

By: Representative Yancey

To: Appropriations

HOUSE BILL NO. 818

1 AN ACT TO DECLARE THE PUBLIC POLICY OF THE STATE REGARDING
 2 THE INVESTMENT OF MONIES OF THE PUBLIC EMPLOYEES' RETIREMENT
 3 SYSTEM AND EXPRESS LEGISLATIVE INTENT TO EMPHASIZE THE COMMITMENT
 4 OF THE STATE TO ONLY INVEST STATE TRUST FUND MONIES IN A MANNER
 5 THAT PRIORITIZES THE SAFETY OF INVESTMENTS AND THE HIGHEST RETURN
 6 ON INVESTMENT FOR BENEFICIARIES, WITHOUT CONSIDERATION FOR
 7 NONPECUNIARY BELIEFS OR POLITICAL FACTORS; TO AMEND SECTION
 8 25-11-121, MISSISSIPPI CODE OF 1972, TO DIRECT THE BOARD OF
 9 TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO MAKE
 10 INVESTMENT DECISIONS WITH THE SOLE PURPOSE OF MAXIMIZING THE
 11 SAFETY OF, AND RETURN ON, ITS INVESTMENTS; TO PROHIBIT THE BOARD
 12 FROM MAKING INVESTMENT DECISIONS WITH THE PRIMARY PURPOSE OF
 13 INFLUENCING ANY SOCIAL OR ENVIRONMENTAL POLICY OR ATTEMPTING TO
 14 INFLUENCE THE GOVERNANCE OF ANY CORPORATION; TO PROHIBIT THE BOARD
 15 FROM SACRIFICING INVESTMENT RETURNS OR ASSUMING GREATER INVESTMENT
 16 RISKS AS A MEANS OF PROMOTING COLLATERAL SOCIAL POLICY GOALS; AND
 17 FOR RELATED PURPOSES.

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

19 **SECTION 1.** (1) The Legislature finds and declares it to be
 20 the public policy of this state that:

21 (a) It is the duty of the Board of Trustees of the
 22 Public Employees' Retirement System of Mississippi to responsibly
 23 and prudently invest monies of retirement system; and

24 (b) In investing the monies of the system, the board of
 25 trustees, the asset managers, the investment advisors, and all



26 other fiduciaries must comply with the highest standard of loyalty
27 and integrity to the fund and its beneficiaries; and

28 (c) The United States Department of Labor (DOL) has
29 been asked to opine on the prudence of considering environmental,
30 social, and governance (ESG) principles of funds when evaluating
31 the fund for investment potential; and

32 (d) The DOL has acknowledged that the definitions and
33 applications of ESG and similar considerations have changed
34 throughout the years and remain often subjective or unclear, with
35 the DOL emphasizing that ESG "terms do not have a uniform meaning
36 and the terminology is evolving" in its rulemaking process leading
37 to its final rule that became effective on January 12, 2021; and

38 (e) The DOL made clear in recent years that fiduciaries
39 responsible for investing retirement monies should only consider
40 financial factors in evaluating funds for investment potential and
41 that "fiduciaries may not sacrifice investment returns or assume
42 greater investment risks as a means of promoting collateral social
43 policy goals"; and

44 (f) Both federal and various state governments have
45 made clear their intention to encourage investment using ESG
46 factors; and

47 (g) The State of Mississippi takes its fiduciary
48 responsibilities seriously when investing state trust fund monies,
49 particularly retirement system monies for our law enforcement,
50 teachers, and public servants.



51 (2) Therefore, it is the intent of the Mississippi
52 Legislature to emphasize the commitment of the State of
53 Mississippi to only invest state trust fund monies in a manner
54 that prioritizes the safety of investments and the highest return
55 on investment for beneficiaries, without consideration for
56 nonpecuniary beliefs or political factors.

57 **SECTION 2.** Section 25-11-121, Mississippi Code of 1972, is
58 amended as follows:

59 25-11-121. (1) The board shall, from time to time,
60 determine the current requirements for benefit payments and
61 administrative expense which shall be maintained as a cash working
62 balance, except that such cash working balance shall not exceed at
63 any time an amount necessary to meet the current obligations of
64 the system for a period of ninety (90) days. Any amounts in
65 excess of such cash working balance shall be invested, as follows:

66 (a) Funds may be deposited in any institution insured
67 by the Federal Deposit Insurance Corporation that maintains a
68 facility that takes deposits in the State of Mississippi or a
69 custodial bank;

70 (b) Corporate bonds and taxable municipal bonds; or
71 corporate short-term obligations of corporations or of wholly
72 owned subsidiaries of corporations, whose short-term obligations
73 are rated A-2 or better by Standard and Poor's, rated P-2 or
74 better by Moody's Investment Service, F-2 or better by Fitch
75 Ratings, Ltd., or the equivalent of these ratings if assigned by



76 another United States Securities and Exchange Commission
77 designated Nationally Recognized Statistical Rating Organization;
78 (c) Agency and nonagency residential and commercial
79 mortgage-backed securities and collateralized mortgage
80 obligations;
81 (d) Asset-backed securities;
82 (e) Bank loans;
83 (f) Convertible bonds;
84 (g) Bonds of the Tennessee Valley Authority;
85 (h) Bonds, notes, certificates and other valid
86 obligations of the United States, and other valid obligations of
87 any federal instrumentality that issues securities under authority
88 of an act of Congress and are exempt from registration with the
89 Securities and Exchange Commission;
90 (i) Bonds, notes, debentures and other securities
91 issued by any federal instrumentality and fully guaranteed by the
92 United States;
93 (j) Interest-bearing revenue bonds or notes or bonds or
94 notes which are general obligations of any state in the United
95 States or of any city or county therein;
96 (k) Bonds of established non-United States companies
97 and foreign government securities. The board may take requisite
98 action to effectuate or hedge transactions or invest in currency
99 through foreign or domestic banks, including the purchase and
100 sale, transfer, exchange, or otherwise disposal of, and generally



101 deal in foreign exchange through the use of foreign currency,
102 interbank forward contracts, futures contracts, options contracts,
103 swaps and other related derivative instruments, notwithstanding
104 any other provisions of this article to the contrary;

105 (1) Shares of stocks, common and/or preferred, of
106 corporations created by or existing under the laws of the United
107 States or any state, district or territory thereof and shares of
108 stocks, common and/or preferred, and convertible securities of
109 non-United States companies; provided:

110 (i) The maximum investments in stocks shall not
111 exceed eighty percent (80%) of the total book value of the total
112 investment fund of the system;

113 (ii) The stock of such corporation shall:

- 114 1. Be listed on a national stock exchange; or
115 2. Be traded in the over-the-counter market;

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

119 (iv) The amount of investment in any one (1)
120 corporation shall not exceed three percent (3%) of the book value
121 of the assets of the system;

122 (v) The shares of any one (1) corporation owned by
123 the system shall not exceed five percent (5%) of that
124 corporation's outstanding stock.



125 The board may take requisite action utilizing foreign
126 currency as an investment vehicle, or to effectuate or hedge
127 transactions for shares of stocks and convertible securities of
128 non-United States companies through foreign or domestic banks,
129 including the purchase and sale, transfer, exchange, or otherwise
130 disposal of, and generally deal in foreign exchange through the
131 use of foreign currency, interbank forward contracts, futures
132 contracts, options contracts, swaps and other related derivative
133 instruments, notwithstanding any other provisions of this article
134 to the contrary;

135 (m) Covered call and put options on securities or
136 indices traded on one or more of the regulated exchanges;

137 (n) Pooled or commingled funds managed by a corporate
138 trustee or by a Securities and Exchange Commission registered
139 investment advisory firm retained as an investment manager by the
140 board of trustees, and shares of investment companies and unit
141 investment trusts registered under the Investment Company Act of
142 1940, where such pooled or commingled funds or shares are
143 comprised of common or preferred stocks, bonds, money market
144 instruments or other investments authorized under this section.
145 Such investment in commingled funds or shares shall be held in
146 trust; provided that the total book value of investments under
147 this paragraph shall at no time exceed five percent (5%) of the
148 total book value of all investments of the system. Any investment



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

151 (o) Pooled or commingled real estate funds or real
152 estate securities managed by a corporate trustee or by a
153 Securities and Exchange Commission registered investment advisory
154 firm retained as an investment manager by the board of trustees.
155 Such investment in commingled funds or shares shall be held in
156 trust; provided that the total book value of investments under
157 this paragraph shall at no time exceed ten percent (10%) of the
158 total book value of all investments of the system. Any investment
159 manager approved by the board of trustees shall invest such
160 commingled funds or shares as a fiduciary. The ten percent (10%)
161 limitation in this paragraph shall not be subject to the five
162 percent (5%) limitation in paragraph (n) of this subsection;

163 (p) Types of investments not specifically authorized by
164 this subsection if the investments are in the form of a separate
165 account managed by a Securities and Exchange Commission registered
166 investment advisory firm retained as an investment manager by the
167 board; or a limited partnership or commingled fund approved by the
168 board; provided that the total book value of investments under
169 this paragraph shall at no time exceed twenty percent (20%) of the
170 total book value of all investments of the system. Any person or
171 entity who exercises any discretionary authority or discretionary
172 control respecting management of the separate account, limited
173 partnership or commingled fund, or who exercises any authority or



174 control respecting management or disposition of the assets of the
175 separate account, limited partnership or commingled fund, shall
176 exercise such authority or control as a fiduciary.

177 (2) All investments shall be acquired at prices not
178 exceeding the prevailing market values for such investments.

179 (3) Any limitations herein set forth shall be applicable
180 only at the time of purchase and shall not require the liquidation
181 of any investment at any time. All investments shall be clearly
182 marked to indicate ownership by the system and to the extent
183 possible shall be registered in the name of the system.

184 (4) Subject to the above terms, conditions, limitations and
185 restrictions, the board shall have power to sell, assign, transfer
186 and dispose of any of the securities and investments of the
187 system, provided that said sale, assignment or transfer has the
188 majority approval of the entire board. The board may employ or
189 contract with investment managers, evaluation services or other
190 such services as determined by the board to be necessary for the
191 effective and efficient operation of the system.

192 (5) Except as otherwise provided herein, no trustee and no
193 employee of the board shall have any direct or indirect interest
194 in the income, gains or profits of any investment made by the
195 board, nor shall any such person receive any pay or emolument for
196 his services in connection with any investment made by the board.
197 No trustee or employee of the board shall become an endorser or



198 surety, or in any manner an obligor for money loaned by or
199 borrowed from the system.

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

203 (7) The board of trustees shall credit regular interest to
204 the annuity savings account monthly. Regular interest shall mean
205 such per centum rate to be compounded annually as set by the board
206 of trustees through regulation.

207 (8) The board of trustees shall be the custodian of the
208 funds of the system. All retirement allowance payrolls shall be
209 certified by the executive director who shall furnish the board a
210 surety bond in a company authorized to do business in Mississippi
211 in such an amount as shall be required by the board, the premium
212 to be paid by the board from the expense account.

213 (9) For the purpose of meeting disbursements for retirement
214 allowances, annuities and other payments, cash may be kept
215 available, not exceeding the requirements of the system for a
216 period of ninety (90) days, on deposit in one or more banks or
217 trust companies organized under the laws of the State of
218 Mississippi or the laws of the United States, provided that the
219 sum on deposit in any one (1) bank or trust company shall not
220 exceed thirty-five percent (35%) of the paid-up capital and
221 regular surplus of such bank or trust company.



222 (10) The board, the executive director and employees shall
223 discharge their duties with respect to the investments of the
224 system solely for the interest of the system with the care, skill,
225 prudence and diligence under the circumstances then prevailing
226 that a prudent investor acting in a like capacity and familiar
227 with such matters would use in the conduct of an enterprise of a
228 like character and with like aims, including diversifying the
229 investments of the system so as to minimize the risk of large
230 losses, unless under the circumstances it is clearly prudent not
231 to do so. The board, in accordance with its fiduciary duties,
232 shall make investment decisions with the sole purpose of
233 maximizing the safety of, and return on, its investments. The
234 board shall not make an investment decision with the primary
235 purpose of influencing any social or environmental policy or
236 attempting to influence the governance of any corporation. The
237 board shall not sacrifice investment returns or assume greater
238 investment risks as a means of promoting collateral social policy
239 goals.

240 (11) Documentary material or data made or received by the
241 system which consists of trade secrets or commercial or financial
242 information that relates to the investments of the system shall be
243 exempt from the Mississippi Public Records Act of 1983 if the
244 disclosure of the material or data is likely to impair the
245 system's ability to obtain such information in the future, or is



246 likely to cause substantial harm to the competitive position of
247 the person or entity from whom the information was obtained.

248 **SECTION 3.** This act shall take effect and be in force from
249 and after July 1, 2023.

