

1 SB330  
2 135022-1  
3 By Senators Beasley, Coleman, Figures, Fielding, Ross, Irons,  
4 Keahey, Singleton, Dunn, Brooks, Smitherman and Sanders  
5 RFD: Finance and Taxation General Fund  
6 First Read: 16-FEB-12

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Currently, contributions made for retirement  
9 under the Employees' Retirement System and the  
10 Teachers' Retirement System are based on earnable  
11 compensation as defined by law, which does not  
12 specifically include overtime payments and  
13 subsistence allowance payments.

14 This bill would amend current law to clarify  
15 that overtime payments and subsistence allowance  
16 payments are part of earnable compensation for  
17 purposes of calculating retirement benefits.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 To amend Sections 16-25-1 and 36-27-1, Code of  
24 Alabama 1975, relating to retirement benefits under the  
25 Employees' Retirement System and the Teachers' Retirement  
26 System; to clarify that earnable compensation shall include

1 amounts paid as overtime payments and subsistence allowance  
2 payments.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 16-25-1 and 36-27-1, Code of  
5 Alabama 1975, are amended to read as follows:

6 "§16-25-1.

7 For the purposes of this chapter the following  
8 terms, unless a different meaning is plainly required by the  
9 context, shall have the following respective meanings:

10 (1) RETIREMENT SYSTEM. The Teachers' Retirement  
11 System of Alabama as defined in Section 16-25-2.

12 (2) PUBLIC SCHOOL. Any day school conducted within  
13 the state under the authority and supervision of a duly  
14 elected or appointed county or city board of education and any  
15 educational institution supported by and under the control of  
16 the state or any private nondenominational school operated  
17 nonprofit for the education of children of school age residing  
18 within a district where no public school is available for the  
19 children.

20 (3) TEACHER. Any teacher, principal, superintendent,  
21 supervisor, college professor, administrative officer, or  
22 clerk employed in any public school or public college within  
23 the state or employed in any private nondenominational school  
24 operated nonprofit for the education of children of school age  
25 residing within a district where no public school is available  
26 for the children or any similar employee or officer of the  
27 Department of Education or of the Alabama Education

1 Association, or any attendance worker 50 percent or more of  
2 whose salary is paid from public school funds or any employee  
3 receiving a regular stated compensation from the retirement  
4 system. In all cases of doubt, the Board of Control shall  
5 determine whether any person is a teacher as defined in this  
6 chapter.

7 (4) SUPPORT PERSONNEL or EMPLOYEE. Any maid,  
8 custodian, adult bus driver, lunchroom, or cafeteria worker,  
9 secretary, clerk, clerical assistant, maintenance worker, or  
10 other non-certificated employee who works an average of 20  
11 hours weekly.

12 (5) EMPLOYER. The State of Alabama, the county  
13 school board, the city school board, the State Board of  
14 Education, or any governing body of any private  
15 nondenominational school operated nonprofit for education of  
16 children of school age residing within a district where no  
17 public school is available for the children or any other  
18 agency of and within the state by which a teacher is paid.

19 (6) MEMBER. Any teacher included in the membership  
20 of the system as provided in Section 16-25-3.

21 (7) BOARD OF CONTROL. The board provided for in  
22 Section 16-25-19 to administer the retirement system.

23 (8) MEDICAL BOARD. The board of physicians provided  
24 for in Section 16-25-19.

25 (9) TRUSTEES. The members of the Board of Control to  
26 administer the trust funds.

27 (10) SERVICE. Service as a teacher.

1 (11) PRIOR SERVICE. Service rendered prior to the  
2 date of establishment of the retirement system for which  
3 credit is allowable under Section 16-25-11.

4 (12) MEMBERSHIP SERVICE. Service as a teacher  
5 rendered while a member of the retirement system and on  
6 account of which contributions are made.

7 (13) CREDITABLE SERVICE. "Prior service" plus  
8 "membership service" rendered since last becoming a member.

9 (14) BENEFICIARY. Any person in receipt of a  
10 pension, an annuity, a retirement allowance, or other benefit  
11 as provided by this chapter.

12 (15) REGULAR INTEREST. Interest compounded annually  
13 at the rate determined by the Board of Control in accordance  
14 with subsection (b) of Section 16-25-20.

15 (16) ACCUMULATED CONTRIBUTIONS. The sum of all the  
16 amounts deducted from the compensation of a member and  
17 credited to his or her individual account in the annuity  
18 savings fund together with regular interest thereon as  
19 provided in Section 16-25-21.

20 (17) EARNABLE COMPENSATION. The salaries or wages  
21 earned by a member during a payroll period for personal  
22 services. Earnable compensation includes overtime payments,  
23 subsistence payments pursuant to Section 36-21-2, Code of  
24 Alabama 1975, and salaries or wages deferred pursuant to  
25 sections 403(b), 414(h), and 457 of the Internal Revenue Code.  
26 Earnable compensation does not include expense allowances,  
27 lump sum payments for annual leave, sick leave or compensatory

1 time, or any form of severance pay. ~~The full rate of the~~  
2 ~~compensation that would be payable to a teacher if he or she~~  
3 ~~worked the full normal working time.~~ In cases where  
4 compensation includes maintenance, the Board of Control shall  
5 fix the value of that part of the compensation not paid in  
6 money. Earnable compensation shall not exceed the limitations  
7 imposed by Section 401(a)(17) of the Internal Revenue Code for  
8 public pension funds except that any employee who was a member  
9 of the Teachers' Retirement System before the first plan year  
10 beginning after December 31, 1995, shall not be subject to the  
11 earning limitations set forth in Section 401(a)(17).

12 (18) AVERAGE FINAL COMPENSATION. The average annual  
13 compensation of a teacher, with respect to which he or she has  
14 made contributions pursuant to paragraph b of subdivision (1)  
15 of Section 16-25-21 during the three years in his or her last  
16 10 years of creditable service for which the average is  
17 highest or during his or her entire period of creditable  
18 service if less than three years; except, that for any period  
19 prior to October 1, 1959, the compensation used in computing  
20 the average shall include compensation in excess of the  
21 maximum amount with respect to which members were required to  
22 contribute.

23 (19) ANNUITY. Payments for life derived from the  
24 "accumulated contributions" of a member. All annuities shall  
25 be payable in equal monthly installments.

1           (20) PENSION. Payments for life derived from money  
2 provided by the employer. All pensions shall be payable in  
3 equal monthly installments.

4           (21) RETIREMENT ALLOWANCE. The sum of the "annuity"  
5 and the "pension."

6           (22) RETIREMENT. Withdrawal from active service with  
7 a retirement allowance or optional benefit in lieu thereof  
8 granted under this chapter.

9           (23) ANNUITY RESERVE. The present value of all  
10 payments to be made on account of any annuity or benefit in  
11 lieu of any annuity, computed upon the basis of the mortality  
12 tables as shall be adopted by the Board of Control, and  
13 regular interest.

14           (24) PENSION RESERVE. The present value of all  
15 payments to be made on account of any pension or benefit in  
16 lieu of any pension, computed upon the basis of the mortality  
17 tables as shall be adopted by the Board of Control, and  
18 regular interest.

19           (25) ACTUARIAL EQUIVALENT. A benefit of equal value,  
20 when computed upon the basis of the mortality tables as shall  
21 be adopted by the Board of Control, and regular interest.

22           (26) NORMAL CONTRIBUTION. The contributions of the  
23 state necessary to provide a pension equal to the annuity  
24 which the member's contribution made prior to age 65 with  
25 interest will provide at age of retirement not to exceed 65.

26           "§36-27-1.

1           When used in this article, the following terms shall  
2 have the following meanings, respectively, unless the context  
3 clearly indicates otherwise:

4           (1) RETIREMENT SYSTEM. The Employees' Retirement  
5 System of Alabama as defined in Section 36-27-2.

6           (2) EMPLOYEE. Any regular employee of the State of  
7 Alabama whose salary is paid by state warrant by the state,  
8 except a member of the Legislature of the state, a person who  
9 is covered or eligible to be covered under the Teachers'  
10 Retirement System of Alabama or any other retirement system to  
11 which contributions are made by the state, an elective  
12 official of the state government, and a temporary employee or  
13 person engaged under retainer or special agreement. In all  
14 cases of doubt the Board of Control shall determine who is an  
15 employee within the meaning of this article. The term shall  
16 include any regular employee of the Alabama state hospitals  
17 and Partlow State School and Hospital and the Alabama State  
18 Port Authority, however paid.

19           (3) EMPLOYER. The State of Alabama or any  
20 department, commission, institution, or any other agency of  
21 and within the state by which an employee is paid, including  
22 employers as provided in Section 36-27-6.

23           (4) MEMBER. Any employee included in the membership  
24 of the system as provided in Section 36-27-4.

25           (5) BOARD OF CONTROL. The board provided for in  
26 Section 36-27-23 to administer the retirement system.



1 (6) MEDICAL BOARD. The board of physicians provided  
2 for in Section 36-27-23.

3 (7) SERVICE. Service as an employee paid for by an  
4 employer.

5 (8) PRIOR SERVICE. Service rendered prior to the  
6 date of establishment of the retirement system for which  
7 credit is allowable under Section 36-27-11.

8 (9) MEMBERSHIP SERVICE. Service as an employee  
9 rendered while a member of the retirement system and on  
10 account of which contributions are made.

11 (10) CREDITABLE SERVICE. "Prior service" plus  
12 "membership service" rendered since last becoming a member.

13 (11) BENEFICIARY. Any person in receipt of a  
14 pension, an annuity, a retirement allowance or other benefit  
15 as provided by this article.

16 (12) REGULAR INTEREST. Interest compounded annually  
17 at the rate determined by the Board of Control in accordance  
18 with subsection (f) of Section 36-27-25.

19 (13) ACCUMULATED CONTRIBUTIONS. The sum of all the  
20 amounts deducted from the compensation of a member credited to  
21 his or her individual account in the Annuity Savings Fund,  
22 together with regular interest thereon, as provided in Section  
23 36-27-24.

24 (14) EARNABLE COMPENSATION. The salaries or wages  
25 earned by a member during a payroll period for personal  
26 services. Earnable compensation includes overtime payments,  
27 subsistence payments pursuant to Section 36-21-2, Code of

1 Alabama 1975, and salaries or wages deferred pursuant to  
2 sections 403(b), 414(h), and 457 of the Internal Revenue Code.  
3 Earnable compensation does not include expense allowances,  
4 lump sum payments for annual leave, sick leave or compensatory  
5 time, or any form of severance pay. ~~The full rate of~~  
6 compensation that would be payable to an employee if he or she  
7 worked the full normal work-time. In cases where compensation  
8 includes maintenance, the Board of Control shall fix the value  
9 of that part of the compensation not paid in money. Earnable  
10 compensation shall not exceed the limitations imposed by  
11 Section 401(a) (17) of the Internal Revenue Code for public  
12 pension funds, except that any employee who was a member of  
13 the Employees' Retirement System before the first plan year  
14 beginning after December 31, 1995, shall not be subject to the  
15 earning limitations set forth in Section 401(a) (17).

16 (15) AVERAGE FINAL COMPENSATION. The average annual  
17 compensation of an employee, with respect to which he or she  
18 had made contributions pursuant to subsection (b) of Section  
19 36-27-24 during the three years, in his or her last 10 years  
20 of creditable service for which the average is highest or  
21 during his or her entire period of creditable service if less  
22 than three years; except, that for any period prior to  
23 November 1, 1959, the compensation used in computing the  
24 average shall include compensation in excess of the maximum  
25 amount with respect to which members were required to  
26 contribute.

1                   (16) ANNUITY. Payments for life derived from the  
2 "accumulated contributions" of a member. All annuities shall  
3 be payable in equal monthly installments.

4                   (17) PENSION. Payments for life derived from money  
5 provided by the employer. All pensions shall be payable in  
6 equal monthly installments.

7                   (18) RETIREMENT ALLOWANCE. The sum of the "annuity"  
8 and the "pension."

9                   (19) RETIREMENT. Withdrawal from active service with  
10 a retirement allowance or optional benefit in lieu thereof  
11 granted under this article.

12                   (20) ANNUITY RESERVE. The present value of all  
13 payments to be made on account of any annuity or benefit in  
14 lieu of any annuity computed upon the basis of the mortality  
15 tables adopted by the Board of Control and regular interest.

16                   (21) PENSION RESERVE. The present value of all  
17 payments to be made on account of any pension or benefit in  
18 lieu of any pension computed upon the basis of the mortality  
19 tables adopted by the Board of Control and regular interest.

20                   (22) ACTUARIAL EQUIVALENT. A benefit of equal value  
21 when computed upon the basis of the mortality tables adopted  
22 by the Board of Control and regular interest.

23                   (23) STATE POLICEMAN. An employee in the classified  
24 service under the Merit System Act approved by the State  
25 Personnel Board to perform the duties of highway patrolman or  
26 a beverage control agent or a crime investigator. The term

1 shall not include a member employed as a policeman under  
2 Section 36-27-6.

3 Section 2. This act shall be effective immediately  
4 upon its passage and approval by the Governor, or otherwise  
5 becoming law.