

1 HB352  
2 216797-4  
3 By Representatives Meadows and Clouse  
4 RFD: Ways and Means General Fund  
5 First Read: 15-FEB-22

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ENROLLED, An Act,

To create the State Employee Retirees' Trust Fund Funding Act of 2022; to establish 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:

Section 1. This act shall be known and may be cited as the State Employee Retirees' Trust Fund Funding Act of 2022.

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

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

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

1           (2) BOARD OF CONTROL. The Board of Control of the  
2 State Employees' Retirement System established pursuant to  
3 Section 36-27-2, 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 State Employee Retirees' Trust Fund to retirees  
8 and beneficiaries of the State Employees' 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 State Employees' Retirement System pursuant  
14 to Chapter 27 of Title 36, Code of Alabama 1975, and who  
15 satisfies the definitions of retirement and employee as  
16 provided in Section 36-27-1, Code of Alabama 1975.

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

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

21           Section 4. (a) There is created the State Employee  
22 Retirees' Trust Fund evidenced by a written trust instrument,  
23 the terms and conditions of which shall be determined by the  
24 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~~ State General Fund revenue and  
17 those revenues are expressly prohibited from that use. The  
18 trust fund shall be funded from sources other than the  
19 ~~Education Trust~~ State General Fund.

20           (b) The agreements creating the trust fund shall be  
21 irrevocable and the assets of the trust fund may not be  
22 expended, disbursed, loaned, or transferred, or used for any  
23 purpose other than to acquire permitted investments, pay  
24 administrative expenses, and provide periodic bonus checks to

1 or for retired employees and their beneficiaries. The  
2 Legislature may not appropriate the assets of the trust fund.

3 (c) Upon certification from the actuary of the State  
4 Employees' Retirement System that the assets of the trust fund  
5 are sufficient to fund periodic bonus checks as provided for  
6 by legislation granting the periodic bonus checks, the  
7 trustees shall transfer the amount of assets certified by the  
8 board of control to the State Employees' Retirement System to  
9 fund those bonuses or 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 State Employees' Retirement System invest the funds  
21 of the 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 State Employees'  
14 Retirement System pension plan. The rights and privileges, if  
15 any, shall be governed by the terms of the pension plan, if  
16 any. This act is not intended to assure or deny any existing  
17 or future employee or retired employee, or any of their  
18 beneficiaries or any other person of any right of employment  
19 or entitlement to any periodic bonus check or to otherwise  
20 restrict the ability of the state to modify or eliminate any  
21 existing or future 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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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 15-MAR-22, as amended.

Jeff Woodard  
Clerk

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| Senate | 06-APR-22 | Passed |
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