SB299

199229-1

By Senator Whatley

RFD: Finance and Taxation Education

First Read: 16-APR-19
SYNOPSIS: This bill would create a separate fund in the State Treasury known as the Education Retirees' Trust Fund for Cost-of-Living Adjustments. The bill would provide for funding, including from a lottery if one is authorized; provide that when the assets of the trust are sufficient to fully fund a cost-of-living adjustment for education retirees of one percent or more, funds would be transferred and used for that purpose.

A BILL TO BE ENTITLED

AN ACT

To create the Education Retirees' Trust Fund for Cost-of-Living Adjustments for the purpose of providing education retirees with cost-of-living increases.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. This act shall be known as the Education Retirees' Trust Fund for Cost-of-Living Adjustments Funding Act of 2019.

Section 2. The Legislature of Alabama hereby determines that it is advisable for the state to create an irrevocable trust whereby the state may begin funding cost-of-living adjustments for retired Alabama education employees. Therefore, the Board of Control of the Teachers' Retirement System is authorized and directed to create the irrevocable trust to be named the Education Retirees' Trust Fund for Cost-of-Living Adjustments, which shall be created, funded, and administered in accordance with the provisions of this act.

Section 3. As used in this act, the following words and phrases shall have the following respective meanings:

(1) BENEFICIARY. Any person in receipt of a pension, annuity, retirement allowance, or other benefit provided by Chapter 25 of Title 16 of the Code of Alabama 1975.

(2) BOARD OF CONTROL. The Teacher's Retirement System Board of Control.

(3) COST-OF-LIVING ADJUSTMENT BENEFITS. Cost-of-living adjustment benefits provided to retirees and beneficiaries of the Teachers' Retirement System under the conditions provided for in the act.

(4) EDUCATION RETIREES' TRUST FUND FOR COST-OF-LIVING ADJUSTMENTS. The Education Retirees' Trust Fund
for Cost-of-Living Adjustments created by the Teachers'
Retirement System Board of Control pursuant to this act.

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

(6) LOTTERY. The lottery authorized and implemented
pursuant to the Constitutional Amendment as contained in House
Bill ___ of the 2019 Regular Session of the Legislature.

(7) PERMITTED INVESTMENTS. All assets and properties
in which the Retirement Systems of Alabama may invest as
permitted by law from time to time.

(8) RETIRED EMPLOYEE. A former employee who is a
participant in the Teachers' Retirement System pursuant to
Chapter 25 of Title 16, of the Code of Alabama 1975, as
amended from time to time, and satisfies the definitions of
retirement and teacher, support personnel, or employee under
Section 16-25-1, Code of Alabama 1975, as amended from time to
time.

(9) STATE. The State of Alabama.

(10) TEACHERS' RETIREMENT SYSTEM BOARD OF CONTROL.
The Teachers' Retirement System Board of Control established
by Section 16-25-2, Code of Alabama 1975, or its successor or
assign.

(11) TRUSTEE. A trustee of the trust.

(12) TRUST. The trust created by the members of the
Teachers' Retirement System Board of Control pursuant to this
act.
Section 4. (a) The board of control shall establish the trust.

(b) The trust shall be evidenced by a written trust instrument, the terms and conditions of which shall be determined by the board of control pursuant to this act.

(c) The trustees shall be the members of the board of control serving from time to time. The trust shall be managed and controlled by its trustees. The trustees shall serve without compensation for their service as trustees, but may be reimbursed from the trust for all reasonable and necessary expenses that they incur in connection with their services as trustees. Except as provided in subsection (d) of Section 6, the instrument creating the trust shall be irrevocable and the assets of the trust may not be expended, disbursed, loaned, transferred, or used for any purpose other than to acquire permitted investments, pay administrative expenses, and provide cost-of-living adjustment benefits to or for retired employees and their beneficiaries.

Section 5. (a) The trustees shall have all of the powers necessary to carry out and effectuate the purposes and provisions of this act, all the power and authority granted under law to the board of control, and all powers granted to trustees under Alabama law to the extent not in conflict with this act, including, without limiting the generality of the foregoing, the following:

(1) To adopt, alter, and repeal rules for the operation and conduct of the trust's affairs and business.
(2) To make, enter into, and execute contracts, agreements, and other instruments and to take such other actions as may be necessary or otherwise advisable for the management and operation of the trust, to accomplish any purpose for which the trust was created, or to exercise any power granted by this act.

(3) To enter into contracts with, to accept aid and grants from, to cooperate with, and to do any and all things that may be necessary or otherwise advisable in order to avail the trust of the aid and cooperation of the federal government, the state, or any agency, instrumentality, or political subdivision of either thereof in furtherance of the purposes of this act.

(4) To appoint, employ, and contract with such employees, agents, advisors, and consultants, including, but not limited to, attorneys, accountants, actuaries, financial experts, and such other advisors, consultants, and agents as may, in the trustees' judgments, be necessary or otherwise advisable and to determine and pay, from the funds of the trust, the compensation of those persons.

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

(b) The expenses of making and disposing of investments, such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes, and other customary transactional expenses with respect to a trust shall be payable out of the funds of the trust.
Section 6. (a) The sources of funding to the trust include:

(1) Appropriations made by the Legislature.
(2) Dedicated revenues from the lottery.
(3) Investment income.
(4) Proceeds of any gifts, grants, or contributions.
(5) All other sources permitted by law.

(b) The primary source of funding for the trust shall be the lottery. Twenty-five percent of the net proceeds of the lottery that are dedicated to the Education Trust Fund are appropriated from the Education Trust Fund to the trust annually.

(c) The trustees shall report to the Teachers' Retirement System's actuary the value of the assets of the trust on or before September 1 of each year. Upon certification from the Teachers' Retirement System's actuary that the assets of the trust are sufficient to fund a cost-of-living adjustment of one percent or greater, the trustees shall transfer the certified amount of assets to the Teachers' Retirement System to fund the cost-of-living adjustment effective the following October 1.

(d) The funds transferred to the Teachers' Retirement System shall be expended by the system for cost-of-living adjustments.

(e) As long as a proposed amendment is consistent with the legislative intent of this act, the trustees may amend or modify the trust if:
(1) In the opinion of counsel for the trustees, it is necessary or otherwise advisable to obtain any material tax advantage or avoid any material adverse tax result.

(2) In the opinion of the independent accountant for the trustees of the trust, it is necessary or otherwise advisable to cause the trust to be considered another post-employment benefits trust in accordance with generally accepted governmental accounting principles, as prescribed by the Governmental Accounting Standards Board or its successor.

(3) In response to a petition of the trustees requesting that the trust be amended, a court of competent jurisdiction determines that the amendment is necessary or otherwise advisable to accomplish one or more purposes of this act.

(f) All assets and income of the trust shall be exempt from taxation by the state or any political subdivision thereof. The assets of the trust are not subject to the claim of a creditor of the state, the board, trustees, plan administrators, employees, retired employees, or beneficiaries, and are not subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

(g) The trustees shall prepare annual financial statements of the trust in accordance with generally accepted accounting principles and an audit by a qualified independent certified accounting firm to be conducted of those financial
statements of the respective trust for each fiscal year in accordance with generally accepted auditing standards.

Section 7. It is the intent of the Legislature that the state and the board establish and the trustees operate the trust in compliance with the Internal Revenue Code of the United States of America in a manner which would allow the trust to maximize investment earnings while minimizing the costs to the state and its employees and other citizens of providing the cost-of-living adjustment benefits. It is also the intent of the Legislature that the trust be operated in a manner that satisfies the definition of other post-employment benefits trusts under generally accepted governmental accounting principles. The trust shall not be subject to any provision of a law of the state, or any subdivision thereof, which conflicts with that legislative intent or would prevent or unreasonably hinder the accomplishment of the purposes of this act.

Section 8. (a) A trustee is not:

(1) Personally liable for any liability, loss, or expense suffered by the trust, unless the liability, loss, or expense arises out of or results from the willful misconduct or intentional wrongdoing of the trustee.

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

(3) Required to take action to enforce the payment of any contribution or appropriation to the trust.
(b) The trustees, their officers, and employees shall be immune from suit to the same extent as the state, its agencies, officers, and employees.

(c) The trustees may be indemnified by the trust and from funds of the trust against any cost, liability, loss, damage, and expense, including attorneys fees, unless the cost, liability, loss, damage, or expense arises out of or results from the willful misconduct or intentional wrongdoing of the trustee.

Section 9. Nothing in this act shall be construed to define or otherwise grant any right or privilege to cost-of-living adjustment benefits or other pension benefits to any person other than those cost-of-living adjustment benefits or other pension benefits, rights, and privileges previously or already granted to employees and retired employees and their beneficiaries by the Teachers' Retirement System or as specifically provided herein. Such rights and privileges, if any, shall be governed by the terms of the pension plan, if any. This act is not intended to assure or deny any existing or future employee, retired employee, any of his or her beneficiaries, or any other person of any right of employment or entitlement to any cost-of-living adjustment benefit or limit or otherwise restrict the ability of the state to modify or eliminate any existing or future cost-of-living adjustment benefit, except as specifically provided herein.
Section 10. This act shall become effective upon its passage and approval by the Governor or upon its otherwise becoming an act, and is contingent upon ratification by the voters of Alabama of the constitutional amendment contained in House Bill ____ of the 2019 Regular Session of the Legislatures, relating to the creation of a lottery.