

# State of Tennessee

## PUBLIC CHAPTER NO. 374

HOUSE BILL NO. 1373

By Representatives Sargent, Kevin Brooks

Substituted for: Senate Bill No. 1000

By Senators Watson, Stevens

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 36, Part 9 and Title 9, Chapter 4, relative to pension stabilization reserve trusts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following as a new part:

**9-4-5701.** The pension stabilization reserve trust is created. The pension stabilization reserve trust fund shall be established and funded through the employer contributions contributed to the trust pursuant to § 8-36-920(d)(4), and all income from the investment of the funds in the trust fund. The trust and the funds therein shall be administered by the treasury department. The trust fund shall be an irrevocable trust for the benefit of the participants and beneficiaries of the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-5702.** The comptroller of the treasury, the commissioner of financial institutions, the commissioner of finance and administration, the secretary of state, and the state treasurer, or their designees, shall serve as trustees of the trust. The comptroller of the treasury shall serve as the chair of the trustees and shall preside over all meetings and proceedings of the trustees.

**9-4-5703.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to title 9, chapter 4, part 6.

(c) The trust fund shall consist of the following individual separate stabilization reserve trust accounts for the purpose of accounting for the employer contributions made to the trust on account of:

(1) State employees participating in the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9; and

(2) Teachers participating in the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9.

(d) In addition, the trust fund shall consist of individual separate stabilization reserve trust accounts established in the name of each political subdivision participating in the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9, for the purpose of accounting for the employer contributions made to the trust by the political subdivision on account of its employees.

(e) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-5704.**

(a) As provided in this section, the purpose of the pension stabilization reserve trust fund is to protect the participants and beneficiaries of the Hybrid Retirement Plan for State Employees and Teachers from a reduction or loss of benefits through the implementation of the cost controls contained in § 8-36-922(c)(1)(C) - (G) or in § 8-36-922(d)(1). If in any given year, the total amount in an employer's employer reserve account established pursuant to § 8-36-920(e) is not sufficient to meet the benefit liabilities for which the employer's employer reserve account was created, then the board of trustees of the Tennessee consolidated retirement system shall certify to the trustees of the trust the amount necessary to fund the benefits as determined by the actuarial valuation performed by the retirement system's actuary. Upon receipt of the certification, the trustees of the trust shall determine whether transferring all or a portion of the requested amount from the employer's stabilization reserve trust account to the applicable employer reserve account of the employer would be in the best interests of the trust beneficiaries. If it is, the trustees shall direct the treasurer to transfer such amount as the trustees shall determine from the employer's stabilization reserve trust account to the applicable employer reserve account of the employer.

(b) The assets of the pension stabilization reserve trust fund shall be used exclusively for the purpose set forth in this section and to pay the reasonable expenses incurred in administering and investing the trust assets.

**9-4-5705.** Deposits of employer contributions into the pension stabilization reserve trust fund as provided in § 8-36-920 shall be suspended effective July 1 of any given year next following the most recent actuarial valuation conducted pursuant to § 8-36-922(b) for an employer whose stabilization reserve trust account equals or exceeds a certain maximum amount that is determined by the trustees of the trust created pursuant to this part. The amount shall be expressed in dollars, as a percentage, or other form as shall be determined at the sole discretion of the trustees. The trustees, in consultation with board of trustees of the Tennessee consolidated retirement system and the retirement system's actuary, shall establish the methodology and procedures to be used in ascertaining the maximum amount. Deposits into the pension stabilization reserve trust fund shall be reinstated for the employer effective July 1 of any given year next following the most recent actuarial valuation conducted pursuant to § 8-36-922(b) when the total amount in the employer's stabilization reserve trust account is less than the maximum amount adopted by the trustees pursuant to this section.

**9-4-5706.** The trustees shall prepare annual financial reports following the close of each fiscal year relative to the activities of the trust. The annual reports, all books, accounts, and financial records of the trust shall be subject to audit by the comptroller of the treasury.

SECTION 2. Tennessee Code Annotated, Section 8-36-920(c), is amended by deleting subdivision (1)(A)(iii) and by substituting instead the following:

(iii) Transfers from the stabilization reserve trust account pursuant to subdivision (d)(3) and transfers from the pension stabilization reserve trust fund pursuant to subdivision (d)(4);

SECTION 3. Tennessee Code Annotated, Section 8-36-920(d), is amended by adding the following as a new subdivision (4):

(4) Notwithstanding this section, after the terms of the trust instrument governing the pension stabilization reserve trust are approved by the attorney general and reporter as provided in § 9-4-5701, all employer contributions made thereafter in excess of the

actuarial rate determined pursuant to § 8-36-922(b) shall be deposited into the pension stabilization reserve trust fund established pursuant to § 9-4-5701. All funds contributed to the pension stabilization reserve trust fund pursuant to this subdivision shall be administered in accordance with title 9, chapter 4, part 57.

SECTION 4. Tennessee Code Annotated, Section 8-36-920, is amended by deleting the last sentence of subsection (g) and substituting instead the following:

Unless the terms of the trust instrument governing the pension stabilization reserve trust are approved as provided in § 9-4-5701, deposits into the stabilization reserve trust account shall be reinstated for the employer effective July 1 of any given year next following the most recent actuarial valuation when the total amount in the employer's stabilization reserve trust account is less than the maximum amount adopted by the board pursuant to this subsection (g). Once the terms of the trust instrument governing the pension stabilization reserve are approved as provided in § 9-4-5701, deposits of employer contributions into the pension stabilization reserve trust fund shall be suspended and reinstated as provided in § 9-4-5705.

SECTION 5. Tennessee Code Annotated, Section 8-36-922, is amended by deleting subsection (a) and substituting instead the following:

(a)

(1) Every employer participating in the hybrid plan shall contribute each year a sum equal to the greater of:

(A) The normal contribution rate and the accrued liability contribution rate as determined pursuant to subsection (b), multiplied by the earnable compensation of all its participating employees; or

(B) Four percent (4%) of the earnable compensation of all its participating employees, except as otherwise provided in subdivision (a)(3).

(2) All employer contributions shall be deposited to the hybrid plan benefits trust account until such time as the pension stabilization reserve trust takes effect as provided in § 9-4-5701. Once the trust takes effect, any employer contributions made in excess of the actuarial rate determined pursuant to subsection (b) shall be deposited into the pension stabilization reserve trust fund established pursuant to § 9-4-5701.

(3) Employer contributions for kindergarten through twelfth (K-12) grade teachers shall be paid by the respective local education agency for which the teachers are employed. Employer contributions for political subdivision employees shall be paid by the respective participating political subdivision. Notwithstanding any other law to the contrary, the director of the retirement system is authorized, at the director's sole discretion, to determine the amount of employer contributions, if any, that must be paid by a local education agency into the stabilization reserve trust account or to the pension stabilization reserve trust fund pursuant to § 8-36-920; provided, that the amount shall not exceed the amount that would otherwise be required. The director of the retirement system is further authorized, at the director's sole discretion, to determine the amount of employer contributions, if any, that must be paid by a participating political subdivision into its individual pension stabilization reserve trust fund pursuant to § 8-36-920; provided, that the amount shall not exceed the amount that would otherwise be required.

(4) Notwithstanding this section, if deposits of employer contributions attributable to federal funds are prohibited to be made to the stabilization reserve trust account or to the pension stabilization reserve trust fund pursuant to § 8-36-920(d)(2), the employer contributions attributable to those funds shall be based solely on subdivision (a)(1)(A).

(5) Notwithstanding this section, employer contributions shall be based solely on subdivision (a)(1)(A) on July 1 of any given year for an employer whose deposits into the stabilization reserve trust account are suspended pursuant to § 8-36-920(g) or whose deposits into the pension stabilization reserve trust fund are suspended pursuant to § 9-4-5705. Nothing in this subdivision (a)(5) shall be deemed to give any participating employer or any participant a valid claim or cause of action for refund or credit for any sum or sums paid or to be paid to the hybrid plan or to the pension stabilization reserve trust fund.

SECTION 6. Tennessee Code Annotated, Section 8-36-922(c), is amended by adding the following new subdivision immediately after subdivision (1)(A) and by redesignating the subsequent subdivisions accordingly:

(B) Request a transfer pursuant to § 9-4-5704 of such amounts as may be necessary from the pension stabilization reserve trust fund created in § 9-4-5701 to the reserve trust account to fund the increase in the employer contribution rate;

SECTION 7. Tennessee Code Annotated, Title 9, Chapter 4, is further amended by adding the following as a new part:

**9-4-5801.** As used in this part, unless the context otherwise requires:

(1) "Legacy pension plan" means the Tennessee consolidated retirement system that is established in title 8, chapters 34 - 37, excluding the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9;

(2) "State employee" means any person who is a state official, including members of the general assembly, the attorney general and reporter, district attorneys general, state judges, and district public defenders, or any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in whole or in part from federal or other funds. "State employee" also means any person who is employed in the service of and whose compensation is payable by a public institution of higher education, or any person who is employed by a public institution of higher education whose compensation is paid in whole or in part from federal or other funds; and

(3) "Trustees" means the five (5) trustees designated in § 9-4-5702.

**9-4-5802.** The state employee legacy pension stabilization reserve trust is created. The state employee legacy pension stabilization reserve trust fund shall be established and funded through appropriations made in the general appropriations act from time to time for such purpose. The trust and the funds therein shall be administered by the department of the treasury. The trust fund shall be an irrevocable trust for the benefit of state employees who are members of the legacy plan. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-5803.** The comptroller of the treasury shall serve as the chair of the trustees and shall preside over all meetings and proceedings of the trustees.

**9-4-5804.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but

not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to title 9, chapter 4, part 6.

(c) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-5805.**

(a) As provided in this section, the purpose of the state employee legacy pension stabilization reserve trust fund is to protect state employee members of the legacy plan from a reduction or erosion of funds in the legacy plan that are necessary to pay benefits provided by the plan. If in any given year, the actuarially determined employer contribution rate for state employees exceeds the actuarially determined employer contribution rate for state employees as of fiscal year 2018, the board of trustees of the Tennessee consolidated retirement system may certify to the trustees of the trust the amount necessary to fund the increase in the employer contribution rate for that year. Upon receipt of the certification, the trustees of the trust shall determine whether transferring all or a portion of the requested amount from the state employee legacy pension stabilization reserve trust fund would be in the best interests of the trust beneficiaries. If it is, the trustees shall direct the treasurer to transfer such amount as the trustees shall determine from the state employee legacy pension stabilization reserve trust fund to the state accumulation fund of the legacy plan.

(b) The assets of the state employee legacy pension stabilization reserve trust fund shall be used exclusively for the purpose set forth in this section and to pay the reasonable expenses incurred in administering and investing the trust assets.

**9-4-5806.** The trustees shall prepare annual financial reports following the close of each fiscal year relative to the activities of the trust. The annual reports, all books, accounts, and financial records of the trust shall be subject to audit by the comptroller of the treasury.

SECTION 8. Tennessee Code Annotated, Title 9, Chapter 4, is further amended by adding the following as a new part:

**9-4-5901.** As used in this part, unless the context otherwise requires:

(1) "Legacy pension plan" means the Tennessee consolidated retirement system that is established in title 8, chapters 34 - 37, excluding the Hybrid Retirement Plan for State Employees and Teachers that is codified in title 8, chapter 36, part 9;

(2) "Teacher" has the meaning set forth in § 8-34-101(49)(B), but does not include any person employed by a public institution of higher education; and

(3) "Trustees" means the five (5) trustees designated in § 9-4-5702.

**9-4-5902.** The teacher legacy pension stabilization reserve trust is created. The teacher legacy pension stabilization reserve trust fund shall be established and funded through a mechanism and methodology as shall be determined in the future by the commissioner of finance and administration and the state treasurer. The trust and the funds therein shall be administered by the department of the treasury. The trust fund shall be an irrevocable trust for the benefit of teachers who are members of the legacy plan. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-5903.** The comptroller of the treasury shall serve as the chair of the trustees and shall preside over all meetings and proceedings of the trustees.

**9-4-5904.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal

investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to title 9, chapter 4, part 6.

(c) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-5905.**

(a) As provided in this section, the purpose of the teacher legacy pension stabilization reserve trust fund is to protect teacher members of the legacy plan from a reduction or erosion of funds in the legacy plan that are necessary to pay benefits provided by the plan. If in any given year, the actuarially determined employer contribution rate for teachers exceeds the actuarially determined employer contribution rate for teachers as of fiscal year 2018, the board of trustees of the Tennessee consolidated retirement system may certify to the trustees of the trust the amount necessary to fund the increase in the employer contribution rate for that year. Upon receipt of the certification, the trustees of the trust shall determine whether transferring all or a portion of the requested amount from the teacher legacy pension stabilization reserve trust fund would be in the best interests of the trust beneficiaries. If it is, the trustees shall direct the treasurer to transfer such amount as the trustees shall determine from the teacher legacy pension stabilization reserve trust fund to the state accumulation fund of the legacy plan.

(b) The assets of the teacher legacy pension stabilization reserve trust fund shall be used exclusively for the purpose set forth in this section and to pay the reasonable expenses incurred in administering and investing the trust assets.

**9-4-5906.** The trustees shall prepare annual financial reports following the close of each fiscal year relative to the activities of the trust. The annual reports, all books, accounts, and financial records of the trust shall be subject to audit by the comptroller of the treasury.

SECTION 9. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

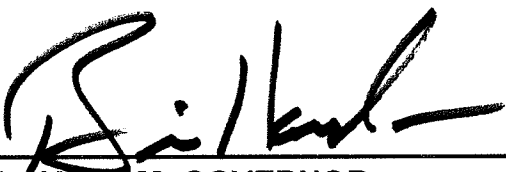
HOUSE BILL NO. 1373

PASSED: May 3, 2017

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

  
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RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 11<sup>th</sup> day of May 2017

  
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BILL HASLAM, GOVERNOR