

By: Senator(s) White

To: Finance

SENATE BILL NO. 2674

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10 FUNDS AND HAS WITHDRAWN FROM SERVICE SHALL HAVE THE OPTION OF A  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, 2003. If  
31 a constable withdraws from membership in the system as provided  
32 for in this section, he shall not thereafter be eligible for  
33 membership in the system for service as a constable. Any person  
34 who elects to withdraw from the system as provided for in this  
35 section shall notify the executive director in the time and manner  
36 as prescribed by the board.



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

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41 annuity savings account provided the member has withdrawn from  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

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



70 eligible rollover distribution of accumulated contributions  
71 payable under this section paid directly to an eligible retirement  
72 plan, as defined under applicable federal law, or an individual  
73 retirement account. If the member or the spouse of a member who  
74 is an eligible beneficiary makes such election and specifies the  
75 eligible retirement plan or individual retirement account to which  
76 such distribution is to be paid, the distribution will be made in  
77 the form of a direct trustee-to-trustee transfer to the specified  
78 eligible retirement plan. Flexible rollovers under this  
79 subsection shall not be considered assignments under Section  
80 25-11-129.

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

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



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

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

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

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

129           25-11-105. **I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP**

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

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



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

138 (ii) From and after July 1, 2002, any individual  
139 who is employed by a governmental entity to perform professional  
140 services shall become a member of the system if the individual is  
141 paid regular periodic compensation for those services that is  
142 subject to payroll taxes, is provided all other employee benefits  
143 and meets the membership criteria established by the regulations  
144 adopted by the board of trustees that apply to all other members  
145 of the system; however, any active member employed in such a  
146 position on July 1, 2002, will continue to be an active member for  
147 as long as they are employed in any such position.

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



169 member, together with interest at the rate determined by the board  
170 of trustees. Members reentering after withdrawal from service  
171 shall qualify for prior service under the provisions of Section  
172 25-11-117. From and after July 1, 1998, upon eligibility as noted  
173 above, the member may receive credit for such retroactive service  
174 provided:

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

178 (2) The member shall pay to the retirement system  
179 on the date he or she is eligible for such credit or at any time  
180 thereafter prior to the date of retirement the actuarial cost for  
181 each year of such creditable service. The provisions of this  
182 subparagraph (2) shall be subject to the limitations of Section  
183 415 of the Internal Revenue Code and regulations promulgated  
184 thereunder.

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

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

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



202           (e) All persons who are employees in the state service  
203 on January 31, 1953, and who under existing laws are members of  
204 any fund operated for the retirement of employees by the State of  
205 Mississippi, or any of its departments or agencies, shall not be  
206 entitled to membership in this retirement system unless, before  
207 February 1, 1953, any such person shall indicate by a notice filed  
208 with the board, on a form prescribed by the board, his individual  
209 election and choice to participate in this system, but no such  
210 person shall receive prior service credit unless he becomes a  
211 member on or before February 1, 1953.

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

232           (1) It provides that all services which constitute  
233 employment as defined in Section 25-11-5 and are performed in the  
234 employ of the political subdivision or instrumentality, by any



235 employees thereof, shall be covered by the plan; with the  
236 exception of municipal employees who are already covered by  
237 existing retirement plans; however, those employees in this class  
238 may elect to come under the provisions of this article;

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

244           (3) It provides for such methods of administration  
245 of the plan by the political subdivision or instrumentality as are  
246 found by the board of trustees to be necessary for the proper and  
247 efficient administration thereof;

248           (4) It provides that the political subdivision or  
249 instrumentality will make such reports, in such form and  
250 containing such information, as the board of trustees may from  
251 time to time require;

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

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





267 accordance with the provisions of law with respect to civil causes  
268 by certiorari.

269                   B. Each political subdivision or  
270 instrumentality as to which a plan has been approved under this  
271 section shall pay into the contribution fund, with respect to  
272 wages (as defined in Section 25-11-5), at such time or times as  
273 the board of trustees may by regulation prescribe, contributions  
274 in the amounts and at the rates specified in the applicable  
275 agreement entered into by the board.

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

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



300 board of trustees, be deducted from any other monies payable to  
301 such reporting agency by any department or agency of the state.

302 E. Each political subdivision of the state  
303 and each instrumentality of the state or a political subdivision  
304 or subdivisions which submits a plan for approval of the board, as  
305 provided in this section, shall reimburse the board for coverage  
306 into the expense account, its pro rata share of the total expense  
307 of administering Articles 1 and 3 as provided by regulations of  
308 the board.

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

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

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

331 In the event any member of any other actuarially funded  
332 system maintained by an agency of the state changes his employment



333 to an agency covered by this system, the board of trustees may  
334 authorize the receipt of the transfer of the member's creditable  
335 service and of the present value of the member's employer's  
336 accumulation account and of the present value of the member's  
337 accumulated membership contributions from such other system,  
338 provided the employee agrees to the transfer of his accumulated  
339 membership contributions to this system and provided the other  
340 system is authorized and agrees to make such transfer.

341 (j) Wherever herein state employment is referred to, it  
342 shall include joint employment by state and federal agencies of  
343 all kinds.

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



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

370                   (2) The member shall pay to the retirement system  
371 on the date he or she is eligible for such credit or at any time  
372 thereafter prior to the date of retirement the actuarial cost for  
373 each year of such creditable service. The provisions of this  
374 subparagraph (2) shall be subject to the limitations of Section  
375 415 of the Internal Revenue Code and regulations promulgated  
376 thereunder.

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

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



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

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

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

405 (a) Patient or inmate help in state charitable, penal  
406 or correctional institutions;

407 (b) Students of any state educational institution  
408 employed by any agency of the state for temporary, part-time or  
409 intermittent work;

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

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

417 (e) A constable who withdraws from service as provided  
418 for in Section 1 of Senate Bill No. 2674, 2003 Regular Session.

419 **III. TERMINATION OF MEMBERSHIP**

420 Membership in this system shall cease by a member withdrawing  
421 his accumulated contributions, or by a member withdrawing from  
422 active service with a retirement allowance, or by a member's  
423 death.

424 **SECTION 5.** This act shall take effect and be in force from  
425 and after July 1, 2003.

