

By: Senator(s) Turner

To: Finance

SENATE BILL NO. 2846

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,
 2 TO INCLUDE IN THE DEFINITION OF THE TERMS "AVERAGE COMPENSATION"
 3 AND "EARNED COMPENSATION" UNDER THE PUBLIC EMPLOYEES RETIREMENT
 4 SYSTEM LAW, PAYMENTS TO AN EMPLOYEE FOR PART-TIME EMPLOYMENT IN
 5 STATE SERVICE IF THE PAYMENTS WERE MADE WHILE THE EMPLOYEE IS
 6 OTHERWISE EMPLOYED FULL-TIME IN STATE SERVICE; AND FOR RELATED
 7 PURPOSES.

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. Section 25-11-103, Mississippi Code of 1972, is
 11 amended as follows:

12 25-11-103. The following words and phrases as used in
 13 Articles 1 and 3, unless a different meaning is plainly required
 14 by the context, shall have the following meanings:

15 (a) "Accumulated contributions" shall mean the sum of
 16 all the amounts deducted from the compensation of a member and
 17 credited to his individual account in the annuity savings account,
 18 together with regular interest thereon as provided in Section
 19 25-11-123.

20 (b) "Actuarial cost" shall mean the amount of funds
 21 presently required to provide future benefits as determined by the
 22 board based on applicable tables and formulas provided by the
 23 actuary.

24 (c) "Actuarial equivalent" shall mean a benefit of
 25 equal value to the accumulated contributions, annuity or benefit,
 26 as the case may be, when computed upon the basis of such mortality
 27 tables as shall be adopted by the board of trustees, and regular
 28 interest. (d) "Actuarial tables" shall mean such tables of

29 mortality and rates of interest as shall be adopted by the board

30 in accordance with the recommendation of the actuary.

31 (e) "Agency" shall mean any governmental body employing
32 persons in the state service.

33 (f) "Average compensation" shall mean the average of
34 the four (4) highest years of earned compensation reported for an
35 employee in a fiscal or calendar year period, or combination
36 thereof which do not overlap, or the last forty-eight (48)
37 consecutive months of earned compensation reported for an
38 employee. The four (4) years need not be successive or joined
39 years of service. In no case shall the average compensation so
40 determined be in excess of One Hundred Twenty-five Thousand
41 Dollars (\$125,000.00). In computing the average compensation, any
42 amount paid in a lump sum for personal leave shall be included in
43 the calculation to the extent that such amount does not exceed an
44 amount which is equal to thirty (30) days of earned compensation
45 and to the extent that it does not cause the employees' earned
46 compensation to exceed the maximum reportable amount specified in
47 Section 25-11-103(k); provided, however, that such thirty-day
48 limitation shall not prevent the inclusion in the calculation of
49 leave earned under federal regulations prior to July 1, 1976, and
50 frozen as of that date as referred to in Section 25-3-99. Only
51 the amount of lump sum pay for personal leave due and paid upon
52 the death of a member attributable for up to one hundred fifty
53 (150) days shall be used in the deceased member's average
54 compensation calculation in determining the beneficiary's
55 benefits. In computing the average compensation, no amounts shall
56 be used which are in excess of the amount on which contributions
57 were required and paid. If any member who is or has been granted
58 any increase in annual salary or compensation of more than eight
59 percent (8%) retires within twenty-four (24) months from the date
60 that such increase becomes effective, then the board shall exclude
61 that part of the increase in salary or compensation that exceeds
62 eight percent (8%) in calculating that member's average

63 compensation for retirement purposes; provided however, that
64 payments to an employee for part-time employment in state service
65 shall be included in such employee's average compensation if the
66 payments were made while the employee is otherwise employed
67 full-time in state service. The board may enforce this provision
68 by rule or regulation. However, increases in compensation in
69 excess of eight percent (8%) per year granted within twenty-four
70 (24) months of the date of retirement may be included in such
71 calculation of average compensation if satisfactory proof is
72 presented to the board showing that the increase in compensation
73 was the result of an actual change in the position held or
74 services rendered, or that such compensation increase was
75 authorized by the State Personnel Board or was increased as a
76 result of statutory enactment, and the employer furnishes an
77 affidavit stating that such increase granted within the last
78 twenty-four (24) months was not contingent on a promise or
79 agreement of the employee to retire. Nothing in Section 25-3-31
80 shall affect the calculation of the average compensation of any
81 member for the purposes of this article. The average compensation
82 of any member who retires before July 1, 1992, shall not exceed
83 the annual salary of the Governor.

84 (g) "Beneficiary" shall mean any person entitled to
85 receive a retirement allowance, an annuity or other benefit as
86 provided by Articles 1 and 3. In the event of the death prior to
87 retirement of any member whose spouse and/or children are not
88 entitled to a retirement allowance, the lawful spouse of a member
89 at the time of the death of such member shall be the beneficiary
90 of such member unless the member has designated another
91 beneficiary subsequent to the date of marriage in writing, and
92 filed such writing in the office of the executive director of the
93 board of trustees. No designation or change of beneficiary shall
94 be made in any other manner.

95 (h) "Board" shall mean the board of trustees provided

96 in Section 25-11-15 to administer the retirement system herein
97 created.

98 (i) "Creditable service" shall mean "prior service,"
99 "retroactive service" and all lawfully credited unused leave not
100 exceeding the accrual rates and limitations provided in Section
101 25-3-91 et seq., as of the date of withdrawal from service plus
102 "membership service" for which credit is allowable as provided in
103 Section 25-11-109. Except to limit creditable service reported to
104 the system for the purpose of computing an employee's retirement
105 allowance or annuity or benefits provided in this article, nothing
106 in this paragraph shall limit or otherwise restrict the power of
107 the governing authority of a municipality or other political
108 subdivision of the state to adopt such vacation and sick leave
109 policies as it deems necessary.

110 (j) "Child" means either a natural child of the member,
111 a child that has been made a child of the member by applicable
112 court action before the death of the member, or a child under the
113 permanent care of the member at the time of the latter's death,
114 which permanent care status shall be determined by evidence
115 satisfactory to the board.

116 (k) "Earned compensation" shall mean the full amount
117 earned by an employee for a given pay period including any
118 maintenance furnished up to a maximum of One Hundred Twenty-five
119 Thousand Dollars (\$125,000.00) per year, and proportionately for
120 less than one (1) year of service. The value of such maintenance
121 when not paid in money shall be fixed by the employing state
122 agency, and, in case of doubt, by the board of trustees as defined
123 in Section 25-11-15. In any case, earned compensation shall be
124 limited to the regular periodic compensation paid, exclusive of
125 litigation fees, bond fees, and other similar extraordinary
126 non-recurring payments; provided however, that payments to an
127 employee for part-time employment in state service shall be
128 included in earned compensation if the payments were made while

129 the employee is otherwise employed full-time in state service. In
130 the case of fee officials, the net earnings from their office
131 after deduction of expenses shall apply, except that in no case
132 shall earned compensation be less than the total direct payments
133 made by the state or governmental subdivisions to the official,
134 and employer and employee contributions shall be paid thereon. In
135 the case of members of the state Legislature, all remuneration or
136 amounts paid, except mileage allowance, shall apply. The amount
137 by which an eligible employee's salary is reduced pursuant to a
138 salary reduction agreement authorized under Section 25-17-5 shall
139 be included as earned compensation under this paragraph, provided
140 this inclusion does not conflict with federal law, including
141 federal regulations and federal administrative interpretations
142 thereunder, pertaining to the Federal Insurance Contributions Act
143 or to Internal Revenue Code Section 125 cafeteria plans.
144 Compensation in addition to an employee's base salary that is paid
145 to the employee pursuant to the vacation and sick leave policies
146 of a municipality or other political subdivision of the state that
147 employs him which exceeds the maximums authorized by Section
148 25-3-91 et seq. shall be excluded from the calculation of earned
149 compensation under this article. The maximum salary applicable
150 for retirement purposes before July 1, 1992, shall be the salary
151 of the Governor. Nothing in Section 25-3-31 shall affect the
152 determination of the earned compensation of any member for the
153 purposes of this article.

154 (1) "Employee" means any person legally occupying a
155 position in the state service, and shall include the employees of
156 the retirement system created hereunder.

157 (m) "Employer" shall mean the State of Mississippi or
158 any of its departments, agencies or subdivisions from which any
159 employee receives his compensation.

160 (n) "Executive director" shall mean the secretary to
161 the board of trustees, as provided in Section 25-11-15(9), and the

162 administrator of the Public Employees' Retirement System and all
163 systems under the management of the board of trustees. Wherever
164 the term "Executive Secretary of the Public Employees' Retirement
165 System" or "executive secretary" appears in this article or in any
166 other provision of law, it shall be construed to mean the
167 Executive Director of the Public Employees' Retirement System.

168 (o) "Fiscal year" shall mean the period beginning on
169 July 1 of any year and ending on June 30 of the next succeeding
170 year.

171 (p) "Medical board" shall mean the board of physicians
172 or any governmental or non-governmental disability determination
173 service designated by the board of trustees that is qualified to
174 make disability determinations as provided for in Section
175 25-11-119.

176 (q) "Member" shall mean any person included in the
177 membership of the system as provided in Section 25-11-105.

178 (r) "Membership service" shall mean service as an
179 employee rendered while a member of the retirement system.

180 (s) "Position" means any office or any employment in
181 the state service, or two (2) or more of them, the duties of which
182 call for services to be rendered by one (1) person, including
183 positions jointly employed by federal and state agencies
184 administering federal and state funds.

185 (t) "Prior service" shall mean service rendered before
186 February 1, 1953, for which credit is allowable under Sections
187 25-11-105 and 25-11-109, and which shall allow prior service for
188 any person who is now or becomes a member of the Public Employees'
189 Retirement System and who does contribute to the system for a
190 minimum period of four (4) years.

191 (u) "Regular interest" shall mean interest compounded
192 annually at such a rate as shall be determined by the board in
193 accordance with Section 25-11-121.

194 (v) "Retirement allowance" shall mean an annuity for

195 life as provided in this article, payable each year in twelve (12)
196 equal monthly installments beginning as of the date fixed by the
197 board. The retirement allowance shall be calculated in accordance
198 with Section 25-11-111. Provided, any spouse who received a
199 spouse retirement benefit in accordance with Section 25-11-111(d)
200 prior to March 31, 1971, and said benefits were terminated because
201 of eligibility for a Social Security benefit, may again receive
202 his spouse retirement benefit from and after making application
203 with the board of trustees to reinstate such spouse retirement
204 benefit.

205 (w) "Retroactive service" shall mean service rendered
206 after February 1, 1953, for which credit is allowable under
207 Section 25-11-105(b) and Section 25-11-105(k).

208 (x) "System" shall mean the Public Employees'
209 Retirement System of Mississippi established and described in
210 Section 25-11-101.

211 (y) "State" shall mean the State of Mississippi or any
212 political subdivision thereof or instrumentality thereof.

213 (z) "State service" shall mean all offices and
214 positions of trust or employment in the employ of the state, or
215 any political subdivision or instrumentality thereof, which elect
216 to participate as provided by Section 25-11-105 (f), including the
217 position of elected or fee officials of the counties and their
218 deputies and employees performing public services or any
219 department, independent agency, board or commission thereof, and
220 shall also include all offices and positions of trust or
221 employment in the employ of joint state and federal agencies
222 administering state and federal funds and service rendered by
223 employees of the public schools. Effective July 1, 1973, all
224 nonprofessional public school employees, such as bus drivers,
225 janitors, maids, maintenance workers and cafeteria employees,
226 shall have the option to become members in accordance with Section
227 25-11-105(b), and shall be eligible to receive credit for services

228 prior to July 1, 1973, provided the contributions and interest are
229 paid by the employee in accordance with said section; provided,
230 further, that the county or municipal separate school district may
231 pay the employer contribution and pro rata share of interest of
232 the retroactive service from available funds. From and after July
233 1, 1998, retroactive service credit shall be purchased at the
234 actuarial cost in accordance with Section 25-11-105(b).

235 (aa) "Withdrawal from service" shall mean complete
236 severance of employment in the state service of any member by
237 resignation, dismissal or discharge.

238 (bb) The masculine pronoun, wherever used, shall
239 include the feminine pronoun.

240 SECTION 2. This act shall take effect and be in force from
241 and after July 1, 1999.