

By: Senator(s) White

To: Finance

SENATE BILL NO. 2017

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10 FUNDS AND HAS WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A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, 2005. 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 that the member has withdrawn
42 from state service and has not returned to state service on the
43 date the refund of the accumulated contributions would be paid.
44 That refund of the contributions to the credit of the member in
45 the annuity savings account shall be paid within ninety (90) days
46 from receipt in the office of the retirement system of the
47 properly completed form requesting the payment. In the event of
48 death before retirement of any member whose spouse and/or children
49 are not entitled to a retirement allowance, the accumulated
50 contributions to the credit of the deceased member in the annuity
51 savings account shall be paid to the designated beneficiary on
52 file in writing in the office of the executive director of the
53 board of trustees within ninety (90) days from receipt of a
54 properly completed form requesting the payment. If there is no
55 such designated beneficiary on file for the deceased member in the
56 office of the system, upon the filing of a proper request with the
57 board, the contributions to the credit of the deceased member in
58 the annuity savings account shall be refunded pursuant to Section
59 25-11-117.1(1). The payment of the refund shall discharge all
60 obligations of the retirement system to the member on account of
61 any creditable service rendered by the member prior to the receipt
62 of the refund. By the acceptance of the refund, the member shall
63 waive and relinquish all accrued rights in the system.

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

70 section paid directly to an eligible retirement plan, as defined
71 under applicable federal law, or an individual retirement account.
72 If the member or the spouse of a member who is an eligible
73 beneficiary makes that election and specifies the eligible
74 retirement plan or individual retirement account to which the
75 distribution is to be paid, the distribution will be made in the
76 form of a direct trustee-to-trustee transfer to the specified
77 eligible retirement plan. Flexible rollovers under this
78 subsection shall not be considered assignments under Section
79 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; however, the amounts
91 that are repaid by the member and the creditable service related
92 thereto shall not be used in any benefit calculation or
93 determination until the member has remained a contributor to the
94 system for a period of at least four (4) years after the member's
95 reentry into state service. Repayment for that time shall be made
96 in increments of not less than one-quarter (1/4) year of
97 creditable service beginning with the most recent service for
98 which refund has been made. Upon the repayment of all or part of
99 that refund and interest, the member shall again receive credit
100 for the period of creditable service for which full repayment has
101 been made to the system.

102 (5) (a) In order to provide a source of income to members
103 who have applied for disability benefits under Section 25-11-113
104 or 25-11-114, the board may provide, at the employee's election, a
105 temporary benefit to be paid from the member's accumulated
106 contributions, if any, without forfeiting the right to pursue
107 disability benefits, provided that the member has exhausted all
108 personal and medical leave and has terminated his or her
109 employment. The board may prescribe rules and regulations for
110 carrying out the provisions of this subsection * * *.

111 (b) If a member who has elected to receive temporary
112 benefits under this subsection later applies for a refund of his
113 or her accumulated contributions, all amounts paid under this
114 subsection shall be deducted from the accumulated contributions
115 and the balance will be paid to the member. If a member who has
116 elected to receive temporary benefits under this subsection is
117 later approved for a disability retirement allowance, and a
118 service retirement allowance or survivor benefits are paid on the
119 account, the board shall adjust the benefits in such a manner that
120 no more than the actuarial equivalent of the benefits to which the
121 member or beneficiary was or is entitled shall be paid.

122 (c) The board may study, develop and propose a
123 disability benefit structure, including short and long term
124 disability benefits, provided that it is the actuarial equivalent
125 of the benefits currently provided in Section 25-11-113 or
126 25-11-114.

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

129 25-11-125. (1) The board of supervisors may appropriate and
130 include in its budget for public purposes a sufficient sum to pay
131 the required employer contribution to the Public Employees'
132 Retirement System for all fee paid elected officials in judicial
133 capacities of the county and supervisors' districts, and those
134 contributions shall be included by the clerk of the board in his

135 regular reports and remittals to the Executive Director of the
136 Public Employees' Retirement System for other county officers and
137 regular county employees whose employer contributions are not
138 included in and paid from the annual county budget.

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

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

153 25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

154 The membership of this retirement system shall be composed as
155 follows:

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

162 (ii) From and after July 1, 2002, any individual
163 who is employed by a governmental entity to perform professional
164 services shall become a member of the system if the individual is
165 paid regular periodic compensation for those services that is
166 subject to payroll taxes, is provided all other employee benefits
167 and meets the membership criteria established by the regulations

168 adopted by the board of trustees that apply to all other members
169 of the system; however, any active member employed in such a
170 position on July 1, 2002, will continue to be an active member for
171 as long as they are employed in any such position.

172 (b) All persons who become employees in the state
173 service after January 31, 1953, except those specifically excluded
174 or as to whom election is provided in Articles 1 and 3, unless
175 they file with the board before the lapse of sixty (60) days of
176 employment or sixty (60) days after the effective date of the
177 cited articles, whichever is later, on a form prescribed by the
178 board, a notice of election not to be covered by the membership of
179 the retirement system and a duly executed waiver of all present
180 and prospective benefits that would otherwise inure to them on
181 account of their participation in the system, shall become members
182 of the retirement system; however, no credit for prior service
183 will be granted to members until they have contributed to Article
184 3 of the retirement system for a minimum period of at least four
185 (4) years. Those members shall receive credit for services
186 performed before January 1, 1953, in employment now covered by
187 Article 3, but no credit shall be granted for retroactive services
188 between January 1, 1953, and the date of their entry into the
189 retirement system, unless the employee pays into the retirement
190 system both the employer's and the employee's contributions on
191 wages paid him during the period from January 31, 1953, to the
192 date of his becoming a contributing member, together with interest
193 at the rate determined by the board of trustees. Members
194 reentering after withdrawal from service shall qualify for prior
195 service under the provisions of Section 25-11-117. From and after
196 July 1, 1998, upon eligibility as noted above, the member may
197 receive credit for such retroactive service provided:

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

201 (2) The member shall pay to the retirement system
202 on the date he or she is eligible for that credit or at any time
203 thereafter before the date of retirement the actuarial cost for
204 each year of that creditable service. The provisions of this
205 subparagraph (2) shall be subject to the limitations of Section
206 415 of the Internal Revenue Code and regulations promulgated under
207 Section 415.

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

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

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

225 (e) All persons who are employees in the state service
226 on January 31, 1953, and who under existing laws are members of
227 any fund operated for the retirement of employees by the State of
228 Mississippi, or any of its departments or agencies, shall not be
229 entitled to membership in this retirement system unless, before
230 February 1, 1953, any such person indicates by a notice filed with
231 the board, on a form prescribed by the board, his individual
232 election and choice to participate in this system, but no such

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

235 (f) Each political subdivision of the state and each
236 instrumentality of the state or a political subdivision, or both,
237 is authorized to submit, for approval by the board of trustees, a
238 plan for extending the benefits of this article to employees of
239 any such political subdivision or instrumentality. Each such plan
240 or any amendment to the plan for extending benefits thereof shall
241 be approved by the board of trustees if it finds that the plan, or
242 the plan as amended, is in conformity with such requirements as
243 are provided in Articles 1 and 3; however, upon approval of the
244 plan or any such plan previously approved by the board of
245 trustees, the approved plan shall not be subject to cancellation
246 or termination by the political subdivision or instrumentality,
247 except that any community hospital serving a municipality that
248 joined the Public Employees' Retirement System as of November 1,
249 1956, to offer social security coverage for its employees and
250 subsequently extended retirement annuity coverage to its employees
251 as of December 1, 1965, may, upon documentation of extreme
252 financial hardship, have future retirement annuity coverage
253 cancelled or terminated at the discretion of the board of
254 trustees. No such plan shall be approved unless:

255 (1) It provides that all services that constitute
256 employment as defined in Section 25-11-5 and are performed in the
257 employ of the political subdivision or instrumentality, by any
258 employees thereof, shall be covered by the plan, with the
259 exception of municipal employees who are already covered by
260 existing retirement plans; however, those employees in this class
261 may elect to come under the provisions of this article;

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

265 section are expected to be derived and contains reasonable
266 assurance that those sources will be adequate for that purpose;

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

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

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

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

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

297 in the amounts and at the rates specified in the applicable
298 agreement entered into by the board.

299 C. Every political subdivision or
300 instrumentality required to make payments under paragraph (f)(5)B
301 of this section is authorized, in consideration of the employees'
302 retention in or entry upon employment after enactment of Articles
303 1 and 3, to impose upon its employees, as to services that are
304 covered by an approved plan, a contribution with respect to wages
305 (as defined in Section 25-11-5) not exceeding the amount provided
306 in Section 25-11-123(d) if those services constituted employment
307 within the meaning of Articles 1 and 3, and to deduct the amount
308 of the contribution from the wages as and when paid.

309 Contributions so collected shall be paid into the contribution
310 fund as partial discharge of the liability of the political
311 subdivisions or instrumentalities under paragraph (f)(5)B of this
312 section. Failure to deduct the contribution shall not relieve the
313 employee or employer of liability for the contribution.

314 D. Any state agency, school, political
315 subdivision, instrumentality or any employer that is required to
316 submit contribution payments or wage reports under any section of
317 this chapter shall be assessed interest on delinquent payments or
318 wage reports as determined by the board of trustees in accordance
319 with rules and regulations adopted by the board and delinquent
320 payments, assessed interest and any other amount certified by the
321 board as owed by an employer, may be recovered by action in a
322 court of competent jurisdiction against the reporting agency
323 liable therefor or may, upon due certification of delinquency and
324 at the request of the board of trustees, be deducted from any
325 other monies payable to the reporting agency by any department or
326 agency of the state.

327 E. Each political subdivision of the state
328 and each instrumentality of the state or a political subdivision
329 or subdivisions that submit a plan for approval of the board, as

330 provided in this section, shall reimburse the board for coverage
331 into the expense account, its pro rata share of the total expense
332 of administering Articles 1 and 3 as provided by regulations of
333 the board.

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

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

346 (i) If any member of this system changes his employment
347 to any agency of the state having an actuarially funded retirement
348 system, the board of trustees may authorize the transfer of the
349 member's creditable service and of the present value of the
350 member's employer's accumulation account and of the present value
351 of the member's accumulated membership contributions to that other
352 system, provided that the employee agrees to the transfer of his
353 accumulated membership contributions and provided that the other
354 system is authorized to receive and agrees to make the transfer.

355 If any member of any other actuarially funded system
356 maintained by an agency of the state changes his employment to an
357 agency covered by this system, the board of trustees may authorize
358 the receipt of the transfer of the member's creditable service and
359 of the present value of the member's employer's accumulation
360 account and of the present value of the member's accumulated
361 membership contributions from the other system, provided that the
362 employee agrees to the transfer of his accumulated membership

363 contributions to this system and provided that the other system is
364 authorized and agrees to make the transfer.

365 (j) Wherever state employment is referred to in this
366 section, it includes joint employment by state and federal
367 agencies of all kinds.

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

389 (1) The member shall furnish proof satisfactory to
390 the board of trustees of certification of those services from the
391 political subdivision or instrumentality where the services were
392 rendered or verification by the Social Security Administration;
393 and

394 (2) The member shall pay to the retirement system
395 on the date he or she is eligible for that credit or at any time

396 thereafter before the date of retirement the actuarial cost for
397 each year of that creditable service. The provisions of this
398 subparagraph (2) shall be subject to the limitations of Section
399 415 of the Internal Revenue Code and regulations promulgated under
400 Section 415.

401 Nothing contained in this paragraph (k) shall be construed to
402 limit the authority of the board to allow the correction of
403 reporting errors or omissions based on the payment of employee and
404 employer contributions plus applicable interest. Payment for that
405 time shall be made in increments of not less than one-quarter
406 (1/4) year of creditable service beginning with the most recent
407 service. Upon the payment of all or part of the required
408 contributions, plus interest or the actuarial cost as provided
409 above, the member shall receive credit for the period of
410 creditable service for which full payment has been made to the
411 retirement system.

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

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

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

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

