

By: Representative Evans

To: Appropriations

## HOUSE BILL NO. 523

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT  
3 SYSTEM RETIRING ON OR AFTER JULY 1, 2007, WHEN DETERMINING THE  
4 MEMBER'S AVERAGE COMPENSATION BASED ON THE LAST 48 MONTHS OF  
5 EARNED COMPENSATION, THE AVERAGE COMPENSATION SHALL BE COMPUTED AS  
6 THE GREATER OF THE LAST 48 CONSECUTIVE MONTHS OF EARNED  
7 COMPENSATION REPORTED FOR THE MEMBER INCLUDING THE FINAL MONTHLY  
8 WAGE POSTING, OR THE 48 CONSECUTIVE MONTHS IMMEDIATELY PRECEDING  
9 THE FINAL MONTHLY WAGE POSTING AND EXCLUDING THE FINAL MONTHLY  
10 WAGE POSTING; AND FOR RELATED PURPOSES.

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

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

14 25-11-103. The following words and phrases as used in  
15 Articles 1 and 3, unless a different meaning is plainly required  
16 by the context, have the following meanings:

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

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

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

29 (d) "Actuarial tables" means such tables of mortality  
30 and rates of interest as adopted by the board in accordance with  
31 the recommendation of the actuary.

32           (e) "Agency" means any governmental body employing  
33 persons in the state service.

34           (f) "Average compensation" means the average of the  
35 four (4) highest years of earned compensation reported for an  
36 employee in a fiscal or calendar year period, or combination  
37 thereof that do not overlap, or the last forty-eight (48)  
38 consecutive months of earned compensation reported for an  
39 employee. For members retiring on or after July 1, 2007, in  
40 determining the average of the last forty-eight (48) consecutive  
41 months of earned compensation of the member, the following  
42 computation shall be used: the greater of (i) the last  
43 forty-eight (48) consecutive months of earned compensation  
44 reported for the member including the final monthly wage posting,  
45 or (ii) the forty-eight (48) consecutive months immediately  
46 preceding the final monthly wage posting and excluding the final  
47 monthly wage posting. The four (4) years need not be successive  
48 or joined years of service. In no case shall the average  
49 compensation so determined be in excess of One Hundred Fifty  
50 Thousand Dollars (\$150,000.00). In computing the average  
51 compensation, any amount lawfully paid in a lump sum for personal  
52 leave or major medical leave shall be included in the calculation  
53 to the extent that the amount does not exceed an amount that is  
54 equal to thirty (30) days of earned compensation and to the extent  
55 that it does not cause the employees' earned compensation to  
56 exceed the maximum reportable amount specified in Section  
57 25-11-103(k); however, this thirty-day limitation shall not  
58 prevent the inclusion in the calculation of leave earned under  
59 federal regulations before July 1, 1976, and frozen as of that  
60 date as referred to in Section 25-3-99. Only the amount of  
61 lump-sum pay for personal leave due and paid upon the death of a  
62 member attributable for up to one hundred fifty (150) days shall  
63 be used in the deceased member's average compensation calculation  
64 in determining the beneficiary's benefits. In computing the

65 average compensation, no amounts shall be used that are in excess  
66 of the amount on which contributions were required and paid, and  
67 no nontaxable amounts paid by the employer for health or life  
68 insurance premiums for the employee shall be used. If any member  
69 who is or has been granted any increase in annual salary or  
70 compensation of more than eight percent (8%) retires within  
71 twenty-four (24) months from the date that the increase becomes  
72 effective, then the board shall exclude that part of the increase  
73 in salary or compensation that exceeds eight percent (8%) in  
74 calculating that member's average compensation for retirement  
75 purposes. The board may enforce this provision by rule or  
76 regulation. However, increases in compensation in excess of eight  
77 percent (8%) per year granted within twenty-four (24) months of  
78 the date of retirement may be included in the calculation of  
79 average compensation if satisfactory proof is presented to the  
80 board showing that the increase in compensation was the result of  
81 an actual change in the position held or services rendered, or  
82 that the compensation increase was authorized by the State  
83 Personnel Board or was increased as a result of statutory  
84 enactment, and the employer furnishes an affidavit stating that  
85 the increase granted within the last twenty-four (24) months was  
86 not contingent on a promise or agreement of the employee to  
87 retire. Nothing in Section 25-3-31 shall affect the calculation  
88 of the average compensation of any member for the purposes of this  
89 article. The average compensation of any member who retires  
90 before July 1, 1992, shall not exceed the annual salary of the  
91 Governor.

92 (g) "Beneficiary" means any person entitled to receive  
93 a retirement allowance, an annuity or other benefit as provided by  
94 Articles 1 and 3. The term "beneficiary" may also include an  
95 organization, estate, trust or entity; however, a beneficiary  
96 designated or entitled to receive monthly payments under an  
97 optional settlement based on life contingency or pursuant to a

98 statutory monthly benefit may only be a natural person. In the  
99 event of the death before retirement of any member whose spouse  
100 and/or children are not entitled to a retirement allowance on the  
101 basis that the member has less than four (4) years of service  
102 credit and/or has not been married for a minimum of one (1) year  
103 or the spouse has waived his or her entitlement to a retirement  
104 allowance under Section 25-11-114, the lawful spouse of a member  
105 at the time of the death of the member shall be the beneficiary of  
106 the member unless the member has designated another beneficiary  
107 after the date of marriage in writing, and filed that writing in  
108 the office of the executive director of the board of trustees. No  
109 designation or change of beneficiary shall be made in any other  
110 manner.

111 (h) "Board" means the board of trustees provided in  
112 Section 25-11-15 to administer the retirement system created under  
113 this article.

114 (i) "Creditable service" means "prior service,"  
115 "retroactive service" and all lawfully credited unused leave not  
116 exceeding the accrual rates and limitations provided in Section  
117 25-3-91 et seq., as of the date of withdrawal from service plus  
118 "membership service" for which credit is allowable as provided in  
119 Section 25-11-109. Except to limit creditable service reported to  
120 the system for the purpose of computing an employee's retirement  
121 allowance or annuity or benefits provided in this article, nothing  
122 in this paragraph shall limit or otherwise restrict the power of  
123 the governing authority of a municipality or other political  
124 subdivision of the state to adopt such vacation and sick leave  
125 policies as it deems necessary.

126 (j) "Child" means either a natural child of the member,  
127 a child that has been made a child of the member by applicable  
128 court action before the death of the member, or a child under the  
129 permanent care of the member at the time of the latter's death,

130 which permanent care status shall be determined by evidence  
131 satisfactory to the board.

132 (k) "Earned compensation" means the full amount earned  
133 by an employee for a given pay period including any maintenance  
134 furnished up to a maximum of One Hundred Fifty Thousand Dollars  
135 (\$150,000.00) per year, and proportionately for less than one (1)  
136 year of service. The value of that maintenance when not paid in  
137 money shall be fixed by the employing state agency, and, in case  
138 of doubt, by the board of trustees as defined in Section 25-11-15.  
139 Earned compensation shall not include any nontaxable amounts paid  
140 by the employer for health or life insurance premiums for an  
141 employee. In any case, earned compensation shall be limited to  
142 the regular periodic compensation paid, exclusive of litigation  
143 fees, bond fees, and other similar extraordinary nonrecurring  
144 payments. In addition, any member in a covered position, as  
145 defined by Public Employees' Retirement System laws and  
146 regulations, who is also employed by another covered agency or  
147 political subdivision shall have the earnings of that additional  
148 employment reported to the Public Employees' Retirement System  
149 regardless of whether the additional employment is sufficient in  
150 itself to be a covered position. In addition, computation of  
151 earned compensation shall be governed by the following:

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

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

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

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

171                   (v) Compensation in addition to an employee's base  
172 salary that is paid to the employee under the vacation and sick  
173 leave policies of a municipality or other political subdivision of  
174 the state that employs him that exceeds the maximums authorized by  
175 Section 25-3-91 et seq. shall be excluded from the calculation of  
176 earned compensation under this article.

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

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

182                   (1) "Employee" means any person legally occupying a  
183 position in the state service, and shall include the employees of  
184 the retirement system created under this article.

185                   (m) "Employer" means the State of Mississippi or any of  
186 its departments, agencies or subdivisions from which any employee  
187 receives his compensation.

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

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

198           (p) "Medical board" means the board of physicians or  
199 any governmental or nongovernmental disability determination  
200 service designated by the board of trustees that is qualified to  
201 make disability determinations as provided for in Section  
202 25-11-119.

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

205           (r) "Membership service" means service as an employee  
206 rendered while a member of the retirement system.

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

226           (t) "Prior service" means service rendered before  
227 February 1, 1953, for which credit is allowable under Sections  
228 25-11-105 and 25-11-109, and which shall allow prior service for

229 any person who is now or becomes a member of the Public Employees'  
230 Retirement System and who does contribute to the system for a  
231 minimum period of four (4) years.

232 (u) "Regular interest" means interest compounded  
233 annually at such a rate as determined by the board in accordance  
234 with Section 25-11-121.

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

245 (w) "Retroactive service" means service rendered after  
246 February 1, 1953, for which credit is allowable under Section  
247 25-11-105(b) and Section 25-11-105(k).

248 (x) "System" means the Public Employees' Retirement  
249 System of Mississippi established and described in Section  
250 25-11-101.

251 (y) "State" means the State of Mississippi or any  
252 political subdivision thereof or instrumentality of the state.

253 (z) "State service" means all offices and positions of  
254 trust or employment in the employ of the state, or any political  
255 subdivision or instrumentality of the state, that elect to  
256 participate as provided by Section 25-11-105(f), including the  
257 position of elected or fee officials of the counties and their  
258 deputies and employees performing public services or any  
259 department, independent agency, board or commission thereof, and  
260 also includes all offices and positions of trust or employment in  
261 the employ of joint state and federal agencies administering state



262 and federal funds and service rendered by employees of the public  
263 schools. Effective July 1, 1973, all nonprofessional public  
264 school employees, such as bus drivers, janitors, maids,  
265 maintenance workers and cafeteria employees, shall have the option  
266 to become members in accordance with Section 25-11-105(b), and  
267 shall be eligible to receive credit for services before July 1,  
268 1973, provided that the contributions and interest are paid by the  
269 employee in accordance with that section; in addition, the county  
270 or municipal separate school district may pay the employer  
271 contribution and pro rata share of interest of the retroactive  
272 service from available funds. From and after July 1, 1998,  
273 retroactive service credit shall be purchased at the actuarial  
274 cost in accordance with Section 25-11-105(b).

275 (aa) "Withdrawal from service" or "termination from  
276 service" means complete severance of employment in the state  
277 service of any member by resignation, dismissal or discharge.

278 (bb) The masculine pronoun, wherever used, includes the  
279 feminine pronoun.

280 **SECTION 2.** This act shall take effect and be in force from  
281 and after July 1, 2006.