

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2213

1 AN ACT TO AMEND SECTION 25-11-121, MISSISSIPPI CODE OF 1972,
2 TO REMOVE CERTAIN RESTRICTIONS ON THE TYPES OF BONDS AND FOREIGN
3 GOVERNMENT SECURITIES IN WHICH THE PUBLIC EMPLOYEES' RETIREMENT
4 SYSTEM MAY INVEST; TO EXEMPT FROM THE PROVISIONS OF THE
5 MISSISSIPPI PUBLIC RECORDS ACT OF 1983, DOCUMENTARY MATERIAL OR
6 DATA MADE OR RECEIVED BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
7 WHICH CONSISTS OF TRADE SECRETS OR COMMERCIAL OR FINANCIAL
8 INFORMATION THAT RELATES TO THE INVESTMENTS OF THE SYSTEM IF THE
9 DISCLOSURE OF THE MATERIAL OR DATA IS LIKELY TO IMPAIR THE
10 SYSTEM'S ABILITY TO OBTAIN SUCH INFORMATION IN THE FUTURE, OR IS
11 LIKELY TO CAUSE SUBSTANTIAL HARM TO THE COMPETITIVE POSITION OF
12 THE PERSON OR ENTITY FROM WHOM THE INFORMATION WAS OBTAINED; TO
13 AMEND SECTION 25-41-7, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
14 PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO HOLD EXECUTIVE SESSIONS
15 WHEN DISCUSSING SUCH INFORMATION THAT IS EXEMPT FROM THE
16 MISSISSIPPI PUBLIC RECORDS ACT OF 1983 PURSUANT TO SECTION
17 25-11-121, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 25-11-121, Mississippi Code of 1972, is
20 amended as follows:

21 25-11-121. (1) The board shall, from time to time,
22 determine the current requirements for benefit payments and
23 administrative expense which shall be maintained as a cash working
24 balance, except that such cash working balance shall not exceed at
25 any time an amount necessary to meet the current obligations of
26 the system for a period of ninety (90) days. Any amounts in
27 excess of such cash working balance shall be invested, as follows,
28 at such periodic intervals as the board may determine; however,
29 all purchases shall be made from competitive offerings except
30 short-term obligations referred to in Section 25-11-121(d):

31 (a) Bonds, notes, certificates and other valid general
32 obligations of the State of Mississippi, or of any county, or of
33 any city, or of any supervisors district of any county of the
34 State of Mississippi, or of any school district bonds of the State

35 of Mississippi; notes or certificates of indebtedness issued by
36 the Veterans' Home Purchase Board of Mississippi, provided such
37 notes or certificates of indebtedness are secured by the pledge of
38 collateral equal to two hundred percent (200%) of the amount of
39 the loan, which collateral is also guaranteed at least for fifty
40 percent (50%) of the face value by the United States government,
41 and provided that not more than five percent (5%) of the total
42 investment holdings of the system shall be in Veterans' Home
43 Purchase Board notes or certificates at any time; real estate
44 mortgage loans one hundred percent (100%) insured by the Federal
45 Housing Administration on single family homes located in the State
46 of Mississippi, where monthly collections and all servicing
47 matters are handled by Federal Housing Administration approved
48 mortgagees authorized to make such loans in the State of
49 Mississippi;

50 (b) State of Mississippi highway bonds;

51 (c) Funds may be deposited in any institution insured
52 by the Federal Deposit Insurance Corporation that maintains a
53 facility that takes deposits in the State of Mississippi or a
54 custodial bank;

55 (d) Corporate bonds and taxable municipal bonds * * *
56 rated by Standard and Poor's or by Moody's Investment Service; or
57 corporate short-term obligations of corporations or of
58 wholly-owned subsidiaries of corporations, whose short-term
59 obligations are rated A-3 or better by Standard and Poor's or
60 rated P-3 or better by Moody's Investment Service;

61 (e) Bonds of the Tennessee Valley Authority;

62 (f) Bonds, notes, certificates and other valid
63 obligations of the United States, and other valid obligations of
64 any federal instrumentality that issues securities under authority
65 of an act of Congress and are exempt from registration with the
66 Securities and Exchange Commission;

67 (g) Bonds, notes, debentures and other securities
68 issued by any federal instrumentality and fully guaranteed by the
69 United States;

70 (h) Interest-bearing bonds or notes which are general
71 obligations of any other state in the United States or of any city
72 or county therein, provided such city or county had a population
73 as shown by the federal census next preceding such investment of
74 not less than twenty-five thousand (25,000) inhabitants and
75 provided that such state, city or county has not defaulted for a
76 period longer than thirty (30) days in the payment of principal or
77 interest on any of its general obligation indebtedness during a
78 period of ten (10) calendar years immediately preceding such
79 investment;

80 (i) Shares of stocks, common and/or preferred, of
81 corporations created by or existing under the laws of the United
82 States or any state, district or territory thereof; provided:

83 (i) The maximum investments in stocks shall not
84 exceed fifty percent (50%) of the book value of the total
85 investment fund of the system;

86 (ii) The stock of such corporation shall:

87 A. Be listed on a national stock exchange; or

88 B. Be traded in the over-the-counter market,

89 provided price quotations for such over-the-counter stocks are
90 quoted by the National Association of Securities Dealers Automated
91 Quotation System (NASDAQ);

92 (iii) The outstanding shares of such corporation
93 shall have a total market value of not less than Fifty Million
94 Dollars (\$50,000,000.00);

95 (iv) The amount of investment in any one (1)
96 corporation shall not exceed three percent (3%) of the book value
97 of the assets of the system; and

98 (v) The shares of any one (1) corporation owned by
99 the system shall not exceed five percent (5%) of that
100 corporation's outstanding stock;

101 (j) Bonds * * *, stocks and convertible securities of
102 established non-United States companies, which companies are
103 listed on only primary national stock exchanges of foreign
104 nations; and in foreign government securities rated * * * by a
105 recognized rating agency; provided that the total book value of
106 investments under this paragraph shall at no time exceed thirty
107 percent (30%) of the total book value of all investments of the
108 system. The board may take requisite action to effectuate or
109 hedge such transactions through foreign banks, including the
110 purchase and sale, transfer, exchange, or otherwise disposal of,
111 and generally deal in foreign exchange through the use of foreign
112 currency, interbank forward contracts, futures contracts, options
113 contracts, swaps and other related derivative instruments,
114 notwithstanding any other provisions of this article to the
115 contrary;

116 (k) Covered call and put options on securities traded
117 on one or more of the regulated exchanges;

118 (l) Pooled or commingled funds managed by a corporate
119 trustee or by a Securities and Exchange Commission registered
120 investment advisory firm retained as an investment manager by the
121 board of trustees, and shares of investment companies and unit
122 investment trusts registered under the Investment Company Act of
123 1940, where such pooled or commingled funds or shares are
124 comprised of common or preferred stocks, bonds, money market
125 instruments or other investments authorized under this section.
126 Such investment in commingled funds or shares shall be held in
127 trust; provided that the total book value of investments under
128 this paragraph shall at no time exceed five percent (5%) of the
129 total book value of all investments of the system. Any investment

130 manager approved by the board of trustees shall invest such
131 commingled funds or shares as a fiduciary;

132 (m) Pooled or commingled real estate funds or real
133 estate securities managed by a corporate trustee or by a
134 Securities and Exchange Commission registered investment advisory
135 firm retained as an investment manager by the board of trustees.
136 Such investment in commingled funds or shares shall be held in
137 trust; provided that the total book value of investments under
138 this paragraph shall at no time exceed ten percent (10%) of the
139 total book value of all investments of the system. Any investment
140 manager approved by the board of trustees shall invest such
141 commingled funds or shares as a fiduciary. The ten percent (10%)
142 limitation in this subsection shall not be subject to the five
143 percent (5%) limitation in paragraph (l) of this subsection;

144 (n) Types of investments not specifically authorized by
145 this subsection if the investments are in the form of a separate
146 account managed by a Securities and Exchange Commission registered
147 investment advisory firm retained as an investment manager by the
148 board; or a limited partnership or commingled fund approved by the
149 board; provided that the total book value of investments under
150 this paragraph shall at no time exceed ten percent (10%) of the
151 total book value of all investments of the system.

152 (2) All investments shall be acquired by the board at prices
153 not exceeding the prevailing market values for such securities.

154 (3) Any limitations herein set forth shall be applicable
155 only at the time of purchase and shall not require the liquidation
156 of any investment at any time. All investments shall be clearly
157 marked to indicate ownership by the system and to the extent
158 possible shall be registered in the name of the system.

159 (4) Subject to the above terms, conditions, limitations and
160 restrictions, the board shall have power to sell, assign, transfer
161 and dispose of any of the securities and investments of the
162 system, provided that said sale, assignment or transfer has the

163 majority approval of the entire board. The board may employ or
164 contract with investment managers, evaluation services or other
165 such services as determined by the board to be necessary for the
166 effective and efficient operation of the system.

167 (5) Except as otherwise provided herein, no trustee and no
168 employee of the board shall have any direct or indirect interest
169 in the income, gains or profits of any investment made by the
170 board, nor shall any such person receive any pay or emolument for
171 his services in connection with any investment made by the board.
172 No trustee or employee of the board shall become an endorser or
173 surety, or in any manner an obligor for money loaned by or
174 borrowed from the system.

175 (6) All interest derived from investments and any gains from
176 the sale or exchange of investments shall be credited by the board
177 to the account of the system.

178 (7) The board of trustees annually shall credit regular
179 interest on the mean amount for the preceding year in each of the
180 reserves maintained by the board, with the exception of the
181 expense account. This credit shall be made annually from interest
182 and other earnings on the invested assets of the system. Any
183 additional amount required to meet the regular interest on the
184 funds of the system shall be charged to the employer's
185 accumulation account, and any excess of earnings over such regular
186 interest required shall be credited to the employer's accumulation
187 account. Regular interest shall mean such per centum rate to be
188 compounded annually as shall be determined by the board of
189 trustees on the basis of the interest earnings of the system for
190 the preceding year.

191 (8) The board of trustees shall be the custodian of the
192 funds of the system. All expense vouchers and retirement
193 allowance payrolls shall be certified by the executive secretary
194 who shall furnish the board a surety bond in a company authorized
195 to do business in Mississippi in such an amount as shall be

196 required by the board, the premium to be paid by the board from
197 the expense account.

198 (9) For the purpose of meeting disbursements for retirement
199 allowances, annuities and other payments, cash may be kept
200 available, not exceeding the requirements of the system for a
201 period of ninety (90) days, on deposit in one or more banks or
202 trust companies organized under the laws of the State of
203 Mississippi or the laws of the United States, provided that the
204 sum on deposit in any one (1) bank or trust company shall not
205 exceed thirty-five percent (35%) of the paid-up capital and
206 regular surplus of such bank or trust company.

207 (10) Except as otherwise provided, the monies or properties
208 of the Public Employees' Retirement System of Mississippi
209 deposited in any bank or banks of the United States shall, where
210 possible, be safeguarded and guaranteed by the posting as security
211 by the depository of bonds, notes and other securities purchasable
212 by the system, as provided elsewhere in this section. The bonds,
213 notes and other securities offered as security shall be posted to
214 the credit of the system by the depository with the board or with
215 an unaffiliated bank or trust company domiciled within the United
216 States or the State of Mississippi acceptable to both the board
217 and to the fiscal agent bank. In the event the board and the
218 fiscal agent bank cannot reach an agreement, the bonds, notes and
219 other securities shall be deposited in a bank or trust company
220 designated by the State Commissioner of Banking and Consumer
221 Finance. Provided, however, that bonds or notes of the United
222 States government owned by the system may be deposited for
223 safekeeping in any federal reserve bank.

224 (11) The board of trustees shall determine the degree of
225 collateralization necessary for both foreign and domestic demand
226 deposit accounts in addition to that which is guaranteed by the
227 Federal Deposit Insurance Corporation or such other federal
228 insurance program as may be in effect.

229 (12) The board, the executive secretary and employees shall
230 discharge their duties with respect to the investments of the
231 system solely for the interest of the system with the care, skill,
232 prudence and diligence under the circumstances then prevailing
233 that a prudent investor acting in a like capacity and familiar
234 with such matters would use in the conduct of an enterprise of a
235 like character and with like aims, including diversifying the
236 investments of the system so as to minimize the risk of large
237 losses, unless under the circumstances it is clearly prudent not
238 to do so.

239 (13) Documentary material or data made or received by the
240 system which consists of trade secrets or commercial or financial
241 information that relates to the investments of the system shall be
242 exempt from the Mississippi Public Records Act of 1983 if the
243 disclosure of the material or data is likely to impair the
244 system's ability to obtain such information in the future, or is
245 likely to cause substantial harm to the competitive position of
246 the person or entity from whom the information was obtained.

247 **SECTION 2.** Section 25-41-7, Mississippi Code of 1972, is
248 amended as follows:

249 25-41-7. (1) Any public body may enter into executive
250 session for the transaction of public business; provided, however,
251 all meetings of any such public body shall commence as an open
252 meeting, and an affirmative vote of three-fifths (3/5) of all
253 members present shall be required to declare an executive session.

254 (2) The procedure to be followed by any public body in
255 declaring an executive session shall be as follows: Any member
256 shall have the right to request by motion a closed determination
257 upon the issue of whether or not to declare an executive session.
258 Such motion, by majority vote, shall require the meeting to be
259 closed for a preliminary determination of the necessity for
260 executive session. No other business shall be transacted until
261 the discussion of the nature of the matter requiring executive

262 session has been completed and a vote, as required in subsection
263 (1) hereof, has been taken on the issue.

264 (3) An executive session shall be limited to matters allowed
265 to be exempted from open meetings by subsection (4) of this
266 section. The reason for holding such an executive session shall
267 be stated in an open meeting, and the reason so stated shall be
268 recorded in the minutes of the meeting. Nothing in this section
269 shall be construed to require that any meeting be closed to the
270 public, nor shall any executive session be used to circumvent or
271 to defeat the purposes of this chapter.

272 (4) A public body may hold an executive session pursuant to
273 this section for one or more of the following reasons:

274 (a) Transaction of business and discussion of personnel
275 matters relating to the job performance, character, professional
276 competence, or physical or mental health of a person holding a
277 specific position.

278 (b) Strategy sessions or negotiations with respect to
279 prospective litigation, litigation or issuance of an appealable
280 order when an open meeting would have a detrimental effect on the
281 litigating position of the public body.

282 (c) Transaction of business and discussion regarding
283 the report, development or course of action regarding security
284 personnel, plans or devices.

285 (d) Investigative proceedings by any public body
286 regarding allegations of misconduct or violation of law.

287 (e) Any body of the Legislature which is meeting on
288 matters within the jurisdiction of such body.

289 (f) Cases of extraordinary emergency which would pose
290 immediate or irrevocable harm or damage to persons and/or property
291 within the jurisdiction of such public body.

292 (g) Transaction of business and discussion regarding
293 the prospective purchase, sale or leasing of lands.

294 (h) Discussions between a school board and individual
295 students who attend a school within the jurisdiction of such
296 school board or the parents or teachers of such students regarding
297 problems of such students or their parents or teachers.

298 (i) Transaction of business and discussion concerning
299 the preparation of tests for admission to practice in recognized
300 professions.

301 (j) Transaction of business and discussions or
302 negotiations regarding the location, relocation or expansion of a
303 business or an industry.

304 (k) Transaction of business and discussions regarding
305 employment or job performance of a person in a specific position
306 or termination of an employee holding a specific position. The
307 exemption provided by this paragraph includes the right to enter
308 into executive session concerning a line item in a budget which
309 might affect the termination of an employee or employees. All
310 other budget items shall be considered in open meetings and final
311 budgetary adoption shall not be taken in executive session.

312 (l) Discussions regarding material or data exempt from the
313 Mississippi Public Records Act of 1983 pursuant to Section
314 25-11-121.

315 (5) The total vote on the question of entering into an
316 executive session shall be recorded and spread upon the minutes of
317 such public body.

318 (6) Any such vote whereby an executive session is declared
319 shall be applicable only to that particular meeting on that
320 particular day.

321 **SECTION 3.** This act shall take effect and be in force from
322 and after its passage.