

By: Representative Watson

To: Appropriations

HOUSE BILL NO. 573

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF THE TERM "EARNED COMPENSATION" UNDER
3 THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM LAWS TO INCLUDE CERTAIN
4 EXPENSE ALLOWANCES AND REIMBURSEMENTS RECEIVED BY JUSTICES OF THE
5 SUPREME COURT AND JUDGES OF THE COURT OF APPEALS; AND FOR RELATED
6 PURPOSES.

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

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

10 25-11-103. The following words and phrases as used in
11 Articles 1 and 3, unless a different meaning is plainly required
12 by the context, shall have the following meanings:

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

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

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

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



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

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



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

79 (g) "Beneficiary" shall mean any person entitled to
80 receive a retirement allowance, an annuity or other benefit as
81 provided by Articles 1 and 3. In the event of the death prior to
82 retirement of any member whose spouse and/or children are not
83 entitled to a retirement allowance on the basis that the member
84 has less than four (4) years of service credit and/or has not been
85 married for a minimum of one (1) year or the spouse has waived his
86 or her entitlement to a retirement allowance pursuant to Section
87 25-11-114, the lawful spouse of a member at the time of the death
88 of such member shall be the beneficiary of such member unless the
89 member has designated another beneficiary subsequent to the date
90 of marriage in writing, and filed such writing in the office of
91 the executive director of the board of trustees. No designation
92 or change of beneficiary shall be made in any other manner.

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



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

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

114 (k) "Earned compensation" shall mean the full amount
115 earned by an employee for a given pay period including any
116 maintenance furnished up to a maximum of One Hundred Fifty
117 Thousand Dollars (\$150,000.00) per year, and proportionately for
118 less than one (1) year of service. The value of such maintenance
119 when not paid in money shall be fixed by the employing state
120 agency, and, in case of doubt, by the board of trustees as defined
121 in Section 25-11-15. In any case, earned compensation shall be
122 limited to the regular periodic compensation paid, exclusive of
123 litigation fees, bond fees, and other similar extraordinary
124 nonrecurring payments. In addition, any member in a covered
125 position, as defined by Public Employees' Retirement System laws
126 and regulations, who is also employed by another covered agency or
127 political subdivision shall have the earnings of that additional
128 employment reported to the Public Employees' Retirement System



129 regardless of whether the additional employment is sufficient in
130 itself to be a covered position. In addition, computation of
131 earned compensation shall be governed by the following:

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

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

140 (iii) In the case of members of the State
141 Legislature, all remuneration or amounts paid, except mileage
142 allowance, shall apply.

143 (iv) In the case of justices of the Supreme Court
144 and judges of the Court of Appeals, all remunerations and amounts
145 paid, including expense allowances and reimbursements paid under
146 Sections 25-3-41 and 25-3-43, shall apply.

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

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



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

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

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

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

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

180 (o) "Fiscal year" shall mean the period beginning on
181 July 1 of any year and ending on June 30 of the next succeeding
182 year.

183 (p) "Medical board" shall mean the board of physicians
184 or any governmental or nongovernmental disability determination
185 service designated by the board of trustees that is qualified to
186 make disability determinations as provided for in Section
187 25-11-119.

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

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

192 (s) "Position" means any office or any employment in
193 the state service, or two (2) or more of them, the duties of which



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

211 (t) "Prior service" shall mean service rendered before
212 February 1, 1953, for which credit is allowable under Sections
213 25-11-105 and 25-11-109, and which shall allow prior service for
214 any person who is now or becomes a member of the Public Employees'
215 Retirement System and who does contribute to the system for a
216 minimum period of four (4) years.

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

220 (v) "Retirement allowance" shall mean an annuity for
221 life as provided in this article, payable each year in twelve (12)
222 equal monthly installments beginning as of the date fixed by the
223 board. The retirement allowance shall be calculated in accordance
224 with Section 25-11-111. However, any spouse who received a spouse
225 retirement benefit in accordance with Section 25-11-111(d) before
226 March 31, 1971, and those benefits were terminated because of



227 eligibility for a social security benefit, may again receive his
228 spouse retirement benefit from and after making application with
229 the board of trustees to reinstate the spouse retirement benefit.

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

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

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

238 (z) "State service" shall mean all offices and
239 positions of trust or employment in the employ of the state, or
240 any political subdivision or instrumentality thereof, which elect
241 to participate as provided by Section 25-11-105(f), including the
242 position of elected or fee officials of the counties and their
243 deputies and employees performing public services or any
244 department, independent agency, board or commission thereof, and
245 shall also include all offices and positions of trust or
246 employment in the employ of joint state and federal agencies
247 administering state and federal funds and service rendered by
248 employees of the public schools. Effective July 1, 1973, all
249 nonprofessional public school employees, such as bus drivers,
250 janitors, maids, maintenance workers and cafeteria employees,
251 shall have the option to become members in accordance with Section
252 25-11-105(b), and shall be eligible to receive credit for services
253 before July 1, 1973, provided that the contributions and interest
254 are paid by the employee in accordance with that section; in
255 addition, the county or municipal separate school district may pay
256 the employer contribution and pro rata share of interest of the
257 retroactive service from available funds. From and after July 1,
258 1998, retroactive service credit shall be purchased at the
259 actuarial cost in accordance with Section 25-11-105(b).



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

263 (bb) The masculine pronoun, wherever used, shall
264 include the feminine pronoun.

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

