

1 SB350
2 192198-1
3 By Senator Smitherman
4 RFD: Finance and Taxation Education
5 First Read: 27-FEB-18

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8 SYNOPSIS: This bill would create a separate fund in
9 the State Treasury known as the COLA Trust Fund for
10 the Teachers' Retirement System that would serve as
11 a permanent trust and as an investment account for
12 the earnings and funds received in the fund for the
13 purpose of providing education retirees with
14 cost-of-living adjustments.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to education retirees; to create a separate
21 fund in the State Treasury known as the COLA Trust Fund for
22 the Teachers' Retirement System; to establish a permanent
23 trust and investment account for the funds and earnings
24 received in the fund to provide education retirees with
25 cost-of-living adjustments.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the COLA Trust Fund for the Teachers' Retirement System
3 Act.

4 Section 2. As used in this act, the following terms
5 shall have the following meanings:

6 (1) BENEFICIARY. Any person in receipt of a pension,
7 an annuity, a retirement allowance, or other benefit provided
8 by Chapter 25 of Title 16, Code of Alabama 1975.

9 (2) BOARD OF CONTROL. The Teachers' Retirement
10 System Board of Control established by Section 16-25-2, Code
11 of Alabama 1975, or its successor or assign.

12 (3) COLA TRUST FUND FOR THE TEACHERS' RETIREMENT
13 SYSTEM. A separate trust fund created by the Board of Control
14 of the Teachers' Retirement System pursuant to this act.

15 (4) COST-OF-LIVING ADJUSTMENT (COLA) BENEFITS. A
16 cost-of-living adjustment (COLA) benefit granted by the
17 Legislature to retirees and beneficiaries of the Teachers'
18 Retirement System.

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

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

24 (7) RETIRED EMPLOYEE. A former employee who is a
25 participant in the Teachers' Retirement System pursuant to
26 Chapter 25 of Title 16, Code of Alabama 1975, and satisfies
27 the definitions of retirement and teacher, support personnel,

1 or employee as defined by Section 16-25-1, Code of Alabama
2 1975.

3 (8) TRUST. The trust to be created by the state, on
4 the one hand, as the grantor, and members of the Board of
5 Control of the Teachers' Retirement System, on the other hand,
6 as trustees of the trust, named the COLA Trust Fund for the
7 Teachers' Retirement System, pursuant to this act.

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

9 Section 3. (a) The Board of Control shall create an
10 irrevocable trust to be named the COLA Trust Fund for the
11 Teachers' Retirement System, which shall be created, funded,
12 and administered in accordance with this act.

13 (b) The trust created pursuant to this act shall be
14 evidenced by a written trust instrument, the terms and
15 conditions of which shall be determined by the Board of
16 Control creating the trust as long as the terms and conditions
17 do not conflict with this act.

18 (c) (1) The trustees of the COLA Trust Fund for the
19 Teachers' Retirement System shall be the members of the Board
20 of Control of the Teachers' Retirement System.

21 (2) The trustees shall serve without compensation
22 for their service as trustees, but may be reimbursed from the
23 trust for all reasonable and necessary expenses that they
24 incur in connection with their services as trustees.

25 Section 4. (a) The trust shall be under the
26 management and control of the trustees.

1 (b) All powers necessary or otherwise advisable for
2 the management and control of the trust shall be vested solely
3 in the trustees and the trustees shall have all of the powers
4 necessary to carry out and effectuate the purposes of this
5 act, all the powers and authority granted under law to the
6 Board of Control which created the trust, and all powers
7 granted to trustees under state law to the extent not in
8 conflict with this act, including, without limiting the
9 generality of the foregoing powers, all of the following
10 powers:

11 (1) To adopt, alter, and repeal rules for the
12 operation and conduct of the affairs and business of the
13 trust.

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

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

1 (4) To appoint, employ, and contract with employees,
2 agents, advisors, and consultants, including, but not limited
3 to, attorneys, accountants, actuaries, financial experts, and
4 other advisors, consultants, and agents as may, in the
5 trustees' judgment, be necessary or otherwise advisable, and
6 to determine and pay, from the funds of the trust, the
7 compensation of those persons.

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

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

15 Section 5. (a) The sources of funding to the COLA
16 Trust Fund for the Teachers' Retirement System may be from any
17 of the following:

18 (1) Appropriations made by the Legislature.

19 (2) Investment income.

20 (3) Proceeds of any gifts, grants, or contributions.

21 (4) Any other sources permitted by law.

22 (b) (1) The agreements creating the trust shall be
23 irrevocable and the assets of the trust shall not be expended,
24 disbursed, loaned, transferred, or used for any purpose other
25 than to acquire permitted investments, pay administrative
26 expenses, and provide COLA benefits to or for retired
27 employees and their beneficiaries.

1 (2) The Legislature shall have no authority or power
2 to appropriate the assets of the trust.

3 (c) Upon certification from the actuary of the
4 Teachers' Retirement System that the assets of the trust are
5 sufficient to fund a COLA benefit as provided for by
6 legislation granting the COLA benefit, the trustees shall
7 transfer the certified amount of assets from the COLA Trust
8 Fund for the Teachers' Retirement System to the Teachers'
9 Retirement System to fund the COLA.

10 (d) Notwithstanding the foregoing, as long as the
11 amendment is consistent with the legislative intent of this
12 act, the trustees of the trust shall have the authority to
13 amend or modify the trust if any of the following apply:

14 (1) In the opinion of the counsel for the trustees
15 of the trust, it is necessary or otherwise advisable to obtain
16 any material tax advantage or avoid any material adverse tax
17 result.

18 (2) In the opinion of the independent accountant for
19 the trustees of the trust, it is necessary or otherwise
20 advisable to cause the trust to be considered another
21 post-employment benefits trust in accordance with generally
22 accepted governmental accounting principles, as prescribed by
23 the Governmental Accounting Standards Board or its successor.

24 (3) In response to a petition of the trustees of the
25 trust requesting that the trust be amended, a court of
26 competent jurisdiction determines that the amendment is

1 necessary or otherwise advisable to accomplish one or more
2 purposes of this act.

3 (e) (1) All assets and income of the trust shall be
4 exempt from taxation by the state or any political subdivision
5 thereof.

6 (2) The assets of the trust shall not be subject to
7 the claims of creditors of the state, the board, trustees,
8 plan administrators, employees, retired employees, or
9 beneficiaries, and shall not be subject to execution,
10 attachment, garnishment, the operation of bankruptcy, the
11 insolvency laws, or other legal process, nor shall any
12 assignment thereof be enforceable in any court.

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

20 Section 6. (a) It is the intent of the Legislature
21 that the state and the board establish and the trustees
22 operate the trust in compliance with the Internal Revenue Code
23 of the United States of America in a manner which would allow
24 the trust to maximize investment earnings while minimizing the
25 costs to the state and its employees and other citizens of
26 providing COLA benefits.

1 (b) It is also the intent of the Legislature that
2 the trust be operated in a manner that satisfies the
3 definition of other post-employment benefits trusts under
4 generally accepted governmental accounting principles.

5 (c) The trust shall not be subject to any law or
6 rule of the state, or any subdivision thereof, which conflicts
7 with the legislative intent of this act or would prevent or
8 unreasonably hinder the accomplishment of the purposes of this
9 act.

10 Section 7. (a) A trustee shall not be subject to any
11 of the following:

12 (1) Personally liable for any liability, loss, or
13 expense suffered by the trust, unless the liability, loss, or
14 expense arises out of or results from the willful misconduct
15 or intentional wrongdoing of the trustee.

16 (2) Responsible for the adequacy of the trust to
17 meet and discharge any obligation under the relevant pension
18 plan.

19 (3) Required to take action to enforce the payment
20 of any contribution or appropriation to the trust.

21 (b) The trustees, their officers, and employees
22 shall 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
27 more fully provided in the respective trust agreements, unless

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

4 Section 8. (a) Nothing in this act shall be
5 construed to define or otherwise grant any right or privilege
6 to COLA benefits or other pension benefits to any person other
7 than those COLA benefits or other pension benefits, rights,
8 and privileges previously or already granted to employees and
9 retired employees and their beneficiaries by the Teachers'
10 Retirement System pension plan.

11 (b) The rights and privileges, if any, shall be
12 governed by the terms of the pension plan, if any.

13 (c) This act 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 COLA benefit or limit or otherwise
17 restrict the ability of the state to modify or eliminate any
18 existing or future COLA benefit.

19 Section 9. All personnel employed and vendors hired
20 by contract with funds available to the trust and trustees
21 under subdivision (4) of subsection (b) of Section 36-36-5,
22 Code of Alabama 1975, shall reflect the racial, gender,
23 geographic, urban, rural, and economic diversity of the state.

24 Section 10. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.