

By: Representative Criswell

To: Appropriations

HOUSE BILL NO. 1099

1 AN ACT TO REQUIRE A FIDUCIARY OR THE GOVERNING BOARD OF A
2 PUBLIC RETIREMENT SYSTEM, IN MAKING AND SUPERVISING INVESTMENTS
3 FOR THE PUBLIC RETIREMENT SYSTEM, TO DISCHARGE ITS DUTIES SOLELY
4 IN THE FINANCIAL INTEREST OF THE PARTICIPANTS AND BENEFICIARIES
5 FOR THE EXCLUSIVE PURPOSES OF PROVIDING FINANCIAL BENEFITS TO
6 PARTICIPANTS AND THEIR BENEFICIARIES AND DEFRAYING REASONABLE
7 EXPENSES OF ADMINISTERING THE SYSTEM; TO PROVIDE THAT AN
8 INVESTMENT MANAGER RETAINED BY THE GOVERNING BOARD SHALL BE
9 SUBJECT TO THE SAME FIDUCIARY DUTIES AS THE BOARD; TO REQUIRE A
10 FIDUCIARY TO TAKE INTO ACCOUNT ONLY FINANCIAL FACTORS WHEN
11 DISCHARGING ITS DUTIES WITH RESPECT TO A RETIREMENT PLAN; TO
12 PROVIDE THAT FINANCIAL FACTORS DO NOT INCLUDE ANY ACTION TAKEN, OR
13 FACTOR CONSIDERED, BY A FIDUCIARY WITH ANY PURPOSE TO FURTHER
14 SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS; TO PROVIDE THAT ALL
15 SHARES HELD DIRECTLY OR INDIRECTLY BY OR ON BEHALF OF A PUBLIC
16 RETIREMENT SYSTEM AND/OR THE PARTICIPANTS AND THEIR BENEFICIARIES
17 SHALL BE VOTED SOLELY IN THE FINANCIAL INTEREST OF PLAN
18 PARTICIPANTS AND THEIR BENEFICIARIES; TO PROVIDE THAT THIS ACT, OR
19 ANY CONTRACT SUBJECT TO THIS ACT, MAY BE ENFORCED BY THE ATTORNEY
20 GENERAL; TO PROVIDE THAT A PERSON OR COMPANY WHO SERVES AS A
21 FIDUCIARY AND WHO VIOLATES THE FIDUCIARY DUTY IMPOSED BY THIS ACT
22 SHALL BE OBLIGATED TO PAY DAMAGES TO THE PUBLIC RETIREMENT SYSTEM
23 IN AN AMOUNT EQUAL TO THREE TIMES ALL MONIES PAID TO THE PERSON OR
24 COMPANY BY THE SYSTEM FOR THE SERVICES OF THE PERSON OR COMPANY;
25 TO AMEND SECTIONS 25-11-121 AND 25-11-407, MISSISSIPPI CODE OF
26 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED
27 PURPOSES.

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

29 **SECTION 1. Definitions.** As used in this act, the following
30 terms shall be defined as provided in this subsection:



31 (a) "Board" means the board of trustees or other
32 governing board of the public retirement system.

33 (b) "Fiduciary" includes any person acting on behalf of
34 the board of trustees as an investment manager or proxy advisor.

35 (c) "Fiduciary commitment" means any evidence of a
36 fiduciary's purpose in managing assets as a fiduciary, including,
37 but not limited to, any of the following in a fiduciary's capacity
38 as a fiduciary:

39 (i) Advertising, statements, explanations,
40 reports, letters to clients, communications with portfolio
41 companies, statements of principles, or commitments; or

42 (ii) Participation in, affiliation with, or status
43 as a signatory to, any coalition, initiative, joint statement of
44 principles, or agreement.

45 (c) "Financial" means having been prudently determined
46 by a fiduciary to have a material effect on the financial risk or
47 the financial return of an investment.

48 (i) The term "financial" does not include any
49 action taken, or factor considered, by a fiduciary with any
50 purpose whatsoever to further social, political or ideological
51 interests.

52 (ii) A fiduciary may reasonably be determined to
53 have taken an action, or considered a factor, with a purpose to
54 further social, political, or ideological interests based upon
55 evidence indicating such a purpose, including, but not limited to,



56 any fiduciary commitment to further, through portfolio company
57 engagement, board or shareholder votes, or otherwise as a
58 fiduciary, any of the following beyond what controlling federal or
59 state law requires:

60 1. Eliminating, reducing, offsetting, or
61 disclosing greenhouse gas emissions;

62 2. Divesting from, limiting investment in, or
63 limiting the activities or investments of, any company, for
64 failing, or not committing, to meet environmental standards or
65 disclosures;

66 3. Access to abortion, sex or gender change
67 or transgender surgery; or

68 4. Divesting from, limiting investment in, or
69 limiting the activities or investments of, any company that
70 engages in, facilitates, or supports the manufacture, import,
71 distribution, marketing or advertising, sale, or lawful use of
72 firearms, ammunition or components parts and accessories of
73 firearms or ammunition.

74 (d) "Governmental entity" means:

75 (i) The State of Mississippi or any political
76 subdivision of the state; or

77 (ii) Any school, college, university,
78 administration, authority, or other enterprise operated by the
79 state or any political subdivision of the state.



80 (e) "Public retirement system," "system" or "plan"
81 means any retirement or pension system or plan maintained,
82 provided or offered by a governmental entity.

83 **SECTION 2. Fiduciary duty.** (1) In making and supervising
84 investments of the reserve fund of a public retirement system, a
85 fiduciary or the board shall discharge its duties solely in the
86 financial interest of the participants and beneficiaries for the
87 exclusive purposes of:

88 (a) Providing financial benefits to participants and
89 their beneficiaries; and

90 (b) Defraying reasonable expenses of administering the
91 system.

92 (2) An investment manager retained by the board shall be
93 subject to the same fiduciary duties as the board.

94 (3) A fiduciary shall take into account only financial
95 factors when discharging its duties with respect to a plan.

96 (4) All shares held directly or indirectly by or on behalf
97 of a public retirement system and/or the participants and their
98 beneficiaries shall be voted solely in the financial interest of
99 plan participants and their beneficiaries.

100 (5) Unless no economically practicable alternative is
101 available, the governmental entity that establishes or maintains a
102 public retirement system or the board of the system may not grant
103 proxy voting authority to any person who is not a part of the
104 governmental entity, unless that person has a practice of, and in



105 writing commits to, follow guidelines that match the governmental
106 entity's and the board's obligation to act solely upon financial
107 factors.

108 (5) Unless no economically practicable alternative is
109 available, public retirement system assets shall not be entrusted
110 to a fiduciary, unless that fiduciary has a practice of, and in
111 writing commits to, follow guidelines, when engaging with
112 portfolio companies and voting shares or proxies, that match the
113 governmental entity's and the board's obligation to act solely
114 upon financial factors.

115 (6) Unless no economically practicable alternative is
116 available, a fiduciary or the board may not adopt a practice of
117 following the recommendations of a proxy advisor or other service
118 provider, unless such advisor or service provider has a practice
119 of, and in writing commits to, follow proxy voting guidelines that
120 match the governmental entity's and the board's obligation to act
121 solely upon financial factors.

122 (7) All proxy votes shall be tabulated and reported annually
123 to the board. For each vote, the report shall contain a vote
124 caption, the plan's vote, the recommendation of company
125 management, and, if applicable, the proxy advisor's
126 recommendation. These reports shall be posted on a publicly
127 available webpage on the board's website.

128 **SECTION 3. Enforcement.** (1) This act, or any contract
129 subject to this act, may be enforced by the Attorney General.



130 (2) If the Attorney General has reasonable cause to believe
131 that a person has engaged in, is engaging in, or is about to
132 engage in, a violation of this act, he or she may:

133 (a) Require such person to file on such forms as he or
134 she prescribes a statement or report in writing, under oath, as to
135 all the facts and circumstances concerning the violation; and

136 (b) Such other data and information as he or she may
137 deem necessary.

138 (3) In addition to any other remedies available at law or
139 equity, a person or company who serves as a fiduciary and who
140 violates Section 2 of this act shall be obligated to pay damages
141 to the public retirement system in an amount equal to three (3)
142 times all monies paid to the person or company by the system for
143 the services of the person or company.

144 **SECTION 4.** Section 25-11-121, Mississippi Code of 1972, is
145 amended as follows:

146 25-11-121. (1) The board shall, from time to time,
147 determine the current requirements for benefit payments and
148 administrative expense which shall be maintained as a cash working
149 balance, except that such cash working balance shall not exceed at
150 any time an amount necessary to meet the current obligations of
151 the system for a period of ninety (90) days. Any amounts in
152 excess of such cash working balance shall be invested, as follows:

153 (a) Funds may be deposited in any institution insured
154 by the Federal Deposit Insurance Corporation that maintains a



155 facility that takes deposits in the State of Mississippi or a
156 custodial bank;

157 (b) Corporate bonds and taxable municipal bonds; or
158 corporate short-term obligations of corporations or of wholly
159 owned subsidiaries of corporations, whose short-term obligations
160 are rated A-2 or better by Standard and Poor's, rated P-2 or
161 better by Moody's Investment Service, F-2 or better by Fitch
162 Ratings, Ltd., or the equivalent of these ratings if assigned by
163 another United States Securities and Exchange Commission
164 designated Nationally Recognized Statistical Rating Organization;

165 (c) Agency and nonagency residential and commercial
166 mortgage-backed securities and collateralized mortgage
167 obligations;

168 (d) Asset-backed securities;

169 (e) Bank loans;

170 (f) Convertible bonds;

171 (g) Bonds of the Tennessee Valley Authority;

172 (h) Bonds, notes, certificates and other valid
173 obligations of the United States, and other valid obligations of
174 any federal instrumentality that issues securities under authority
175 of an act of Congress and are exempt from registration with the
176 Securities and Exchange Commission;

177 (i) Bonds, notes, debentures and other securities
178 issued by any federal instrumentality and fully guaranteed by the
179 United States;



180 (j) Interest-bearing revenue bonds or notes or bonds or
181 notes which are general obligations of any state in the United
182 States or of any city or county therein;

183 (k) Bonds of established non-United States companies
184 and foreign government securities. The board may take requisite
185 action to effectuate or hedge transactions or invest in currency
186 through foreign or domestic banks, including the purchase and
187 sale, transfer, exchange, or otherwise disposal of, and generally
188 deal in foreign exchange through the use of foreign currency,
189 interbank forward contracts, futures contracts, options contracts,
190 swaps and other related derivative instruments, notwithstanding
191 any other provisions of this article to the contrary;

192 (l) Shares of stocks, common and/or preferred, of
193 corporations created by or existing under the laws of the United
194 States or any state, district or territory thereof and shares of
195 stocks, common and/or preferred, and convertible securities of
196 non-United States companies; provided:

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

200 (ii) The stock of such corporation shall:

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



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

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

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

212 The board may take requisite action utilizing foreign
213 currency as an investment vehicle, or to effectuate or hedge
214 transactions for shares of stocks and convertible securities of
215 non-United States companies through foreign or domestic banks,
216 including the purchase and sale, transfer, exchange, or otherwise
217 disposal of, and generally deal in foreign exchange through the
218 use of foreign currency, interbank forward contracts, futures
219 contracts, options contracts, swaps and other related derivative
220 instruments, notwithstanding any other provisions of this article
221 to the contrary;

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

224 (n) Pooled or commingled funds managed by a corporate
225 trustee or by a Securities and Exchange Commission registered
226 investment advisory firm retained as an investment manager by the
227 board of trustees, and shares of investment companies and unit



228 investment trusts registered under the Investment Company Act of
229 1940, where such pooled or commingled funds or shares are
230 comprised of common or preferred stocks, bonds, money market
231 instruments or other investments authorized under this section.
232 Such investment in commingled funds or shares shall be held in
233 trust; provided that the total book value of investments under
234 this paragraph shall at no time exceed five percent (5%) of the
235 total book value of all investments of the system. Any investment
236 manager approved by the board of trustees shall invest such
237 commingled funds or shares as a fiduciary in accordance with
238 Sections 1 though 3 of this act;

239 (o) Pooled or commingled real estate funds or real
240 estate securities managed by a corporate trustee or by a
241 Securities and Exchange Commission registered investment advisory
242 firm retained as an investment manager by the board of trustees.
243 Such investment in commingled funds or shares shall be held in
244 trust; provided that the total book value of investments under
245 this paragraph shall at no time exceed ten percent (10%) of the
246 total book value of all investments of the system. Any investment
247 manager approved by the board of trustees shall invest such
248 commingled funds or shares as a fiduciary in accordance with
249 Sections 1 though 3 of this act. The ten percent (10%) limitation
250 in this paragraph shall not be subject to the five percent (5%)
251 limitation in paragraph (n) of this subsection;



252 (p) Types of investments not specifically authorized by
253 this subsection if the investments are in the form of a separate
254 account managed by a Securities and Exchange Commission registered
255 investment advisory firm retained as an investment manager by the
256 board; or a limited partnership or commingled fund approved by the
257 board; provided that the total book value of investments under
258 this paragraph shall at no time exceed twenty percent (20%) of the
259 total book value of all investments of the system. Any person or
260 entity who exercises any discretionary authority or discretionary
261 control respecting management of the separate account, limited
262 partnership or commingled fund, or who exercises any authority or
263 control respecting management or disposition of the assets of the
264 separate account, limited partnership or commingled fund, shall
265 exercise such authority or control as a fiduciary in accordance
266 with Sections 1 through 3 of this act.

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

269 (3) Any limitations herein set forth shall be applicable
270 only at the time of purchase and shall not require the liquidation
271 of any investment at any time. All investments shall be clearly
272 marked to indicate ownership by the system and to the extent
273 possible shall be registered in the name of the system.

274 (4) Subject to the above terms, conditions, limitations and
275 restrictions, the board shall have power to sell, assign, transfer
276 and dispose of any of the securities and investments of the



277 system, provided that said sale, assignment or transfer has the
278 majority approval of the entire board. The board may employ or
279 contract with investment managers, evaluation services or other
280 such services as determined by the board to be necessary for the
281 effective and efficient operation of the system.

282 (5) Except as otherwise provided herein, no trustee and no
283 employee of the board shall have any direct or indirect interest
284 in the income, gains or profits of any investment made by the
285 board, nor shall any such person receive any pay or emolument for
286 his services in connection with any investment made by the board.
287 No trustee or employee of the board shall become an endorser or
288 surety, or in any manner an obligor for money loaned by or
289 borrowed from the system.

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

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

297 (8) The board of trustees shall be the custodian of the
298 funds of the system. All retirement allowance payrolls shall be
299 certified by the executive director who shall furnish the board a
300 surety bond in a company authorized to do business in Mississippi



301 in such an amount as shall be required by the board, the premium
302 to be paid by the board from the expense account.

303 (9) For the purpose of meeting disbursements for retirement
304 allowances, annuities and other payments, cash may be kept
305 available, not exceeding the requirements of the system for a
306 period of ninety (90) days, on deposit in one or more banks or
307 trust companies organized under the laws of the State of
308 Mississippi or the laws of the United States, provided that the
309 sum on deposit in any one (1) bank or trust company shall not
310 exceed thirty-five percent (35%) of the paid-up capital and
311 regular surplus of such bank or trust company.

312 (10) The board, the executive director and employees shall
313 discharge their duties with respect to the investments of the
314 system solely for the interest of the system with the care, skill,
315 prudence and diligence under the circumstances then prevailing
316 that a prudent investor acting in a like capacity and familiar
317 with such matters would use in the conduct of an enterprise of a
318 like character and with like aims, including diversifying the
319 investments of the system so as to minimize the risk of large
320 losses, unless under the circumstances it is clearly prudent not
321 to do so. The board, the executive director and employees shall
322 discharge their duties under this subsection in accordance with
323 Sections 1 through 3 of this act.

324 (11) Documentary material or data made or received by the
325 system which consists of trade secrets or commercial or financial



326 information that relates to the investments of the system shall be
327 exempt from the Mississippi Public Records Act of 1983 if the
328 disclosure of the material or data is likely to impair the
329 system's ability to obtain such information in the future, or is
330 likely to cause substantial harm to the competitive position of
331 the person or entity from whom the information was obtained.

332 **SECTION 5.** Section 25-11-407, Mississippi Code of 1972, is
333 amended as follows:

334 25-11-407. The Board of Trustees of the Public Employees'
335 Retirement System shall designate not less than three (3) nor more
336 than five (5) companies to provide annuity contracts, mutual fund
337 accounts or similar investment products, and the types of
338 investment contracts or funds that may be offered by those
339 companies. In making those designations, the board of trustees
340 shall consider and be guided by:

341 (a) The nature and extent of the rights and benefits to
342 be provided by those contracts or accounts, or both, for
343 participants and their beneficiaries;

344 (b) The relation of those rights and benefits to the
345 amount of contributions to be made;

346 (c) The suitability of those rights and benefits to the
347 needs of the participants;

348 (d) The efficacy of the contracts or accounts, or both,
349 in the recruitment and retention of faculty and administrators;



350 (e) The ability and experience of the designated
351 companies in providing those suitable rights and benefits under
352 those contracts or accounts, or both; and

353 (f) The ability and experience of the designated
354 companies to provide both suitable participant investment guidance
355 and investment options.

356 The companies shall act in a fiduciary capacity in accordance
357 with Sections 1 through 3 of this act in selecting investment
358 products that are suitable for the optional retirement program.
359 It shall be the duty of the companies to report to and seek
360 approval from the board for the investment products made available
361 under this paragraph and to report the participant use of those
362 options annually. The board reserves the right to refuse or
363 discontinue any product offered by those companies.

364 **SECTION 6.** This act shall take effect and be in force from
365 and after July 1, 2023.

