

1 SB61
2 209224-2
3 By Senator Chesteen
4 RFD: Finance and Taxation Education
5 First Read: 02-FEB-21
6 PFD: 01/22/2021

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To create the Education Retirees' Trust Fund Funding
12 Act of 2021; to establish a separate fund in the State
13 Treasury known as the Education Retirees' Trust Fund for the
14 purpose of establishing a permanent trust and investment
15 account for the funds and earnings received to provide
16 education retirees with periodic bonus checks.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the Education Retirees' Trust Fund Funding Act of 2021.

20 Section 2. The Legislature finds that it is
21 advisable for the state to create an irrevocable trust whereby
22 the state may begin funding periodic bonus checks for Alabama
23 retired education employees. Therefore, the Teachers'
24 Retirement System Board of Control shall create an irrevocable
25 trust named the Education Retirees' Trust Fund in accordance
26 with this act.

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

3 (1) BENEFICIARY. Any individual who receives a
4 pension, annuity, a retirement allowance, or other benefit
5 provided by Chapter 25 of Title 16, Code of Alabama 1975.

6 (2) BOARD OF CONTROL. The Board of Control of the
7 Teachers' Retirement System established pursuant to Section
8 16-25-2, Code of Alabama 1975.

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

11 (4) PERIODIC BONUS CHECKS. Periodic bonus checks
12 granted by the Education Retirees' Trust Fund to retirees and
13 beneficiaries of the Teachers' Retirement System.

14 (5) PERMITTED INVESTMENTS. All assets and properties
15 in which the Retirement Systems of Alabama may invest as
16 permitted by law.

17 (6) RETIRED EMPLOYEE. A former employee who is a
18 participant in the Teachers' Retirement System pursuant to
19 Chapter 25 of Title 16, Code of Alabama 1975, and who
20 satisfies the definitions of retirement and teacher, support
21 personnel, or employee as provided in Section 16-25-1, Code of
22 Alabama 1975.

23 (7) TRUSTEE. A trustee serving on the Board of
24 Control.

25 (8) TRUST FUND. The Education Retirees' Trust Fund
26 created by this act.

1 Section 4. (a) There is created the Education
2 Retirees' Trust Fund evidenced by a written trust instrument,
3 the terms and conditions of which shall be determined by the
4 Board of Control creating the trust fund.

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

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

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

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

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

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

23 (c) A trustee may be indemnified by the trust fund
24 and from funds of the trust fund against costs, liabilities,
25 losses, damages, and expenses including, but not limited to,
26 attorney's fees, as may be more fully provided in a respective
27 trust fund agreement, unless the cost, liability, loss,

1 damage, or expense arises out of, or results from, the willful
2 misconduct or intentional wrongdoing of the trustee.

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

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

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

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

22 (4) To appoint, employ, and contract with employees,
23 agents, advisors, and consultants including, but not limited
24 to, attorneys, accountants, actuaries, financial experts, and
25 other advisors, consultants, and agents as determined
26 necessary by the trustees and to establish any compensation to
27 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 Fund revenue and those revenues are
17 expressly prohibited from that use. The trust fund shall be
18 funded from sources other than the Education Trust Fund.

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

26 (c) Upon certification from the actuary of the
27 Teachers' Retirement System that the assets of the trust fund

1 are above and beyond the minimum trust fund balance of one
2 hundred million dollars (\$100,000,000) and sufficient to fund
3 periodic bonus checks as provided for by legislation granting
4 the periodic bonus checks, the trustees shall transfer the
5 amount of assets certified by the board of control to the
6 Teachers' Retirement System to fund those bonuses or
7 increases.

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

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

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

21 (3) If, in response to a petition of the trustees
22 requesting that the trust fund be amended, a court of
23 competent jurisdiction determines that the amendment is
24 necessary or advisable to accomplish the purposes of this act.

25 (e) All assets and income of the trust fund shall be
26 exempt from taxation by the state or any political subdivision
27 thereof. The assets of the trust fund are not subject to the

1 claims of creditors of the state, the board of control,
2 trustees, plan administrators, employees, retired employees,
3 or beneficiaries, and are not subject to execution,
4 attachment, garnishment, the operation of bankruptcy,
5 insolvency laws, or any other process whatsoever, and no
6 assignment thereof shall be enforceable in any court.

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

14 Section 8. (a) It is the intent of the Legislature
15 that the Teachers' Retirement System invest the funds of the
16 trust fund and the trustees operate the trust fund in
17 compliance with the Internal Revenue Code in a manner that
18 could allow the trust fund to maximize investment earnings
19 while minimizing the costs to the trust fund. It is also the
20 intent of the Legislature that the trust fund be operated in a
21 manner that satisfies the definition of other post-employment
22 benefits trusts under generally accepted governmental
23 accounting principles.

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

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

15 Section 10. All personnel employed and vendors hired
16 by contract with funds available to the trust fund and
17 trustees under subdivision (b)(4) of Section 36-36-5, Code of
18 Alabama 1975, shall reflect the racial and ethnic diversity of
19 the state.

20 Section 11. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation Education 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 16-MAR-21

Read for the third time and passed as amended 18-MAR-21

Yeas 23
Nays 2

Patrick Harris,
Secretary.