

By: Representative Reeves

To: Fees and Salaries of  
Public Officers;  
Appropriations

HOUSE BILL NO. 482

1 AN ACT TO PROVIDE THAT IF ANY STATE OFFICER OR EMPLOYEE EARNS  
2 ADDITIONAL COMPENSATION FOR WORKING OVERTIME, THE OFFICER OR  
3 EMPLOYEE SHALL RECEIVE THE FULL AMOUNT OF THAT COMPENSATION, EVEN  
4 IF IT CAUSES THE TOTAL AMOUNT OF HIS OR HER COMPENSATION TO EXCEED  
5 THE SALARY OF THE EXECUTIVE HEAD OF THE STATE AGENCY OR DEPARTMENT  
6 IN WHICH THE PERSON IS EMPLOYED; TO PROVIDE THAT THE ADDITIONAL  
7 COMPENSATION FOR WORKING OVERTIME SHALL BE CONSIDERED AS PART OF  
8 THE TOTAL COMPENSATION OF THE OFFICER OR EMPLOYEE FOR RETIREMENT  
9 PURPOSES AND FOR ALL OTHER PURPOSES UNDER STATE LAW; TO AMEND  
10 SECTIONS 25-3-39 AND 25-11-103, MISSISSIPPI CODE OF 1972, TO  
11 CONFORM TO THE PRECEDING PROVISIONS; TO PROVIDE THAT THIS ACT  
12 SHALL APPLY RETROACTIVELY WITH REGARD TO ANY ADDITIONAL  
13 COMPENSATION EARNED BY ANY STATE OFFICER OR EMPLOYEE FOR WORKING  
14 OVERTIME ON OR AFTER JULY 1, 2001; AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** If any officer or employee of the State of  
17 Mississippi earns additional compensation for working overtime,  
18 the officer or employee shall receive the full amount of that  
19 compensation, even if it causes the total amount of the  
20 compensation of the officer or employee to exceed the salary of  
21 the executive head of the state agency or department in which the  
22 person is employed. The additional compensation for working  
23 overtime shall be considered as part of the total compensation of  
24 the officer or employee for the purposes of the Public Employees'  
25 Retirement System and the Highway Safety Patrol Retirement System,  
26 and for all other purposes under state law.

27 **SECTION 2.** Section 25-3-39, Mississippi Code of 1972, is  
28 amended as follows:

29 25-3-39. (1) No public officer, public employee,  
30 administrator, or executive head of any arm or agency of the  
31 state, in the executive branch of government, shall be paid a  
32 salary or compensation, directly or indirectly, in excess of the  
33 salary fixed in Section 25-3-31 for the Governor. All academic



34 officials, members of the teaching staffs and employees of the  
35 state institutions of higher learning, the State Board for  
36 Community and Junior Colleges, and community and junior colleges,  
37 and licensed physicians who are public employees, shall be exempt  
38 from this subsection. In addition, the Executive Director of the  
39 Mississippi Development Authority and the Chief of Staff of the  
40 Governor's Office shall be exempt from this subsection. The  
41 Governor shall fix the annual salary of the Executive Director of  
42 the Mississippi Development Authority and the annual salary of the  
43 Chief of Staff of the Governor's Office, which salaries shall be  
44 completely paid by the state and may not be supplemented with any  
45 funds from any source, including federal or private funds. \* \* \*  
46 However, \* \* \* the salary of the Executive Director of the  
47 Mississippi Development Authority and the Governor's Chief of  
48 Staff shall not be greater than fifty percent (50%) in excess of  
49 the salary of the Governor.

50 (2) Except as otherwise provided in this subsection, no  
51 public officer, employee or administrator shall be paid a salary  
52 or compensation, directly or indirectly, in excess of the salary  
53 of the executive head of the state agency or department in which  
54 he is employed. The State Personnel Board, based upon its  
55 findings of fact, may exempt physicians and actuaries from this  
56 subsection when the acquisition of those professional services is  
57 precluded based on the prevailing wage in the relevant labor  
58 market. This subsection shall not prohibit any public officer,  
59 employee or administrator from receiving the full amount of any  
60 additional compensation earned for working overtime, even if that  
61 additional compensation causes the total amount of the  
62 compensation of the officer, employee or administrator to exceed  
63 the salary of the executive head of the state agency or department  
64 in which the person is employed.

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



67           25-11-103. The following words and phrases as used in  
68 Articles 1 and 3, unless a different meaning is plainly required  
69 by the context, shall have the following meanings:

70           (a) "Accumulated contributions" shall mean the sum of  
71 all the amounts deducted from the compensation of a member and  
72 credited to his individual account in the annuity savings account,  
73 together with regular interest thereon as provided in Section  
74 25-11-123.

75           (b) "Actuarial cost" shall mean the amount of funds  
76 presently required to provide future benefits as determined by the  
77 board based on applicable tables and formulas provided by the  
78 actuary.

79           (c) "Actuarial equivalent" shall mean a benefit of  
80 equal value to the accumulated contributions, annuity or benefit,  
81 as the case may be, when computed upon the basis of such mortality  
82 tables as shall be adopted by the board of trustees, and regular  
83 interest.

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

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

89           (f) "Average compensation" shall mean the average of  
90 the four (4) highest years of earned compensation reported for an  
91 employee in a fiscal or calendar year period, or combination  
92 thereof which do not overlap, or the last forty-eight (48)  
93 consecutive months of earned compensation reported for an  
94 employee. The four (4) years need not be successive or joined  
95 years of service. In no case shall the average compensation so  
96 determined be in excess of One Hundred Fifty Thousand Dollars  
97 (\$150,000.00). In computing the average compensation, any amount  
98 paid in a lump sum for personal leave shall be included in the  
99 calculation to the extent that such amount does not exceed an



100 amount which is equal to thirty (30) days of earned compensation  
101 and to the extent that it does not cause the employees' earned  
102 compensation to exceed the maximum reportable amount specified in  
103 Section 25-11-103(k); however, this thirty-day limitation shall  
104 not prevent the inclusion in the calculation of leave earned under  
105 federal regulations prior to July 1, 1976, and frozen as of that  
106 date as referred to in Section 25-3-99. Only the amount of lump  
107 sum pay for personal leave due and paid upon the death of a member  
108 attributable for up to one hundred fifty (150) days shall be used  
109 in the deceased member's average compensation calculation in  
110 determining the beneficiary's benefits. In computing the average  
111 compensation, no amounts shall be used which are in excess of the  
112 amount on which contributions were required and paid. If any  
113 member who is or has been granted any increase in annual salary or  
114 compensation of more than eight percent (8%) retires within  
115 twenty-four (24) months from the date that such increase becomes  
116 effective, then the board shall exclude that part of the increase  
117 in salary or compensation that exceeds eight percent (8%) in  
118 calculating that member's average compensation for retirement  
119 purposes. The board may enforce this provision by rule or  
120 regulation. However, increases in compensation in excess of eight  
121 percent (8%) per year granted within twenty-four (24) months of  
122 the date of retirement may be included in such calculation of  
123 average compensation if satisfactory proof is presented to the  
124 board showing that the increase in compensation was the result of  
125 an actual change in the position held or services rendered, or  
126 that such compensation increase was authorized by the State  
127 Personnel Board or was increased as a result of statutory  
128 enactment, and the employer furnishes an affidavit stating that  
129 such increase granted within the last twenty-four (24) months was  
130 not contingent on a promise or agreement of the employee to  
131 retire. Nothing in Section 25-3-31 shall affect the calculation  
132 of the average compensation of any member for the purposes of this



133 article. The average compensation of any member who retires  
134 before July 1, 1992, shall not exceed the annual salary of the  
135 Governor.

136 (g) "Beneficiary" shall mean any person entitled to  
137 receive a retirement allowance, an annuity or other benefit as  
138 provided by Articles 1 and 3. In the event of the death prior to  
139 retirement of any member whose spouse and/or children are not  
140 entitled to a retirement allowance on the basis that the member  
141 has less than four (4) years of service credit and/or has not been  
142 married for a minimum of one (1) year or the spouse has waived his  
143 or her entitlement to a retirement allowance pursuant to Section  
144 25-11-114, the lawful spouse of a member at the time of the death  
145 of such member shall be the beneficiary of such member unless the  
146 member has designated another beneficiary subsequent to the date  
147 of marriage in writing, and filed such writing in the office of  
148 the executive director of the board of trustees. No designation  
149 or change of beneficiary shall be made in any other manner.

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

153 (i) "Creditable service" shall mean "prior service,"  
154 "retroactive service" and all lawfully credited unused leave not  
155 exceeding the accrual rates and limitations provided in Section  
156 25-3-91 et seq., as of the date of withdrawal from service plus  
157 "membership service" for which credit is allowable as provided in  
158 Section 25-11-109. Except to limit creditable service reported to  
159 the system for the purpose of computing an employee's retirement  
160 allowance or annuity or benefits provided in this article, nothing  
161 in this paragraph shall limit or otherwise restrict the power of  
162 the governing authority of a municipality or other political  
163 subdivision of the state to adopt such vacation and sick leave  
164 policies as it deems necessary.



165           (j) "Child" means either a natural child of the member,  
166 a child that has been made a child of the member by applicable  
167 court action before the death of the member, or a child under the  
168 permanent care of the member at the time of the latter's death,  
169 which permanent care status shall be determined by evidence  
170 satisfactory to the board.

171           (k) "Earned compensation" shall mean the full amount  
172 earned by an employee for a given pay period including any  
173 maintenance furnished up to a maximum of One Hundred Fifty  
174 Thousand Dollars (\$150,000.00) per year, and proportionately for  
175 less than one (1) year of service. The value of such maintenance  
176 when not paid in money shall be fixed by the employing state  
177 agency, and, in case of doubt, by the board of trustees as defined  
178 in Section 25-11-15. In any case, earned compensation shall be  
179 limited to the regular periodic compensation paid, exclusive of  
180 litigation fees, bond fees, and other similar extraordinary  
181 nonrecurring payments, except as otherwise provided in this  
182 paragraph (k). In addition, any member in a covered position, as  
183 defined by Public Employees' Retirement System laws and  
184 regulations, who is also employed by another covered agency or  
185 political subdivision shall have the earnings of that additional  
186 employment reported to the Public Employees' Retirement System  
187 regardless of whether the additional employment is sufficient in  
188 itself to be a covered position. In addition, computation of  
189 earned compensation shall be governed by the following:

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

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



198 (iii) In the case of members of the State  
199 Legislature, all remuneration or amounts paid, except mileage  
200 allowance, shall apply.

201 (iv) In the case of state officers and employees,  
202 earned compensation shall include any additional compensation  
203 earned for working overtime.

204 (v) The amount by which an eligible employee's  
205 salary is reduced pursuant to a salary reduction agreement  
206 authorized under Section 25-17-5 shall be included as earned  
207 compensation under this paragraph, provided this inclusion does  
208 not conflict with federal law, including federal regulations and  
209 federal administrative interpretations thereunder, pertaining to  
210 the Federal Insurance Contributions Act or to Internal Revenue  
211 Code Section 125 cafeteria plans.

212 (vi) Compensation in addition to an employee's  
213 base salary that is paid to the employee pursuant to the vacation  
214 and sick leave policies of a municipality or other political  
215 subdivision of the state that employs him which exceeds the  
216 maximums authorized by Section 25-3-91 et seq. shall be excluded  
217 from the calculation of earned compensation under this article.

218 (vii) The maximum salary applicable for retirement  
219 purposes before July 1, 1992, shall be the salary of the Governor.

220 (viii) Nothing in Section 25-3-31 shall affect the  
221 determination of the earned compensation of any member for the  
222 purposes of this article.

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

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

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



231 administrator of the Public Employees' Retirement System and all  
232 systems under the management of the board of trustees. Wherever  
233 the term "Executive Secretary of the Public Employees' Retirement  
234 System" or "executive secretary" appears in this article or in any  
235 other provision of law, it shall be construed to mean the  
236 Executive Director of the Public Employees' Retirement System.

237 (o) "Fiscal year" shall mean the period beginning on  
238 July 1 of any year and ending on June 30 of the next succeeding  
239 year.

240 (p) "Medical board" shall mean the board of physicians  
241 or any governmental or nongovernmental disability determination  
242 service designated by the board of trustees that is qualified to  
243 make disability determinations as provided for in Section  
244 25-11-119.

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

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

249 (s) "Position" means any office or any employment in  
250 the state service, or two (2) or more of them, the duties of which  
251 call for services to be rendered by one (1) person, including  
252 positions jointly employed by federal and state agencies  
253 administering federal and state funds. The employer shall  
254 determine upon initial employment and during the course of  
255 employment of an employee who does not meet the criteria for  
256 coverage in the Public Employees' Retirement System based on the  
257 position held, whether the employee is or becomes eligible for  
258 coverage in the Public Employees' Retirement System based upon any  
259 other employment in a covered agency or political subdivision. If  
260 or when the employee meets the eligibility criteria for coverage  
261 in such other position, then the employer must withhold  
262 contributions and report wages from the noncovered position in  
263 accordance with the provisions for reporting of earned



264 compensation. Failure to deduct and report those contributions  
265 shall not relieve the employee or employer of liability thereof.  
266 The board shall adopt such rules and regulations as necessary to  
267 implement and enforce this provision.

268 (t) "Prior service" shall mean service rendered before  
269 February 1, 1953, for which credit is allowable under Sections  
270 25-11-105 and 25-11-109, and which shall allow prior service for  
271 any person who is now or becomes a member of the Public Employees'  
272 Retirement System and who does contribute to the system for a  
273 minimum period of four (4) years.

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

277 (v) "Retirement allowance" shall mean an annuity for  
278 life as provided in this article, payable each year in twelve (12)  
279 equal monthly installments beginning as of the date fixed by the  
280 board. The retirement allowance shall be calculated in accordance  
281 with Section 25-11-111. However, any spouse who received a spouse  
282 retirement benefit in accordance with Section 25-11-111(d) before  
283 March 31, 1971, and those benefits were terminated because of  
284 eligibility for a social security benefit, may again receive his  
285 spouse retirement benefit from and after making application with  
286 the board of trustees to reinstate the spouse retirement benefit.

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

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

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

295 (z) "State service" shall mean all offices and  
296 positions of trust or employment in the employ of the state, or



297 any political subdivision or instrumentality thereof, which elect  
298 to participate as provided by Section 25-11-105(f), including the  
299 position of elected or fee officials of the counties and their  
300 deputies and employees performing public services or any  
301 department, independent agency, board or commission thereof, and  
302 shall also include all offices and positions of trust or  
303 employment in the employ of joint state and federal agencies  
304 administering state and federal funds and service rendered by  
305 employees of the public schools. Effective July 1, 1973, all  
306 nonprofessional public school employees, such as bus drivers,  
307 janitors, maids, maintenance workers and cafeteria employees,  
308 shall have the option to become members in accordance with Section  
309 25-11-105(b), and shall be eligible to receive credit for services  
310 before July 1, 1973, provided that the contributions and interest  
311 are paid by the employee in accordance with that section; in  
312 addition, the county or municipal separate school district may pay  
313 the employer contribution and pro rata share of interest of the  
314 retroactive service from available funds. From and after July 1,  
315 1998, retroactive service credit shall be purchased at the  
316 actuarial cost in accordance with Section 25-11-105(b).

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

320 (bb) The masculine pronoun, wherever used, shall  
321 include the feminine pronoun.

322 **SECTION 4.** The provisions of this act shall apply  
323 retroactively with regard to any additional compensation earned by  
324 any officer or employee of the State of Mississippi for working  
325 overtime on or after July 1, 2001.

326 **SECTION 5.** This act shall take effect and be in force from  
327 and after its passage.

