

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 3014

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION  
2 25-11-106, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY CHANCERY  
3 CLERK, CIRCUIT CLERK OR CONSTABLE WHO IS A MEMBER OF THE PUBLIC  
4 EMPLOYEES' RETIREMENT SYSTEM MAY ELECT TO WITHDRAW FROM THE SYSTEM  
5 AT THE BEGINNING OF HIS TERM OF OFFICE; TO PROVIDE THAT ANY SUCH  
6 OFFICIAL WHO ELECTS TO WITHDRAW FROM THE SYSTEM SHALL NOT  
7 THEREAFTER BE ELIGIBLE FOR MEMBERSHIP IN THE SYSTEM FOR SERVICE AS  
8 A CHANCERY CLERK, CIRCUIT CLERK OR CONSTABLE; TO AMEND SECTION  
9 25-11-117, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CHANCERY  
10 CLERK, CIRCUIT CLERK OR CONSTABLE WHO HAS PAID THE EMPLOYER  
11 CONTRIBUTION TO THE RETIREMENT SYSTEM OUT OF HIS OWN FUNDS AND HAS  
12 WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A REFUND OF THE  
13 ACCUMULATED EMPLOYER CONTRIBUTIONS THAT HE PAID TO THE SYSTEM  
14 TOGETHER WITH REGULAR INTEREST THEREON; TO AMEND SECTION  
15 25-11-125, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF  
16 SUPERVISORS OF EACH COUNTY TO PAY THE REQUIRED EMPLOYER  
17 CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR EACH  
18 CONSTABLE HOLDING OFFICE IN THAT COUNTY; TO PROVIDE THAT THIS  
19 REQUIREMENT SHALL BE RETROACTIVE TO THE BEGINNING OF THE  
20 CONSTABLES' TERM OF OFFICE ON JANUARY 1, 1996; TO PROVIDE THAT IF  
21 ANY CONSTABLE HAS PAID THE EMPLOYER CONTRIBUTIONS OUT OF HIS OWN  
22 FUNDS AFTER DECEMBER 31, 1995, THE BOARD OF SUPERVISORS MAY  
23 REIMBURSE THE CONSTABLE FOR THE AMOUNT HE PAID AFTER THAT DATE; TO  
24 AMEND SECTION 25-11-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
25 THERETO; AND FOR RELATED PURPOSES.

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

27 SECTION 1. The following provision shall be codified as  
28 Section 25-11-106, Mississippi Code of 1972:

29 25-11-106. Any chancery clerk, circuit clerk or constable  
30 who is a member of the system by virtue of a plan submitted and  
31 approved pursuant to Section 25-11-105(f) may elect to withdraw  
32 from membership in the system at the beginning of any term of  
33 office beginning after July 1, 2001. If a chancery clerk, circuit  
34 clerk or constable withdraws from membership in the system  
35 pursuant to this section, he shall not thereafter be eligible for  
36 membership in the system for service as a chancery clerk, circuit

37 clerk or constable. Any person who elects to withdraw from the  
38 system as provided for in this section shall notify the executive  
39 director in the time and manner as prescribed by the board.

40 SECTION 2. Section 25-11-117, Mississippi Code of 1972, is  
41 amended as follows:

42 25-11-117. (1) A member may be paid a refund of the amount  
43 of accumulated contributions to the credit of the member in the  
44 annuity savings account provided the member has withdrawn from  
45 state service and further provided the member has not returned to  
46 state service on the date the refund of the accumulated  
47 contributions would be paid. Such refund of the contributions to  
48 the credit of the member in the annuity savings account shall be  
49 paid within ninety (90) days from receipt in the office of the  
50 retirement system of the properly completed form requesting such  
51 payment. In the event of death prior to retirement of any member  
52 whose spouse and/or children are not entitled to a retirement  
53 allowance, the accumulated contributions to the credit of the  
54 deceased member in the annuity savings account shall be paid to  
55 the designated beneficiary on file in writing in the office of  
56 executive director of the board of trustees within ninety (90)  
57 days from receipt of a properly completed form requesting such  
58 payment. If there is no such designated beneficiary on file for  
59 such deceased member in the office of the system, upon the filing  
60 of a proper request with the board, the contributions to the  
61 credit of the deceased member in the annuity savings account shall  
62 be refunded pursuant to Section 25-11-117.1(1). The payment of  
63 the refund shall discharge all obligations of the retirement  
64 system to the member on account of any creditable service rendered  
65 by the member prior to the receipt of the refund. By the  
66 acceptance of the refund, the member shall waive and relinquish  
67 all accrued rights in the system.

68 (2) Pursuant to the Unemployment Compensation Amendments of  
69 1992 (Public Law 102-318 (UCA)), a member or eligible beneficiary

70 eligible for a refund under this section may elect on a form  
71 prescribed by the board under rules and regulations established by  
72 the board, to have an eligible rollover distribution of  
73 accumulated contributions payable under this section paid directly  
74 to an eligible retirement plan or individual retirement account.  
75 If the member or eligible beneficiary makes such election and  
76 specifies the eligible retirement plan or individual retirement  
77 account to which such distribution is to be paid, the distribution  
78 will be made in the form of a direct trustee-to-trustee transfer  
79 to the specified eligible retirement plan. Flexible rollovers  
80 under this subsection shall not be considered assignments under  
81 Section 25-11-129.

82       (3) In addition to the refund of accumulated contributions  
83 authorized in subsection (1) of this section, a chancery clerk,  
84 circuit clerk or constable who has paid the employer contribution  
85 to the retirement system out of his own funds and has withdrawn  
86 from service shall have the option of a refund of the accumulated  
87 employer contributions that he paid to the system together with  
88 regular interest thereon.

89       (4) If any person who has received a refund reenters the  
90 state service and again becomes a member of the system, the member  
91 may repay all or part of the amounts previously received as a  
92 refund, together with regular interest covering the period from  
93 the date of refund to the date of repayment; provided, however,  
94 that the amounts that are repaid by the member and the creditable  
95 service related thereto shall not be used in any benefit  
96 calculation or determination until the member has remained a  
97 contributor to the system for a period of at least four (4) years  
98 subsequent to such member's reentry into state service. Repayment  
99 for such time shall be made in increments of not less than  
100 one-quarter (1/4) year of creditable service beginning with the  
101 most recent service for which refund has been made. Upon the  
102 repayment of all or part of such refund and interest, the member

103 shall again receive credit for the period of creditable service  
104 for which full repayment has been made to the system.

105 SECTION 3. Section 25-11-125, Mississippi Code of 1972, is  
106 amended as follows:

107 25-11-125. (1) The board of supervisors is hereby  
108 authorized and empowered to appropriate and include in its budget  
109 for public purposes a sufficient sum to pay the required employer  
110 contribution to the Public Employees' Retirement System for all  
111 fee paid elected officials in judicial capacities of the county  
112 and supervisors' districts, and such contributions shall be  
113 included by the clerk of the board in his regular reports and  
114 remittals to the Executive Director of the Public Employees'  
115 Retirement System for other county officers and regular county  
116 employees whose employer contributions are not included in and  
117 paid from the annual county budget.

118 (2) The board of supervisors of each county may appropriate  
119 and include in its budget a sufficient sum to pay the required  
120 employer contributions to the Public Employees' Retirement System  
121 for each chancery clerk, circuit clerk or constable holding office  
122 in that county, and those contributions shall be handled by the  
123 clerk of the board in the manner required by subsection (1) of  
124 this section. This provision that authorizes the boards of  
125 supervisors to pay the constables' employer contributions shall be  
126 retroactive to the beginning of the constables' term of office on  
127 January 1, 1996. If any constable has paid the employer  
128 contributions to the retirement system out of his own funds after  
129 December 31, 1995, the board of supervisors of the county in which  
130 the constable holds office may reimburse the constable for the  
131 amount he paid as employer contributions after that date.

132 SECTION 4. Section 25-11-105, Mississippi Code of 1972, is  
133 amended as follows:

134 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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

143           (b) All persons who shall become employees in the state  
144 service after January 31, 1953, except those specifically excluded  
145 or as to whom election is provided in Articles 1 and 3, unless  
146 they shall file with the board prior to the lapse of sixty (60)  
147 days of employment or sixty (60) days after the effective date of  
148 the cited articles, whichever is later, on a form prescribed by  
149 the board, a notice of election not to be covered by the  
150 membership of the retirement system and a duly executed waiver of  
151 all present and prospective benefits which would otherwise inure  
152 to them on account of their participation in the system, shall  
153 become members of the retirement system; provided, however, that  
154 no credit for prior service will be granted to members until they  
155 have contributed to Article 3 of the retirement system for a  
156 minimum period of at least four (4) years. Such members shall  
157 receive credit for services performed prior to January 1, 1953, in  
158 employment now covered by Article 3, but no credit shall be  
159 granted for retroactive services between January 1, 1953, and the  
160 date of their entry into the retirement system unless the employee  
161 pays into the retirement system both the employer's and the  
162 employee's contributions on wages paid him during the period from  
163 January 31, 1953, to the date of his becoming a contributing  
164 member, together with interest at the rate determined by the board  
165 of trustees. Members reentering after withdrawal from service  
166 shall qualify for prior service under the provisions of Section  
167 25-11-117. From and after July 1, 1998, upon eligibility as noted

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

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

173 (2) The member shall pay to the retirement system  
174 on the date he or she is eligible for such credit or at any time  
175 thereafter prior to the date of retirement the actuarial cost for  
176 each year of such creditable service. The provisions of this  
177 subparagraph (2) shall be subject to the limitations of Section  
178 415 of the Internal Revenue Code and regulations promulgated  
179 thereunder.

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

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

190 (d) All persons who are employees in the state service  
191 on January 31, 1953, and who are members of any nonfunded  
192 retirement system operated by the State of Mississippi, or any of  
193 its departments or agencies, shall become members of this system  
194 with prior service credit unless, before February 1, 1953, they  
195 shall file a written notice with the board of trustees that they  
196 do not elect to become members.

197 (e) All persons who are employees in the state service  
198 on January 31, 1953, and who under existing laws are members of  
199 any fund operated for the retirement of employees by the State of  
200 Mississippi, or any of its departments or agencies, shall not be

201 entitled to membership in this retirement system unless, before  
202 February 1, 1953, any such person shall indicate by a notice filed  
203 with the board, on a form prescribed by the board, his individual  
204 election and choice to participate in this system, but no such  
205 person shall receive prior service credit unless he becomes a  
206 member on or before February 1, 1953.

207           (f) Each political subdivision of the state and each  
208 instrumentality of the state or a political subdivision, or both,  
209 is hereby authorized to submit, for approval by the board of  
210 trustees, a plan for extending the benefits of this article to  
211 employees of any such political subdivision or instrumentality.  
212 Each such plan or any amendment to the plan for extending benefits  
213 thereof shall be approved by the board of trustees if it finds  
214 that such plan, or such plan as amended, is in conformity with  
215 such requirements as are provided in Articles 1 and 3; however,  
216 upon approval of such plan or any such plan heretofore approved by  
217 the board of trustees, the approved plan shall not be subject to  
218 cancellation or termination by the political subdivision or  
219 instrumentality, except that any community hospital serving a  
220 municipality that joined the Public Employees' Retirement System  
221 as of November 1, 1956, to offer social security coverage for its  
222 employees and subsequently extended retirement annuity coverage to  
223 its employees as of December 1, 1965, may, upon documentation of  
224 extreme financial hardship, have future retirement annuity  
225 coverage cancelled or terminated at the discretion of the board of  
226 trustees. No such plan shall be approved unless:

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

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

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

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

247                   (5) It authorizes the board of trustees to  
248 terminate the plan in its entirety in the discretion of the board  
249 if it finds that there has been a failure to comply substantially  
250 with any provision contained in such plan, such termination to  
251 take effect at the expiration of such notice and on such  
252 conditions as may be provided by regulations of the board and as  
253 may be consistent with applicable federal law.

254                   A. The board of trustees shall not finally  
255 refuse to approve a plan submitted under paragraph (f), and shall  
256 not terminate an approved plan without reasonable notice and  
257 opportunity for hearing to each political subdivision or  
258 instrumentality affected thereby. The board's decision in any  
259 such case shall be final, conclusive and binding unless an appeal  
260 be taken by the political subdivision or instrumentality aggrieved  
261 thereby to the Circuit Court of Hinds County, Mississippi, in  
262 accordance with the provisions of law with respect to civil causes  
263 by certiorari.

264                   B. Each political subdivision or  
265 instrumentality as to which a plan has been approved under this  
266 section shall pay into the contribution fund, with respect to



267 wages (as defined in Section 25-11-5), at such time or times as  
268 the board of trustees may by regulation prescribe, contributions  
269 in the amounts and at the rates specified in the applicable  
270 agreement entered into by the board.

271 C. Every political subdivision or  
272 instrumentality required to make payments under paragraph (f)(5)B  
273 hereof is authorized, in consideration of the employees' retention  
274 in or entry upon employment after enactment of Articles 1 and 3,  
275 to impose upon its employees, as to services which are covered by  
276 an approved plan, a contribution with respect to wages (as defined  
277 in Section 25-11-5) not exceeding the amount provided in Section  
278 25-11-123(d) if such services constituted employment within the  
279 meaning of Articles 1 and 3, and to deduct the amount of such  
280 contribution from the wages as and when paid. Contributions so  
281 collected shall be paid into the contribution fund as partial  
282 discharge of the liability of such political subdivisions or  
283 instrumentalities under paragraph (f)(5)B hereof. Failure to  
284 deduct such contribution shall not relieve the employee or  
285 employer of liability thereof.

286 D. Any state agency, school, political  
287 subdivision, instrumentality or any employer that is required to  
288 submit contribution payments or wage reports under any section of  
289 this chapter shall be assessed interest on delinquent payments or  
290 wage reports as determined by the board of trustees in accordance  
291 with rules and regulations adopted by the board and such assessed  
292 interest may be recovered by action in a court of competent  
293 jurisdiction against such reporting agency liable therefor or may,  
294 upon due certification of delinquency and at the request of the  
295 board of trustees, be deducted from any other monies payable to  
296 such reporting agency by any department or agency of the state.

297 E. Each political subdivision of the state  
298 and each instrumentality of the state or a political subdivision  
299 or subdivisions which submits a plan for approval of the board, as

300 provided in this section, shall reimburse the board for coverage  
301 into the expense account, its pro rata share of the total expense  
302 of administering Articles 1 and 3 as provided by regulations of  
303 said board.

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

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

316 (i) In the event any member of this system should  
317 change his employment to any agency of the state having an  
318 actuarially funded retirement system, the board of trustees may  
319 authorize the transfer of the member's creditable service and of  
320 the present value of the member's employer's accumulation account  
321 and of the present value of the member's accumulated membership  
322 contributions to such other system, provided the employee agrees  
323 to the transfer of his accumulated membership contributions and  
324 provided such other system is authorized to receive and agrees to  
325 make such transfer.

326 In the event any member of any other actuarially funded  
327 system maintained by an agency of the state changes his employment  
328 to an agency covered by this system, the board of trustees may  
329 authorize the receipt of the transfer of the member's creditable  
330 service and of the present value of the member's employer's  
331 accumulation account and of the present value of the member's  
332 accumulated membership contributions from such other system,

333 provided the employee agrees to the transfer of his accumulated  
334 membership contributions to this system and provided the other  
335 system is authorized and agrees to make such transfer.

336 (j) Wherever herein state employment is referred to, it  
337 shall include joint employment by state and federal agencies of  
338 all kinds.

339 (k) Employees of a political subdivision or  
340 instrumentality who were employed by such political subdivision or  
341 instrumentality prior to an agreement between such entity and the  
342 Public Employees' Retirement System to extend the benefits of this  
343 article to its employees, and which agreement provides for the  
344 establishment of retroactive service credit, and who have been  
345 members of the retirement system and have remained contributors to  
346 the retirement system for four (4) years, may receive credit for  
347 such retroactive service with such political subdivision or  
348 instrumentality, provided the employee and/or employer, as  
349 provided under the terms of the modification of the joinder  
350 agreement in allowing such coverage, pay into the retirement  
351 system the employer's and employee's contributions on wages paid  
352 the member during such previous employment, together with interest  
353 or actuarial cost as determined by the board covering the period  
354 from the date the service was rendered until the payment for the  
355 credit for such service was made. Such wages shall be verified by  
356 the Social Security Administration or employer payroll records.  
357 Effective July 1, 1998, upon eligibility as noted above, a member  
358 may receive credit for such retroactive service with such  
359 political subdivision or instrumentality provided:

360 (1) The member shall furnish proof satisfactory to  
361 the board of trustees of certification of such services from the  
362 political subdivision or instrumentality where the services were  
363 rendered or verification by the Social Security Administration;  
364 and

365                   (2) The member shall pay to the retirement system  
366 on the date he or she is eligible for such credit or at any time  
367 thereafter prior to the date of retirement the actuarial cost for  
368 each year of such creditable service. The provisions of this  
369 subparagraph (2) shall be subject to the limitations of Section  
370 415 of the Internal Revenue Code and regulations promulgated  
371 thereunder.

372           Nothing contained in this paragraph (k) shall be construed to  
373 limit the authority of the board to allow the correction of  
374 reporting errors or omissions based on the payment of employee and  
375 employer contributions plus applicable interest. Payment for such  
376 time shall be made in increments of not less than one-quarter  
377 (1/4) year of creditable service beginning with the most recent  
378 service. Upon the payment of all or part of such required  
379 contributions, plus interest or the actuarial cost as provided  
380 above, the member shall receive credit for the period of  
381 creditable service for which full payment has been made to the  
382 retirement system.

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

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

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

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

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

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

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

408           (d) A chancery clerk, circuit clerk or constable who  
409 withdraws from service pursuant to Section 1, Senate Bill No.  
410 3014, 2001 Regular Session.

411           **III. TERMINATION OF MEMBERSHIP**

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

416           SECTION 5. This act shall take effect and be in force from  
417 and after July 1, 2001.