

1 SB314
2 189741-1
3 By Senator Whatley
4 RFD: Finance and Taxation Education
5 First Read: 13-FEB-18

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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
11 function of the Education Retirees' Trust Fund for
12 Cost-of-Living Adjustments shall be to serve as a
13 permanent trust and as an investment account for
14 the earnings and funds received for the purpose of
15 providing education retirees with cost-of-living
16 increases or one-time bonuses.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

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22 To create a separate fund in the State Treasury
23 known as the Education Retirees' Trust Fund for Cost of Living
24 Adjustments for the purpose of establishing a permanent trust
25 and investment account for the funds and earnings received to
26 provide education retirees with cost-of-living increase or
27 one-time bonuses.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. The Legislature of Alabama has determined
3 that it would be advisable for the state to create an
4 irrevocable trust whereby the state may begin funding
5 cost-of-living adjustments or one-time bonuses for Alabama
6 retired education employees. Therefore, the Teachers'
7 Retirement System Board of Control is authorized and directed
8 to create the irrevocable trust to be named the "Education
9 Retirees' Trust Fund for Cost-of-Living Adjustments," which
10 shall be created, funded, and administered in accordance with
11 the provisions of this chapter.

12 Section 2. The name of this chapter is the Education
13 Retirees' Trust Fund for Cost-of-Living Adjustments Funding
14 Act of 2018.

15 Section 3. As used in this chapter, the following
16 words and phrases shall have the following respective
17 meanings:

18 (1) BOARD OF CONTROL. The Teachers' Retirement
19 System Board of Control.

20 (2) BENEFICIARY. Any person in receipt of a pension,
21 annuity, a retirement allowance or other benefit provided by
22 Chapter 25 of Title 16.

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

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

3 (5) COST-OF-LIVING ADJUSTMENT BENEFITS.
4 Cost-of-Living adjustments or one-time retiree bonus benefits
5 granted by the Legislature to retirees and beneficiaries of
6 the Teachers' Retirement System.

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

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

16 (8) STATE. The State of Alabama.

17 (9) TEACHERS' RETIREMENT SYSTEM BOARD OF CONTROL.
18 The Teachers' Retirement System Board of Control established
19 by Section 16-25-2, or its successor or assign.

20 (10) TRUSTEE. A trustee of the trust.

21 (11) TRUST. The trust to be created by the State, on
22 the one hand, as the grantor, and members of the Teachers'
23 Retirement System Board of Control, on the other hand, as
24 trustees of the trust, pursuant to this chapter.

25 Section 4. The trust created pursuant to this
26 chapter shall be evidenced by a written trust instrument, the
27 terms and conditions of which shall be determined by the board

1 creating such trust as long as such terms and conditions do
2 not conflict with this chapter. The Trustees of the Education
3 Retirees' Trust Fund for Cost-of-Living Adjustments shall be
4 the members of the Teachers' Retirement System Board of
5 Control serving from time to time. The trust shall be managed
6 and controlled by its trustees. The trustees shall serve
7 without compensation for their service as trustees, but may be
8 reimbursed from the trust for all reasonable and necessary
9 expenses that they incur in connection with their services as
10 trustees.

11 Section 5. (a) The trust shall be under the
12 management and control of the trustees. All powers necessary
13 or otherwise advisable for the management and control of the
14 trust shall be vested solely in the trustees.

15 (b) The trustees shall have all of the powers
16 necessary to carry out and effectuate the purposes and
17 provisions of this chapter, all the power and authority
18 granted under law to the board which created the trust, and
19 all powers granted to trustees under Alabama law to the extent
20 not in conflict with this chapter, including, without limiting
21 the generality of the foregoing, the following powers:

22 (1) To adopt, alter, and repeal rules for the
23 operation and conduct of the trust's affairs and business;

24 (2) To make, enter into, and execute contracts,
25 agreements, and other instruments and to take such other
26 actions as may be necessary or otherwise advisable for the
27 management and operation of the respective trust, to

1 accomplish any purpose for which the trust was created, or to
2 exercise any power granted by this chapter;

3 (3) To enter into contracts with, to accept aid and
4 grants from, to cooperate with, and to do any and all things
5 that may be necessary or otherwise advisable in order to avail
6 the trust of the aid and cooperation of the United States of
7 America, the state, or any agency, instrumentality, or
8 political subdivision of either thereof in furtherance of the
9 purposes of this chapter;

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

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

19 (c) The expenses of making and disposing of
20 investments, such as brokerage commissions, legal expenses
21 referable to a particular transaction, transfer taxes, and
22 other customary transactional expenses with respect to a trust
23 shall be payable out of the funds of such trust.

24 Section 6. a) The sources of funding to the
25 Education Retirees' Trust Fund for Cost of Living Adjustments
26 may be: (1) appropriations made by the Legislature; (2)

1 investment income; (3) proceeds of any gifts, grants, or
2 contributions; and (4) all other sources permitted by law.

3 (b) The agreements creating the trust shall be
4 irrevocable and the assets of the trust shall not be expended
5 or disbursed or loaned or transferred or used for any purpose
6 other than to acquire permitted investments, pay
7 administrative expenses, and provide cost-of-living adjustment
8 benefits to or for retired employees and their beneficiaries.
9 The Legislature shall have no authority or power to
10 appropriate the assets of the trust.

11 (c) Upon certification from the Teachers' Retirement
12 System's actuary that the assets of the trust are sufficient
13 to fund a cost-of-living adjustment or one-time bonus as
14 provided for by legislation granting such cost-of-living
15 adjustment or one-time bonus, the trustees shall transfer the
16 certified amount of assets to the Teacher's Retirement System
17 to fund such cost-of-living adjustment or one-time bonus.

18 (d) Notwithstanding the above, as long as such
19 amendment is consistent with the legislative intent of this
20 chapter, the trustees of the trust shall have the authority to
21 amend or modify the trust: (1) if, in the opinion of counsel
22 for the trustees of the trust, it is necessary or otherwise
23 advisable to obtain any material tax advantage or avoid any
24 material adverse tax result; (2) if, in the opinion of the
25 independent accountant for the trustees of the trust, it is
26 necessary or otherwise advisable to cause the trust to be
27 considered another post-employment benefits trust in

1 accordance with generally accepted governmental accounting
2 principles, as prescribed by the Governmental Accounting
3 Standards Board or its successor; or (3) if, in response to a
4 petition of the trustees of the trust requesting that the
5 trust be amended, a court of competent jurisdiction determines
6 that such amendment is necessary or otherwise advisable to
7 accomplish one or more purposes of this chapter.

8 (e) All assets and income of the trust shall be
9 exempt from taxation by the state or any political subdivision
10 thereof. The assets of the trust will not be subject to the
11 claims of creditors of the state, the board, trustees, plan
12 administrators, employees, retired employees, or
13 beneficiaries, and will not be subject to execution,
14 attachment, garnishment, the operation of bankruptcy, the
15 insolvency laws, or other process whatsoever, nor shall any
16 assignment thereof be enforceable in any court.

17 (f) The trustees shall cause the annual financial
18 statements of the trust to be prepared in accordance with
19 generally accepted accounting principles and an audit by a
20 qualified independent certified accounting firm to be
21 conducted of those financial statements of the respective
22 trust for each fiscal year in accordance with generally
23 accepted auditing standards.

24 Section 7. It is the intent of the Legislature that
25 the state and the board establish and the trustees operate the
26 trust in compliance with the Internal Revenue Code of the
27 United States of America in a manner which would allow the

1 trust to maximize investment earnings while minimizing the
2 costs to the state and its employees and other citizens of
3 providing the cost-of-living adjustment benefits. It is also
4 the intent of the Legislature that the trust be operated in a
5 manner that satisfies the definition of other post-employment
6 benefits trusts under generally accepted governmental
7 accounting principles. The trust shall not be subject to any
8 provision of a law of the state (or any subdivision thereof)
9 which conflicts with that legislative intent or would prevent
10 or unreasonably hinder the accomplishment of the purposes of
11 this chapter.

12 Section 8. a) A trustee shall not be: (1) personally
13 liable for any liability, loss, or expense suffered by the
14 trust, unless such liability, loss, or expense arises out of
15 or results from the willful misconduct or intentional
16 wrongdoing of such trustee; (2) responsible for the adequacy
17 of the trust to meet and discharge any obligation under the
18 relevant pension plan; or (3) required to take action to
19 enforce the payment of any contribution or appropriation to
20 the trust.

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

24 (c) The trustees may be indemnified by the trust and
25 from funds of the trust against costs, liabilities, losses,
26 damages, and expenses, including their attorneys fees, as more
27 fully provided in the respective trust agreements, unless such

1 cost, liability, loss, damage, or expense arises out of or
2 results from the willful misconduct or intentional wrongdoing
3 of such trustee.

4 Section 9. Nothing in this chapter shall be
5 construed to define or otherwise grant any right or privilege
6 to cost-of-living adjustment benefits or other pension
7 benefits to any person other than those cost-of-living
8 adjustment benefits or other pension benefits, rights, and
9 privileges previously or already granted to employees and
10 retired employees and their beneficiaries by the Teachers'
11 Retirement System pension plan. Such rights and privileges, if
12 any, shall be governed by the terms of the pension plan, if
13 any. This chapter is not intended to assure or deny any
14 existing or future employee, retired employee, any of their
15 beneficiaries, or any other person of any right of employment
16 or entitlement to any cost-of-living adjustment benefit or
17 limit or otherwise restrict the ability of the state to modify
18 or eliminate any existing or future cost-of-living adjustment
19 benefit.

20 Section 10. All personnel employed and vendors hired
21 by contract with funds available to the trust and trustees
22 under the provisions of subdivision (4) of subsection (b) of
23 Section 36-36-5 shall reflect the racial and ethnic diversity
24 of the state.

25 Section 11. This act shall become effective
26 immediately following its passage and approval by the
27 Governor, or its otherwise becoming law.

