

By: Senator(s) Tollison, Jackson (11th), Chamberlin, Browning, Gollott, Cuevas, Carmichael, Doxey, Walley, Albritton, Lee (47th), Jordan, Hyde-Smith, Lee (35th), Butler, Harden, Clarke, Thomas, Flowers, Thames, Harvey, Pickering, Horhn, Simmons, Jackson (15th), Burton

To: Finance

SENATE BILL NO. 2352

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE AMOUNT OF UNUSED LEAVE THAT FIREMEN AND POLICEMEN  
3 EMPLOYED BY POLITICAL SUBDIVISIONS WHO WORK SHIFTS THAT CAUSE THEM  
4 TO WORK IN EXCESS OF 200 HOURS PER MONTH SHALL BE ALLOWED TO  
5 REPORT TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR THE PURPOSE  
6 OF COMPUTING THEIR RETIREMENT ALLOWANCE; AND FOR RELATED 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, except as otherwise provided in this  
98 paragraph, all lawfully credited unused leave not exceeding the  
99 accrual rates and limitations provided in Section 25-3-91 et seq.,  
100 as of the date of withdrawal from service plus "membership  
101 service" for which credit is allowable as provided in Section  
102 25-11-109. Firemen and policemen employed by political  
103 subdivisions who are required to work shifts that cause them to  
104 work in excess of two hundred (200) hours per month shall be  
105 allowed to report to the system for the purpose of computing their  
106 retirement allowance or annuity or benefits provided in this  
107 article, all lawfully credited unused leave not to exceed one  
108 hundred fifty percent (150%) of the accrual rates authorized in  
109 Section 25-3-91 et seq. Except to limit creditable service  
110 reported to the system for the purpose of computing an employee's  
111 retirement allowance or annuity or benefits provided in this  
112 article, nothing in this paragraph shall limit or otherwise  
113 restrict the power of the governing authority of a municipality or  
114 other political subdivision of the state to adopt such vacation  
115 and sick leave policies as it deems necessary.

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

122           (k) "Earned compensation" shall mean the full amount  
123 earned by an employee for a given pay period including any  
124 maintenance furnished up to a maximum of One Hundred Fifty  
125 Thousand Dollars (\$150,000.00) per year, and proportionately for  
126 less than one (1) year of service. The value of such maintenance  
127 when not paid in money shall be fixed by the employing state  
128 agency, and, in case of doubt, by the board of trustees as defined

129 in Section 25-11-15. In any case, earned compensation shall be  
130 limited to the regular periodic compensation paid, exclusive of  
131 litigation fees, bond fees, and other similar extraordinary  
132 nonrecurring payments. In addition, any member in a covered  
133 position, as defined by Public Employees' Retirement System laws  
134 and regulations, who is also employed by another covered agency or  
135 political subdivision shall have the earnings of that additional  
136 employment reported to the Public Employees' Retirement System  
137 regardless of whether the additional employment is sufficient in  
138 itself to be a covered position. In addition, computation of  
139 earned compensation shall be governed by the following:

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

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

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

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

159 (v) Compensation in addition to an employee's base  
160 salary that is paid to the employee pursuant to the vacation and  
161 sick leave policies of a municipality or other political

162 subdivision of the state that employs him which exceeds the  
163 maximums authorized by Section 25-3-91 et seq. shall be excluded  
164 from the calculation of earned compensation under this article.

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

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

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

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

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

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

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

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

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

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

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

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

224           (v) "Retirement allowance" shall mean an annuity for  
225 life as provided in this article, payable each year in twelve (12)  
226 equal monthly installments beginning as of the date fixed by the

227 board. The retirement allowance shall be calculated in accordance  
228 with Section 25-11-111. However, any spouse who received a spouse  
229 retirement benefit in accordance with Section 25-11-111(d) before  
230 March 31, 1971, and those benefits were terminated because of  
231 eligibility for a social security benefit, may again receive his  
232 spouse retirement benefit from and after making application with  
233 the board of trustees to reinstate the spouse retirement benefit.

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

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

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

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



260 the employer contribution and pro rata share of interest of the  
261 retroactive service from available funds. From and after July 1,  
262 1998, retroactive service credit shall be purchased at the  
263 actuarial cost in accordance with Section 25-11-105(b).

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

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

269 **SECTION 2.** This act shall take effect and be in force from  
270 and after July 1, 2004.