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CIRCUIT CLERK OR CONSTABLE WHO HAS PAID THE EMPLOYER CONTRIBUTION TO THE RETIREMENT SYSTEM OUT OF HIS OWN FUNDS AND HAS WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A REFUND OF THE ACCUMULATED EMPLOYER CONTRIBUTIONS THAT HE PAID TO THE SYSTEM TOGETHER WITH REGULAR INTEREST THEREON; TO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

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

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

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

system as provided for in this section shall notify the executive 
director in the time and manner as prescribed by the board. 

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

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

(2) Pursuant to the Unemployment Compensation Amendments of 
1992 (Public Law 102-318 (UCA)), a member or eligible beneficiary
eligible for a refund under this section may elect on a form prescribed by the board under rules and regulations established by the board, to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan or individual retirement account. If the member or eligible beneficiary makes such election and specifies the eligible retirement plan or individual retirement account to which such distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. Flexible rollovers under this subsection shall not be considered assignments under Section 25-11-129.

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

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

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

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

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

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

25-11-105. I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP
The membership of this retirement system shall be composed as follows:

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

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

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

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

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

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

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

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

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

(1) It provides that all services which constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan; with the exception of municipal employees who are already covered by existing retirement plans; provided, however, those employees in this class may elect to come under the provisions of this article;
(2) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (d) of Section 25-11-123 and of paragraph (f)(5)B and C of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The member shall furnish proof satisfactory to
the board of trustees of certification of such services from the
political subdivision or instrumentality where the services were
rendered or verification by the Social Security Administration;
and
(2) The member shall pay to the retirement system on the date he or she is eligible for such credit or at any time thereafter prior to the date of retirement the actuarial cost for each year of such creditable service. The provisions of this subparagraph (2) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder.

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

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

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

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP
The following classes of employees and officers shall not become members of this retirement system, any other provisions of Articles 1 and 3 to the contrary notwithstanding:

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

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

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

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

III. TERMINATION OF MEMBERSHIP

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

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