

1 HB255
2 135704-1
3 By Representatives Love, Hill and Barton
4 RFD: Ways and Means General Fund
5 First Read: 09-FEB-12

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

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17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

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
27 the discretion of the department. For the period October 1,

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

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

9 "§36-27-1.

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

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

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

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

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

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

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

11 "(7) SERVICE. Service as an employee paid for by an
12 employer.

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

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

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

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

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

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

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

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

21 "(15) AVERAGE FINAL COMPENSATION. The average annual
22 compensation of an employee, with respect to which he or she
23 had made contributions pursuant to subsection (b) of Section
24 36-27-24 during the three years, in his or her last 10 years
25 of creditable service for which the average is highest or
26 during his or her entire period of creditable service if less
27 than three years; except, that for any period prior to

1 November 1, 1959, the compensation used in computing the
2 average shall include compensation in excess of the maximum
3 amount with respect to which members were required to
4 contribute.

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

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

11 "(18) RETIREMENT ALLOWANCE. The sum of the "annuity"
12 and the "pension."

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

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

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

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

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

7 Section 2. (a) The amendments made to Sections
8 36-21-4 and 36-27-1 of the Code of Alabama 1975, in Section 1
9 are declaratory of, and do not constitute a change in, the
10 preexisting law, and shall be applied retroactively to
11 September 1, 2011.

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

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