

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.