

By: Representative Banks

To: Appropriations

HOUSE BILL NO. 659

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,  
 2 TO PROVIDE THAT PERSONS WHO ARE EMPLOYED AS COUNTY BOARD ATTORNEYS  
 3 AND CITY ATTORNEYS SHALL BE MEMBERS OF THE PUBLIC EMPLOYEES'  
 4 RETIREMENT SYSTEM REGARDLESS OF WHETHER THEY ARE PAID REGULAR  
 5 PERIODIC COMPENSATION FOR THOSE SERVICES AND REGARDLESS OF THE  
 6 NUMBER OF HOURS PER WEEK OR HOURS PER MONTH THAT THEY PERFORM  
 7 THOSE SERVICES AND RECEIVE COMPENSATION FOR THOSE SERVICES; AND  
 8 FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 25-11-105, Mississippi Code of 1972, is  
 11 amended as follows:

12 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

13 The membership of this retirement system shall be composed as  
 14 follows:

15 (a) (i) All persons who become employees in the state  
 16 service after January 31, 1953, and whose wages are subject to  
 17 payroll taxes and are lawfully reported on IRS Form W-2, except  
 18 those specifically excluded, or as to whom election is provided in  
 19 Articles 1 and 3, shall become members of the retirement system as  
 20 a condition of their employment.



21 (ii) From and after July 1, 2002, except as  
22 otherwise provided in subparagraph (iii), any individual who is  
23 employed by a governmental entity to perform professional services  
24 shall become a member of the system if the individual is paid  
25 regular periodic compensation for those services that is subject  
26 to payroll taxes, is provided all other employee benefits and  
27 meets the membership criteria established by the regulations  
28 adopted by the board of trustees that apply to all other members  
29 of the system; however, any active member employed in such a  
30 position on July 1, 2002, will continue to be an active member for  
31 as long as they are employed in any such position.

32 (iii) From and after July 1, 2018, any individual  
33 who is employed by a county as the county board attorney and any  
34 individual who is employed by a municipality as the city attorney,  
35 where the county or municipality has an existing agreement with  
36 the Public Employees' Retirement System to cover those positions,  
37 shall be a member of the system regardless of whether the  
38 individual is paid regular periodic compensation for those  
39 services and regardless of the number of hours per week or hours  
40 per month that the individual performs those services and receives  
41 compensation for those services.

42 (b) All persons who become employees in the state  
43 service after January 31, 1953, except those specifically excluded  
44 or as to whom election is provided in Articles 1 and 3, unless  
45 they file with the board before the lapse of sixty (60) days of



46 employment or sixty (60) days after the effective date of the  
47 cited articles, whichever is later, on a form prescribed by the  
48 board, a notice of election not to be covered by the membership of  
49 the retirement system and a duly executed waiver of all present  
50 and prospective benefits that would otherwise inure to them on  
51 account of their participation in the system, shall become members  
52 of the retirement system; however, no credit for prior service  
53 will be granted to members who became members of the system before  
54 July 1, 2007, until they have contributed to Article 3 of the  
55 retirement system for a minimum period of at least four (4) years,  
56 or to members who became members of the system on or after July 1,  
57 2007, until they have contributed to Article 3 of the retirement  
58 system for a minimum period of at least eight (8) years. Those  
59 members shall receive credit for services performed before January  
60 1, 1953, in employment now covered by Article 3, but no credit  
61 shall be granted for retroactive services between January 1, 1953,  
62 and the date of their entry into the retirement system, unless the  
63 employee pays into the retirement system both the employer's and  
64 the employee's contributions on wages paid him during the period  
65 from January 31, 1953, to the date of his becoming a contributing  
66 member, together with interest at the rate determined by the board  
67 of trustees. Members reentering after withdrawal from service  
68 shall qualify for prior service under the provisions of Section  
69 25-11-117. From and after July 1, 1998, upon eligibility as noted



70 above, the member may receive credit for such retroactive service  
71 provided:

72 (i) The member shall furnish proof satisfactory to  
73 the board of trustees of certification of that service from the  
74 covered employer where the services were performed; and

75 (ii) The member shall pay to the retirement system  
76 on the date he or she is eligible for that credit or at any time  
77 thereafter before the date of retirement the actuarial cost for  
78 each year of that creditable service. The provisions of this  
79 subparagraph (ii) shall be subject to the limitations of Section  
80 415 of the Internal Revenue Code and regulations promulgated under  
81 Section 415.

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

86 (c) All persons who become employees in the state  
87 service after January 31, 1953, and who are eligible for  
88 membership in any other retirement system shall become members of  
89 this retirement system as a condition of their employment, unless  
90 they elect at the time of their employment to become a member of  
91 that other system.

92 (d) All persons who are employees in the state service  
93 on January 31, 1953, and who are members of any nonfunded  
94 retirement system operated by the State of Mississippi, or any of



95 its departments or agencies, shall become members of this system  
96 with prior service credit unless, before February 1, 1953, they  
97 file a written notice with the board of trustees that they do not  
98 elect to become members.

99 (e) All persons who are employees in the state service  
100 on January 31, 1953, and who under existing laws are members of  
101 any fund operated for the retirement of employees by the State of  
102 Mississippi, or any of its departments or agencies, shall not be  
103 entitled to membership in this retirement system unless, before  
104 February 1, 1953, any such person indicates by a notice filed with  
105 the board, on a form prescribed by the board, his individual  
106 election and choice to participate in this system, but no such  
107 person shall receive prior service credit unless he becomes a  
108 member on or before February 1, 1953.

109 (f) Each political subdivision of the state and each  
110 instrumentality of the state or a political subdivision, or both,  
111 is authorized to submit, for approval by the board of trustees, a  
112 plan for extending the benefits of this article to employees of  
113 any such political subdivision or instrumentality. Each such plan  
114 or any amendment to the plan for extending benefits thereof shall  
115 be approved by the board of trustees if it finds that the plan, or  
116 the plan as amended, is in conformity with such requirements as  
117 are provided in Articles 1 and 3; however, upon approval of the  
118 plan or any such plan previously approved by the board of  
119 trustees, the approved plan shall not be subject to cancellation



120 or termination by the political subdivision or instrumentality.

121 No such plan shall be approved unless:

122 (i) It provides that all services that constitute  
123 employment as defined in Section 25-11-5 and are performed in the  
124 employ of the political subdivision or instrumentality, by any  
125 employees thereof, shall be covered by the plan, with the  
126 exception of municipal employees who are already covered by  
127 existing retirement plans; however, those employees in this class  
128 may elect to come under the provisions of this article;

129 (ii) It specifies the source or sources from which  
130 the funds necessary to make the payments required by paragraph (d)  
131 of Section 25-11-123 and of paragraph (f) (v)2 and 3 of this  
132 section are expected to be derived and contains reasonable  
133 assurance that those sources will be adequate for that purpose;

134 (iii) It provides for such methods of  
135 administration of the plan by the political subdivision or  
136 instrumentality as are found by the board of trustees to be  
137 necessary for the proper and efficient administration thereof;

138 (iv) It provides that the political subdivision or  
139 instrumentality will make such reports, in such form and  
140 containing such information, as the board of trustees may from  
141 time to time require;

142 (v) It authorizes the board of trustees to  
143 terminate the plan in its entirety in the discretion of the board  
144 if it finds that there has been a failure to comply substantially



145 with any provision contained in the plan, the termination to take  
146 effect at the expiration of such notice and on such conditions as  
147 may be provided by regulations of the board and as may be  
148 consistent with applicable federal law.

149           1. The board of trustees shall not finally  
150 refuse to approve a plan submitted under paragraph (f), and shall  
151 not terminate an approved plan without reasonable notice and  
152 opportunity for hearing to each political subdivision or  
153 instrumentality affected by the board's decision. The board's  
154 decision in any such case shall be final, conclusive and binding  
155 unless an appeal is taken by the political subdivision or  
156 instrumentality aggrieved by the decision to the Circuit Court of  
157 the First Judicial District of Hinds County, Mississippi, in  
158 accordance with the provisions of law with respect to civil causes  
159 by certiorari.

160           2. Each political subdivision or  
161 instrumentality as to which a plan has been approved under this  
162 section shall pay into the contribution fund, with respect to  
163 wages (as defined in Section 25-11-5), at such time or times as  
164 the board of trustees may by regulation prescribe, contributions  
165 in the amounts and at the rates specified in the applicable  
166 agreement entered into by the board.

167           3. Every political subdivision or  
168 instrumentality required to make payments under paragraph (f)(v)2  
169 of this section is authorized, in consideration of the employees'



170 retention in or entry upon employment after enactment of Articles  
171 1 and 3, to impose upon its employees, as to services that are  
172 covered by an approved plan, a contribution with respect to wages  
173 (as defined in Section 25-11-5) not exceeding the amount provided  
174 in Section 25-11-123(d) if those services constituted employment  
175 within the meaning of Articles 1 and 3, and to deduct the amount  
176 of the contribution from the wages as and when paid.

177 Contributions so collected shall be paid into the contribution  
178 fund as partial discharge of the liability of the political  
179 subdivisions or instrumentalities under paragraph (f)(v)2 of this  
180 section. Failure to deduct the contribution shall not relieve the  
181 employee or employer of liability for the contribution.

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





195                   5. Each political subdivision of the state  
196 and each instrumentality of the state or a political subdivision  
197 or subdivisions that submit a plan for approval of the board, as  
198 provided in this section, shall reimburse the board for coverage  
199 into the expense account, its pro rata share of the total expense  
200 of administering Articles 1 and 3 as provided by regulations of  
201 the board.

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

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

214                   (i) If any member of this system changes his employment  
215 to any agency of the state having an actuarially funded retirement  
216 system, the board of trustees may authorize the transfer of the  
217 member's creditable service and of the present value of the  
218 member's employer's accumulation account and of the present value  
219 of the member's accumulated membership contributions to that other



220 system, provided that the employee agrees to the transfer of his  
221 accumulated membership contributions and provided that the other  
222 system is authorized to receive and agrees to make the transfer.

223 If any member of any other actuarially funded system  
224 maintained by an agency of the state changes his employment to an  
225 agency covered by this system, the board of trustees may authorize  
226 the receipt of the transfer of the member's creditable service and  
227 of the present value of the member's employer's accumulation  
228 account and of the present value of the member's accumulated  
229 membership contributions from the other system, provided that the  
230 employee agrees to the transfer of his accumulated membership  
231 contributions to this system and provided that the other system is  
232 authorized and agrees to make the transfer.

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

236 (k) Employees of a political subdivision or  
237 instrumentality who were employed by the political subdivision or  
238 instrumentality before an agreement between the entity and the  
239 Public Employees' Retirement System to extend the benefits of this  
240 article to its employees, and which agreement provides for the  
241 establishment of retroactive service credit, and who became  
242 members of the retirement system before July 1, 2007, and have  
243 remained contributors to the retirement system for four (4) years,  
244 or who became members of the retirement system on or after July 1,



245 2007, and have remained contributors to the retirement system for  
246 eight (8) years, may receive credit for that retroactive service  
247 with the political subdivision or instrumentality, provided that  
248 the employee and/or employer, as provided under the terms of the  
249 modification of the joinder agreement in allowing that coverage,  
250 pay into the retirement system the employer's and employee's  
251 contributions on wages paid the member during the previous  
252 employment, together with interest or actuarial cost as determined  
253 by the board covering the period from the date the service was  
254 rendered until the payment for the credit for the service was  
255 made. Those wages shall be verified by the Social Security  
256 Administration or employer payroll records. Effective July 1,  
257 1998, upon eligibility as noted above, a member may receive credit  
258 for that retroactive service with the political subdivision or  
259 instrumentality provided:

260 (i) The member shall furnish proof satisfactory to  
261 the board of trustees of certification of those services from the  
262 political subdivision or instrumentality where the services were  
263 rendered or verification by the Social Security Administration;  
264 and

265 (ii) The member shall pay to the retirement system  
266 on the date he or she is eligible for that credit or at any time  
267 thereafter before the date of retirement the actuarial cost for  
268 each year of that creditable service. The provisions of this  
269 subparagraph (ii) shall be subject to the limitations of Section



270 415 of the Internal Revenue Code and regulations promulgated under  
271 Section 415.

272 Nothing contained in this paragraph (k) shall be construed to  
273 limit the authority of the board to allow the correction of  
274 reporting errors or omissions based on the payment of employee and  
275 employer contributions plus applicable interest. Payment for that  
276 time shall be made beginning with the most recent service. Upon  
277 the payment of all or part of the required contributions, plus  
278 interest or the actuarial cost as provided above, the member shall  
279 receive credit for the period of creditable service for which full  
280 payment has been made to the retirement system.

281 (l) Through June 30, 1998, any state service eligible  
282 for retroactive service credit, no part of which has ever been  
283 reported, and requiring the payment of employee and employer  
284 contributions plus interest, or, from and after July 1, 1998, any  
285 state service eligible for retroactive service credit, no part of  
286 which has ever been reported to the retirement system, and  
287 requiring the payment of the actuarial cost for that creditable  
288 service, may, at the member's option, be purchased in quarterly  
289 increments as provided above at the time that its purchase is  
290 otherwise allowed.

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

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



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

298 (a) Patient or inmate help in state charitable, penal  
299 or correctional institutions;

300 (b) Students of any state educational institution  
301 employed by any agency of the state for temporary, part-time or  
302 intermittent work;

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

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

310 **III. TERMINATION OF MEMBERSHIP**

311 Membership in this system shall cease by a member withdrawing  
312 his accumulated contributions, or by a member withdrawing from  
313 active service with a retirement allowance, or by a member's  
314 death.

315 **SECTION 2.** This act shall take effect and be in force from  
316 and after July 1, 2018.

