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Office of the State Comptroller

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Deputy State Comptroller

MEMORANDUM

TO: All Chief Fiscal Officers
All Payroll/Personnel Officers

FROM: Thomas L. White, Jr.
State Comptroller

DATE: May 14, 2012

RE: Act 2012-302 and Employee Retirement Contribution for Overtime Pay

Be advised that Act 2012-302 amends Title 36-27-1. All state employees are affected by the amendment as follows (cited from Act 2012-302):

“b. the term earnable compensation for retirement purposes shall not include subsistence payments that are made to an employee and shall include overtime payments that are made to an employee; however, earnable compensation shall not exceed 120 percent of any employee’s annual base compensation as certified by the employer.”

Effective pay period beginning *May 16, 2012*, retirement contributions will be calculated and withheld on overtime pay subject to a cap of 120% of annual base compensation.

Please make all employees aware of this important change.

This office will communicate process and specific instructions to all Payroll and Personnel Officers with a separate memorandum. If you have any questions or need additional information, please contact the GHRS Hotline at 334-242-2188.

TLWjr/SHC/dt

CC: All Agency Heads
Ms. Janice A. Hamm, Deputy State Comptroller
Ms. Sandra H. Collins, Payroll Administrator
File

ACT NO. 2012-302

1 HB255
2 137151-8
3 By Representatives Love, Hill and Barton
4 RFD: Ways and Means General Fund
5 First Read: 09-FEB-12



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ENROLLED, An Act,

To amend Sections 16-25-1 and 36-27-1, Code of Alabama 1975, relating to retirement benefits; to provide that earnable compensation may include a portion of overtime payments.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§16-25-1.

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

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

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

1 "(3) TEACHER. Any teacher, principal,
2 superintendent, supervisor, college professor, administrative
3 officer, or clerk employed in any public school or public
4 college within the state or employed in any private
5 nondenominational school operated nonprofit for the education
6 of children of school age residing within a district where no
7 public school is available for the children or any similar
8 employee or officer of the Department of Education or of the
9 Alabama Education Association, or any attendance worker 50
10 percent or more of whose salary is paid from public school
11 funds or any employee receiving a regular stated compensation
12 from the retirement system. In all cases of doubt, the Board
13 of Control shall determine whether any person is a teacher as
14 defined in this chapter.

15 "(4) SUPPORT PERSONNEL or EMPLOYEE. Any maid,
16 custodian, adult bus driver, lunchroom, or cafeteria worker,
17 secretary, clerk, clerical assistant, maintenance worker, or
18 other non-certificated employee who works an average of 20
19 hours weekly.

20 "(5) EMPLOYER. The State of Alabama, the county
21 school board, the city school board, the State Board of
22 Education, or any governing body of any private
23 nondenominational school operated nonprofit for education of
24 children of school age residing within a district where no

1 public school is available for the children or any other
2 agency of and within the state by which a teacher is paid.

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

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

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

9 "(9) TRUSTEES. The members of the Board of Control
10 to administer the trust funds.

11 "(10) SERVICE. Service as a teacher.

12 "(11) PRIOR SERVICE. Service rendered prior to the
13 date of establishment of the retirement system for which
14 credit is allowable under Section 16-25-11.

15 "(12) MEMBERSHIP SERVICE. Service as a teacher
16 rendered while a member of the retirement system and on
17 account of which contributions are made.

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

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

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

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

6 "(17) EARNABLE COMPENSATION. a. The full rate of the
7 compensation that would be payable to a teacher if he or she
8 worked the full normal working time. In cases where
9 compensation includes maintenance, the Board of Control shall
10 fix the value of that part of the compensation not paid in
11 money. Earnable compensation shall not exceed the limitations
12 imposed by Section 401(a)(17) of the Internal Revenue Code for
13 public pension funds except that any employee who was a member
14 of the Teachers' 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 an
19 employee; however, earnable compensation shall not exceed 120
20 percent of any employee's annual base compensation as
21 certified by the employer.

22 "(18) AVERAGE FINAL COMPENSATION. The average annual
23 compensation of a teacher, with respect to which he or she has
24 made contributions pursuant to paragraph b of subdivision (1)
25 of Section 16-25-21 during the three years in his or her last

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

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

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

14 "(21) RETIREMENT ALLOWANCE. The sum of the "annuity"
15 and the "pension."

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

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

24 "(24) 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 as shall be adopted by the Board of Control, and
3 regular interest.

4 "(25) ACTUARIAL EQUIVALENT. A benefit of equal
5 value, when computed upon the basis of the mortality tables as
6 shall be adopted by the Board of Control, and regular
7 interest.

8 "(26) NORMAL CONTRIBUTION. The contributions of the
9 state necessary to provide a pension equal to the annuity
10 which the member's contribution made prior to age 65 with
11 interest will provide at age of retirement not to exceed 65.

12 "§36-27-1.

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

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

18 "(2) EMPLOYEE. Any regular employee of the State of
19 Alabama whose salary is paid by state warrant by the state,
20 except a member of the Legislature of the state, a person who
21 is covered or eligible to be covered under the Teachers'
22 Retirement System of Alabama or any other retirement system to
23 which contributions are made by the state, an elective
24 official of the state government, and a temporary employee or
25 person engaged under retainer or special agreement. In all

1 cases of doubt the Board of Control shall determine who is an
2 employee within the meaning of this article. The term shall
3 include any regular employee of the Alabama state hospitals
4 and Partlow State School and Hospital and the Alabama State
5 Port Authority, however paid.

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

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

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

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

16 "(7) SERVICE. Service as an employee paid for by an
17 employer.

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

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

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

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

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

7 "(13) ACCUMULATED CONTRIBUTIONS. The sum of all the
 8 amounts deducted from the compensation of a member credited to
 9 his or her individual account in the Annuity Savings Fund,
 10 together with regular interest thereon, as provided in Section
 11 36-27-24.

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

23 "b. The term earnable compensation for retirement
 24 purposes shall not include subsistence payments that are made
 25 to an employee and shall include overtime payments that are

1 made to an employee; however, earnable compensation shall not
2 exceed ~~125%~~ 120 percent of any employees' annual base
3 compensation as certified by the employer.

4 "(15) AVERAGE FINAL COMPENSATION. The average annual
5 compensation of an employee, with respect to which he or she
6 had made contributions pursuant to subsection (b) of Section
7 36-27-24 during the three years, in his or her last 10 years
8 of creditable service for which the average is highest or
9 during his or her entire period of creditable service if less
10 than three years; except, that for any period prior to
11 November 1, 1959, the compensation used in computing the
12 average shall include compensation in excess of the maximum
13 amount with respect to which members were required to
14 contribute.

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

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

21 "(18) RETIREMENT ALLOWANCE. The sum of the "annuity"
22 and the "pension."

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

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

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

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

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

18 Section 2. This act shall be effective immediately
19 upon its passage and approval by the Governor, or its
20 otherwise becoming law.

