

# ACT No. 87

Regular Session, 2008

HOUSE BILL NO. 668

BY REPRESENTATIVE DOWNS

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AN ACT

To amend and reenact R.S. 33:5161(A)(2) and (B)(3) and to enact R.S. 33:5161(B)(2)(c) and 5162, relative to post-employment benefits funds established by political subdivisions; to provide relative to the management and investment of such funds; to provide for authorized and prohibited investments; to provide relative to asset allocation; to authorize the retention of investment managers or advisors; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:5161(A)(2) and (B)(3) are hereby amended and reenacted and R.S. 33:5161(B)(2)(c) and 5162 are hereby enacted to read as follows:

§5161. Post-employment benefits funds; political subdivisions

A.

\* \* \*

(2) For purposes of this ~~Section~~ Chapter, "post-employment benefits" shall mean health care, life insurance, or any other benefit, not including pension benefits, provided by the political subdivision to a person who is no longer employed by such political subdivision.

\* \* \*

B.

\* \* \*

(2)

\* \* \*

(c) Any political subdivision that establishes one or more post-employment benefit trusts shall develop and adopt an investment policy that details and clarifies

1 investment objectives and the procedures and constraints necessary to reach the  
2 objectives of such trusts, in accordance with the provisions of R.S. 33:5162.

3 (3) Any trustee serving pursuant to the provisions of this Section shall be  
4 subject to the provisions of Subpart E of Part II of the Louisiana Trust Code, ~~R.S.~~  
5 ~~9:1721 et seq.~~

6 \* \* \*

7 §5162. Investment of post-employment benefits trusts; political subdivisions

8 A. Any political subdivision of the state may invest post-employment  
9 benefits funds of the political subdivision held in a trust created pursuant to this  
10 Chapter in any of the following securities:

11 (1) Direct United States Treasury obligations, the principal and interest of  
12 which are fully guaranteed by the government of the United States.

13 (2) Bonds, debentures, notes, or other evidence of indebtedness any of which  
14 are issued or guaranteed by federal agencies and backed by the full faith and credit  
15 of the United States of America.

16 (3) Bonds, debentures, notes, or other evidence of indebtedness any of which  
17 are issued or guaranteed by a United States government-sponsored entity.

18 (4) Direct security repurchase agreements of any federal book-entry only  
19 securities enumerated in Paragraphs (1), (2), and (3) of this Subsection. "Direct  
20 security repurchase agreement" means an agreement under which the trust buys,  
21 holds for a specified time, and then sells back those securities and obligations  
22 enumerated in Paragraphs (1), (2), and (3) of this Subsection.

23 (5) Bonds, debentures, notes, or other evidence of indebtedness any of which  
24 are issued by corporations of the United States which are rated investment grade as  
25 reflected by a rating by Moody's, Inc., of Baa or its equivalent or better or a rating  
26 by Fitch or Standard & Poor's Corporation of BBB or its equivalent or better.

27 (6) Bonds, debentures, notes, or other evidence of indebtedness any of which  
28 are issued by and backed by the full faith and credit of sovereign nations, are  
29 denominated in United States dollars, and are rated investment grade as reflected by

1 a rating by Moody's, Inc., of A or better or a rating by Fitch or Standard & Poor's  
2 Corporation of A or better.

3 (7) Money market mutual funds as authorized by Paragraph (11) of this  
4 Subsection, direct issue commercial paper except asset-backed commercial paper as  
5 prohibited by Paragraph (B)(3) of this Section, and other short-term money market  
6 securities as authorized by this Chapter.

7 (8) The Louisiana Asset Management Pool and any other intergovernmental  
8 pool formed by or of Louisiana governmental entities.

9 (9)(a) Time certificates of deposit of any bank domiciled or having a branch  
10 office in the state of Louisiana, savings accounts or shares, as defined by R.S. 6:703,  
11 of savings and loan associations and savings banks, or share accounts and share  
12 certificate accounts of federally or state-chartered credit unions issuing time  
13 certificates of deposit. For those funds made available for investment in time  
14 certificates of deposit, the rate of interest paid by the bank shall be established by  
15 contract between the bank and the trust; however, the interest rate at the time of  
16 investment shall be a rate not less than fifty basis points below the prevailing market  
17 interest rate on direct obligations of the United States Treasury with a similar length  
18 of maturity.

19 (b) Funds invested in accordance with the provisions of this Paragraph shall  
20 not exceed at any time the amount insured by the Federal Deposit Insurance  
21 Corporation in any one banking institution or in any one savings and loan association  
22 or National Credit Union Administration unless the uninsured portion is  
23 collateralized by the pledge of securities in the manner provided in R.S. 39:1221.

24 (10) Stocks of any corporation listed on the New York Stock Exchange, the  
25 American Stock Exchange, or authorized for quotations display on the National  
26 Association of Securities Dealers Automated Quotations System or any successor  
27 national exchanges.

28 (11) Mutual funds which are registered with the Securities and Exchange  
29 Commission under the Securities Act of 1933 and the Investment Company Act of  
30 1940 and that are listed on the New York Stock Exchange, the American Stock

1           Exchange, or authorized for quotations display on the National Association of  
2           Securities Dealers Automated Quotations System or any successor national  
3           exchanges, and that have underlying investments consisting predominantly of  
4           securities permitted by this Chapter. As used in this Section, "predominantly" means  
5           ninety percent or greater.

6           (12) Exchange traded funds which are registered with the Securities and  
7           Exchange Commission under the Securities Act of 1933 and the Investment  
8           Company Act of 1940 and that are listed on the New York Stock Exchange, the  
9           American Stock Exchange, or authorized for quotations display on the National  
10           Association of Securities Dealers Automated Quotations System or any successor  
11           national exchanges, and which have underlying investments consisting  
12           predominantly of securities permitted by this Chapter.

13           B. The following investments and activities are hereby prohibited by any  
14           political subdivision of the state in the investment of post-employment benefits funds  
15           of the political subdivision that are held in trusts created under this Chapter:

16           (1) The use of any leverage either directly or through mutual funds or  
17           exchange traded funds that use leverage.

18           (2) Selling short any securities either directly or through mutual funds or  
19           exchange traded funds that sell securities short.

20           (3) Investing in or by any of the following: asset-backed securities other than  
21           those issued directly by the entities described in Paragraphs (A)(1), (A)(2), and  
22           (A)(3) of this Section; the purchase of stock warrants; any direct interest in oil, gas,  
23           or other mineral exploration program; private or direct placements of any kind; direct  
24           ownership of real estate or real estate investment trusts; collectibles such as coins,  
25           stamps, or art; direct loans or extensions of credit; the direct purchase of securities  
26           denominated in foreign currencies, purchased on foreign exchanges, or cleared  
27           through foreign clearing entities; the direct purchase of single family or commercial  
28           mortgages; collateralized mortgage obligations that have been stripped into interest  
29           only or principal only obligations; inverse floaters; or structured notes. For the

1 purposes of this Section, "structured notes" means securities which have been  
2 restructured, modified, or reissued by private entities.

3 C. This Subsection shall apply to all political subdivisions of the state in the  
4 administration of all post-employment benefits funds of the political subdivision that  
5 are held in trusts created under this Chapter:

6 (1)(a) Though the investment policy adopted by a political subdivision for  
7 the trust may provide for specific asset allocations for asset classes, in no  
8 circumstance except as provided in this Section shall a trust created under this  
9 Chapter allocate more than fifty-five percent, in value, of the total portfolio in  
10 equities.

11 (b) If the equity portion of the portfolio exceeds fifty-five percent of the total  
12 portfolio as measured at the end of a calendar quarter, the trust shall take such  
13 actions as are prudent to reduce the equity portion of the portfolio to no more than  
14 fifty-five percent during the following calendar quarter.

15 (c) The underlying assets of mutual funds and exchange traded funds shall  
16 be used when making calculations as required by this Paragraph.

17 (2)(a) The trust shall not own more than five percent of the outstanding stock  
18 of any company.

19 (b) In the event the trust shall come to own greater than five percent of the  
20 outstanding stock of a company as measured at the end of a calendar quarter, the  
21 trust shall take such actions as are prudent to reduce its ownership to below five  
22 percent during the following calendar quarter.

23 (3)(a) No more than five percent of the funds designated for equity allocation  
24 shall be invested in the stock of any single company.

25 (b) In the event that more than ten percent of the funds designated for equity  
26 allocation become invested in the stock of any single company as measured at the  
27 end of a calendar quarter, the trust shall take such actions as are prudent to reduce  
28 its ownership to below ten percent during the following calendar quarter.

29 (4)(a) The trust may not allow more than fifteen percent of the funds  
30 designated for equity allocation to be concentrated in any single industry.

1           (b) In the event the trust shall come to own greater than fifteen percent of the  
2           funds designated for equity allocation in a single industry as measured at the end of  
3           a calendar quarter, the trust shall take such actions as are prudent to reduce its  
4           ownership to below fifteen percent during the following calendar quarter.

5           (c) "Industry" as used in this Section shall be defined by the Global Industry  
6           Classification System as promulgated by Standard & Poor's or its successors from  
7           time to time.

8           (5) Fixed income securities shall be selected with consideration for the total  
9           anticipated return, taking into consideration both interest income and capital  
10          appreciation or loss.

11          (6) All fixed income investments shall be appropriately diversified by  
12          maturity, security, sector, and credit quality.

13          (7) If any fixed income investment security in the portfolio is downgraded  
14          below the applicable requirements in Paragraph (A)(5) or (6) of this Section, the trust  
15          shall take such actions as are prudent to eliminate its exposure to that security by the  
16          end of the next full calendar quarter.

17          (8) Active management of the investment portfolio is permitted.

18          (9)(a) The trust may retain one or more investment managers or advisors to  
19          manage a portfolio or portfolios in a discretionary manner strictly limited by this  
20          Chapter and the investment guidelines adopted by the trust.

21          (b) Any investment manager or advisor must be a Registered Investment  
22          Advisor under the Investment Advisers Act of 1940, or a bank trust department,  
23          under the supervision of the Office of the Comptroller of Currency or the Louisiana  
24          Office of Financial Institutions.

25          (c) An investment manager or advisor shall be a fiduciary with respect to the  
26          trust and shall acknowledge such in writing to the trust.

27          (d) Investment performance reports submitted by any investment manager  
28          or advisor to any trust covered by this Chapter shall be in compliance with the  
29          current Global Investment Performance Standards as amended and published by the  
30          CFA Institute or any successor entity.

1                    D. The investment of monies in a post-employment benefits fund by a  
2                    political subdivision of the state in violation of the provisions of this Section shall  
3                    constitute an intentional performance of a duty in an unlawful manner and may be  
4                    prosecuted pursuant to R.S. 14:134.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_