ACT No. 2015- 498

1 SB411

2 168913-3

3 By Senator Orr

4 RFD: Finance and Taxation General Fund

5 First Read: 23-APR-15

JUN - 4 2015
RECEIVED
GOVERNOR'S OFFICE

SB411

ENROLLED, An Act,

To amend Section 36-27B-1, Code of Alabama 1975, relating to preretirement death benefits for judges, clerks and district attorneys; to establish the Judges' and Clerks' Plan for retirement for justices, judges, and circuit clerks; to establish the District Attorneys' Plan for retirement for district attorneys; and to provide guidelines for the plans.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§36-27B-1.

"There shall be created the Preretirement Death Benefit Program effective October 1, 1985, which shall be effective as of that date to all employees covered under the Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama. Beginning November 8, 2016, the Preretirement Death Benefit Program shall be effective to all members of the Judges' and Clerks' Plan and the District Attorneys' Plan provided for in Section 3 and Section 19. In the event the conditions prescribed in Section 36-27B-5 shall occur prior to October 1, 1985, the death benefit plan established herein shall become effective upon certification

1 and adoption by a joint resolution of the Teachers' and
2 Employees' Retirement Systems' Boards of Control."
3 Section 2. When used in this article, the following
4 terms shall have the following meanings, respectively, unless
5 the context clearly indicates otherwise:
6 (1) RETIREMENT SYSTEM. The Employees' Retirement
7 System of Alabama as defined in Section 36-27-2.
8 (2) FUND. The Judicial Retirement Fund provided for
9 in Chapter 18 of Title 12.
10 (3) PLAN. The Judges' and Clerks' Plan provided for
11 in Section 3.
12 (4) JUDGE OR CLERK. Any justice of the Supreme
13 Court, judge of the Court of Civil Appeals, judge of the Court
14 of Criminal Appeals, circuit judge, district judge, probate
15 judge, or circuit clerk who is not a member of the Judicial
16 Retirement Fund or Clerks' and Registers' Supernumerary Fund
17 on November 7, 2016 and who is first elected or appointed to
18 his or her position on or after November 8, 2016. This shall
19 not include any judge or clerk who is a member of the Judicial
20 Retirement Fund or Clerks' and Registers' Supernumerary Fund
21 prior to the effective date of this act regardless of when he
22 or she is first appointed or elected to his or her judicial or
23 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

his or her individual account in the Judges' and Clerks' Plan, together with regular interest thereon.

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

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

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

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

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

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

Section 4. (a) Every judge or clerk first elected or appointed to his or her position on or after November 8, 2016 who is not a member of the Judicial Retirement Fund or Clerks' and Registers' Supernumerary Fund on November 7, 2016 shall come under this article by operation of law. The plan shall not include any judge or clerk who is a member of the Judicial

1 Retirement Fund or Clerks' and Registers' Supernumerary Fund
2 prior to the effective date of this act regardless of the type
3 of judgeship position held. Each judge or clerk shall
4 contribute to the fund eight and one-half percent (8.5%) of
5 his or her annual salary or base sum as provided in Section
6 12-18-82. The percentages shall be deducted by the employer
7 from each judge's or clerk's salary and paid into the fund in
8 the State Treasury and credited to the individual account of
9 the judge or clerk from whose salary it was deducted.
10 (b) On account of each member there shall be paid
11 monthly by the employer an amount equal to a certain
12 percentage of the annual salary of each member to be the
13 employer's contribution. The percentage rate of such
14 contribution shall be fixed for each fiscal year on the basis
15 of the liabilities as shown by the last annual actuarial
16 valuation, and such percentage rate as established by such
17 valuation shall take effect the following October 1 and
18 continue in effect for the fiscal year.
19 Section 5. (a) Any active and contributing member of
20 the Judges' and Clerks' Plan who, not more than one year prior
21 to becoming a member of the plan was a member of the
22 Employees' Retirement System of Alabama or the Teachers'
23 Retirement System of Alabama, may elect to transfer his or her
24 membership service and accumulated contributions in the

1 Employees' Retirement System or the Teachers' Retirement
2 System to the Judges' and Clerks' Plan.
3 (b) Any active and contributing member desiring to
4 transfer any membership service and accumulated contributions
5 under subsection (a) shall notify the Board of Control of the
6 Employees' Retirement System of his or her election to
7 transfer membership service and shall authorize the transfer
8 of the amount of his or her accumulated contributions to his
9 or her credit in the Employees' Retirement System or Teachers'
10 Retirement System to his or her account in the Judges' and
11 Clerks' Plan.
12 (c) The Board of Control transferring the membership
13 service and contributions shall thereupon certify to the Board
14 of Control of the Employees' Retirement System and to the fund
15 the amount of contributions and service creditable to the
16 member at the time of separation from the transferring
17 retirement system. The member shall be credited in the fund
18 with the membership service and accumulated contributions so
19 certified.
20 (d) Anything in this article to the contrary
21 notwithstanding, in the application of the foregoing
22 provisions of this section to a member whose membership
23 service includes a period of service as a judge or clerk and a
24 period of service in another employment classification, the
25 benefit rates applicable to a judge or clerk shall apply to

all membership service as a judge or clerk, and the benefit rates applicable to the member's other employment classification shall apply to membership service in such other classification. In all other respects, the pension under this section shall be determined on the basis of the member's employment classification at the time of his or her withdrawal from service.

Section 6. (a) Any member who withdraws from service upon or after attainment of age 62 may retire upon written application to the Board of Control setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he or she desires to be retired; provided, that any such member shall have completed 10 or more years of membership service in the Judges' and Clerks' Plan.

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

(c) Upon retirement from service, a member who is a clerk shall receive a service retirement allowance which shall consist of an annuity, which shall be the actuarial equivalent

of the member's accumulated contributions at the time of retirement, and a pension, which when added to the member's annuity shall be equal to three percent (3%) of the member's average final compensation multiplied by the member's number of years of membership service. Notwithstanding the foregoing, the service retirement allowance shall not exceed eighty percent (80%) of the member's average final compensation.

"(d) Upon retirement from service, a member who is a judge shall receive a service retirement allowance which shall consist of an annuity, which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement, and a pension, which when added to the member's annuity shall be equal to four percent (4%) of the member's average final compensation multiplied by the member's number of years of membership service. Notwithstanding the foregoing, the service retirement allowance shall not exceed seventy-five percent (75%) of the member's average final compensation. A member who is a judge and who has attained 18 or more years of membership service shall be entitled to a retirement allowance of seventy-five percent (75%) of the member's average final compensation."

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

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

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

(c) Upon retirement for disability, a member who is a judge shall receive a service retirement allowance if he or she has attained age 62; otherwise, he or she shall receive a disability retirement allowance which shall consist of an annuity, which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement,

1 and a pension, which when added to the member's annuity shall
2 be equal to four percent (4%) of the member's average final
3 compensation multiplied by the member's number of years of
4 membership service. Notwithstanding the foregoing, the
5 disability retirement allowance shall not exceed seventy-five
6 percent (75%) of the member's average final compensation. A
7 member who is a judge and who has attained 18 or more years of
8 membership service shall be entitled to a disability
9 retirement allowance of seventy-five percent (75%) of the
10 member's average final compensation.
11 (d) Once each year during the first five years
12 following the retirement of a member on a disability
13 retirement allowance and once every three-year period
14 thereafter, the Board of Control may require any disability
15 beneficiary who has not yet attained age 62 to undergo a
16 medical examination, such examination to be made at the place
17 of residence of such beneficiary or other place mutually
18 agreed upon by a physician or physicians of or designated by
19 the medical board. Should any disability beneficiary who has
20 not yet attained age 62 refuse to submit to such medical
21 examination, his or her retirement allowance may be
22 discontinued until his or her withdrawal of such refusal, and
23 should his or her refusal continue for one year, all his or
24 her rights in and to his or her pension may be revoked by the
25 Board of Control. Should the medical board report and certify

to the Board of Control that a disability beneficiary has the capacity to engage in regular and substantial gainful employment, the Board of Control shall discontinue the beneficiary's retirement allowance until the beneficiary is otherwise eligible for service retirement.

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

(b) In case of the death of a member eligible for service retirement pursuant to Section 6, an allowance shall be paid to the surviving spouse, or to such other person who the member shall have designated, in an amount that would have been payable if the member had retired immediately prior to

his or her death and had elected Option 3, as set forth in subsection (d) of this section or, alternatively, if the surviving spouse or other designee desires, he or she may choose to receive, in lieu of the allowance provided under Option 3, the accumulated contributions of the member plus an amount equal to the accumulated contributions of the member not to exceed $5,000.00 or the accumulated contributions of the member plus the benefit provided by Section 36-27B-3 if a benefit is payable under such section.

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

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

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

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

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

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

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

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

check received by the member following the date of designation of the replacement beneficiary.

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

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

(b) The Secretary-Treasurer of the state Employees' Retirement System, when authorized by a retired employee, is hereby authorized to withhold from the retirement pay of such

employee a sufficient amount to pay the premium on such policy and remit the same to the insurance carrier.

Section 11. The Judges' and Clerks' Plan shall be under the management and supervision of the Employees' Retirement System as a component of the Judicial Retirement Fund, with all contributions to the plan deposited and held in the same manner as contributions to the Judicial Retirement Fund. The Employees' Retirement System may adopt rules and regulations as necessary to implement the plan.

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

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

(b) Should any charge or error in the records result in any member or beneficiary receiving from the fund more or less than he or she would have been entitled to receive had the records been correct, the Board of Control shall correct such error and, as far as practicable, shall adjust the

payment in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

Section 14. The right of a person to a pension, an annuity, a retirement allowance or to the return of contributions, the pension, annuity or retirement allowance itself and any optional benefit or any other right accrued or accruing to any person under the provisions of this article and the moneys in the fund are hereby exempt from any state or municipal tax and exempt from levy and sale, garnishment, attachment or any other process whatsoever and shall be unassignable except as in this article specifically otherwise provide.

Section 15. Official copies of records or documents maintained on microfilm, microfiche or other photo-reproductive material of archival quality by the Employees' Retirement System shall be admissible as primary evidence in any legal, judicial or administrative proceeding or action for the purpose of proving the truth of the contents of the photo-reproduced copies of such records or documents, regardless of any rule of evidence or law relating to the proof of such matters, provided the Secretary-Treasurer of the Employees' Retirement System of Alabama certifies on such copies offered into evidence that the Employees' Retirement System of Alabama is not in possession of the original and

1 that the copy is a true and correct representation of the
2 original.
3 Section 16. No other provision of law in any other
4 statute which provides wholly or partly at the expense of the
5 State of Alabama or of any political subdivision thereof for
6 pensions or retirement benefits for employees of the said
7 state shall apply to members of the plan established by this
8 article, except as to provisions for coverage under the
9 federal Social Security Act, as may be provided by state and
10 federal laws.
11 Section 17. The Board of Control is authorized to
12 implement any new accounting procedures, funds, or
13 administrative changes and to provide for the payment of
14 benefits to members or beneficiaries of the plan as may be
15 necessary to ensure the plan's compliance with the
16 qualification standards required of public pension plans by
17 the Internal Revenue Code of the United States.
18 Section 18. When used in this article, the following
19 terms shall have the following meanings, respectively, unless
20 the context clearly indicates otherwise:
21 (1) RETIREMENT SYSTEM. The Employees' Retirement
22 System of Alabama as defined in Section 36-27-2.
23 (2) FUND. The Judicial Retirement Fund provided for
24 in Chapter 18 of Title 12.

1 (3) PLAN. The District Attorneys' Plan provided for
2 in Section 19.
3 (4) DISTRICT ATTORNEY. Except as otherwise provided
4 in Section 29, any district attorney first elected or
5 appointed to his or her position on or after November 8, 2016.
6 (5) SUPERNUMERARY DISTRICT ATTORNEY. A supernumerary
7 district attorney who has elected to come under the provisions
8 and requirements of Division 2 of Article 6 of Chapter 17 of
9 Title 12.
10 (6) EMPLOYER. The State of Alabama or any
11 department, agency, or local governing body by which a
12 district attorney is paid.
13 (7) MEMBER. Any district attorney included in
14 membership of the plan.
15 (8) BOARD OF CONTROL. The board provided for in
16 Section 36-27-23 to administer the retirement system.
17 (9) MEDICAL BOARD. The board of physicians provided
18 for in Section 36-27-23.
19 (10) MEMBERSHIP SERVICE. Service as a district
20 attorney on account of which contributions are made.
21 (11) AVERAGE FINAL COMPENSATION. The average annual
22 compensation of a district attorney with respect to which he
23 or she had made contributions pursuant to Section 20 during
24 the five years in his or her last 10 years of membership

service for which the average is highest or during his or her entire period of membership service if less than five years.

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

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

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

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

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

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

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

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

1 Section 19. There is hereby created and established
2 the District Attorneys' Plan under the Judicial Retirement
3 Fund.
4 Section 20. (a) Every district attorney first
5 elected or appointed to his or her position on or after
6 November 8, 2016 shall come under this article by operation of
7 law. Each district attorney shall contribute to the fund eight
8 and one-half percent (8.5%) of his or her annual salary. The
9 percentages shall be deducted by the employer from each
10 district attorney's salary and paid into the fund in the State
11 Treasury and credited to the individual account of the
12 district attorney from whose salary it was deducted.
13 (b) On account of each member there shall be paid
14 monthly by the employer an amount equal to a certain
15 percentage of the annual salary of each member to be the
16 employer's contribution. The percentage rate of such
17 contribution shall be fixed for each fiscal year on the basis
18 of the liabilities as shown by the last annual actuarial
19 valuation, and such percentage rate as established by such
20 valuation shall take effect the following October 1 and
21 continue in effect for the fiscal year. Such contribution
22 shall be made by the Office of the District Attorney who
23 employs the member.
24 Section 21. (a) Any active and contributing member
25 of the District Attorneys' Plan who, not more than one year

1 prior to becoming a member of the plan was a member of the
2 Employees' Retirement System of Alabama or the Teachers'
3 Retirement System of Alabama, may elect to transfer his or her
4 membership service and accumulated contributions in the
5 Employees' Retirement System or the Teachers' Retirement
6 System to the District Attorneys' Plan.
7 (b) Any active and contributing member desiring to
8 transfer any membership service and accumulated contributions
9 under subsection (a) shall notify the Board of Control of the
10 Employees' Retirement System of his or her election to
11 transfer membership service and shall authorize the transfer
12 of the amount of his or her accumulated contributions to his
13 or her credit in the Employees' Retirement System or Teachers'
14 Retirement System to his or her account in the District
15 Attorneys' Plan.
16 (c) The Board of Control transferring the membership
17 service and contributions shall thereupon certify to the Board
18 of Control of the Employees' Retirement System and to the fund
19 the amount of contributions and service creditable to the
20 member at the time of separation from the transferring
21 retirement system. The member shall be credited in the fund
22 with the membership service and accumulated contributions so
23 certified.
24 (d) Anything in this article to the contrary
25 notwithstanding, in the application of the foregoing

1 provisions of this section to a member whose membership
2 service includes a period of service as a district attorney
3 and a period of service in another employment classification,
4 the benefit rates applicable to a district attorney shall
5 apply to all membership service as a district attorney, and
6 the benefit rates applicable to the member's other employment
7 classification shall apply to membership service in such other
8 classification. In all other respects, the pension under this
9 section shall be determined on the basis of the member's
10 employment classification at the time of his or her withdrawal
11 from service.
12 Section 22. (a) Any member who withdraws from
13 service upon or after attainment of age 62 may retire upon
14 written application to the Board of Control setting forth at
15 what time, not less than 30 days nor more than 90 days
16 subsequent to the execution and filing thereof, he or she
17 desires to be retired; provided, that any such member shall
18 have completed 10 or more years of membership service in the
19 District Attorneys' Plan.
20 (b) Any member who has attained age 62 and has
21 previously withdrawn from service may retire upon written
22 application to the Board of Control setting forth at what
23 time, not less than 30 days nor more than 90 days subsequent
24 to the execution and filing thereof, he or she desires to be

1 retired; provided, that any such member shall have completed
2 10 or more years of membership service.
3 (c) Upon retirement from service, the member shall
4 receive a service retirement allowance which shall consist of
5 an annuity, which shall be the actuarial equivalent of the
6 member's accumulated contributions at the time of retirement,
7 and a pension, which when added to the member's annuity shall
8 be equal to three percent (3%) of the member's average final
9 compensation multiplied by the member's number of years of
10 membership service. Notwithstanding the foregoing, the service
11 retirement allowance shall not exceed eighty percent (80%) of
12 the member's average final compensation.
13 Section 23. (a) Upon application of an active and
14 contributing member, any such member who has 10 or more years
15 of membership service who becomes disabled may be retired on a
16 disability retirement allowance by the Board of Control not
17 less than 30 days nor more than 90 days next following the
18 date of filing of such application; provided that the medical
19 board, after a medical examination of such member, shall
20 certify that such individual is totally and permanently
21 mentally or physically incapacitated from regular and
22 substantial gainful employment and that such member should be
23 retired.
24 (b) Upon retirement for disability, the member shall
25 receive a service retirement allowance if he or she has

1 attained age 62; otherwise, he or she shall receive a
2 disability retirement allowance which shall consist of an
3 annuity, which shall be the actuarial equivalent of the
4 member's accumulated contributions at the time of retirement,
5 and a pension, which when added to the member's annuity shall
6 be equal to three percent (3%) of the member's average final
7 compensation multiplied by the member's number of years of
8 membership service. Notwithstanding the foregoing, the
9 disability retirement allowance shall not exceed eighty
10 percent (80%) of the member's average final compensation.
11 (c) Once each year during the first five years
12 following the retirement of a member on a disability
13 retirement allowance and once every three-year period
14 thereafter, the Board of Control may require any disability
15 beneficiary who has not yet attained age 62 to undergo a
16 medical examination, such examination to be made at the place
17 of residence of such beneficiary or other place mutually
18 agreed upon by a physician or physicians of or designated by
19 the medical board. Should any disability beneficiary who has
20 not yet attained age 62 refuse to submit to such medical
21 examination, his or her retirement allowance may be
22 discontinued until his or her withdrawal of such refusal, and
23 should his or her refusal continue for one year, all his or
24 her rights in and to his or her pension may be revoked by the
25 Board of Control. Should the medical board report and certify

to the Board of Control that a disability beneficiary has the capacity to engage in regular and substantial gainful employment, the Board of Control shall discontinue the beneficiary's retirement allowance until the beneficiary is otherwise eligible for service retirement.

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

(b) In case of the death of a member eligible for service retirement pursuant to Section 22, an allowance shall be paid to the surviving spouse, or to such other person who the member shall have designated, in an amount that would have been payable if the member had retired immediately prior to

his or her death and had elected Option 3, as set forth in subsection (d) of this section or, alternatively, if the surviving spouse or other designee desires, he or she may choose to receive, in lieu of the allowance provided under Option 3, the accumulated contributions of the member plus an amount equal to the accumulated contributions of the member not to exceed $5,000.00 or the accumulated contributions of the member plus the benefit provided by Section 36-27B-3 if a benefit is payable under such section.

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

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

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

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

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

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

check received by the member following the date of designation of the replacement beneficiary.

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

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

(b) The Secretary-Treasurer of the state Employees' Retirement System, when authorized by a retired employee, is hereby authorized to withhold from the retirement pay of such

employee a sufficient amount to pay the premium on such policy and remit the same to the insurance carrier.

Section 27. The District Attorneys' Plan shall be under the management and supervision of the Employees' Retirement System as a component of the Judicial Retirement Fund, with all contributions to the plan deposited and held in the same manner as contributions to the Judicial Retirement Fund. The Employees' Retirement System may adopt rules and regulations as necessary to implement the plan.

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

Section 29. (a) A person serving as district attorney, supernumerary district attorney, or who has made an election to assume the office of supernumerary district attorney or is otherwise entitled to participate in the supernumerary district attorney program established under Division 2 of Article 6 of Chapter 17 of Title 12 shall, subject to subsection (c), continue to serve or participate in the supernumerary district attorney program, which shall include the assumption of the office of the supernumerary district attorney after November 8, 2016 according to the terms and conditions of Division 2 of Article 6 of Chapter 17 of Title 12, notwithstanding the fact that the person may be

1 re-elected after November 8, 2016 to the office he or she is
2 holding on November 8, 2016.
3 (b) No person may participate in both the
4 supernumerary district attorney program and the Employees'
5 Retirement System based on the same service.
6 (c) A district attorney who was elected prior to
7 November 8, 2016 and who is serving in the capacity of
8 district attorney on and after November 8, 2016 and had prior
9 service credit in the Employees' Retirement System, Teachers'
10 Retirement System, or Judicial Retirement Fund prior to being
11 elected district attorney shall have 30 days from November 8,
12 2016 to elect to participate in the District Attorneys' Plan
13 established by this article. This election shall be
14 irrevocable.
15 (d) An assistant or deputy district attorney who
16 obtains service credit in that position as a Tier 1 plan
17 member and is elected or appointed district attorney on or
18 after the effective date of this act, may withdraw from
19 service after completion of not less than 25 years of credible
20 service and may retire without a reduction in retirement
21 allowance upon written application to the Board of Control
22 setting forth at what time, not less than 30 days nor more
23 than 90 days subsequent to the execution and filing thereof,
24 he or she desires to be retired.

1 Section 30. (a) Any person occupying the office of
2 supernumerary district attorney shall not represent any
3 client, other than the State of Alabama, himself or herself,
4 or an immediate family member in any criminal, quasi-criminal,
5 or civil forfeiture proceeding resulting from a criminal
6 action where the State of Alabama is a party to the action, as
7 court appointed counsel or as a public defender, eligible to
8 receive funds or reimbursements from the indigent defense
9 fund. Upon motion, the court shall enjoin any supernumerary
10 district attorney from violating this section.
11 Section 31. (a) Any person who shall knowingly make
12 any false statement or shall falsify or permit to be falsified
13 any record or records of this plan in any attempt to defraud
14 such plan shall be guilty of a misdemeanor and, on conviction
15 thereof by any court of competent jurisdiction, shall be
16 punished by a fine not exceeding $500.00, or imprisonment not
17 exceeding 12 months, or both such fine and imprisonment, at
18 the discretion of the court.
19 (b) Should any charge or error in the records result
20 in any member or beneficiary receiving from the fund more or
21 less than he or she would have been entitled to receive had
22 the records been correct, the Board of Control shall correct
23 such error and, as far as practicable, shall adjust the
24 payment in such manner that the actuarial equivalent of the

1 benefit to which such member or beneficiary was correctly
2 entitled shall be paid.
3 Section 32. The right of a person to a pension, an
4 annuity, a retirement allowance or to the return of
5 contributions, the pension, annuity or retirement allowance
6 itself and any optional benefit or any other right accrued or
7 accruing to any person under the provisions of this article
8 and the moneys in the fund are hereby exempt from any state or
9 municipal tax and exempt from levy and sale, garnishment,
10 attachment or any other process whatsoever and shall be
11 unassignable except as in this article specifically otherwise
12 provide.
13 Section 33. Official copies of records or documents
14 maintained on microfilm, microfiche or other
15 photo-reproductive material of archival quality by the
16 Employees' Retirement System shall be admissible as primary
17 evidence in any legal, judicial or administrative proceeding
18 or action for the purpose of proving the truth of the contents
19 of the photo-reproduced copies of such records or documents,
20 regardless of any rule of evidence or law relating to the
21 proof of such matters, provided the Secretary-Treasurer of the
22 Employees' Retirement System of Alabama certifies on such
23 copies offered into evidence that the Employees' Retirement
24 System of Alabama is not in possession of the original and

that the copy is a true and correct representation of the original.

Section 34. No other provision of law in any other statute which provides wholly or partly at the expense of the State of Alabama or of any political subdivision thereof for pensions or retirement benefits for employees of the said state shall apply to members of the plan established by this article, except as to provisions for coverage under the federal Social Security Act, as may be provided by state and federal laws.

Section 35. The Board of Control is authorized to implement any new accounting procedures, funds, or administrative changes and to provide for the payment of benefits to members or beneficiaries of the plan as may be necessary to ensure the plan's compliance with the qualification standards required of public pension plans by the Internal Revenue Code of the United States.

Section 36. Passage and approval of this act is contingent upon passage of a proposed Constitutional Amendment passed by the legislature during the 2015 Regular Session allowing the legislature to authorize a retirement plan for district attorneys and circuit clerks.

Section 37. This act shall become effective on November 8, 2016, following its passage and approval by the Governor, or by its otherwise becoming law if the

1 constitutional amendment proposed by Senate Bill 421 of the
2 2015 Regular Session is passed by the legislature and
3 ratified.

1

2

3 Kay Ivey

4 President and Presiding Officer of the Senate

5

6 Speaker of the House of Representatives

7 SB411
8 Senate 07-MAY-15
9 I hereby certify that the within Act originated in and passed
10 the Senate.
11
12 Patrick Harris
13 Secretary
14

15

16
17 House of Representatives
18 Amended and passed 04-JUN-15

19

20
21 Senate concurred in House amendment 04-JUN-15

22

23 **APPROVED** 6-12-2015
24 By: Senator Orr
TIME 9:00 AM

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2015-498
Bill Num...: S-411

Recv'd 06/12/15 10:59amSLF

PONSOR

O-SPONSORS

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SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 411

yeas 24 nays 0 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees _____

HOUSE ACTION

DATE: 5-7 20 15

RD 1 RFD Judy

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Judy was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed w/amend(s) 2 w/sub

This 2nd day of June 20 15

Chairperson

DATE: 6-2 2015

RF Amends RD 2 CAL

DATE: 20 __

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill SB 411

YEAS 94 NAYS 2

JEFF WOODARD,
Clerk

FURTHER HOUSE ACTION (OVER)