retirement System
80 of Mississippi if he were a member of that retirement system.
81 Participant contributions may be made by a reduction in salary in
82 accordance with the provisions of Section 403(b) of the United
83 States Internal Revenue Code or any amendment thereto, or in
84 accordance with Section 25-11-124, as may be appropriate under the
85 determination made in accordance with Section 25-11-421. The
86 entirety of each participant's contribution shall be remitted to
87 the appropriate company or companies for application to the
88 participant's * * * contracts or accounts, or both. Each employer
89 of a participant in the optional retirement program shall
90 contribute on behalf of each participant in the optional
91 retirement program the same amount the employer would be required
92 to contribute to the Public Employees' Retirement System of
93 Mississippi if the participant were a member of the retirement
94 system. The employer's contribution shall be remitted as follows:

95 (a) An amount equal to seven and one-fourth percent
96 (7-1/4%) of the participant's total earned compensation as defined
97 in Section 25-11-103 shall be remitted to the appropriate company
98 or companies for application to the participant's * * * contracts
99 or accounts, or both;

100 (b) An amount equal to two and one-half percent
101 (2-1/2%) of the participant's total earned compensation as defined
102 in Section 25-11-103 shall be remitted to the Public Employees'

103 Retirement System of Mississippi for application to the accrued
104 liability contribution fund;

105 (c) The remainder, if any, shall be remitted to the
106 appropriate company or companies for application to the
107 participant's * * * contracts or accounts, or both.

108 If the employer's contribution level is decreased below nine
109 and three-fourths percent (9-3/4%) of the employee's total earned
110 compensation, the remittance provided by paragraph (b) of this
111 section shall be reduced accordingly. There shall be no reduction
112 in the remittance provided by paragraph (a) of this section until
113 such time, if any, that the employer's contribution level is less
114 than seven and one-fourth percent (7-1/4%) of the participant's
115 total earned compensation. If the accrued liability contribution
116 is reduced or discontinued pursuant to Section 25-11-123, the
117 amount of the reduction, or the entirety of the employer's
118 contribution, in case of discontinuance, shall be remitted to the
119 appropriate company or companies for application to the
120 participant's * * * contracts or accounts, or both. Any
121 remittance required to be made by the employer to the Public
122 Employees' Retirement System of Mississippi shall be made at the
123 times the employer remits contributions for members of such
124 retirement system.

125 **SECTION 4.** Section 25-11-417, Mississippi Code of 1972, is
126 amended as follows:

127 25-11-417. Benefits payable to participants under the
128 optional retirement program are not obligations of the State of
129 Mississippi. Such benefits and other rights of optional
130 retirement program participants or their beneficiaries are the
131 liability and responsibility solely of the designated company or
132 companies. The benefits of participants whose funds are invested
133 with annuity providers shall be governed solely by the terms of
134 the annuity contracts issued by such company or companies. The
135 benefits of participants whose funds are invested in mutual funds

136 or similar investment products shall be limited by the value of
137 the account.

138 **SECTION 5.** Section 25-11-419, Mississippi Code of 1972, is
139 amended as follows:

140 25-11-419. Annuity contracts, mutual fund accounts or
141 similar investment products authorized under the optional
142 retirement program and all rights thereto of a participant in the
143 optional retirement program, shall be exempt from any state or
144 municipal tax (except to the extent that state income tax is
145 payable under Chapter 7, Title 27, Mississippi Code of 1972),
146 shall be exempt from any levy and sale, garnishment, attachment,
147 or any process whatsoever, and shall be unassignable except, in
148 the case of an annuity contract, as specifically otherwise
149 provided in the annuity contract. Annuity contracts issued under
150 the optional retirement program shall be treated under the State
151 Life and Health Insurance Guaranty Association Act in the same
152 manner as contracts qualified under Section 403(b) of the Internal
153 Revenue Code.

154 **SECTION 6.** This act shall take effect and be in force from
155 and after July 1, 2005.