

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2712

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 25-11-125,  
 8 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF SUPERVISORS OF  
 9 EACH COUNTY TO PAY THE REQUIRED EMPLOYER CONTRIBUTIONS TO THE  
 10 PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR EACH CONSTABLE HOLDING  
 11 OFFICE IN THAT COUNTY; TO PROVIDE THAT THIS REQUIREMENT SHALL BE  
 12 RETROACTIVE TO THE BEGINNING OF THE CONSTABLES' TERM OF OFFICE ON  
 13 JANUARY 1, 1996; TO PROVIDE THAT IF ANY CONSTABLE HAS PAID THE  
 14 EMPLOYER CONTRIBUTIONS OUT OF HIS OWN FUNDS AFTER DECEMBER 31,  
 15 1995, THE BOARD OF SUPERVISORS MAY REIMBURSE THE CONSTABLE FOR THE  
 16 AMOUNT HE PAID AFTER THAT DATE; TO AMEND SECTION 25-11-105,  
 17 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING  
 18 PROVISIONS; AND FOR RELATED PURPOSES.

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

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

22 25-11-106. Any constable who is a member of the system by  
 23 virtue of a plan submitted and approved under Section 25-11-105(f)  
 24 may elect to withdraw from membership in the system at the  
 25 beginning of any term of office beginning after July 1, 2002. If  
 26 a constable withdraws from membership in the system as provided  
 27 for in this section, he shall not thereafter be eligible for  
 28 membership in the system for service as a constable. Any person  
 29 who elects to withdraw from the system as provided for in this  
 30 section shall notify the executive director in the time and manner  
 31 as prescribed by the board.

32 **SECTION 2.** Section 25-11-125, Mississippi Code of 1972, is  
 33 amended as follows:

34 25-11-125. (1) The board of supervisors may appropriate and  
 35 include in its budget for public purposes a sufficient sum to pay



36 the required employer contribution to the Public Employees'  
37 Retirement System for all fee paid elected officials in judicial  
38 capacities of the county and supervisors' districts, and those  
39 contributions shall be included by the clerk of the board in his  
40 regular reports and remittals to the Executive Director of the  
41 Public Employees' Retirement System for other county officers and  
42 regular county employees whose employer contributions are not  
43 included in and paid from the annual county budget.

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

56 **SECTION 3.** Section 25-11-105, Mississippi Code of 1972, is  
57 amended as follows:

58 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

59 The membership of this retirement system shall be composed as  
60 follows:

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

67 (ii) From and after July 1, 2002, any individual  
68 who is employed by a governmental entity to perform professional



69 services shall become a member of the system if the individual is  
70 paid regular periodic compensation for those services that is  
71 subject to payroll taxes, is provided all other employee benefits  
72 and meets the membership criteria established by the regulations  
73 adopted by the board of trustees that apply to all other members  
74 of the system; however, any active member employed in such a  
75 position on July 1, 2002, will continue to be an active member for  
76 as long as they are employed in any such position.

77 (b) All persons who shall become employees in the state  
78 service after January 31, 1953, except those specifically excluded  
79 or as to whom election is provided in Articles 1 and 3, unless  
80 they shall file with the board prior to the lapse of sixty (60)  
81 days of employment or sixty (60) days after the effective date of  
82 the cited articles, whichever is later, on a form prescribed by  
83 the board, a notice of election not to be covered by the  
84 membership of the retirement system and a duly executed waiver of  
85 all present and prospective benefits which would otherwise inure  
86 to them on account of their participation in the system, shall  
87 become members of the retirement system; however, no credit for  
88 prior service will be granted to members until they have  
89 contributed to Article 3 of the retirement system for a minimum  
90 period of at least four (4) years. Such members shall receive  
91 credit for services performed prior to January 1, 1953, in  
92 employment now covered by Article 3, but no credit shall be  
93 granted for retroactive services between January 1, 1953, and the  
94 date of their entry into the retirement system unless the employee  
95 pays into the retirement system both the employer's and the  
96 employee's contributions on wages paid him during the period from  
97 January 31, 1953, to the date of his becoming a contributing  
98 member, together with interest at the rate determined by the board  
99 of trustees. Members reentering after withdrawal from service  
100 shall qualify for prior service under the provisions of Section  
101 25-11-117. From and after July 1, 1998, upon eligibility as noted



102 above, the member may receive credit for such retroactive service  
103 provided:

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

107 (2) The member shall pay to the retirement system  
108 on the date he or she is eligible for such credit or at any time  
109 thereafter prior to the date of retirement the actuarial cost for  
110 each year of such creditable service. The provisions of this  
111 subparagraph (2) shall be subject to the limitations of Section  
112 415 of the Internal Revenue Code and regulations promulgated  
113 thereunder.

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

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

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

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



135 entitled to membership in this retirement system unless, before  
136 February 1, 1953, any such person shall indicate by a notice filed  
137 with the board, on a form prescribed by the board, his individual  
138 election and choice to participate in this system, but no such  
139 person shall receive prior service credit unless he becomes a  
140 member on or before February 1, 1953.

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

161 (1) It provides that all services which constitute  
162 employment as defined in Section 25-11-5 and are performed in the  
163 employ of the political subdivision or instrumentality, by any  
164 employees thereof, shall be covered by the plan; with the  
165 exception of municipal employees who are already covered by  
166 existing retirement plans; however, those employees in this class  
167 may elect to come under the provisions of this article;



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

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

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

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

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

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



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

205           C. Every political subdivision or  
206 instrumentality required to make payments under paragraph (f)(5)B  
207 hereof is authorized, in consideration of the employees' retention  
208 in or entry upon employment after enactment of Articles 1 and 3,  
209 to impose upon its employees, as to services which are covered by  
210 an approved plan, a contribution with respect to wages (as defined  
211 in Section 25-11-5) not exceeding the amount provided in Section  
212 25-11-123(d) if such services constituted employment within the  
213 meaning of Articles 1 and 3, and to deduct the amount of such  
214 contribution from the wages as and when paid. Contributions so  
215 collected shall be paid into the contribution fund as partial  
216 discharge of the liability of such political subdivisions or  
217 instrumentalities under paragraph (f)(5)B hereof. Failure to  
218 deduct such contribution shall not relieve the employee or  
219 employer of liability thereof.

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

231           E. Each political subdivision of the state  
232 and each instrumentality of the state or a political subdivision  
233 or subdivisions which submits a plan for approval of the board, as



234 provided in this section, shall reimburse the board for coverage  
235 into the expense account, its pro rata share of the total expense  
236 of administering Articles 1 and 3 as provided by regulations of  
237 the board.

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

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

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

260 In the event any member of any other actuarially funded  
261 system maintained by an agency of the state changes his employment  
262 to an agency covered by this system, the board of trustees may  
263 authorize the receipt of the transfer of the member's creditable  
264 service and of the present value of the member's employer's  
265 accumulation account and of the present value of the member's  
266 accumulated membership contributions from such other system,





267 provided the employee agrees to the transfer of his accumulated  
268 membership contributions to this system and provided the other  
269 system is authorized and agrees to make such transfer.

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

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

294 (1) The member shall furnish proof satisfactory to  
295 the board of trustees of certification of such services from the  
296 political subdivision or instrumentality where the services were  
297 rendered or verification by the Social Security Administration;  
298 and



299                   (2) The member shall pay to the retirement system  
300 on the date he or she is eligible for such credit or at any time  
301 thereafter prior to the date of retirement the actuarial cost for  
302 each year of such creditable service. The provisions of this  
303 subparagraph (2) shall be subject to the limitations of Section  
304 415 of the Internal Revenue Code and regulations promulgated  
305 thereunder.

306           Nothing contained in this paragraph (k) shall be construed to  
307 limit the authority of the board to allow the correction of  
308 reporting errors or omissions based on the payment of employee and  
309 employer contributions plus applicable interest. Payment for such  
310 time shall be made in increments of not less than one-quarter  
311 (1/4) year of creditable service beginning with the most recent  
312 service. Upon the payment of all or part of such required  
313 contributions, plus interest or the actuarial cost as provided  
314 above, the member shall receive credit for the period of  
315 creditable service for which full payment has been made to the  
316 retirement system.

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

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

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



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

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

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

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

342 (d) From and after July 1, 2002, individuals who are  
343 employed by a governmental entity to perform professional service  
344 on less than a full-time basis who do not meet the criteria  
345 established in I(a)(ii) of this section.

346 (e) A constable who withdraws from service as provided  
347 for in Section 1 of Senate Bill No. 2712, 2003 Regular Session.

348 **III. TERMINATION OF MEMBERSHIP**

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

353 **SECTION 4.** This act shall take effect and be in force from  
354 and after July 1, 2003.

