

ARTICLE 11

OPTIONAL RETIREMENT PROGRAM FOR EMPLOYEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SECTION

- 25-11-401. Eligibility for optional program.
- 25-11-403. Contributions to annuity contracts and mutual funds.
- 25-11-405. Administration of program; delegation of responsibilities.
- 25-11-407. Designation of life insurance companies for purchase of annuity contracts and mutual funds.
- 25-11-409. Election to participate in program; time of election.
- 25-11-411. Contributions made by reduction in salary; contributions by employer; amount; accrued liability contribution fund.
- 25-11-413. Ineligibility for membership in Public Employees' Retirement System.
- 25-11-415. Deductions from employers' contribution to administer program; expense fund.
- 25-11-417. Benefits payable not obligations of state but of designated companies.
- 25-11-419. Exemption from state or municipal tax; exemption from levy, garnishment, attachment, or other process; application of State Life and Health Insurance Guaranty Association Act.
- 25-11-421. Qualification under Section 401(a) or conformity with section 403(b) of Internal Revenue Code; determination letter from Internal Revenue Service.
- 25-11-423. Actuarial study; report of study.

§ 25-11-401. Eligibility for optional program.

There is established an optional retirement program for employees of the state institutions of higher learning included in Section 37-101-1, Mississippi Code of 1972, who are appointed or employed after July 1, 1990. To be eligible to participate in the optional retirement program, a newly appointed employee must:

- (a) (i) Hold a teaching or administrative faculty position, or
- (ii) Hold a position as an intern or resident in training at the University Medical Center or the College of Veterinary Medicine at Mississippi State University under a teaching program at such institutions; and
- (b) Be eligible for membership in the Public Employees' Retirement System of Mississippi.

§ 25-11-403. Contributions to annuity contracts and mutual funds.

Retirement and death benefits shall be provided to participants in the optional retirement program by contribution to annuity contracts, fixed or variable in nature, mutual fund accounts or similar investment products, or a combination thereof, at the option of the participant. The state and the participants shall contribute, in accordance with this article, toward the purchase of benefits under those contracts or accounts, which contracts or accounts shall become the property of the participants.

§ 25-11-405. Administration of program; delegation of responsibilities.

The Board of Trustees of the Public Employees' Retirement System shall provide for the administration of the optional retirement program. The board of trustees may delegate to the state institutions of higher learning certain responsibilities for administering the optional retirement program with respect to each institution's own employees.

§ 25-11-407. Designation of life insurance companies for purchase of annuity contracts and mutual funds.

The Board of Trustees of the Public Employees' Retirement System shall designate not less than three (3) nor more than five (5) companies to provide annuity contracts, mutual fund accounts or similar investment products, and the types of investment contracts or funds that may be offered by those companies. In making those designations, the board of trustees shall consider and be guided by:

- (a) The nature and extent of the rights and benefits to be provided by those contracts or accounts, or both, for participants and their beneficiaries;
- (b) The relation of those rights and benefits to the amount of contributions to be made;
- (c) The suitability of those rights and benefits to the needs of the participants;
- (d) The efficacy of the contracts or accounts, or both, in the recruitment and retention of faculty and administrators;

- (e) The ability and experience of the designated companies in providing those suitable rights and benefits under those contracts or accounts, or both; and
- (f) The ability and experience of the designated companies to provide both suitable participant investment guidance and investment options.

The companies shall act in a fiduciary capacity in selecting investment products that are suitable for the optional retirement program. It shall be the duty of the companies to report to and seek approval from the board for the investment products made available under this paragraph and to report the participant use of those options annually. The board reserves the right to refuse or discontinue any product offered by those companies.

§ 25-11-409. Election to participate in program; time of election.

Eligible employees initially employed on or after July 1, 1990, shall elect to participate in the optional retirement program within thirty (30) days after (i) entry into state service, or (ii) the effective date of the optional retirement program, whichever is later. The election must be made in writing and filed with the board of trustees and will be effective as of the date of employment. If an eligible employee fails to timely make the election provided in this section, he shall become a member of the Public Employees' Retirement System of Mississippi in accordance with Article 3 of this chapter.

§ 25-11-411. Contributions made by reduction in salary; contributions by employer; amount; accrued liability contribution fund.

Each participant shall contribute monthly to the optional retirement program the same amount that he or she would be required to contribute to the Public Employees' Retirement System of Mississippi if he or she were a member of that retirement system. Participant contributions may be made by a reduction in salary in accordance with the provisions of Section 403(b) of the United States Internal Revenue Code or any amendment thereto, or in accordance with Section 25-11-124, as may be appropriate under the determination made in accordance with Section 25-11-421. The entirety of each participant's contribution shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both. Each employer of a participant in the optional retirement program shall contribute on behalf of each participant in the optional retirement program the same amount the employer would be required to contribute to the Public Employees' Retirement System of Mississippi if the participant were a member of the retirement system. The employer's contribution shall be remitted as follows:

- (a) An amount equal to seven and one-fourth percent (7- $\frac{1}{4}$ %) of the participant's total earned compensation as defined in Section 25-11-103 shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both;
- (b) An amount equal to two and one-half percent (2- $\frac{1}{2}$ %) of the participant's total earned compensation as defined in Section 25-11-103 shall be remitted to the Public Employees' Retirement System of Mississippi for application to the accrued liability contribution fund;

- (c) The remainder, if any, shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both.

If the employer's contribution level is decreased below nine and three-fourths percent (9-³/₄%) of the employee's total earned compensation, the remittance provided by paragraph (b) of this section shall be reduced accordingly. There shall be no reduction in the remittance provided by paragraph (a) of this section until such time, if any, that the employer's contribution level is less than seven and one-fourth percent (7-¹/₄%) of the participant's total earned compensation. If the accrued liability contribution is reduced or discontinued pursuant to Section 25-11-123, the amount of the reduction, or the entirety of the employer's contribution, in case of discontinuance, shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both. Any remittance required to be made by the employer to the Public Employees' Retirement System of Mississippi shall be made at the times the employer remits contributions for members of the retirement system.

(Editorial Note: Effective July 1, 2010, H. B. 1 (2010 First Extraordinary Session) provides that the employee contribution rate is 9%. The employer contribution rate as of July 1, 2011, is 12%)

§ 25-11-413. Ineligibility for membership in Public Employees' Retirement System.

Any person electing to participate in the optional retirement program shall be ineligible for membership in the Public Employees' Retirement System of Mississippi so long as he is employed in a position for which the optional retirement program is available. If an optional retirement program participant assumes a position in state service other than as an employee of a state institution of higher learning, he must at that time begin membership in the Public Employees' Retirement System of Mississippi in accordance with Article 3 of this chapter.

§ 25-11-415. Deductions from employer's contribution to administer program; expense fund.

The Public Employees' Retirement System of Mississippi may deduct not more than two percent (2%) of all employers' contributions and transfer such deductions to the expense fund of the Public Employees' Retirement System to defray the cost of administering the optional retirement program created by this article.

§ 25-11-417. Benefits payable not obligations of state but of designated companies.

Benefits payable to participants under the optional retirement program are not obligations of the State of Mississippi. Those benefits and other rights of optional retirement program participants or their beneficiaries are the liability and responsibility solely of the designated company or companies. The benefits of participants whose funds are invested with annuity providers shall be governed solely by the terms of the contracts issued by that company or companies. The benefits of participants whose funds are

invested in mutual funds or other similar investment products shall be limited to the value of the account.

§ 25-11-419. Exemption from state or municipal tax; exemption from levy, garnishment, attachment, or other process; application of State Life and Health Insurance Guaranty Association Act.

Annuity contracts, mutual fund accounts or similar investment products authorized under the optional retirement program and all rights thereto of a participant in the optional retirement program shall be exempt from any state or municipal tax (except to the extent that state income tax is payable under Chapter 7, Title 27, Mississippi Code of 1972), shall be exempt from any levy and sale, garnishment, attachment, or any process whatsoever, and shall be unassignable except as specifically otherwise provided in the contract or account. Annuity contracts issued under the optional retirement program shall be treated under the State Life and Health Insurance Guaranty Association Act in the same manner as contracts qualified under Section 403(b) of the Internal Revenue Code.

§ 25-11-421. Qualification under Section 401(a) or conformity with section 403(b) of Internal Revenue Code; determination letter from Internal Revenue Service.

The Board of Trustees of the Public Employees' Retirement System shall determine whether the optional retirement program shall be operated in conformity with Section 403(b) of the Internal Revenue Code or be qualified under Section 401(a) of the Internal Revenue Code (or any successor section). If the optional retirement program is to be qualified, the board of trustees shall file for a determination letter from the Internal Revenue Service as soon as practicable, and not later than ninety (90) days, after this article has been approved by the Governor or has been approved by the Legislature subsequent to veto, and the continuance of the optional retirement program shall be subject to a favorable determination letter issued by the Internal Revenue Service.

§ 25-11-423. Actuarial study; report of study.

After a period of three (3) years has elapsed from March 24, 1990, and not later than December 1, 1993, the Board of Trustees of the Public Employees' Retirement System shall have an actuarial study conducted to determine what effect the optional retirement system created by this article has had on the Public Employees' Retirement System. The results of such study shall be reported to the next regular session of the Legislature convening after completion of the study.

EFFECTIVE: MARCH 24, 1990

SOURCES: Laws, 1990, Ch 450, §§1-12