SB319

199048-1

By Senator Barfoot

RFD: Finance and Taxation General Fund

First Read: 18-APR-19
SYNOPSIS: This bill would establish a new defined benefit retirement plan for any public employee who is first hired on or after October 1, 2020, by an employer who participates in the Employees' Retirement System.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 36-26-36.1, 36-27-1, 36-27-16, 36-27-24, and 36-27-59, Code of Alabama 1975, relating to retirement benefits for employees who are members of the Employees' Retirement System, to establish a new defined benefit retirement plan for employees who first become a member of the Employees' Retirement System on or after October 1, 2020, or any Tier II plan member who has elected to join the new plan.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 36-26-36.1, 36-27-1, 36-27-16, 36-27-24, and 36-27-59, Code of Alabama 1975, are amended to read as follows:

"§36-26-36.1.

(a) Any Tier I or Tier III plan member of the Teachers' or Employees' Retirement System of Alabama not otherwise covered by a provision to convert unused sick leave into membership service for purposes of service retirement may, at their option and in lieu of receiving payment for 50 percent of their accrued and unused sick leave at the time of their retirement as provided in Section 36-26-36, or any other payment that may be provided for such unused sick leave, use their accrued sick leave, up to a maximum number of 180 accrued sick leave days or as otherwise allowed by law, whichever is greater, to be included as membership service in determining the total years of creditable service in the Employees' Retirement System of Alabama or the Teachers' Retirement System of Alabama; provided that no employee of an employer participating in the Employees' Retirement System pursuant to Section 36-27-6 shall be entitled to the benefits provided herein unless such employer shall elect to come under the provisions of this section and further elects to fund the benefits provided herein. Unused sick leave may be converted to membership service only for the purpose of applying for service retirement and may be considered in the determination of eligibility for retirement. The conversion shall not apply to eligibility for deferred retirement. It is further provided
that if a Tier I or Tier III plan member eligible for service retirement is also eligible for disability retirement the member may elect disability retirement and also receive credit for accumulated sick leave pursuant to this section. No Tier I or Tier III plan member shall receive both service credit provided for by this section and payment or partial payment for accrued sick leave pursuant to any other provision of law.

"(b) The conversion of accrued sick leave into creditable service provided in this section shall not apply to any Tier II plan member.

§36-27-1.

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

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

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

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

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

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

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

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

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

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

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

"(11) BENEFICIARY. Any person in receipt of a
pension, an annuity, a retirement allowance or other benefit
as provided by this article.
"(12) REGULAR INTEREST. Interest compounded annually at the rate determined by the Board of Control in accordance with subsection (f) of Section 36-27-25.

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

"(14) EARNABLE COMPENSATION. The full rate of compensation that would be payable to an employee if he or she worked the full normal work-time. In cases where compensation includes maintenance, the Board of Control shall fix the value of that part of the compensation not paid in money. Earnable compensation shall not exceed the limitations imposed by Section 401(a)(17) of the Internal Revenue Code for public pension funds, except that any employee who was a member of the Employees' Retirement System before the first plan year beginning after December 31, 1995, shall not be subject to the earning limitations set forth in Section 401(a)(17). For Tier I plan members, the term earnable compensation for retirement purposes shall not include subsistence payments that are made to a member and shall include overtime payments that are made to a member; however, earnable compensation shall not exceed 120 percent of any members' annual base compensation as certified by the employer. For Tier II and Tier III plan members, earnable compensation shall include overtime payments that are made to the member but shall not include subsistence
payments that are made to the member and shall not exceed one
hundred twenty-five percent (125%) of the member's annual base
compensation, as certified by the employer.

"(15) AVERAGE FINAL COMPENSATION. For any Tier I
plan member, the average annual compensation of the member,
with respect to which he or she had made contributions
pursuant to subsection (b) of Section 36-27-24 during the
three years, in his or her last 10 years of creditable service
for which the average is highest or during his or her entire
period of creditable service if less than three years; except,
that for any period prior to November 1, 1959, the
compensation used in computing the average shall include
compensation in excess of the maximum amount with respect to
which members were required to contribute. For any Tier II or
Tier III plan member, the average annual compensation of the
member, with respect to which he or she has made contributions
pursuant to subsection (b) of Section 36-27-24 during the five
years, in his or her last ten years of creditable service for
which the average is highest or during his or her entire
period of creditable service if less than five years.

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

"(17) PENSION. Payments for life derived from money
provided by the employer. All pensions shall be payable in
equal monthly installments.
(18) RETIREMENT ALLOWANCE. The sum of the "annuity" and the "pension."

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

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

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

(22) 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.

(23) STATE POLICEMAN. An employee in the classified service under the Merit System Act approved by the State Personnel Board to perform the duties of highway patrolman or a beverage control agent or a crime investigator. The term includes any employee hired by the Alabama State Law Enforcement Agency after January 1, 2015, who is certified by the Alabama Peace Officers' Standards and Training Commission and performs law enforcement duties. Such an employee of the Alabama State Law Enforcement Agency shall pay the same employee contribution rate as and receive the same benefits as Tier II law enforcement officers, as defined by Section
36-27-59(a)(3). The term shall not include a member employed as a policeman under Section 36-27-6.

"(24) TIER I PLAN. The defined benefit pension plan provided by the Retirement System to Tier I plan members.

"(25) TIER II PLAN. The defined benefit pension plan provided by the Retirement System to Tier II plan members.

"(26) TIER III PLAN. The defined benefit pension plan provided by the Retirement System to Tier III plan members.

"(26) (27) TIER I PLAN MEMBER. Any member of the Retirement System who had service for which he or she received credit in the Employees' Retirement System or in the Teachers' Retirement System prior to January 1, 2013.

"(27) (28) TIER II PLAN MEMBER. Any member of the Retirement System who first began eligible employment with an Employees' Retirement System or a Teachers' Retirement System participating employer on or after January 1, 2013, and prior to October 1, 2020, and who had no eligible service in the Employees' Retirement System or the Teachers' Retirement System prior to January 1, 2013, and who opted to remain a Tier II plan member on or before January 1, 2021, in the manner prescribed by the Board of Control. Any member of the Retirement System who first began eligible employment with an Employees' Retirement System or a Teachers' Retirement System participating employer on or after January 1, 2013, who had no eligible service in the Employees' Retirement System or the Teachers' Retirement System prior to January 1, 2013, and
whose employer participates in the Employees' Retirement System pursuant to Section 36-27-6.

"(29) TIER III PLAN MEMBER. Any member of the Retirement System who first began eligible employment with a Teachers' Retirement System or an Employees' Retirement System participating employer on or after January 1, 2013, and who had no eligible service in the Teachers' Retirement System or the Employees' Retirement System prior to January 1, 2013. This term shall not include any active Tier II Plan member of the Retirement System who opted to remain a Tier II Plan member on or before January 1, 2021, in the manner prescribed by the Board of Control or any member of the Retirement System whose employer participates in the Employees' Retirement System pursuant to Section 36-27-6.

"§36-27-16.

"(a)(1) RETIREMENT, ETC., OF EMPLOYEES GENERALLY; ELIGIBILITY FOR SERVICE RETIREMENT BENEFITS.

"a. Any Tier I plan member who withdraws from service upon or after attainment of age 60 and any Tier II or Tier III plan 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 who became a member on or after October 1, 1963, shall have completed 10 or more years of creditable service; provided further, that a Tier I plan member employed
as a state policeman shall be eligible to file application for service retirement upon attaining age 52 and a Tier II or Tier III plan member employed as a state policeman or employed as a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59 with at least ten years of creditable service as a correctional officer, firefighter, or law enforcement officer shall be eligible to file application for service retirement upon attaining age 56.

"b. Any Tier I plan member who has attained age 60, or age 52 in the case of a state policeman and any Tier II or Tier III plan member who has attained age 62, or age 56 in the case of a state policeman or in the case of a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59 who has at least ten years of creditable service as a correctional officer, firefighter, or law enforcement officer, 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, the member shall have at the time of his or her withdrawal from service completed the age and service requirements established by the Board of Control for eligibility for deferred benefits; provided, that such minimum number of years of creditable service shall not be less than 10 years nor more than 25 years.
"c. In addition to any law or part of law relating to service retirement under the Employees' Retirement System of Alabama, any Tier I plan member of the Employees' Retirement System who withdraws from service after completion of not less than 25 years of creditable service, or any Tier III plan member, who withdraws from service after completion of not less than 30 years of creditable service, may retire without a reduction in retirement allowance upon written application to the Board of Control of the Employees' Retirement System setting forth the first day of which month, not less than 30 days or more than 90 days subsequent to the execution and filing thereof, he or she desires to be retired, provided that no person whose employer participates in the Employees' Retirement System under Section 36-27-6 shall be entitled to the benefits provided in this paragraph unless such employer elects to come under the provisions of the paragraph. Any employer making such election must bear the cost of such benefit.

"(2) AMOUNT OF SERVICE RETIREMENT ALLOWANCE.

"a. Upon retirement from service a Tier I plan member shall receive a service retirement allowance which shall consist of:

"1. An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; except, that in the case of a state policeman who has completed 20 years of creditable service as a state policeman who retires after age 56 but prior to age
60, the annuity shall be equal to the annuity that would have
been payable upon service retirement at age 60 had the member
continued in service to age 60 without change in compensation;

"2. A pension which shall be equal to the annuity
allowance at age of retirement, but not to exceed an annuity
allowable at age 65, computed on the basis of contributions
made prior to attainment of age 65; except, that in the case
of a state policeman who has completed 20 years of creditable
service as a state policeman who retires after age 56 but
prior to age 60, the pension shall be equal to the annuity
that he or she would have received had he or she contributed
to age 60 without change in compensation; and

"3. An additional pension, if he or she has a prior
service certificate in full force and effect, which shall be
equal to the annuity which would have been provided at the age
of retirement, but which shall not exceed an annuity allowable
at age 65 by twice the contributions which he or she would
have made during the period of prior service with which he or
she is credited had the system been in operation and had he or
she contributed thereunder; except, that in case of a state
policeman who has completed 20 years of creditable service as
a state policeman who retired after age 56 but prior to age
60, an additional pension, if he or she has a prior service
certificate in full force and effect, which shall be equal to
the annuity which would have been provided at age 60, but
which shall not exceed an annuity allowable at age 60 by twice
the contributions which he or she would have made during the
period of prior service with which he or she is credited had
the system been in operation and had he or she contributed
thereunder.

"b. Notwithstanding the provisions of subparagraphs
1, 2, and 3 of paragraph a. of this subdivision, a state
policeman who is a Tier I plan member and who has completed 20
years of service as a state policeman who retires after age 52
but prior to age 56 shall receive:

"1. An annuity which shall be equal to the annuity
that would have been payable had the member continued in
service for four years without change in compensation;

"2. A pension which shall be equal to the annuity
that he or she would have received had he or she contributed
for four years without change in compensation; and

"3. An additional pension, if he or she has a prior
service certificate in full force and effect, which shall be
equal to the annuity which would have been provided at the age
of retirement, but which shall not exceed an annuity allowable
at the age of retirement plus four years by twice the
contributions which he or she would have made during the
period of prior service with which he or she is credited had
the system been in operation and had he or she contributed
thereunder. In lieu of a determination of the actual
compensation of a member that was received during such prior
service, the Board of Control may use for the purpose of this
article the compensation rate which, if it had progressed with
the rates of salary increase shown in the tables as prescribed
in subsection (n) of Section 36-27-23, would have resulted in
the same average salary of the member for the five years
immediately preceding the date of establishment as the records
show the member actually received.

"c. The annual service retirement pension payable to
a Tier I plan member not employed as a state policeman
retiring on or after October 1, 1975, shall not be less than
an amount which, when added to his or her annuity, is equal to
the greater of the following two amounts:

"1. Two and one-eightieth percent of the member's
average final compensation multiplied by the number of years
of his or her creditable service; or

"2. If he or she became a member before October 1,
1965, $72.00 multiplied by the number of years of his or her
creditable service not in excess of 25 years.

"d. The annual service retirement pension payable to
a Tier I plan member employed as a state policeman retiring on
or after October 1, 1975, shall not be less than an amount
which, when added to his or her annuity is equal to the
greater of the following two amounts:

"1. Two and seven-eighths percent of the member's
average final compensation multiplied by the number of years
of his or her creditable service. Creditable service for any
state policeman under the age of 56 years who has completed 20
years of creditable service as a state policeman shall include
a bonus equal to four additional years. Creditable service for
a state policeman 56 years or older shall include a bonus
equal to the years or portion thereof remaining until the
member reaches age 60; or

"2. If he or she became a member before October 1,
1965, $86.40 multiplied by the number of years of his or her
creditable service not in excess of 25 years; provided,
however, that if such member has completed 20 years of
creditable service as a state policeman and has not attained
age 60 at the time of retirement, the pension shall be
determined as provided in this subparagraph on the basis of
the number of years of creditable service which he or she
would have had if he or she had remained in service for four
years, except that, in the case of those state policemen
retiring at age 56 or after, the number of years in
determining the pension shall not exceed the number of years
of creditable service which he or she would have had if he or
she had remained in service to age 60.

"e. Upon retirement from service, a Tier II plan
member who is not employed as a state policeman 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 one and sixty-five hundredths percent (1.65%) of
the member's average final compensation multiplied by the
number of years of creditable service. Notwithstanding the
foregoing, the service retirement allowance shall not exceed
eighty percent (80%) of the member's average final compensation.

"f. Upon retirement from service, a Tier II plan member who is employed as a state policeman 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 two and three-eighths percent (2.375%) of the member's average final compensation multiplied by the member's number of years of creditable service. Notwithstanding the foregoing, the service retirement allowance shall not exceed eighty percent (80%) of the member's average final compensation.

"g. Upon retirement from service, a Tier III plan member 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 two percent (2%) of the member's average final compensation multiplied by the number of years of creditable service. Notwithstanding the foregoing, the service retirement allowance shall not exceed eighty percent (80%) of the member's average final compensation.

"g. h. Anything in this article to the contrary notwithstanding, in the application of the foregoing provisions of this subdivision to a member whose creditable
service includes a period of service as a state policeman and
a period of service in another employment classification, the
benefit rates applicable to a member employed as a state
policeman shall apply to all creditable service as a state
policeman, and the benefit rates applicable to a member not
employed as a state policeman shall apply to all creditable
service, but in all other respects the pension under this
subdivision shall be determined on the basis of the member's
employment classification at the time of his or her withdrawal
from service.

"h. i. The annual service retirement pension payable
to any state employee who had attained age 60 on or before
October 1, 1945, who declined membership in the Employees'
Retirement System of Alabama in the manner prescribed in
Section 36-27-4 and who retires as a state employee after
completing a minimum of 15 years' service shall be $72.00
multiplied by the number of years of his or her service not in
excess of 25 years.

"(b)(1) RETIREMENT OF DISABLED EMPLOYEES;
ELIGIBILITY FOR DISABILITY RETIREMENT BENEFITS.

"a. Upon application of a Tier I plan member in
service or of his or her employer, any member who has had 10
or more years of creditable service who becomes disabled may
be retired on a disability retirement allowance by the Board
of Control not less than 30 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 member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired. Upon the application of a Tier II or Tier III plan member in service or his or her employer, any member who has had 10 or more years of creditable service may be retired by the Board of Control on a disability retirement allowance not less than 30 nor more than 90 days next following the date of filing such application; provided, that the medical board, after a medical examination of such member, shall certify that the member is totally and permanently mentally or physically incapacitated from regular and substantial gainful employment, and that such member should be retired.

"b. Without regard to the number of years of creditable service, a member employed as a state policeman, a municipal police officer or a deputy sheriff, or a member employed as a state, municipal, or county firefighter who is not covered through his or her current employer under the United States Social Security Act, who as a result of his or her employment, in the line of duty and not as a result of his or her own misconduct, shall become permanently and totally disabled to the extent that he or she cannot perform his or her duties or duties of a less strenuous nature, as an employee of the State of Alabama or as an employee of an employer participating under the provisions of Section 36-27-6, shall be retired on a disability retirement
allowance, not less than 30 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 member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

"(2) AMOUNT OF DISABILITY RETIREMENT ALLOWANCE. "

"a. Upon retirement for disability a member shall receive a service retirement allowance if he or she is a Tier I plan member and he or she has attained age 60 or if he or she is a Tier II or Tier III plan member and he or she has attained age 62, or if any law or part of any law pertaining to retirement under the Employees' Retirement System of Alabama provides for service retirement after the completion of 25 years of creditable service or 30 years of creditable service without a reduction in the retirement allowance and the member has completed 25 years of creditable service or 30 years of creditable service, whichever is applicable, or, in the case of a state policeman, if he or she is a Tier I plan member and he or she has attained age 52 or, in the case of a state policeman or a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59 with at least ten years of creditable service as a correctional officer, firefighter, or law enforcement officer, if he or she is a Tier II or Tier III plan member and he or she has
attained age 56; otherwise, he or she shall receive a

disability retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement;

2. A pension which shall be equal to the pension that would have been payable under subparagraphs 2 and 3 of paragraph a. of subdivision (2) of subsection (a) of this section upon service retirement at age 65 had the member continued in service to that age without change in compensation.

b. The annual disability retirement pension payable to a Tier I plan member not employed as a state policeman retiring on or after October 1, 1975, shall not be less than an amount which when added to his or her annuity is equal to the greatest of the following two amounts:

1. Two and one-eighth percent of the member's average final compensation multiplied by the number of years of creditable service.

2. If he or she became a member before October 1, 1965, $54.00 multiplied by the number of years of his or her creditable service not in excess of 25 years.

c. The annual disability retirement pension payable to a Tier I plan member employed as a state policeman retiring on or after October 1, 1975, shall not be less than an amount which when added to his or her annuity is equal to the greater of the following two amounts:
"1. Two and seven-eighths percent of the member's average final compensation multiplied by the number of years of his or her creditable service. Creditable service for any state policeman under the age of 56 years who has completed 20 years of creditable service as a state policeman shall include a bonus equal to four additional years. Creditable service for a state policeman 56 years or older shall include a bonus equal to the years or portion thereof remaining until the member reaches age 60; or

"2. If he or she became a member before October 1, 1965, $64.80 multiplied by the number of years of his or her creditable service not in excess of 25 years.

d. The annual disability retirement allowance payable to a Tier II plan member not employed as a state policeman shall be equal to one and sixty-five hundredths percent (1.65%) of the member's average final compensation multiplied by the number of years of creditable service.

e. The annual disability retirement allowance payable to a Tier II plan member employed as a state policeman shall be equal to two and three-eighths percent (2.375%) of the member's average final compensation multiplied by the number of years of creditable service.

f. The annual disability retirement allowance payable to a Tier III plan member shall be equal to two percent (2%) of the member's average final compensation multiplied by the number of years of creditable service.
Anything in this chapter to the contrary notwithstanding in the application of the provisions of this subdivision to a member whose creditable service includes a period of service as a state policeman and a period of service in another employment classification the benefit rates applicable to a member employed as a state policeman shall apply to all creditable service as a state policeman, and the benefit rates applicable to a member not employed as a state policeman shall apply to all other creditable service, but in all other respects the pension under this subdivision shall be determined on the basis of the member's employment classification at the time of his or her withdrawal from service.

"(3) REEXAMINATION OF BENEFICIARIES RETIRED ON ACCOUNT OF DISABILITY. Once each year during the first five years following the retirement of a member on a disability retirement allowance and once every three-year period thereafter, the Board of Control may, and upon his or her application shall, require any disability beneficiary who has not yet attained age 60 if the beneficiary is a Tier I plan member or age 62 if the beneficiary is a Tier II or Tier III plan member to undergo a medical examination, such examination to be made at the place of residence of such beneficiary or other place mutually agreed upon by a physician or physicians of or designated by the medical board. Should any disability beneficiary who has not yet attained age 60 if the beneficiary is a Tier I plan member or age 62 if the beneficiary is a Tier
II or Tier III plan member refuse to submit to such medical examination, his or her allowance may be discontinued until his or her withdrawal of such refusal, and, should his or her refusal continue for one year, all his or her rights in and to his or her pension may be revoked by the Board of Control; provided, that these requirements relative to the medical examination shall not apply in the case of a state policeman retired for disability and who has attained age 52 if he or she is a Tier I plan member or in the case of a state policeman or a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59 with at least ten years of creditable service as a correctional officer, firefighter, or law enforcement officer retired for disability who has attained age 56 if he or she is a Tier II or Tier III plan member. Should the medical board report and certify to the Board of Control that a disability beneficiary who is a Tier I plan member is engaged in or is able to engage in a gainful occupation paying more than the difference between his or her retirement allowance and his or her average final compensation and should the Board of Control concur in such report, then the amount of his or her pension shall be reduced to an amount which, together with his or her annuity and the amount earnable by him or her shall equal the amount of his or her average final compensation. Should his or her earning capacity be later changed, the amount of his or her pension may be further modified; provided, that the new pension shall not exceed the amount of the pension originally
granted nor an amount which, when added to the amount earnable
by the beneficiary, together with this annuity exceeds the
amount of his or her average final compensation.

"Should the medical board report and certify to the
Board of Control that a disability beneficiary who is a Tier
II or Tier III plan member 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.

"(c) Disposition of contributions and allowances
upon death, etc., of member.

"(1) Should a member cease to be an employee 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 Annuity Savings 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.
(2) In case of the death of a member eligible for service retirement pursuant to subsection (a) of this section, 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;

(3) In case of the death of a Tier I plan member not eligible for service retirement, after completion of 25 years of creditable service, 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 for disability 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;

"(4) Upon the death of a member on account of whom
no survivor allowance is payable under subdivisions (2) or (3)
of this subsection, 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) Effect of return to active service. Should any beneficiary be restored to active service, his or her retirement allowance shall be suspended until he or she again withdraws from service and he or she shall not again become a member of the retirement system nor shall he or she make contributions; except, that should such beneficiary who has been restored to active service continue in service for a period of two or more years from the date of his or her reentry into active service, he or she may request the Board of Control to allow him or her to again become a member of the
retirement system. The Board of Control may grant the request for restoration to membership; provided, that such beneficiary whose retirement allowance has been suspended shall repay to the system all moneys received by him or her as benefits during any periods subsequent to the date of his or her reentry into active service and shall make a contribution equal to the amount he or she would have contributed had he or she been a member during the period of his or her restoration to active service on a suspended allowance basis together with the interest which would have been credited to the contributions on account of such period of restoration up to the date such contribution is made.

"(f)(1) REDETERMINATION, ETC., OF CERTAIN ALLOWANCES. All retirement allowance payments due on or after October 1, 1975, to members who retired prior to that date shall be redetermined as if the provisions of this section in effect on October 1, 1975, were in effect at the time the member retired. Anything in this article to the contrary notwithstanding, the annual retirement allowance of any member not employed as a state policeman who retired on or before January 1, 1956, shall not be less than $79.20 multiplied by the number of years of his or her creditable service not in excess of 30 years in the case of service retirement of $59.40 multiplied by the number of years of his or her creditable service not in excess of 30 years in the case of disability retirement. Any increase provided in the retirement allowance payment under this subdivision for a member who retired under
the provisions of any optional benefit elected pursuant to subsection (d) of this section shall accrue only to the retired member, and no person designated to receive any payments after the death of a retired member under the provisions of any such optional benefit shall receive any increase in such payments under this subdivision. Notwithstanding, any member who retired prior to October 1, 1975, and who chose either Option 2 or Option 3 may elect to receive a reduced allowance and to stipulate that the actuarial equivalent of the increase in his or her retirement allowance, which became effective on that date, be ascribed to his or her designated beneficiary; provided, that such member shall clearly express this intention by filing a written application to the effect with the Secretary-Treasurer of the Employees' Retirement System of Alabama prior to October 1, 1976.

"(2) Any person who, prior to October 1, 1963, was in receipt of a benefit pursuant to Act No. 376, approved November 6, 1959, but was not a member of the system at the time of retirement shall not be entitled to receive an annual retirement allowance from the system, effective October 1, 1971, as follows:

"a. If such person was retired on or before January 1, 1956, an amount equal to $79.20 multiplied by the number of years of his or her creditable service not in excess of 30 years.
"b. If such person was retired after January 1, 1956, an amount equal to $72.00 multiplied by the number of years of his or her creditable service not in excess of 25 years.

"(3) Prior to October 31, 1975, any beneficiary may elect to leave on deposit with the system all or a specified part of any increase in his or her monthly retirement allowance payments arising in accordance with subdivisions (1) or (2) of this subsection over the monthly allowance which he or she was receiving prior to October 1, 1975. The portion of each monthly payment left in the system in accordance with such election shall be credited, together with regular interest thereon, to the individual account of such beneficiary. Upon the death of such beneficiary the total amount standing to his or her credit, including regular interest to the date of death, shall be paid in a lump sum to his or her legal representatives or to such person as he or she shall have nominated by written designation duly acknowledged and filed with the Board of Control.

"(g) 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.

"(h) 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.

"(i) Any future act to increase the retirement age for Tier II plan members above the age of 62 shall require a two-thirds vote of the elected membership of each house of the Legislature.


"(a) Effective October 1, 1997, all the assets of the retirement system shall be credited according to the purpose for which they are held among three funds, namely, the Annuity Savings Fund, the Pension Accumulation Fund, and the
Expense Fund. The operation of the former Pension Reserve Fund and the Annuity Reserve Fund shall be discontinued as of such date and the balance of the former Pension Reserve Fund shall be transferred to the Pension Accumulation Fund, and the balance of the former Annuity Reserve Fund shall be transferred to the Pension Accumulation Fund.

"(b) Annuity Savings Fund. The Annuity Savings Fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities.

"Contributions to and payments from the Annuity Savings Fund shall be made as follows: Effective October 1, 1971, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period five percent of his or her earnable compensation; except, that in the case of a state policeman, the rate of 10 percent of earnable compensation shall apply, and in computing all retirement benefits it shall be assumed that a seven percent rate of contribution had applied with respect to service as a state policeman prior to July 1, 1957. For all pay dates beginning on or after October 1, 2011, each employer, except those employers participating pursuant to Section 36-27-6, shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period seven and one-quarter percent (7.25%) of his or her earnable compensation; except, that in the case of a state policeman,
the rate of ten percent (10%) of earnable compensation shall apply. For all pay dates beginning on or after October 1, 2012, each employer, except those employers participating pursuant to Section 36-27-6, shall cause to be deducted from the salary of each Tier I plan member on each and every payroll of such employer for each and every payroll period seven and one-half percent (7.5%) of his or her earnable compensation; except, that in the case of a state policeman, the rate of ten percent (10%) of earnable compensation shall apply. For all pay dates beginning on or after January 1, 2013, each employer shall cause to be deducted from the salary of each Tier II plan member on each and every payroll period six percent (6%) of his or her earnable compensation; except that in the case of a state policeman, the rate of ten percent (10%) shall apply and in the case of a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59, the rate of seven percent (7%) shall apply. For all pay dates beginning on or after October 1, 2020, each employer shall cause to be deducted from the salary of each Tier III plan member on each and every payroll period seven and one-half percent (7.5%) of his or her earnable compensation; except in the case of a Tier III plan member who is a correctional officer, firefighter, or law enforcement officer as defined in Section 36-27-59, the rate of seven and three-quarters percent (7.75%) shall apply. Any employer participating under Section 36-27-6, by adoption of a resolution, may elect for the increases in employee
contributions provided by Act 2011-676 to be withheld from the earnable compensation of employees of the employer. In determining the amount earnable by a member in a payroll period, the Board of Control may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing through such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period, and, to facilitate the making of deductions, it may modify the deductions required of any member by such an amount as shall not exceed one tenth of one percent of the annual compensation upon the basis of which such deductions are made.

"The deductions provided for in this subsection shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deduction made and provided for in this subsection and shall receipt for his or her full salary or compensation and payment of salary or compensation less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the Board of Control in each and every payroll or in such other manner as the board may prescribe the amounts to be deducted, and each of the amounts shall be deducted and,
when deducted, shall be paid into the Annuity Savings Fund and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation the deduction was made.

"In addition to the contributions deducted from compensation as provided in this subsection, subject to the approval of the Board of Control, any member may deposit in the Annuity Savings Fund by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity which, together with his or her prospective retirement allowance, will provide for him or her a total retirement allowance not to exceed one half of his or her average final compensation at age 60. Such additional amounts so deposited shall become a part of his or her accumulated contributions, except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his or her pension.

"The contributions and interest credits of a member withdrawn by him or her or paid to his or her estate or to his or her designated beneficiary in event of his or her death shall be paid from the Annuity Savings Fund. Should a member cease to be a member other than by retirement under the provisions of this article, an amount equivalent to the difference, if any, between his or her accumulated contributions and the amount then paid shall be transferred to
the Expense Fund. Upon the retirement of a member or the death of an eligible member where an allowance to a surviving spouse or other designated beneficiary is payable, his or her accumulated contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation Fund.

"Notwithstanding the preceding provisions, no deductions shall be made from any member's salary on account of which the employer's contributions are in default."

"The State Personnel Board, with the approval of the Governor, may provide that the state shall pick up member contributions to the Employees' Retirement System of Alabama as required by this subsection on behalf of all state employees who participate in the Employees' Retirement System by a corresponding reduction in the salary of the member, such pick-up to be mandatory for all such employees, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. These contributions shall be paid from the same source of funds which is used in paying earnings to the employee. If employee contributions are so picked up they shall be treated for all other purposes of state law in the same manner and to the same extent as employee contributions made prior to the date picked up."

"(c) Pension Accumulation Fund. The Pension Accumulation Fund shall be the fund in which shall be accumulated all reserves other than the amounts held in the Annuity Savings Fund for the payment of all pensions, all
allowances granted to surviving spouses or other designated beneficiaries and other benefits payable from contributions made by the employer and from which shall be paid all pensions, all allowances granted to surviving spouses or other designated beneficiaries and other benefits on account of members with prior service credit.

"Contributions to and payments from the Pension Accumulation Fund shall be made as follows: On account of each member there shall be paid monthly by the employer an amount equal to a certain percentage of the earnable compensation of each member to be known as the "normal contribution" and an additional amount equal to a percentage of his or her earnable compensation to be known as the "accrued liability contribution," and these two amounts shall be paid monthly into the Pension Accumulation Fund; provided, that in the case of a state policeman, such percentage rates of contributions shall be calculated separately. The percentage rate of such contributions shall be fixed for each fiscal year on the basis of the liabilities of the retirement system as shown by the last annual actuarial valuation, and such percentage rate as established by such valuation shall take effect the following October 1 and continue in effect for the fiscal year.

"On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Control, the actuary engaged by the board to make such valuation required by this article during the period over which the accrued liability contribution is payable shall,
Immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant which, if contributed on the basis of his or her compensation throughout his or her entire period of active service, would be sufficient to provide for the payment of any pension payable on his or her account. The percentage rate so determined shall be known as the "normal contribution" rate. The normal rate of contributions shall be determined by the actuary after each valuation.

"The accrued liability contribution rate shall be computed by the actuary on the basis of each valuation as the percentage rate of the total annual compensation of all members which is sufficient to liquidate the accrued liability over a period to be determined by the Board of Control which shall be not less than 10 nor more than 30 years.

"The unfunded accrued liability shall be computed by the actuary as the total liabilities of the system which are not dischargeable by the assets of the Annuity Savings Fund and the Pension Accumulation Fund and the present value of the aforesaid normal contributions.

"For purposes of computing the unfunded accrued liability the assets shall be determined as follows:

"On September 30, 1997, the assets shall be determined by using the market value of such assets. For subsequent years the value of the assets shall be determined by the system's actuary using a five year smoothed market value.
"The total amount payable in each year to the Pension Accumulation Fund shall be not less than the sum of the percentage rates known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year.

"All interest and dividends earned on the funds of the retirement system shall be credited to the Pension Accumulation Fund. The amounts needed to allow a regular interest on the reserves in the Annuity Savings Fund shall be transferred in accordance with this article from the Pension Accumulation Fund. The Board of Control, in its discretion, may transfer to and from the Pension Accumulation Fund the amounts of any surplus or deficit which may develop in the Annuity Savings Fund, or the Expense Fund.

"Upon the death of a member on account of whom no survivor allowance is payable under subdivisions (2) and (3) of subsection (c) of Section 36-27-16, the death benefit as provided in subdivision (4) of subsection (c) of Section 36-27-16 equal to the accumulated contributions, not to exceed $5,000.00, shall be payable from the Pension Accumulation Fund.

"(d) Expense Fund. The Expense Fund shall be the fund from which the expenses of the administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided in this chapter. In addition thereto and on account of each
member of the retirement system, there shall be paid monthly
by the employer an amount equal to a certain percentage of the
earnable compensation of each member for the administrative
expenses of the retirement system. The percentage rate of such
contribution shall be fixed by the Board of Control on the
basis of the cost exclusive of that provided by interest not
returnable. Any amounts credited to the accounts of the
members withdrawing before retirement and not returnable under
the provisions of subsection (c) of Section 36-27-16 shall be
credited to the Expense Fund.

"(e) Employer's contributions. For each biennium
beginning October 1, 1965, each employer shall pay to the
retirement system the rates provided in this section and
thereafter, at least 30 days preceding October 1 of each
fiscal year, the Board of Control shall certify to the chief
fiscal officer of each employer the percentage rates of
earnable compensation of the members required to be paid to
the retirement system in accordance with subsections (c) and
(d) of this section.

"The employer's contribution on account of the
membership of employees whose salaries are paid in whole or in
part from funds derived from federal grants shall be paid from
funds derived from the federal grants in accordance with
statutes governing the administration of the grants and in
proportion to salaries paid therefrom. At such time and in
such manner as may be required, the Board of Control shall
certify to each department of state receiving a federal grant
the amount due and payable from the grant as the employer's contribution to the retirement system on account of the membership of the department whose salaries are paid in whole or in part from funds derived from such federal grants. The fiscal agent of the department shall authorize the state Comptroller to draw a warrant or warrants in payment of the amount certified as due and payable from federal grants.

"(f) Appropriations. There is hereby appropriated annually from the fund from which salaries of the employees of each employer are paid the amounts sufficient to carry out the provisions of this section. In the case of those departments supported wholly by transfers from other state funds, there is hereby appropriated from the supporting funds such additional amounts as may be necessary to pay the employer contribution of each department so supported in the same proportion as the other state funds contribute to the support and maintenance of such department.

"(g) Employer cost provided for in this article together with member contributions required under this article shall be paid to the Employees' Retirement System on the first day of the month following the month in which the related member salary is earned. Delinquent accounts shall accrue interest at the actuarial assumed investment rate beginning 30 days after the original due date. The member contributions for each member shall be reported to the Employees' Retirement System in a format prescribed by the Employees' Retirement System.
§36-27-59.

(a) When used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) CORRECTIONAL OFFICER. A full-time correctional officer who is certified as a correctional officer by the Alabama Peace Officers' Standards and Training Commission.

(2) FIREFIGHTER. A full-time firefighter employed with the State of Alabama, a municipal fire department, or a fire district who has a level one minimum standard certification by the Firefighters Personnel Standards and Education Commission, or a firefighter employed by the Alabama Forestry Commission who has been certified by the State Forester as having met the wild land firefighter training standard of the National Wildfire Coordinating Group.

(3) LAW ENFORCEMENT OFFICER. A full-time law enforcement officer, not covered as a state policeman, employed with any state agency, department, board, commission, or institution or a full-time law enforcement officer employed by a local unit of the Employees' Retirement System under Section 36-27-6 who is certified as a law enforcement officer by the Alabama Peace Officers' Standards and Training Commission.

(b)(1) Any firefighter, law enforcement officer, or correctional officer covered under the Employees' Retirement System or the Teachers' Retirement System as a Tier I plan member, upon attainment of the requisite years of creditable
service or who otherwise qualifies for service or disability retirement, shall be awarded one year of hazardous duty time for every five years of service as a firefighter, a law enforcement officer, or a correctional officer provided that the person has made the additional contribution provided in subdivision (2) or paid the additional contribution required in subsection (c) for each year of service used in determining hazardous duty time for the person. Proportional credit shall be awarded for any period of service less than five years.

"(2) Effective January 1, 2001, and each pay period thereafter, each active employee who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), shall contribute to the Teachers' or Employees' Retirement System of Alabama six percent of his or her earnable compensation. For all pay dates beginning on or after October 1, 2011, each active employee who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), except those employees participating pursuant to Section 36-27-6, shall contribute to the Teachers' or Employees' Retirement System of Alabama eight and one-quarter percent (8.25%) of his or her earnable compensation. For all pay dates beginning on or after October 1, 2012, each active employee who is a Tier I plan member and who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), except those employees participating pursuant to Section 36-27-6, shall contribute to the Teachers' or Employees' Retirement System of Alabama eight
and one-half percent (8.5%) of his or her earnable compensation. Any employer participating under Section 36-27-6, by adoption of a resolution, may elect for the increases in employee contributions provided by Act 2011-676 to be withheld from the earnable compensation of employees of the employer.

"(c) Any member of the Employees' Retirement System or the Teachers' Retirement System eligible under subsection (b) may receive credit for his or her eligible prior service provided the member pays to the Secretary-Treasurer of the Employees' Retirement System or the Secretary-Treasurer of the Teachers' Retirement System one percent of his or her current annual earnable compensation or previous year's annual earnable compensation, whichever is higher, for each year of claimed credit within two years of January 1, 2001, except that any firefighter employed by the Alabama Forestry Commission shall make such payment within two years of December 28, 2001. Any member participating in the Employees' Retirement System under Section 36-27-6, who has eligible prior service under this section and who also had no prior eligibility to purchase prior service credit under this subsection, may purchase prior service credit under this section at the same rate provided in subsection (b) within one year of the effective date of his or her enrollment with the Employees' Retirement System or within one year of August 1, 2004. The member may purchase his or her claimed credit in increments of five years, unless the total service credit is
less than five years, in which case the service shall be purchased in its entirety. The member shall provide certification from each employing agency, on forms prescribed by the Teachers' or Employees' Retirement System, of each year of claimed service, as a prerequisite to payment under this section.

"(d) The provisions of this section shall not apply to any Tier II or Tier III plan member."

Section 2. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.