HOUSE BILL NO. 573

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

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

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

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

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

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

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

(d) "Actuarial tables" shall mean such tables of mortality and rates of interest as shall be adopted by the board in accordance with the recommendation of the actuary.
(e) "Agency" shall mean any governmental body employing persons in the state service.

(f) "Average compensation" shall mean the average of the four (4) highest years of earned compensation reported for an employee in a fiscal or calendar year period, or combination thereof which do not overlap, or the last forty-eight (48) consecutive months of earned compensation reported for an employee. The four (4) years need not be successive or joined years of service. In no case shall the average compensation so determined be in excess of One Hundred Fifty Thousand Dollars ($150,000.00). In computing the average compensation, any amount paid in a lump sum for personal leave shall be included in the calculation to the extent that such amount does not exceed an amount which is equal to thirty (30) days of earned compensation and to the extent that it does not cause the employees' earned compensation to exceed the maximum reportable amount specified in Section 25-11-103(k); however, this thirty-day limitation shall not prevent the inclusion in the calculation of leave earned under federal regulations prior to July 1, 1976, and frozen as of that date as referred to in Section 25-3-99. Only the amount of lump sum pay for personal leave due and paid upon the death of a member attributable for up to one hundred fifty (150) days shall be used in the deceased member's average compensation calculation in determining the beneficiary's benefits. In computing the average compensation, no amounts shall be used which are in excess of the amount on which contributions were required and paid. If any member who is or has been granted any increase in annual salary or compensation of more than eight percent (8%) retires within twenty-four (24) months from the date that such increase becomes effective, then the board shall exclude that part of the increase in salary or compensation that exceeds eight percent (8%) in calculating that member's average compensation for retirement purposes. The board may enforce this provision by rule or
regulation. However, increases in compensation in excess of eight percent (8%) per year granted within twenty-four (24) months of the date of retirement may be included in such calculation of average compensation if satisfactory proof is presented to the board showing that the increase in compensation was the result of an actual change in the position held or services rendered, or that such compensation increase was authorized by the State Personnel Board or was increased as a result of statutory enactment, and the employer furnishes an affidavit stating that such increase granted within the last twenty-four (24) months was not contingent on a promise or agreement of the employee to retire. Nothing in Section 25-3-31 shall affect the calculation of the average compensation of any member for the purposes of this article. The average compensation of any member who retires before July 1, 1992, shall not exceed the annual salary of the Governor.

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

(h) "Board" shall mean the board of trustees provided in Section 25-11-15 to administer the retirement system herein created.
(i) "Creditable service" shall mean "prior service," "retroactive service" and all lawfully credited unused leave not exceeding the accrual rates and limitations provided in Section 25-3-91 et seq., as of the date of withdrawal from service plus "membership service" for which credit is allowable as provided in Section 25-11-109. Except to limit creditable service reported to the system for the purpose of computing an employee's retirement allowance or annuity or benefits provided in this article, nothing in this paragraph shall limit or otherwise restrict the power of the governing authority of a municipality or other political subdivision of the state to adopt such vacation and sick leave policies as it deems necessary.

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

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

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

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

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

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

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

(vi) Compensation in addition to an employee's base salary that is paid to the employee pursuant to the vacation and sick leave policies of a municipality or other political subdivision of the state that employs him which exceeds the maximums authorized by Section 25-3-91 et seq. shall be excluded from the calculation of earned compensation under this article.
(vii) The maximum salary applicable for retirement purposes before July 1, 1992, shall be the salary of the Governor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(z) "State service" shall mean all offices and
positions of trust or employment in the employ of the state, or
any political subdivision or instrumentality thereof, which elect
to participate as provided by Section 25-11-105(f), including the
position of elected or fee officials of the counties and their
deputies and employees performing public services or any
department, independent agency, board or commission thereof, and
shall also include all offices and positions of trust or
employment in the employ of joint state and federal agencies
administering state and federal funds and service rendered by
employees of the public schools. Effective July 1, 1973, all
nonprofessional public school employees, such as bus drivers,
janitors, maids, maintenance workers and cafeteria employees,
shall have the option to become members in accordance with Section
25-11-105(b), and shall be eligible to receive credit for services
before July 1, 1973, provided that the contributions and interest
are paid by the employee in accordance with that section; in
addition, the county or municipal separate school district may pay
the employer contribution and pro rata share of interest of the
retroactive service from available funds. From and after July 1,
1998, retroactive service credit shall be purchased at the
actuarial cost in accordance with Section 25-11-105(b).
(aa) "Withdrawal from service" or "termination from service" shall mean complete severance of employment in the state service of any member by resignation, dismissal or discharge.

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

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