

By: Representative Currie

To: Appropriations

## HOUSE BILL NO. 1173

1 AN ACT TO REQUIRE ALL EMPLOYEES OF THE STATE DEPARTMENT OF  
2 MENTAL HEALTH WHO ARE PROVIDED HOUSING ON THE GROUNDS OF A  
3 HOSPITAL OR OTHER FACILITY UNDER THE JURISDICTION OF THE  
4 DEPARTMENT TO PAY THE FAIR MARKET RENTAL VALUE OF THE HOUSING, AS  
5 DETERMINED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION, AND  
6 PAY THE ACTUAL COST OF THE UTILITIES USED IN THAT HOUSING BY THE  
7 EMPLOYEE; TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972, TO  
8 PROVIDE THAT THE VALUE OF HOUSING THAT IS PROVIDED TO EMPLOYEES OF  
9 THE STATE DEPARTMENT OF MENTAL HEALTH ON THE GROUNDS OF A HOSPITAL  
10 OR OTHER FACILITY UNDER THE JURISDICTION OF THE DEPARTMENT SHALL  
11 NOT BE INCLUDED IN THE EARNED COMPENSATION OF THE EMPLOYEE FOR THE  
12 PURPOSES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM LAW; AND FOR  
13 RELATED PURPOSES.

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

15 **SECTION 1.** Each employee of the State Department of Mental  
16 Health who is provided housing on the grounds of a hospital or  
17 other facility under the jurisdiction of the department shall be  
18 required to pay the fair market rental value of the housing, as  
19 determined by the Department of Finance and Administration, and  
20 pay the actual cost of the utilities used in that housing by the  
21 employee.

22 **SECTION 2.** Section 25-11-103, Mississippi Code of 1972, is  
23 amended as follows:



24           25-11-103. The following words and phrases as used in  
25 Articles 1 and 3, unless a different meaning is plainly required  
26 by the context, have the following meanings:

27           (a) "Accumulated contributions" means the sum of all  
28 the amounts deducted from the compensation of a member and  
29 credited to his or her individual account in the annuity savings  
30 account, together with regular interest as provided in Section  
31 25-11-123.

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

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

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

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

45           (f) "Average compensation" means the average of the  
46 four (4) highest years of earned compensation reported for an  
47 employee in a fiscal or calendar year period, or combination  
48 thereof that do not overlap, or the last forty-eight (48)



49 consecutive months of earned compensation reported for an  
50 employee. The four (4) years need not be successive or joined  
51 years of service. In computing the average compensation for  
52 retirement, disability or survivor benefits, any amount lawfully  
53 paid in a lump sum for personal leave or major medical leave shall  
54 be included in the calculation to the extent that the amount does  
55 not exceed an amount that is equal to thirty (30) days of earned  
56 compensation and to the extent that it does not cause the  
57 employee's earned compensation to exceed the maximum reportable  
58 amount specified in paragraph (k) of this section; however, this  
59 thirty-day limitation shall not prevent the inclusion in the  
60 calculation of leave earned under federal regulations before July  
61 1, 1976, and frozen as of that date as referred to in Section  
62 25-3-99. In computing the average compensation, no amounts shall  
63 be used that are in excess of the amount on which contributions  
64 were required and paid, and no nontaxable amounts paid by the  
65 employer for health or life insurance premiums for the employee  
66 shall be used. If any member who is or has been granted any  
67 increase in annual salary or compensation of more than eight  
68 percent (8%) retires within twenty-four (24) months from the date  
69 that the increase becomes effective, then the board shall exclude  
70 that part of the increase in salary or compensation that exceeds  
71 eight percent (8%) in calculating that member's average  
72 compensation for retirement purposes. The board may enforce this  
73 provision by rule or regulation. However, increases in



74 compensation in excess of eight percent (8%) per year granted  
75 within twenty-four (24) months of the date of retirement may be  
76 included in the calculation of average compensation if  
77 satisfactory proof is presented to the board showing that the  
78 increase in compensation was the result of an actual change in the  
79 position held or services rendered, or that the compensation  
80 increase was authorized by the State Personnel Board or was  
81 increased as a result of statutory enactment, and the employer  
82 furnishes an affidavit stating that the increase granted within  
83 the last twenty-four (24) months was not contingent on a promise  
84 or agreement of the employee to retire. Nothing in Section  
85 25-3-31 shall affect the calculation of the average compensation  
86 of any member for the purposes of this article. The average  
87 compensation of any member who retires before July 1, 1992, shall  
88 not exceed the annual salary of the Governor.

89 (g) "Beneficiary" means any person entitled to receive  
90 a retirement allowance, an annuity or other benefit as provided by  
91 Articles 1 and 3. The term "beneficiary" may also include an  
92 organization, estate, trust or entity; however, a beneficiary  
93 designated or entitled to receive monthly payments under an  
94 optional settlement based on life contingency or under a statutory  
95 monthly benefit may only be a natural person. In the event of the  
96 death before retirement of any member who became a member of the  
97 system before July 1, 2007, and whose spouse and/or children are  
98 not entitled to a retirement allowance on the basis that the



99 member has less than four (4) years of service credit, or who  
100 became a member of the system on or after July 1, 2007, and whose  
101 spouse and/or children are not entitled to a retirement allowance  
102 on the basis that the member has less than eight (8) years of  
103 service credit, and/or has not been married for a minimum of one  
104 (1) year or the spouse has waived his or her entitlement to a  
105 retirement allowance under Section 25-11-114, the lawful spouse of  
106 a member at the time of the death of the member shall be the  
107 beneficiary of the member unless the member has designated another  
108 beneficiary after the date of marriage in writing, and filed that  
109 writing in the office of the executive director of the board of  
110 trustees. No designation or change of beneficiary shall be made  
111 in any other manner.

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

115 (i) "Creditable service" means "prior service,"  
116 "retroactive service" and all lawfully credited unused leave not  
117 exceeding the accrual rates and limitations provided in Section  
118 25-3-91 et seq., as of the date of withdrawal from service plus  
119 "membership service" and other service for which credit is  
120 allowable as provided in Section 25-11-109. Except to limit  
121 creditable service reported to the system for the purpose of  
122 computing an employee's retirement allowance or annuity or  
123 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" means the full amount earned during a fiscal year by an employee including any maintenance furnished not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. The value of that 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. Earned compensation shall not include any nontaxable amounts paid by the employer for health or life insurance premiums for an employee. 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 employees of the State Department of Mental Health, the value of housing that is provided to an employee on the grounds of a hospital or other facility under the jurisdiction of the department shall not be included in the earned compensation of the employee.

( \* \* \*y) 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



174 compensation under this paragraph, provided this inclusion does  
175 not conflict with federal law, including federal regulations and  
176 federal administrative interpretations under the federal law,  
177 pertaining to the Federal Insurance Contributions Act or to  
178 Internal Revenue Code Section 125 cafeteria plans.

179 ( \* \* \* vi) Compensation in addition to an  
180 employee's base salary that is paid to the employee under the  
181 vacation and sick leave policies of a municipality or other  
182 political subdivision of the state that employs him or her that  
183 exceeds the maximums authorized by Section 25-3-91 et seq. shall  
184 be excluded from the calculation of earned compensation under this  
185 article.

186 ( \* \* \* vii) The maximum salary applicable for  
187 retirement purposes before July 1, 1992, shall be the salary of  
188 the Governor.

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

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

195 (m) "Employer" means the State of Mississippi or any of  
196 its departments, agencies or subdivisions from which any employee  
197 receives his or her compensation.





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

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

208           (p) "Medical board" means the board of physicians or  
209 any governmental or nongovernmental disability determination  
210 service designated by the board of trustees that is qualified to  
211 make disability determinations as provided for in Section  
212 25-11-119.

213           (q) "Member" means any person included in the  
214 membership of the system as provided in Section 25-11-105. For  
215 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,  
216 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the  
217 system withdrew from state service and received a refund of the  
218 amount of the accumulated contributions to the credit of the  
219 member in the annuity savings account before July 1, 2007, and the  
220 person reenters state service and becomes a member of the system  
221 again on or after July 1, 2007, and repays all or part of the  
222 amount received as a refund and interest in order to receive



creditable service for service rendered before July 1, 2007, the member shall be considered to have become a member of the system on or after July 1, 2007, subject to the eight-year membership service requirement, as applicable in those sections. For purposes of Sections 25-11-103, 25-11-111, 25-11-114 and 25-11-115, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2011, and the person reenters state service and becomes a member of the system again on or after July 1, 2011, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2011, the member shall be considered to have become a member of the system on or after July 1, 2011.

(r) "Membership service" means service as an employee in a covered position rendered while a contributing 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 the 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" means:

(i) For persons who became members of the system before July 1, 2007, 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.

(ii) For persons who became members of the system on or after July 1, 2007, 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 eight (8) years.

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

(v) "Retirement allowance" means 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 or her spouse retirement benefit from and after making application with the board of trustees to reinstate the spouse retirement benefit.

(w) "Retroactive service" means 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" means the Public Employees' Retirement System of Mississippi established and described in Section 25-11-101.

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



(z) "State service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state, that 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 also includes 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" means complete severance of employment in the state service of any member by resignation, dismissal or discharge.



321                   (bb) The masculine pronoun, wherever used, includes the  
322 feminine pronoun.

323           **SECTION 3.** This act shall take effect and be in force from  
324 and after July 1, 2013.

