

By: Senator(s) Tollison

To: Education

SENATE BILL NO. 2161

1 AN ACT RELATING TO THE MISSISSIPPI CHARTER SCHOOLS ACT OF
2 2013; TO AMEND SECTION 37-28-7, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE DESIGNATION OF SCHOOL DISTRICTS WHICH MAY DISAPPROVE
4 THE LOCATION OF A CHARTER SCHOOL; TO AMEND SECTION 37-28-23,
5 MISSISSIPPI CODE OF 1972, TO REVISE THE RESIDENCY REQUIREMENT FOR
6 APPLICANTS TO ATTEND A CHARTER SCHOOL AND TO REQUIRE CHARTER
7 SCHOOLS TO GIVE ENROLLMENT PREFERENCE TO UNDERSERVED CHILDREN; TO
8 AMEND SECTION 37-28-29, MISSISSIPPI CODE OF 1972, TO REQUIRE
9 CHARTER SCHOOLS TO OFFER COURSES MEETING STATE REQUIREMENTS FOR
10 HIGH SCHOOL GRADUATION; TO AMEND SECTION 37-28-47, MISSISSIPPI
11 CODE OF 1972, TO PROVIDE THAT EMPLOYEES IN CHARTER SCHOOLS ARE
12 MEMBERS OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM AND TO REQUIRE
13 TEACHERS AT CHARTER SCHOOLS TO BE FULLY CERTIFIED WITHIN THREE
14 YEARS OF EMPLOYMENT; TO AMEND SECTION 37-28-55, MISSISSIPPI CODE
15 OF 1972, RELATING TO THE PAYMENT OF FUNDS TO MISSISSIPPI CHARTER
16 SCHOOLS TO PROVIDE THAT STATE FUND PAYMENTS ARE BASED ON ACCURATE
17 ENROLLMENT PROJECTIONS AND TO CLARIFY THE CALCULATION AND
18 DISTRIBUTION OF THE LOCAL AD VALOREM TAX PORTION OF THE CHARTER
19 SCHOOL PER PUPIL FUNDING; TO AMEND SECTION 37-28-57, MISSISSIPPI
20 CODE OF 1972, TO REVISE THE AUDIT DATE FOR CHARTER SCHOOLS; TO
21 AMEND SECTION 37-28-61, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
22 LOCAL SCHOOL DISTRICT TO LEASE A CONVERSION CHARTER SCHOOL
23 FACILITY AT OR BELOW FAIR MARKET VALUE; TO AMEND SECTION 37-47-3,
24 MISSISSIPPI CODE OF 1972, TO INCLUDE CHARTER SCHOOLS IN THE
25 AUTHORITY FOR PARTICIPATION IN THE STATE PUBLIC SCHOOL BUILDING
26 FUND PROGRAM; TO PROHIBIT PUBLIC SCHOOL DISTRICTS FROM RETALIATING
27 AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE IS INVOLVED IN CREATING A
28 CHARTER SCHOOL; TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF
29 1972, TO INCLUDE PUBLIC CHARTER SCHOOLS IN THE DEFINITION OF
30 POLITICAL SUBDIVISION FOR PURPOSES OF THE PUBLIC EMPLOYEES'
31 RETIREMENT SYSTEM; TO REPEAL SECTION 37-28-63, MISSISSIPPI CODE OF
32 1972, WHICH IS THE AUTOMATIC REPEALER ON THE MISSISSIPPI CHARTER
33 SCHOOLS ACT OF 2013; AND FOR RELATED PURPOSES.



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

35 **SECTION 1.** Section 37-28-7, Mississippi Code of 1972, is
36 amended as follows:

37 37-28-7. (1) There is created the Mississippi Charter
38 School Authorizer Board as a state agency with exclusive
39 chartering jurisdiction in the State of Mississippi. Unless
40 otherwise authorized by law, no other governmental agency or
41 entity may assume any charter authorizing function or duty in any
42 form.

43 (2) (a) The mission of the Mississippi Charter School
44 Authorizer Board is to authorize high-quality charter schools,
45 particularly schools designed to expand opportunities for
46 underserved students, consistent with the purposes of this
47 chapter. Subject to the restrictions and conditions prescribed in
48 this subsection, the Mississippi Charter School Authorizer Board
49 may authorize charter schools within the geographical boundaries
50 of any school district.

51 (b) The Mississippi Charter School Authorizer Board may
52 approve a maximum of fifteen (15) qualified charter applications
53 during a fiscal year.

54 (c) In any school district designated as an "A * * *"
55 or "B" * * * school district by the State Board of Education under
56 the accreditation rating system at the time of application, the
57 Mississippi Charter School Authorizer Board may authorize charter
58 schools only if a majority of the members of the local school



59 board votes at a public meeting to endorse the application or to
60 initiate the application on its own initiative.

61 (3) The Mississippi Charter School Authorizer Board shall
62 consist of seven (7) members, to be appointed as follows:

63 (a) Three (3) members appointed by the Governor, with
64 one (1) member being from each of the Mississippi Supreme Court
65 Districts.

66 (b) Three (3) members appointed by the Lieutenant
67 Governor, with one (1) member being from each of the Mississippi
68 Supreme Court Districts.

69 (c) One (1) member appointed by the State
70 Superintendent of Public Education.

71 All appointments must be made with the advice and consent of
72 the Senate. In making the appointments, the appointing authority
73 shall ensure diversity among members of the Mississippi Charter
74 School Authorizer Board.

75 (4) Members appointed to the Mississippi Charter School
76 Authorizer Board collectively must possess strong experience and
77 expertise in public and nonprofit governance, management and
78 finance, public school leadership, assessment, curriculum and
79 instruction, and public education law. Each member of the
80 Mississippi Charter School Authorizer Board must have demonstrated
81 an understanding of and commitment to charter schooling as a
82 strategy for strengthening public education.



83 (5) To establish staggered terms of office, the initial term
84 of office for the three (3) Mississippi Charter School Authorizer
85 Board members appointed by the Governor shall be four (4) years
86 and thereafter shall be three (3) years; the initial term of
87 office for the three (3) members appointed by the Lieutenant
88 Governor shall be three (3) years and thereafter shall be three
89 (3) years; and the initial term of office for the member appointed
90 by the State Superintendent of Public Education shall be two (2)
91 years and thereafter shall be three (3) years. No member may
92 serve more than two (2) consecutive terms. The initial
93 appointments must be made before September 1, 2013.

94 (6) The Mississippi Charter School Authorizer Board shall
95 meet as soon as practical after September 1, 2013, upon the call
96 of the Governor, and shall organize for business by selecting a
97 chairman and adopting bylaws. Subsequent meetings shall be called
98 by the chairman.

99 (7) An individual member of the Mississippi Charter School
100 Authorizer Board may be removed by the board if the member's
101 personal incapacity renders the member incapable or unfit to
102 discharge the duties of the office or if the member is absent from
103 a number of meetings of the board, as determined and specified by
104 the board in its bylaws. Whenever a vacancy on the Mississippi
105 Charter School Authorizer Board exists, the original appointing
106 authority shall appoint a member for the remaining portion of the
107 term.



108 (8) No member of the Mississippi Charter School Authorizer
109 Board or employee, agent or representative of the board may serve
110 simultaneously as an employee, trustee, agent, representative,
111 vendor or contractor of a charter school authorized by the board.

112 (9) The Mississippi Charter School Authorizer Board shall
113 appoint an individual to serve as the Executive Director of the
114 Mississippi Charter School Authorizer Board. The executive
115 director shall possess the qualifications established by the board
116 which are based on national best practices, and shall possess an
117 understanding of state and federal education law. The executive
118 director, who shall serve at the will and pleasure of the board,
119 shall devote his full time to the proper administration of the
120 board and the duties assigned to him by the board and shall be
121 paid a salary established by the board, subject to the approval of
122 the State Personnel Board. Subject to the availability of
123 funding, the executive director may employ such administrative
124 staff as may be necessary to assist the director and board in
125 carrying out the duties and directives of the Mississippi Charter
126 School Authorizer Board.

127 (10) The Mississippi Charter School Authorizer Board shall
128 be located, for administrative purposes, within the offices of the
129 State Institutions of Higher Learning, which shall provide meeting
130 space and clerical support for the board.

131 **SECTION 2.** Section 37-28-23, Mississippi Code of 1972, is
132 amended as follows:



133 37-28-23. (1) A charter school must be open to any student
134 residing in the * * * State of Mississippi.

135 (2) A school district may not require any student enrolled
136 in the school district to attend a charter school.

137 (3) Except as otherwise provided under subsection (8) (d) of
138 this section, a charter school may not limit admission based on
139 ethnicity, national origin, religion, gender, income level,
140 disabling condition, proficiency in the English language, or
141 academic or athletic ability.

142 (4) A charter school may limit admission to students within
143 a given age group or grade level, including pre-kindergarten
144 students, and may be organized around a special emphasis, theme or
145 concept as stated in the school's application.

146 (5) The underserved student composition of a charter
147 school's enrollment collectively must reflect that of students of
148 all ages attending the school district in which the charter school
149 is located, to be defined for the purposes of this chapter as
150 being at least eighty percent (80%) of that population. If the
151 underserved student composition of an applicant's or charter
152 school's enrollment is less than eighty percent (80%) of the
153 enrollment of students of all ages in the school district in which
154 the charter school is located, despite the school's best efforts,
155 the authorizer must consider the applicant's or charter school's
156 recruitment efforts and the underserved student composition of the
157 applicant pool in determining whether the applicant or charter



158 school is operating in a nondiscriminatory manner. A finding by
159 the authorizer that a charter school is operating in a
160 discriminatory manner justifies the revocation of a charter.

161 (6) A charter school must enroll all students who wish to
162 attend the school unless the number of students exceeds the
163 capacity of a program, class, grade level or building.

164 (7) If capacity is insufficient to enroll all students who
165 wish to attend the school based on initial application, the
166 charter school must select students through a lottery.

167 (8) (a) Any noncharter public school or part of a
168 noncharter public school converting to a charter school shall
169 adopt and maintain a policy giving an enrollment preference to
170 students who reside within the former attendance area of that
171 public school. If the charter school has excess capacity after
172 enrolling students residing within the former attendance area of
173 the school, students outside of the former attendance area of the
174 school, but within the geographical boundaries of the school
175 district in which the charter school is located, are eligible for
176 enrollment. If the number of students applying for admission
177 exceeds the capacity of a program, class, grade level or building
178 of the charter school, the charter school must admit students on
179 the basis of a lottery.

180 (b) A charter school must give an enrollment preference
181 to students enrolled in the charter school during the preceding
182 school year and to siblings of students already enrolled in the



183 charter school. An enrollment preference for returning students
184 excludes those students from entering into a lottery.

185 (c) A charter school may give an enrollment preference
186 to children of the charter school's applicant, governing board
187 members and full-time employees, so long as those children
188 constitute no more than ten percent (10%) of the charter school's
189 total student population.

190 (d) A charter school may give an enrollment preference
191 to underserved children as defined in Section 37-28-5 to ensure
192 the charter school meets its required underserved student
193 composition.

194 (* * *e) This section does not preclude the formation
195 of a charter school whose mission is focused on serving students
196 with disabilities, students of the same gender, students who pose
197 such severe disciplinary problems that they warrant a specific
198 educational program, or students who are at risk of academic
199 failure. If capacity is insufficient to enroll all students who
200 wish to attend the school, the charter school must select students
201 through a lottery.

202 **SECTION 3.** Section 37-28-29, Mississippi Code of 1972, is
203 amended as follows:

204 37-28-29. (1) The performance provisions within a charter
205 contract must be based on a performance framework that clearly
206 sets forth the academic and operational performance indicators,
207 measures and metrics that will guide the authorizer's evaluations



208 of the charter school. The performance framework must include
209 indicators, measures and metrics, at a minimum, for the following:

210 (a) Student academic proficiency;

211 (b) Student academic growth;

212 (c) Achievement gaps in both proficiency and growth
213 between major student subgroups;

214 (d) Attendance;

215 (e) Recurrent enrollment from year to year;

216 (f) In-school and out-of-school suspension rates and
217 expulsion rates;

218 (g) For charter high schools, postsecondary readiness,
219 including the percentage of graduates submitting applications to
220 postsecondary institutions, high school completion, postsecondary
221 admission and postsecondary enrollment or employment;

222 (h) Financial performance and sustainability; and

223 (i) Board performance and stewardship, including
224 compliance with all applicable laws, regulations and terms of the
225 charter contract.

226 (2) The charter contract of each charter school serving
227 Grades 9-12 must include a provision ensuring that graduation
228 requirements meet or exceed those set by the Mississippi
229 Department of Education for a regular high school diploma.
230 Nothing in this section shall preclude competency-based
231 satisfaction of graduation requirements.



232 (* * *3) Annual performance targets must be set by each
233 charter school in conjunction with the authorizer and must be
234 designed to help each school meet applicable federal, state and
235 authorizer expectations.

236 (* * *4) The performance framework must allow the inclusion
237 of additional rigorous, valid and reliable indicators proposed by
238 a charter school to augment external evaluations of its
239 performance; however, the authorizer must approve the quality and
240 rigor of any indicators proposed by a charter school, which
241 indicators must be consistent with the purposes of this chapter.

242 (* * *5) The performance framework must require the
243 disaggregation of all student performance data by major student
244 subgroups (gender, race, poverty status, special education status,
245 English learner status and gifted status).

246 (* * *6) The authorizer shall collect, analyze and report
247 all data from state assessments in accordance with the performance
248 framework for each charter school. Multiple schools overseen by a
249 single governing board must report their performance as separate,
250 individual schools, and each school must be held independently
251 accountable for its performance.

252 (* * *7) Information needed by the authorizer from the
253 charter school governing board for the authorizer's reports must
254 be required and included as a material part of the charter
255 contract.



256 **SECTION 4.** Section 37-28-47, Mississippi Code of 1972, is
257 amended as follows:

258 37-28-47. (1) (a) Charter schools must comply with
259 applicable federal laws, rules and regulations regarding the
260 qualification of teachers and other instructional staff. No more
261 than twenty-five percent (25%) of teachers in a charter school may
262 be exempt from state teacher licensure requirements * * *.

263 Administrators of charter schools are exempt from state
264 administrator licensure requirements. However, teachers and
265 administrators must have a bachelor's degree as a minimum
266 requirement, and teachers must have demonstrated subject-matter
267 competency. Within three (3) years of * * * a teacher's
268 employment by a charter school, the teacher must have, at a
269 minimum, alternative licensure approved by the Commission on
270 Teacher and Administrator Education, Certification and Licensure
271 and Development.

272 (b) A charter school may not staff positions for
273 teachers, administrators, ancillary support personnel or other
274 employees by utilizing or otherwise relying on nonimmigrant
275 foreign worker visa programs. However, a charter school may
276 submit a request to the authorizer for an exception allowing the
277 employment of a nonimmigrant foreign worker before the worker is
278 employed. The authorizer may grant permission for the employment
279 of the nonimmigrant foreign worker only if the charter school
280 makes a satisfactory showing of efforts to recruit lawful



281 permanent residents of the United States to fill the position and
282 a lack of qualified applicants to fill the position.

283 (2) Employees in charter schools must have the same general
284 rights and privileges as other public school employees, except
285 such employees are not:

286 (a) Covered under the Education Employment Procedures
287 Law (Section 37-9-103); and

288 (b) Subject to the state salary requirements prescribed
289 in Section 37-19-7 * * *.

290 * * *

291 (3) * * * For the purpose of eligibility for participation
292 in the Public Employees' Retirement System, a public charter
293 school is considered to be a political subdivision of the state.
294 Employees in public charter schools are eligible for participation
295 in other benefits programs if the public charter school governing
296 board chooses to participate.

297 **SECTION 5.** Section 37-28-55, Mississippi Code of 1972, is
298 amended as follows:

299 37-28-55. (1) (a) The State Department of Education shall
300 make payments to charter schools for each student in average daily
301 attendance at the charter school equal to the state share of the
302 adequate education program payments for each student in average
303 daily attendance at the school district in which the charter
304 school is located. In calculating the local contribution for
305 purposes of determining the state share of the adequate education



306 program payments, the department shall deduct the pro rata local
307 contribution of the school district in which the student resides,
308 to be determined as provided in Section 37-151-7(2) (a).

309 (b) Payments made pursuant to this subsection by the
310 State Department of Education must be made at the same time and in
311 the same manner as adequate education program payments are made to
312 school districts under Sections 37-151-101 and 37-151-103.
313 Amounts payable to a charter school must be determined by the
314 State Department of Education. Amounts payable to a charter
315 school over its charter term must be based on the enrollment
316 projections set forth over the term of the charter contract. Such
317 projections must be reconciled with the average daily
318 attendance * * * consistent with Section 37-151-7 (a), using
319 months two (2) and three (3) ADA for the year immediately
320 preceding the year for which adequate education program funds are
321 being appropriated and any necessary adjustments must be made to
322 payments during the school's following year of operation.

323 (2) The school district in which a charter school * * *
324 student resides shall pay directly to the charter school an amount
325 for each student enrolled in the charter school equal to the ad
326 valorem tax receipts and in-lieu payments received per pupil for
327 the support of the local school district in which the student
328 resides. The pro rata ad valorem receipts and in-lieu receipts to
329 be transferred to the charter school shall include all levies for
330 the support of the local school district under Sections 37-57-1



331 (local contribution to the adequate education program) and
332 37-57-105 (school district operational levy) and may not include
333 any taxes levied for the retirement of the local school district's
334 bonded indebtedness or short-term notes or any taxes levied for
335 the support of vocational-technical education programs. The
336 amount of funds payable to the charter school by the school
337 district must be based on the previous year's enrollment data and
338 ad valorem receipts and in-lieu receipts of the local school
339 district in which the student resides. The pro rata amount must
340 be calculated by dividing the local school district's months one
341 (1) through nine (9) average daily membership into the total
342 amount of ad valorem receipts and in-lieu receipts, as reported to
343 the State Department of Education by the local school district.
344 The local school district shall pay an amount equal to this pro
345 rata amount multiplied by the number of students enrolled in the
346 charter school, based on the charter school's end of first month
347 enrollment for the current school year. The amount must be paid
348 by the school district to the charter school before January 16 of
349 the current fiscal year. If the local school district does not
350 pay the required amount to the charter school before January 16,
351 the State Department of Education shall reduce the local school
352 district's January transfer of Mississippi Adequate Education
353 Program funds by the amount owed to the charter school and shall
354 redirect that amount to the charter school. Any such payments
355 made under this subsection (2) by the State Department of



356 Education to a charter school must be made at the same time and in
357 the same manner as adequate education program payments are made to
358 school districts under Sections 37-151-101 and 37-151-103.

359 (3) (a) The State Department of Education shall direct the
360 proportionate share of monies generated under federal and state
361 categorical aid programs, including special education, vocational,
362 gifted and alternative school programs, to charter schools serving
363 students eligible for such aid. The department shall ensure that
364 charter schools with rapidly expanding enrollments are treated
365 equitably in the calculation and disbursement of all federal and
366 state categorical aid program dollars. Each charter school that
367 serves students who may be eligible to receive services provided
368 through such programs shall comply with all reporting requirements
369 to receive the aid.

370 (b) A charter school shall pay to a local school
371 district any federal or state aid attributable to a student with a
372 disability attending the charter school in proportion to the level
373 of services for that student which the local school district
374 provides directly or indirectly.

375 (c) Subject to the approval of the authorizer, a
376 charter school and a local school district may negotiate and enter
377 into a contract for the provision of and payment for special
378 education services, including, but not necessarily limited to, a
379 reasonable reserve not to exceed five percent (5%) of the local
380 school district's total budget for providing special education



381 services. The reserve may be used by the local school district
382 only to offset excess costs of providing services to students with
383 disabilities enrolled in the charter school.

384 (4) (a) The State Department of Education shall disburse
385 state transportation funding to a charter school on the same basis
386 and in the same manner as it is paid to school districts under the
387 adequate education program.

388 (b) A charter school may enter into a contract with a
389 school district or private provider to provide transportation to
390 the school's students.

391 **SECTION 6.** Section 37-28-57, Mississippi Code of 1972, is
392 amended as follows:

393 37-28-57. (1) A charter school must adhere to generally
394 accepted accounting principles.

395 (2) A charter school shall have its financial records
396 audited annually, at the end of each fiscal year, either by the
397 State Auditor or by a certified public accountant approved by the
398 State Auditor. However, a certified public accountant may not be
399 selected to perform the annual audit of a charter school if that
400 accountant previously has audited the charter school for more than
401 three (3) consecutive years. Certified public accountants must be
402 selected in a manner determined by the State Auditor. The charter
403 school shall file a copy of each audit report and accompanying
404 management letter with the authorizer before * * * October 1.



405 **SECTION 7.** Section 37-28-61, Mississippi Code of 1972, is
406 amended as follows:

407 37-28-61. (1) A charter school has a right of first refusal
408 to purchase or lease at or below fair market value a closed public
409 school facility or property or unused portions of a public school
410 facility or property in the school district in which the charter
411 school is located if the school district decides to sell or lease
412 the public school facility or property. If a conversion charter
413 school application is successful, the local school district owning
414 the conversion charter school's facility must offer to lease or
415 sell the building to the conversion charter school at or below
416 fair market value.

417 (2) A charter school may negotiate and contract at or below
418 fair market value with a school district, state institution of
419 higher learning, public community or junior college, or any other
420 public or for-profit or nonprofit private entity for the use of a
421 facility for a school building.

422 (3) Public entities, including, but not limited to,
423 libraries, community service organizations, museums, performing
424 arts venues, theatres, cinemas, churches, community and junior
425 colleges, colleges and universities, may provide space to charter
426 schools within their facilities under their preexisting zoning and
427 land use designations.

428 **SECTION 8.** Section 37-47-3, Mississippi Code of 1972, is
429 amended as follows:



430 37-47-3. The term "school district" as used in this chapter
431 shall be defined as including all public school districts and
432 public charter schools in this state and also all agricultural
433 high schools not located on the campus of a junior college.

434 **SECTION 9.** A school district, school district employee or
435 any other person who has control over personnel actions may not
436 take unlawful reprisal against an employee of the school district
437 because the employee is directly or indirectly involved in an
438 effort to create or encourage participation in a public charter
439 school. As used in this section, the term "unlawful reprisal"
440 means an action which is adverse to the employee and results in
441 one or more of the following for the employee:

- 442 (a) Disciplinary or correction action;
- 443 (b) Detail, transfer or reassignment;
- 444 (c) Suspension, demotion or dismissal;
- 445 (d) An unfavorable performance evaluation;
- 446 (e) A reduction in pay, benefits or awards;
- 447 (f) Elimination of the employee's position without a
448 reduction in force by reason of lack of monies or work; or
- 449 (g) Other significant changes in duties or
450 responsibilities which are inconsistent with the employee's salary
451 or employment classification.

452 **SECTION 10.** Section 25-11-103, Mississippi Code of 1972, is
453 amended as follows:



454 25-11-103. (1) The following words and phrases as used in
455 Articles 1 and 3, unless a different meaning is plainly required
456 by the context, have the following meanings:

457 (a) "Accumulated contributions" means the sum of all
458 the amounts deducted from the compensation of a member and
459 credited to his or her individual account in the annuity savings
460 account, together with regular interest as provided in Section
461 25-11-123.

462 (b) "Actuarial cost" means the amount of funds
463 presently required to provide future benefits as determined by the
464 board based on applicable tables and formulas provided by the
465 actuary.

466 (c) "Actuarial equivalent" means a benefit of equal
467 value to the accumulated contributions, annuity or benefit, as the
468 case may be, when computed upon the basis of such mortality tables
469 as adopted by the board of trustees, and regular interest.

470 (d) "Actuarial tables" means such tables of mortality
471 and rates of interest as adopted by the board in accordance with
472 the recommendation of the actuary.

473 (e) "Agency" means any governmental body employing
474 persons in the state service.

475 (f) "Average compensation" means the average of the
476 four (4) highest years of earned compensation reported for an
477 employee in a fiscal or calendar year period, or combination
478 thereof that do not overlap, or the last forty-eight (48)



479 consecutive months of earned compensation reported for an
480 employee. The four (4) years need not be successive or joined
481 years of service. In computing the average compensation for
482 retirement, disability or survivor benefits, any amount lawfully
483 paid in a lump sum for personal leave or major medical leave shall
484 be included in the calculation to the extent that the amount does
485 not exceed an amount that is equal to thirty (30) days of earned
486 compensation and to the extent that it does not cause the
487 employee's earned compensation to exceed the maximum reportable
488 amount specified in paragraph (k) of this section; however, this
489 thirty-day limitation shall not prevent the inclusion in the
490 calculation of leave earned under federal regulations before July
491 1, 1976, and frozen as of that date as referred to in Section
492 25-3-99. In computing the average compensation, no amounts shall
493 be used that are in excess of the amount on which contributions
494 were required and paid, and no nontaxable amounts paid by the
495 employer for health or life insurance premiums for the employee
496 shall be used. If any member who is or has been granted any
497 increase in annual salary or compensation of more than eight
498 percent (8%) retires within twenty-four (24) months from the date
499 that the increase becomes effective, then the board shall exclude
500 that part of the increase in salary or compensation that exceeds
501 eight percent (8%) in calculating that member's average
502 compensation for retirement purposes. The board may enforce this
503 provision by rule or regulation. However, increases in



504 compensation in excess of eight percent (8%) per year granted
505 within twenty-four (24) months of the date of retirement may be
506 included in the calculation of average compensation if
507 satisfactory proof is presented to the board showing that the
508 increase in compensation was the result of an actual change in the
509 position held or services rendered, or that the compensation
510 increase was authorized by the State Personnel Board or was
511 increased as a result of statutory enactment, and the employer
512 furnishes an affidavit stating that the increase granted within
513 the last twenty-four (24) months was not contingent on a promise
514 or agreement of the employee to retire. Nothing in Section
515 25-3-31 shall affect the calculation of the average compensation
516 of any member for the purposes of this article. The average
517 compensation of any member who retires before July 1, 1992, shall
518 not exceed the annual salary of the Governor.

519 (g) "Beneficiary" means any person entitled to receive
520 a retirement allowance, an annuity or other benefit as provided by
521 Articles 1 and 3. The term "beneficiary" may also include an
522 organization, estate, trust or entity; however, a beneficiary
523 designated or entitled to receive monthly payments under an
524 optional settlement based on life contingency or under a statutory
525 monthly benefit may only be a natural person. In the event of the
526 death before retirement of any member who became a member of the
527 system before July 1, 2007, and whose spouse and/or children are
528 not entitled to a retirement allowance on the basis that the



529 member has less than four (4) years of service credit, or who
530 became a member of the system on or after July 1, 2007, and whose
531 spouse and/or children are not entitled to a retirement allowance
532 on the basis that the member has less than eight (8) years of
533 service credit, and/or has not been married for a minimum of one
534 (1) year or the spouse has waived his or her entitlement to a
535 retirement allowance under Section 25-11-114, the lawful spouse of
536 a member at the time of the death of the member shall be the
537 beneficiary of the member unless the member has designated another
538 beneficiary after the date of marriage in writing, and filed that
539 writing in the office of the executive director of the board of
540 trustees. No designation or change of beneficiary shall be made
541 in any other manner.

542 (h) "Board" means the board of trustees provided in
543 Section 25-11-15 to administer the retirement system created under
544 this article.

545 (i) "Creditable service" means "prior service,"
546 "retroactive service" and all lawfully credited unused leave not
547 exceeding the accrual rates and limitations provided in Section
548 25-3-91 et seq., as of the date of withdrawal from service plus
549 "membership service" and other service for which credit is
550 allowable as provided in Section 25-11-109. Except to limit
551 creditable service reported to the system for the purpose of
552 computing an employee's retirement allowance or annuity or
553 benefits provided in this article, nothing in this paragraph shall



554 limit or otherwise restrict the power of the governing authority
555 of a municipality or other political subdivision of the state to
556 adopt such vacation and sick leave policies as it deems necessary.

557 (j) "Child" means either a natural child of the member,
558 a child that has been made a child of the member by applicable
559 court action before the death of the member, or a child under the
560 permanent care of the member at the time of the latter's death,
561 which permanent care status shall be determined by evidence
562 satisfactory to the board.

563 (k) "Earned compensation" means the full amount earned
564 during a fiscal year by an employee not to exceed the employee
565 compensation limit set pursuant to Section 401(a)(17) of the
566 Internal Revenue Code for the calendar year in which the fiscal
567 year begins and proportionately for less than one (1) year of
568 service. Except as otherwise provided in this paragraph, the
569 value of maintenance furnished to an employee shall not be
570 included in earned compensation. Earned compensation shall not
571 include any amounts paid by the employer for health or life
572 insurance premiums for an employee. Earned compensation shall be
573 limited to the regular periodic compensation paid, exclusive of
574 litigation fees, bond fees, performance-based incentive payments,
575 and other similar extraordinary nonrecurring payments. In
576 addition, any member in a covered position, as defined by Public
577 Employees' Retirement System laws and regulations, who is also
578 employed by another covered agency or political subdivision shall



579 have the earnings of that additional employment reported to the
580 Public Employees' Retirement System regardless of whether the
581 additional employment is sufficient in itself to be a covered
582 position. In addition, computation of earned compensation shall
583 be governed by the following:

584 (i) In the case of constables, the net earnings
585 from their office after deduction of expenses shall apply, except
586 that in no case shall earned compensation be less than the total
587 direct payments made by the state or governmental subdivisions to
588 the official.

589 (ii) In the case of chancery or circuit clerks,
590 the net earnings from their office after deduction of expenses
591 shall apply as expressed in Section 25-11-123(f) (4).

592 (iii) In the case of members of the State
593 Legislature, all remuneration or amounts paid, except mileage
594 allowance, shall apply.

595 (iv) The amount by which an eligible employee's
596 salary is reduced under a salary reduction agreement authorized
597 under Section 25-17-5 shall be included as earned compensation
598 under this paragraph, provided this inclusion does not conflict
599 with federal law, including federal regulations and federal
600 administrative interpretations under the federal law, pertaining
601 to the Federal Insurance Contributions Act or to Internal Revenue
602 Code Section 125 cafeteria plans.



603 (v) Compensation in addition to an employee's base
604 salary that is paid to the employee under the vacation and sick
605 leave policies of a municipality or other political subdivision of
606 the state that employs him or her that exceeds the maximums
607 authorized by Section 25-3-91 et seq. shall be excluded from the
608 calculation of earned compensation under this article.

609 (vi) The maximum salary applicable for retirement
610 purposes before July 1, 1992, shall be the salary of the Governor.

611 (vii) Nothing in Section 25-3-31 shall affect the
612 determination of the earned compensation of any member for the
613 purposes of this article.

614 (viii) The value of maintenance furnished to an
615 employee before July 1, 2013, for which the proper amount of
616 employer and employee contributions have been paid, shall be
617 included in earned compensation. From and after July 1, 2013, the
618 value of maintenance furnished to an employee shall be reported as
619 earned compensation only if the proper amount of employer and
620 employee contributions have been paid on the maintenance and the
621 employee was receiving maintenance and having maintenance reported
622 to the system as of June 30, 2013. The value of maintenance when
623 not paid in money shall be fixed by the employing state agency,
624 and, in case of doubt, by the board of trustees as defined in
625 Section 25-11-15.

626 (ix) Except as otherwise provided in this
627 paragraph, the value of any in-kind benefits provided by the



628 employer shall not be included in earned compensation. As used in
629 this subparagraph, "in-kind benefits" shall include, but not be
630 limited to, group life insurance premiums, health or dental
631 insurance premiums, nonpaid major medical and personal leave,
632 employer contributions for social security and retirement, tuition
633 reimbursement or educational funding, day care or transportation
634 benefits.

635 (l) "Employee" means any person legally occupying a
636 position in the state service, and shall include the employees of
637 the retirement system created under this article.

638 (m) "Employer" means the State of Mississippi or any of
639 its departments, agencies or subdivisions from which any employee
640 receives his or her compensation.

641 (n) "Executive director" means the secretary to the
642 board of trustees, as provided in Section 25-11-15(9), and the
643 administrator of the Public Employees' Retirement System and all
644 systems under the management of the board of trustees. Wherever
645 the term "Executive Secretary of the Public Employees' Retirement
646 System" or "executive secretary" appears in this article or in any
647 other provision of law, it shall be construed to mean the
648 Executive Director of the Public Employees' Retirement System.

649 (o) "Fiscal year" means the period beginning on July 1
650 of any year and ending on June 30 of the next succeeding year.

651 (p) "Medical board" means the board of physicians or
652 any governmental or nongovernmental disability determination



653 service designated by the board of trustees that is qualified to
654 make disability determinations as provided for in Section
655 25-11-119.

656 (q) "Member" means any person included in the
657 membership of the system as provided in Section 25-11-105. For
658 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,
659 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the
660 system withdrew from state service and received a refund of the
661 amount of the accumulated contributions to the credit of the
662 member in the annuity savings account before July 1, 2007, and the
663 person reenters state service and becomes a member of the system
664 again on or after July 1, 2007, and repays all or part of the
665 amount received as a refund and interest in order to receive
666 creditable service for service rendered before July 1, 2007, the
667 member shall be considered to have become a member of the system
668 on or after July 1, 2007, subject to the eight-year membership
669 service requirement, as applicable in those sections. For
670 purposes of Sections 25-11-103, 25-11-111, 25-11-114 and
671 25-11-115, if a member of the system withdrew from state service
672 and received a refund of the amount of the accumulated
673 contributions to the credit of the member in the annuity savings
674 account before July 1, 2011, and the person reenters state service
675 and becomes a member of the system again on or after July 1, 2011,
676 and repays all or part of the amount received as a refund and
677 interest in order to receive creditable service for service



678 rendered before July 1, 2011, the member shall be considered to
679 have become a member of the system on or after July 1, 2011.

680 (r) "Membership service" means service as an employee
681 in a covered position rendered while a contributing member of the
682 retirement system.

683 (s) "Position" means any office or any employment in
684 the state service, or two (2) or more of them, the duties of which
685 call for services to be rendered by one (1) person, including
686 positions jointly employed by federal and state agencies
687 administering federal and state funds. The employer shall
688 determine upon initial employment and during the course of
689 employment of an employee who does not meet the criteria for
690 coverage in the Public Employees' Retirement System based on the
691 position held, whether the employee is or becomes eligible for
692 coverage in the Public Employees' Retirement System based upon any
693 other employment in a covered agency or political subdivision. If
694 or when the employee meets the eligibility criteria for coverage
695 in the other position, then the employer must withhold
696 contributions and report wages from the noncovered position in
697 accordance with the provisions for reporting of earned
698 compensation. Failure to deduct and report those contributions
699 shall not relieve the employee or employer of liability thereof.
700 The board shall adopt such rules and regulations as necessary to
701 implement and enforce this provision.

702 (t) "Prior service" means:



703 (i) For persons who became members of the system
704 before July 1, 2007, service rendered before February 1, 1953, for
705 which credit is allowable under Sections 25-11-105 and 25-11-109,
706 and which shall allow prior service for any person who is now or
707 becomes a member of the Public Employees' Retirement System and
708 who does contribute to the system for a minimum period of four (4)
709 years.

710 (ii) For persons who became members of the system
711 on or after July 1, 2007, service rendered before February 1,
712 1953, for which credit is allowable under Sections 25-11-105 and
713 25-11-109, and which shall allow prior service for any person who
714 is now or becomes a member of the Public Employees' Retirement
715 System and who does contribute to the system for a minimum period
716 of eight (8) years.

717 (u) "Regular interest" means interest compounded
718 annually at such a rate as determined by the board in accordance
719 with Section 25-11-121.

720 (v) "Retirement allowance" means an annuity for life as
721 provided in this article, payable each year in twelve (12) equal
722 monthly installments beginning as of the date fixed by the board.
723 The retirement allowance shall be calculated in accordance with
724 Section 25-11-111. However, any spouse who received a spouse
725 retirement benefit in accordance with Section 25-11-111(d) before
726 March 31, 1971, and those benefits were terminated because of
727 eligibility for a social security benefit, may again receive his



728 or her spouse retirement benefit from and after making application
729 with the board of trustees to reinstate the spouse retirement
730 benefit.

731 (w) "Retroactive service" means service rendered after
732 February 1, 1953, for which credit is allowable under Section
733 25-11-105(b) and Section 25-11-105(k).

734 (x) "System" means the Public Employees' Retirement
735 System of Mississippi established and described in Section
736 25-11-101.

737 (y) "State" means the State of Mississippi or any
738 political subdivision thereof or instrumentality of the state.

739 (z) "State service" means all offices and positions of
740 trust or employment in the employ of the state, or any political
741 subdivision or instrumentality of the state, that elect to
742 participate as provided by Section 25-11-105(f), including the
743 position of elected or fee officials of the counties and their
744 deputies and employees performing public services or any
745 department, independent agency, board or commission thereof, and
746 also includes all offices and positions of trust or employment in
747 the employ of joint state and federal agencies administering state
748 and federal funds and service rendered by employees of the public
749 schools. Effective July 1, 1973, all nonprofessional public
750 school employees, such as bus drivers, janitors, maids,
751 maintenance workers and cafeteria employees, shall have the option
752 to become members in accordance with Section 25-11-105(b), and



753 shall be eligible to receive credit for services before July 1,
754 1973, provided that the contributions and interest are paid by the
755 employee in accordance with that section; in addition, the county
756 or municipal separate school district may pay the employer
757 contribution and pro rata share of interest of the retroactive
758 service from available funds. From and after July 1, 1998,
759 retroactive service credit shall be purchased at the actuarial
760 cost in accordance with Section 25-11-105(b).

761 (aa) "Withdrawal from service" or "termination from
762 service" means complete severance of employment in the state
763 service of any member by resignation, dismissal or discharge.

764 (bb) The masculine pronoun, wherever used, includes the
765 feminine pronoun.

766 (2) For purposes of this article, the term "political
767 subdivision" shall have the meaning ascribed to such term in
768 Section 25-11-5 and shall also include public charter schools.

769 **SECTION 11.** Section 37-28-63, Mississippi Code of 1972,
770 which is the automatic repealer on the Mississippi Charter Schools
771 Act of 2013, is here repealed.

772 **SECTION 12.** This act shall take effect and be in force from
773 and after July 1, 2016.

