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Legislative Document

No. 1901

H.P. 1408

House of Representatives, January 5, 2022

**An Act To Protect Funding for Health Care for Retired Teachers by
Establishing an Investment Trust Fund**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DODGE of Belfast.

Cosponsored by Representatives: COLLINGS of Portland, McCREA of Fort Fairfield, MILLETT of Cape Elizabeth, PEBWORTH of Blue Hill, SALISBURY of Westbrook, SYLVESTER of Portland, TERRY of Gorham, Senator: DAUGHTRY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §286-B, sub-§1, ¶B**, as enacted by PL 2007, c. 240, Pt. RRR, §1,
3 is amended to read:

4 B. "Investment trust ~~fund~~ funds" means the Retiree Health Insurance Post-employment
5 Benefits Investment Trust Fund established under section 17432 and the Retired
6 Teacher Health Insurance Post-employment Benefits Investment Trust Fund
7 established under section 17442.

8 **Sec. 2. 5 MRSA §286-B, sub-§3**, as amended by PL 2011, c. 380, Pt. Y, §1, is
9 further amended to read:

10 **3. Trustees.** The trustees of the irrevocable trust funds are as follows.

11 A. The Treasurer of State and the State Controller shall serve as trustees of the state
12 employee plan and the teacher plan.

13 B. An independent, nongovernmental entity with a physical presence in the State
14 selected by the Treasurer of State with the advice of the State Controller and municipal,
15 ~~school management and education~~ associations pursuant to the process set forth in Title
16 5, chapter 155 shall serve as the trustee of ~~the teacher plan~~ and the first responder plan.

17 **Sec. 3. 5 MRSA §286-B, sub-§5**, as amended by PL 2011, c. 380, Pt. Y, §1, is
18 further amended to read:

19 **5. Investment of funds.** The trustees of the investment trust ~~fund~~ funds are
20 responsible for the investment and reinvestment of the funds appropriated to the irrevocable
21 trust funds and transferred to the investment trust ~~fund~~ funds in accordance with the Maine
22 Uniform Trust Code and the Maine Uniform Prudent Investor Act under Title 18-B, subject
23 to the guidelines set for the investment trust ~~fund~~ funds in ~~section~~ sections 17435 and
24 17445, respectively.

25 **Sec. 4. 5 MRSA c. 421, sub-c. 4, art. 10** is enacted to read:

26 **ARTICLE 10**

27 **RETIRED TEACHER HEALTH INSURANCE POST-EMPLOYMENT**
28 **BENEFITS INVESTMENT TRUST FUND**

29 **§17441. Definitions**

30 As used in this article, unless the context otherwise indicates, the following terms have
31 the following meanings.

32 **1. Assets of the investment trust fund.** "Assets of the investment trust fund" means
33 the funds appropriated or otherwise provided to fund the investment trust fund, together
34 with the interest, earnings and returns on the funds.

35 **2. Commissioner.** "Commissioner" means the Commissioner of Administrative and
36 Financial Services.

37 **3. Investment trust fund.** "Investment trust fund" means the Retired Teacher Health
38 Insurance Post-employment Benefits Investment Trust Fund established in section 17442.

1 **4. Investment trust fund agreement.** "Investment trust fund agreement" means the
2 trust agreement to be entered into by the State and the trustees of the investment trust fund.

3 **5. System.** "System" means the Maine Public Employees Retirement System.

4 **§17442. Establishment**

5 **1. Investment trust fund established.** The Retired Teacher Health Insurance Post-
6 employment Benefits Investment Trust Fund is established as an irrevocable trust for the
7 sole purpose of holding and investing funds appropriated or otherwise provided to the
8 investment trust fund for the benefit of the Irrevocable Trust Fund for Other Post-
9 employment Benefits for the teacher plan established in section 286-B with respect to the
10 State's liabilities for retiree health benefits. The purpose of accumulating assets in this
11 investment trust fund is to provide funding of the State's unfunded liability obligations for
12 health benefits for retired teachers. The Legislature has no authority or power to divert any
13 of the assets of the investment trust fund to use for any other purpose.

14 **2. Date of establishment.** The date of establishment of the investment trust fund is
15 January 1, 2023.

16 **3. Trustees.** The trustees of the investment trust fund are the members of the Board
17 of Trustees of the Maine Public Employees Retirement System.

18 **§17443. Statutory references**

19 Notwithstanding that this article is placed in the Maine Revised Statutes in Part 20,
20 chapter 421, subchapter 4, any reference to "Part," "in this Part," "under this Part" or similar
21 wording in Part 20 is inapplicable to every provision in this article. This article stands apart
22 from all other provisions of this Part except by explicit reference.

23 **§17444. Administration of investment trust fund**

24 **1. Administration.** The trustees of the investment trust fund may delegate to the
25 executive director, chief investment officer or other staff of the system as appropriate the
26 responsibility to carry out, as directed by the trustees of the investment trust fund, the
27 administration of the investment trust fund and its investment and disbursement activities.

28 **2. Expenses.** Associated administrative costs and expenses attributable to the
29 investment trust fund must be charged to the investment trust fund.

30 **§17445. Duties of trustees of investment trust fund**

31 The trustees of the investment trust fund have the following duties.

32 **1. Manage assets.** The trustees of the investment trust fund shall hold, invest, reinvest
33 and manage assets appropriated to the investment trust fund and all other assets of the
34 investment trust fund for the sole benefit of the Irrevocable Trust Fund for Other Post-
35 employment Benefits for the teacher plan established in section 286-B and may not
36 encumber, invest, divest or disburse the funds for any other purpose. The trustees of the
37 investment trust fund have full power to hold, purchase, sell, assign, transfer and dispose
38 of any such assets and investments and will provide for all necessary services with respect
39 to such assets.

40 The primary goals of the investment trust fund are the preservation and growth of principal
41 in accordance with long-term investment assumptions established from time to time by the
42 Board of Trustees of the Maine Public Employees Retirement System for the defined

1 benefits plans of the system, as considered appropriate by the trustees of the investment
2 trust fund.

3 **2. Investment policy.** Except as provided in subsection 3, the trustees of the
4 investment trust fund shall determine and revise as necessary an appropriate investment
5 trust fund investment policy, including but not limited to provisions for asset allocation and
6 investment strategy. This policy must take into account the following factors as established
7 by the trustees of the Irrevocable Trust Fund for Other Post-employment Benefits for the
8 teacher plan established in section 286-B, subsection 2 and as may be revised in the
9 investment trust fund agreement from time to time:

10 A. A long-term time horizon for the assets of the investment trust fund;

11 B. A funding plan; and

12 C. A projected disbursement schedule that does not begin before the year 2033.

13 **3. Transfer of funds before policy established.** Any funds transferred to the
14 investment trust fund prior to the establishment of the investment policy in subsection 2
15 must be held and transitionally invested in a prudent manner as determined by the trustees
16 of the investment trust fund.

17 **4. Investment and management of assets.** The trustees of the investment trust fund
18 shall invest and manage the assets of the investment trust fund in accordance with the
19 requirements of subsections 1 and 2 and with the reasonable care, skill and expertise of a
20 prudent investor.

21 **5. Investment expenses.** The trustees of the investment trust fund may incur
22 reasonable investment expenses payable from the assets of the investment trust fund,
23 including but not limited to services of investment managers, investment consultants,
24 actuaries, investment counsel, banks and trust companies and other investment
25 professionals or advisors as they consider necessary and prudent in determining investment
26 policy, in investing funds and in liquidating assets.

27 **6. Disbursement of funds.** The trustees of the investment trust fund may disburse
28 funds from the investment trust fund only to the Irrevocable Trust Fund for Other Post-
29 employment Benefits for the teacher plan as established in section 286-B, subsection 2.
30 The trustees of the Irrevocable Trust Fund for Other Post-employment Benefits for the
31 teacher plan must present jointly a lawful payment order. The trustees of the investment
32 trust fund have no responsibility to ensure that the stated use or actual use by the trustees
33 of the Irrevocable Trust Fund for Other Post-employment Benefits for the teacher plan of
34 such money is to fund retiree health benefits. The trustees of the investment trust fund's
35 duties under the investment trust fund are discharged by disbursing money under the terms
36 of this subsection.

37 **7. Report.** The trustees of the investment trust fund shall provide annually a report to
38 the State, the trustees of the Irrevocable Trust Fund for Other Post-employment Benefits
39 for the teacher plan established in section 286-B, subsection 2, the joint standing committee
40 of the Legislature having jurisdiction over the system and the joint standing committee of
41 the Legislature having jurisdiction over appropriations and financial affairs. The trustees
42 of the investment trust fund shall provide quarterly to the trustees of the Irrevocable Trust
43 Fund for Other Post-employment Benefits for the teacher plan a report of the performance
44 of the investment trust fund.

1 **§17446. Liability and immunity of trustees of investment trust fund**

2 **1. Limited liability of trustees of investment trust fund.** A trustee of the investment
3 trust fund is not:

4 A. Personally liable for any liability, loss or expense suffered by the investment trust
5 fund, unless such a liability, loss or expense arises out of or results from the willful
6 misconduct or intentional wrongdoing of that trustee of the investment trust fund;

7 B. Responsible for the adequacy of the investment trust fund to meet and discharge any
8 obligation; or

9 C. Required to take action to enforce the payment of any contribution or appropriation
10 to the investment trust fund.

11 **2. Immunity of trustees of investment trust fund.** The trustees of the investment
12 trust fund are immune from suit on any tort claims seeking recovery of damages to the
13 same extent as governmental entities under the Maine Tort Claims Act.

14 **3. Legal representation and defense of trustees of investment trust fund.** The
15 Attorney General is legal counsel to the trustees of the investment trust fund and shall
16 represent and defend the trustees of the investment trust fund, as a group and individually,
17 in connection with any claim, suit or action at law arising out of the performance or
18 nonperformance of any actions related to the investment trust fund to the same extent as
19 provided for governmental entities under the Maine Tort Claims Act.

20 **4. Performance of essential governmental functions.** The exercise of the powers
21 conferred by this article is held to be the performance of essential governmental functions.

22 **§17447. Exemption from taxation**

23 The money in the investment trust fund is exempt from any state, county or municipal
24 tax in the State.

25 **§17448. Reporting requirements under Governmental Accounting Standards Board**

26 The system and trustees of the investment trust fund have no obligation to comply with
27 reporting requirements related to the investment trust fund under Governmental
28 Accounting Standards Board Statement Number 74, Financial Reporting for
29 Postemployment Benefit Plans Other Than Pension Plans, or Governmental Accounting
30 Standards Board Statement Number 75, Accounting and Financial Reporting for
31 Postemployment Benefits Other Than Pensions. The State is obligated to comply with the
32 reporting requirements under Governmental Accounting Standards Board Statement
33 Number 74 and Governmental Accounting Standards Board Statement Number 75. The
34 system shall account for the assets of the investment trust fund in its annual financial
35 statements.

36 **§17449. Information for administrative or judicial proceedings**

37 If information regarding the investment trust fund is required from the system or the
38 trustees of the investment trust fund for an administrative or judicial proceeding, the party
39 seeking the information must file a written request for that information with the executive
40 director of the Maine Public Employees Retirement System. The executive director or the
41 executive director's designee shall make a certified response to that request within 30 days
42 and the certified response is admissible as evidence in any administrative or judicial

1 proceeding. A subpoena or other form of discovery directed at obtaining the information
2 may not be issued nor may employees of the system be required to testify on the subjects
3 covered by the certified response unless there is an express finding by an administrative
4 agency or a court that there is a compelling necessity to permit further discovery or to
5 require testimony. The executive director shall notify the trustees of the Irrevocable Trust
6 Fund for Other Post-employment Benefits for the teacher plan established in section 286-B,
7 subsection 2 immediately of any request for information, subpoena or other form of
8 discovery.

9 **SUMMARY**

10 This bill establishes the Retired Teacher Health Insurance Post-employment Benefits
11 Investment Trust Fund to protect funding for health care for retired teachers. It also
12 designates the Treasurer of State and the State Controller as trustees of the Irrevocable
13 Trust Fund for Other Post-employment Benefits for the teacher plan.