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Chapter No. 397
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HOUSE BILL NO. 861

Originated in House Don Richardson Clerk

HOUSE BILL NO. 861

AN ACT TO AMEND SECTION 25-11-121, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WITH RESPECT TO CERTAIN INVESTMENTS MADE BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM THAT ARE IN THE FORM OF A SEPARATE MANAGED ACCOUNT, OR A LIMITED PARTNERSHIP OR COMMINGLED FUND, ANY PERSON OR ENTITY WHO EXERCISES ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY CONTROL RESPECTING MANAGEMENT OF THE SEPARATE ACCOUNT, LIMITED PARTNERSHIP OR COMMINGLED FUND, OR WHO EXERCISES ANY AUTHORITY OR CONTROL RESPECTING MANAGEMENT OR DISPOSITION OF THE ASSETS OF THE SEPARATE ACCOUNT, LIMITED PARTNERSHIP OR COMMINGLED FUND, SHALL EXERCISE SUCH AUTHORITY OR CONTROL AS A FIDUCIARY; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 25-11-121, Mississippi Code of 1972, is amended as follows:

25-11-121. (1) The board shall, from time to time, determine the current requirements for benefit payments and administrative expense which shall be maintained as a cash working balance, except that such cash working balance shall not exceed at any time an amount necessary to meet the current obligations of the system for a period of ninety (90) days. Any amounts in excess of such cash working balance shall be invested, as follows, at such periodic intervals as the board may determine; however, all purchases shall be made from competitive offerings except short-term obligations referred to in paragraph (d) of this subsection (1):

(a) Bonds, notes, certificates and other valid general obligations of the State of Mississippi, or of any county, or of any city, or of any supervisors district of any county of the State of Mississippi, or of any school district bonds of the State of Mississippi; notes or certificates of indebtedness issued by

the Veterans' Home Purchase Board of Mississippi, provided such notes or certificates of indebtedness are secured by the pledge of collateral equal to two hundred percent (200%) of the amount of the loan, which collateral is also guaranteed at least for fifty percent (50%) of the face value by the United States government, and provided that not more than five percent (5%) of the total investment holdings of the system shall be in Veterans' Home Purchase Board notes or certificates at any time; real estate mortgage loans one hundred percent (100%) insured by the Federal Housing Administration on single family homes located in the State of Mississippi, where monthly collections and all servicing matters are handled by Federal Housing Administration approved mortgagees authorized to make such loans in the State of Mississippi;

(b) State of Mississippi highway bonds;

(c) Funds may be deposited in any institution insured by the Federal Deposit Insurance Corporation that maintains a facility that takes deposits in the State of Mississippi or a custodial bank;

(d) Corporate bonds and taxable municipal bonds rated by a United States Securities and Exchange Commission designated Nationally Recognized Statistical Rating Organization; or corporate short-term obligations of corporations or of wholly owned subsidiaries of corporations, whose short-term obligations are rated A-2 or better by Standard and Poor's, rated P-2 or better by Moody's Investment Service, F-2 or better by Fitch Ratings, Ltd., or the equivalent of these ratings if assigned by another United States Securities and Exchange Commission designated Nationally Recognized Statistical Rating Organization;

(e) Bonds of the Tennessee Valley Authority;

(f) Bonds, notes, certificates and other valid obligations of the United States, and other valid obligations of any federal instrumentality that issues securities under authority

of an act of Congress and are exempt from registration with the Securities and Exchange Commission;

(g) Bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States;

(h) Interest-bearing bonds or notes which are general obligations of any other state in the United States or of any city or county therein, provided such city or county had a population as shown by the federal census next preceding such investment of not less than twenty-five thousand (25,000) inhabitants and provided that such state, city or county has not defaulted for a period longer than thirty (30) days in the payment of principal or interest on any of its general obligation indebtedness during a period of ten (10) calendar years immediately preceding such investment;

(i) Bonds of established non-United States companies and foreign government securities rated by a recognized rating agency. The board may take requisite action to effectuate or hedge transactions through foreign banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(j) Shares of stocks, common and/or preferred, of corporations created by or existing under the laws of the United States or any state, district or territory thereof and shares of stocks and convertible securities of non-United States companies; provided:

(i) The maximum investments in stocks shall not exceed eighty percent (80%) of the total book value of the total investment fund of the system;

(ii) The stock of such corporation shall:

1. Be listed on a national stock exchange; or

2. Be traded in the over-the-counter market, provided price quotations for such over-the-counter stocks are quoted by the National Association of Securities Dealers Automated Quotation System (NASDAQ);

(iii) The outstanding shares of such corporation shall have a total market value of not less than Fifty Million Dollars ($50,000,000.00);

(iv) The amount of investment in any one (1) corporation shall not exceed three percent (3%) of the book value of the assets of the system;

(v) The shares of any one (1) corporation owned by the system shall not exceed five percent (5%) of that corporation's outstanding stock.

The board may take requisite action to effectuate or hedge transactions for shares of stocks and convertible securities of non-United States companies through foreign banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(k) Covered call and put options on securities traded on one or more of the regulated exchanges;

(l) Pooled or commingled funds managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees, and shares of investment companies and unit investment trusts registered under the Investment Company Act of 1940, where such pooled or commingled funds or shares are comprised of common or preferred stocks, bonds, money market

instruments or other investments authorized under this section. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed five percent (5%) of the total book value of all investments of the system. Any investment manager approved by the board of trustees shall invest such commingled funds or shares as a fiduciary;

(m) Pooled or commingled real estate funds or real estate securities managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any investment manager approved by the board of trustees shall invest such commingled funds or shares as a fiduciary. The ten percent (10%) limitation in this paragraph shall not be subject to the five percent (5%) limitation in paragraph (l) of this subsection;

(n) Types of investments not specifically authorized by this subsection if the investments are in the form of a separate account managed by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board; or a limited partnership or commingled fund approved by the board; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any person or entity who exercises any discretionary authority or discretionary control respecting management of the separate account, limited partnership or commingled fund, or who exercises any authority or control respecting management or disposition of the assets of the separate account, limited partnership or commingled fund, shall exercise such authority or control as a fiduciary.

(2) All investments shall be acquired by the board at prices not exceeding the prevailing market values for such securities.

(3) Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time. All investments shall be clearly marked to indicate ownership by the system and to the extent possible shall be registered in the name of the system.

(4) Subject to the above terms, conditions, limitations and restrictions, the board shall have power to sell, assign, transfer and dispose of any of the securities and investments of the system, provided that said sale, assignment or transfer has the majority approval of the entire board. The board may employ or contract with investment managers, evaluation services or other such services as determined by the board to be necessary for the effective and efficient operation of the system.

(5) Except as otherwise provided herein, no trustee and no employee of the board shall have any direct or indirect interest in the income, gains or profits of any investment made by the board, nor shall any such person receive any pay or emolument for his services in connection with any investment made by the board. No trustee or employee of the board shall become an endorser or surety, or in any manner an obligor for money loaned by or borrowed from the system.

(6) All interest derived from investments and any gains from the sale or exchange of investments shall be credited by the board to the account of the system.

(7) The board of trustees annually shall credit regular interest on the mean amount for the preceding year in each of the reserves maintained by the board, with the exception of the expense account. This credit shall be made annually from interest and other earnings on the invested assets of the system. Any additional amount required to meet the regular interest on the funds of the system shall be charged to the employer's

accumulation account, and any excess of earnings over such regular interest required shall be credited to the employer's accumulation account. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees.

(8) The board of trustees shall be the custodian of the funds of the system. All expense vouchers and retirement allowance payrolls shall be certified by the executive secretary who shall furnish the board a surety bond in a company authorized to do business in Mississippi in such an amount as shall be required by the board, the premium to be paid by the board from the expense account.

(9) For the purpose of meeting disbursements for retirement allowances, annuities and other payments, cash may be kept available, not exceeding the requirements of the system for a period of ninety (90) days, on deposit in one or more banks or trust companies organized under the laws of the State of Mississippi or the laws of the United States, provided that the sum on deposit in any one (1) bank or trust company shall not exceed thirty-five percent (35%) of the paid-up capital and regular surplus of such bank or trust company.

(10) Except as otherwise provided, the monies or properties of the Public Employees' Retirement System of Mississippi deposited in any bank or banks of the United States shall, where possible, be safeguarded and guaranteed by the posting as security by the depository of bonds, notes and other securities purchasable by the system, as provided elsewhere in this section. The bonds, notes and other securities offered as security shall be posted to the credit of the system by the depository with the board or with an unaffiliated bank or trust company domiciled within the United States or the State of Mississippi acceptable to both the board and to the fiscal agent bank. In the event the board and the fiscal agent bank cannot reach an agreement, the bonds, notes and

other securities shall be deposited in a bank or trust company designated by the State Commissioner of Banking and Consumer Finance. Provided, however, that bonds or notes of the United States government owned by the system may be deposited for safekeeping in any federal reserve bank.

(11) The board of trustees shall determine the degree of collateralization necessary for both foreign and domestic demand deposit accounts in addition to that which is guaranteed by the Federal Deposit Insurance Corporation or such other federal insurance program as may be in effect.

(12) The board, the executive secretary and employees shall discharge their duties with respect to the investments of the system solely for the interest of the system with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, including diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(13) Documentary material or data made or received by the system which consists of trade secrets or commercial or financial information that relates to the investments of the system shall be exempt from the Mississippi Public Records Act of 1983 if the disclosure of the material or data is likely to impair the system's ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

SECTION 2. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 2, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 3, 2011

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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