

1 SB265  
2 135704-1  
3 By Senators Waggoner, Marsh, Reed, Dial, Glover, Brewbaker,  
4 Keahey, Fielding, Blackwell, Ward, Irons and Williams  
5 RFD: Judiciary  
6 First Read: 09-FEB-12

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8 SYNOPSIS: Currently, contributions made for  
9 retirement for state policemen are based on  
10 earnable compensation as defined by law, which does  
11 not specifically include overtime payments.

12 This bill would amend current law to clarify  
13 that overtime payments made to state policemen are  
14 part of earnable compensation for purposes of  
15 calculating retirement benefits.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
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21 To amend Sections 36-21-4 and 36-27-1, Code of  
22 Alabama 1975, relating to retirement benefits for state  
23 policemen; to clarify that earnable compensation shall include  
24 amounts paid as overtime payments to those officers; to  
25 provide that the act is declaratory of existing law; to  
26 provide an effective date of September 1, 2011, and to allow

1 contributions to be made not later than September 30, 2012,  
2 for any amounts not contributed after September 1, 2011.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 36-21-4 and 36-27-1, Code of  
5 Alabama 1975, are amended to read as follows:

6 "§36-21-4.

7 "(a) Each state law enforcement officer in the  
8 service of the state who is assigned to duty for more than 40  
9 hours during the calendar week shall be paid time and one half  
10 for ~~such~~ excess hours worked or he or she shall be given time  
11 and one-half compensatory leave as herein provided, except as  
12 hereinafter limited. ~~Such~~ The officers shall normally work a  
13 40-hour work week.

14 "(b) Hours worked in excess of 40 hours in any  
15 calendar week shall be compensated at the rate of one and  
16 one-half times his or her regular rate of pay up to a maximum  
17 of eight hours per week; however, compensatory time at the  
18 rate of one and one-half times regular time may be paid for  
19 overtime worked. The decision of whether to accept overtime  
20 pay or compensatory time shall be at the sole option of the  
21 officer. For the time worked, when required by employee's  
22 department, through September 30, 1977, hours worked in excess  
23 of 48 up to 54 hours, the officer shall be given straight  
24 compensatory time off. Time worked in excess of 54 hours per  
25 week shall be compensated at a rate of one and one-half times  
26 the regular pay or one and one-half times compensatory time at

1 the discretion of the department. For the period October 1,  
2 1977, and thereafter, all hours over 48 shall be one and  
3 one-half compensatory time or pay at the discretion of the  
4 department.

5 "(c) Overtime payments made to a state policeman as  
6 defined in Section 36-27-1 who contributes to the State Police  
7 Retirement Fund shall be considered to be earnable  
8 compensation as that term is defined in Section 36-27-1 for  
9 purposes of retirement benefits.

10 "§36-27-1.

11 "When used in this article, the following terms  
12 shall have the following meanings, respectively, unless the  
13 context clearly indicates otherwise:

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

16 "(2) EMPLOYEE. Any regular employee of the State of  
17 Alabama whose salary is paid by state warrant by the state,  
18 except a member of the Legislature of the state, a person who  
19 is covered or eligible to be covered under the Teachers'  
20 Retirement System of Alabama or any other retirement system to  
21 which contributions are made by the state, an elective  
22 official of the state government, and a temporary employee or  
23 person engaged under retainer or special agreement. In all  
24 cases of doubt the Board of Control shall determine who is an  
25 employee within the meaning of this article. The term shall  
26 include any regular employee of the Alabama state hospitals

1 and Partlow State School and Hospital and the Alabama State  
2 Port Authority, however paid.

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

7 "(4) MEMBER. Any employee included in the membership  
8 of the system as provided in Section 36-27-4.

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

11 "(6) MEDICAL BOARD. The board of physicians provided  
12 for in Section 36-27-23.

13 "(7) SERVICE. Service as an employee paid for by an  
14 employer.

15 "(8) PRIOR SERVICE. Service rendered prior to the  
16 date of establishment of the retirement system for which  
17 credit is allowable under Section 36-27-11.

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

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

23 "(11) BENEFICIARY. Any person in receipt of a  
24 pension, an annuity, a retirement allowance or other benefit  
25 as provided by this article.

1           "(12) REGULAR INTEREST. Interest compounded annually  
2 at the rate determined by the Board of Control in accordance  
3 with subsection (f) of Section 36-27-25.

4           "(13) ACCUMULATED CONTRIBUTIONS. The sum of all the  
5 amounts deducted from the compensation of a member credited to  
6 his or her individual account in the Annuity Savings Fund,  
7 together with regular interest thereon, as provided in Section  
8 36-27-24.

9           "(14) EARNABLE COMPENSATION. a. The full rate of  
10 compensation that would be payable to an employee if he or she  
11 worked the full normal work-time. In cases where compensation  
12 includes maintenance, the Board of Control shall fix the value  
13 of that part of the compensation not paid in money. Earnable  
14 compensation shall not exceed the limitations imposed by  
15 Section 401(a) (17) of the Internal Revenue Code for public  
16 pension funds, except that any employee who was a member of  
17 the Employees' Retirement System before the first plan year  
18 beginning after December 31, 1995, shall not be subject to the  
19 earning limitations set forth in Section 401(a) (17).

20           "b. The term earnable compensation for retirement  
21 purposes shall include overtime payments that are made to a  
22 state policeman who contributes to the State Police Retirement  
23 Fund.

24           "(15) AVERAGE FINAL COMPENSATION. The average annual  
25 compensation of an employee, with respect to which he or she  
26 had made contributions pursuant to subsection (b) of Section

1 36-27-24 during the three years, in his or her last 10 years  
2 of creditable service for which the average is highest or  
3 during his or her entire period of creditable service if less  
4 than three years; except, that for any period prior to  
5 November 1, 1959, the compensation used in computing the  
6 average shall include compensation in excess of the maximum  
7 amount with respect to which members were required to  
8 contribute.

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

12 "(17) PENSION. Payments for life derived from money  
13 provided by the employer. All pensions shall be payable in  
14 equal monthly installments.

15 "(18) RETIREMENT ALLOWANCE. The sum of the "annuity"  
16 and the "pension."

17 "(19) RETIREMENT. Withdrawal from active service  
18 with a retirement allowance or optional benefit in lieu  
19 thereof granted under this article.

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

24 "(21) PENSION RESERVE. The present value of all  
25 payments to be made on account of any pension or benefit in

1 lieu of any pension computed upon the basis of the mortality  
2 tables adopted by the Board of Control and regular interest.

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

6 "(23) STATE POLICEMAN. An employee in the classified  
7 service under the Merit System Act approved by the State  
8 Personnel Board to perform the duties of highway patrolman or  
9 a beverage control agent or a crime investigator. The term  
10 shall not include a member employed as a policeman under  
11 Section 36-27-6."

12 Section 2. (a) The amendments made to Sections  
13 36-21-4 and 36-27-1 of the Code of Alabama 1975, in Section 1  
14 are declaratory of, and do not constitute a change in, the  
15 preexisting law, and shall be applied retroactively to  
16 September 1, 2011.

17 (b) For the period of time from September 1, 2011,  
18 through September 30, 2012, a state policeman may make  
19 employee contributions based on overtime payments to the State  
20 Police Retirement Fund for any amounts not contributed on and  
21 after September 1, 2011.

22 Section 3. This act shall be effective retroactively  
23 to September 1, 2011, upon its passage and approval by the  
24 Governor, or its otherwise becoming law.