SB149

197528-1

By Senator Shelnutt

RFD: Education Policy

First Read: 20-MAR-19
SYNOPSIS: Existing law provides for the Deferred Retirement Option Plan (DROP), which contractually allows a member of the Employees' Retirement System (ERS) or the Teachers' Retirement System (TRS) to continue employment with his or her employer for a specific period of time, while deferring a portion of his or her retirement allowance until the end of the participation period, at which time the member withdraws from his or her service.

Existing law provides that participation in DROP is prohibited after March 24, 2011.

This bill would open participation in an Employees' Investment Retirement Plan (EIRP) and would further provide options for Tier I and Tier II members to participate in EIRP.

A BILL
TO BE ENTITLED
AN ACT
To amend Sections 16-25-150, 16-25-151, 36-27-170, and 36-27-171 of the Code of Alabama 1975, relating to the Deferred Retirement Option Plan (DROP); to open participation in an Employees' Investment Retirement Plan (EIRP) for certain members; and to further provide options for Tier I and Tier II members to participate in EIRP.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 16-25-150, 16-25-151, 36-27-170, and 36-27-171 of the Code of Alabama 1975, are amended to read as follows:

"§16-25-150.

"(a) As governed by this subsection, there exists as a part of this retirement system an optional account known as the Deferred Retirement Option Plan Employees' Investment Retirement Plan, which may be cited as "DROP EIRP." The purpose of DROP EIRP is to allow, contractually, in lieu of immediate withdrawal from service and receipt of a retirement allowance, continued employment for a specific period of time, coupled with the deferral of receipt of a retirement allowance until the end of the period of participation, at which time the member shall withdraw from service.

"(b) Participation in DROP EIRP is an option available to any Tier I member of this retirement system who meets all of the following requirements:

"(1) Has at least 25 years of creditable service exclusive of sick leave.

"(2) Is at least 55 years of age."
"(3) Is eligible for service retirement.

"(c) Participation in EIRP is an option available to any Tier II member of this retirement system who meets all of the following requirements:

"(1) Has at least 25 years of creditable service exclusive of sick leave.

"(2) Is at least 62 years of age.

"(3) Is eligible for service retirement.

"(d) An election to participate in DROP EIRP may be made in one year increments not to exceed five years, nor to be less than three years. A member may participate in DROP EIRP only one time. Any voluntary termination within the first three years in DROP EIRP will result in a forfeiture of the portion of his or her DROP EIRP account that constitutes the retirement allowance. However, member contributions will not be forfeited, nor will any interest attributable to the retirement allowance. There will be no penalty forfeiture if the participation period is interrupted due to an involuntary dismissal, disability, involuntary transfer of his or her spouse, or death of the participant.

"(e) A member who chooses to participate in DROP EIRP may elect an option allowance set out for members of the Teachers' Retirement System in subsection (h) of Section 16-25-14 at the beginning of the participation period. Otherwise, he or she shall receive the maximum benefit. Such election shall be irrevocable once the participation period begins except as otherwise provided in this chapter.
"(e) (f) For purposes of DROP EIRP, sick leave may not be converted for purposes of establishing retirement eligibility, nor used in the calculation of the original retirement allowance except as provided in Section 16-25-151.

"(f) (g) The election to participate in DROP EIRP shall be made in accordance with procedures set forth in a uniform and nondiscriminatory election and application form adopted by the Board of Control. The election to participate in DROP EIRP may be made at any time on or after the date the member becomes eligible to participate as set out in subsection (b). Such application must be made at least 30 days, but not more than 90 days, before the effective date of participation in DROP EIRP, and shall be made no later than March 24, 2011. A member must be eligible to participate, as provided above at the time the application is made.

"(g) (h) Upon the effective date of the commencement in DROP EIRP, the member's service shall remain as it existed on that date for the duration of DROP EIRP. Once a member enters DROP EIRP, service credit purchases are prohibited. Both the employer and employee member contribution shall continue to be made. The employee member contribution shall not be refundable to the member at the completion of EIRP. The Eighty percent of the monthly retirement allowance that would have been payable, had the person elected to withdraw from service and receive a retirement allowance, shall be paid into a DROP EIRP account that reflects the credits attributed to the person in DROP EIRP. However, the monies shall remain a
(h)(1) The DROP account shall earn interest at the same rate that interest is posted to active member accounts as defined in subdivision (15) of Section 16-25-1. (i) A person who participates in this plan shall not be eligible to receive a retiree cost-of-living increase while participating in DROP EIRP, and shall not be eligible for a retiree cost-of-living increase until participation in the plan ceases and he or she withdraws from service and has been receiving a retirement allowance for at least one full year.

(2) Notwithstanding any other provision of this chapter, for any member who has fulfilled his or her obligation under DROP and does not withdraw from service and any member who begins participation in DROP on or before April 1, 2011, and fulfills his or her obligation under DROP and does not withdraw from service, the amount of interest payable on benefit deposits after March 24, 2011, shall be the lesser of (1) the investment performance of the immediately preceding fiscal year but no less than $0, or (2) as provided in subdivision (1) of subsection (d) of Section 16-25-151.

(j) DROP EIRP shall not be subject to any fees, charges, or other similar expenses of any kind for any purpose.
"(j) Participation in DROP EIRP shall not affect the rights of any education employee including, but not limited to, the Fair Dismissal Act, Section 36-26-100 et seq., the tenure law, Section 16-24-1, et seq., or any other fringe benefit.

"(k) Participation in DROP EIRP shall not affect the accrual of annual and sick leave by the participant.

"(l) Participants in DROP EIRP may receive salary cost-of-living adjustments and salary increases.

"§16-25-151.

"(a) On withdrawing from service pursuant to Section 16-25-14, a member who participated in DROP EIRP:

"(1) Who fulfilled his or her contractual obligation pursuant to DROP EIRP shall receive a lump-sum payment from his or her DROP EIRP account equal to the payments made to that account on his or her behalf plus interest. Further, the member shall receive his or her accumulated contribution made during participation in DROP, together with interest for the period of DROP participation as provided in subdivision (1) of subsection (g) of Section 16-25-14. In lieu of a lump-sum payment from the DROP EIRP account, to the extent eligible under applicable tax laws, the member's total accrued benefit may be "rolled over" directly to the custodian of an eligible retirement plan. The member shall also begin receiving his or her monthly benefit which had been paid directly into the DROP account during that would have been payable, had the person elected to withdraw from service and receive a retirement
allowance at the commencement of his or her participation in DROP EIRP. However, the monthly benefit shall be recalculated prospectively to reflect any accrued sick leave as credit for retirement purposes. Conversion of sick leave is limited to the applicable laws pertaining to conversion of sick leave into retirement credit. In no event can the number of days converted be greater than the number of days the participant had on the date he or she entered DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(2) Who did not fulfill his or her obligation under DROP EIRP due to involuntary termination, disability, or involuntary transfer of his or her spouse, shall receive a lump-sum payment from his or her DROP EIRP account equal to the payments made to that account on his or her behalf plus interest. Further, the member shall receive his or her accumulated contribution made during participation in DROP, together with interest for the period of DROP participation as provided in subdivision (1) of subsection (g) of Section 16-25-14. In lieu of a lump-sum payment from the DROP EIRP account, to the extent eligible under applicable tax laws, the member's total accrued benefit may be "rolled over" directly to the custodian of an eligible retirement plan. The member shall also begin receiving his or her monthly benefit which had been paid directly into the DROP account during that would have been payable, had the person elected to withdraw from service and receive a retirement allowance at the commencement
of his or her participation in DROP EIRP. However, the monthly
benefit shall be recalculated prospectively to reflect any
accrued sick leave as credit for retirement purposes.
Conversion of sick leave is limited to the applicable laws
pertaining to conversion of sick leave into retirement credit.
In no event can the number of days converted be greater than
the number of days the participant had on the date he or she
entered DROP EIRP. The member is not allowed to change the
option allowance chosen at the beginning of DROP EIRP
participation.

"(3) Who did not fulfill his or her obligation under
DROP EIRP due to voluntary termination within the first three
years of participation shall forfeit a portion of his or her
DROP EIRP account that constitutes the retirement allowance.
The member shall be entitled to a return of his or her member
collection made during his or her participation in DROP as
well as any interest attributable to the retirement allowance.
However, following termination of employment, the member shall
begin receiving his or her monthly benefit which had been paid
directly into the DROP account during that would have been
payable, had the person elected to withdraw from service and
receive a retirement allowance at the commencement of his or
her participation in DROP EIRP. However, the monthly benefit
shall be recalculated prospectively to reflect any accrued
sick leave as credit for retirement purposes. Conversion of
sick leave is limited to the applicable laws pertaining to
conversion of sick leave into retirement credit. In no event
can the number of days converted be greater than the number of days the participant had on the date he or she entered DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(b) If a participant dies during the period of participation in DROP EIRP, a lump-sum payment equal to the payments made to the DROP EIRP account on his or her behalf plus interest shall be paid to his or her named beneficiary or, if none, to his or her estate. Further, the beneficiary of the estate shall be entitled to a return of the member's contribution made during his or her participation in DROP together with interest for the period of DROP participation as provided in subdivision (j) of subsection (g) of Section 16-25-14. However, death benefits payable pursuant to subsection (g) of Section 16-25-14 or Section 36-27B-3 shall not be applicable. Where there is a beneficiary that would be entitled to an ongoing monthly benefit, if applicable laws allow, the monthly benefit may be recalculated prospectively to reflect accrued sick leave as credit for retirement purposes. If applicable laws allow, the beneficiary may elect to be paid for the deceased member's sick leave as would any other member upon retirement. In no event can the number of sick leave days used for either calculation be greater than the number of days the participant had on entry into DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.
"(c) At the end of the specified period for DROP EIRP:

"(1) Payments into the DROP EIRP account made on behalf of the member shall cease.

"(2) Payment from the DROP EIRP account shall not be made to the member until he or she withdraws from service, nor shall the monthly retirement allowance being paid into the DROP EIRP account during the period of participation be payable to the member until he or she withdraws from service pursuant to Section 16-25-14.

"(3) If the member does not withdraw from service after the period specified for participation in DROP EIRP, he or she shall resume active contributing membership in the system for the purpose of earning creditable service. Under no circumstance will any time spent participating in DROP EIRP be eligible to constitute service credit in any Alabama public supported retirement system.

"(d)(1) Upon a future withdrawal from service, the member shall receive a lump-sum payment from his or her DROP EIRP account equal to the payments made to that account on his or her behalf plus interest. Further, the member shall receive his or her accumulated contribution made during participation in DROP together with interest for the period of DROP participation as provided in subdivision (1) of subsection (g) of Section 16-25-14. In lieu of a lump-sum payment from the DROP EIRP account, to the extent eligible under applicable tax
laws, the member's total accrued benefit may be "rolled over" directly to the custodian of an eligible retirement plan.

"(2) Upon withdrawal from service, the monthly retirement allowance that was being originally paid into the DROP account would have been payable, had the person elected to withdraw from service and receive a retirement allowance at the commencement of his or her participation in EIRP, shall begin to be paid to the member. However, the monthly benefit shall be recalculated prospectively to reflect any accrued sick leave as credit for retirement purposes. Conversion of sick leave is limited to the applicable laws pertaining to conversion of sick leave into retirement credit. In no event can the number of days converted be greater than the number of days the participant had on the date he or she entered DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(3) Upon withdrawal from service, the member shall receive an additional retirement benefit based on his or her additional service rendered to the system since termination of participating in DROP EIRP, using the normal method of computation of benefit for that period only. This additional service shall not be added to any service prior to his or her participation in DROP EIRP. The member's average compensation for that time worked after the participation in DROP EIRP shall be multiplied by the appropriate benefit factor multiplied by the amount of time worked after the participation in DROP EIRP. Under no circumstances is this
service to be combined with service prior to participation in DROP EIRP.

"(4) The option used for retirement purposes shall be that applicable to the original benefit.

"(5) If the member dies or becomes disabled during the period of additional service, he or she shall be considered as having retired on the date of death or commencement of disability. However, no death benefits pursuant to subsection (g) of Section 16-25-14 or Section 36-27B-3 will be applicable.

"§36-27-170.

"(a) As governed by this subsection, there exists as a part of this retirement system, an optional account known as the Deferred Retirement Option Plan Employees' Investment Retirement Plan, which may be cited as "DROP EIRP." The purpose of DROP EIRP is to allow, contractually, in lieu of immediate withdrawal from service and receipt of a retirement allowance, continued employment for a specific period of time, coupled with the deferral of receipt of a retirement allowance until the end of such period of participation, at which time the member shall withdraw from service.

"(b) Participation in DROP EIRP is an option available to any Tier I member of this retirement system who meets all of the following:

"(1) Has at least 25 years of creditable service exclusive of sick leave.
(2) Is at least 55 years of age, or in the case of a state police member, is at least 52 years of age.

(3) Is eligible for service retirement.

(c) Participation in EIRP is an option available to any Tier II member of this retirement system who meets all of the following:

(1) Has at least 25 years of creditable service exclusive of sick leave.

(2) Is at least 62 years of age, or in the case of a firefighter, law enforcement officer, correction officer, or state police member, is at least 56 years of age.

(3) Is eligible for service retirement.

(e) (d) An election to participate in DROP EIRP may be made in one year increments not to exceed five years, nor to be less than three years. A member may participate in DROP EIRP only one time. Any voluntary termination within the first three years in DROP EIRP will result in a forfeiture of a portion of his or her DROP EIRP account that constitutes the retirement allowance. However, member contributions will not be forfeited nor will any interest attributable to the retirement allowance. There will be no forfeiture if the participation period is interrupted due to an involuntary dismissal, disability, involuntary transfer of his or her spouse, or death of the participant.

(e) (d) A member who chooses to participate in DROP EIRP may elect an option allowance set out for members of the Employees' Retirement System in subsection (d) of Section
36-27-16 at the beginning of the participation period. Otherwise, he or she shall receive the maximum benefit. Such election shall be irrevocable once the participation period begins except as otherwise provided in this chapter.

"(e) (f) For purposes of DROP EIRP, sick leave may not be converted for purposes of establishing retirement eligibility, nor used in the calculation of the original retirement allowance except as provided in Section 36-27-171. A person electing to enter the DROP EIRP program is not eligible for a lump-sum payment for any annual or sick leave until withdrawal from service.

"(f) (g) The election to participate in DROP EIRP shall be made in accordance with procedures set forth in a uniform and nondiscriminatory election and application form adopted by the Board of Control. The election to participate in DROP EIRP may be made at any time on or after the date the member becomes eligible to participate as set out in subsection (b). Such application must be made at least 30 days, but not more than 90 days, before the effective date of participation in DROP EIRP, and shall be made no later than March 24, 2011. A member must be eligible to participate, as provided above, at the time the application is made.

"(g) (h) Upon the effective date of the commencement in DROP EIRP, the member's service shall remain as it existed on that date for the duration of DROP EIRP. Once a member enters DROP EIRP, service credit purchases are prohibited. Both the employer and employee member contribution shall
continue to be made. The employee member contribution shall not be refundable to the member at the completion of EIRP. Eighty percent of the monthly retirement allowance that would have been payable, had the person elected to withdraw from service and receive a retirement allowance, shall be paid into a DROP EIRP account that reflects the credits attributed to the person in DROP EIRP. However, the monies shall remain a part of the regular retirement fund until disbursed to the participating member in accordance with this section. Any monies paid into this account are subject to the exemptions set out in Section 36-27-28.

"(h)(1) The DROP account shall earn interest at the same rate that interest is posted to active member accounts as defined in subdivision (12) of Section 36-27-1. (i) A person who participates in this plan shall not be eligible to receive a retiree cost-of-living increase while participating in DROP EIRP, and shall not be eligible for a retiree cost-of-living increase until participation in the plan ceases and he or she withdraws from service and has been receiving a retirement allowance for at least one full year.

"(2) Notwithstanding any other provision of this chapter, for any member who has fulfilled his or her obligation under DROP and does not withdraw from service and any member who begins participation in DROP on or before April 1, 2011, and fulfills his or her obligation under DROP and does not withdraw from service, the amount of interest payable on benefit deposits after March 24, 2011, shall be the lesser
of (1) the investment performance of the immediately preceding fiscal year but no less than $0, or (2) as provided in subdivision (1) of subsection (d) of Section 36-27-171.

"(i) (j) DROP EIRP shall not be subject to any fees, charges, or other similar expenses of any kind for any purpose.

"(j) (k) Participation in DROP EIRP shall not affect the rights of any state employee under the state personnel system, including, but not limited to, his or her rights to longevity pay.

"(k) (l) Participation in DROP EIRP shall not affect the accrual of annual and sick leave by the participant.

"(l) (m) Participants in DROP EIRP may receive salary cost-of-living adjustments and salary increases.

"§36-27-171.

"(a) On withdrawing from service pursuant to Section 36-27-16, a member who participated in DROP EIRP:

"(1) Who fulfilled his or her contractual obligation pursuant to DROP EIRP shall receive a lump-sum payment from his or her DROP EIRP account equal to the payments made to that account on his or her behalf plus interest. Further, the member shall receive his or her accumulated contribution made during participation in DROP, together with interest for the period of DROP participation as provided in subdivision (1) of subsection (c) of Section 36-27-16. In lieu of a lump-sum payment from the DROP EIRP account, to the extent eligible under applicable tax laws, the member's total accrued benefit
may be "rolled over" directly to the custodian of an eligible retirement plan. The member shall also begin receiving his or her monthly benefit which had been paid directly into the DROP account during that would have been payable, had the person elected to withdraw from service and receive a retirement allowance at the commencement of his or her participation in DROP EIRP. However, if applicable laws allow, the monthly benefit may be recalculated prospectively to reflect accrued sick leave as credit for retirement purposes. If applicable laws allow, the participant may elect to be paid for his or her sick leave as would any other member upon retirement. In no event can the number of sick leave days used for either calculation be greater than the number of days the participant had on entry into DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(2) Who did not fulfill his or her obligation under DROP EIRP due to involuntary termination, disability, or involuntary transfer of his or her spouse, shall receive a lump-sum payment from his or her DROP EIRP account equal to the payments made to that account on his or her behalf plus interest. Further, the member shall receive his or her accumulated contribution made during participation in DROP, together with interest for the period of DROP participation as provided in subdivision (1) of subsection (c) of Section 36-27-16. In lieu of a lump-sum payment from the DROP EIRP account to the extent eligible under applicable tax laws, the
member's total accrued benefit may be "rolled over" directly
to the custodian of an eligible retirement plan. The member
shall also begin receiving his or her monthly benefit which
had been paid into the DROP account during that would have
been payable, had the person elected to withdraw from service
and receive a retirement allowance at the commencement of his
or her participation in DROP EIRP. However, if applicable laws
allow, the monthly benefit may be recalculated prospectively
to reflect accrued sick leave as credit for retirement
purposes. If applicable laws allow, the participant may elect
to be paid for his or her sick leave as would any other member
upon retirement. In no event can the number of sick leave days
used for either calculation be greater than the number of days
the participant had on entry into DROP EIRP. The member is not
allowed to change the option allowance chosen at the beginning
of DROP EIRP participation.

"(3) Who did not fulfill his or her obligation under
DROP EIRP due to voluntary termination within the first three
years of participation shall forfeit a portion of his or her
DROP EIRP account that constitutes the retirement allowance.
The member will be entitled to a return of his or her member
contributions made during his or her participation in DROP as
well as any interest attributable to the retirement allowance.
However, following termination of employment, the member shall
begin receiving his or her monthly benefit which had been paid
directly into the DROP account during that would have been
payable, had the person elected to withdraw from service and
receive a retirement allowance at the commencement of his or her participation in DROP EIRP. However, if applicable laws allow, the monthly benefit may be recalculated prospectively to reflect accrued sick leave as credit for retirement purposes. If applicable laws allow, the participant may elect to be paid for his or her sick leave as would any other member upon retirement. In no event can the number of sick leave days used for either calculation be greater than the number of days the participant had on entry into DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(b) If a participant dies during the period of participation in DROP EIRP, a lump-sum payment equal to the payments made to the DROP EIRP account on his or her behalf plus interest shall be paid to his or her named beneficiary or, if none, to his or her estate. Further, the beneficiary of the estate shall be entitled to a return of the member's contribution made during his or her participation in DROP together with interest for the period of DROP participation as provided in subdivision (1) of subsection (c) of Section 36-27-16. However, death benefits payable pursuant to subsection (c) of Section 36-27-16 or Section 36-27B-3 shall not be applicable. Where there is a beneficiary who would be entitled to an ongoing monthly benefit, if applicable laws allow, the monthly benefit may be recalculated prospectively to reflect accrued sick leave as credit for retirement purposes. If applicable laws allow, the beneficiary may elect
to be paid for the deceased member's sick leave as would any
other member upon retirement. In no event can the number of
sick leave days used for either calculation be greater than
the number of days the participant had on entry into DROP
EIRP. The member is not allowed to change the option allowance
chosen at the beginning of DROP EIRP participation.

"(c) At the end of the specified period for DROP EIRP:

"(1) Payments into the DROP EIRP account made on
behalf of the member shall cease.

"(2) Payment from the DROP EIRP account shall not be
made to the member until he or she withdraws from service, nor
shall the monthly retirement allowance being paid into the
DROP EIRP account during the period of participation be
payable to the member until he or she withdraws from service
pursuant to Section 36-27-16. However, if applicable laws
allow, the monthly benefit may be recalculated prospectively
to reflect accrued sick leave as credit for retirement
purposes. If applicable laws allow, the participant may elect
to be paid for his or her sick leave as would any other member
upon retirement. In no event can the number of sick leave days
used for either calculation be greater than the number of days
the participant had on entry into DROP EIRP. The member is not
allowed to change the option allowance chosen at the beginning
of DROP EIRP participation.

"(3) If the member does not withdraw from service
after the period specified for participation in DROP EIRP, he
or she shall resume active contributing membership in the
system for the purpose of earning creditable service. Under no
circumstance will any time spent participating in DROP EIRP be
eligible to constitute service credit in any Alabama public
supported retirement system.

"(d)(1) Upon a future withdrawal from service, the
member shall receive a lump-sum payment from his or her DROP
EIRP account equal to the payments made to that account on his
or her behalf plus interest. Further, the beneficiary of the
estate shall be entitled to a return of the member's
collection made during his or her participation in DROP
together with interest for the period of DROP participation as
provided in subdivision (1) of subsection (c) of Section
36-27-16. In lieu of a lump-sum payment from the DROP EIRP
account, to the extent eligible under applicable tax laws, the
member's total accrued benefit may be "rolled over" directly
to the custodian of an eligible retirement plan.

"(2) Upon withdrawal from service, the monthly
retirement allowance that would have been payable, had the person elected
to withdraw from service and receive a retirement allowance at
the commencement of his or her participation in EIRP, shall
begin to be paid to the member. However, if applicable laws
allow, the monthly benefit may be recalculated prospectively
to reflect accrued sick leave as credit for retirement
purposes. If applicable laws allow, the participant may elect
to be paid for his or her sick leave as would any other member
upon retirement. In no event can the number of sick leave days used for either calculation be greater than the number of days the participant had on entry into DROP EIRP. The member is not allowed to change the option allowance chosen at the beginning of DROP EIRP participation.

"(3) Upon withdrawal from service, the member shall receive an additional retirement benefit based on his or her additional service rendered to the system since termination of participating in DROP EIRP, using the normal method of computation of benefit for that period only. This additional service shall not be added to any service prior to his or her participation in DROP EIRP. The member's average compensation for that time worked after the participation in DROP EIRP shall be multiplied by the appropriate benefit factor multiplied by the amount of time worked after the participation in DROP EIRP. Under no circumstances is this service to be combined with service prior to participation in DROP EIRP.

"(4) The option used for retirement purposes shall be that applicable to the original benefit.

"(5) If the member dies or becomes disabled during the period of additional service, he or she shall be considered as having retired on the date of death or commencement of disability. However, no death benefits pursuant to subsection (c) of Section 36-27-16 or Section 36-27B-3 will be applicable."
Section 2. This act shall become effective January 1, 2020, following its passage and approval by the Governor, or its otherwise becoming law.