MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Banks

To: Appropriations

HOUSE BILL NO. 643

AN ACT TO AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS WHO ARE EMPLOYED OR RETAINED AS COUNTY BOARD ATTORNEYS AND CITY ATTORNEYS SHALL BE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM REGARDLESS OF WHETHER THEY ARE PAID REGULAR PERIODIC COMPENSATION OR A RETAINER FOR THOSE SERVICES AND REGARDLESS OF THE NUMBER OF HOURS PER WEEK OR HOURS PER MONTH THAT THEY PERFORM THOSE SERVICES AND RECEIVE COMPENSATION OR A RETAINER FOR THOSE SERVICES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(iii) From and after July 1, 2021, any individual who is employed or retained by a county as the county board attorney and any individual who is employed or retained by a municipality as the city attorney, where the county or municipality has an existing agreement with the Public Employees' Retirement System to cover those positions, shall be a member of the system regardless of whether the individual is paid regular periodic compensation or a retainer for those services and regardless of the number of hours per week or hours per month that the individual performs those services and receives compensation or a retainer for those services.

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

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

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

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

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

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

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

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

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

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

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

or termination by the political subdivision or instrumentality. No such plan shall be approved unless:

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

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

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

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

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

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

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

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

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

retention in or entry upon employment after enactment of Articles 1 and 3, to impose upon its employees, as to services that are covered by an approved plan, a contribution with respect to wages (as defined in Section 25-11-5) not exceeding the amount provided in Section 25-11-123(d) if those services constituted employment within the meaning of Articles 1 and 3, and to deduct the amount of the contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund as partial discharge of the liability of the political subdivisions or instrumentalities under paragraph (f)(v)2 of this section. Failure to deduct the contribution shall not relieve the employee or employer of liability for the contribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

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

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

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

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

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

III. TERMINATION OF MEMBERSHIP

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2021.