

By: Senator(s) Ross

To: Finance

SENATE BILL NO. 2055
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 25-11-103, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT FOR PURPOSES OF THE PUBLIC EMPLOYEES' RETIREMENT
3 SYSTEM, THE TERM "EARNED COMPENSATION" FOR JUSTICES OF THE SUPREME
4 COURT AND JUDGES OF THE COURT OF APPEALS SHALL INCLUDE ALL
5 REMUNERATION AMOUNTS PAID, EXCEPT MILEAGE; TO AMEND SECTION
6 25-3-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
7 AUTHORIZE JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF
8 APPEALS TO CLAIM AS EARNED COMPENSATION THE EXPENSE ALLOWANCES
9 PAID TO THEM FROM AND AFTER DECEMBER 31, 2003, THAT WERE NOT
10 REPORTED AS A PART OF THEIR EARNED COMPENSATION TO THE PUBLIC
11 EMPLOYEES' RETIREMENT SYSTEM UNDER CERTAIN CONDITIONS; AND FOR
12 RELATED PURPOSES.

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

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

16 25-11-103. The following words and phrases as used in
17 Articles 1 and 3, unless a different meaning is plainly required
18 by the context, have the following meanings:

19 (a) "Accumulated contributions" means the sum of all
20 the amounts deducted from the compensation of a member and
21 credited to his individual account in the annuity savings account,
22 together with regular interest as provided in Section 25-11-123.

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

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

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

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

36 (f) "Average compensation" means the average of the
37 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. The four (4) years need not be successive or joined
42 years of service. In no case shall the average compensation so
43 determined be in excess of One Hundred Fifty Thousand Dollars
44 (\$150,000.00). In computing the average compensation, any amount
45 lawfully paid in a lump sum for personal leave or major medical
46 leave shall be included in the calculation to the extent that the
47 amount does not exceed an amount that is equal to thirty (30) days
48 of earned compensation and to the extent that it does not cause
49 the employees' earned compensation to exceed the maximum
50 reportable amount specified in Section 25-11-103(k); however, this
51 thirty-day limitation shall not prevent the inclusion in the
52 calculation of leave earned under federal regulations before July
53 1, 1976, and frozen as of that date as referred to in Section
54 25-3-99. Only the amount of lump-sum pay for personal leave due
55 and paid upon the death of a member attributable for up to one
56 hundred fifty (150) days shall be used in the deceased member's
57 average compensation calculation in determining the beneficiary's
58 benefits. In computing the average compensation, no amounts shall
59 be used that are in excess of the amount on which contributions
60 were required and paid, and no nontaxable amounts paid by the
61 employer for health or life insurance premiums for the employee
62 shall be used. If any member who is or has been granted any
63 increase in annual salary or compensation of more than eight

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

85 (g) "Beneficiary" means any person entitled to receive
86 a retirement allowance, an annuity or other benefit as provided by
87 Articles 1 and 3. The term "beneficiary" may also include an
88 organization, estate, trust or entity; however, a beneficiary
89 designated or entitled to receive monthly payments under an
90 optional settlement based on life contingency or pursuant to a
91 statutory monthly benefit may only be a natural person. In the
92 event of the death before retirement of any member whose spouse
93 and/or children are not entitled to a retirement allowance on the
94 basis that the member has less than four (4) years of service
95 credit and/or has not been married for a minimum of one (1) year
96 or the spouse has waived his or her entitlement to a retirement

97 allowance under Section 25-11-114, the lawful spouse of a member
98 at the time of the death of the member shall be the beneficiary of
99 the member unless the member has designated another beneficiary
100 after the date of marriage in writing, and filed that writing in
101 the office of the executive director of the board of trustees. No
102 designation or change of beneficiary shall be made in any other
103 manner.

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

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

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

125 (k) "Earned compensation" means the full amount earned
126 by an employee for a given pay period including any maintenance
127 furnished up to a maximum of One Hundred Fifty Thousand Dollars
128 (\$150,000.00) per year, and proportionately for less than one (1)
129 year of service. The value of that maintenance when not paid in

130 money shall be fixed by the employing state agency, and, in case
131 of doubt, by the board of trustees as defined in Section 25-11-15.
132 Earned compensation shall not include any nontaxable amounts paid
133 by the employer for health or life insurance premiums for an
134 employee. In any case, earned compensation shall be limited to
135 the regular periodic compensation paid, exclusive of litigation
136 fees, bond fees, and other similar extraordinary nonrecurring
137 payments. In addition, any member in a covered position, as
138 defined by Public Employees' Retirement System laws and
139 regulations, who is also employed by another covered agency or
140 political subdivision shall have the earnings of that additional
141 employment reported to the Public Employees' Retirement System
142 regardless of whether the additional employment is sufficient in
143 itself to be a covered position. In addition, computation of
144 earned compensation shall be governed by the following:

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

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

153 (iii) In the case of members of the State
154 Legislature, Justices of the Supreme Court and Judges of the Court
155 of Appeals, all remuneration or amounts paid, except mileage
156 allowance, shall apply.

157 (iv) The amount by which an eligible employee's
158 salary is reduced under a salary reduction agreement authorized
159 under Section 25-17-5 shall be included as earned compensation
160 under this paragraph, provided this inclusion does not conflict
161 with federal law, including federal regulations and federal
162 administrative interpretations under the federal law, pertaining

163 to the Federal Insurance Contributions Act or to Internal Revenue
164 Code Section 125 cafeteria plans.

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

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

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

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

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

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

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

192 (p) "Medical board" means the board of physicians or
193 any governmental or nongovernmental disability determination
194 service designated by the board of trustees that is qualified to

195 make disability determinations as provided for in Section
196 25-11-119.

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

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

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

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

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

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

239 (w) "Retroactive service" means service rendered after
240 February 1, 1953, for which credit is allowable under Section
241 25-11-105(b) and Section 25-11-105(k).

242 (x) "System" means the Public Employees' Retirement
243 System of Mississippi established and described in Section
244 25-11-101.

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

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

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

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

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

274 **SECTION 2.** Section 25-3-35, Mississippi Code of 1972, is
275 amended as follows:

276 25-3-35. (1) The annual salaries of the following judges
277 are fixed as follows, to begin at the commencement of the next
278 term of office immediately succeeding the existing term:

279	Chief Justice of the Supreme Court.....	\$115,390.00
280	Presiding Justice of the Supreme Court.....	113,190.00
281	Associate Justices of the Supreme Court, each....	112,530.00

282 However, in addition to their present official duties, there
283 are imposed upon the Supreme Court justices the extra duties of
284 making a special study of existing laws and reporting to each
285 regular session of the Legislature such constructive suggestions
286 as they may deem necessary for the improvement of the
287 administration of justice, and of identifying and directing the
288 State Librarian to apply for grants and donations from any public
289 or private source for the purpose of enhancing the holdings of the
290 state law library, and of advising and counseling with the State
291 Librarian in the selection of law books for purchase and use in

292 the State Law Library, advising with the librarian thereof upon
293 the removal from the library of any books which may be the least
294 frequently used, and for the placing of same in a convenient
295 location so as to provide additional space for such books and
296 other current publications which may be more frequently used or
297 called for. For such extra services each justice, from and after
298 January 1, 2004, shall receive a sum sufficient when added to the
299 present salaries of the justices to aggregate One Hundred Fifteen
300 Thousand Three Hundred Ninety Dollars (\$115,390.00) for the Chief
301 Justice, One Hundred Thirteen Thousand One Hundred Ninety Dollars
302 (\$113,190.00) for the presiding justice, and One Hundred Twelve
303 Thousand Five Hundred Thirty Dollars (\$112,530.00) for associate
304 justices, per annum. As each existing term expires and the
305 above-captioned salaries become effective in due course, the extra
306 duties and compensation provided for shall cease.

307 *The * * * expense allowance for Justices of the Supreme Court*
308 *shall be reported as part of their compensation for retirement*
309 *purposes.*

310 (2) The annual salaries of the judges of the Court of
311 Appeals of Mississippi are fixed as follows, to begin at the
312 commencement of the next term of office immediately succeeding the
313 existing term:

314 Chief Judge of the Court of Appeals..... \$108,130.00
315 Associate Judges of the Court of Appeals, each... 105,050.00

316 However, in addition to their present official duties, there
317 are imposed upon the judges of the Court of Appeals the extra
318 duties of making a special study of existing laws and reporting to
319 the Supreme Court of the State of Mississippi such constructive
320 suggestions as they may deem necessary for the improvement of the
321 administration of justice, and assisting in advising and
322 counseling with the State Librarian in the selection of law books
323 for purchase and use in the State Law Library, assisting in
324 advising with the librarian thereof upon the removal from the

325 library of any books which may be the least frequently used, and
326 for the placing of same in a convenient location so as to provide
327 additional space for such books and other current publications
328 which may be more frequently used or called for. For such extra
329 services each judge, from and after January 1, 2004, shall receive
330 a sum sufficient when added to the present salaries of the judges
331 to aggregate One Hundred Eight Thousand One Hundred Thirty Dollars
332 (\$108,130.00) for the Chief Judge and One Hundred Five Thousand
333 Fifty Dollars (\$105,050.00) for associate judges, per annum. As
334 each existing term expires and the above-captioned salaries become
335 effective in due course, the extra duties and compensation
336 provided for shall cease.

337 *The * * * expense allowance for Judges of the Court of*
338 *Appeals shall be reported as part of their compensation for*
339 *retirement purposes.*

340 (3) The annual salaries of the chancery and circuit court
341 judges are fixed as follows, to begin at the commencement of the
342 next term of office immediately succeeding the existing term:

343	Chancery Judges, each.....	\$104,170.00
344	Circuit Judges, each.....	104,170.00

345 In addition to their present official duties, there are
346 imposed upon the chancery and circuit court judges the extra
347 duties of making a special study of existing laws relating to
348 trial courts and reporting to the Supreme Court of the State of
349 Mississippi such constructive suggestions as they may deem
350 necessary for the improvement of the administration of justice,
351 which shall be recommended to the Legislature by the Supreme Court
352 in the manner provided by law. The judges shall advise and
353 supervise in the purchase of law books for the libraries of each
354 district, and shall study and evaluate the inventory of books and
355 facilities now existing in the libraries of each district to
356 effect the removal and relocation of obsolete publications so as
357 to provide additional space for those books and current

358 publications more frequently used. The judges shall seek and
359 identify any grants and donations from any public or private
360 source for the purpose of enhancing the holdings of the libraries
361 of each district. The judges shall study the existing rules
362 promulgated by the circuit and chancery court judicial
363 associations governing the operation of chancery and circuit
364 courts, and revise the same pursuant to existing laws. For such
365 extra services each judge, from and after January 1, 2004, shall
366 receive a sum sufficient when added to the present salaries of the
367 judges to aggregate One Hundred Four Thousand One Hundred Seventy
368 Dollars (\$104,170.00) per annum for each judge. Upon the
369 expiration of the existing term, the above-captioned salaries
370 become effective in due course, and the extra duties and
371 compensation provided for shall cease.

372 (4) The Supreme Court shall prepare a payroll for chancery
373 judges and circuit judges and submit such payroll to the
374 Department of Finance and Administration.

375 (5) The annual salary of the full-time district attorneys
376 shall be Ninety-five Thousand Seven Hundred Ninety-six Dollars
377 (\$95,796.00).

378 (6) The annual salary of the full-time legal assistants
379 shall be not less than Fifteen Thousand Dollars (\$15,000.00) nor
380 more than eighty percent (80%) of the salary of the district
381 attorney for legal assistants who have been licensed to practice
382 law for five (5) years or less; eighty-five percent (85%) of the
383 salary of the district attorney for legal assistants who have been
384 licensed to practice law for at least five (5) years but less than
385 fifteen (15) years; and ninety percent (90%) of the salary of the
386 district attorney for legal assistants who have been licensed to
387 practice law for at least fifteen (15) years or more.

388 (7) This section shall stand repealed from and after July 1,
389 2008.

390 **SECTION 3.** For Justices of the Supreme Court and Judges of
391 the Court of Appeals, earned compensation under the laws governing
392 the Public Employees' Retirement System shall include the expense
393 allowances paid to them from and after December 31, 2003, that
394 were not reported as a part of their earned compensation to the
395 Public Employees' Retirement System under the following
396 conditions:

397 (a) The judge or justice must pay to the Public
398 Employees' Retirement System the employee contribution on the
399 expense allowance paid but not reported together with regular
400 interest from the date of the payment of the expense allowance to
401 the date of the payment required by this section.

402 (b) The employer must pay to the Public Employees'
403 Retirement System the employer contribution on the expense
404 allowance paid but not reported together with regular interest
405 from the date of the payment of the expense allowance to the date
406 of the payment required by this section.

407 (c) The employee and employer contributions and
408 interest due on the expense allowances paid but not reported must
409 be received by the Public Employees' Retirement System by not
410 later than December 31, 2007. If the total amount required to be
411 paid on all expense allowances paid but not reported is not
412 received by the Public Employees' Retirement System by December
413 31, 2007, the service attributable to the periods while in receipt
414 of the unreported expense allowance from and after December 31,
415 2003, to the effective date of this act shall not be eligible for
416 creditable service.

417 **SECTION 4.** This act shall take effect and be in force from
418 and after its passage.