

By: Senator(s) Tollison

To: Education

SENATE BILL NO. 2161
(As Sent to Governor)

1 AN ACT RELATING TO THE MISSISSIPPI CHARTER SCHOOLS ACT OF
2 2013; TO AMEND SECTION 37-28-7, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE DESIGNATION OF SCHOOL DISTRICTS WHICH MAY DISAPPROVE
4 THE LOCATION OF A CHARTER SCHOOL; TO AMEND SECTION 37-28-23,
5 MISSISSIPPI CODE OF 1972, TO REVISE THE RESIDENCY REQUIREMENT FOR
6 APPLICANTS TO ATTEND A CHARTER SCHOOL AND TO REQUIRE CHARTER
7 SCHOOLS TO GIVE ENROLLMENT PREFERENCE TO UNDERSERVED CHILDREN; TO
8 AMEND SECTION 37-28-29, MISSISSIPPI CODE OF 1972, TO REQUIRE
9 CHARTER SCHOOLS TO OFFER COURSES MEETING STATE REQUIREMENTS FOR
10 HIGH SCHOOL GRADUATION; TO AMEND SECTION 37-28-47, MISSISSIPPI
11 CODE OF 1972, TO PROVIDE THAT EMPLOYEES IN CHARTER SCHOOLS ARE
12 MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND TO REQUIRE
13 TEACHERS AT CHARTER SCHOOLS TO BE FULLY CERTIFIED WITHIN THREE
14 YEARS OF EMPLOYMENT; TO AMEND SECTION 37-28-55, MISSISSIPPI CODE
15 OF 1972, RELATING TO THE PAYMENT OF FUNDS TO MISSISSIPPI CHARTER
16 SCHOOLS TO PROVIDE THAT STATE FUND PAYMENTS ARE BASED ON ACCURATE
17 ENROLLMENT PROJECTIONS AND TO CLARIFY THE CALCULATION AND
18 DISTRIBUTION OF THE LOCAL AD VALOREM TAX PORTION OF THE CHARTER
19 SCHOOL PER PUPIL FUNDING; TO AMEND SECTION 37-28-57, MISSISSIPPI
20 CODE OF 1972, TO REVISE THE AUDIT DATE FOR CHARTER SCHOOLS; TO
21 AMEND SECTION 37-28-61, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
22 LOCAL SCHOOL DISTRICT TO LEASE A CONVERSION CHARTER SCHOOL
23 FACILITY AT OR BELOW FAIR MARKET VALUE; TO AMEND SECTION 37-47-3,
24 MISSISSIPPI CODE OF 1972, TO INCLUDE CHARTER SCHOOLS IN THE
25 AUTHORITY FOR PARTICIPATION IN THE STATE PUBLIC SCHOOL BUILDING
26 FUND PROGRAM; TO PROHIBIT PUBLIC SCHOOL DISTRICTS FROM RETALIATING
27 AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE IS INVOLVED IN CREATING A
28 CHARTER SCHOOL; TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF
29 1972, TO INCLUDE PUBLIC CHARTER SCHOOLS IN THE DEFINITION OF
30 POLITICAL SUBDIVISION FOR PURPOSES OF THE PUBLIC EMPLOYEES'
31 RETIREMENT SYSTEM; TO REPEAL SECTION 37-28-63, MISSISSIPPI CODE OF
32 1972, WHICH IS THE AUTOMATIC REPEALER ON THE MISSISSIPPI CHARTER
33 SCHOOLS ACT OF 2013; AND FOR RELATED PURPOSES.



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

35 **SECTION 1.** Section 37-28-7, Mississippi Code of 1972, is
36 amended as follows:

37 37-28-7. (1) There is created the Mississippi Charter
38 School Authorizer Board as a state agency with exclusive
39 chartering jurisdiction in the State of Mississippi. Unless
40 otherwise authorized by law, no other governmental agency or
41 entity may assume any charter authorizing function or duty in any
42 form.

43 (2) (a) The mission of the Mississippi Charter School
44 Authorizer Board is to authorize high-quality charter schools,
45 particularly schools designed to expand opportunities for
46 underserved students, consistent with the purposes of this
47 chapter. Subject to the restrictions and conditions prescribed in
48 this subsection, the Mississippi Charter School Authorizer Board
49 may authorize charter schools within the geographical boundaries
50 of any school district.

51 (b) The Mississippi Charter School Authorizer Board may
52 approve a maximum of fifteen (15) qualified charter applications
53 during a fiscal year.

54 (c) In any school district designated as an "A," "B"
55 or "C" school district by the State Board of Education under the
56 accreditation rating system at the time of application, the
57 Mississippi Charter School Authorizer Board may authorize charter
58 schools only if a majority of the members of the local school



59 board votes at a public meeting to endorse the application or to
60 initiate the application on its own initiative.

61 (3) The Mississippi Charter School Authorizer Board shall
62 consist of seven (7) members, to be appointed as follows:

63 (a) Three (3) members appointed by the Governor, with
64 one (1) member being from each of the Mississippi Supreme Court
65 Districts.

66 (b) Three (3) members appointed by the Lieutenant
67 Governor, with one (1) member being from each of the Mississippi
68 Supreme Court Districts.

69 (c) One (1) member appointed by the State
70 Superintendent of Public Education.

71 All appointments must be made with the advice and consent of
72 the Senate. In making the appointments, the appointing authority
73 shall ensure diversity among members of the Mississippi Charter
74 School Authorizer Board.

75 (4) Members appointed to the Mississippi Charter School
76 Authorizer Board collectively must possess strong experience and
77 expertise in public and nonprofit governance, management and
78 finance, public school leadership, assessment, curriculum and
79 instruction, and public education law. Each member of the
80 Mississippi Charter School Authorizer Board must have demonstrated
81 an understanding of and commitment to charter schooling as a
82 strategy for strengthening public education.



83 (5) To establish staggered terms of office, the initial term
84 of office for the three (3) Mississippi Charter School Authorizer
85 Board members appointed by the Governor shall be four (4) years
86 and thereafter shall be three (3) years; the initial term of
87 office for the three (3) members appointed by the Lieutenant
88 Governor shall be three (3) years and thereafter shall be three
89 (3) years; and the initial term of office for the member appointed
90 by the State Superintendent of Public Education shall be two (2)
91 years and thereafter shall be three (3) years. No member may
92 serve more than two (2) consecutive terms. The initial
93 appointments must be made before September 1, 2013.

94 (6) The Mississippi Charter School Authorizer Board shall
95 meet as soon as practical after September 1, 2013, upon the call
96 of the Governor, and shall organize for business by selecting a
97 chairman and adopting bylaws. Subsequent meetings shall be called
98 by the chairman.

99 (7) An individual member of the Mississippi Charter School
100 Authorizer Board may be removed by the board if the member's
101 personal incapacity renders the member incapable or unfit to
102 discharge the duties of the office or if the member is absent from
103 a number of meetings of the board, as determined and specified by
104 the board in its bylaws. Whenever a vacancy on the Mississippi
105 Charter School Authorizer Board exists, the original appointing
106 authority shall appoint a member for the remaining portion of the
107 term.



108 (8) No member of the Mississippi Charter School Authorizer
109 Board or employee, agent or representative of the board may serve
110 simultaneously as an employee, trustee, agent, representative,
111 vendor or contractor of a charter school authorized by the board.

112 (9) The Mississippi Charter School Authorizer Board shall
113 appoint an individual to serve as the Executive Director of the
114 Mississippi Charter School Authorizer Board. The executive
115 director shall possess the qualifications established by the board
116 which are based on national best practices, and shall possess an
117 understanding of state and federal education law. The executive
118 director, who shall serve at the will and pleasure of the board,
119 shall devote his full time to the proper administration of the
120 board and the duties assigned to him by the board and shall be
121 paid a salary established by the board, subject to the approval of
122 the State Personnel Board. Subject to the availability of
123 funding, the executive director may employ such administrative
124 staff as may be necessary to assist the director and board in
125 carrying out the duties and directives of the Mississippi Charter
126 School Authorizer Board.

127 (10) The Mississippi Charter School Authorizer Board * * *
128 is authorized to obtain suitable office space for administrative
129 purposes * * *. In acquiring a facility or office space the
130 authorizer board shall adhere to all policies and procedures
131 required by the Department of Finance and Administration and the
132 Public Procurement Review Board.



133 **SECTION 2.** Section 37-28-23, Mississippi Code of 1972, is
134 amended as follows:

135 37-28-23. (1) A charter school must be open to:

136 (a) Any student residing in the geographical boundaries
137 of the school district in which the charter school is
138 located * * *; and

139 (b) Any student who resides in the geographical
140 boundaries of a school district that was rated "C," "D" or "F" at
141 the time the charter school was approved by the authorizer board,
142 or who resides in the geographical boundaries of a school district
143 rated "C," or "D" or "F" at the time the student enrolls.

144 (2) A school district may not require any student enrolled
145 in the school district to attend a charter school.

146 (3) Except as otherwise provided under subsection (8) (d) of
147 this section, a charter school may not limit admission based on
148 ethnicity, national origin, religion, gender, income level,
149 disabling condition, proficiency in the English language, or
150 academic or athletic ability.

151 (4) A charter school may limit admission to students within
152 a given age group or grade level, including pre-kindergarten
153 students, and may be organized around a special emphasis, theme or
154 concept as stated in the school's application.

155 (5) The underserved student composition of a charter
156 school's enrollment collectively must reflect that of students of
157 all ages attending the school district in which the charter school



158 is located, to be defined for the purposes of this chapter as
159 being at least eighty percent (80%) of that population. If the
160 underserved student composition of an applicant's or charter
161 school's enrollment is less than eighty percent (80%) of the
162 enrollment of students of all ages in the school district in which
163 the charter school is located, despite the school's best efforts,
164 the authorizer must consider the applicant's or charter school's
165 recruitment efforts and the underserved student composition of the
166 applicant pool in determining whether the applicant or charter
167 school is operating in a nondiscriminatory manner. A finding by
168 the authorizer that a charter school is operating in a
169 discriminatory manner justifies the revocation of a charter.

170 (6) A charter school must enroll all students who wish to
171 attend the school unless the number of students exceeds the
172 capacity of a program, class, grade level or building.

173 (7) If capacity is insufficient to enroll all students who
174 wish to attend the school based on initial application, the
175 charter school must select students through a lottery.

176 (8) (a) Any noncharter public school or part of a
177 noncharter public school converting to a charter school shall
178 adopt and maintain a policy giving an enrollment preference to
179 students who reside within the former attendance area of that
180 public school. If the charter school has excess capacity after
181 enrolling students residing within the former attendance area of
182 the school, students outside of the former attendance area of the



183 school, but within the geographical boundaries of the school
184 district in which the charter school is located, are eligible for
185 enrollment. If the number of students applying for admission
186 exceeds the capacity of a program, class, grade level or building
187 of the charter school, the charter school must admit students on
188 the basis of a lottery.

189 (b) A charter school must give an enrollment preference
190 to students enrolled in the charter school during the preceding
191 school year and to siblings of students already enrolled in the
192 charter school. An enrollment preference for returning students
193 excludes those students from entering into a lottery.

194 (c) A charter school may give an enrollment preference
195 to children of the charter school's applicant, governing board
196 members and full-time employees, so long as those children
197 constitute no more than ten percent (10%) of the charter school's
198 total student population.

199 (d) A charter school shall give an enrollment
200 preference to underserved children as defined in Section 37-28-5
201 to ensure the charter school meets its required underserved
202 student composition.

203 (* * *e) This section does not preclude the formation
204 of a charter school whose mission is focused on serving students
205 with disabilities, students of the same gender, students who pose
206 such severe disciplinary problems that they warrant a specific
207 educational program, or students who are at risk of academic



208 failure. If capacity is insufficient to enroll all students who
209 wish to attend the school, the charter school must select students
210 through a lottery.

211 **SECTION 3.** Section 37-28-29, Mississippi Code of 1972, is
212 amended as follows:

213 37-28-29. (1) The performance provisions within a charter
214 contract must be based on a performance framework that clearly
215 sets forth the academic and operational performance indicators,
216 measures and metrics that will guide the authorizer's evaluations
217 of the charter school. The performance framework must include
218 indicators, measures and metrics, at a minimum, for the following:

219 (a) Student academic proficiency;

220 (b) Student academic growth;

221 (c) Achievement gaps in both proficiency and growth
222 between major student subgroups;

223 (d) Attendance;

224 (e) Recurrent enrollment from year to year;

225 (f) In-school and out-of-school suspension rates and
226 expulsion rates;

227 (g) For charter high schools, postsecondary readiness,
228 including the percentage of graduates submitting applications to
229 postsecondary institutions, high school completion, postsecondary
230 admission and postsecondary enrollment or employment;

231 (h) Financial performance and sustainability; and



232 (i) Board performance and stewardship, including
233 compliance with all applicable laws, regulations and terms of the
234 charter contract.

235 (2) The charter contract of each charter school serving
236 Grades 9-12 must include a provision ensuring that graduation
237 requirements meet or exceed those set by the Mississippi
238 Department of Education for a regular high school diploma.
239 Nothing in this section shall preclude competency-based
240 satisfaction of graduation requirements.

241 (* * *3) Annual performance targets must be set by each
242 charter school in conjunction with the authorizer and must be
243 designed to help each school meet applicable federal, state and
244 authorizer expectations.

245 (* * *4) The performance framework must allow the inclusion
246 of additional rigorous, valid and reliable indicators proposed by
247 a charter school to augment external evaluations of its
248 performance; however, the authorizer must approve the quality and
249 rigor of any indicators proposed by a charter school, which
250 indicators must be consistent with the purposes of this chapter.

251 (* * *5) The performance framework must require the
252 disaggregation of all student performance data by major student
253 subgroups (gender, race, poverty status, special education status,
254 English learner status and gifted status).

255 (* * *6) The authorizer shall collect, analyze and report
256 all data from state assessments in accordance with the performance



257 framework for each charter school. Multiple schools overseen by a
258 single governing board must report their performance as separate,
259 individual schools, and each school must be held independently
260 accountable for its performance.

261 (* * *7) Information needed by the authorizer from the
262 charter school governing board for the authorizer's reports must
263 be required and included as a material part of the charter
264 contract.

265 **SECTION 4.** Section 37-28-47, Mississippi Code of 1972, is
266 amended as follows:

267 37-28-47. (1) (a) Charter schools must comply with
268 applicable federal laws, rules and regulations regarding the
269 qualification of teachers and other instructional staff. No more
270 than twenty-five percent (25%) of teachers in a charter school may
271 be exempt from state teacher licensure requirements * * *.
272 Administrators of charter schools are exempt from state
273 administrator licensure requirements. However, teachers and
274 administrators must have a bachelor's degree as a minimum
275 requirement, and teachers must have demonstrated subject-matter
276 competency. Within three (3) years of * * * a teacher's
277 employment by a charter school, the teacher must have, at a
278 minimum, alternative licensure approved by the Commission on
279 Teacher and Administrator Education, Certification and Licensure
280 and Development.



281 (b) A charter school may not staff positions for
282 teachers, administrators, ancillary support personnel or other
283 employees by utilizing or otherwise relying on nonimmigrant
284 foreign worker visa programs. However, a charter school may
285 submit a request to the authorizer for an exception allowing the
286 employment of a nonimmigrant foreign worker before the worker is
287 employed. The authorizer may grant permission for the employment
288 of the nonimmigrant foreign worker only if the charter school
289 makes a satisfactory showing of efforts to recruit lawful
290 permanent residents of the United States to fill the position and
291 a lack of qualified applicants to fill the position.

292 (2) Employees in charter schools must have the same general
293 rights and privileges as other public school employees, except
294 such employees are not:

295 (a) Covered under the Education Employment Procedures
296 Law (Section 37-9-103); and

297 (b) Subject to the state salary requirements prescribed
298 in Section 37-19-7 * * *.

299 * * *

300 (3) * * * For the purpose of eligibility for participation
301 in the Public Employees' Retirement System, a public charter
302 school is considered to be a political subdivision of the state.
303 Employees in public charter schools are eligible for participation
304 in other benefits programs if the public charter school governing
305 board chooses to participate.



306 **SECTION 5.** Section 37-28-55, Mississippi Code of 1972, is
307 amended as follows:

308 37-28-55. (1) (a) The State Department of Education shall
309 make payments to charter schools for each student in average daily
310 attendance at the charter school equal to the state share of the
311 adequate education program payments for each student in average
312 daily attendance at the school district in which the charter
313 school is located. In calculating the local contribution for
314 purposes of determining the state share of the adequate education
315 program payments, the department shall deduct the pro rata local
316 contribution of the school district in which the student resides,
317 to be determined as provided in Section 37-151-7(2) (a).

318 (b) Payments made pursuant to this subsection by the
319 State Department of Education must be made at the same time and in
320 the same manner as adequate education program payments are made to
321 school districts under Sections 37-151-101 and 37-151-103.
322 Amounts payable to a charter school must be determined by the
323 State Department of Education. Amounts payable to a charter
324 school over its charter term must be based on the enrollment
325 projections set forth over the term of the charter contract. Such
326 projections must be reconciled with the average daily
327 attendance * * * using months two (2) and three (3) ADA for the
328 current year for which adequate education program funds are being
329 appropriated and any necessary adjustments must be made to
330 payments during the school's following year of operation.



331 (2) For students attending a charter school located in the
332 school district in which the student resides, the school district
333 in which a charter school is located shall pay directly to the
334 charter school an amount for each student enrolled in the charter
335 school equal to the ad valorem tax receipts and in-lieu payments
336 received per pupil for the support of the local school district in
337 which the student resides. The pro rata ad valorem receipts and
338 in-lieu receipts to be transferred to the charter school shall
339 include all levies for the support of the local school district
340 under Sections 37-57-1 (local contribution to the adequate
341 education program) and 37-57-105 (school district operational
342 levy) and may not include any taxes levied for the retirement of
343 the local school district's bonded indebtedness or short-term
344 notes or any taxes levied for the support of vocational-technical
345 education programs. The amount of funds payable to the charter
346 school by the school district must be based on the previous year's
347 enrollment data and ad valorem receipts and in-lieu receipts of
348 the local school district in which the student resides. The pro
349 rata amount must be calculated by dividing the local school
350 district's months one (1) through nine (9) average daily
351 membership into the total amount of ad valorem receipts and
352 in-lieu receipts, as reported to the State Department of Education
353 by the local school district. The local school district shall pay
354 an amount equal to this pro rata amount multiplied by the number
355 of students enrolled in the charter school, based on the charter



356 school's end of first month enrollment for the current school
357 year. The amount must be paid by the school district to the
358 charter school before January 16 of the current fiscal year. If
359 the local school district does not pay the required amount to the
360 charter school before January 16, the State Department of
361 Education shall reduce the local school district's January
362 transfer of Mississippi Adequate Education Program funds by the
363 amount owed to the charter school and shall redirect that amount
364 to the charter school. Any such payments made under this
365 subsection (2) by the State Department of Education to a charter
366 school must be made at the same time and in the same manner as
367 adequate education program payments are made to school districts
368 under Sections 37-151-101 and 37-151-103.

369 (3) For students attending a charter school located in a
370 school district in which the student does not reside, the State
371 Department of Education shall pay to the charter school in which
372 the student is enrolled an amount as follows: the pro rata ad
373 valorem receipts and in-lieu payments per pupil for the support of
374 the local school district in which the student resides under
375 Sections 37-57-1 (local contribution to the adequate education
376 program) and 37-57-105 (school district operational levy),
377 however, not including any taxes levied for the retirement of the
378 local school district's bonded indebtedness or short-term notes or
379 any taxes levied for the support of vocational-technical education
380 programs. The amount of funds payable to the charter school by



381 the school district must be based on the previous year's
382 enrollment data and ad valorem receipts and in-lieu receipts of
383 the local school district in which the student resides. The pro
384 rata amount must be calculated by dividing the local school
385 district's months one (1) through nine (9) average daily
386 membership into the total amount of ad valorem receipts and
387 in-lieu receipts, as reported to the State Department of Education
388 by the transferor local school district. The payable amount shall
389 be equal to this pro rata amount multiplied by the number of
390 students enrolled in the charter school, based on the charter
391 school's end of first month enrollment for the current school
392 year. The State Department of Education shall reduce the school
393 district's January transfer of Mississippi Adequate Education
394 Program funds by the amount owed to the charter school and shall
395 redirect that amount to the charter school. Any such payments
396 made under this subsection (3) by the State Department of
397 Education to a charter school must be made at the same time and in
398 the same manner as adequate education program payments are made to
399 school districts under Sections 37-151-101 and 37-151-103.

400 (* * *4) (a) The State Department of Education shall
401 direct the proportionate share of monies generated under federal
402 and state categorical aid programs, including special education,
403 vocational, gifted and alternative school programs, to charter
404 schools serving students eligible for such aid. The department
405 shall ensure that charter schools with rapidly expanding



406 enrollments are treated equitably in the calculation and
407 disbursement of all federal and state categorical aid program
408 dollars. Each charter school that serves students who may be
409 eligible to receive services provided through such programs shall
410 comply with all reporting requirements to receive the aid.

411 (b) A charter school shall pay to a local school
412 district any federal or state aid attributable to a student with a
413 disability attending the charter school in proportion to the level
414 of services for that student which the local school district
415 provides directly or indirectly.

416 (c) Subject to the approval of the authorizer, a
417 charter school and a local school district may negotiate and enter
418 into a contract for the provision of and payment for special
419 education services, including, but not necessarily limited to, a
420 reasonable reserve not to exceed five percent (5%) of the local
421 school district's total budget for providing special education
422 services. The reserve may be used by the local school district
423 only to offset excess costs of providing services to students with
424 disabilities enrolled in the charter school.

425 (* * *5) (a) The State Department of Education shall
426 disburse state transportation funding to a charter school on the
427 same basis and in the same manner as it is paid to school
428 districts under the adequate education program.



429 (b) A charter school may enter into a contract with a
430 school district or private provider to provide transportation to
431 the school's students.

432 **SECTION 6.** Section 37-28-57, Mississippi Code of 1972, is
433 amended as follows:

434 37-28-57. (1) A charter school must adhere to generally
435 accepted accounting principles.

436 (2) A charter school shall have its financial records
437 audited annually, at the end of each fiscal year, either by the
438 State Auditor or by a certified public accountant approved by the
439 State Auditor. However, a certified public accountant may not be
440 selected to perform the annual audit of a charter school if that
441 accountant previously has audited the charter school for more than
442 three (3) consecutive years. Certified public accountants must be
443 selected in a manner determined by the State Auditor. The charter
444 school shall file a copy of each audit report and accompanying
445 management letter with the authorizer before * * * October 1.

446 **SECTION 7.** Section 37-28-61, Mississippi Code of 1972, is
447 amended as follows:

448 37-28-61. (1) A charter school has a right of first refusal
449 to purchase or lease at or below fair market value a closed public
450 school facility or property or unused portions of a public school
451 facility or property in the school district in which the charter
452 school is located if the school district decides to sell or lease
453 the public school facility or property. If a conversion charter



454 school application is successful, the local school district owning
455 the conversion charter school's facility must offer to lease or
456 sell the building to the conversion charter school at or below
457 fair market value.

458 (2) A charter school may negotiate and contract at or below
459 fair market value with a school district, state institution of
460 higher learning, public community or junior college, or any other
461 public or for-profit or nonprofit private entity for the use of a
462 facility for a school building.

463 (3) Public entities, including, but not limited to,
464 libraries, community service organizations, museums, performing
465 arts venues, theatres, cinemas, churches, community and junior
466 colleges, colleges and universities, may provide space to charter
467 schools within their facilities under their preexisting zoning and
468 land use designations.

469 **SECTION 8.** Section 37-47-3, Mississippi Code of 1972, is
470 amended as follows:

471 37-47-3. The term "school district" as used in this chapter
472 shall be defined as including all public school districts and
473 public charter schools in this state and also all agricultural
474 high schools not located on the campus of a junior college.

475 **SECTION 9.** A school district, school district employee or
476 any other person who has control over personnel actions may not
477 take unlawful reprisal against an employee of the school district
478 because the employee is directly or indirectly involved in an



479 effort to create or encourage participation in a public charter
480 school. As used in this section, the term "unlawful reprisal"
481 means an action which is adverse to the employee and results in
482 one or more of the following for the employee:

- 483 (a) Disciplinary or correction action;
- 484 (b) Detail, transfer or reassignment;
- 485 (c) Suspension, demotion or dismissal;
- 486 (d) An unfavorable performance evaluation;
- 487 (e) A reduction in pay, benefits or awards;
- 488 (f) Elimination of the employee's position without a
489 reduction in force by reason of lack of monies or work; or
- 490 (g) Other significant changes in duties or
491 responsibilities which are inconsistent with the employee's salary
492 or employment classification.

493 **SECTION 10.** Section 25-11-103, Mississippi Code of 1972, is
494 amended as follows:

495 25-11-103. (1) The following words and phrases as used in
496 Articles 1 and 3, unless a different meaning is plainly required
497 by the context, have the following meanings:

- 498 (a) "Accumulated contributions" means the sum of all
499 the amounts deducted from the compensation of a member and
500 credited to his or her individual account in the annuity savings
501 account, together with regular interest as provided in Section
502 25-11-123.



503 (b) "Actuarial cost" means the amount of funds
504 presently required to provide future benefits as determined by the
505 board based on applicable tables and formulas provided by the
506 actuary.

507 (c) "Actuarial equivalent" means a benefit of equal
508 value to the accumulated contributions, annuity or benefit, as the
509 case may be, when computed upon the basis of such mortality tables
510 as adopted by the board of trustees, and regular interest.

511 (d) "Actuarial tables" means such tables of mortality
512 and rates of interest as adopted by the board in accordance with
513 the recommendation of the actuary.

514 (e) "Agency" means any governmental body employing
515 persons in the state service.

516 (f) "Average compensation" means the average of the
517 four (4) highest years of earned compensation reported for an
518 employee in a fiscal or calendar year period, or combination
519 thereof that do not overlap, or the last forty-eight (48)
520 consecutive months of earned compensation reported for an
521 employee. The four (4) years need not be successive or joined
522 years of service. In computing the average compensation for
523 retirement, disability or survivor benefits, any amount lawfully
524 paid in a lump sum for personal leave or major medical leave shall
525 be included in the calculation to the extent that the amount does
526 not exceed an amount that is equal to thirty (30) days of earned
527 compensation and to the extent that it does not cause the



528 employee's earned compensation to exceed the maximum reportable
529 amount specified in paragraph (k) of this section; however, this
530 thirty-day limitation shall not prevent the inclusion in the
531 calculation of leave earned under federal regulations before July
532 1, 1976, and frozen as of that date as referred to in Section
533 25-3-99. In computing the average compensation, no amounts shall
534 be used that are in excess of the amount on which contributions
535 were required and paid, and no nontaxable amounts paid by the
536 employer for health or life insurance premiums for the employee
537 shall be used. If any member who is or has been granted any
538 increase in annual salary or compensation of more than eight
539 percent (8%) retires within twenty-four (24) months from the date
540 that the increase becomes effective, then the board shall exclude
541 that part of the increase in salary or compensation that exceeds
542 eight percent (8%) in calculating that member's average
543 compensation for retirement purposes. The board may enforce this
544 provision by rule or regulation. However, increases in
545 compensation in excess of eight percent (8%) per year granted
546 within twenty-four (24) months of the date of retirement may be
547 included in the calculation of average compensation if
548 satisfactory proof is presented to the board showing that the
549 increase in compensation was the result of an actual change in the
550 position held or services rendered, or that the compensation
551 increase was authorized by the State Personnel Board or was
552 increased as a result of statutory enactment, and the employer



553 furnishes an affidavit stating that the increase granted within
554 the last twenty-four (24) months was not contingent on a promise
555 or agreement of the employee to retire. Nothing in Section
556 25-3-31 shall affect the calculation of the average compensation
557 of any member for the purposes of this article. The average
558 compensation of any member who retires before July 1, 1992, shall
559 not exceed the annual salary of the Governor.

560 (g) "Beneficiary" means any person entitled to receive
561 a retirement allowance, an annuity or other benefit as provided by
562 Articles 1 and 3. The term "beneficiary" may also include an
563 organization, estate, trust or entity; however, a beneficiary
564 designated or entitled to receive monthly payments under an
565 optional settlement based on life contingency or under a statutory
566 monthly benefit may only be a natural person. In the event of the
567 death before retirement of any member who became a member of the
568 system before July 1, 2007, and whose spouse and/or children are
569 not entitled to a retirement allowance on the basis that the
570 member has less than four (4) years of service credit, or who
571 became a member of the system on or after July 1, 2007, and whose
572 spouse and/or children are not entitled to a retirement allowance
573 on the basis that the member has less than eight (8) years of
574 service credit, and/or has not been married for a minimum of one
575 (1) year or the spouse has waived his or her entitlement to a
576 retirement allowance under Section 25-11-114, the lawful spouse of
577 a member at the time of the death of the member shall be the



578 beneficiary of the member unless the member has designated another
579 beneficiary after the date of marriage in writing, and filed that
580 writing in the office of the executive director of the board of
581 trustees. No designation or change of beneficiary shall be made
582 in any other manner.

583 (h) "Board" means the board of trustees provided in
584 Section 25-11-15 to administer the retirement system created under
585 this article.

586 (i) "Creditable service" means "prior service,"
587 "retroactive service" and all lawfully credited unused leave not
588 exceeding the accrual rates and limitations provided in Section
589 25-3-91 et seq., as of the date of withdrawal from service plus
590 "membership service" and other service for which credit is
591 allowable as provided in Section 25-11-109. Except to limit
592 creditable service reported to the system for the purpose of
593 computing an employee's retirement allowance or annuity or
594 benefits provided in this article, nothing in this paragraph shall
595 limit or otherwise restrict the power of the governing authority
596 of a municipality or other political subdivision of the state to
597 adopt such vacation and sick leave policies as it deems necessary.

598 (j) "Child" means either a natural child of the member,
599 a child that has been made a child of the member by applicable
600 court action before the death of the member, or a child under the
601 permanent care of the member at the time of the latter's death,



602 which permanent care status shall be determined by evidence
603 satisfactory to the board.

604 (k) "Earned compensation" means the full amount earned
605 during a fiscal year by an employee not to exceed the employee
606 compensation limit set pursuant to Section 401(a)(17) of the
607 Internal Revenue Code for the calendar year in which the fiscal
608 year begins and proportionately for less than one (1) year of
609 service. Except as otherwise provided in this paragraph, the
610 value of maintenance furnished to an employee shall not be
611 included in earned compensation. Earned compensation shall not
612 include any amounts paid by the employer for health or life
613 insurance premiums for an employee. Earned compensation shall be
614 limited to the regular periodic compensation paid, exclusive of
615 litigation fees, bond fees, performance-based incentive payments,
616 and other similar extraordinary nonrecurring payments. In
617 addition, any member in a covered position, as defined by Public
618 Employees' Retirement System laws and regulations, who is also
619 employed by another covered agency or political subdivision shall
620 have the earnings of that additional employment reported to the
621 Public Employees' Retirement System regardless of whether the
622 additional employment is sufficient in itself to be a covered
623 position. In addition, computation of earned compensation shall
624 be governed by the following:

625 (i) In the case of constables, the net earnings
626 from their office after deduction of expenses shall apply, except



627 that in no case shall earned compensation be less than the total
628 direct payments made by the state or governmental subdivisions to
629 the official.

630 (ii) In the case of chancery or circuit clerks,
631 the net earnings from their office after deduction of expenses
632 shall apply as expressed in Section 25-11-123(f) (4).

633 (iii) In the case of members of the State
634 Legislature, all remuneration or amounts paid, except mileage
635 allowance, shall apply.

636 (iv) The amount by which an eligible employee's
637 salary is reduced under a salary reduction agreement authorized
638 under Section 25-17-5 shall be included as earned compensation
639 under this paragraph, provided this inclusion does not conflict
640 with federal law, including federal regulations and federal
641 administrative interpretations under the federal law, pertaining
642 to the Federal Insurance Contributions Act or to Internal Revenue
643 Code Section 125 cafeteria plans.

644 (v) Compensation in addition to an employee's base
645 salary that is paid to the employee under the vacation and sick
646 leave policies of a municipality or other political subdivision of
647 the state that employs him or her that exceeds the maximums
648 authorized by Section 25-3-91 et seq. shall be excluded from the
649 calculation of earned compensation under this article.

650 (vi) The maximum salary applicable for retirement
651 purposes before July 1, 1992, shall be the salary of the Governor.



652 (vii) Nothing in Section 25-3-31 shall affect the
653 determination of the earned compensation of any member for the
654 purposes of this article.

655 (viii) The value of maintenance furnished to an
656 employee before July 1, 2013, for which the proper amount of
657 employer and employee contributions have been paid, shall be
658 included in earned compensation. From and after July 1, 2013, the
659 value of maintenance furnished to an employee shall be reported as
660 earned compensation only if the proper amount of employer and
661 employee contributions have been paid on the maintenance and the
662 employee was receiving maintenance and having maintenance reported
663 to the system as of June 30, 2013. The value of maintenance when
664 not paid in money shall be fixed by the employing state agency,
665 and, in case of doubt, by the board of trustees as defined in
666 Section 25-11-15.

667 (ix) Except as otherwise provided in this
668 paragraph, the value of any in-kind benefits provided by the
669 employer shall not be included in earned compensation. As used in
670 this subparagraph, "in-kind benefits" shall include, but not be
671 limited to, group life insurance premiums, health or dental
672 insurance premiums, nonpaid major medical and personal leave,
673 employer contributions for social security and retirement, tuition
674 reimbursement or educational funding, day care or transportation
675 benefits.



676 (l) "Employee" means any person legally occupying a
677 position in the state service, and shall include the employees of
678 the retirement system created under this article.

679 (m) "Employer" means the State of Mississippi or any of
680 its departments, agencies or subdivisions from which any employee
681 receives his or her compensation.

682 (n) "Executive director" means the secretary to the
683 board of trustees, as provided in Section 25-11-15(9), and the
684 administrator of the Public Employees' Retirement System and all
685 systems under the management of the board of trustees. Wherever
686 the term "Executive Secretary of the Public Employees' Retirement
687 System" or "executive secretary" appears in this article or in any
688 other provision of law, it shall be construed to mean the
689 Executive Director of the Public Employees' Retirement System.

690 (o) "Fiscal year" means the period beginning on July 1
691 of any year and ending on June 30 of the next succeeding year.

692 (p) "Medical board" means the board of physicians or
693 any governmental or nongovernmental disability determination
694 service designated by the board of trustees that is qualified to
695 make disability determinations as provided for in Section
696 25-11-119.

697 (q) "Member" means any person included in the
698 membership of the system as provided in Section 25-11-105. For
699 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,
700 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the



701 system withdrew from state service and received a refund of the
702 amount of the accumulated contributions to the credit of the
703 member in the annuity savings account before July 1, 2007, and the
704 person reenters state service and becomes a member of the system
705 again on or after July 1, 2007, and repays all or part of the
706 amount received as a refund and interest in order to receive
707 creditable service for service rendered before July 1, 2007, the
708 member shall be considered to have become a member of the system
709 on or after July 1, 2007, subject to the eight-year membership
710 service requirement, as applicable in those sections. For
711 purposes of Sections 25-11-103, 25-11-111, 25-11-114 and
712 25-11-115, if a member of the system withdrew from state service
713 and received a refund of the amount of the accumulated
714 contributions to the credit of the member in the annuity savings
715 account before July 1, 2011, and the person reenters state service
716 and becomes a member of the system again on or after July 1, 2011,
717 and repays all or part of the amount received as a refund and
718 interest in order to receive creditable service for service
719 rendered before July 1, 2011, the member shall be considered to
720 have become a member of the system on or after July 1, 2011.

721 (r) "Membership service" means service as an employee
722 in a covered position rendered while a contributing member of the
723 retirement system.

724 (s) "Position" means any office or any employment in
725 the state service, or two (2) or more of them, the duties of which



726 call for services to be rendered by one (1) person, including
727 positions jointly employed by federal and state agencies
728 administering federal and state funds. The employer shall
729 determine upon initial employment and during the course of
730 employment of an employee who does not meet the criteria for
731 coverage in the Public Employees' Retirement System based on the
732 position held, whether the employee is or becomes eligible for
733 coverage in the Public Employees' Retirement System based upon any
734 other employment in a covered agency or political subdivision. If
735 or when the employee meets the eligibility criteria for coverage
736 in the other position, then the employer must withhold
737 contributions and report wages from the noncovered position in
738 accordance with the provisions for reporting of earned
739 compensation. Failure to deduct and report those contributions
740 shall not relieve the employee or employer of liability thereof.
741 The board shall adopt such rules and regulations as necessary to
742 implement and enforce this provision.

743 (t) "Prior service" means:

744 (i) For persons who became members of the system
745 before July 1, 2007, service rendered before February 1, 1953, for
746 which credit is allowable under Sections 25-11-105 and 25-11-109,
747 and which shall allow prior service for any person who is now or
748 becomes a member of the Public Employees' Retirement System and
749 who does contribute to the system for a minimum period of four (4)
750 years.



751 (ii) For persons who became members of the system
752 on or after July 1, 2007, service rendered before February 1,
753 1953, for which credit is allowable under Sections 25-11-105 and
754 25-11-109, and which shall allow prior service for any person who
755 is now or becomes a member of the Public Employees' Retirement
756 System and who does contribute to the system for a minimum period
757 of eight (8) years.

758 (u) "Regular interest" means interest compounded
759 annually at such a rate as determined by the board in accordance
760 with Section 25-11-121.

761 (v) "Retirement allowance" means an annuity for life as
762 provided in this article, payable each year in twelve (12) equal
763 monthly installments beginning as of the date fixed by the board.
764 The retirement allowance shall be calculated in accordance with
765 Section 25-11-111. However, any spouse who received a spouse
766 retirement benefit in accordance with Section 25-11-111(d) before
767 March 31, 1971, and those benefits were terminated because of
768 eligibility for a social security benefit, may again receive his
769 or her spouse retirement benefit from and after making application
770 with the board of trustees to reinstate the spouse retirement
771 benefit.

772 (w) "Retroactive service" means service rendered after
773 February 1, 1953, for which credit is allowable under Section
774 25-11-105(b) and Section 25-11-105(k).



775 (x) "System" means the Public Employees' Retirement
776 System of Mississippi established and described in Section
777 25-11-101.

778 (y) "State" means the State of Mississippi or any
779 political subdivision thereof or instrumentality of the state.

780 (z) "State service" means all offices and positions of
781 trust or employment in the employ of the state, or any political
782 subdivision or instrumentality of the state, that elect to
783 participate as provided by Section 25-11-105(f), including the
784 position of elected or fee officials of the counties and their
785 deputies and employees performing public services or any
786 department, independent agency, board or commission thereof, and
787 also includes all offices and positions of trust or employment in
788 the employ of joint state and federal agencies administering state
789 and federal funds and service rendered by employees of the public
790 schools. Effective July 1, 1973, all nonprofessional public
791 school employees, such as bus drivers, janitors, maids,
792 maintenance workers and cafeteria employees, shall have the option
793 to become members in accordance with Section 25-11-105(b), and
794 shall be eligible to receive credit for services before July 1,
795 1973, provided that the contributions and interest are paid by the
796 employee in accordance with that section; in addition, the county
797 or municipal separate school district may pay the employer
798 contribution and pro rata share of interest of the retroactive
799 service from available funds. From and after July 1, 1998,



800 retroactive service credit shall be purchased at the actuarial
801 cost in accordance with Section 25-11-105(b).

802 (aa) "Withdrawal from service" or "termination from
803 service" means complete severance of employment in the state
804 service of any member by resignation, dismissal or discharge.

805 (bb) The masculine pronoun, wherever used, includes the
806 feminine pronoun.

807 (2) For purposes of this article, the term "political
808 subdivision" shall have the meaning ascribed to such term in
809 Section 25-11-5 and shall also include public charter schools.

810 **SECTION 11.** Section 37-28-63, Mississippi Code of 1972,
811 which is the automatic repealer on the Mississippi Charter Schools
812 Act of 2013, is hereby repealed.

813 **SECTION 12.** This act shall take effect and be in force from
814 and after July 1, 2016.

