

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2892

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12 WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A REFUND OF THE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, 2002. 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 the
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 the spouse of a
70 member who is an eligible beneficiary entitled to a refund under



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

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86 to the retirement system out of his own funds and has withdrawn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

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



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

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

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

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

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

135 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**



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

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

144 (b) All persons who shall become employees in the state
145 service after January 31, 1953, except those specifically excluded
146 or as to whom election is provided in Articles 1 and 3, unless
147 they shall file with the board prior to the lapse of sixty (60)
148 days of employment or sixty (60) days after the effective date of
149 the cited articles, whichever is later, on a form prescribed by
150 the board, a notice of election not to be covered by the
151 membership of the retirement system and a duly executed waiver of
152 all present and prospective benefits which would otherwise inure
153 to them on account of their participation in the system, shall
154 become members of the retirement system; provided, however, that
155 no credit for prior service will be granted to members until they
156 have contributed to Article 3 of the retirement system for a
157 minimum period of at least four (4) years. Such members shall
158 receive credit for services performed prior to January 1, 1953, in
159 employment now covered by Article 3, but no credit shall be
160 granted for retroactive services between January 1, 1953, and the
161 date of their entry into the retirement system unless the employee
162 pays into the retirement system both the employer's and the
163 employee's contributions on wages paid him during the period from
164 January 31, 1953, to the date of his becoming a contributing
165 member, together with interest at the rate determined by the board
166 of trustees. Members reentering after withdrawal from service
167 shall qualify for prior service under the provisions of Section
168 25-11-117. From and after July 1, 1998, upon eligibility as noted



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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



