

By: Representatives Evans, Calhoun

To: Appropriations

HOUSE BILL NO. 800

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, 2005, 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
 18 all 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
 21 25-11-123.

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

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

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

34 (e) "Agency" * * * means any governmental body
35 employing persons in the state service.

36 (f) "Average compensation" * * * means the average of
37 the four (4) highest years of earned compensation reported for an
38 employee in a fiscal or calendar year period, or combination
39 thereof that do not overlap, or the last forty-eight (48)
40 consecutive months of earned compensation reported for an
41 employee. For members retiring on or after July 1, 2005, in
42 determining the average of the last forty-eight (48) consecutive
43 months of earned compensation of the member, the following
44 computation shall be used: the greater of (i) the last
45 forty-eight (48) consecutive months of earned compensation
46 reported for the member including the final monthly wage posting,
47 or (ii) the forty-eight (48) consecutive months immediately
48 preceding the final monthly wage posting and excluding the final
49 monthly wage posting. The four (4) years need not be successive
50 or joined years of service. In no case shall the average
51 compensation so determined be in excess of One Hundred Fifty
52 Thousand Dollars (\$150,000.00). In computing the average
53 compensation, any amount paid in a lump sum for personal leave
54 shall be included in the calculation to the extent that the amount
55 does not exceed an amount that is equal to thirty (30) days of
56 earned compensation and to the extent that it does not cause the
57 employees' earned compensation to exceed the maximum reportable
58 amount specified in Section 25-11-103(k); however, this thirty-day
59 limitation shall not prevent the inclusion in the calculation of
60 leave earned under federal regulations before July 1, 1976, and
61 frozen as of that date as referred to in Section 25-3-99. Only
62 the amount of lump sum pay for personal leave due and paid upon
63 the death of a member attributable for up to one hundred fifty

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

91 (g) "Beneficiary" * * * means any person entitled to
92 receive a retirement allowance, an annuity or other benefit as
93 provided by Articles 1 and 3. In the event of the death before
94 retirement of any member whose spouse and/or children are not
95 entitled to a retirement allowance on the basis that the member
96 has less than four (4) years of service credit and/or has not been

97 married for a minimum of one (1) year or the spouse has waived his
98 or her entitlement to a retirement allowance under Section
99 25-11-114, the lawful spouse of a member at the time of the death
100 of the member shall be the beneficiary of the member unless the
101 member has designated another beneficiary after the date of
102 marriage in writing, and filed that writing in the office of the
103 executive director of the board of trustees. No designation or
104 change of beneficiary shall be made in any other manner.

105 (h) "Board" * * * means the board of trustees provided
106 in Section 25-11-15 to administer the retirement system * * *
107 created under this article.

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

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

126 (k) "Earned compensation" * * * means the full amount
127 earned by an employee for a given pay period including any
128 maintenance furnished up to a maximum of One Hundred Fifty
129 Thousand Dollars (\$150,000.00) per year, and proportionately for

130 less than one (1) year of service. The value of that maintenance
131 when not paid in money shall be fixed by the employing state
132 agency, and, in case of doubt, by the board of trustees as defined
133 in Section 25-11-15. In any case, earned compensation shall be
134 limited to the regular periodic compensation paid, exclusive of
135 litigation fees, bond fees, and other similar extraordinary
136 nonrecurring payments. In addition, any member in a covered
137 position, as defined by Public Employees' Retirement System laws
138 and regulations, who is also employed by another covered agency or
139 political subdivision shall have the earnings of that additional
140 employment reported to the Public Employees' Retirement System
141 regardless of whether the additional employment is sufficient in
142 itself to be a covered position. In addition, computation of
143 earned compensation shall be governed by the following:

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

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

152 (iii) In the case of members of the State
153 Legislature, all remuneration or amounts paid, except mileage
154 allowance, shall apply.

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

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

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

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

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

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

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

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

191 (p) "Medical board" * * * means the board of physicians
192 or any governmental or nongovernmental disability determination
193 service designated by the board of trustees that is qualified to
194 make disability determinations as provided for in Section
195 25-11-119.

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

198 (r) "Membership service" * * * means service as an
199 employee rendered while a member of the retirement system.

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

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

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

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

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

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

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

246 (z) "State service" * * * means all offices and
247 positions of trust or employment in the employ of the state, or
248 any political subdivision or instrumentality of the state, that
249 elect to participate as provided by Section 25-11-105(f),
250 including the position of elected or fee officials of the counties
251 and their deputies and employees performing public services or any
252 department, independent agency, board or commission thereof,
253 and * * * also includes all offices and positions of trust or
254 employment in the employ of joint state and federal agencies
255 administering state and federal funds and service rendered by
256 employees of the public schools. Effective July 1, 1973, all
257 nonprofessional public school employees, such as bus drivers,
258 janitors, maids, maintenance workers and cafeteria employees,
259 shall have the option to become members in accordance with Section
260 25-11-105(b), and shall be eligible to receive credit for services

261 before July 1, 1973, provided that the contributions and interest
262 are paid by the employee in accordance with that section; in
263 addition, the county or municipal separate school district may pay
264 the employer contribution and pro rata share of interest of the
265 retroactive service from available funds. From and after July 1,
266 1998, retroactive service credit shall be purchased at the
267 actuarial cost in accordance with Section 25-11-105(b).

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

271 (bb) The masculine pronoun, wherever used, * * *
272 includes the feminine pronoun.

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