

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

1 SB411

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3  
4 ENROLLED, An Act,

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§36-27B-1.

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

1 and adoption by a joint resolution of the Teachers' and  
2 Employees' Retirement Systems' Boards of Control."

3 Section 2. When used in this article, the following  
4 terms shall have the following meanings, respectively, unless  
5 the context clearly indicates otherwise:

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

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

10 (3) PLAN. The Judges' and Clerks' Plan provided for  
11 in Section 3.

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

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

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

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

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

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

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

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

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

23          (13) ACCUMULATED CONTRIBUTIONS. The sum of all the  
24 amounts deducted from the compensation of a member credited to

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

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

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

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

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

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

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

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

1 Retirement Fund or Clerks' and Registers' Supernumerary Fund  
2 prior to the effective date of this act regardless of the type  
3 of judgeship position held. Each judge or clerk shall  
4 contribute to the fund eight and one-half percent (8.5%) of  
5 his or her annual salary or base sum as provided in Section  
6 12-18-82. The percentages shall be deducted by the employer  
7 from each judge's or clerk's salary and paid into the fund in  
8 the State Treasury and credited to the individual account of  
9 the judge or clerk from whose salary it was deducted.

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

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

1 Employees' Retirement System or the Teachers' Retirement  
2 System to the Judges' and Clerks' Plan.

3 (b) Any active and contributing member desiring to  
4 transfer any membership service and accumulated contributions  
5 under subsection (a) shall notify the Board of Control of the  
6 Employees' Retirement System of his or her election to  
7 transfer membership service and shall authorize the transfer  
8 of the amount of his or her accumulated contributions to his  
9 or her credit in the Employees' Retirement System or Teachers'  
10 Retirement System to his or her account in the Judges' and  
11 Clerks' Plan.

12 (c) The Board of Control transferring the membership  
13 service and contributions shall thereupon certify to the Board  
14 of Control of the Employees' Retirement System and to the fund  
15 the amount of contributions and service creditable to the  
16 member at the time of separation from the transferring  
17 retirement system. The member shall be credited in the fund  
18 with the membership service and accumulated contributions so  
19 certified.

20 (d) Anything in this article to the contrary  
21 notwithstanding, in the application of the foregoing  
22 provisions of this section to a member whose membership  
23 service includes a period of service as a judge or clerk and a  
24 period of service in another employment classification, the  
25 benefit rates applicable to a judge or clerk shall apply to

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

8 Section 6. (a) Any member who withdraws from service  
9 upon or after attainment of age 62 may retire upon written  
10 application to the Board of Control setting forth at what  
11 time, not less than 30 days nor more than 90 days subsequent  
12 to the execution and filing thereof, he or she desires to be  
13 retired; provided, that any such member shall have completed  
14 10 or more years of membership service in the Judges' and  
15 Clerks' Plan.

16 (b) Any member who has attained age 62 and has  
17 previously withdrawn from service may retire upon written  
18 application to the Board of Control setting forth at what  
19 time, not less than 30 days nor more than 90 days subsequent  
20 to the execution and filing thereof, he or she desires to be  
21 retired; provided, that any such member shall have completed  
22 10 or more years of membership service.

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

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

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

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

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

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

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

1 and a pension, which when added to the member's annuity shall  
2 be equal to four percent (4%) of the member's average final  
3 compensation multiplied by the member's number of years of  
4 membership service. Notwithstanding the foregoing, the  
5 disability retirement allowance shall not exceed seventy-five  
6 percent (75%) of the member's average final compensation. A  
7 member who is a judge and who has attained 18 or more years of  
8 membership service shall be entitled to a disability  
9 retirement allowance of seventy-five percent (75%) of the  
10 member's average final compensation.

11 (d) Once each year during the first five years  
12 following the retirement of a member on a disability  
13 retirement allowance and once every three-year period  
14 thereafter, the Board of Control may require any disability  
15 beneficiary who has not yet attained age 62 to undergo a  
16 medical examination, such examination to be made at the place  
17 of residence of such beneficiary or other place mutually  
18 agreed upon by a physician or physicians of or designated by  
19 the medical board. Should any disability beneficiary who has  
20 not yet attained age 62 refuse to submit to such medical  
21 examination, his or her retirement allowance may be  
22 discontinued until his or her withdrawal of such refusal, and  
23 should his or her refusal continue for one year, all his or  
24 her rights in and to his or her pension may be revoked by the  
25 Board of Control. Should the medical board report and certify

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Section 16. No other provision of law in any other  
4 statute which provides wholly or partly at the expense of the  
5 State of Alabama or of any political subdivision thereof for  
6 pensions or retirement benefits for employees of the said  
7 state shall apply to members of the plan established by this  
8 article, except as to provisions for coverage under the  
9 federal Social Security Act, as may be provided by state and  
10 federal laws.

11 Section 17. The Board of Control is authorized to  
12 implement any new accounting procedures, funds, or  
13 administrative changes and to provide for the payment of  
14 benefits to members or beneficiaries of the plan as may be  
15 necessary to ensure the plan's compliance with the  
16 qualification standards required of public pension plans by  
17 the Internal Revenue Code of the United States.

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

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

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

1           (3) PLAN. The District Attorneys' Plan provided for  
2 in Section 19.

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

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

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

13          (7) MEMBER. Any district attorney included in  
14 membership of the plan.

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

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

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

21          (11) AVERAGE FINAL COMPENSATION. The average annual  
22 compensation of a district attorney with respect to which he  
23 or she had made contributions pursuant to Section 20 during  
24 the five years in his or her last 10 years of membership

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

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

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

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

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

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

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

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

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

1           Section 19. There is hereby created and established  
2 the District Attorneys' Plan under the Judicial Retirement  
3 Fund.

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

13           (b) On account of each member there shall be paid  
14 monthly by the employer an amount equal to a certain  
15 percentage of the annual salary of each member to be the  
16 employer's contribution. The percentage rate of such  
17 contribution shall be fixed for each fiscal year on the basis  
18 of the liabilities as shown by the last annual actuarial  
19 valuation, and such percentage rate as established by such  
20 valuation shall take effect the following October 1 and  
21 continue in effect for the fiscal year. Such contribution  
22 shall be made by the Office of the District Attorney who  
23 employs the member.

24           Section 21. (a) Any active and contributing member  
25 of the District Attorneys' Plan who, not more than one year

1 prior to becoming a member of the plan was a member of the  
2 Employees' Retirement System of Alabama or the Teachers'  
3 Retirement System of Alabama, may elect to transfer his or her  
4 membership service and accumulated contributions in the  
5 Employees' Retirement System or the Teachers' Retirement  
6 System to the District Attorneys' Plan.

7 (b) Any active and contributing member desiring to  
8 transfer any membership service and accumulated contributions  
9 under subsection (a) shall notify the Board of Control of the  
10 Employees' Retirement System of his or her election to  
11 transfer membership service and shall authorize the transfer  
12 of the amount of his or her accumulated contributions to his  
13 or her credit in the Employees' Retirement System or Teachers'  
14 Retirement System to his or her account in the District  
15 Attorneys' Plan.

16 (c) The Board of Control transferring the membership  
17 service and contributions shall thereupon certify to the Board  
18 of Control of the Employees' Retirement System and to the fund  
19 the amount of contributions and service creditable to the  
20 member at the time of separation from the transferring  
21 retirement system. The member shall be credited in the fund  
22 with the membership service and accumulated contributions so  
23 certified.

24 (d) Anything in this article to the contrary  
25 notwithstanding, in the application of the foregoing

1 provisions of this section to a member whose membership  
2 service includes a period of service as a district attorney  
3 and a period of service in another employment classification,  
4 the benefit rates applicable to a district attorney shall  
5 apply to all membership service as a district attorney, and  
6 the benefit rates applicable to the member's other employment  
7 classification shall apply to membership service in such other  
8 classification. In all other respects, the pension under this  
9 section shall be determined on the basis of the member's  
10 employment classification at the time of his or her withdrawal  
11 from service.

12 Section 22. (a) Any member who withdraws from  
13 service upon or after attainment of age 62 may retire upon  
14 written application to the Board of Control setting forth at  
15 what time, not less than 30 days nor more than 90 days  
16 subsequent to the execution and filing thereof, he or she  
17 desires to be retired; provided, that any such member shall  
18 have completed 10 or more years of membership service in the  
19 District Attorneys' Plan.

20 (b) Any member who has attained age 62 and has  
21 previously withdrawn from service may retire upon written  
22 application to the Board of Control setting forth at what  
23 time, not less than 30 days nor more than 90 days subsequent  
24 to the execution and filing thereof, he or she desires to be

1       retired; provided, that any such member shall have completed  
2       10 or more years of membership service.

3               (c) Upon retirement from service, the member shall  
4       receive a service retirement allowance which shall consist of  
5       an annuity, which shall be the actuarial equivalent of the  
6       member's accumulated contributions at the time of retirement,  
7       and a pension, which when added to the member's annuity shall  
8       be equal to three percent (3%) of the member's average final  
9       compensation multiplied by the member's number of years of  
10      membership service. Notwithstanding the foregoing, the service  
11     retirement allowance shall not exceed eighty percent (80%) of  
12     the member's average final compensation.

13              Section 23. (a) Upon application of an active and  
14     contributing member, any such member who has 10 or more years  
15     of membership service who becomes disabled may be retired on a  
16     disability retirement allowance by the Board of Control not  
17     less than 30 days nor more than 90 days next following the  
18     date of filing of such application; provided that the medical  
19     board, after a medical examination of such member, shall  
20     certify that such individual is totally and permanently  
21     mentally or physically incapacitated from regular and  
22     substantial gainful employment and that such member should be  
23     retired.

24              (b) Upon retirement for disability, the member shall  
25     receive a service retirement allowance if he or she has

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

11 (c) Once each year during the first five years  
12 following the retirement of a member on a disability  
13 retirement allowance and once every three-year period  
14 thereafter, the Board of Control may require any disability  
15 beneficiary who has not yet attained age 62 to undergo a  
16 medical examination, such examination to be made at the place  
17 of residence of such beneficiary or other place mutually  
18 agreed upon by a physician or physicians of or designated by  
19 the medical board. Should any disability beneficiary who has  
20 not yet attained age 62 refuse to submit to such medical  
21 examination, his or her retirement allowance may be  
22 discontinued until his or her withdrawal of such refusal, and  
23 should his or her refusal continue for one year, all his or  
24 her rights in and to his or her pension may be revoked by the  
25 Board of Control. Should the medical board report and certify

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 re-elected after November 8, 2016 to the office he or she is  
2 holding on November 8, 2016.

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

6 (c) A district attorney who was elected prior to  
7 November 8, 2016 and who is serving in the capacity of  
8 district attorney on and after November 8, 2016 and had prior  
9 service credit in the Employees' Retirement System, Teachers'  
10 Retirement System, or Judicial Retirement Fund prior to being  
11 elected district attorney shall have 30 days from November 8,  
12 2016 to elect to participate in the District Attorneys' Plan  
13 established by this article. This election shall be  
14 irrevocable.

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

1           Section 30. (a) Any person occupying the office of  
2           supernumerary district attorney shall not represent any  
3           client, other than the State of Alabama, himself or herself,  
4           or an immediate family member in any criminal, quasi-criminal,  
5           or civil forfeiture proceeding resulting from a criminal  
6           action where the State of Alabama is a party to the action, as  
7           court appointed counsel or as a public defender, eligible to  
8           receive funds or reimbursements from the indigent defense  
9           fund. Upon motion, the court shall enjoin any supernumerary  
10          district attorney from violating this section.

11          Section 31. (a) Any person who shall knowingly make  
12          any false statement or shall falsify or permit to be falsified  
13          any record or records of this plan in any attempt to defraud  
14          such plan shall be guilty of a misdemeanor and, on conviction  
15          thereof by any court of competent jurisdiction, shall be  
16          punished by a fine not exceeding \$500.00, or imprisonment not  
17          exceeding 12 months, or both such fine and imprisonment, at  
18          the discretion of the court.

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

1 benefit to which such member or beneficiary was correctly  
2 entitled shall be paid.

3 Section 32. The right of a person to a pension, an  
4 annuity, a retirement allowance or to the return of  
5 contributions, the pension, annuity or retirement allowance  
6 itself and any optional benefit or any other right accrued or  
7 accruing to any person under the provisions of this article  
8 and the moneys in the fund are hereby exempt from any state or  
9 municipal tax and exempt from levy and sale, garnishment,  
10 attachment or any other process whatsoever and shall be  
11 unassignable except as in this article specifically otherwise  
12 provide.

13 Section 33. Official copies of records or documents  
14 maintained on microfilm, microfiche or other  
15 photo-reproductive material of archival quality by the  
16 Employees' Retirement System shall be admissible as primary  
17 evidence in any legal, judicial or administrative proceeding  
18 or action for the purpose of proving the truth of the contents  
19 of the photo-reproduced copies of such records or documents,  
20 regardless of any rule of evidence or law relating to the  
21 proof of such matters, provided the Secretary-Treasurer of the  
22 Employees' Retirement System of Alabama certifies on such  
23 copies offered into evidence that the Employees' Retirement  
24 System of Alabama is not in possession of the original and

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

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

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

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

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

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB411

Senate 07-MAY-15

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Amended and passed 04-JUN-15

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Senate concurred in House amendment 04-JUN-15

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By: Senator Orr