

By: Representative Moak

To: Appropriations

HOUSE BILL NO. 551

1 AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT
3 SYSTEM SHALL BE TERMINATED FROM MEMBERSHIP IN THE SYSTEM IF THE
4 MEMBER IS CONVICTED OF EMBEZZLEMENT OR CERTAIN OTHER CRIMES; TO
5 AMEND SECTION 25-11-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
6 THE REFUND OF THE ACCUMULATED CONTRIBUTIONS OF ANY MEMBER WHO IS
7 CONVICTED OF ANY SUCH CRIME; AND FOR RELATED PURPOSES.

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

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

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

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

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

20 (b) All persons who shall become employees in the state
21 service after January 31, 1953, except those specifically excluded
22 or as to whom election is provided in Articles 1 and 3, unless
23 they shall file with the board prior to the lapse of sixty (60)
24 days of employment or sixty (60) days after the effective date of
25 the cited articles, whichever is later, on a form prescribed by
26 the board, a notice of election not to be covered by the
27 membership of the retirement system and a duly executed waiver of
28 all present and prospective benefits which would otherwise inure
29 to them on account of their participation in the system, shall



30 become members of the retirement system; provided, however, that
31 no credit for prior service will be granted to members until they
32 have contributed to Article 3 of the retirement system for a
33 minimum period of at least four (4) years. Such members shall
34 receive credit for services performed prior to January 1, 1953, in
35 employment now covered by Article 3, but no credit shall be
36 granted for retroactive services between January 1, 1953, and the
37 date of their entry into the retirement system unless the employee
38 pays into the retirement system both the employer's and the
39 employee's contributions on wages paid him during the period from
40 January 31, 1953, to the date of his becoming a contributing
41 member, together with interest at the rate determined by the board
42 of trustees. Members reentering after withdrawal from service
43 shall qualify for prior service under the provisions of Section
44 25-11-117. From and after July 1, 1998, upon eligibility as noted
45 above, the member may receive credit for such retroactive service
46 provided:

47 (1) The member shall furnish proof satisfactory to
48 the board of trustees of certification of such service from the
49 covered employer where the services were performed; and

50 (2) The member shall pay to the retirement system
51 on the date he or she is eligible for such credit or at any time
52 thereafter prior to the date of retirement the actuarial cost for
53 each year of such creditable service. The provisions of this
54 subparagraph (2) shall be subject to the limitations of Section
55 415 of the Internal Revenue Code and regulations promulgated
56 thereunder.

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

61 (c) All persons who shall become employees in the state
62 service after January 31, 1953, and who are eligible for



63 membership in any other retirement system shall become members of
64 this retirement system as a condition of their employment unless
65 they elect at the time of their employment to become a member of
66 such other system.

67 (d) All persons who are employees in the state service
68 on January 31, 1953, and who are members of any nonfunded
69 retirement system operated by the State of Mississippi, or any of
70 its departments or agencies, shall become members of this system
71 with prior service credit unless, before February 1, 1953, they
72 shall file a written notice with the board of trustees that they
73 do not elect to become members.

74 (e) All persons who are employees in the state service
75 on January 31, 1953, and who under existing laws are members of
76 any fund operated for the retirement of employees by the State of
77 Mississippi, or any of its departments or agencies, shall not be
78 entitled to membership in this retirement system unless, before
79 February 1, 1953, any such person shall indicate by a notice filed
80 with the board, on a form prescribed by the board, his individual
81 election and choice to participate in this system, but no such
82 person shall receive prior service credit unless he becomes a
83 member on or before February 1, 1953.

84 (f) Each political subdivision of the state and each
85 instrumentality of the state or a political subdivision, or both,
86 is hereby authorized to submit, for approval by the board of
87 trustees, a plan for extending the benefits of this article to
88 employees of any such political subdivision or instrumentality.
89 Each such plan or any amendment to the plan for extending benefits
90 thereof shall be approved by the board of trustees if it finds
91 that such plan, or such plan as amended, is in conformity with
92 such requirements as are provided in Articles 1 and 3; however,
93 upon approval of such plan or any such plan heretofore approved by
94 the board of trustees, the approved plan shall not be subject to
95 cancellation or termination by the political subdivision or



96 instrumentality, except that any community hospital serving a
97 municipality that joined the Public Employees' Retirement System
98 as of November 1, 1956, to offer social security coverage for its
99 employees and subsequently extended retirement annuity coverage to
100 its employees as of December 1, 1965, may, upon documentation of
101 extreme financial hardship, have future retirement annuity
102 coverage cancelled or terminated at the discretion of the board of
103 trustees. No such plan shall be approved unless:

104 (1) It provides that all services which constitute
105 employment as defined in Section 25-11-5 and are performed in the
106 employ of the political subdivision or instrumentality, by any
107 employees thereof, shall be covered by the plan; with the
108 exception of municipal employees who are already covered by
109 existing retirement plans; provided, however, those employees in
110 this class may elect to come under the provisions of this article;

111 (2) It specifies the source or sources from which
112 the funds necessary to make the payments required by paragraph (d)
113 of Section 25-11-123 and of paragraph (f) (5)B and C of this
114 section are expected to be derived and contains reasonable
115 assurance that such sources will be adequate for such purpose;

116 (3) It provides for such methods of administration
117 of the plan by the political subdivision or instrumentality as are
118 found by the board of trustees to be necessary for the proper and
119 efficient administration thereof;

120 (4) It provides that the political subdivision or
121 instrumentality will make such reports, in such form and
122 containing such information, as the board of trustees may from
123 time to time require;

124 (5) It authorizes the board of trustees to
125 terminate the plan in its entirety in the discretion of the board
126 if it finds that there has been a failure to comply substantially
127 with any provision contained in such plan, such termination to
128 take effect at the expiration of such notice and on such



129 conditions as may be provided by regulations of the board and as
130 may be consistent with applicable federal law.

131 A. The board of trustees shall not finally
132 refuse to approve a plan submitted under paragraph (f), and shall
133 not terminate an approved plan without reasonable notice and
134 opportunity for hearing to each political subdivision or
135 instrumentality affected thereby. The board's decision in any
136 such case shall be final, conclusive and binding unless an appeal
137 be taken by the political subdivision or instrumentality aggrieved
138 thereby to the Circuit Court of Hinds County, Mississippi, in
139 accordance with the provisions of law with respect to civil causes
140 by certiorari.

141 B. Each political subdivision or
142 instrumentality as to which a plan has been approved under this
143 section shall pay into the contribution fund, with respect to
144 wages (as defined in Section 25-11-5), at such time or times as
145 the board of trustees may by regulation prescribe, contributions
146 in the amounts and at the rates specified in the applicable
147 agreement entered into by the board.

148 C. Every political subdivision or
149 instrumentality required to make payments under paragraph (f) (5)B
150 hereof is authorized, in consideration of the employees' retention
151 in or entry upon employment after enactment of Articles 1 and 3,
152 to impose upon its employees, as to services which are covered by
153 an approved plan, a contribution with respect to wages (as defined
154 in Section 25-11-5) not exceeding the amount provided in Section
155 25-11-123(d) if such services constituted employment within the
156 meaning of Articles 1 and 3, and to deduct the amount of such
157 contribution from the wages as and when paid. Contributions so
158 collected shall be paid into the contribution fund as partial
159 discharge of the liability of such political subdivisions or
160 instrumentalities under paragraph (f) (5)B hereof. Failure to



161 deduct such contribution shall not relieve the employee or
162 employer of liability thereof.

163 D. Any state agency, school, political
164 subdivision, instrumentality or any employer that is required to
165 submit contribution payments or wage reports under any section of
166 this chapter shall be assessed interest on delinquent payments or
167 wage reports as determined by the board of trustees in accordance
168 with rules and regulations adopted by the board and such assessed
169 interest may be recovered by action in a court of competent
170 jurisdiction against such reporting agency liable therefor or may,
171 upon due certification of delinquency and at the request of the
172 board of trustees, be deducted from any other monies payable to
173 such reporting agency by any department or agency of the state.

174 E. Each political subdivision of the state
175 and each instrumentality of the state or a political subdivision
176 or subdivisions which submits a plan for approval of the board, as
177 provided in this section, shall reimburse the board for coverage
178 into the expense account, its pro rata share of the total expense
179 of administering Articles 1 and 3 as provided by regulations of
180 said board.

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

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



193 (i) In the event any member of this system should
194 change his employment to any agency of the state having an
195 actuarially funded retirement system, the board of trustees may
196 authorize the transfer of the member's creditable service and of
197 the present value of the member's employer's accumulation account
198 and of the present value of the member's accumulated membership
199 contributions to such other system, provided the employee agrees
200 to the transfer of his accumulated membership contributions and
201 provided such other system is authorized to receive and agrees to
202 make such transfer.

203 In the event any member of any other actuarially funded
204 system maintained by an agency of the state changes his employment
205 to an agency covered by this system, the board of trustees may
206 authorize the receipt of the transfer of the member's creditable
207 service and of the present value of the member's employer's
208 accumulation account and of the present value of the member's
209 accumulated membership contributions from such other system,
210 provided the employee agrees to the transfer of his accumulated
211 membership contributions to this system and provided the other
212 system is authorized and agrees to make such transfer.

213 (j) Wherever herein state employment is referred to, it
214 shall include joint employment by state and federal agencies of
215 all kinds.

216 (k) Employees of a political subdivision or
217 instrumentality who were employed by such political subdivision or
218 instrumentality prior to an agreement between such entity and the
219 Public Employees' Retirement System to extend the benefits of this
220 article to its employees, and which agreement provides for the
221 establishment of retroactive service credit, and who have been
222 members of the retirement system and have remained contributors to
223 the retirement system for four (4) years, may receive credit for
224 such retroactive service with such political subdivision or
225 instrumentality, provided the employee and/or employer, as



226 provided under the terms of the modification of the joinder
227 agreement in allowing such coverage, pay into the retirement
228 system the employer's and employee's contributions on wages paid
229 the member during such previous employment, together with interest
230 or actuarial cost as determined by the board covering the period
231 from the date the service was rendered until the payment for the
232 credit for such service was made. Such wages shall be verified by
233 the Social Security Administration or employer payroll records.
234 Effective July 1, 1998, upon eligibility as noted above, a member
235 may receive credit for such retroactive service with such
236 political subdivision or instrumentality provided:

237 (1) The member shall furnish proof satisfactory to
238 the board of trustees of certification of such services from the
239 political subdivision or instrumentality where the services were
240 rendered or verification by the Social Security Administration;
241 and

242 (2) The member shall pay to the retirement system
243 on the date he or she is eligible for such credit or at any time
244 thereafter prior to the date of retirement the actuarial cost for
245 each year of such creditable service. The provisions of this
246 subparagraph (2) shall be subject to the limitations of Section
247 415 of the Internal Revenue Code and regulations promulgated
248 thereunder.

249 Nothing contained in this paragraph (k) shall be construed to
250 limit the authority of the board to allow the correction of
251 reporting errors or omissions based on the payment of employee and
252 employer contributions plus applicable interest. Payment for such
253 time shall be made in increments of not less than one-quarter
254 (1/4) year of creditable service beginning with the most recent
255 service. Upon the payment of all or part of such required
256 contributions, plus interest or the actuarial cost as provided
257 above, the member shall receive credit for the period of



258 creditable service for which full payment has been made to the
259 retirement system.

260 (l) Through June 30, 1998, any state service eligible
261 for retroactive service credit, no part of which has ever been
262 reported, and requiring the payment of employee and employer
263 contributions plus interest, or, from and after July 1, 1998, any
264 state service eligible for retroactive service credit, no part of
265 which has ever been reported to the retirement system, and
266 requiring the payment of the actuarial cost for such creditable
267 service, may, at the member's option, be purchased in quarterly
268 increments as provided above at such time as its purchase is
269 otherwise allowed.

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

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

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

277 (a) Patient or inmate help in state charitable, penal
278 or correctional institutions;

279 (b) Students of any state educational institution
280 employed by any agency of the state for temporary, part-time or
281 intermittent work;

282 (c) Participants of Comprehensive Employment and
283 Training Act of 1973 (CETA) being Public Law 93-203, who enroll on
284 or after July 1, 1979.

285 **III. TERMINATION OF MEMBERSHIP**

286 Membership in this system shall cease by:

287 (a) A member withdrawing his or her accumulated
288 contributions; * * *

289 (b) A member withdrawing from active service with a
290 retirement allowance; * * *



291 (c) A member's death; or
292 (d) A member's conviction of embezzlement in connection
293 with the member's employment in the state service or any other
294 crime that involved the member's employment in the state service.
295 Any member who is terminated from the system because of any such
296 conviction shall have his or her contributions plus any accrued
297 interest refunded in accordance with Section 25-11-117.

298 **SECTION 2.** Section 25-11-117, Mississippi Code of 1972, is
299 amended as follows:

300 25-11-117. (1) A member may be paid a refund of the amount
301 of accumulated contributions to the credit of the member in the
302 annuity savings account provided the member has withdrawn from
303 state service and further provided the member has not returned to
304 state service on the date the refund of the accumulated
305 contributions would be paid. Such refund of the contributions to
306 the credit of the member in the annuity savings account shall be
307 paid within ninety (90) days from receipt in the office of the
308 retirement system of the properly completed form requesting such
309 payment. The accumulated contributions of any member who is
310 terminated from membership in the system because of conviction of
311 a crime, as provided for under Section 25-11-105 III(d), shall be
312 refunded to the member within ninety (90) days from the date that
313 the retirement system receives notice of the conviction. In the
314 event of death prior to retirement of any member whose spouse
315 and/or children are not entitled to a retirement allowance, the
316 accumulated contributions to the credit of the deceased member in
317 the annuity savings account shall be paid to the designated
318 beneficiary on file in writing in the office of executive director
319 of the board of trustees within ninety (90) days from receipt of a
320 properly completed form requesting such payment. If there is no
321 such designated beneficiary on file for such deceased member in
322 the office of the system, upon the filing of a proper request with
323 the board, the contributions to the credit of the deceased member



324 in the annuity savings account shall be refunded pursuant to
325 Section 25-11-117.1(1). The payment of the refund shall discharge
326 all obligations of the retirement system to the member on account
327 of any creditable service rendered by the member prior to the
328 receipt of the refund. By the acceptance of the refund, the
329 member shall waive and relinquish all accrued rights in the
330 system.

331 (2) Pursuant to the Unemployment Compensation Amendments of
332 1992 (Public Law 102-318 (UCA)), a member or the spouse of a
333 member who is an eligible beneficiary entitled to a refund under
334 this section may elect, on a form prescribed by the board under
335 rules and regulations established by the board, to have an
336 eligible rollover distribution of accumulated contributions
337 payable under this section paid directly to an eligible retirement
338 plan or individual retirement account. If the member or the
339 spouse of a member who is an eligible beneficiary makes such
340 election and specifies the eligible retirement plan or individual
341 retirement account to which such distribution is to be paid, the
342 distribution will be made in the form of a direct
343 trustee-to-trustee transfer to the specified eligible retirement
344 plan. Flexible rollovers under this subsection shall not be
345 considered assignments under Section 25-11-129.

346 (3) If any person who has received a refund reenters the
347 state service and again becomes a member of the system, the member
348 may repay all or part of the amounts previously received as a
349 refund, together with regular interest covering the period from
350 the date of refund to the date of repayment; provided, however,
351 that the amounts that are repaid by the member and the creditable
352 service related thereto shall not be used in any benefit
353 calculation or determination until the member has remained a
354 contributor to the system for a period of at least four (4) years
355 subsequent to such member's reentry into state service. Repayment
356 for such time shall be made in increments of not less than



357 one-quarter (1/4) year of creditable service beginning with the
358 most recent service for which refund has been made. Upon the
359 repayment of all or part of such refund and interest, the member
360 shall again receive credit for the period of creditable service
361 for which full repayment has been made to the system.

362 **SECTION 3.** This act shall take effect and be in force from
363 and after July 1, 2002.

