

By: Representative Moody

To: Appropriations

## HOUSE BILL NO. 1182

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10 FUNDS AND HAS WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A  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

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

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

27 25-11-106. Any constable who is a member of the system by  
28 virtue of a plan submitted and approved under Section 25-11-105(f)  
29 may elect to withdraw from membership in the system at the  
30 beginning of any term of office beginning after July 1, 2002. If  
31 a constable withdraws from membership in the system as provided  
32 for in this section, he shall not thereafter be eligible for  
33 membership in the system for service as a constable. Any person  
34 who elects to withdraw from the system as provided for in this  
35 section shall notify the executive director in the time and manner  
36 as prescribed by the board.



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

39           25-11-117. (1) A member may be paid a refund of the amount  
40 of accumulated contributions to the credit of the member in the  
41 annuity savings account provided the member has withdrawn from  
42 state service and further provided the member has not returned to  
43 state service on the date the refund of the accumulated  
44 contributions would be paid. Such refund of the contributions to  
45 the credit of the member in the annuity savings account shall be  
46 paid within ninety (90) days from receipt in the office of the  
47 retirement system of the properly completed form requesting such  
48 payment. In the event of death prior to retirement of any member  
49 whose spouse and/or children are not entitled to a retirement  
50 allowance, the accumulated contributions to the credit of the  
51 deceased member in the annuity savings account shall be paid to  
52 the designated beneficiary on file in writing in the office of the  
53 executive director of the board of trustees within ninety (90)  
54 days from receipt of a properly completed form requesting such  
55 payment. If there is no such designated beneficiary on file for  
56 such deceased member in the office of the system, upon the filing  
57 of a proper request with the board, the contributions to the  
58 credit of the deceased member in the annuity savings account shall  
59 be refunded pursuant to Section 25-11-117.1(1). The payment of  
60 the refund shall discharge all obligations of the retirement  
61 system to the member on account of any creditable service rendered  
62 by the member prior to the receipt of the refund. By the  
63 acceptance of the refund, the member shall waive and relinquish  
64 all accrued rights in the system.

65           (2) Pursuant to the Unemployment Compensation Amendments of  
66 1992 (Public Law 102-318 (UCA)), a member or the spouse of a  
67 member who is an eligible beneficiary entitled to a refund under  
68 this section may elect, on a form prescribed by the board under  
69 rules and regulations established by the board, to have an



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

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

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



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

104           25-11-125. (1) The board of supervisors may appropriate and  
105 include in its budget for public purposes a sufficient sum to pay  
106 the required employer contribution to the Public Employees'  
107 Retirement System for all fee paid elected officials in judicial  
108 capacities of the county and supervisors' districts, and those  
109 contributions shall be included by the clerk of the board in his  
110 regular reports and remittals to the Executive Director of the  
111 Public Employees' Retirement System for other county officers and  
112 regular county employees whose employer contributions are not  
113 included in and paid from the annual county budget.

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

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

128           25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

129           The membership of this retirement system shall be composed as  
130 follows:

131           (a) All persons who shall become employees in the state  
132 service after January 31, 1953, and whose wages are subject to  
133 payroll taxes and are lawfully reported on IRS Form W-2, except  
134 those specifically excluded, or as to whom election is provided in



135 Articles 1 and 3, shall become members of the retirement system as  
136 a condition of their employment.

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

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



167                   (2) The member shall pay to the retirement system  
168 on the date he or she is eligible for such credit or at any time  
169 thereafter prior to the date of retirement the actuarial cost for  
170 each year of such creditable service. The provisions of this  
171 subparagraph (2) shall be subject to the limitations of Section  
172 415 of the Internal Revenue Code and regulations promulgated  
173 thereunder.

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

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

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

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



199 person shall receive prior service credit unless he becomes a  
200 member on or before February 1, 1953.

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

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

228 (2) It specifies the source or sources from which  
229 the funds necessary to make the payments required by paragraph (d)  
230 of Section 25-11-123 and of paragraph (f) (5)B and C of this



231 section are expected to be derived and contains reasonable  
232 assurance that such sources will be adequate for such purpose;

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

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

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

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

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





263 in the amounts and at the rates specified in the applicable  
264 agreement entered into by the board.

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

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

291 E. Each political subdivision of the state  
292 and each instrumentality of the state or a political subdivision  
293 or subdivisions which submits a plan for approval of the board, as  
294 provided in this section, shall reimburse the board for coverage  
295 into the expense account, its pro rata share of the total expense



296 of administering Articles 1 and 3 as provided by regulations of  
297 said board.

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

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

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

320 In the event any member of any other actuarially funded  
321 system maintained by an agency of the state changes his employment  
322 to an agency covered by this system, the board of trustees may  
323 authorize the receipt of the transfer of the member's creditable  
324 service and of the present value of the member's employer's  
325 accumulation account and of the present value of the member's  
326 accumulated membership contributions from such other system,  
327 provided the employee agrees to the transfer of his accumulated



328 membership contributions to this system and provided the other  
329 system is authorized and agrees to make such transfer.

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

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

354 (1) The member shall furnish proof satisfactory to  
355 the board of trustees of certification of such services from the  
356 political subdivision or instrumentality where the services were  
357 rendered or verification by the Social Security Administration;  
358 and

359 (2) The member shall pay to the retirement system  
360 on the date he or she is eligible for such credit or at any time



361 thereafter prior to the date of retirement the actuarial cost for  
362 each year of such creditable service. The provisions of this  
363 subparagraph (2) shall be subject to the limitations of Section  
364 415 of the Internal Revenue Code and regulations promulgated  
365 thereunder.

366 Nothing contained in this paragraph (k) shall be construed to  
367 limit the authority of the board to allow the correction of  
368 reporting errors or omissions based on the payment of employee and  
369 employer contributions plus applicable interest. Payment for such  
370 time shall be made in increments of not less than one-quarter  
371 (1/4) year of creditable service beginning with the most recent  
372 service. Upon the payment of all or part of such required  
373 contributions, plus interest or the actuarial cost as provided  
374 above, the member shall receive credit for the period of  
375 creditable service for which full payment has been made to the  
376 retirement system.

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

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

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

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



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

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

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

402 (d) A constable who withdraws from service as provided  
403 for in Section 1 of House Bill No. , 2002 Regular Session.

404 **III. TERMINATION OF MEMBERSHIP**

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

409 **SECTION 5.** This act shall take effect and be in force from  
410 and after July 1, 2002.

