

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.

