

By: Representative Blackmon

To: Appropriations

## HOUSE BILL NO. 1286

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, have the following meanings:

13 (a) "Accumulated contributions" means the sum of all  
14 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 as provided in Section 25-11-123.

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

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

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

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

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

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

79 (g) "Beneficiary" means any person entitled to receive  
80 a retirement allowance, an annuity or other benefit as provided by  
81 Articles 1 and 3. The term "beneficiary" may also include an  
82 organization, estate, trust or entity; however, a beneficiary  
83 designated or entitled to receive monthly payments under an  
84 optional settlement based on life contingency or pursuant to a  
85 statutory monthly benefit may only be a natural person. In the  
86 event of the death before retirement of any member whose spouse  
87 and/or children are not entitled to a retirement allowance on the  
88 basis that the member has less than four (4) years of service  
89 credit and/or has not been married for a minimum of one (1) year  
90 or the spouse has waived his or her entitlement to a retirement  
91 allowance under Section 25-11-114, the lawful spouse of a member  
92 at the time of the death of the member shall be the beneficiary of  
93 the member unless the member has designated another beneficiary  
94 after the date of marriage in writing, and filed that writing in  
95 the office of the executive director of the board of trustees. No

96 designation or change of beneficiary shall be made in any other  
97 manner.

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

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

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

119           (k) "Earned compensation" means the full amount earned  
120 by an employee for a given pay period including any maintenance  
121 furnished up to a maximum of One Hundred Fifty Thousand Dollars  
122 (\$150,000.00) per year, and proportionately for less than one (1)  
123 year of service. The value of that maintenance when not paid in  
124 money shall be fixed by the employing state agency, and, in case  
125 of doubt, by the board of trustees as defined in Section 25-11-15.  
126 Earned compensation shall not include any nontaxable amounts paid  
127 by the employer for health or life insurance premiums for an  
128 employee. In any case, earned compensation shall be limited to

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

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

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

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

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

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

162                   (vi) Compensation in addition to an employee's  
163 base salary that is paid to the employee under the vacation and  
164 sick leave policies of a municipality or other political  
165 subdivision of the state that employs him that exceeds the  
166 maximums authorized by Section 25-3-91 et seq. shall be excluded  
167 from the calculation of earned compensation under this article.

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

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

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

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

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

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

189                   (p) "Medical board" means the board of physicians or  
190 any governmental or nongovernmental disability determination  
191 service designated by the board of trustees that is qualified to  
192 make disability determinations as provided for in Section  
193 25-11-119.

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

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

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

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

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

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

236           (w) "Retroactive service" means service rendered after  
237 February 1, 1953, for which credit is allowable under Section  
238 25-11-105(b) and Section 25-11-105(k).

239           (x) "System" means the Public Employees' Retirement  
240 System of Mississippi established and described in Section  
241 25-11-101.

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

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



259 1973, provided that the contributions and interest are paid by the  
260 employee in accordance with that section; in addition, the county  
261 or municipal separate school district may pay the employer  
262 contribution and pro rata share of interest of the retroactive  
263 service from available funds. From and after July 1, 1998,  
264 retroactive service credit shall be purchased at the actuarial  
265 cost in accordance with Section 25-11-105(b).

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

269 (bb) The masculine pronoun, wherever used, includes the  
270 feminine pronoun.

271 **SECTION 2.** This act shall take effect and be in force from  
272 and after July 1, 2007.