

1 SB394
2 213382-2
3 By Senators Albritton and Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 15-APR-21

SYNOPSIS: This bill would create the State Employee Retirees' Trust Fund Funding Act of 2021.

This bill would establish a separate fund in the State Treasury known as the State Employee Retirees' Trust Fund, to serve as a permanent trust and as an investment account for the earnings and funds received for the purpose of periodic bonus checks.

A BILL
TO BE ENTITLED
AN ACT

To create the State Employee Retirees' Trust Fund Funding Act of 2021; to establish a separate fund in the State Treasury known as the State Employee Retirees' Trust Fund for the purpose of establishing a permanent trust and investment account for the funds and earnings received to provide state employee retirees with periodic bonus checks.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the State Employee Retirees' Trust Fund Funding Act of
3 2021.

4 Section 2. The Legislature finds that it is
5 advisable for the state to create an irrevocable trust whereby
6 the state may begin funding periodic bonus checks for Alabama
7 retired state employees. Therefore, the State Employees'
8 Retirement System Board of Control shall create an irrevocable
9 trust named the State Retirees' Trust Fund in accordance with
10 this act.

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

13 (1) BENEFICIARY. Any individual who receives a
14 pension, annuity, a retirement allowance, or other benefit
15 provided by Chapter 27 of Title 36, Code of Alabama 1975.

16 (2) BOARD OF CONTROL. The Board of Control of the
17 State Employees' Retirement System established pursuant to
18 Section 36-27-2, Code of Alabama 1975.

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

21 (4) PERIODIC BONUS CHECKS. Periodic bonus checks
22 granted by the State Employee Retirees' Trust Fund to retirees
23 and beneficiaries of the State Employees' Retirement System.

24 (5) PERMITTED INVESTMENTS. All assets and properties
25 in which the Retirement Systems of Alabama may invest as
26 permitted by law.

1 (6) RETIRED EMPLOYEE. A former employee who is a
2 participant in the State Employees' Retirement System pursuant
3 to Chapter 27 of Title 36, Code of Alabama 1975, and who
4 satisfies the definitions of retirement and employee as
5 provided in Section 36-27-1, Code of Alabama 1975.

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

8 (8) TRUST FUND. The State Employee Retirees' Trust
9 Fund created by this act.

10 Section 4. (a) There is created the State Employee
11 Retirees' Trust Fund evidenced by a written trust instrument,
12 the terms and conditions of which shall be determined by the
13 Board of Control creating the trust fund.

14 (b) The trust shall be managed and controlled by its
15 trustees. The trustees shall serve without compensation for
16 their service as trustees, but may be reimbursed from the
17 trust for all reasonable and necessary expenses that they
18 incur in connection with their service as trustees.

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

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

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

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

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

5 (c) A trustee may be indemnified by the trust fund
6 and from funds of the trust fund against costs, liabilities,
7 losses, damages, and expenses including, but not limited to,
8 attorney's fees, as may be more fully provided in a respective
9 trust fund agreement, unless the cost, liability, loss,
10 damage, or expense arises out of, or results from, the willful
11 misconduct or intentional wrongdoing of the trustee.

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

17 (1) To adopt, alter, and repeal rules for the
18 operation and conduct of the affairs and business of the trust
19 fund.

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

25 (3) To enter into contracts with, to accept aid and
26 grants from, to cooperate with, and to do any and all things
27 necessary to avail the trust fund of the aid and cooperation

1 of the United States, the state, or any agency,
2 instrumentality, or political subdivision of either, in
3 furtherance of the purposes of this act.

4 (4) To appoint, employ, and contract with employees,
5 agents, advisors, and consultants including, but not limited
6 to, attorneys, accountants, actuaries, financial experts, and
7 other advisors, consultants, and agents as determined
8 necessary by the trustees and to establish any compensation to
9 be paid from the funds of the trust fund.

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

12 (b) The expenses of making and disposing of
13 investments, including brokerage commissions, legal expenses
14 referable to a particular transaction, transfer taxes, and
15 other customary transactional expenses with respect to a trust
16 shall be payable out of the funds of the trust fund.

17 Section 7. (a) (1) The sources of funding to the
18 trust fund may consist of all of the following:

- 19 a. Investment income.
- 20 b. Proceeds of any gifts, grants, or contributions.
- 21 c. Revenue sources as directed by the Legislature.
- 22 d. Revenue sources other than direct appropriations
23 by the Legislature.

24 (2) The sources of funding to the trust fund may not
25 consist of Education Trust Fund revenue and those revenues are
26 expressly prohibited from that use. The trust fund shall be
27 funded from sources other than the Education Trust Fund.

1 (b) The agreements creating the trust fund shall be
2 irrevocable and the assets of the trust fund may not be
3 expended, disbursed, loaned, or transferred, or used for any
4 purpose other than to acquire permitted investments, pay
5 administrative expenses, and provide periodic bonus checks to
6 or for retired employees and their beneficiaries. The
7 Legislature may not appropriate the assets of the trust fund.

8 (c) Upon certification from the actuary of the State
9 Employees' Retirement System that the assets of the trust fund
10 are above and beyond the minimum trust fund balance of
11 twenty-five million dollars (\$25,000,000) and sufficient to
12 fund periodic bonus checks as provided for by legislation
13 granting the periodic bonus checks, the trustees shall
14 transfer the amount of assets certified by the board of
15 control to the State Employees' Retirement System to fund
16 those bonuses or increases.

17 (d) Notwithstanding subsection (c), the trustees may
18 amend or modify the trust fund, consistent with the
19 legislative intent of this act, in any of the following
20 circumstances:

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

24 (2) If, in the opinion of an independent accountant
25 for the trustees, it is necessary or advisable to cause the
26 trust fund to be considered a post-employment benefits trust
27 fund in accordance with generally accepted governmental

1 accounting principles as prescribed by the Governmental
2 Accounting Standards Board, or its successor.

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

7 (e) All assets and income of the trust fund shall be
8 exempt from taxation by the state or any political subdivision
9 thereof. The assets of the trust fund are not subject to the
10 claims of creditors of the state, the board of control,
11 trustees, plan administrators, employees, retired employees,
12 or beneficiaries, and are not subject to execution,
13 attachment, garnishment, the operation of bankruptcy,
14 insolvency laws, or any other process whatsoever, and no
15 assignment thereof shall be enforceable in any court.

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

23 Section 8. (a) It is the intent of the Legislature
24 that the State Employees' Retirement System invest the funds
25 of the trust fund and the trustees operate the trust fund in
26 compliance with the Internal Revenue Code in a manner that
27 could allow the trust fund to maximize investment earnings

1 while minimizing the costs to the trust fund. It is also the
2 intent of the Legislature that the trust fund be operated in a
3 manner that satisfies the definition of other post-employment
4 benefits trusts under generally accepted governmental
5 accounting principles.

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

10 Section 9. Nothing in this act shall be construed to
11 define or otherwise grant any right or privilege to periodic
12 bonus checks or other pension benefits to any person other
13 than those periodic bonus checks, rights, and privileges
14 previously or already granted to employees and retired
15 employees and their beneficiaries by the State Employees'
16 Retirement System pension plan. The rights and privileges, if
17 any, shall be governed by the terms of the pension plan, if
18 any. This act is not intended to assure or deny any existing
19 or future employee or retired employee, or any of their
20 beneficiaries or any other person of any right of employment
21 or entitlement to any periodic bonus check or to otherwise
22 restrict the ability of the state to modify or eliminate any
23 existing or future increase benefit.

24 Section 10. All personnel employed and vendors hired
25 by contract with funds available to the trust fund and
26 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.