

By: Representative Taylor

To: Appropriations

HOUSE BILL NO. 577

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT ANY STATE EMPLOYEE WHO RETIRES UNDER THE PUBLIC
 3 EMPLOYEES' RETIREMENT SYSTEM WITH UNUSED PERSONAL LEAVE IN EXCESS
 4 OF 30 DAYS SHALL HAVE HIS OR HER AVERAGE COMPENSATION INCREASED BY
 5 THE AMOUNT OF COMPENSATION THAT THE MEMBER WOULD HAVE BEEN PAID
 6 FOR THE NUMBER OF PERSONAL LEAVE DAYS IN EXCESS OF 30 DAYS IF THE
 7 MEMBER HAD USED THOSE PERSONAL LEAVE DAYS BEFORE RETIREMENT; AND
 8 FOR RELATED PURPOSES.

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

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

12 25-11-103. The following words and phrases as used in
 13 Articles 1 and 3, unless a different meaning is plainly required
 14 by the context, shall have the following meanings:

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

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

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



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

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

34 (f) "Average compensation" shall mean the average of
35 the four (4) highest years of earned compensation reported for an
36 employee in a fiscal or calendar year period, or combination
37 thereof which do not overlap, or the last forty-eight (48)
38 consecutive months of earned compensation reported for an
39 employee. The four (4) years need not be successive or joined
40 years of service. In no case shall the average compensation so
41 determined be in excess of One Hundred Twenty-five Thousand
42 Dollars (\$125,000.00). In computing the average compensation, any
43 amount paid in a lump sum for personal leave shall be included in
44 the calculation to the extent that such amount does not exceed an
45 amount which is equal to thirty (30) days of earned compensation
46 and to the extent that it does not cause the employees' earned
47 compensation to exceed the maximum reportable amount specified in
48 Section 25-11-103(k); provided, however, that such thirty-day
49 limitation shall not prevent the inclusion in the calculation of
50 leave earned under federal regulations prior to July 1, 1976, and
51 frozen as of that date as referred to in Section 25-3-99. Only
52 the amount of lump sum pay for personal leave due and paid upon
53 the death of a member attributable for up to one hundred fifty
54 (150) days shall be used in the deceased member's average
55 compensation calculation in determining the beneficiary's
56 benefits. In computing the average compensation, no amounts shall
57 be used which are in excess of the amount on which contributions
58 were required and paid, except as otherwise authorized in this
59 paragraph. If any member who is or has been granted any increase
60 in annual salary or compensation of more than eight percent (8%)
61 retires within twenty-four (24) months from the date that such



62 increase becomes effective, then the board shall exclude that part
63 of the increase in salary or compensation that exceeds eight
64 percent (8%) in calculating that member's average compensation for
65 retirement purposes. The board may enforce this provision by rule
66 or regulation. However, increases in compensation in excess of
67 eight percent (8%) per year granted within twenty-four (24) months
68 of the date of retirement may be included in such calculation of
69 average compensation if satisfactory proof is presented to the
70 board showing that the increase in compensation was the result of
71 an actual change in the position held or services rendered, or
72 that such compensation increase was authorized by the State
73 Personnel Board or was increased as a result of statutory
74 enactment, and the employer furnishes an affidavit stating that
75 such increase granted within the last twenty-four (24) months was
76 not contingent on a promise or agreement of the employee to
77 retire. Nothing in Section 25-3-31 shall affect the calculation
78 of the average compensation of any member for the purposes of this
79 article. The average compensation of any member who retires
80 before July 1, 1992, shall not exceed the annual salary of the
81 Governor. Notwithstanding any provision of this paragraph to the
82 contrary, any member who retires with unused personal leave in
83 excess of thirty (30) days earned under Section 25-3-93 shall have
84 his or her average compensation increased by the amount of
85 compensation that the member would have been paid for the number
86 of personal leave days in excess of thirty (30) days if the member
87 had used those personal leave days before retirement.

88 (g) "Beneficiary" shall mean any person entitled to
89 receive a retirement allowance, an annuity or other benefit as
90 provided by Articles 1 and 3. In the event of the death prior to
91 retirement of any member whose spouse and/or children are not
92 entitled to a retirement allowance on the basis that the member
93 has less than four (4) years of service credit and/or has not been
94 married for a minimum of one (1) year or the spouse has waived his



95 or her entitlement to a retirement allowance pursuant to Section
96 25-11-114, the lawful spouse of a member at the time of the death
97 of such member shall be the beneficiary of such member unless the
98 member has designated another beneficiary subsequent to the date
99 of marriage in writing, and filed such writing in the office of
100 the executive director of the board of trustees. No designation
101 or change of beneficiary shall be made in any other manner.

102 (h) "Board" shall mean the board of trustees provided
103 in Section 25-11-15 to administer the retirement system herein
104 created.

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

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

123 (k) "Earned compensation" shall mean the full amount
124 earned by an employee for a given pay period including any
125 maintenance furnished up to a maximum of One Hundred Twenty-five
126 Thousand Dollars (\$125,000.00) per year, and proportionately for
127 less than one (1) year of service. The value of such maintenance



128 when not paid in money shall be fixed by the employing state
129 agency, and, in case of doubt, by the board of trustees as defined
130 in Section 25-11-15. In any case, earned compensation shall be
131 limited to the regular periodic compensation paid, exclusive of
132 litigation fees, bond fees, and other similar extraordinary
133 nonrecurring payments. In addition, any member in a covered
134 position, as defined by Public Employees' Retirement System laws
135 and regulations, who is also employed by another covered agency or
136 political subdivision shall have the earnings of that additional
137 employment reported to the Public Employees' Retirement System
138 regardless of whether the additional employment is sufficient in
139 itself to be a covered position. In the case of fee officials,
140 the net earnings from their office after deduction of expenses
141 shall apply, except that in no case shall earned compensation be
142 less than the total direct payments made by the state or
143 governmental subdivisions to the official, and employer and
144 employee contributions shall be paid thereon. In the case of
145 members of the state Legislature, all remuneration or amounts
146 paid, except mileage allowance, shall apply. The amount by which
147 an eligible employee's salary is reduced pursuant to a salary
148 reduction agreement authorized under Section 25-17-5 shall be
149 included as earned compensation under this paragraph, provided
150 this inclusion does not conflict with federal law, including
151 federal regulations and federal administrative interpretations
152 thereunder, pertaining to the Federal Insurance Contributions Act
153 or to Internal Revenue Code Section 125 cafeteria plans.
154 Compensation in addition to an employee's base salary that is paid
155 to the employee pursuant to the vacation and sick leave policies
156 of a municipality or other political subdivision of the state that
157 employs him which exceeds the maximums authorized by Section
158 25-3-91 et seq., shall be excluded from the calculation of earned
159 compensation under this article. The maximum salary applicable
160 for retirement purposes before July 1, 1992, shall be the salary



161 of the Governor. Nothing in Section 25-3-31 shall affect the
162 determination of the earned compensation of any member for the
163 purposes of this article.

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

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

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

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

181 (p) "Medical board" shall mean the board of physicians
182 or any governmental or nongovernmental disability determination
183 service designated by the board of trustees that is qualified to
184 make disability determinations as provided for in Section
185 25-11-119.

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

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

190 (s) "Position" means any office or any employment in
191 the state service, or two (2) or more of them, the duties of which
192 call for services to be rendered by one (1) person, including
193 positions jointly employed by federal and state agencies



194 administering federal and state funds. The employer shall
195 determine upon initial employment and during the course of
196 employment of an employee who does not meet the criteria for
197 coverage in the Public Employees' Retirement System based on the
198 position held, whether the employee is or becomes eligible for
199 coverage in the Public Employees' Retirement System based upon any
200 other employment in a covered agency or political subdivision. If
201 or when the employee meets the eligibility criteria for coverage
202 in such other position, then the employer must withhold
203 contributions and report wages from the noncovered position in
204 accordance with the provisions for reporting of earned
205 compensation. Failure to deduct and report those contributions
206 shall not relieve the employee or employer of liability thereof.
207 The board shall adopt such rules and regulations as necessary to
208 implement and enforce this provision.

209 (t) "Prior service" shall mean service rendered before
210 February 1, 1953, for which credit is allowable under Sections
211 25-11-105 and 25-11-109, and which shall allow prior service for
212 any person who is now or becomes a member of the Public Employees'
213 Retirement System and who does contribute to the system for a
214 minimum period of four (4) years.

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

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



227 with the board of trustees to reinstate such spouse retirement
228 benefit.

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

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

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

237 (z) "State service" shall mean all offices and
238 positions of trust or employment in the employ of the state, or
239 any political subdivision or instrumentality thereof, which elect
240 to participate as provided by Section 25-11-105(f), including the
241 position of elected or fee officials of the counties and their
242 deputies and employees performing public services or any
243 department, independent agency, board or commission thereof, and
244 shall also include all offices and positions of trust or
245 employment in the employ of joint state and federal agencies
246 administering state and federal funds and service rendered by
247 employees of the public schools. Effective July 1, 1973, all
248 nonprofessional public school employees, such as bus drivers,
249 janitors, maids, maintenance workers and cafeteria employees,
250 shall have the option to become members in accordance with Section
251 25-11-105(b), and shall be eligible to receive credit for services
252 prior to July 1, 1973, provided the contributions and interest are
253 paid by the employee in accordance with said section; provided,
254 further, that the county or municipal separate school district may
255 pay the employer contribution and pro rata share of interest of
256 the retroactive service from available funds. From and after July
257 1, 1998, retroactive service credit shall be purchased at the
258 actuarial cost in accordance with Section 25-11-105(b).



259 (aa) "Withdrawal from service" shall mean complete
260 severance of employment in the state service of any member by
261 resignation, dismissal or discharge.

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

264 **SECTION 2.** This act shall take effect and be in force from
265 and after July 1, 2002.

