

By: Representatives Banks, Brown (70th),
Crudup, Stamps

To: Appropriations

HOUSE BILL NO. 1290

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT PERSONS WHO ARE EMPLOYED OR RETAINED AS COUNTY
3 BOARD ATTORNEYS AND CITY ATTORNEYS SHALL BE MEMBERS OF THE PUBLIC
4 EMPLOYEES' RETIREMENT SYSTEM REGARDLESS OF WHETHER THEY ARE PAID
5 REGULAR PERIODIC COMPENSATION OR A RETAINER FOR THOSE SERVICES AND
6 REGARDLESS OF THE NUMBER OF HOURS PER WEEK OR HOURS PER MONTH THAT
7 THEY PERFORM THOSE SERVICES AND RECEIVE COMPENSATION OR A RETAINER
8 FOR THOSE SERVICES; AND 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, 2022, any individual
33 who is employed or retained by a county as the county board
34 attorney and any individual who is employed or retained by a
35 municipality as the city attorney, where the county or
36 municipality has an existing agreement with the Public Employees'
37 Retirement System to cover those positions, shall be a member of
38 the system regardless of whether the individual is paid regular
39 periodic compensation or a retainer for those services and
40 regardless of the number of hours per week or hours per month that
41 the individual performs those services and receives compensation
42 or a retainer for those services.

43 (b) All persons who become employees in the state
44 service after January 31, 1953, except those specifically excluded
45 or as to whom election is provided in Articles 1 and 3, unless



46 they file with the board before the lapse of sixty (60) days of
47 employment or sixty (60) days after the effective date of the
48 cited articles, whichever is later, on a form prescribed by the
49 board, a notice of election not to be covered by the membership of
50 the retirement system and a duly executed waiver of all present
51 and prospective benefits that would otherwise inure to them on
52 account of their participation in the system, shall become members
53 of the retirement system; however, no credit for prior service
54 will be granted to members who became members of the system before
55 July 1, 2007, until they have contributed to Article 3 of the
56 retirement system for a minimum period of at least four (4) years,
57 or to members who became members of the system on or after July 1,
58 2007, until they have contributed to Article 3 of the retirement
59 system for a minimum period of at least eight (8) years. Those
60 members shall receive credit for services performed before January
61 1, 1953, in employment now covered by Article 3, but no credit
62 shall be granted for retroactive services between January 1, 1953,
63 and the date of their entry into the retirement system, unless the
64 employee pays into the retirement system both the employer's and
65 the employee's contributions on wages paid him during the period
66 from January 31, 1953, to the date of his becoming a contributing
67 member, together with interest at the rate determined by the board
68 of trustees. Members reentering after withdrawal from service
69 shall qualify for prior service under the provisions of Section
70 25-11-117. From and after July 1, 1998, upon eligibility as noted



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

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

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

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

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

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



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

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

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



121 or termination by the political subdivision or instrumentality.

122 No such plan shall be approved unless:

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

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

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

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

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



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

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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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

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

311 **III. TERMINATION OF MEMBERSHIP**

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

316 **SECTION 2.** This act shall take effect and be in force from
317 and after July 1, 2022.

