

1 SB380
2 97465-1
3 By Senator Penn
4 RFD: Governmental Affairs
5 First Read: 19-FEB-08

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8 SYNOPSIS: This bill would authorize any and all
9 governmental entities and the instrumentalities
10 thereof to permissively create an irrevocable trust
11 or trusts or any other fund exclusively for the
12 purposes of holding, investing, and distributing
13 assets to be used for certain post-employment
14 benefits.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To authorize any and all political subdivisions of
21 the state, any departments, agencies, boards, commissions, or
22 authorities of any such political subdivisions, or any public
23 corporations, authorities, agencies, instrumentalities,
24 boards, commissions, state colleges, universities, or other
25 governmental entities controlled or otherwise associated with
26 any such political subdivisions thereof permissively to
27 create, individually or jointly with other governmental

1 entities, an irrevocable trust or trusts or any other fund
2 exclusively for the purposes of holding, investing, and
3 distributing assets to be used for certain post-employment
4 benefits; to provide for definitions; to provide for the
5 proper funding and allowable investments of the trusts; and to
6 provide for other related matters.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. The name of this act is the
9 Post-Employment Benefits Act of 2008.

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

12 (1) DEPENDENTS. The spouse, children, or other
13 dependents of the retired employee, as defined by and covered
14 under the documents governing the governmental entities'
15 benefit plans that provide post-employment benefits.

16 (2) EMPLOYEE. Any person who is an employee of any
17 governmental entity located in the state who may become
18 eligible for post-employment benefits from the governmental
19 entity.

20 (3) EMPLOYER. Any governmental entity that sponsors,
21 in whole or in part, post-employment benefits.

22 (4) FISCAL YEAR. The annual period at the end of
23 which a governmental entity determines its financial
24 condition.

25 (5) GASB. The Governmental Accounting Standards
26 Board.

1 (6) GOVERNMENTAL ENTITY. Any political subdivision
2 of the state, any department, agency, board, commission, or
3 authority of any such political subdivision, or any public
4 corporation, authority, agency, instrumentality, board,
5 commission, state college, university, or other governmental
6 entity controlled by or otherwise associated with any
7 political subdivision.

8 (7) POST-EMPLOYMENT BENEFITS. Non-pension benefits
9 sponsored in whole or in part by a governmental entity and
10 paid in whole or in part by a governmental entity on behalf of
11 retired employees or their dependents after separation from
12 service in accordance with the terms of the relevant plan
13 providing such benefits. Such benefits include, but are not
14 limited to, medical, dental, vision, and prescription drug
15 benefits; life insurance; long-term health care benefits;
16 disability benefits and any other benefits as may now or
17 hereafter be defined by GASB as subject to Statements 43 and
18 45, or similar statements, as may be amended from time to
19 time.

20 (8) RETIRED EMPLOYEE. A former employee of a
21 governmental entity who is eligible for post-employment
22 benefits from the governmental entity.

23 (9) STATE. The State of Alabama.

24 (10) TRUSTEE. The trustee of a trust.

25 (11) TRUST. Any single-employer or multiple-employer
26 trust or fund established for the purpose of funding
27 post-employment benefits and includes, but is not limited to,

1 an Internal Revenue Code Section 115 trust, 26 U.S.C.
2 §501(c)(9) trust, also known as a Voluntary Employee Benefits
3 Association trust, or 26 U.S.C. §401(h) fund.

4 Section 3. (a) A governmental entity may adopt an
5 ordinance, bylaw, or resolution allowing for the establishment
6 of a trust, or for the establishment of participation in a
7 multiple-employer trust with other governmental entities, for
8 the sole purpose of funding post-employment benefit
9 obligations. The governmental entity may adopt such ordinance,
10 bylaw, or resolution through voting procedures and
11 requirements currently utilized by the governmental entity
12 which are in accordance with state law.

13 (b) Any trusts 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 and between the
16 governmental entity or entities and the applicable trustee, so
17 long as such terms and conditions do not conflict with this
18 act. Each trust shall be managed and controlled by its
19 respective governmental entity or entities and trustee
20 pursuant to the terms of the written trust agreement.

21 (c) All assets and income of any trusts shall be
22 exempt from taxation by the state or any political subdivision
23 thereof. Distributions from the trusts will not be taxable
24 income to the retired employees or their dependents under
25 state law or other local law. The assets of the trusts will
26 not be subject to the claims of creditors of the governmental
27 entities, trustees, plan administrators, employees, retired

1 employees, or dependents, and will not be subject to
2 execution, attachment, garnishment, the operation of
3 bankruptcy, the insolvency laws, or other process whatsoever,
4 nor shall any assignment thereof be enforceable in any court.

5 (d) A trust created pursuant to this act shall not
6 be deemed to be invalid by reason of any indefiniteness or
7 uncertainty of the persons designated as beneficiaries in the
8 agreements creating the trusts, nor shall they be deemed to be
9 invalid as violating any existing law against perpetuities or
10 against suspension of the power of alienation of title to
11 property or against trusts for the purpose of the accumulation
12 of income; but each trust may continue for such time as may be
13 necessary to accomplish the purpose for which it was created.

14 (e) A single-employer trust may be terminated by the
15 governmental entity if the governmental entity's plans or
16 programs providing post-employment benefits for which the
17 trust is established are repealed or terminated, and there is
18 no future obligation of the governmental entity to provide
19 such post-employment benefits. A multiple-employer trust may
20 be terminated, or a governmental entity may terminate its
21 affiliation with a multiple-employer trust, under the
22 aforementioned circumstances pursuant to the terms of the
23 written trust agreement. Also, any trust may be terminated if
24 GASB adopts new requirements that eliminate or alter the
25 funding of post-employment benefits.

26 Section 4. (a) A governmental entity or entities may
27 retain as a trustee any financial institution, committee,

1 association, person or persons which it deems capable,
2 competent, experienced and appropriate for serving in such
3 capacity.

4 (b) The powers and duties of the trustee shall be
5 evidenced in and determined by the written trust agreement
6 between the trustee and the governmental entity or entities.

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

14 (d) Reasonable trustee fees and the reasonable
15 expenses of holding, making, and disposing of investments,
16 such as brokerage commissions, legal expenses referable to a
17 particular transaction, transfer taxes, and other customary
18 transactional expenses with respect to a trust may be payable
19 out of the funds of such trust, if so allowed by the written
20 trust agreement.

21 Section 5. (a) Subject to any limitations necessary
22 to ensure the tax-exempt status of a trust, the sources of
23 funding to a trust may be any of the following:

- 24 (1) Appropriations made by the governmental entity.
25 (2) Contributions by employees and retired
26 employees.
27 (3) Employer contributions.

1 (4) Investment income.

2 (5) Proceeds of any gifts, grants, or contributions.

3 (6) Transfers from another trust or fund held by a
4 governmental entity.

5 (7) Bonds, warrants, notes, or other evidence of
6 indebtedness.

7 (8) All other sources permitted by law.

8 (b) Subject to payment for fees and reasonable
9 expenses of maintaining a trust, the funds deposited into a
10 trust shall be used for the exclusive purpose of funding
11 post-employment benefit obligations of the governmental entity
12 or entities. The agreements creating a trust shall be
13 irrevocable, subject to the provisions of Sections 3(e) and 8
14 of this act, and the assets of a trust shall not be expended,
15 disbursed, loaned, transferred, or used for any purpose other
16 than to acquire investments, pay reasonable administrative
17 expenses, and provide post-employment benefits to or for
18 retired employees and their dependents. The Legislature may
19 not appropriate the assets of any trust.

20 (c) The governmental entity or entities may retain,
21 in addition to the trustee, the appropriate administrative and
22 professional services, including, but not limited to,
23 actuaries, attorneys, and investment consultants, to properly
24 maintain a trust and manage and invest the assets held in a
25 trust. The reasonable administrative expenses associated with
26 these services may be paid from the assets of the trust, if so
27 allowed by the written trust agreement.

1 (d) The trust investments shall be governed by an
2 asset allocation strategy that emphasizes the long-term
3 funding of the trust while investing the assets for the
4 highest investment rate of return consistent with acceptable
5 levels of risk and the actuarially assumed rate of return that
6 is established by the trust's actuary. These investments may
7 include, but are not limited to, stocks, bonds, and various
8 alternative assets, including real estate, hedge funds, and
9 commodities. With respect to each trust that is created, an
10 investment policy guiding the investment of such trust's
11 assets, consistent with this subsection and all other
12 provisions of this act, shall be established.

13 Section 6. Nothing in this act shall be construed to
14 define or otherwise grant any right or privilege to
15 post-employment benefits or any other benefits to any person
16 other than those post-employment benefits, rights, and
17 privileges previously or already granted to employees, retired
18 employees, and their dependents by each governmental entity's
19 post-employment benefit plans, if any. Such rights and
20 privileges shall be governed by the terms of the governmental
21 entity's benefit plans, if any. This act is not intended to
22 assure or deny any existing or future employee, retired
23 employee, any of their dependents, or any other person of any
24 right of employment or entitlement to any post-employment
25 benefit or limit or otherwise restrict the ability of the
26 governmental entity to modify or eliminate any existing or
27 future benefit or post-employment benefit.

1 Section 7. It is the intent of the Legislature that,
2 to the extent a governmental entity or entities establishes a
3 trust, that it be operated in compliance with the Internal
4 Revenue Code 26 U.S.C., as amended, in a manner which would
5 allow the trust to maximize investment earnings while
6 minimizing the costs to the governmental entities and their
7 employees. The trusts shall not be subject to any current or
8 future provision of a law, rule, ordinance, or resolution of
9 the state, municipality, city, town, county, agency, or
10 instrumentality thereof which conflicts with this legislative
11 intent or would prevent or unreasonably hinder the
12 accomplishment of the purposes of this act. This act shall be
13 read as separate and apart from, and not in conflict with or
14 subject to, the provisions of Amendment No. 623 of the
15 Constitution of Alabama of 1901, now appearing as Section
16 228.01 of the Official Recompilation of the Constitution of
17 Alabama of 1901, as amended.

18 Section 8. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.