

By: Senator(s) Harkins

To: Finance

SENATE BILL NO. 2905

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE ANY TERMINATED PLAN PREVIOUSLY APPROVED BY THE BOARD OF
 3 TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PAY TO THE
 4 BOARD ITS PORTION OF THE UNFUNDED ACTUARIAL ACCRUED LIABILITY IN A
 5 LUMP SUM BEFORE TERMINATION, AS PROVIDED BY BOARD REGULATIONS; AND
 6 FOR RELATED PURPOSES.

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

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

10 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

11 The membership of this retirement system shall be composed as
 12 follows:

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

19 (ii) From and after July 1, 2002, any individual
 20 who is employed by a governmental entity to perform professional



21 services shall become a member of the system if the individual is
22 paid regular periodic compensation for those services that is
23 subject to payroll taxes, is provided all other employee benefits
24 and meets the membership criteria established by the regulations
25 adopted by the board of trustees that apply to all other members
26 of the system; however, any active member employed in such a
27 position on July 1, 2002, will continue to be an active member for
28 as long as they are employed in any such position.

29 (b) All persons who become employees in the state
30 service after January 31, 1953, except those specifically excluded
31 or as to whom election is provided in Articles 1 and 3, unless
32 they file with the board before the lapse of sixty (60) days of
33 employment or sixty (60) days after the effective date of the
34 cited articles, whichever is later, on a form prescribed by the
35 board, a notice of election not to be covered by the membership of
36 the retirement system and a duly executed waiver of all present
37 and prospective benefits that would otherwise inure to them on
38 account of their participation in the system, shall become members
39 of the retirement system; however, no credit for prior service
40 will be granted to members who became members of the system before
41 July 1, 2007, until they have contributed to Article 3 of the
42 retirement system for a minimum period of at least four (4) years,
43 or to members who became members of the system on or after July 1,
44 2007, until they have contributed to Article 3 of the retirement
45 system for a minimum period of at least eight (8) years. Those



46 members shall receive credit for services performed before January
47 1, 1953, in employment now covered by Article 3, but no credit
48 shall be granted for retroactive services between January 1, 1953,
49 and the date of their entry into the retirement system, unless the
50 employee pays into the retirement system both the employer's and
51 the employee's contributions on wages paid him during the period
52 from January 31, 1953, to the date of his becoming a contributing
53 member, together with interest at the rate determined by the board
54 of trustees. Members reentering after withdrawal from service
55 shall qualify for prior service under the provisions of Section
56 25-11-117. From and after July 1, 1998, upon eligibility as noted
57 above, the member may receive credit for such retroactive service
58 provided:

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

62 (ii) The member shall pay to the retirement system
63 on the date he or she is eligible for that credit or at any time
64 thereafter before the date of retirement the actuarial cost for
65 each year of that creditable service. The provisions of this
66 subparagraph (ii) shall be subject to the limitations of Section
67 415 of the Internal Revenue Code and regulations promulgated under
68 Section 415.

69 Nothing contained in this paragraph (b) shall be construed to
70 limit the authority of the board to allow the correction of



71 reporting errors or omissions based on the payment of the employee
72 and employer contributions plus applicable interest.

73 (c) All persons who become employees in the state
74 service after January 31, 1953, and who are eligible for
75 membership in any other retirement system shall become members of
76 this retirement system as a condition of their employment, unless
77 they elect at the time of their employment to become a member of
78 that other system.

79 (d) All persons who are employees in the state service
80 on January 31, 1953, and who are members of any nonfunded
81 retirement system operated by the State of Mississippi, or any of
82 its departments or agencies, shall become members of this system
83 with prior service credit unless, before February 1, 1953, they
84 file a written notice with the board of trustees that they do not
85 elect to become members.

86 (e) All persons who are employees in the state service
87 on January 31, 1953, and who under existing laws are members of
88 any fund operated for the retirement of employees by the State of
89 Mississippi, or any of its departments or agencies, shall not be
90 entitled to membership in this retirement system unless, before
91 February 1, 1953, any such person indicates by a notice filed with
92 the board, on a form prescribed by the board, his individual
93 election and choice to participate in this system, but no such
94 person shall receive prior service credit unless he becomes a
95 member on or before February 1, 1953.



96 (f) Each political subdivision of the state and each
97 instrumentality of the state or a political subdivision, or both,
98 is authorized to submit, for approval by the board of trustees, a
99 plan for extending the benefits of this article to employees of
100 any such political subdivision or instrumentality. Each such plan
101 or any amendment to the plan for extending benefits thereof shall
102 be approved by the board of trustees if it finds that the plan, or
103 the plan as amended, is in conformity with such requirements as
104 are provided in Articles 1 and 3; however, upon approval of the
105 plan or any such plan previously approved by the board of
106 trustees, the approved plan shall not be subject to cancellation
107 or termination by the political subdivision or instrumentality.
108 Any plan terminated through legislation, privatization, sale,
109 dissolution, actions of the board through subparagraph (v) of this
110 paragraph, or any other method, shall pay to the board its portion
111 of the unfunded actuarial accrued liability in a lump sum before
112 termination, as provided by board regulations. No such plan shall
113 be approved unless:

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



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

126 (iii) It provides for such methods of
127 administration of the plan by the political subdivision or
128 instrumentality as are found by the board of trustees to be
129 necessary for the proper and efficient administration thereof;

130 (iv) It provides that the political subdivision or
131 instrumentality will make such reports, in such form and
132 containing such information, as the board of trustees may from
133 time to time require;

134 (v) It authorizes the board of trustees to
135 terminate the plan in its entirety in the discretion of the board
136 if it finds that there has been a failure to comply substantially
137 with any provision contained in the plan, the termination to take
138 effect at the expiration of such notice and on such conditions as
139 may be provided by regulations of the board and as may be
140 consistent with applicable federal law.

141 1. The board of trustees shall not finally
142 refuse to approve a plan submitted under paragraph (f), and shall
143 not terminate an approved plan without reasonable notice and
144 opportunity for hearing to each political subdivision or
145 instrumentality affected by the board's decision. The board's



146 decision in any such case shall be final, conclusive and binding
147 unless an appeal is taken by the political subdivision or
148 instrumentality aggrieved by the decision to the Circuit Court of
149 the First Judicial District of Hinds County, Mississippi, in
150 accordance with the provisions of law with respect to civil causes
151 by certiorari.

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

159 3. Every political subdivision or
160 instrumentality required to make payments under paragraph (f)(v)2
161 of this section is authorized, in consideration of the employees'
162 retention in or entry upon employment after enactment of Articles
163 1 and 3, to impose upon its employees, as to services that are
164 covered by an approved plan, a contribution with respect to wages
165 (as defined in Section 25-11-5) not exceeding the amount provided
166 in Section 25-11-123(d) if those services constituted employment
167 within the meaning of Articles 1 and 3, and to deduct the amount
168 of the contribution from the wages as and when paid.
169 Contributions so collected shall be paid into the contribution
170 fund as partial discharge of the liability of the political



171 subdivisions or instrumentalities under paragraph (f)(v)2 of this
172 section. Failure to deduct the contribution shall not relieve the
173 employee or employer of liability for the contribution.

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

187 5. Each political subdivision of the state
188 and each instrumentality of the state or a political subdivision
189 or subdivisions that submit a plan for approval of the board, as
190 provided in this section, shall reimburse the board for coverage
191 into the expense account, its pro rata share of the total expense
192 of administering Articles 1 and 3 as provided by regulations of
193 the board.

194 (g) The board may, in its discretion, deny the right of
195 membership in this system to any class of employees whose



196 compensation is only partly paid by the state or who are occupying
197 positions on a part-time or intermittent basis. The board may, in
198 its discretion, make optional with employees in any such classes
199 their individual entrance into this system.

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

206 (i) If any member of this system changes his employment
207 to any agency of the state having an actuarially funded retirement
208 system, the board of trustees may authorize the transfer of the
209 member's creditable service and of the present value of the
210 member's employer's accumulation account and of the present value
211 of the member's accumulated membership contributions to that other
212 system, provided that the employee agrees to the transfer of his
213 accumulated membership contributions and provided that the other
214 system is authorized to receive and agrees to make the transfer.

215 If any member of any other actuarially funded system
216 maintained by an agency of the state changes his employment to an
217 agency covered by this system, the board of trustees may authorize
218 the receipt of the transfer of the member's creditable service and
219 of the present value of the member's employer's accumulation
220 account and of the present value of the member's accumulated



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

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

228 (k) Employees of a political subdivision or
229 instrumentality who were employed by the political subdivision or
230 instrumentality before an agreement between the entity and the
231 Public Employees' Retirement System to extend the benefits of this
232 article to its employees, and which agreement provides for the
233 establishment of retroactive service credit, and who became
234 members of the retirement system before July 1, 2007, and have
235 remained contributors to the retirement system for four (4) years,
236 or who became members of the retirement system on or after July 1,
237 2007, and have remained contributors to the retirement system for
238 eight (8) years, may receive credit for that retroactive service
239 with the political subdivision or instrumentality, provided that
240 the employee and/or employer, as provided under the terms of the
241 modification of the joinder agreement in allowing that coverage,
242 pay into the retirement system the employer's and employee's
243 contributions on wages paid the member during the previous
244 employment, together with interest or actuarial cost as determined
245 by the board covering the period from the date the service was



246 rendered until the payment for the credit for the service was
247 made. Those wages shall be verified by the Social Security
248 Administration or employer payroll records. Effective July 1,
249 1998, upon eligibility as noted above, a member may receive credit
250 for that retroactive service with the political subdivision or
251 instrumentality provided:

252 (i) The member shall furnish proof satisfactory to
253 the board of trustees of certification of those services from the
254 political subdivision or instrumentality where the services were
255 rendered or verification by the Social Security Administration;
256 and

257 (ii) The member shall pay to the retirement system
258 on the date he or she is eligible for that credit or at any time
259 thereafter before the date of retirement the actuarial cost for
260 each year of that creditable service. The provisions of this
261 subparagraph (ii) shall be subject to the limitations of Section
262 415 of the Internal Revenue Code and regulations promulgated under
263 Section 415.

264 Nothing contained in this paragraph (k) shall be construed to
265 limit the authority of the board to allow the correction of
266 reporting errors or omissions based on the payment of employee and
267 employer contributions plus applicable interest. Payment for that
268 time shall be made beginning with the most recent service. Upon
269 the payment of all or part of the required contributions, plus
270 interest or the actuarial cost as provided above, the member shall



271 receive credit for the period of creditable service for which full
272 payment has been made to the retirement system.

273 (1) Through June 30, 1998, any state service eligible
274 for retroactive service credit, no part of which has ever been
275 reported, and requiring the payment of employee and employer
276 contributions plus interest, or, from and after July 1, 1998, any
277 state service eligible for retroactive service credit, no part of
278 which has ever been reported to the retirement system, and
279 requiring the payment of the actuarial cost for that creditable
280 service, may, at the member's option, be purchased in quarterly
281 increments as provided above at the time that its purchase is
282 otherwise allowed.

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

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

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

290 (a) Patient or inmate help in state charitable, penal
291 or correctional institutions;

292 (b) Students of any state educational institution
293 employed by any agency of the state for temporary, part-time or
294 intermittent work;



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

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

302 **III. TERMINATION OF MEMBERSHIP**

303 Membership in this system shall cease by a member withdrawing
304 his accumulated contributions, or by a member withdrawing from
305 active service with a retirement allowance, or by a member's
306 death.

307 **SECTION 2.** This act shall take effect and be in force from
308 and after July 1, 2024.

