

1 SB187
2 216797-2
3 By Senators Albritton, Melson, Livingston, Butler, Holley,
4 Singleton, Price, Barfoot, Allen, Whatley, Weaver, Sessions,
5 Elliott, Marsh, Reed, Coleman-Madison, Jones and Chesteen
6 RFD: Finance and Taxation General Fund
7 First Read: 03-FEB-22

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create the State Employee Retirees' Trust Fund
12 Funding Act of 2022; to establish a separate fund in the State
13 Treasury known as the State Employee Retirees' Trust Fund for
14 the purpose of establishing a permanent trust and investment
15 account for the funds and earnings received to provide state
16 employee retirees with periodic bonus checks.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the State Employee Retirees' Trust Fund Funding Act of
20 2022.

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

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

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

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

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

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

14 (5) PERMITTED INVESTMENTS. All assets and properties
15 in which the Retirement Systems of Alabama may invest as
16 permitted by law.

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

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

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

26 Section 4. (a) There is created the State Employee
27 Retirees' Trust Fund evidenced by a written trust instrument,

1 the terms and conditions of which shall be determined by the
2 Board of Control creating the trust fund.

3 (b) The trust shall be managed and controlled by its
4 trustees. The trustees shall serve without compensation for
5 their service as trustees, but may be reimbursed from the
6 trust for all reasonable and necessary expenses that they
7 incur in connection with their service as trustees.

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

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

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

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

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

21 (c) A trustee may be indemnified by the trust fund
22 and from funds of the trust fund against costs, liabilities,
23 losses, damages, and expenses including, but not limited to,
24 attorney's fees, as may be more fully provided in a respective
25 trust fund agreement, unless the cost, liability, loss,
26 damage, or expense arises out of, or results from, the willful
27 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.

26 (5) To invest the funds of the trust fund in any
27 permitted investment.

1 (b) The expenses of making and disposing of
2 investments, including brokerage commissions, legal expenses
3 referable to a particular transaction, transfer taxes, and
4 other customary transactional expenses with respect to a trust
5 shall be payable out of the funds of the trust fund.

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

8 a. Investment income.

9 b. Proceeds of any gifts, grants, or contributions.

10 c. Revenue sources as directed by the Legislature.

11 d. Revenue sources other than direct appropriations
12 by the Legislature.

13 (2) The sources of funding to the trust fund may not
14 consist of State General Fund revenue and those revenues are
15 expressly prohibited from that use. The trust fund shall be
16 funded from sources other than the State General Fund.

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

24 (c) Upon certification from the actuary of the State
25 Employees' Retirement System that the assets of the trust fund
26 are sufficient to fund periodic bonus checks as provided for
27 by legislation granting the periodic bonus checks, the

1 trustees shall transfer the amount of assets certified by the
2 board of control to the State Employees' Retirement System to
3 fund those bonuses or increases.

4 (d) Notwithstanding subsection (c), the trustees may
5 amend or modify the trust fund, consistent with the
6 legislative intent of this act, in any of the following
7 circumstances:

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

11 (2) If, in the opinion of an independent accountant
12 for the trustees, it is necessary or advisable to cause the
13 trust fund to be considered a post-employment benefits trust
14 fund in accordance with generally accepted governmental
15 accounting principles as prescribed by the Governmental
16 Accounting Standards Board, or its successor.

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

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

1 insolvency laws, or any other process whatsoever, and no
2 assignment thereof shall be enforceable in any court.

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

10 Section 8. (a) It is the intent of the Legislature
11 that the State Employees' Retirement System invest the funds
12 of the trust fund and the trustees operate the trust fund in
13 compliance with the Internal Revenue Code in a manner that
14 could allow the trust fund to maximize investment earnings
15 while minimizing the costs to the trust fund. It is also the
16 intent of the Legislature that the trust fund be operated in a
17 manner that satisfies the definition of other post-employment
18 benefits trusts under generally accepted governmental
19 accounting principles.

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

24 Section 9. Nothing in this act shall be construed to
25 define or otherwise grant any right or privilege to periodic
26 bonus checks or other pension benefits to any person other
27 than those periodic bonus checks, rights, and privileges

1 previously or already granted to employees and retired
2 employees and their beneficiaries by the State Employees'
3 Retirement System pension plan. The rights and privileges, if
4 any, shall be governed by the terms of the pension plan, if
5 any. This act is not intended to assure or deny any existing
6 or future employee or retired employee, or any of their
7 beneficiaries or any other person of any right of employment
8 or entitlement to any periodic bonus check or to otherwise
9 restrict the ability of the state to modify or eliminate any
10 existing or future increase benefit.

11 Section 10. All personnel employed and vendors hired
12 by contract with funds available to the trust fund and
13 trustees under subdivision (b)(4) of Section 36-36-5, Code of
14 Alabama 1975, shall reflect the racial and ethnic diversity of
15 the state.

16 Section 11. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the 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 General Fund ... 03-FEB-22

Read for the second time and placed on the calen-
dar 1 amendment..... 09-FEB-22

Read for the third time and passed as amended 30-MAR-22

Yeas 28
Nays 0

Patrick Harris,
Secretary.