

By: Taylor

To: Appropriations

HOUSE BILL NO. 213

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT ANY STATE EMPLOYEE WHO RETIRES UNDER THE PUBLIC  
3 EMPLOYEES' RETIREMENT SYSTEM WITH UNUSED PERSONAL LEAVE IN EXCESS  
4 OF 30 DAYS SHALL HAVE HIS OR HER AVERAGE COMPENSATION INCREASED BY  
5 THE AMOUNT OF COMPENSATION THAT THE MEMBER WOULD HAVE BEEN PAID  
6 FOR THE NUMBER OF PERSONAL LEAVE DAYS IN EXCESS OF 30 DAYS IF THE  
7 MEMBER HAD USED THOSE PERSONAL LEAVE DAYS BEFORE RETIREMENT; AND  
8 FOR RELATED PURPOSES.

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:[RF1]

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.

29 (d) "Actuarial tables" shall mean such tables of  
30 mortality and rates of interest as shall be adopted by the board  
31 in accordance with the recommendation of the actuary.

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

34 (f) "Average compensation" shall mean the average of  
35 the four (4) highest years of earned compensation reported for an  
36 employee in a fiscal or calendar year period, or combination  
37 thereof which do not overlap, or the last forty-eight (48)  
38 consecutive months of earned compensation reported for an  
39 employee. The four (4) years need not be successive or joined  
40 years of service. In no case shall the average compensation so  
41 determined be in excess of One Hundred Twenty-five Thousand  
42 Dollars (\$125,000.00). In computing the average compensation, any  
43 amount paid in a lump sum for personal leave shall be included in  
44 the calculation to the extent that such amount does not exceed an  
45 amount which is equal to thirty (30) days of earned compensation  
46 and to the extent that it does not cause the employees' earned  
47 compensation to exceed the maximum reportable amount specified in  
48 Section 25-11-103(k); provided, however, that such thirty-day  
49 limitation shall not prevent the inclusion in the calculation of  
50 leave earned under federal regulations prior to July 1, 1976, and  
51 frozen as of that date as referred to in Section 25-3-99. Only  
52 the amount of lump sum pay for personal leave due and paid upon  
53 the death of a member attributable for up to one hundred fifty  
54 (150) days shall be used in the deceased member's average  
55 compensation calculation in determining the beneficiary's

56 benefits. In computing the average compensation, no amounts shall  
57 be used which are in excess of the amount on which contributions  
58 were required and paid, except as otherwise authorized in this  
59 paragraph. If any member who is or has been granted any increase  
60 in annual salary or compensation of more than eight percent (8%)  
61 retires within twenty-four (24) months from the date that such  
62 increase becomes effective, then the board shall exclude that part  
63 of the increase in salary or compensation that exceeds eight  
64 percent (8%) in calculating that member's average compensation for  
65 retirement purposes. The board may enforce this provision by rule  
66 or regulation. However, increases in compensation in excess of  
67 eight percent (8%) per year granted within twenty-four (24) months  
68 of the date of retirement may be included in such calculation of  
69 average compensation if satisfactory proof is presented to the  
70 board showing that the increase in compensation was the result of  
71 an actual change in the position held or services rendered, or  
72 that such compensation increase was authorized by the State  
73 Personnel Board or was increased as a result of statutory  
74 enactment, and the employer furnishes an affidavit stating that  
75 such increase granted within the last twenty-four (24) months was  
76 not contingent on a promise or agreement of the employee to  
77 retire. Nothing in Section 25-3-31 shall affect the calculation  
78 of the average compensation of any member for the purposes of this  
79 article. The average compensation of any member who retires  
80 before July 1, 1992, shall not exceed the annual salary of the  
81 Governor. Notwithstanding any provision of this paragraph to the  
82 contrary, any member who retires with unused personal leave in  
83 excess of thirty (30) days earned under Section 25-3-93 shall have

84 his or her average compensation increased by the amount of  
85 compensation that the member would have been paid for the number  
86 of personal leave days in excess of thirty (30) days if the member  
87 had used those personal leave days before retirement.

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

99 (h) "Board" shall mean the board of trustees provided  
100 in Section 25-11-15 to administer the retirement system herein  
101 created.

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

112 subdivision of the state to adopt such vacation and sick leave  
113 policies as it deems necessary.

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

120 (k) "Earned compensation" shall mean the full amount  
121 earned by an employee for a given pay period including any  
122 maintenance furnished up to a maximum of One Hundred Twenty-five  
123 Thousand Dollars (\$125,000.00) per year, and proportionately for  
124 less than one (1) year of service. The value of such maintenance  
125 when not paid in money shall be fixed by the employing state  
126 agency, and, in case of doubt, by the board of trustees as defined  
127 in Section 25-11-15. In any case, earned compensation shall be  
128 limited to the regular periodic compensation paid, exclusive of  
129 litigation fees, bond fees, and other similar extraordinary  
130 nonrecurring payments. In addition, any member in a covered  
131 position, as defined by Public Employees' Retirement System laws  
132 and regulations, who is also employed by another covered agency or  
133 political subdivision shall have the earnings of that additional  
134 employment reported to the Public Employees' Retirement System  
135 regardless of whether the additional employment is sufficient in  
136 itself to be a covered position. In the case of fee officials,  
137 the net earnings from their office after deduction of expenses  
138 shall apply, except that in no case shall earned compensation be  
139 less than the total direct payments made by the state or

140 governmental subdivisions to the official, and employer and  
141 employee contributions shall be paid thereon. In the case of  
142 members of the state Legislature, all remuneration or amounts  
143 paid, except mileage allowance, shall apply. The amount by which  
144 an eligible employee's salary is reduced pursuant to a salary  
145 reduction agreement authorized under Section 25-17-5 shall be  
146 included as earned compensation under this paragraph, provided  
147 this inclusion does not conflict with federal law, including  
148 federal regulations and federal administrative interpretations  
149 thereunder, pertaining to the Federal Insurance Contributions Act  
150 or to Internal Revenue Code Section 125 cafeteria plans.

151 Compensation in addition to an employee's base salary that is paid  
152 to the employee pursuant to the vacation and sick leave policies  
153 of a municipality or other political subdivision of the state that  
154 employs him which exceeds the maximums authorized by Section  
155 25-3-91 et seq., shall be excluded from the calculation of earned  
156 compensation under this article. The maximum salary applicable  
157 for retirement purposes before July 1, 1992, shall be the salary  
158 of the Governor. Nothing in Section 25-3-31 shall affect the  
159 determination of the earned compensation of any member for the  
160 purposes of this article.

161 (l) "Employee" means any person legally occupying a  
162 position in the state service, and shall include the employees of  
163 the retirement system created hereunder.

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

167 (n) "Executive director" shall mean the secretary to

168 the board of trustees, as provided in Section 25-11-15(9), and the  
169 administrator of the Public Employees' Retirement System and all  
170 systems under the management of the board of trustees. Wherever  
171 the term "Executive Secretary of the Public Employees' Retirement  
172 System" or "executive secretary" appears in this article or in any  
173 other provision of law, it shall be construed to mean the  
174 Executive Director of the Public Employees' Retirement System.

175 (o) "Fiscal year" shall mean the period beginning on  
176 July 1 of any year and ending on June 30 of the next succeeding  
177 year.

178 (p) "Medical board" shall mean the board of physicians  
179 or any governmental or nongovernmental disability determination  
180 service designated by the board of trustees that is qualified to  
181 make disability determinations as provided for in Section  
182 25-11-119.

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

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

187 (s) "Position" means any office or any employment in  
188 the state service, or two (2) or more of them, the duties of which  
189 call for services to be rendered by one (1) person, including  
190 positions jointly employed by federal and state agencies  
191 administering federal and state funds. The employer shall  
192 determine upon initial employment and during the course of  
193 employment of an employee who does not meet the criteria for  
194 coverage in the Public Employees' Retirement System based on the  
195 position held, whether the employee is or becomes eligible for

196 coverage in the Public Employees' Retirement System based upon any  
197 other employment in a covered agency or political subdivision. If  
198 or when the employee meets the eligibility criteria for coverage  
199 in such other position, then the employer must withhold  
200 contributions and report wages from the noncovered position in  
201 accordance with the provisions for reporting of earned  
202 compensation. Failure to deduct and report those contributions  
203 shall not relieve the employee or employer of liability thereof.  
204 The board shall adopt such rules and regulations as necessary to  
205 implement and enforce this provision.

206 (t) "Prior service" shall mean service rendered before  
207 February 1, 1953, for which credit is allowable under Sections  
208 25-11-105 and 25-11-109, and which shall allow prior service for  
209 any person who is now or becomes a member of the Public Employees'  
210 Retirement System and who does contribute to the system for a  
211 minimum period of four (4) years.

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

215 (v) "Retirement allowance" shall mean an annuity for  
216 life as provided in this article, payable each year in twelve (12)  
217 equal monthly installments beginning as of the date fixed by the  
218 board. The retirement allowance shall be calculated in accordance  
219 with Section 25-11-111. Provided, any spouse who received a  
220 spouse retirement benefit in accordance with Section 25-11-111(d)  
221 prior to March 31, 1971, and said benefits were terminated because  
222 of eligibility for a Social Security benefit, may again receive  
223 his spouse retirement benefit from and after making application



224 with the board of trustees to reinstate such spouse retirement  
225 benefit.

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

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

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

234 (z) "State service" shall mean all offices and  
235 positions of trust or employment in the employ of the state, or  
236 any political subdivision or instrumentality thereof, which elect  
237 to participate as provided by Section 25-11-105(f), including the  
238 position of elected or fee officials of the counties and their  
239 deputies and employees performing public services or any  
240 department, independent agency, board or commission thereof, and  
241 shall also include all offices and positions of trust or  
242 employment in the employ of joint state and federal agencies  
243 administering state and federal funds and service rendered by  
244 employees of the public schools. Effective July 1, 1973, all  
245 nonprofessional public school employees, such as bus drivers,  
246 janitors, maids, maintenance workers and cafeteria employees,  
247 shall have the option to become members in accordance with Section  
248 25-11-105(b), and shall be eligible to receive credit for services  
249 prior to July 1, 1973, provided the contributions and interest are  
250 paid by the employee in accordance with said section; provided,  
251 further, that the county or municipal separate school district may

252 pay the employer contribution and pro rata share of interest of  
253 the retroactive service from available funds. From and after July  
254 1, 1998, retroactive service credit shall be purchased at the  
255 actuarial cost in accordance with Section 25-11-105(b).

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

259 (bb) The masculine pronoun, wherever used, shall  
260 include the feminine pronoun.

261 SECTION 2. This act shall take effect and be in force from  
262 and after July 1, 2000.