

1 HB515
2 128586-2
3 By Representative Treadaway (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 14-APR-11

1
2 ENROLLED, An Act,

3 Relating to the City of Birmingham, Alabama; to
4 further amend Act 556 of the Regular Session of the
5 Legislature of Alabama of 1959, approved November 19, 1959,
6 (Acts 1959, p. 1376), as heretofore amended, which act
7 established a supplemental pension and relief system for
8 firefighters and police officers under Act 929 of the Regular
9 Session of the Legislature of Alabama of 1951 (Acts 1951, p.
10 1579); to amend Section 4 of Act 556 of the 1959 Regular
11 Session (Acts 1959, p. 1376), as last amended by Act 2007-503
12 of the 2007 Regular Session (Acts 2007, p. 1072), establishing
13 a Fireman's and Policeman's Supplemental Pension System for
14 the City of Birmingham; to amend the investment powers to
15 expand the discretion of the board of managers to make
16 investments to include alternative investments, removing the
17 requirement of not less than 50 percent of fixed income be
18 invested in bills, notes, and bonds of the United States
19 government and removing the requirement bonds be rated
20 investment grade by at least one nationally recognized credit
21 rating agency; and to add a new Section 8.2 to Act 556 of the
22 1959 Regular Session (Acts 1959, p. 1376), as last amended by
23 Act 2007-503 of the 2007 Regular Session (Acts 2007, p. 1072),
24 adopting applicable mandatory provisions of the Internal

1 Revenue Code of 1986, as amended (the Code) and the
2 regulations promulgated thereunder.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 4 of Act 556 of the 1959 Regular
5 Session (Acts 1959, p. 1376), as amended, is further amended
6 to read as follows:

7 "Section 4. Board of Managers.

8 "(a) In order to assure representation of all
9 participants of this system, there shall be a Board of
10 Managers of four members for the administration, management,
11 and control of the Supplemental Pension System, including
12 administration, management, control, acquisition, and
13 disbursement of the fund. The board shall consist of the
14 president of the governing body of the city, who shall be
15 chair of the board, and three associate members, designated
16 respectively as Member No. 1, Member No. 2, and Member No. 3.

17 "Member No. 1 shall be appointed by the Jefferson
18 County personnel board and shall be a person who at the time
19 of appointment has had five or more consecutive years
20 immediately preceding his or her appointment and has been an
21 officer of, or the occupant of an executive position in
22 insurance, actuarial, investment, banking, or as a certified
23 public accountant and shall serve for a term of four years.
24 Should the appointed Member No. 1 die, resign, or otherwise be
25 unable to serve, the vacancy thus created shall be filled for

1 the remainder of the term by the Jefferson County Personnel
2 Board. The personnel board in appointing Member No. 1 shall
3 select the person who in the opinion of the personnel board is
4 best qualified to discharge the duties of a member of the
5 Board of Managers. Member No. 2 shall be a firefighter who is
6 a participant of the system and Member No. 3 shall be a police
7 officer who is a participant of the system. The firefighter
8 participants of the Supplemental Pension System shall elect
9 Member No. 2 and the police officer participants of the system
10 shall elect Member No. 3. The firefighter and the police
11 officer receiving a plurality of votes shall be elected.
12 Members of the board shall be elected by secret ballot to
13 serve a term of four years commencing on the date the result
14 of the election is declared. Any member of the board may be
15 removed by impeachment for corruption or malfeasance or
16 misfeasance in office or for habitual neglect of duty. Any
17 member of the board may serve beyond his or her term until a
18 successor is appointed or elected. The governing body of the
19 city shall have the authority to prescribe and to change rules
20 and regulations concerning the election of the
21 participant-member of the board provided that the rules and
22 regulations as prescribed or changed are not inconsistent with
23 this act.

24 "The board shall meet on the second Wednesday in
25 each calendar month; however, the board shall not be required

1 to meet unless there is pending before the board some
2 application for pension, relief, or benefit or unless there is
3 pending some other matter requiring consideration by the board
4 and the board by resolution may change the regular meeting
5 date.

6 "The personnel director shall be the secretary of
7 the board and shall be present at every meeting of the board,
8 and keep a record of all proceedings of the board and all
9 orders and decisions of the board. Neither the secretary nor
10 any member of the board shall receive any salary or
11 compensation. Any three members of the board, when assembled
12 either in regular or special meeting, shall constitute a
13 quorum for the transaction of any and all business of the
14 board, and the affirmative vote of three members present shall
15 be necessary and sufficient to pass any motion or resolution.
16 The board shall meet in the office of the chair, or such other
17 place as the board may designate.

18 "The board is empowered to make rules and
19 regulations not inconsistent with the provisions of the system
20 in relation to its affairs and the system. The board shall
21 receive, investigate, and pass upon all applications for
22 retirement, disability, and survivors benefits and shall make
23 retirement, disability, and survivors benefits in accordance
24 with the system to all participants and their survivors
25 entitled thereto under the system, and its decisions upon all

1 such matters of fact shall be final and conclusive unless it
2 shall be affirmatively made to appear that its decision is
3 plainly and manifestly wrong.

4 "(b) (1) No money of the fund shall be invested, paid
5 out, or disbursed except pursuant to order or authorization of
6 the board. The board shall be the trustee, have entire
7 management and control of the fund, and shall direct
8 investment of monies of the fund not needed to meet
9 disbursements provided for in this act and in the loans to
10 members hereinafter referred to and shall be invested in the
11 classes of bonds, mortgages, common and preferred stocks,
12 shares of investment companies or mutual funds, real estate
13 investment trusts, international equity, corporate fixed
14 income, international fixed income, index funds, ~~and~~
15 derivative securities and investments recognized as
16 alternative investments or treasury bonds, notes, and bills of
17 the United States, and agencies of the United States as the
18 board may approve, subject to the limitations herein. The
19 board may invest in fixed income securities and bonds of
20 corporations organized under federal laws or under laws of any
21 state of the United States or in bonds registered with the
22 Security and Exchange Commission, mortgaged-backed securities
23 or asset backed securities ~~rated by at least one nationally~~
24 ~~recognized credit rating agency as Investment Grade~~, or in
25 securities issued by federal agencies and government sponsored

1 entities, or may invest in Federal Savings and Loan
2 Associations or in other corporations having Federal Savings
3 and Loan Association's guarantee or in certificates of deposit
4 or bonds issued by banks organized under federal laws or under
5 the laws of the State of Alabama and insured by the federal
6 government. No funds may be invested in fixed income
7 securities or common or preferred stocks and stocks of private
8 corporations or other forms of equity or fixed investment
9 unless such common or preferred stocks or other forms of
10 equity or fixed investments are registered with the Securities
11 and Exchange Commission or are traded through NASDAQ Stock
12 Market or are Rule 144A securities or are ~~companies domiciled~~
13 ~~in organized markets and listed on any organized exchange and~~
14 ~~are subject to the jurisdiction of the local currency,~~ traded
15 on an organized exchange and the aggregate value of the funds
16 invested in such common or preferred stock of corporations or
17 other forms of equity securities last referred to above shall
18 not exceed 60 percent of the value of all funds available in
19 the system. ~~All investments in corporate bonds must be rated~~
20 ~~Investment Grade or higher by a nationally recognized rating~~
21 ~~service.~~ The aggregate value of the funds invested in common
22 or preferred stocks, mutual funds or other forms of equity
23 securities, shall not exceed 60 percent of total investments
24 of the fund. ~~The remaining funds available shall be invested~~
25 ~~in fixed income securities, of which not less than fifty~~

1 ~~percent (50%) be invested in bills, notes and bonds of the~~
2 ~~United States or securities fully guaranteed as to payment of~~
3 ~~principal and interest by the United States government.~~

4 ~~Securities issued by agencies and entities that receive the~~
5 ~~unconditional guarantee of the United States government shall~~
6 ~~be considered permissible United States government guaranteed~~
7 ~~investments. Securities issued by agencies and entities not~~
8 ~~directly guaranteed by the United States government may be~~
9 ~~included with these fixed income securities, but are not to~~
10 ~~exceed twenty-five percent (25%) of the total fixed income~~
11 ~~securities. The total investment in fixed income securities~~
12 ~~shall not be less than forty percent (40%) of the fair market~~
13 ~~value of all the funds available in the system for investment.~~

14 Securities issued by any single non-guaranteed agency or
15 entity may not constitute more than ten percent (10%) of the
16 fixed income allocation of the fund at the time of purchase.
17 The fair market value of all funds available in the system for
18 investment is to be determined periodically, but not less than
19 annually. In exercising its discretion to invest, reinvest,
20 and have invested and reinvested all funds of the system, the
21 board shall act with the care, skill, prudence and diligence
22 under the circumstances then prevailing that a prudent person
23 acting in a like capacity and familiar with such matters would
24 use in the conduct of an enterprise of a like character and
25 with like aims.

1 "(2) From the fund of the system created by this
2 act, the Board of Managers shall pay to the fund of the
3 General Retirement and Relief System of the City of Birmingham
4 amounts hereinafter specified. When any firefighter or police
5 officer retires on length of service, as hereinafter provided
6 for in Section 8, the Board of Managers shall pay from the
7 fund of this system the amount specified during each month
8 between the due date on which the participant retires and the
9 date on which the participant would have been entitled to
10 receive a retirement allowance from the General Retirement and
11 Relief System for 30 years service had the participant not
12 retired, but had continued to serve without interruption as a
13 participant of the General Retirement and Relief System until
14 entitled to receive from said last named system a retirement
15 system pension based upon 30 years service. The amount which
16 the Board of Managers shall pay to the fund of the General
17 Retirement and Relief System, during the period specified,
18 shall be the sum of the amount which the city would have
19 deducted from the salary of the participant and would have
20 paid into the fund of the General Retirement and Relief System
21 had the participant continued to be employed by the city
22 during the period specified had the participant retired under
23 Section 8 of this act plus the amount which the city during
24 the same period would have paid from the funds of the city
25 into the General Retirement and Relief System to match the

1 deductions had the participant continued to work until
2 entitled to retire on a pension based upon 30 years' service.

3 "(c) At least 60 days prior to the convening of the
4 Regular Session of the Legislature of Alabama of 2007, the
5 Board of Managers shall, upon request, present to each member
6 of the Jefferson County Delegation and to the House of
7 Representatives and to the Senate of the Legislature of
8 Alabama the report and survey of a competent actuary stating
9 his or her opinion as to the ability of the funds and
10 resources of the system to meet the benefits separately and
11 severally. If the actuary concludes that any reduction in
12 benefits is necessary in order to assure the solvency of the
13 fund, the actuary report shall include the actuary's
14 recommendations as to what reductions should be made, to the
15 end that the board may make reductions in benefits as may be
16 required to assure the solvency of the fund. It is expressly
17 provided that no claim for any benefit provided for by this
18 act shall be an obligation against the city, or the General
19 Retirement and Relief System, it being the intention and
20 purpose of this act that the funds out of which the benefits
21 provided for by this act will be paid, shall be the funds of
22 this pension system, which system was established upon
23 petition of the firefighters and police officers belonging to
24 the system, with the express understanding on their part that
25 the firefighters and police officers and the dependents of

1 firefighters and police officers claiming benefits hereunder
2 shall look only to the fund hereby created for the payment of
3 benefits and with full understanding upon the part of the
4 firefighters and police officers that the benefits provided
5 for hereby will be reduced if reduction thereof is required in
6 order to assure the solvency of the fund. The actuarial report
7 or survey shall contain the opinion of the actuary as to
8 whether the board should consider any change in the benefits
9 necessary in order to assure the solvency of the fund, and if
10 so, what changes the actuary considers necessary. At the
11 Regular Session of the Legislature of Alabama of 2007, the
12 Board of Managers shall present, upon request, to the
13 Jefferson County Delegation, to the House of Representatives
14 and to the Senate a similar actuarial report or survey at
15 least once every four years 60 days prior to the convening of
16 the regular session of the Legislature of Alabama. The Board
17 of Managers shall have the authority to secure other actuarial
18 studies, financial consulting services, investigations, and
19 reports at other times as may seem proper to the board. From
20 the fund of the system the Board of Managers shall pay the
21 cost of securing any such actuarial reports, financial
22 consulting services, surveys, or investigations.

23 Section 2. Section 8 of Act 556 of the 1959 Regular
24 Session is further amended to add new Section 8.2 to

1 incorporate applicable required provisions of the Internal
2 Revenue Code of 1986, as amended, to read as follows:

3 8.2 Compliance with the Internal Revenue Code of
4 1986, as amended (the Code). Notwithstanding any other
5 provision of this act to the contrary, the following
6 provisions shall apply:

7 (a) Compensation Limits. Compensation in excess of
8 one hundred sixty thousand dollars (\$160,000), or such other
9 amount provided in the code, shall be disregarded. Such amount
10 shall be adjusted for increases in the cost of living in
11 accordance with Section 401(a)(17)(B), except that the dollar
12 increase in effect on January 1 of any calendar year shall be
13 effective for the fiscal years beginning with or within such
14 calendar year. If compensation for any prior determination
15 period is taken into account in determining a participant
16 member's benefits for the current fiscal year, the
17 compensation for such prior determination period is subject to
18 the applicable annual compensation limit in effect for that
19 prior period.

20 (b) Compliance with Section 415. Notwithstanding the
21 foregoing and to the extent applicable to governmental plans
22 as such are defined in Section 414(d), in no event may the
23 normal retirement benefit exceed the annual dollar limits
24 imposed by Section 415(b), excluding contributions under
25 Section 414(h)(2). Further, no Post Severance Compensation

1 shall be included for any benefit hereunder. Post Severance
2 Compensation means amounts paid by the later of: (1) 2-1/2
3 months after an employee's severance from employment with the
4 city or (2) the end of the limitation year that includes the
5 date of severance from employment with the city; and those
6 amounts would have been included in the definition of
7 compensation if they were paid prior to the employee's
8 severance from employment. However the payment must be for (a)
9 unused accrued bona fide sick, vacation, or other leave, but
10 only if the participant member would have been able to use the
11 leave if the participant member had continued in employment;
12 or (b) received by a member pursuant to a nonqualified
13 unfunded deferred compensation plan, but only if the payment
14 would have been paid to the member at the same time if the
15 employee had continued in employment with the city and only to
16 the extent that the payment is includible in the member's
17 gross income. Notwithstanding the foregoing, in all events no
18 benefit payments shall exceed limits imposed on governmental
19 plans by applicable law.

20 (c) Limits on use of Forfeitures. That portion of a
21 terminated participant member's benefit that is forfeited
22 shall be used only to reduce future costs of the system at
23 such time as it becomes a forfeiture.

24 (d) Required Minimum Distributions. Notwithstanding
25 any provision in the act to the contrary, the distribution of

1 a participant member's benefits shall be made in accordance
2 with the following requirements and shall otherwise comply
3 with Section 401(a)(9) and the regulations thereunder,
4 (including regulation 1.401(a)(9)-2), the provisions of which
5 are incorporated herein by reference:

6 (i) A participant member's benefits shall be
7 distributed or must begin to be distributed not later than
8 April 1st of the calendar year following the later of (A) the
9 calendar year in which the participant member attains age 70
10 1/2 or (B) the calendar year in which the participant member
11 retires. Such distributions shall be equal to or greater than
12 any required distribution.

13 Alternatively, if the distribution is to be in the
14 form of a joint and survivor annuity or single family annuity,
15 then distributions must begin no later than the applicable
16 April 1st as determined under the preceding paragraph and must
17 be made over the life of the participant member (or the lives
18 of the participant member and the participant member's
19 designated beneficiary) in accordance with regulations.

20 (ii) Distributions to a participant member and the
21 participant member's beneficiaries shall only be made in
22 accordance with the incidental death benefit requirements of
23 Section 401(a)(9)(G) and the regulations thereunder.

24 For purposes of this Section 8.2(d), the life
25 expectancy of a participant member and a participant member's

1 spouse (other than in the case of a life annuity) may, at the
2 election of the participant member or the participant member's
3 spouse, be re-determined in accordance with regulations. The
4 election, once made, shall be irrevocable. If no election is
5 made by the time distributions must commence, then the life
6 expectancy of the participant member and the participant
7 member's spouse shall not be subject to recalculation. Life
8 expectancy and joint and last survivor expectancy shall be
9 computed using the return multiples in Tables V and VI of
10 regulation 1.729.

11 (e) Direct Rollovers. Notwithstanding any provision
12 of the act to the contrary that would otherwise limit a
13 distributee's election under this Section 8, a distributee may
14 elect, at the time and in the manner prescribed by the board,
15 to have any portion of an eligible rollover distribution that
16 is equal to at least five hundred dollars (\$500) paid directly
17 to an eligible retirement plan specified by the distributee in
18 a direct rollover.

19 (i) For purposes of this Section 8.2(e) the
20 following definitions shall apply:

21 (A) An eligible rollover distribution is any
22 distribution of all or any portion of the balance to the
23 credit of the distributee, except that an eligible rollover
24 distribution does not include: any distribution that is one of
25 a series of substantially equal periodic payments (not less

1 frequently than annually) made for the life (or life
2 expectancy) of the distributee or the joint lives (or joint
3 life expenctancies) of the distributee and the distributee's
4 designated beneficiary, or for a specified period of 10 years
5 or more; any distribution to the extent such distribution is
6 required under Section 401(a)(9); the portion of any other
7 distribution that is not includible in gross income
8 (determined without regard to the exclusion for net unrealized
9 appreciation with respect to employer securities); any
10 hardship distribution described in Section
11 401(k)(2)(B)(i)(IV); and any other distribution that is
12 reasonably expected to total less than two hundred dollars
13 (\$200) during a year.

14 (B) An eligible retirement plan is an individual
15 retirement account described in Section 408(a), an individual
16 retirement annuity described in Section 408(b), an annuity
17 plan described in Section 403(a), a Roth IRA described in
18 Section 408A(b), or a qualified trust described in Section
19 401(a), that accepts the distributee's eligible rollover
20 distribution.

21 (C) A distributee includes an employee or former
22 employee. In addition, the employee's or former employee's
23 surviving spouse and the employee's or former employee's
24 spouse or former spouse who is the alternate payee under a
25 qualified domestic relations order, as defined in Section

1 414(p), are distributees with regard to the interest of the
2 spouse or former spouse.

3 (D) A direct rollover is a payment by the plan to
4 the eligible retirement plan specified by the distributee.

5 (E) A non-spouse beneficiary who is a designated
6 beneficiary under Section 401(a)(9)(E) and the regulations
7 thereunder, by a direct trustee-to-trustee transfer (direct
8 rollover), may roll over all or any portion of his or her
9 distribution to an Individual Retirement Account (IRA) the
10 beneficiary establishes for purposes of receiving the
11 distribution. In order to be able to roll over the
12 distribution, the distribution otherwise must satisfy the
13 definition of an eligible rollover distribution under Section
14 401(a)(31).

15 (f) Heroes Earnings Assistance and Relief Tax Act of
16 2008 (HEART Act) Provisions. In the case of a death or
17 disability occurring on or after January 1, 2007, if a member
18 dies while performing qualified military service (as defined
19 in Section 414(u)), the survivors of the member are entitled
20 to any additional benefits (other than benefit accruals
21 relating to the period of qualified military service) provided
22 under this system as if the member had resumed and then
23 terminated employment on account of death.

24 (g) Pension Funding Equity Act of 2004 (PFEA).
25 Solely for purposes of calculating DROP benefits and for

1 converting lump sum amounts for compliance with Section 415,
2 if the system provides a benefit in a form that is subject to
3 the minimum present value requirements of Section 417(e)(3) in
4 a fiscal year beginning in 2004 or 2005, the actuarially
5 equivalent straight life annuity that is used for
6 demonstrating compliance with Section 415 shall be the greater
7 of: (i) the straight life annuity determined using the
8 system's rate and system's mortality table and (ii) the
9 straight life annuity determined using 5.5 percent and the
10 applicable mortality table. A benefit is subject to the
11 minimum present value requirements of Section 417(e)(3) if it
12 is any benefit other than a non-decreasing annuity payable for
13 a period of not less than the life of the member (or, in the
14 case of a qualified pre-retirement survivor annuity, the life
15 of the surviving spouse), or such other benefit described in
16 the act.

17 (h) Members in the Armed Forces. Notwithstanding any
18 provision of this act to the contrary, contributions,
19 benefits, and service credit with respect to qualified
20 military service shall be provided in accordance with Section
21 414(u).

22 Section 3. The provisions of this act are severable.
23 Should any article, section, or provision hereof be held
24 invalid or unenforceable by a court of competent jurisdiction,

1 such holding shall not invalidate or render unenforceable the
2 remaining sections or provisions hereof.

3 Section 4. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 26-MAY-11.

Greg Pappas
Clerk

Senate

02-JUN-11

Passed