

By: Senator(s) McMahan

To: Finance

SENATE BILL NO. 2849

1 AN ACT TO CLARIFY THE FIDUCIARY DUTY AND INVESTMENT POLICIES
 2 OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO ENSURE THAT
 3 FIDUCIARIES RESPONSIBLE FOR INVESTING PUBLIC RETIREMENT MONIES DO
 4 SO ONLY IN A MANNER PRIORITIZING THE SAFETY OF AND HIGHEST RETURN
 5 ON INVESTMENT FOR BENEFICIARIES, WITHOUT CONSIDERATION OF
 6 ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) FACTORS OR OTHER
 7 NONPECUNIARY BELIEFS OR POLITICAL FACTORS; TO AMEND SECTIONS
 8 25-11-3 AND 25-11-15, MISSISSIPPI CODE OF 1972, TO CONFORM; AND
 9 FOR RELATED PURPOSES.

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

11 **SECTION 1. Legislative findings and intent.** (1) The
 12 Legislature hereby finds and declares to be the public policy of
 13 this state that:

14 (a) It is the duty of the board to responsibly and
 15 prudently invest monies of the system;

16 (b) In investing these monies, the board, asset
 17 managers, investment advisors and all other fiduciaries must
 18 comply with the highest standard of loyalty and integrity to the
 19 fund and its beneficiaries;

20 (c) The United States Department of Labor (DOL) has
 21 been asked to opine on the prudence of considering environmental,



22 social and governance (ESG) principles of funds when evaluating
23 the fund for investment potential;

24 (d) DOL has acknowledged that the definitions and
25 applications of ESG and similar considerations have changed
26 throughout the years and remain often subjective or unclear, and
27 the agency emphasized, in the rulemaking process leading to its
28 final rule effective January 12, 2021, that ESG "terms do not have
29 a uniform meaning and the terminology is evolving";

30 (e) DOL made clear in recent years that fiduciaries
31 responsible for investing retirement money should consider only
32 financial factors in evaluating funds for investment potential and
33 that "fiduciaries may not sacrifice investment returns or assume
34 greater investment risks as a means of promoting collateral social
35 policy goals";

36 (f) Both federal and various state governments have
37 made clear their intention to encourage investment using ESG
38 factors; and

39 (g) The State of Mississippi takes its fiduciary
40 responsibilities seriously when investing state trust fund monies,
41 particularly retirement fund money for our law enforcement,
42 teachers and public servants.

43 (2) Therefore, it is the intent of the Legislature to
44 emphasize the commitment of the state to invest in funds only in a
45 manner prioritizing the safety of investments and the highest



46 return on investment for beneficiaries, without consideration for
47 nonpecuniary beliefs or political factors.

48 **SECTION 2.** Section 25-11-3, Mississippi Code of 1972, is
49 amended as follows:

50 25-11-3. In order to extend to employees of the state and
51 its political subdivisions and of the instrumentalities of either,
52 and to the dependents and survivors of such employees, the basic
53 protection accorded to others by the old-age and survivors
54 insurance system embodied in the Social Security Act, it is hereby
55 declared to be the policy of this state, subject to the
56 limitations of Articles 1 and 3, that such steps be taken, and
57 they are hereby expressly authorized, as to provide such
58 protection to employees of the state and its political
59 subdivisions and of the instrumentalities of either on as broad a
60 basis as is permitted under applicable federal law. It is also
61 the policy of the Legislature that investment decisions shall be
62 made with the sole purpose of maximizing the safety of investments
63 and return on the investments, with no investment decision being
64 made with the primary purpose of influencing any social or
65 environmental policy or attempting to influence the governance of
66 any corporation. It is also the policy of the Legislature that
67 the protection afforded employees in positions covered by a
68 retirement system on the date an agreement under this article is
69 made applicable to service performed in such positions, or
70 receiving periodic benefits under such retirement system at such



71 time, will not be impaired as a result of making the agreement so
72 applicable or as a result of legislative enactment in anticipation
73 thereof.

74 **SECTION 3.** Section 25-11-15, Mississippi Code of 1972, is
75 amended as follows:

76 25-11-15. (1) Board of trustees: The general
77 administration and responsibility for the proper operation of the
78 Public Employees' Retirement System and the federal-state
79 agreement and for making effective the provisions of Articles 1
80 and 3 are vested in a board of trustees.

81 (2) The board shall consist of ten (10) trustees, as
82 follows:

83 (a) The State Treasurer;

84 (b) One (1) member who shall be appointed by the
85 Governor for a term of four (4) years, who shall be a member of
86 the system;

87 (c) Two (2) members of the system having at least ten
88 (10) years of creditable service who are state employees who are
89 not employees of the state institutions of higher learning, who
90 shall be elected by members of the system who are employees of
91 state agencies and by members of the Mississippi Highway Safety
92 Patrol Retirement System, but not by employees of the state
93 institutions of higher learning;

94 (d) Two (2) members of the system having at least ten
95 (10) years of creditable service who do not hold office in the



96 legislative or judicial departments of municipal or county
97 government, one (1) of whom shall be an employee of a
98 municipality, instrumentality or juristic entity thereof, who
99 shall be elected by members of the system who are employees of the
100 municipalities, instrumentalities or juristic entities thereof and
101 by members of the municipal systems and the firemen's and
102 policemen's disability and relief funds administered by the board
103 of trustees, and one (1) of whom shall be an employee of a county,
104 instrumentality or juristic entity thereof, who shall be elected
105 by members of the system who are employees of the counties,
106 instrumentalities or juristic entities thereof;

107 (e) One (1) member of the system having at least ten
108 (10) years of creditable service who is an employee of a state
109 institution of higher learning, who shall be elected by members of
110 the system who are employees of the state institutions of higher
111 learning as included in Section 37-101-1. Any member of the board
112 on July 1, 1984, who is an employee of an institution of higher
113 learning shall serve as the member trustee representing the
114 institutions of higher learning until the end of the term for
115 which he or she was elected;

116 (f) Two (2) retired members who are receiving a
117 retirement allowance from the system, who shall be elected by the
118 retired members or beneficiaries receiving a retirement allowance
119 from the system and by the retired members or beneficiaries of the
120 municipal systems, the firemen's and policemen's disability and



121 relief funds and the Mississippi Highway Safety Patrol Retirement
122 System administered by the board of trustees, to serve for a term
123 of six (6) years under rules and regulations adopted by the board
124 to govern that election; however, any retired member of the board
125 in office on April 19, 1993, shall serve as a retired trustee
126 until the end of the term for which he or she was elected;

127 (g) One (1) member of the system having at least ten
128 (10) years of creditable service who is an employee of any public
129 school district or junior college or community college district
130 that participates in the system, who shall be elected by the
131 members of the system who are employees of any public school
132 district or junior college or community college district; however,
133 any member of the board on June 30, 1989, who is a certified
134 classroom teacher shall serve as the member representing a
135 classroom teacher until the end of the term for which the member
136 was appointed;

137 (h) In the first election to be held for trustees one
138 (1) member shall be elected for a term of two (2) years, and one
139 (1) member for a term of four (4) years, and one (1) member for a
140 term of six (6) years. Thereafter, their successors shall be
141 elected for terms of six (6) years. All elections shall be held
142 in accordance with rules and regulations adopted by the board to
143 govern those elections and the board shall be the sole judge of
144 all questions arising incident to or connected with the elections.



145 (i) Any person eligible to vote for the election of a
146 member of the board of trustees and who meets the qualifications
147 for the office may seek election to the office and serve if
148 elected. For purposes of determining eligibility to seek office
149 as a member of the board of trustees, the required creditable
150 service in "the system" shall include each system administered by
151 the board of trustees in which the person is a member.

152 The members described above and serving on the board on June
153 30, 1989, shall continue to serve on the board until the
154 expiration of their terms.

155 (3) If a vacancy occurs in the office of a trustee, the
156 vacancy shall be filled for the unexpired term in the same manner
157 as the office was previously filled. However, if the unexpired
158 term is six (6) months or less, an election shall be held to fill
159 the office vacated for the next succeeding full term of office,
160 and the person so elected to fill the next full term shall be
161 appointed by the board to fill the remainder of the unexpired
162 term. Whenever any member who is elected to a position to
163 represent a class of members ceases to be a member of that class,
164 that board member is no longer eligible for membership on the
165 board. The position shall be declared vacant, and the unexpired
166 term shall be filled in the same manner as the office was
167 previously filled.

168 (4) Each trustee shall, within ten (10) days after his or
169 her appointment or election, take an oath of office as provided by



170 law and, in addition, shall take an oath that he or she will
171 diligently and honestly administer the affairs of the board, and
172 that he or she will not knowingly violate or willingly permit to
173 be violated any of the provisions of law applicable to Articles 1
174 and 3. The oath shall be signed by the member making it,
175 certified by the officer before whom it is taken, and immediately
176 filed in the office of the Secretary of State.

177 (5) Each trustee shall be entitled to one (1) vote. Six (6)
178 members shall constitute a quorum at any meeting of the board, and
179 a majority of those present shall be necessary for a decision.

180 (6) Subject to the limitations of Articles 1 and 3, the
181 board shall establish rules and regulations for the administration
182 of the system created by those articles and for the transaction of
183 its business, and to give force and effect to the provisions of
184 those articles wherever necessary to carry out the intent and
185 purposes of the Legislature. The board, in accordance with its
186 fiduciary duties, shall make investment decisions with the sole
187 purpose of maximizing the safety of and return on its investments.
188 The board shall not make an investment decision with the primary
189 purpose of influencing any social or environmental policy or
190 attempting to influence the governance of any corporation. The
191 board shall not sacrifice investment returns or assume greater
192 investment risks as a means of promoting collateral social policy
193 goals. The cited articles are remedial law and shall be liberally
194 construed to accomplish their purposes.



195 (7) Notwithstanding any other law to the contrary, in the
196 event of a natural disaster or other occurrence that results in
197 the failure of the retirement system's computer system or a
198 significant disruption of the normal activities of the retirement
199 system, the executive director of the board, or his or her deputy,
200 shall be authorized to contract with another entity, governmental
201 or private, during the period of the failure or disruption, for
202 services, commodities, work space and supplies as necessary to
203 carry out the administration of all systems and programs
204 administered by the board. The board shall be authorized to pay
205 the reasonable cost of those services, commodities, work space and
206 supplies. At the meeting of the board next following the
207 execution of a contract authorized under this subsection,
208 documentation of the contract, including a description of the
209 services, commodities, work space or supplies, the price thereof
210 and the nature of the disaster or occurrence, shall be presented
211 to the board and placed on the minutes of the board. Because of
212 their emergency nature, purchases made under this subsection shall
213 not be required to comply with the provisions of Section 31-7-13
214 or any other law governing public purchases.

215 (8) The computer equipment and software owned by the Public
216 Employees' Retirement System are assets of the Trust Fund by
217 virtue of the Constitution, Section 272-A and acquisition and
218 operation thereof shall be under the jurisdiction of the Public
219 Employees' Retirement System.



220 (9) The board shall elect a chairman and shall by a majority
221 vote of all of its members appoint a secretary whose title shall
222 be executive director, who shall serve at the will and pleasure of
223 the board, who shall not be a member of the board of trustees, who
224 shall be entitled to membership in the system, and who shall act
225 as secretary of the board. The board of trustees shall employ
226 such actuarial, clerical and other employees as are required to
227 transact the business of the system, and shall fix the
228 compensation of all employees, subject to the rules and
229 regulations of the State Personnel Board.

230 (10) Each member of the board shall receive as compensation
231 for his or her services Three Hundred Dollars (\$300.00) per month.
232 All members of the board shall be reimbursed for their necessary
233 traveling expenses, which shall be paid in accordance with the
234 requirements of Section 25-3-41 or other applicable statutes with
235 respect to traveling expenses of state officials and employees on
236 official business. All members of the board shall be entitled to
237 be members of the system and shall be entitled to creditable
238 service for all time served as a member of the board, except for
239 the retired members, who shall not be entitled to be a member of
240 the system and who shall be eligible to receive the retirement
241 allowance and compensation for services from the system while
242 serving as a member of the board. Members of the board who are
243 employed in state service (as defined in Section 25-11-103) shall
244 not be required to take annual leave from their state service



245 employment while performing his or her official duties as a member
246 of the board.

247 (11) All expenses of the board incurred in the
248 administration of Articles 1 and 3 shall be paid from such funds
249 as may be appropriated by the Legislature for that purpose or from
250 administrative fees collected from political subdivisions or
251 juristic entities of the state. Each political subdivision of the
252 state and each instrumentality of the state or of a political
253 subdivision or subdivisions that submit a plan for approval by the
254 board as provided in Section 25-11-11 shall reimburse the board,
255 for coverage into the administrative expense fund, its pro rata
256 share of the total expense of administering Articles 1 and 3 as
257 provided by regulations of the board.

258 (12) The Lieutenant Governor may designate two (2) Senators
259 and the Speaker of the House of Representatives may designate two
260 (2) Representatives to attend any meeting of the Board of Trustees
261 of the Public Employees' Retirement System. The appointing
262 authorities may designate alternate members from their respective
263 houses to serve when the regular designees are unable to attend
264 the meetings of the board. The legislative designees shall have
265 no jurisdiction or vote on any matter within the jurisdiction of
266 the board. For attending meetings of the board, the legislators
267 shall receive per diem and expenses, which shall be paid from the
268 contingent expense funds of their respective houses in the same
269 amounts as provided for committee meetings when the Legislature is



270 not in session; however, no per diem and expenses for attending
271 meetings of the board will be paid while the Legislature is in
272 session. No per diem and expenses will be paid except for
273 attending meetings of the board without prior approval of the
274 proper committee in their respective houses.

275 **SECTION 4.** Section 1 of this act shall be codified in Title
276 25, Chapter 11, Article 1, Mississippi Code of 1972.

277 **SECTION 5.** This act shall take effect and be in force from
278 and after July 1, 2023.

