

1 SB159
2 182697-2
3 By Senators Whatley and Dial
4 RFD: Finance and Taxation Education
5 First Read: 09-FEB-17

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create a separate fund in the State Treasury
12 known as the Education Retirees' Trust Fund for Cost of Living
13 Adjustments for the purpose of establishing a permanent trust
14 and investment account for the funds and earnings received to
15 provide education retirees with cost-of-living increase or
16 one-time bonuses.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The Legislature of Alabama has determined
19 that it would be advisable for the state to create an
20 irrevocable trust whereby the state may begin funding
21 cost-of-living adjustments or one-time bonuses for Alabama
22 retired education employees. Therefore, the Teachers'
23 Retirement System Board of Control is authorized and directed
24 to create the irrevocable trust to be named the "Education
25 Retirees' Trust Fund for Cost-of-Living Adjustments," which
26 shall be created, funded, and administered in accordance with
27 the provisions of this chapter.

1 Section 2. The name of this chapter is the Education
2 Retirees' Trust Fund for Cost-of-Living Adjustments Funding
3 Act of 2017.

4 Section 3. As used in this chapter, the following
5 words and phrases shall have the following respective
6 meanings:

7 (1) BOARD OF CONTROL. The Teachers' Retirement
8 System Board of Control.

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

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

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

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

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

25 (7) RETIRED EMPLOYEE. A former employee who is a
26 participant in either the Teachers' Retirement System pursuant
27 to Chapter 25 of Title 16, as amended from time to time, and

1 satisfies the definitions of retirement and teacher, support
2 personnel, or employee under Section 16-25-1, as amended from
3 time to time.

4 (8) STATE. The State of Alabama.

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

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

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

13 Section 4. The trust created pursuant to this
14 chapter shall be evidenced by a written trust instrument, the
15 terms and conditions of which shall be determined by the board
16 creating such trust as long as such terms and conditions do
17 not conflict with this chapter. The Trustees of the Education
18 Retirees' Trust Fund for Cost-of-Living Adjustments shall be
19 the members of the Teachers' Retirement System Board of
20 Control serving from time to time. The trust shall be managed
21 and controlled by its trustees. The trustees shall serve
22 without compensation for their service as trustees, but may be
23 reimbursed from the trust for all reasonable and necessary
24 expenses that they incur in connection with their services as
25 trustees.

26 Section 5. (a) The trust shall be under the
27 management and control of the trustees. All powers necessary

1 or otherwise advisable for the management and control of the
2 trust shall be vested solely in the trustees.

3 (b) The trustees shall have all of the powers
4 necessary to carry out and effectuate the purposes and
5 provisions of this chapter, all the power and authority
6 granted under law to the board which created the trust, and
7 all powers granted to trustees under Alabama law to the extent
8 not in conflict with this chapter, including, without limiting
9 the generality of the foregoing, the following powers:

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

12 (2) To make, enter into, and execute contracts,
13 agreements, and other instruments and to take such other
14 actions as may be necessary or otherwise advisable for the
15 management and operation of the respective trust, to
16 accomplish any purpose for which the trust was created, or to
17 exercise any power granted by this chapter;

18 (3) To enter into contracts with, to accept aid and
19 grants from, to cooperate with, and to do any and all things
20 that may be necessary or otherwise advisable in order to avail
21 the trust of the aid and cooperation of the United States of
22 America, the state, or any agency, instrumentality, or
23 political subdivision of either thereof in furtherance of the
24 purposes of this chapter;

25 (4) To appoint, employ, and contract with such
26 employees, agents, advisors, and consultants, including, but
27 not limited to, attorneys, accountants, actuaries, financial

1 experts, and such other advisors, consultants, and agents as
2 may, in the trustees' judgment, be necessary or otherwise
3 advisable and to determine and pay, from the funds of the
4 trust, the compensation of those persons; and

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

7 (c) The expenses of making and disposing of
8 investments, such as brokerage commissions, legal expenses
9 referable to a particular transaction, transfer taxes, and
10 other customary transactional expenses with respect to a trust
11 shall be payable out of the funds of such trust.

12 Section 6. a) The sources of funding to the
13 Education Retirees' Trust Fund for Cost of Living Adjustments
14 may be: (1) appropriations made by the Legislature; (2)
15 investment income; (3) proceeds of any gifts, grants, or
16 contributions; and (4) all other sources permitted by law.

17 (b) The agreements creating the trust shall be
18 irrevocable and the assets of the trust shall not be expended
19 or disbursed or loaned or transferred or used for any purpose
20 other than to acquire permitted investments, pay
21 administrative expenses, and provide cost-of-living adjustment
22 benefits to or for retired employees and their beneficiaries.
23 The Legislature shall have no authority or power to
24 appropriate the assets of the trust.

25 (c) Upon certification from the Teachers' Retirement
26 System's actuary that the assets of the trust are sufficient
27 to fund a cost-of-living adjustment or one-time bonus as

1 provided for by legislation granting such cost-of-living
2 adjustment or one-time bonus, the trustees shall transfer the
3 certified amount of assets to the Teacher's Retirement System
4 to fund such cost-of-living adjustment or one-time bonus.

5 (d) Notwithstanding the above, as long as such
6 amendment is consistent with the legislative intent of this
7 chapter, the trustees of the trust shall have the authority to
8 amend or modify the trust: (1) if, in the opinion of counsel
9 for the trustees of the trust, it is necessary or otherwise
10 advisable to obtain any material tax advantage or avoid any
11 material adverse tax result; (2) if, in the opinion of the
12 independent accountant for the trustees of the trust, it is
13 necessary or otherwise advisable to cause the trust to be
14 considered another post-employment benefits trust in
15 accordance with generally accepted governmental accounting
16 principles, as prescribed by the Governmental Accounting
17 Standards Board or its successor; or (3) if, in response to a
18 petition of the trustees of the trust requesting that the
19 trust be amended, a court of competent jurisdiction determines
20 that such amendment is necessary or otherwise advisable to
21 accomplish one or more purposes of this chapter.

22 (e) All assets and income of the trust shall be
23 exempt from taxation by the state or any political subdivision
24 thereof. The assets of the trust will not be subject to the
25 claims of creditors of the state, the board, trustees, plan
26 administrators, employees, retired employees, or
27 beneficiaries, and will not be subject to execution,

1 attachment, garnishment, the operation of bankruptcy, the
2 insolvency laws, or other process whatsoever, nor shall any
3 assignment thereof be enforceable in any court.

4 (f) The trustees shall cause the annual financial
5 statements of the trust to be prepared in accordance with
6 generally accepted accounting principles and an audit by a
7 qualified independent certified accounting firm to be
8 conducted of those financial statements of the respective
9 trust for each fiscal year in accordance with generally
10 accepted auditing standards.

11 Section 7. It is the intent of the Legislature that
12 the state and the board establish and the trustees operate the
13 trust in compliance with the Internal Revenue Code of the
14 United States of America in a manner which would allow the
15 trust to maximize investment earnings while minimizing the
16 costs to the state and its employees and other citizens of
17 providing the cost-of-living adjustment benefits. It is also
18 the intent of the Legislature that the trust be operated in a
19 manner that satisfies the definition of other post-employment
20 benefits trusts under generally accepted governmental
21 accounting principles. The trust shall not be subject to any
22 provision of a law of the state (or any subdivision thereof)
23 which conflicts with that legislative intent or would prevent
24 or unreasonably hinder the accomplishment of the purposes of
25 this chapter.

26 Section 8. a) A trustee shall not be: (1) personally
27 liable for any liability, loss, or expense suffered by the

1 trust, unless such liability, loss, or expense arises out of
2 or results from the willful misconduct or intentional
3 wrongdoing of such trustee; (2) responsible for the adequacy
4 of the trust to meet and discharge any obligation under the
5 relevant pension plan; or (3) required to take action to
6 enforce the payment of any contribution or appropriation to
7 the trust.

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

11 (c) The trustees may be indemnified by the trust and
12 from funds of the trust against costs, liabilities, losses,
13 damages, and expenses, including their attorneys fees, as more
14 fully provided in the respective trust agreements, unless such
15 cost, liability, loss, damage, or expense arises out of or
16 results from the willful misconduct or intentional wrongdoing
17 of such trustee.

18 Section 9. Nothing in this chapter shall be
19 construed to define or otherwise grant any right or privilege
20 to cost-of-living adjustment benefits or other pension
21 benefits to any person other than those cost-of-living
22 adjustment benefits or other pension benefits, rights, and
23 privileges previously or already granted to employees and
24 retired employees and their beneficiaries by the Teachers'
25 Retirement System pension plan. Such rights and privileges, if
26 any, shall be governed by the terms of the pension plan, if
27 any. This chapter is not intended to assure or deny any

1 existing or future employee, retired employee, any of their
2 beneficiaries, or any other person of any right of employment
3 or entitlement to any cost-of-living adjustment benefit or
4 limit or otherwise restrict the ability of the state to modify
5 or eliminate any existing or future cost-of-living adjustment
6 benefit.

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

12 Section 11. This act shall become effective
13 immediately following its passage and approval by the
14 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 09-FEB-17

Read for the second time and placed on the calen-
dar 1 amendment..... 16-FEB-17

Read for the third time and passed as amended 07-MAR-17

Yeas 28
Nays 0

Patrick Harris,
Secretary.