

ACT #2022 - 349

1 HB352
2 216797-4
3 By Representatives Meadows and Clouse
4 RFD: Ways and Means General Fund
5 First Read: 15-FEB-22



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ENROLLED, An Act,

To create the State Employee Retirees' Trust Fund Funding Act of 2022; to establish the State Employee Retirees' Trust Fund for the purpose of establishing a permanent trust and investment account for the funds and earnings received to provide state employee retirees with periodic bonus checks.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the State Employee Retirees' Trust Fund Funding Act of 2022.

Section 2. The Legislature finds that it is advisable for the state to create an irrevocable trust whereby the state may begin funding periodic bonus checks for Alabama retired state employees. Therefore, the State Employees' Retirement System Board of Control shall create an irrevocable trust named the State Employee Retirees' Trust Fund in accordance with this act.

Section 3. For the purposes of this act, the following terms shall have the following meanings:

(1) BENEFICIARY. Any individual who receives a pension, annuity, a retirement allowance, or other benefit provided by Chapter 27 of Title 36, Code of Alabama 1975.

1 (2) BOARD OF CONTROL. The Board of Control of the
2 State Employees' Retirement System established pursuant to
3 Section 36-27-2, Code of Alabama 1975.

4 (3) FISCAL YEAR. The fiscal year of the state as may
5 from time to time be provided by law.

6 (4) PERIODIC BONUS CHECKS. Periodic bonus checks
7 granted by the State Employee Retirees' Trust Fund to retirees
8 and beneficiaries of the State Employees' Retirement System.

9 (5) PERMITTED INVESTMENTS. All assets and properties
10 in which the Retirement Systems of Alabama may invest as
11 permitted by law.

12 (6) RETIRED EMPLOYEE. A former employee who is a
13 participant in the State Employees' Retirement System pursuant
14 to Chapter 27 of Title 36, Code of Alabama 1975, and who
15 satisfies the definitions of retirement and employee as
16 provided in Section 36-27-1, Code of Alabama 1975.

17 (7) TRUSTEE. A trustee serving on the Board of
18 Control.

19 (8) TRUST FUND. The State Employee Retirees' Trust
20 Fund created by this act.

21 Section 4. (a) There is created the State Employee
22 Retirees' Trust Fund evidenced by a written trust instrument,
23 the terms and conditions of which shall be determined by the
24 Board of Control creating the trust fund.

1 (b) The trust shall be managed and controlled by its
2 trustees. The trustees shall serve without compensation for
3 their service as trustees, but may be reimbursed from the
4 trust for all reasonable and necessary expenses that they
5 incur in connection with their service as trustees.

6 Section 5. (a) A trustee may not be any of the
7 following:

8 (1) Personally liable for any liability, loss, or
9 expense suffered by the trust fund, unless the liability,
10 loss, or expense arises out of, or results from, conduct
11 described in Section 36-1-12, Code of Alabama 1975.

12 (2) Responsible for the adequacy of the trust fund
13 to meet and discharge any obligation under the relevant
14 pension plan.

15 (3) Required to take action to enforce the payment
16 of any contribution or appropriation to the trust fund.

17 (b) A trustee is immune from suit to the same extent
18 as the state, its agencies, officers, and employees.

19 (c) A trustee may be indemnified by the trust fund
20 and from funds of the trust fund against costs, liabilities,
21 losses, damages, and expenses including, but not limited to,
22 attorney's fees, as may be more fully provided in a respective
23 trust fund agreement, unless the cost, liability, loss,
24 damage, or expense arises out of, or results from, the willful
25 misconduct or intentional wrongdoing of the trustee.

1 Section 6. (a) The board of control, through the
2 trustees, shall have all powers necessary for the management
3 and control of the trust fund and to carry out and effectuate
4 the purposes of this act including, but not limited to, the
5 following:

6 (1) To adopt, alter, and repeal rules for the
7 operation and conduct of the affairs and business of the trust
8 fund.

9 (2) To make, enter into, and execute contracts,
10 agreements, and other instruments and to take other actions as
11 necessary for the management and operation of the trust fund,
12 to accomplish any purpose for which the trust fund was
13 created, or to exercise any power granted by this act.

14 (3) To enter into contracts with, to accept aid and
15 grants from, to cooperate with, and to do any and all things
16 necessary to avail the trust fund of the aid and cooperation
17 of the United States, the state, or any agency,
18 instrumentality, or political subdivision of either, in
19 furtherance of the purposes of this act.

20 (4) To appoint, employ, and contract with employees,
21 agents, advisors, and consultants including, but not limited
22 to, attorneys, accountants, actuaries, financial experts, and
23 other advisors, consultants, and agents as determined
24 necessary by the trustees and to establish any compensation to
25 be paid from the funds of the trust fund.

1 (5) To invest the funds of the trust fund in any
2 permitted investment.

3 (b) The expenses of making and disposing of
4 investments, including brokerage commissions, legal expenses
5 referable to a particular transaction, transfer taxes, and
6 other customary transactional expenses with respect to a trust
7 shall be payable out of the funds of the trust fund.

8 Section 7. (a) (1) The sources of funding to the
9 trust fund may consist of all of the following:

- 10 a. Investment income.
11 b. Proceeds of any gifts, grants, or contributions.
12 c. Revenue sources as directed by the Legislature.
13 d. Revenue sources other than direct appropriations
14 by the Legislature.

15 (2) The sources of funding to the trust fund may not
16 consist of ~~Education Trust~~ State General Fund revenue and
17 those revenues are expressly prohibited from that use. The
18 trust fund shall be funded from sources other than the
19 ~~Education Trust~~ State General Fund.

20 (b) The agreements creating the trust fund shall be
21 irrevocable and the assets of the trust fund may not be
22 expended, disbursed, loaned, or transferred, or used for any
23 purpose other than to acquire permitted investments, pay
24 administrative expenses, and provide periodic bonus checks to

1 or for retired employees and their beneficiaries. The
2 Legislature may not appropriate the assets of the trust fund.

3 (c) Upon certification from the actuary of the State
4 Employees' Retirement System that the assets of the trust fund
5 are sufficient to fund periodic bonus checks as provided for
6 by legislation granting the periodic bonus checks, the
7 trustees shall transfer the amount of assets certified by the
8 board of control to the State Employees' Retirement System to
9 fund those bonuses or increases.

10 (d) Notwithstanding subsection (c), the trustees may
11 amend or modify the trust fund, consistent with the
12 legislative intent of this act, in any of the following
13 circumstances:

14 (1) If, in the opinion of counsel for the trustees,
15 it is necessary or advisable to obtain any material tax
16 advantage or avoid any material adverse tax result.

17 (2) If, in the opinion of an independent accountant
18 for the trustees, it is necessary or advisable to cause the
19 trust fund to be considered a post-employment benefits trust
20 fund in accordance with generally accepted governmental
21 accounting principles as prescribed by the Governmental
22 Accounting Standards Board, or its successor.

23 (3) If, in response to a petition of the trustees
24 requesting that the trust fund be amended, a court of

1 competent jurisdiction determines that the amendment is
2 necessary or advisable to accomplish the purposes of this act.

3 (e) All assets and income of the trust fund shall be
4 exempt from taxation by the state or any political subdivision
5 thereof. The assets of the trust fund are not subject to the
6 claims of creditors of the state, the board of control,
7 trustees, plan administrators, employees, retired employees,
8 or beneficiaries, and are not subject to execution,
9 attachment, garnishment, the operation of bankruptcy,
10 insolvency laws, or any other process whatsoever, and no
11 assignment thereof shall be enforceable in any court.

12 (f) The trustees shall prepare the annual financial
13 statements of the trust fund in accordance with generally
14 accepted governmental accounting principles and shall provide
15 for an audit of those financial statements for each fiscal
16 year to be conducted by a qualified independent certified
17 accounting firm in accordance with generally accepted auditing
18 standards.

19 Section 8. (a) It is the intent of the Legislature
20 that the State Employees' Retirement System invest the funds
21 of the trust fund and the trustees operate the trust fund in
22 compliance with the Internal Revenue Code in a manner that
23 could allow the trust fund to maximize investment earnings
24 while minimizing the costs to the trust fund. It is also the
25 intent of the Legislature that the trust fund be operated in a

1 manner that satisfies the definition of other post-employment
2 benefits trusts under generally accepted governmental
3 accounting principles.

4 (b) The trust fund is not subject to any law which
5 conflicts with the intent of the Legislature as expressed in
6 subsection (a) or prevents or unreasonably hinders the
7 accomplishment of the purposes of this act.

8 Section 9. Nothing in this act shall be construed to
9 define or otherwise grant any right or privilege to periodic
10 bonus checks or other pension benefits to any person other
11 than those periodic bonus checks, rights, and privileges
12 previously or already granted to employees and retired
13 employees and their beneficiaries by the State Employees'
14 Retirement System pension plan. The rights and privileges, if
15 any, shall be governed by the terms of the pension plan, if
16 any. This act is not intended to assure or deny any existing
17 or future employee or retired employee, or any of their
18 beneficiaries or any other person of any right of employment
19 or entitlement to any periodic bonus check or to otherwise
20 restrict the ability of the state to modify or eliminate any
21 existing or future increase benefit.

22 Section 10. All personnel employed and vendors hired
23 by contract with funds available to the trust fund and
24 trustees under subdivision (b)(4) of Section 36-36-5, Code of

1 Alabama 1975, shall reflect the racial and ethnic diversity of
2 the state.

3 Section 11. 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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Mac McCutchen

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 15-MAR-22, as amended.

Jeff Woodard
Clerk

Senate

06-APR-22

Passed

APPROVED 4.13.2022

TIME 2:00 pm

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2022-349
Bill Num...: H-352

Recv'd 04/13/22 03:54pmSLF

CO-SPONSORS

Clouse

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 352
YEAS 101 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

DATE:

2-15

RD 1 RFD

F-7G

This Bill was referred to the Standing Committee of the Senate on F-276

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) _____ w/sub _____ by a vote of

years 12 nays 2 abstain _____

this 30th day of March 20 77

[Signature], Chairperson

DATE: 3-30

RF FAV

RD 1

DATE:

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution a required in Section C of Act No. 81-888 was adopted and is attached to the Bill
HB _____

YEAS _____ NAYS _____

PATRICK HARRIS

Secretary

FURTHER SENATE ACTION (OVER)