

By: Representative Banks

To: Appropriations

HOUSE BILL NO. 1481

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 MUNICIPAL ATTORNEYS SHALL BE MEMBERS OF THE
 4 PUBLIC EMPLOYEES' RETIREMENT SYSTEM REGARDLESS OF WHETHER THEY ARE
 5 PAID REGULAR PERIODIC COMPENSATION OR A RETAINER FOR THOSE
 6 SERVICES AND REGARDLESS OF THE NUMBER OF HOURS PER WEEK OR HOURS
 7 PER MONTH THAT THEY PERFORM THOSE SERVICES AND RECEIVE
 8 COMPENSATION OR A RETAINER FOR THOSE SERVICES; AND FOR RELATED
 9 PURPOSES.

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

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

13 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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



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

33 (iii) From and after July 1, 2023, any individual
34 who is employed or retained by a county as the county board
35 attorney and any individual who is employed or retained by a
36 municipality as the municipal attorney, where the county or
37 municipality has an existing agreement with the Public Employees'
38 Retirement System to cover those positions, shall be a member of
39 the system regardless of whether the individual is paid regular
40 periodic compensation or a retainer for those services and
41 regardless of the number of hours per week or hours per month that
42 the individual performs those services and receives compensation
43 or a retainer for those services.

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



47 they file with the board before the lapse of sixty (60) days of
48 employment or sixty (60) days after the effective date of the
49 cited articles, whichever is later, on a form prescribed by the
50 board, a notice of election not to be covered by the membership of
51 the retirement system and a duly executed waiver of all present
52 and prospective benefits that would otherwise inure to them on
53 account of their participation in the system, shall become members
54 of the retirement system; however, no credit for prior service
55 will be granted to members who became members of the system before
56 July 1, 2007, until they have contributed to Article 3 of the
57 retirement system for a minimum period of at least four (4) years,
58 or to members who became members of the system on or after July 1,
59 2007, until they have contributed to Article 3 of the retirement
60 system for a minimum period of at least eight (8) years. Those
61 members shall receive credit for services performed before January
62 1, 1953, in employment now covered by Article 3, but no credit
63 shall be granted for retroactive services between January 1, 1953,
64 and the date of their entry into the retirement system, unless the
65 employee pays into the retirement system both the employer's and
66 the employee's contributions on wages paid him during the period
67 from January 31, 1953, to the date of his becoming a contributing
68 member, together with interest at the rate determined by the board
69 of trustees. Members reentering after withdrawal from service
70 shall qualify for prior service under the provisions of Section
71 25-11-117. From and after July 1, 1998, upon eligibility as noted



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

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

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

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

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

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



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

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

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



122 or termination by the political subdivision or instrumentality.

123 No such plan shall be approved unless:

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

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

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

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

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



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

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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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



