

1 SB374  
2 147241-3  
3 By Senator Orr  
4 RFD: Finance and Taxation General Fund  
5 First Read: 04-APR-13

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8 SYNOPSIS: Under current law, justices and judges in  
9 Alabama are members of the Judicial Retirement  
10 Fund. Circuit clerks and district attorneys have  
11 separate supernumerary systems in lieu of  
12 retirement plans. This bill establishes the Elected  
13 Court Officials' Plan under the Judicial Retirement  
14 Fund, changes benefits for justices and judges  
15 first elected or appointed on or after November 4,  
16 2014, and provides that district attorneys and  
17 circuit clerks participate in the plan upon passage  
18 of a constitutional amendment to allow such  
19 participation. Additionally, this bill allows for  
20 preretirement death benefits for such officials.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To amend Section 36-27B-1, Code of Alabama 1975,  
27 relating to preretirement death benefits for elected court

1 officials; to establish the Elected Court Officials' Plan for  
2 retirement for justices, judges, district attorneys and  
3 circuit clerks; and to provide guidelines for the Elected  
4 Court Officials' Plan.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 "§36-27B-1.

9 There shall be created the Preretirement Death  
10 Benefit Program effective October 1, 1985, which shall be  
11 effective as of that date to all employees covered under the  
12 Teachers' Retirement System of Alabama and the Employees'  
13 Retirement System of Alabama. Beginning November 4, 2014, the  
14 Preretirement Death Benefit Program shall be effective to all  
15 members of the Elected Court Officials' Plan provided for in  
16 Section 3. In the event the conditions prescribed in Section  
17 36-27B-5 shall occur prior to October 1, 1985, the death  
18 benefit plan established herein shall become effective upon  
19 certification and adoption by a joint resolution of the  
20 Teachers' and Employees' Retirement Systems' Boards of  
21 Control.

22 Section 2. When used in this article, the following  
23 terms shall have the following meanings, respectively, unless  
24 the context clearly indicates otherwise:

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

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

3           (3) PLAN. The Elected Court Officials' Plan provided  
4 for in Section 3.

5           (4) ELECTED COURT OFFICIAL. Any justice of the  
6 Supreme Court, judge of the Court of Civil Appeals, judge of  
7 the Court of Criminal Appeals, circuit judge, district judge,  
8 probate judge, district attorney, or circuit clerk first  
9 elected or appointed to his or her position on or after  
10 November 4, 2014.

11           (5) EMPLOYER. The State of Alabama or any  
12 department, agency, or local governing body by which an  
13 elected court official is paid.

14           (6) MEMBER. Any elected court official included in  
15 membership of the plan.

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

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

20           (9) MEMBERSHIP SERVICE. Service as an elected court  
21 official on account of which contributions are made.

22           (10) AVERAGE FINAL COMPENSATION. The average annual  
23 compensation of an elected court official with respect to  
24 which he or she had made contributions pursuant to Section 4  
25 during the five years in his or her last 10 years of  
26 membership service for which the average is highest or during

1 his or her entire period of membership service if less than  
2 five years.

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

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

8 (13) 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 Elected Court Officials'  
11 Plan, together with regular interest thereon.

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

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

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

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

23 (18) 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 3. There is hereby created and established  
2 the Elected Court Officials' Plan under the Judicial  
3 Retirement Fund.

4           Section 4. (a) Every elected court official first  
5 elected or appointed to his or her position on or after  
6 November 4, 2014 shall come under this article by operation of  
7 law. Each elected court official shall contribute to the fund  
8 eight and one-half percent (8.5%) of his or her annual salary  
9 or base sum as provided in Section 12-18-82. The percentages  
10 shall be deducted by the employer from each elected court  
11 official's salary and paid into the fund in the State Treasury  
12 and credited to the individual account of the elected court  
13 official from whose salary it was deducted.

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

23           Section 5. (a) Any active and contributing member of  
24 the Elected Court Officials' Plan who, not more than one year  
25 prior to becoming a member of the plan was a member of the  
26 Employees' Retirement System of Alabama or the Teachers'  
27 Retirement System of Alabama, may elect to transfer his or her

1 membership service and accumulated contributions in the  
2 Employees' Retirement System or the Teachers' Retirement  
3 System to the Elected Court Officials' Plan.

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

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

21 (d) Anything in this article to the contrary  
22 notwithstanding, in the application of the foregoing  
23 provisions of this section to a member whose membership  
24 service includes a period of service as an elected court  
25 official and a period of service in another employment  
26 classification, the benefit rates applicable to an elected  
27 court official shall apply to all membership service as an

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

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

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

22 (c) Upon retirement from service, the member shall  
23 receive a service retirement allowance which shall consist of  
24 an annuity, which shall be the actuarial equivalent of the  
25 member's accumulated contributions at the time of retirement,  
26 and a pension, which when added to the member's annuity shall  
27 be equal to two and one-eighth percent (2.125%) of the



1 member's average final compensation multiplied by the member's  
2 number of years of membership service. Notwithstanding the  
3 foregoing, the service retirement allowance shall not exceed  
4 eighty percent (80%) of the member's average final  
5 compensation.

6 Section 7. (a) Upon application of an active and  
7 contributing member, any such member who has 10 or more years  
8 of membership service who becomes disabled may be retired on a  
9 disability retirement allowance by the Board of Control not  
10 less than 30 days nor more than 90 days next following the  
11 date of filing of such application; provided that the medical  
12 board, after a medical examination of such member, shall  
13 certify that such individual is totally and permanently  
14 mentally or physically incapacitated from regular and  
15 substantial gainful employment and that such member should be  
16 retired.

17 (b) Upon retirement for disability, the member shall  
18 receive a service retirement allowance if he or she has  
19 attained age 62; otherwise, he or she shall receive a  
20 disability retirement allowance which shall consist of an  
21 annuity, which shall be the actuarial equivalent of the  
22 member's accumulated contributions at the time of retirement,  
23 and a pension, which when added to the member's annuity shall  
24 be equal to two and one-eighth percent (2.125%) of the  
25 member's average final compensation multiplied by the member's  
26 number of years of membership service. Notwithstanding the  
27 foregoing, the disability retirement allowance shall not

1 exceed eighty percent (80%) of the member's average final  
2 compensation.

3 (c) Once each year during the first five years  
4 following the retirement of a member on a disability  
5 retirement allowance and once every three-year period  
6 thereafter, the Board of Control may require any disability  
7 beneficiary who has not yet attained age 62 to undergo a  
8 medical examination, such examination to be made at the place  
9 of residence of such beneficiary or other place mutually  
10 agreed upon by a physician or physicians of or designated by  
11 the medical board. Should any disability beneficiary who has  
12 not yet attained age 62 refuse to submit to such medical  
13 examination, his or her retirement allowance may be  
14 discontinued until his or her withdrawal of such refusal, and  
15 should his or her refusal continue for one year, all his or  
16 her rights in and to his or her pension may be revoked by the  
17 Board of Control. Should the medical board report and certify  
18 to the Board of Control that a disability beneficiary has the  
19 capacity to engage in regular and substantial gainful  
20 employment, the Board of Control shall discontinue the  
21 beneficiary's retirement allowance until the beneficiary is  
22 otherwise eligible for service retirement.

23 Section 8. (a) Should a member cease to be an  
24 elected court official except by death or by retirement under  
25 the provisions of this article, the contributions standing to  
26 the credit of his or her individual account in the fund shall  
27 be paid to him or her upon demand and, in addition to such

1 payment, there shall be paid five-tenths of the interest  
2 accumulations standing to the credit of his or her individual  
3 account if he or she shall have not less than three but less  
4 than 16 years of membership service, six-tenths of such  
5 interest accumulations if he or she shall have not less than  
6 16 but less than 21 years of membership service, seven-tenths  
7 of such interest accumulations if he or she shall have not  
8 less than 21 but less than 26 years of membership service and  
9 eight-tenths of such interest accumulations if he or she shall  
10 have not less than 26 years of membership service.

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

25 (c) Upon the death of a member on account of whom no  
26 survivor allowance is payable under subsection (b) of this  
27 section, the accumulated contributions of the member plus an

1 amount equal to the accumulated contributions not to exceed  
2 \$5,000 or the accumulated contributions of the member plus the  
3 benefit provided by Section 36-27B-3 if a benefit is payable  
4 under such section shall be paid to his or her estate or to  
5 such person as he or she shall have nominated by written  
6 designation duly executed and filed with the Board of Control.

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

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

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

26 (3) OPTION 3. Upon his or her death, one half of his  
27 or her reduced allowance shall be continued throughout the

1 life of and paid to such person as he or she shall nominate by  
2 written designation duly acknowledged and filed with the Board  
3 of Control at the time of his or her retirement; or

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

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

24 (f) Notwithstanding any provision of this section to  
25 the contrary, if a retired member who is receiving a monthly  
26 benefit allowance provided under Option 2, 3, or 4 divorces  
27 his or her designated beneficiary, the member may designate a

1 replacement beneficiary for the beneficiary to become  
2 effective two years after the date of designation of the  
3 replacement beneficiary and an actuarial adjustment in the  
4 monthly benefit allowance of the member to cover any cost  
5 associated with designating a replacement beneficiary shall be  
6 reflected thereafter in the monthly benefit allowance received  
7 by the member, commencing with the first benefit allowance  
8 check received by the member following the date of designation  
9 of the replacement beneficiary.

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

24 Section 10. (a) Any member who, at the time of his  
25 or her retirement is a member of and holds a policy in any  
26 state group hospitalization or health insurance plan, may in  
27 writing authorize the Secretary-Treasurer of the state

1 retirement system to withhold from his or her retirement pay a  
2 sufficient sum or amount to pay the premium on such policy.

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

8 Section 11. The Elected Court Officials' Plan shall  
9 be under the management and supervision of the Employees'  
10 Retirement System as a component of the Judicial Retirement  
11 Fund, with all contributions to the plan deposited and held in  
12 the same manner as contributions to the Judicial Retirement  
13 Fund. The Employees' Retirement System may adopt rules and  
14 regulations as necessary to implement the plan.

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

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

26 (b) Should any charge or error in the records result  
27 in any member or beneficiary receiving from the fund more or

1 less than he or she would have been entitled to receive had  
2 the records been correct, the Board of Control shall correct  
3 such error and, as far as practicable, shall adjust the  
4 payment in such manner that the actuarial equivalent of the  
5 benefit to which such member or beneficiary was correctly  
6 entitled shall be paid.

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

17 Section 15. Official copies of records or documents  
18 maintained on microfilm, microfiche or other  
19 photo-reproductive material of archival quality by the  
20 Employees' Retirement System shall be admissible as primary  
21 evidence in any legal, judicial or administrative proceeding  
22 or action for the purpose of proving the truth of the contents  
23 of the photo-reproduced copies of such records or documents,  
24 regardless of any rule of evidence or law relating to the  
25 proof of such matters, provided the Secretary-Treasurer of the  
26 Employees' Retirement System of Alabama certifies on such  
27 copies offered into evidence that the Employees' Retirement



1 System of Alabama is not in possession of the original and  
2 that the copy is a true and correct representation of the  
3 original.

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

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

19 Section 18. Passage and approval of this act is  
20 contingent upon passage of a proposed Constitutional Amendment  
21 passed by the legislature during the 2013 Regular Session  
22 allowing the legislature to authorize a retirement plan for  
23 district attorneys and circuit clerks.

24 Section 19. This act shall become effective on  
25 November 4, 2014, following its passage and approval by the  
26 Governor, or by its otherwise becoming law.