

RESOLUTION DECLARING THAT MADISON COUNTY WILL CONTRIBUTE THE REQUIRED EMPLOYER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS) ON THE NET FEE INCOME FOR MADISON COUNTY CHANCERY CLERK, CIRCUIT CLERK AND CONSTABLES AND FOR OTHER PURPOSES

WHEREAS. Madison County has previously voted, in accordance with MS Code of 1972 (Annotated) Sections 25-11-106 and 25-11-106.1, to fund and pay the employer portion of the PERS contribution on Net Fee Income for the Chancery Clerk, Circuit Clerk and Constables; and

WHEREAS. the aforementioned code sections require a vote on this matter with each new term of the Board of Supervisors; and

WHEREAS. this month marks the occurrence of the organizational meeting of this term of Board of Supervisors; and

WHEREAS. this vote is binding for the duration of such term.

THEREFORE. be it declared that Madison County, as allowed by MS Code of 1972 (Annotated) Sections 25-11-106 and 25-11-106.1, will henceforth contribute the employer's portion on net fee income as earned by the Madison County Chancery Clerk, Circuit Clerk and Constables.

Following the reading of the foregoing Resolution, Supervisor _____ did move for the adoption of the resolution, and Supervisor _____ did second the motion for its adoption. The matter was then put to a roll call vote, and the result was as follows:

Supervisor Sheila Jones	_____
Supervisor Trey Baxter	_____
Supervisor Gerald Steen	_____
Supervisor Karl Banks	_____
Supervisor Paul Griffin	_____

The motion having received the affirmative vote of a majority of the members present, the President declared the motion carried and the resolution adopted this, the _____ day of January, 2020.

SO ORDERED this the _____ day of January 2020.

[Miss. Code Ann. § 25-11-106](#)

Current through the 2019 Regular Session.

Mississippi Code 1972 Annotated > Title 25. Public Officers and Employees; Public Records (Chs. 1 — 65) > Chapter 11. Social Security and Public Employees' Retirement and Disability Benefits (Arts. 1 — 11) > Article 3. Additional State Retirement and Disability Benefits. (§§ 25-11-101 — 25-11-145)

§ 25-11-106. Counties responsible for employer contributions on direct payments to constables covered under Public Employees' Retirement System; constables responsible for employee contributions; county required to withhold percentage of gross fee income as estimated retirement contributions where constable responsible for both employer and employee contributions on net fee income; constables must make delinquent payments or elect not to and forfeit service credit.

(1)

(a) Any constable in office as of July 1, 2005, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under [Section 25-11-105\(f\)](#) will remain a member of the Public Employees' Retirement System.

(b)

(i) The county is responsible for employer contributions on all direct payments to the constable from the county.

(ii) Except as otherwise provided in subparagraph (iii) of this paragraph, the constable is responsible for the employee contributions on direct payments to the constable from the county and both the employer and employee share of contributions on his or her net fee income.

(iii) For contributions required for calendar year 2014 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the net fee income of its constables. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(c) From and after January 1, 2006, in cases in which the constable is responsible for both the employer and employee contributions on net fee income, the county shall withhold from fee income due to the constable a percentage amount, as set by the board, of the gross fee income paid to the constable as estimated retirement contributions and shall remit that amount to the system. Not later than the date on which the annual report of earnings is due to be filed as provided in [Section 7-3-45](#), the constable shall submit to the system a copy of the earnings record and make complete payment of any required contributions on net earnings from his or her office, but not less than the contributions due on the governmental treasuries paid by the county in the prior calendar year. If the constable fails to make full payment of contributions at the time required, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees due to the constable until such time as his or her retirement contributions are fully reported and made.

(2) Any current or former **constable** for whom appropriate employer and employee contributions and interest on all fees and county income from covered service before January 1, 2006, have not been made shall do one (1) of the following:

(a) Make the required payments or enter into an irrevocable agreement by not later than December 31, 2005, to make the payments for all calendar years before January 1, 2006. Contributions and interest due and owing for covered services before January 1, 2006, must be received by the system not later than April 15, 2007, or such date as set forth in the payment schedule mutually adopted by the member and the system.

(b) Elect, before December 31, 2005, not to pay delinquent employee and employer contributions and applicable interest for service as a **constable** before January 1, 2006. By making this election, the current or former **constable** shall irrevocably forfeit that service credit so as to be relieved of the liability for additional employer and employee contributions and applicable interest.

(3) Where a current or former **constable** fails to make required contributions as provided in subsection (2)(a) of this section, or where a current or former **constable** irrevocably elects to forfeit service credit as provided in subsection (2)(b) of this section, all employer and employee contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the **constable** or former **constable**. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

History

Laws, 2005, ch. 439, § 1; Laws, 2006, ch. 357, § 1; Laws, 2013, ch. 488, § 1, eff from and after Oct. 1, 2013.

Annotations

Notes

Amendment Notes —

The 2006 amendment substituted "April 15, 2007" for "April 15, 2006" in the last sentence of (2)(a).

The 2013 amendment in (1)(b)(ii), added the exception, at the beginning, substituted "direct payments" for "those payments," and added "to the **constable** from the county and both the employer and employee share of contributions on his or her net fee income" at the end; added (1)(b)(iii); in (1)(c), substituted "as provided in Section 7-3-45" for "with the Secretary of State" in the second sentence, inserted "or her" twice, and inserted "of contributions" in the last sentence; and made minor stylistic changes.

[Miss. Code Ann. § 25-11-106.1](#)

Current through the 2019 Regular Session.

Mississippi Code 1972 Annotated > Title 25. Public Officers and Employees; Public Records (Chs. 1 — 65) > Chapter 11. Social Security and Public Employees' Retirement and Disability Benefits (Arts. 1 — 11) > Article 3. Additional State Retirement and Disability Benefits. (§§ 25-11-101 — 25-11-145)

§ 25-11-106.1. Counties responsible for employer contributions on direct payments to chancery or circuit clerks covered under Public Employees' Retirement System; chancery or circuit clerks responsible for employee contributions; chancery or circuit clerk delinquent contributions; irrevocable forfeiture of service credit for any period for which appropriate employee and employer contributions not made.

(1) Any chancery or circuit clerk in office as of January 1, 2011, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under [Section 25-11-105\(f\)](#) will remain a member of the Public Employees' Retirement System.

(2)

(a)

(i) The county is responsible for employer contributions on net income attributable to direct treasury or county payroll income paid to the chancery or circuit clerk from the county.

(ii) Except as otherwise provided in this subsection (2), the chancery or circuit clerk is responsible for the employee contributions on net income attributable to direct treasury or county payroll income paid to the clerk and both the employee and employer share of contributions on the proportionate share of net income attributable to fees.

(iii) For contributions required for calendar year 2011 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the proportionate share of net income of the chancery and circuit clerk attributable to fees. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(b) Not later than the date on which the annual report of earnings is due to be filed with the Office of the State Auditor, the chancery or circuit clerk shall submit to the system a copy of the earnings record and make complete payment of required contributions on net income from his or her office; however, in no event shall the contributions be less than the contributions due on the governmental treasuries paid by the county in the prior calendar year.

(c) If the chancery or circuit clerk fails to make full payment of contributions as required for calendar year 2010 or any calendar year thereafter, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees, including accrued interest, due to the chancery or circuit clerk in a manner as prescribed by board regulations until such time as the total

amount of his or her delinquent contributions are withheld and pay the amount so withheld to the system.

(3) Any current or former chancery or circuit clerk for whom appropriate employee and employer contributions and interest on all fees and county income from covered service before January 1, 2010, have not been made shall do one (1) of the following:

(a) Pay to the system the required contributions and interest by not later than December 31, 2011. Failure to pay the required contributions and interest by December 31, 2011, shall constitute an irrevocable election to forfeit service credit for any period for which contributions are delinquent. Upon such forfeiture, the chancery or circuit clerk shall be relieved of the liability for additional employee and employer contributions and applicable interest for covered service before January 1, 2010.

(b) Elect, before December 31, 2011, not to pay delinquent employee and employer contributions and applicable interest for service as a chancery or circuit clerk before January 1, 2010. By making this election, the current or former chancery or circuit clerk shall irrevocably forfeit service credit for any period for which contributions are delinquent and shall not be liable for employee and employer contributions and applicable interest for covered service before January 1, 2010.

(4) If a current or former chancery or circuit clerk fails to make required contributions as provided in subsection (3)(a) of this section or elects to forfeit service credit as provided in subsection (3)(b) of this section, all employee and employer contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the chancery or circuit clerk or former chancery or circuit clerk. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

History

Laws, 2011, ch. 402, § [1](#), eff from and after passage (approved Mar. 14, 2011).

Annotations

Notes

Joint Legislative Committee Note —

Pursuant to [Section 1-1-109](#), the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference near the beginning of (2)(a)(ii) by substituting "(ii) Except as otherwise provided in this subsection (2)" for "(ii) Except as otherwise provided in this paragraph (2)." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Qualifications

The *Constitution*¹⁰ and *Code*¹¹ require that a supervisor be a resident freeholder (property owner) in the district from which he is chosen valued at least at \$1,500. However, the freeholder requirement was declared unconstitutional in 1985 as a denial of equal protection of the laws in *Williams v. Adams County Board of Election Commissioners*, 608 F.Supp. 599 (S.D.Miss. 1985).

In addition, the *Constitution* provides that a public officer (such as a supervisor) must be a qualified elector;¹² must not be liable as principal for public money unaccounted for;¹³ must not have been convicted of "bribery, perjury, or other infamous crime", including having been convicted of giving or offering a bribe to procure his own or any other person's election or appointment;¹⁴ and must not hold an office "of honor or profit" or "act for" a foreign government or the government of the United States.¹⁵ Further, since November 3, 1992, any person convicted in another state of any offense which is a felony in Mississippi or convicted of any felony in a federal court is ineligible to hold the office.¹⁶

A person is not disqualified from holding office if he has been pardoned from a disqualifying offense or if the offense is manslaughter, any violation of the United States Internal Revenue Code, or any violation of Mississippi's tax laws, unless the tax law violation also involved misuse or abuse of his office or money coming into his hands by virtue of his office.¹⁷

ACTIONS NECESSARY TO TAKE OFFICE AFTER ELECTION

A supervisor is prohibited by law from exercising the duties and functions of the office until he has received a certificate of election, posted the required bond, and taken the oath of office prescribed by the *Constitution*.¹⁸ A person who attempts to take office without having taken the oath of office or having posted the bond required by law is guilty of a misdemeanor punishable by a fine of up to \$500 or imprisonment in the county jail for a term not longer than one year, or both.¹⁹

Posting the Bond

Each supervisor must post a bond, with sufficient surety, payable to the state for use of the county, equal to five percent (5%) of the sum of all state and county taxes shown on the county's assessment rolls for the year prior to the year the supervisor is to take office – the bond not to exceed \$100,000.²⁰ The bond must be approved by the chancery clerk of the county and filed and recorded in the chancery clerk's office.²¹ The premium on the bond of a supervisor may be paid out of county funds, but any fee for approval of the bond must be paid by the supervisor.²²

The bond must be made with a surety company authorized to do business in the state.²³ If a supervisor gives an affidavit, including two letters of refusal from bonding companies licensed to do business in the state, that he has made a diligent effort to obtain the required surety bond and has been unable to do so, he may make his official bond with two or more qualified personal sureties.²⁴