

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

1 SB61

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4 ENROLLED, An Act,

5 To create the Education Retirees' Trust Fund Funding
6 Act of 2021; to establish a separate fund in the State
7 Treasury known as the Education Retirees' Trust Fund for the
8 purpose of establishing a permanent trust and investment
9 account for the funds and earnings received to provide
10 education retirees with periodic bonus checks.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

1 (2) BOARD OF CONTROL. The Board of Control of the
2 Teachers' Retirement System established pursuant to Section
3 16-25-2, 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 Education Retirees' Trust Fund to retirees and
8 beneficiaries of the Teachers' 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 Teachers' Retirement System pursuant to
14 Chapter 25 of Title 16, Code of Alabama 1975, and who
15 satisfies the definitions of retirement and teacher, support
16 personnel, or employee as provided in Section 16-25-1, Code of
17 Alabama 1975.

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

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

22 Section 4. (a) There is created the Education
23 Retirees' Trust Fund evidenced by a written trust instrument,
24 the terms and conditions of which shall be determined by the
25 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 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.

1 (c) Upon certification from the actuary of the
2 Teachers' Retirement System that the assets of the trust fund
3 are above and beyond the minimum trust fund balance of one
4 hundred million dollars (\$100,000,000) and sufficient to fund
5 periodic bonus checks as provided for by legislation granting
6 the periodic bonus checks, the trustees shall transfer the
7 amount of assets certified by the board of control to the
8 Teachers' Retirement System to fund those bonuses or
9 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 Teachers' Retirement System invest the funds of the
21 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 Teachers' Retirement
14 System pension plan. The rights and privileges, if any, shall
15 be governed by the terms of the pension plan, if any. This act
16 is not intended to assure or deny any existing or future
17 employee or retired employee, or any of their beneficiaries or
18 any other person of any right of employment or entitlement to
19 any periodic bonus check or to otherwise restrict the ability
20 of the state to modify or eliminate any existing or future
21 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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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB61
Senate 18-MAR-21
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 06-MAY-21

By: Senator Chesteen