

1 SB299  
2 199229-1  
3 By Senator Whatley  
4 RFD: Finance and Taxation Education  
5 First Read: 16-APR-19

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

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To create the Education Retirees' Trust Fund for  
23 Cost-of-Living Adjustments for the purpose of providing  
24 education retirees with cost-of-living increases.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. This act shall be known as the Education  
2 Retirees' Trust Fund for Cost-of-Living Adjustments Funding  
3 Act of 2019.

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

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

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

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

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

25           (4) EDUCATION RETIREES' TRUST FUND FOR  
26 COST-OF-LIVING ADJUSTMENTS. The Education Retirees' Trust Fund

1 for Cost-of-Living Adjustments created by the Teachers'  
2 Retirement System Board of Control pursuant to this act.

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

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

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

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

18 (9) STATE. The State of Alabama.

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

23 (11) TRUSTEE. A trustee of the trust.

24 (12) TRUST. The trust created by the members of the  
25 Teachers' Retirement System Board of Control pursuant to this  
26 act.

1           Section 4. (a) The board of control shall establish  
2 the trust.

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

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

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

26           (1) To adopt, alter, and repeal rules for the  
27 operation and conduct of the trust's affairs and business.

1           (2) To make, enter into, and execute contracts,  
2           agreements, and other instruments and to take such other  
3           actions as may be necessary or otherwise advisable for the  
4           management and operation of the trust, to accomplish any  
5           purpose for which the trust was created, or to exercise any  
6           power granted by this act.

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

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

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

23          (b) The expenses of making and disposing of  
24          investments, such as brokerage commissions, legal expenses  
25          referable to a particular transaction, transfer taxes, and  
26          other customary transactional expenses with respect to a trust  
27          shall be payable out of the funds of the trust.

1                   Section 6. (a) The sources of funding to the trust  
2 include:

3                   (1) Appropriations made by the Legislature.

4                   (2) Dedicated revenues from the lottery.

5                   (3) Investment income.

6                   (4) Proceeds of any gifts, grants, or contributions.

7                   (5) All other sources permitted by law.

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

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

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

25                   (e) As long as a proposed amendment is consistent  
26 with the legislative intent of this act, the trustees may  
27 amend or modify the trust if:

1           (1) In the opinion of counsel for the trustees, it  
2 is necessary or otherwise advisable to obtain any material tax  
3 advantage or avoid any material adverse tax result.

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

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

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

24          (g) The trustees shall prepare annual financial  
25 statements of the trust in accordance with generally accepted  
26 accounting principles and an audit by a qualified independent  
27 certified accounting firm to be conducted of those financial

1 statements of the respective trust for each fiscal year in  
2 accordance with generally accepted auditing standards.

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

18 Section 8. (a) A trustee is not:

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

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

26 (3) Required to take action to enforce the payment  
27 of any contribution or appropriation to the trust.

1           (b) The trustees, their officers, and employees  
2 shall be immune from suit to the same extent as the state, its  
3 agencies, officers, and employees.

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

10           Section 9. Nothing in this act shall be construed to  
11 define or otherwise grant any right or privilege to  
12 cost-of-living adjustment benefits or other pension benefits  
13 to any person other than those cost-of-living adjustment  
14 benefits or other pension benefits, rights, and privileges  
15 previously or already granted to employees and retired  
16 employees and their beneficiaries by the Teachers' Retirement  
17 System or as specifically provided herein. Such rights and  
18 privileges, if any, shall be governed by the terms of the  
19 pension plan, if any. This act is not intended to assure or  
20 deny any existing or future employee, retired employee, any of  
21 his or her beneficiaries, or any other person of any right of  
22 employment or entitlement to any cost-of-living adjustment  
23 benefit or limit or otherwise restrict the ability of the  
24 state to modify or eliminate any existing or future  
25 cost-of-living adjustment benefit, except as specifically  
26 provided herein.

1                   Section 10. This act shall become effective upon its  
2 passage and approval by the Governor or upon its otherwise  
3 becoming an act, and is contingent upon ratification by the  
4 voters of Alabama of the constitutional amendment contained in  
5 House Bill \_\_\_\_ of the 2019 Regular Session of the  
6 Legislatures, relating to the creation of a lottery.