

By: Representatives Evans, Straughter

To: Appropriations

HOUSE BILL NO. 696

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, 2006, 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, 2006, 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 lump
61 sum pay for personal leave due and paid upon the death of a member
62 attributable for up to one hundred fifty (150) days shall be used
63 in the deceased member's average compensation calculation in
64 determining the beneficiary's benefits. In computing the average

65 compensation, no amounts shall be used that are in excess of the
66 amount on which contributions were required and paid, and no
67 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, 2005.