

1 SB411  
2 168913-2  
3 By Senator Orr  
4 RFD: Finance and Taxation General Fund  
5 First Read: 23-APR-15

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Section 36-27B-1, Code of Alabama 1975,  
12 relating to preretirement death benefits for judges, clerks  
13 and district attorneys; to establish the Judges' and Clerks'  
14 Plan for retirement for justices, judges, and circuit clerks;  
15 to establish the District Attorneys' Plan for retirement for  
16 district attorneys; and to provide guidelines for the plans.  
17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 36-27B-1, Code of Alabama 1975,  
19 is amended to read as follows:

20 "§36-27B-1.

21 "There shall be created the Preretirement Death  
22 Benefit Program effective October 1, 1985, which shall be  
23 effective as of that date to all employees covered under the  
24 Teachers' Retirement System of Alabama and the Employees'  
25 Retirement System of Alabama. Beginning November 8, 2016, the  
26 Preretirement Death Benefit Program shall be effective to all  
27 members of the Judges' and Clerks' Plan and the District

1 Attorneys' Plan provided for in Section 3 and Section 19. In  
2 the event the conditions prescribed in Section 36-27B-5 shall  
3 occur prior to October 1, 1985, the death benefit plan  
4 established herein shall become effective upon certification  
5 and adoption by a joint resolution of the Teachers' and  
6 Employees' Retirement Systems' Boards of Control."

7 Section 2. When used in this article, the following  
8 terms shall have the following meanings, respectively, unless  
9 the context clearly indicates otherwise:

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

12 (2) FUND. The Judicial Retirement Fund provided for  
13 in Chapter 18 of Title 12.

14 (3) PLAN. The Judges' and Clerks' Plan provided for  
15 in Section 3.

16 (4) JUDGE OR CLERK. Any justice of the Supreme  
17 Court, judge of the Court of Civil Appeals, judge of the Court  
18 of Criminal Appeals, circuit judge, district judge, probate  
19 judge, or circuit clerk who is not a member of the Judicial  
20 Retirement Fund or Clerks' and Registers' Supernumerary Fund  
21 on November 7, 2016 and who is first elected or appointed to  
22 his or her position on or after November 8, 2016. This shall  
23 not include any judge or clerk who is a member of the Judicial  
24 Retirement Fund or Clerks' and Registers' Supernumerary Fund  
25 prior to the effective date of this act regardless of when he  
26 or she is first appointed or elected to his or her judicial or  
27 clerk position.

1           (5) EMPLOYER. The State of Alabama or any  
2 department, agency, or local governing body by which a judge  
3 or clerk is paid.

4           (6) MEMBER. Any judge or clerk included in  
5 membership of the plan.

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

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

10          (9) MEMBERSHIP SERVICE. Service as a judge or clerk  
11 on account of which contributions are made.

12          (10) AVERAGE FINAL COMPENSATION. The average annual  
13 compensation of a judge or clerk with respect to which he or  
14 she had made contributions pursuant to Section 4 during the  
15 five years in his or her last 10 years of membership service  
16 for which the average is highest or during his or her entire  
17 period of membership service if less than five years.

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

21          (12) REGULAR INTEREST. Interest compounded annually  
22 at the rate determined by the Board of Control.

23          (13) ACCUMULATED CONTRIBUTIONS. The sum of all the  
24 amounts deducted from the compensation of a member credited to  
25 his or her individual account in the Judges' and Clerks' Plan,  
26 together with regular interest thereon.

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

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

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

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

12           (18) ACTUARIAL EQUIVALENT. A benefit of equal value  
13 when computed upon the basis of the mortality tables adopted  
14 by the Board of Control and regular interest.

15           Section 3. There is hereby created and established  
16 the Judges' and Clerks' Plan under the Judicial Retirement  
17 Fund.

18           Section 4. (a) Every judge or clerk first elected or  
19 appointed to his or her position on or after November 8, 2016  
20 who is not a member of the Judicial Retirement Fund or Clerks'  
21 and Registers' Supernumerary Fund on November 7, 2016 shall  
22 come under this article by operation of law. The plan shall  
23 not include any judge or clerk who is a member of the Judicial  
24 Retirement Fund or Clerks' and Registers' Supernumerary Fund  
25 prior to the effective date of this act regardless of the type  
26 of judgeship position held. Each judge or clerk shall  
27 contribute to the fund eight and one-half percent (8.5%) of

1 his or her annual salary or base sum as provided in Section  
2 12-18-82. The percentages shall be deducted by the employer  
3 from each judge's or clerk's salary and paid into the fund in  
4 the State Treasury and credited to the individual account of  
5 the judge or clerk from whose salary it was deducted.

6 (b) On account of each member there shall be paid  
7 monthly by the employer an amount equal to a certain  
8 percentage of the annual salary of each member to be the  
9 employer's contribution. The percentage rate of such  
10 contribution shall be fixed for each fiscal year on the basis  
11 of the liabilities as shown by the last annual actuarial  
12 valuation, and such percentage rate as established by such  
13 valuation shall take effect the following October 1 and  
14 continue in effect for the fiscal year.

15 Section 5. (a) Any active and contributing member of  
16 the Judges' and Clerks' Plan who, not more than one year prior  
17 to becoming a member of the plan was a member of the  
18 Employees' Retirement System of Alabama or the Teachers'  
19 Retirement System of Alabama, may elect to transfer his or her  
20 membership service and accumulated contributions in the  
21 Employees' Retirement System or the Teachers' Retirement  
22 System to the Judges' and Clerks' Plan.

23 (b) Any active and contributing member desiring to  
24 transfer any membership service and accumulated contributions  
25 under subsection (a) shall notify the Board of Control of the  
26 Employees' Retirement System of his or her election to  
27 transfer membership service and shall authorize the transfer

1 of the amount of his or her accumulated contributions to his  
2 or her credit in the Employees' Retirement System or Teachers'  
3 Retirement System to his or her account in the Judges' and  
4 Clerks' Plan.

5 (c) The Board of Control transferring the membership  
6 service and contributions shall thereupon certify to the Board  
7 of Control of the Employees' Retirement System and to the fund  
8 the amount of contributions and service creditable to the  
9 member at the time of separation from the transferring  
10 retirement system. The member shall be credited in the fund  
11 with the membership service and accumulated contributions so  
12 certified.

13 (d) Anything in this article to the contrary  
14 notwithstanding, in the application of the foregoing  
15 provisions of this section to a member whose membership  
16 service includes a period of service as a judge or clerk and a  
17 period of service in another employment classification, the  
18 benefit rates applicable to a judge or clerk shall apply to  
19 all membership service as a judge or clerk, and the benefit  
20 rates applicable to the member's other employment  
21 classification shall apply to membership service in such other  
22 classification. In all other respects, the pension under this  
23 section shall be determined on the basis of the member's  
24 employment classification at the time of his or her withdrawal  
25 from service.

26 Section 6. (a) Any member who withdraws from service  
27 upon or after attainment of age 62 may retire upon written

1 application to the Board of Control setting forth at what  
2 time, not less than 30 days nor more than 90 days subsequent  
3 to the execution and filing thereof, he or she desires to be  
4 retired; provided, that any such member shall have completed  
5 10 or more years of membership service in the Judges' and  
6 Clerks' Plan.

7 (b) Any member who has attained age 62 and has  
8 previously withdrawn from service may retire upon written  
9 application to the Board of Control setting forth at what  
10 time, not less than 30 days nor more than 90 days subsequent  
11 to the execution and filing thereof, he or she desires to be  
12 retired; provided, that any such member shall have completed  
13 10 or more years of membership service.

14 (c) Upon retirement from service, the member shall  
15 receive a service retirement allowance which shall consist of  
16 an annuity, which shall be the actuarial equivalent of the  
17 member's accumulated contributions at the time of retirement,  
18 and a pension, which when added to the member's annuity shall  
19 be equal to three percent (3%) of the member's average final  
20 compensation multiplied by the member's number of years of  
21 membership service. Notwithstanding the foregoing, the service  
22 retirement allowance shall not exceed eighty percent (80%) of  
23 the member's average final compensation.

24 Section 7. (a) Upon application of an active and  
25 contributing member, any such member who has 10 or more years  
26 of membership service who becomes disabled may be retired on a  
27 disability retirement allowance by the Board of Control not



1 less than 30 days nor more than 90 days next following the  
2 date of filing of such application; provided that the medical  
3 board, after a medical examination of such member, shall  
4 certify that such individual is totally and permanently  
5 mentally or physically incapacitated from regular and  
6 substantial gainful employment and that such member should be  
7 retired.

8 (b) Upon retirement for disability, the member shall  
9 receive a service retirement allowance if he or she has  
10 attained age 62; otherwise, he or she shall receive a  
11 disability retirement allowance which shall consist of an  
12 annuity, which shall be the actuarial equivalent of the  
13 member's accumulated contributions at the time of retirement,  
14 and a pension, which when added to the member's annuity shall  
15 be equal to three percent (3%) of the member's average final  
16 compensation multiplied by the member's number of years of  
17 membership service. Notwithstanding the foregoing, the  
18 disability retirement allowance shall not exceed eighty  
19 percent (80%) of the member's average final compensation.

20 (c) Once each year during the first five years  
21 following the retirement of a member on a disability  
22 retirement allowance and once every three-year period  
23 thereafter, the Board of Control may require any disability  
24 beneficiary who has not yet attained age 62 to undergo a  
25 medical examination, such examination to be made at the place  
26 of residence of such beneficiary or other place mutually  
27 agreed upon by a physician or physicians of or designated by

1 the medical board. Should any disability beneficiary who has  
2 not yet attained age 62 refuse to submit to such medical  
3 examination, his or her retirement allowance may be  
4 discontinued until his or her withdrawal of such refusal, and  
5 should his or her refusal continue for one year, all his or  
6 her rights in and to his or her pension may be revoked by the  
7 Board of Control. Should the medical board report and certify  
8 to the Board of Control that a disability beneficiary has the  
9 capacity to engage in regular and substantial gainful  
10 employment, the Board of Control shall discontinue the  
11 beneficiary's retirement allowance until the beneficiary is  
12 otherwise eligible for service retirement.

13 Section 8. (a) Should a member cease to be a judge  
14 or clerk except by death or by retirement under the provisions  
15 of this article, the contributions standing to the credit of  
16 his or her individual account in the fund shall be paid to him  
17 or her upon demand and, in addition to such payment, there  
18 shall be paid five-tenths of the interest accumulations  
19 standing to the credit of his or her individual account if he  
20 or she shall have not less than three but less than 16 years  
21 of membership service, six-tenths of such interest  
22 accumulations if he or she shall have not less than 16 but  
23 less than 21 years of membership service, seven-tenths of such  
24 interest accumulations if he or she shall have not less than  
25 21 but less than 26 years of membership service and  
26 eight-tenths of such interest accumulations if he or she shall  
27 have not less than 26 years of membership service.

1 (b) In case of the death of a member eligible for  
2 service retirement pursuant to Section 6, an allowance shall  
3 be paid to the surviving spouse, or to such other person who  
4 the member shall have designated, in an amount that would have  
5 been payable if the member had retired immediately prior to  
6 his or her death and had elected Option 3, as set forth in  
7 subsection (d) of this section or, alternatively, if the  
8 surviving spouse or other designee desires, he or she may  
9 choose to receive, in lieu of the allowance provided under  
10 Option 3, the accumulated contributions of the member plus an  
11 amount equal to the accumulated contributions of the member  
12 not to exceed \$5,000.00 or the accumulated contributions of  
13 the member plus the benefit provided by Section 36-27B-3 if a  
14 benefit is payable under such section.

15 (c) Upon the death of a member on account of whom no  
16 survivor allowance is payable under subsection (b) of this  
17 section, the accumulated contributions of the member plus an  
18 amount equal to the accumulated contributions not to exceed  
19 \$5,000 or the accumulated contributions of the member plus the  
20 benefit provided by Section 36-27B-3 if a benefit is payable  
21 under such section shall be paid to his or her estate or to  
22 such person as he or she shall have nominated by written  
23 designation duly executed and filed with the Board of Control.

24 (d) Optional allowances. With the provision that the  
25 election of an option shall be effective on the effective date  
26 of retirement, any member may elect prior to retirement to  
27 receive, in lieu of his or her retirement allowance payable

1 throughout life, the actuarial equivalent, at that time, of  
2 his or her retirement allowance in a reduced retirement  
3 allowance payable throughout life with the provisions that:

4 (1) OPTION 1. If he or she dies before he or she has  
5 received in annuity payments the present value of his or her  
6 annuity as it was at the time of his or her retirement, the  
7 balance shall be paid to his or her legal representatives or  
8 to such person as he or she shall nominate by written  
9 designation duly acknowledged and filed with the Board of  
10 Control;

11 (2) OPTION 2. Upon his or her death, his or her  
12 reduced retirement allowance shall be continued throughout the  
13 life of and paid to such person as he or she shall nominate by  
14 written designation duly acknowledged and filed with the Board  
15 of Control at the time of his or her retirement;

16 (3) OPTION 3. Upon his or her death, one half of his  
17 or her reduced allowance shall be continued throughout the  
18 life of and paid to such person as he or she shall nominate by  
19 written designation duly acknowledged and filed with the Board  
20 of Control at the time of his or her retirement; or

21 (4) OPTION 4. Some other benefit or benefits shall  
22 be paid either to the member or to such person or persons as  
23 he or she shall nominate; provided, that such other benefits,  
24 together with the reduced retirement allowance, shall be  
25 certified by the actuary to be of equivalent actuarial value  
26 to his or her retirement allowance and shall be approved by  
27 the Board of Control.

1                   (e) Notwithstanding any other provisions of this  
2 section to the contrary, when a designated beneficiary for a  
3 member predeceases the member who is receiving a monthly  
4 benefit allowance provided under Option 2, 3, or 4, the member  
5 may designate a replacement beneficiary for the deceased  
6 beneficiary to become effective two years after the date of  
7 designation of the replacement beneficiary and an actuarial  
8 adjustment in the monthly benefit allowance of the member to  
9 cover any cost associated with designating a replacement  
10 beneficiary shall be reflected thereafter in the monthly  
11 benefit allowance received by the member, commencing with the  
12 first benefit allowance check received by the member following  
13 the date of designation of the replacement beneficiary.

14                   (f) Notwithstanding any provision of this section to  
15 the contrary, if a retired member who is receiving a monthly  
16 benefit allowance provided under Option 2, 3, or 4 divorces  
17 his or her designated beneficiary, the member may designate a  
18 replacement beneficiary for the beneficiary to become  
19 effective two years after the date of designation of the  
20 replacement beneficiary and an actuarial adjustment in the  
21 monthly benefit allowance of the member to cover any cost  
22 associated with designating a replacement beneficiary shall be  
23 reflected thereafter in the monthly benefit allowance received  
24 by the member, commencing with the first benefit allowance  
25 check received by the member following the date of designation  
26 of the replacement beneficiary.

1           Section 9. Any member of the plan who is retired and  
2 who has selected a survivor option may cancel the survivor  
3 allowance payable to his or her designated beneficiary. Such  
4 election shall be in accordance with the rules and regulations  
5 prescribed by the Board of Control and once made by the member  
6 shall be irrevocable. Any member who so elects to cancel a  
7 survivor allowance shall designate such new beneficiary as he  
8 or she shall nominate to receive a pro rata payment for the  
9 number of days said member shall live during the month of his  
10 or her death. Any cancellation of a survivor allowance under  
11 the provisions of this section shall be irrevocable by the  
12 member and payment of the pro rata amount for the number of  
13 days said member lives during the month of his or her death  
14 shall be in lieu of any other benefits heretofore payable.

15           Section 10. (a) Any member who, at the time of his  
16 or her retirement is a member of and holds a policy in any  
17 state group hospitalization or health insurance plan, may in  
18 writing authorize the Secretary-Treasurer of the state  
19 retirement system to withhold from his or her retirement pay a  
20 sufficient sum or amount to pay the premium on such policy.

21           (b) The Secretary-Treasurer of the state Employees'  
22 Retirement System, when authorized by a retired employee, is  
23 hereby authorized to withhold from the retirement pay of such  
24 employee a sufficient amount to pay the premium on such policy  
25 and remit the same to the insurance carrier.

26           Section 11. The Judges' and Clerks' Plan shall be  
27 under the management and supervision of the Employees'

1 Retirement System as a component of the Judicial Retirement  
2 Fund, with all contributions to the plan deposited and held in  
3 the same manner as contributions to the Judicial Retirement  
4 Fund. The Employees' Retirement System may adopt rules and  
5 regulations as necessary to implement the plan.

6 Section 12. All proposed legislation affecting the  
7 plan shall be accompanied by an actuarial estimate of the cost  
8 involved in such proposed legislation.

9 Section 13. (a) Any person who shall knowingly make  
10 any false statement or shall falsify or permit to be falsified  
11 any record or records of this plan in any attempt to defraud  
12 such plan shall be guilty of a misdemeanor and, on conviction  
13 thereof by any court of competent jurisdiction, shall be  
14 punished by a fine not exceeding \$500.00, or imprisonment not  
15 exceeding 12 months, or both such fine and imprisonment, at  
16 the discretion of the court.

17 (b) Should any charge or error in the records result  
18 in any member or beneficiary receiving from the fund more or  
19 less than he or she would have been entitled to receive had  
20 the records been correct, the Board of Control shall correct  
21 such error and, as far as practicable, shall adjust the  
22 payment in such manner that the actuarial equivalent of the  
23 benefit to which such member or beneficiary was correctly  
24 entitled shall be paid.

25 Section 14. The right of a person to a pension, an  
26 annuity, a retirement allowance or to the return of  
27 contributions, the pension, annuity or retirement allowance

1       itself and any optional benefit or any other right accrued or  
2       accruing to any person under the provisions of this article  
3       and the moneys in the fund are hereby exempt from any state or  
4       municipal tax and exempt from levy and sale, garnishment,  
5       attachment or any other process whatsoever and shall be  
6       unassignable except as in this article specifically otherwise  
7       provide.

8               Section 15. Official copies of records or documents  
9       maintained on microfilm, microfiche or other  
10      photo-reproductive material of archival quality by the  
11      Employees' Retirement System shall be admissible as primary  
12      evidence in any legal, judicial or administrative proceeding  
13      or action for the purpose of proving the truth of the contents  
14      of the photo-reproduced copies of such records or documents,  
15      regardless of any rule of evidence or law relating to the  
16      proof of such matters, provided the Secretary-Treasurer of the  
17      Employees' Retirement System of Alabama certifies on such  
18      copies offered into evidence that the Employees' Retirement  
19      System of Alabama is not in possession of the original and  
20      that the copy is a true and correct representation of the  
21      original.

22              Section 16. No other provision of law in any other  
23      statute which provides wholly or partly at the expense of the  
24      State of Alabama or of any political subdivision thereof for  
25      pensions or retirement benefits for employees of the said  
26      state shall apply to members of the plan established by this  
27      article, except as to provisions for coverage under the



1 federal Social Security Act, as may be provided by state and  
2 federal laws.

3 Section 17. The Board of Control is authorized to  
4 implement any new accounting procedures, funds, or  
5 administrative changes and to provide for the payment of  
6 benefits to members or beneficiaries of the plan as may be  
7 necessary to ensure the plan's compliance with the  
8 qualification standards required of public pension plans by  
9 the Internal Revenue Code of the United States.

10 Section 18. When used in this article, the following  
11 terms shall have the following meanings, respectively, unless  
12 the context clearly indicates otherwise:

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

15 (2) FUND. The Judicial Retirement Fund provided for  
16 in Chapter 18 of Title 12.

17 (3) PLAN. The District Attorneys' Plan provided for  
18 in Section 19.

19 (4) DISTRICT ATTORNEY. Except as otherwise provided  
20 in Section 29, any district attorney first elected or  
21 appointed to his or her position on or after November 8, 2016.

22 (5) SUPERNUMERARY DISTRICT ATTORNEY. A supernumerary  
23 district attorney who has elected to come under the provisions  
24 and requirements of Division 2 of Article 6 of Chapter 17 of  
25 Title 12.

1                   (6) EMPLOYER. The State of Alabama or any  
2 department, agency, or local governing body by which a  
3 district attorney is paid.

4                   (7) MEMBER. Any district attorney included in  
5 membership of the plan.

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

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

10                  (10) MEMBERSHIP SERVICE. Service as a district  
11 attorney on account of which contributions are made.

12                  (11) AVERAGE FINAL COMPENSATION. The average annual  
13 compensation of a district attorney with respect to which he  
14 or she had made contributions pursuant to Section 20 during  
15 the five years in his or her last 10 years of membership  
16 service for which the average is highest or during his or her  
17 entire period of membership service if less than five years.

18                  (12) BENEFICIARY. Any person in receipt of a  
19 pension, an annuity, a retirement allowance or other benefit  
20 as provided by this article.

21                  (13) REGULAR INTEREST. Interest compounded annually  
22 at the rate determined by the Board of Control.

23                  (14) ACCUMULATED CONTRIBUTIONS. The sum of all the  
24 amounts deducted from the compensation of a member credited to  
25 his or her individual account in the District Attorneys' Plan,  
26 together with regular interest thereon.

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

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

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

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

12           (19) ACTUARIAL EQUIVALENT. A benefit of equal value  
13 when computed upon the basis of the mortality tables adopted  
14 by the Board of Control and regular interest.

15           Section 19. There is hereby created and established  
16 the District Attorneys' Plan under the Judicial Retirement  
17 Fund.

18           Section 20. (a) Every district attorney first  
19 elected or appointed to his or her position on or after  
20 November 8, 2016 shall come under this article by operation of  
21 law. Each district attorney shall contribute to the fund eight  
22 and one-half percent (8.5%) of his or her annual salary. The  
23 percentages shall be deducted by the employer from each  
24 district attorney's salary and paid into the fund in the State  
25 Treasury and credited to the individual account of the  
26 district attorney from whose salary it was deducted.

1 (b) On account of each member there shall be paid  
2 monthly by the employer an amount equal to a certain  
3 percentage of the annual salary of each member to be the  
4 employer's contribution. The percentage rate of such  
5 contribution shall be fixed for each fiscal year on the basis  
6 of the liabilities as shown by the last annual actuarial  
7 valuation, and such percentage rate as established by such  
8 valuation shall take effect the following October 1 and  
9 continue in effect for the fiscal year. Such contribution  
10 shall be made by the Office of the District Attorney who  
11 employs the member.

12 Section 21. (a) Any active and contributing member  
13 of the District Attorneys' Plan who, not more than one year  
14 prior to becoming a member of the plan was a member of the  
15 Employees' Retirement System of Alabama or the Teachers'  
16 Retirement System of Alabama, may elect to transfer his or her  
17 membership service and accumulated contributions in the  
18 Employees' Retirement System or the Teachers' Retirement  
19 System to the District Attorneys' Plan.

20 (b) Any active and contributing member desiring to  
21 transfer any membership service and accumulated contributions  
22 under subsection (a) shall notify the Board of Control of the  
23 Employees' Retirement System of his or her election to  
24 transfer membership service and shall authorize the transfer  
25 of the amount of his or her accumulated contributions to his  
26 or her credit in the Employees' Retirement System or Teachers'

1 Retirement System to his or her account in the District  
2 Attorneys' Plan.

3 (c) The Board of Control transferring the membership  
4 service and contributions shall thereupon certify to the Board  
5 of Control of the Employees' Retirement System and to the fund  
6 the amount of contributions and service creditable to the  
7 member at the time of separation from the transferring  
8 retirement system. The member shall be credited in the fund  
9 with the membership service and accumulated contributions so  
10 certified.

11 (d) Anything in this article to the contrary  
12 notwithstanding, in the application of the foregoing  
13 provisions of this section to a member whose membership  
14 service includes a period of service as a district attorney  
15 and a period of service in another employment classification,  
16 the benefit rates applicable to a district attorney shall  
17 apply to all membership service as a district attorney, and  
18 the benefit rates applicable to the member's other employment  
19 classification shall apply to membership service in such other  
20 classification. In all other respects, the pension under this  
21 section shall be determined on the basis of the member's  
22 employment classification at the time of his or her withdrawal  
23 from service.

24 Section 22. (a) Any member who withdraws from  
25 service upon or after attainment of age 62 may retire upon  
26 written application to the Board of Control setting forth at  
27 what time, not less than 30 days nor more than 90 days

1 subsequent to the execution and filing thereof, he or she  
2 desires to be retired; provided, that any such member shall  
3 have completed 10 or more years of membership service in the  
4 District Attorneys' Plan.

5 (b) Any member who has attained age 62 and has  
6 previously withdrawn from service may retire upon written  
7 application to the Board of Control setting forth at what  
8 time, not less than 30 days nor more than 90 days subsequent  
9 to the execution and filing thereof, he or she desires to be  
10 retired; provided, that any such member shall have completed  
11 10 or more years of membership service.

12 (c) Upon retirement from service, the member shall  
13 receive a service retirement allowance which shall consist of  
14 an annuity, which shall be the actuarial equivalent of the  
15 member's accumulated contributions at the time of retirement,  
16 and a pension, which when added to the member's annuity shall  
17 be equal to three percent (3%) of the member's average final  
18 compensation multiplied by the member's number of years of  
19 membership service. Notwithstanding the foregoing, the service  
20 retirement allowance shall not exceed eighty percent (80%) of  
21 the member's average final compensation.

22 Section 23. (a) Upon application of an active and  
23 contributing member, any such member who has 10 or more years  
24 of membership service who becomes disabled may be retired on a  
25 disability retirement allowance by the Board of Control not  
26 less than 30 days nor more than 90 days next following the  
27 date of filing of such application; provided that the medical

1 board, after a medical examination of such member, shall  
2 certify that such individual is totally and permanently  
3 mentally or physically incapacitated from regular and  
4 substantial gainful employment and that such member should be  
5 retired.

6 (b) Upon retirement for disability, the member shall  
7 receive a service retirement allowance if he or she has  
8 attained age 62; otherwise, he or she shall receive a  
9 disability retirement allowance which shall consist of an  
10 annuity, which shall be the actuarial equivalent of the  
11 member's accumulated contributions at the time of retirement,  
12 and a pension, which when added to the member's annuity shall  
13 be equal to three percent (3%) of the member's average final  
14 compensation multiplied by the member's number of years of  
15 membership service. Notwithstanding the foregoing, the  
16 disability retirement allowance shall not exceed eighty  
17 percent (80%) of the member's average final compensation.

18 (c) Once each year during the first five years  
19 following the retirement of a member on a disability  
20 retirement allowance and once every three-year period  
21 thereafter, the Board of Control may require any disability  
22 beneficiary who has not yet attained age 62 to undergo a  
23 medical examination, such examination to be made at the place  
24 of residence of such beneficiary or other place mutually  
25 agreed upon by a physician or physicians of or designated by  
26 the medical board. Should any disability beneficiary who has  
27 not yet attained age 62 refuse to submit to such medical

1 examination, his or her retirement allowance may be  
2 discontinued until his or her withdrawal of such refusal, and  
3 should his or her refusal continue for one year, all his or  
4 her rights in and to his or her pension may be revoked by the  
5 Board of Control. Should the medical board report and certify  
6 to the Board of Control that a disability beneficiary has the  
7 capacity to engage in regular and substantial gainful  
8 employment, the Board of Control shall discontinue the  
9 beneficiary's retirement allowance until the beneficiary is  
10 otherwise eligible for service retirement.

11 Section 24. (a) Should a member cease to be a  
12 district attorney except by death or by retirement under the  
13 provisions of this article, the contributions standing to the  
14 credit of his or her individual account in the fund shall be  
15 paid to him or her upon demand and, in addition to such  
16 payment, there shall be paid five-tenths of the interest  
17 accumulations standing to the credit of his or her individual  
18 account if he or she shall have not less than three but less  
19 than 16 years of membership service, six-tenths of such  
20 interest accumulations if he or she shall have not less than  
21 16 but less than 21 years of membership service, seven-tenths  
22 of such interest accumulations if he or she shall have not  
23 less than 21 but less than 26 years of membership service and  
24 eight-tenths of such interest accumulations if he or she shall  
25 have not less than 26 years of membership service.

26 (b) In case of the death of a member eligible for  
27 service retirement pursuant to Section 22, an allowance shall



1 be paid to the surviving spouse, or to such other person who  
2 the member shall have designated, in an amount that would have  
3 been payable if the member had retired immediately prior to  
4 his or her death and had elected Option 3, as set forth in  
5 subsection (d) of this section or, alternatively, if the  
6 surviving spouse or other designee desires, he or she may  
7 choose to receive, in lieu of the allowance provided under  
8 Option 3, the accumulated contributions of the member plus an  
9 amount equal to the accumulated contributions of the member  
10 not to exceed \$5,000.00 or the accumulated contributions of  
11 the member plus the benefit provided by Section 36-27B-3 if a  
12 benefit is payable under such section.

13 (c) Upon the death of a member on account of whom no  
14 survivor allowance is payable under subsection (b) of this  
15 section, the accumulated contributions of the member plus an  
16 amount equal to the accumulated contributions not to exceed  
17 \$5,000 or the accumulated contributions of the member plus the  
18 benefit provided by Section 36-27B-3 if a benefit is payable  
19 under such section shall be paid to his or her estate or to  
20 such person as he or she shall have nominated by written  
21 designation duly executed and filed with the Board of Control.

22 (d) Optional allowances. With the provision that the  
23 election of an option shall be effective on the effective date  
24 of retirement, any member may elect prior to retirement to  
25 receive, in lieu of his or her retirement allowance payable  
26 throughout life, the actuarial equivalent, at that time, of

1 his or her retirement allowance in a reduced retirement  
2 allowance payable throughout life with the provisions that:

3 (1) OPTION 1. If he or she dies before he or she has  
4 received in annuity payments the present value of his or her  
5 annuity as it was at the time of his or her retirement, the  
6 balance shall be paid to his or her legal representatives or  
7 to such person as he or she shall nominate by written  
8 designation duly acknowledged and filed with the Board of  
9 Control;

10 (2) OPTION 2. Upon his or her death, his or her  
11 reduced retirement allowance shall be continued throughout the  
12 life of and paid to such person as he or she shall nominate by  
13 written designation duly acknowledged and filed with the Board  
14 of Control at the time of his or her retirement;

15 (3) OPTION 3. Upon his or her death, one half of his  
16 or her reduced allowance shall be continued throughout the  
17 life of and paid to such person as he or she shall nominate by  
18 written designation duly acknowledged and filed with the Board  
19 of Control at the time of his or her retirement; or

20 (4) OPTION 4. Some other benefit or benefits shall  
21 be paid either to the member or to such person or persons as  
22 he or she shall nominate; provided, that such other benefits,  
23 together with the reduced retirement allowance, shall be  
24 certified by the actuary to be of equivalent actuarial value  
25 to his or her retirement allowance and shall be approved by  
26 the Board of Control.

1           (e) Notwithstanding any other provisions of this  
2 section to the contrary, when a designated beneficiary for a  
3 member predeceases the member who is receiving a monthly  
4 benefit allowance provided under Option 2, 3, or 4, the member  
5 may designate a replacement beneficiary for the deceased  
6 beneficiary to become effective two years after the date of  
7 designation of the replacement beneficiary and an actuarial  
8 adjustment in the monthly benefit allowance of the member to  
9 cover any cost associated with designating a replacement  
10 beneficiary shall be reflected thereafter in the monthly  
11 benefit allowance received by the member, commencing with the  
12 first benefit allowance check received by the member following  
13 the date of designation of the replacement beneficiary.

14           (f) Notwithstanding any provision of this section to  
15 the contrary, if a retired member who is receiving a monthly  
16 benefit allowance provided under Option 2, 3, or 4 divorces  
17 his or her designated beneficiary, the member may designate a  
18 replacement beneficiary for the beneficiary to become  
19 effective two years after the date of designation of the  
20 replacement beneficiary and an actuarial adjustment in the  
21 monthly benefit allowance of the member to cover any cost  
22 associated with designating a replacement beneficiary shall be  
23 reflected thereafter in the monthly benefit allowance received  
24 by the member, commencing with the first benefit allowance  
25 check received by the member following the date of designation  
26 of the replacement beneficiary.

1           Section 25. Any member of the plan who is retired  
2 and who has selected a survivor option may cancel the survivor  
3 allowance payable to his or her designated beneficiary. Such  
4 election shall be in accordance with the rules and regulations  
5 prescribed by the Board of Control and once made by the member  
6 shall be irrevocable. Any member who so elects to cancel a  
7 survivor allowance shall designate such new beneficiary as he  
8 or she shall nominate to receive a pro rata payment for the  
9 number of days said member shall live during the month of his  
10 or her death. Any cancellation of a survivor allowance under  
11 the provisions of this section shall be irrevocable by the  
12 member and payment of the pro rata amount for the number of  
13 days said member lives during the month of his or her death  
14 shall be in lieu of any other benefits heretofore payable.

15           Section 26. (a) Any member who, at the time of his  
16 or her retirement is a member of and holds a policy in any  
17 state group hospitalization or health insurance plan, may in  
18 writing authorize the Secretary-Treasurer of the state  
19 retirement system to withhold from his or her retirement pay a  
20 sufficient sum or amount to pay the premium on such policy.

21           (b) The Secretary-Treasurer of the state Employees'  
22 Retirement System, when authorized by a retired employee, is  
23 hereby authorized to withhold from the retirement pay of such  
24 employee a sufficient amount to pay the premium on such policy  
25 and remit the same to the insurance carrier.

26           Section 27. The District Attorneys' Plan shall be  
27 under the management and supervision of the Employees'

1 Retirement System as a component of the Judicial Retirement  
2 Fund, with all contributions to the plan deposited and held in  
3 the same manner as contributions to the Judicial Retirement  
4 Fund. The Employees' Retirement System may adopt rules and  
5 regulations as necessary to implement the plan.

6 Section 28. All proposed legislation affecting the  
7 plan shall be accompanied by an actuarial estimate of the cost  
8 involved in such proposed legislation.

9 Section 29. (a) A person serving as district  
10 attorney, supernumerary district attorney, or who has made an  
11 election to assume the office of supernumerary district  
12 attorney or is otherwise entitled to participate in the  
13 supernumerary district attorney program established under  
14 Division 2 of Article 6 of Chapter 17 of Title 12 shall,  
15 subject to subsection (c), continue to serve or participate in  
16 the supernumerary district attorney program, which shall  
17 include the assumption of the office of the supernumerary  
18 district attorney after November 8, 2016 according to the  
19 terms and conditions of Division 2 of Article 6 of Chapter 17  
20 of Title 12, notwithstanding the fact that the person may be  
21 re-elected after November 8, 2016 to the office he or she is  
22 holding on November 8, 2016.

23 (b) No person may participate in both the  
24 supernumerary district attorney program and the Employees'  
25 Retirement System based on the same service.

26 (c) A district attorney who was elected prior to  
27 November 8, 2016 and who is serving in the capacity of

1 district attorney on and after November 8, 2016 and had prior  
2 service credit in the Employees' Retirement System, Teachers'  
3 Retirement System, or Judicial Retirement Fund prior to being  
4 elected district attorney shall have 30 days from November 8,  
5 2016 to elect to participate in the District Attorneys' Plan  
6 established by this article. This election shall be  
7 irrevocable.

8 (d) An assistant or deputy district attorney who  
9 obtains service credit in that position as a Tier 1 plan  
10 member and is elected or appointed district attorney on or  
11 after the effective date of this act, may withdraw from  
12 service after completion of not less than 25 years of credible  
13 service and may retire without a reduction in retirement  
14 allowance upon written application to the Board of Control  
15 setting forth at what time, not less than 30 days nor more  
16 than 90 days subsequent to the execution and filing thereof,  
17 he or she desires to be retired.

18 Section 30. (a) Any person occupying the office of  
19 supernumerary district attorney shall not represent any  
20 client, other than the State of Alabama, himself or herself,  
21 or an immediate family member in any criminal, quasi-criminal,  
22 or civil forfeiture proceeding resulting from a criminal  
23 action where the State of Alabama is a party to the action.  
24 Upon motion, the court shall enjoin any supernumerary district  
25 attorney from violating this section.

26 Section 31. The right of a person to a pension, an  
27 annuity, a retirement allowance or to the return of

1 contributions, the pension, annuity or retirement allowance  
2 itself and any optional benefit or any other right accrued or  
3 accruing to any person under the provisions of this article  
4 and the moneys in the fund are hereby exempt from any state or  
5 municipal tax and exempt from levy and sale, garnishment,  
6 attachment or any other process whatsoever and shall be  
7 unassignable except as in this article specifically otherwise  
8 provide.

9           Section 32. Official copies of records or documents  
10 maintained on microfilm, microfiche or other  
11 photo-reproductive material of archival quality by the  
12 Employees' Retirement System shall be admissible as primary  
13 evidence in any legal, judicial or administrative proceeding  
14 or action for the purpose of proving the truth of the contents  
15 of the photo-reproduced copies of such records or documents,  
16 regardless of any rule of evidence or law relating to the  
17 proof of such matters, provided the Secretary-Treasurer of the  
18 Employees' Retirement System of Alabama certifies on such  
19 copies offered into evidence that the Employees' Retirement  
20 System of Alabama is not in possession of the original and  
21 that the copy is a true and correct representation of the  
22 original.

23           Section 33. No other provision of law in any other  
24 statute which provides wholly or partly at the expense of the  
25 State of Alabama or of any political subdivision thereof for  
26 pensions or retirement benefits for employees of the said  
27 state shall apply to members of the plan established by this

1 article, except as to provisions for coverage under the  
2 federal Social Security Act, as may be provided by state and  
3 federal laws.

4 Section 34. The Board of Control is authorized to  
5 implement any new accounting procedures, funds, or  
6 administrative changes and to provide for the payment of  
7 benefits to members or beneficiaries of the plan as may be  
8 necessary to ensure the plan's compliance with the  
9 qualification standards required of public pension plans by  
10 the Internal Revenue Code of the United States.

11 Section 35. Passage and approval of this act is  
12 contingent upon passage of a proposed Constitutional Amendment  
13 passed by the legislature during the 2015 Regular Session  
14 allowing the legislature to authorize a retirement plan for  
15 district attorneys and circuit clerks.

16 Section 36. This act shall become effective on  
17 November 8, 2016, following its passage and approval by the  
18 Governor, or by its otherwise becoming law if the  
19 constitutional amendment proposed by Senate Bill 421 of the  
20 2015 Regular Session is passed by the legislature and  
21 ratified.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
  
11  
12  
13  
14

Senate

Read for the first time and referred to the Senate committee on Finance and Taxation General Fund ...	23-APR-15
Read for the second time and placed on the calen- dar 1 amendment.....	30-APR-15
Read for the third time and passed as amended ....	07-MAY-15

Patrick Harris  
Secretary