

By: Representative Taylor

To: Appropriations

HOUSE BILL NO. 250

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:

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 Fifty Thousand Dollars  
42 (\$150,000.00). In computing the average compensation, any amount  
43 paid in a lump sum for personal leave shall be included in the  
44 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); however, this thirty-day limitation shall  
49 not prevent the inclusion in the calculation of leave earned under  
50 federal regulations prior to July 1, 1976, and frozen as of that  
51 date as referred to in Section 25-3-99. Only the amount of lump  
52 sum pay for personal leave due and paid upon the death of a member  
53 attributable for up to one hundred fifty (150) days shall be used  
54 in the deceased member's average compensation calculation in  
55 determining the beneficiary's benefits. In computing the average  
56 compensation, no amounts shall be used which are in excess of the  
57 amount on which contributions were required and paid, except as  
58 otherwise authorized in this paragraph. If any member who is or  
59 has been granted any increase in annual salary or compensation of  
60 more than eight percent (8%) retires within twenty-four (24)  
61 months from the date that such increase becomes effective, then



62 the board shall exclude that part of the increase in salary or  
63 compensation that exceeds eight percent (8%) in calculating that  
64 member's average compensation for retirement purposes. The board  
65 may enforce this provision by rule or regulation. However,  
66 increases in compensation in excess of eight percent (8%) per year  
67 granted within twenty-four (24) months of the date of retirement  
68 may be included in such calculation of average compensation if  
69 satisfactory proof is presented to the board showing that the  
70 increase in compensation was the result of an actual change in the  
71 position held or services rendered, or that such compensation  
72 increase was authorized by the State Personnel Board or was  
73 increased as a result of statutory enactment, and the employer  
74 furnishes an affidavit stating that such increase granted within  
75 the last twenty-four (24) months was not contingent on a promise  
76 or agreement of the employee to retire. Nothing in Section  
77 25-3-31 shall affect the calculation of the average compensation  
78 of any member for the purposes of this article. The average  
79 compensation of any member who retires before July 1, 1992, shall  
80 not exceed the annual salary of the Governor. Notwithstanding any  
81 provision of this paragraph to the contrary, any member who  
82 retires with unused personal leave in excess of thirty (30) days  
83 earned under Section 25-3-93 shall have his or her average  
84 compensation increased by the amount of compensation that the  
85 member would have been paid for the number of personal leave days  
86 in excess of thirty (30) days if the member had used those  
87 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 on the basis that the member  
93 has less than four (4) years of service credit and/or has not been  
94 married for a minimum of one (1) year or the spouse has waived his



95 or her entitlement to a retirement allowance pursuant to Section  
96 25-11-114, the lawful spouse of a member at the time of the death  
97 of such member shall be the beneficiary of such member unless the  
98 member has designated another beneficiary subsequent to the date  
99 of marriage in writing, and filed such writing in the office of  
100 the executive director of the board of trustees. No designation  
101 or change of beneficiary shall be made in any other manner.

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

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

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

123 (k) "Earned compensation" shall mean the full amount  
124 earned by an employee for a given pay period including any  
125 maintenance furnished up to a maximum of One Hundred Fifty  
126 Thousand Dollars (\$150,000.00) per year, and proportionately for  
127 less than one (1) year of service. The value of such maintenance



128 when not paid in money shall be fixed by the employing state  
129 agency, and, in case of doubt, by the board of trustees as defined  
130 in Section 25-11-15. In any case, earned compensation shall be  
131 limited to the regular periodic compensation paid, exclusive of  
132 litigation fees, bond fees, and other similar extraordinary  
133 nonrecurring payments. In addition, any member in a covered  
134 position, as defined by Public Employees' Retirement System laws  
135 and regulations, who is also employed by another covered agency or  
136 political subdivision shall have the earnings of that additional  
137 employment reported to the Public Employees' Retirement System  
138 regardless of whether the additional employment is sufficient in  
139 itself to be a covered position. In addition, computation of  
140 earned compensation shall be governed by the following:

141           (i) In the case of constables, the net earnings  
142 from their office after deduction of expenses shall apply, except  
143 that in no case shall earned compensation be less than the total  
144 direct payments made by the state or governmental subdivisions to  
145 the official.

146           (ii) In the case of chancery or circuit clerks,  
147 the net earnings from their office after deduction of expenses  
148 shall apply as expressed in Section 25-11-123(f)(4).

149           (iii) In the case of members of the State  
150 Legislature, all remuneration or amounts paid, except mileage  
151 allowance, shall apply.

152           (iv) The amount by which an eligible employee's  
153 salary is reduced pursuant to a salary reduction agreement  
154 authorized under Section 25-17-5 shall be included as earned  
155 compensation under this paragraph, provided this inclusion does  
156 not conflict with federal law, including federal regulations and  
157 federal administrative interpretations thereunder, pertaining to  
158 the Federal Insurance Contributions Act or to Internal Revenue  
159 Code Section 125 cafeteria plans.



160                   (v) Compensation in addition to an employee's base  
161 salary that is paid to the employee pursuant to the vacation and  
162 sick leave policies of a municipality or other political  
163 subdivision of the state that employs him which exceeds the  
164 maximums authorized by Section 25-3-91 et seq. shall be excluded  
165 from the calculation of earned compensation under this article.

166                   (vi) The maximum salary applicable for retirement  
167 purposes before July 1, 1992, shall be the salary of the Governor.

168                   (vii) Nothing in Section 25-3-31 shall affect the  
169 determination of the earned compensation of any member for the  
170 purposes of this article.

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

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

177                   (n) "Executive director" shall mean the secretary to  
178 the board of trustees, as provided in Section 25-11-15(9), and the  
179 administrator of the Public Employees' Retirement System and all  
180 systems under the management of the board of trustees. Wherever  
181 the term "Executive Secretary of the Public Employees' Retirement  
182 System" or "executive secretary" appears in this article or in any  
183 other provision of law, it shall be construed to mean the  
184 Executive Director of the Public Employees' Retirement System.

185                   (o) "Fiscal year" shall mean the period beginning on  
186 July 1 of any year and ending on June 30 of the next succeeding  
187 year.

188                   (p) "Medical board" shall mean the board of physicians  
189 or any governmental or nongovernmental disability determination  
190 service designated by the board of trustees that is qualified to  
191 make disability determinations as provided for in Section  
192 25-11-119.



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

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

197 (s) "Position" means any office or any employment in  
198 the state service, or two (2) or more of them, the duties of which  
199 call for services to be rendered by one (1) person, including  
200 positions jointly employed by federal and state agencies  
201 administering federal and state funds. The employer shall  
202 determine upon initial employment and during the course of  
203 employment of an employee who does not meet the criteria for  
204 coverage in the Public Employees' Retirement System based on the  
205 position held, whether the employee is or becomes eligible for  
206 coverage in the Public Employees' Retirement System based upon any  
207 other employment in a covered agency or political subdivision. If  
208 or when the employee meets the eligibility criteria for coverage  
209 in such other position, then the employer must withhold  
210 contributions and report wages from the noncovered position in  
211 accordance with the provisions for reporting of earned  
212 compensation. Failure to deduct and report those contributions  
213 shall not relieve the employee or employer of liability thereof.  
214 The board shall adopt such rules and regulations as necessary to  
215 implement and enforce this provision.

216 (t) "Prior service" shall mean service rendered before  
217 February 1, 1953, for which credit is allowable under Sections  
218 25-11-105 and 25-11-109, and which shall allow prior service for  
219 any person who is now or becomes a member of the Public Employees'  
220 Retirement System and who does contribute to the system for a  
221 minimum period of four (4) years.

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



225           (v) "Retirement allowance" shall mean an annuity for  
226 life as provided in this article, payable each year in twelve (12)  
227 equal monthly installments beginning as of the date fixed by the  
228 board. The retirement allowance shall be calculated in accordance  
229 with Section 25-11-111. However, any spouse who received a spouse  
230 retirement benefit in accordance with Section 25-11-111(d) before  
231 March 31, 1971, and those benefits were terminated because of  
232 eligibility for a social security benefit, may again receive his  
233 spouse retirement benefit from and after making application with  
234 the board of trustees to reinstate the spouse retirement benefit.

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

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

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

243           (z) "State service" shall mean all offices and  
244 positions of trust or employment in the employ of the state, or  
245 any political subdivision or instrumentality thereof, which elect  
246 to participate as provided by Section 25-11-105(f), including the  
247 position of elected or fee officials of the counties and their  
248 deputies and employees performing public services or any  
249 department, independent agency, board or commission thereof, and  
250 shall also include all offices and positions of trust or  
251 employment in the employ of joint state and federal agencies  
252 administering state and federal funds and service rendered by  
253 employees of the public schools. Effective July 1, 1973, all  
254 nonprofessional public school employees, such as bus drivers,  
255 janitors, maids, maintenance workers and cafeteria employees,  
256 shall have the option to become members in accordance with Section  
257 25-11-105(b), and shall be eligible to receive credit for services





258 before July 1, 1973, provided that the contributions and interest  
259 are paid by the employee in accordance with that section; in  
260 addition, the county or municipal separate school district may pay  
261 the employer contribution and pro rata share of interest of the  
262 retroactive service from available funds. From and after July 1,  
263 1998, retroactive service credit shall be purchased at the  
264 actuarial cost in accordance with Section 25-11-105(b).

265 (aa) "Withdrawal from service" or "termination from  
266 service" shall mean complete severance of employment in the state  
267 service of any member by resignation, dismissal or discharge.

268 (bb) The masculine pronoun, wherever used, shall  
269 include the feminine pronoun.

270 **SECTION 2.** This act shall take effect and be in force from  
271 and after July 1, 2003.

