

House Bill 266 (AS PASSED HOUSE AND SENATE)

By: Representative Battles of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and
2 pensions, so as to correct certain provisions relative to the investment authority of local
3 retirement systems; to correct the name of a certain council; to modify a definition related
4 to the Georgia Municipal Employees Benefit System; to modify provisions related to the
5 return of mandatory employee contributions in the Georgia Municipal Employees Benefit
6 System; to provide new definitions; to change a term for membership of the board; to provide
7 for a break in employment for certain members; to clarify provisions related to leaves of
8 absence, withdrawal of dues, and application for reinstatement as an active member; to
9 clarify provisions for failure to pay dues and the reinstatement process; to permit selection
10 of up to five beneficiaries to receive equal portions of certain benefits upon the death of
11 certain members; to provide for certain penalties for false statements or falsified records; to
12 provide for related matters; to repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is
16 amended in Chapter 1, relating to investment and reinvestment of assets of local retirement
17 system, valuation and limitation on investments, and duties of the state auditor, by revising
18 subsection (a) of Code Section 47-1-12, relating to investment and reinvestment of assets of
19 local retirement system, as follows:

20 "(a) The board of trustees of any local retirement system shall have full power to invest
21 and reinvest assets of the retirement system and to purchase, hold, sell, assign, transfer, and
22 dispose of any securities and other investments in which assets of the retirement system
23 have been invested, any proceeds of any investments, and any money belonging to the
24 retirement system; provided, however, that, except as otherwise provided in this Code
25 section, such power shall be subject to all terms, conditions, limitations, and restrictions

26 imposed by ~~the laws of this state upon domestic life insurance companies~~ Article 7 of
 27 Chapter 20 of this title in making and disposing of their investments."

28 **SECTION 2.**

29 Said title is further amended in Chapter 2, relating to the Employees' Retirement System of
 30 Georgia, by revising paragraph (1) of subsection (a) of Code Section 47-2-323, relating to
 31 membership in retirement system of employees of the Georgia Public Defender Standards
 32 Council, creditable service, and contributions, as follows:

33 "(1) 'Council' means the Georgia Public Defender ~~Standards~~ Council established by Code
 34 Section 17-12-3."

35 **SECTION 3.**

36 Said title is further amended in Chapter 5, relating to the Georgia Municipal Employees
 37 Benefit System, by revising paragraph (6) of Code Section 47-5-2, relating to definitions, as
 38 follows:

39 "(6) 'Employee' means any full-time salaried or hourly rated person in the active service
 40 of an employer and any employees of the board of trustees. Notwithstanding any laws
 41 to the contrary, the term also includes any appointed or elected member of the governing
 42 authority of a municipal corporation of this state or of an employer created pursuant to
 43 the charter of a municipal corporation of this state, the chief legal officer or any associate
 44 legal officer of a municipal corporation, and any municipal officer elected or appointed
 45 to preside over the court of a municipal corporation. Said term shall also include
 46 part-time employees of an employer for the purposes of participating in employee benefit
 47 plans."

48 **SECTION 4.**

49 Said title is further amended in said chapter by revising Code Section 47-5-47, relating to
 50 return of contributions to employee or employee's estate, as follows:

51 "47-5-47.

52 ~~Plans~~ Except as otherwise provided with respect to the provision of death benefits under
 53 a plan, plans providing for retirement benefits established under this chapter shall provide
 54 that mandatory contributions made by a participating employee shall be returned to such
 55 ~~employee~~ employee's surviving spouse or his to the estate of the participant or the
 56 participant's pre-retirement beneficiary in the event of death before retirement. If the
 57 employee is separated from employment prior to the time he or she is eligible for
 58 retirement benefits, such contributions shall be returned unless the employee chooses to
 59 claim his or her vested benefits, in which case the employee contributions shall remain with

60 the fund until such time as the employee becomes eligible for the vested benefits. Such
 61 contributions may be returned without interest or with such interest as is provided in the
 62 plan."

63

SECTION 5.

64 Said title is further amended in Chapter 7, relating to the Georgia Firefighters' Pension Fund,
 65 by adding new paragraphs to Code Section 47-7-1, relating to definitions, as follows:

66 "47-7-1.

67 As used in this chapter, the term:

68 (1) 'Active member' means an individual who has been granted membership in the fund
 69 in accordance with the rules of this chapter and who is not an inactive member, a
 70 suspended member, a retired member, or a withdrawn member.

71 ~~(1)~~(2) 'Board' means the Board of Trustees of the Georgia Firefighters' Pension Fund.

72 ~~(2)~~(3) 'Fire department' means a ~~full-time~~ full-time fire department or volunteer fire
 73 department or a combination ~~full-time~~ full-time and volunteer fire department which
 74 satisfies the following criteria:

75 (A) The fire department ~~is certified by the superintendent of~~ holds a valid certificate
 76 of compliance issued by the Georgia Firefighter Standards and Training Council as
 77 provided in pursuant to Article 4 2 of Chapter 4 3 of Title 25; and

78 (B) The public fire suppression facilities of the fire department are ratable not less
 79 favorably than a class nine rating under standards set forth in the Fire Suppression
 80 Rating Schedule, Section I, Public Fire Suppression, Edition 6-80, Copyright 1980,
 81 published by the Insurance Services Office, a rating organization licensed by the
 82 Commissioner of Insurance, which schedule is maintained on file with the
 83 Commissioner of Insurance as required by general law and which has not been
 84 disapproved by the Commissioner, or less than a rating which the board by regulation
 85 determines is substantially equivalent under rating standards published by a rating
 86 organization licensed by the Commissioner of Insurance performing similar rating
 87 functions which standards are maintained on file with the Commissioner of Insurance
 88 and which have not been disapproved by the Commissioner.

89 The board may require annual certification by the chief of a fire department of the
 90 satisfaction of such requirements as a condition to the eligibility of firefighters and
 91 volunteer firefighters to become members of the fund to obtain creditable service with
 92 the fund.

93 ~~(3)~~(4) 'Firefighter' means a person who is:

94 (A) A permanent, compensated employee of a fire department who in the course of his
 95 or her employment by and within a department either is a candidate for or holds a

96 current firefighter's certificate issued under Article 1 of Chapter 4 of Title 25 and has
 97 as incident to his or her position of employment the principal duty of, and actually
 98 performs the function of, preventing and suppressing fires and who works at least 1,040
 99 hours per year; provided, however, that such term shall not include persons whose
 100 primary responsibility is the performance of emergency medical services; or

101 (B) Appointed and regularly enrolled as a volunteer with a volunteer fire department
 102 or combination ~~full-time~~ full-time and volunteer fire department which satisfies the
 103 requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23 and who, as
 104 a volunteer firefighter, has and primarily performs the principal responsibility of
 105 preventing or suppressing fires.

106 ~~(4)~~(5) '~~Full-time~~ Full-time fire department' means a ~~full-time~~ full-time department,
 107 bureau, division, or other organizational unit, separately organized and administered as
 108 such, of this state or any municipality or other political subdivision thereof, which
 109 organizational unit:

110 (A) Has, as an organizational unit, the principal responsibility to prevent and suppress
 111 fires; and

112 (B) Is financed by public appropriation or subscription and is not privately owned.

113 A ~~full-time~~ full-time fire department includes the fire chief or chief operating officer of
 114 the organizational unit and only those employees who are under the direction and
 115 supervision of the fire chief or chief operating officer.

116 ~~(5)~~(6) 'Fund' means the Georgia Firefighters' Pension Fund.

117 (7) 'Inactive member' means an individual who was an active member of the fund who
 118 obtained a leave of absence in accordance with Code Section 47-7-41 and who has not
 119 withdrawn his or her dues pursuant to Code Section 47-7-60.

120 ~~(5.1)~~(8) '~~Part-time~~ Part-time employment' means working at a permanent job position
 121 for less than 40 hours a week but at least 1,040 hours a year.

122 (9) 'Retired member' means an individual who was an active member of the fund who
 123 has commenced receipt of benefits pursuant to Article 6 of this chapter or pursuant to
 124 Code Section 47-7-102.

125 (10) 'Suspended member' means an individual who was an active member of the fund
 126 who owes at least six months of dues payments pursuant to Code Section 47-7-60.

127 ~~(6)~~(11) 'Volunteer fire department' means a volunteer fire department staffed by
 128 firefighters, volunteer firefighters, or a combination of firefighters and volunteer
 129 firefighters, separately organized and administered as such, of this state or any
 130 municipality or other political subdivision of this state or serving any fire district therein,
 131 which:

132 (A) Has the principal responsibility to prevent and suppress fires;

133 (B) Is financed by public appropriation or subscription and is not privately owned;

134 (C) Holds drills and meetings of not less than eight hours monthly; and

135 (D) Meets the requirements imposed by Code Section 47-7-81.

136 ~~(7)~~(12) 'Volunteer firefighter' means an individual who is appointed and regularly
 137 enrolled as a volunteer, with or without compensation, with a fire department; who, as
 138 a volunteer firefighter, has and primarily performs the principal responsibility of
 139 preventing or suppressing fires; and who satisfies the requirements specified in
 140 subparagraph (a)(1)(D) of Code Section 25-3-23.

141 (13) 'Withdrawn member' means an individual who was an active member of the fund
 142 who has had his or her moneys refunded pursuant to Code Section 47-7-105."

143 **SECTION 6.**

144 Said title is further amended in said chapter by revising paragraph (4) of subsection (a) of
 145 Code Section 47-7-20, relating to membership of the board, manner of election, and
 146 compensation and expenses, as follows:

147 "(4) One retired ~~beneficiary~~ member of the fund appointed by the Governor."

148 **SECTION 7.**

149 Said title is further amended in said chapter by revising subsection (d) of Code Section
 150 47-7-40, relating to eligibility to apply for membership and transfer of Georgia Class Nine
 151 Fire Department Pension Fund, as follows:

152 "(d) Any person who, on June 30, 2006, was an active member of the fund by virtue of
 153 holding a position other than as a ~~certified firefighter or a candidate for such certification,~~
 154 in accordance with the qualifications for membership in effect on that date, shall be entitled
 155 to remain a member of the fund; provided, however, that if such person has a break in
 156 membership such position that qualified him or her for membership on June 30, 2006, or
 157 any other eligible employment provided by this Code section, for greater than 30 days, that
 158 member shall be deemed a suspended member, and any future membership shall be subject
 159 to laws and regulations in effect ~~at such time~~ when that member's application for
 160 reinstatement as an active member is approved."

161 **SECTION 8.**

162 Said title is further amended in said chapter by revising Code Section 47-7-41, relating to
 163 effect of withdrawal of contributions or termination of employment, eligibility for
 164 reinstatement, credit for time spent on leave of absences and resumption of payments to fund
 165 upon return of service, as follows:

166 "47-7-41.

167 (a)(1) Any active member of the fund who is in good standing with the fund, who leaves
 168 work as a firefighter or volunteer firefighter, and who elects to leave in the fund during
 169 such leave from work as a firefighter or voluntary firefighter the dues which the member
 170 has theretofore paid, shall, upon application to the board, be entitled to obtain a leave of
 171 absence from the fund for a period of not more than two years and shall be deemed an
 172 inactive member. ~~Upon application prior to the expiration of any leave of absence or~~
 173 ~~extended leave of absence, such a member shall be entitled to an extension of such leave~~
 174 ~~of absence for a period of not greater than two years. An inactive member may apply for~~
 175 ~~additional leaves of absence from the fund every two years. If a member who leaves~~
 176 ~~work as a firefighter or volunteer firefighter an inactive member fails to apply for and~~
 177 maintain in effect a leave of absence, the board may treat such failure as an election to
 178 withdraw from membership in the fund as provided in subsection (b) of this Code section
 179 and Code Section 47-7-105.

180 (2) A An inactive member of the fund who obtains a leave of absence under
 181 ~~paragraph (1) of this subsection~~ shall, upon application to the board, be entitled to
 182 reinstatement ~~to active status in the fund~~ as an active member; provided, however, that
 183 upon such application, the applicant meets the requirements set forth in Code Section
 184 47-7-40 as a prerequisite to reinstated active membership. Such a reinstated active
 185 member shall be entitled to credit for service rendered before obtaining a leave of absence
 186 and after reinstatement but shall not be entitled to credit for any period during such leave
 187 of absence.

188 (b)(1) ~~A~~ Any member may at any time elect to withdraw from membership in the fund
 189 and upon such withdrawal shall be entitled to a refund of ~~dues theretofore paid by such~~
 190 ~~member moneys~~ as provided in Code Section 47-7-105-, and such member shall be
 191 deemed a withdrawn member. Any withdrawn member ~~who elects to withdraw from~~
 192 ~~membership in the fund~~ shall not thereafter be eligible for membership or benefits except
 193 upon reinstatement to active membership in accordance with this subsection. Any such
 194 withdrawn member may make application to the board for reinstatement ~~of membership~~
 195 as an active member. Upon making such application, the applicant must pay to the fund
 196 a reinstatement fee of \$100.00. An applicant for reinstatement of membership in the fund
 197 as provided in this subsection shall not be entitled to such reinstatement unless at the time
 198 of such application the applicant meets the requirements set forth in Code Section
 199 47-7-40. Upon reinstatement, such reinstated active member shall be entitled to credit
 200 for service rendered after reinstatement ~~to active membership in the fund~~ as an active
 201 member but not for service prior to the date of reinstatement. Any such applicant who

202 fails to satisfy the requirements of reinstatement shall not be entitled to ~~membership in~~
 203 ~~the fund~~ reinstatement as an active member.

204 ~~(2) An applicant for reinstatement of membership in the fund as provided in this~~
 205 ~~subsection shall not be entitled to such reinstatement unless at the time of such~~
 206 ~~application the applicant meets the requirements set forth in Code Section 47-7-40."~~

207 **SECTION 9.**

208 Said title is further amended in said chapter by revising Code Section 47-7-60, relating to
 209 dues required of members and effect of failure to pay dues in timely manner, as follows:

210 "47-7-60.

211 (a) ~~Each firefighter or volunteer firefighter accepted for membership in the fund~~ active
 212 member shall pay to the fund the sum of \$25.00 for each month of service as a firefighter
 213 or volunteer firefighter in a fire department. Such monthly payments shall be due on or
 214 before the tenth day of each month of service.

215 (b)(1) Any active member who becomes six months in arrears in making such payments
 216 shall be ~~removed from membership in the fund and shall thereafter be ineligible for~~
 217 ~~membership in or benefits under the fund, except as provided in this subsection and in~~
 218 ~~subsection (c) of this Code section~~ deemed a suspended member.

219 (2) ~~Any member who has been removed from membership in the fund under~~
 220 ~~paragraph (1) of this subsection~~ A suspended member may make application to the board
 221 for reinstatement ~~of membership~~ as an active member. As a condition of such
 222 reinstatement, the applicant must pay to the fund a reinstatement fee of \$100.00. Upon
 223 such reinstatement as an active member, such member shall be entitled to credit for
 224 service rendered after reinstatement. If such member has not withdrawn the dues he or
 225 she paid to the fund prior to ~~the suspension~~ becoming a suspended member, then he or
 226 she shall also be entitled to creditable service for service rendered prior to ~~the suspension~~
 227 his or her becoming a suspended member.

228 (3) ~~An applicant~~ A suspended member who applies for reinstatement ~~of membership in~~
 229 ~~the fund as provided in this subsection~~ as an active member shall not be entitled to
 230 reinstatement unless at the time of such application the applicant meets the requirements
 231 set forth in Code Section 47-7-40 ~~as a prerequisite to reinstatement to active membership.~~

232 (c) If a suspended member who has attained the minimum service credits required for a
 233 normal retirement benefit under Code Section 47-7-100 ~~is suspended from membership in~~
 234 ~~the fund under this Code section and is not reinstated~~ as an active member, then, provided
 235 that such member does not withdraw dues paid to the fund, ~~prior to his or her suspension,~~
 236 ~~upon termination of service~~, such member shall be entitled to a normal retirement benefit
 237 payable under Code Section 47-7-100. The normal retirement benefit to which such

238 member may thereafter become entitled upon termination of service shall be calculated as
 239 of the date of the member's suspension from the fund, using the service credits and age the
 240 member had attained on the date of suspension, which shall be deemed to be the youngest
 241 age at which early retirement benefits may commence or such greater age as the member
 242 has actually attained on that date, and the maximum monthly benefit in effect on such date
 243 of suspension becoming a suspended member."

244 **SECTION 10.**

245 Said title is further amended in said chapter by revising paragraph (2) of subsection (d) and
 246 paragraph (2) of subsection (h) of Code Section 47-7-100, relating to eligibility for full
 247 pension benefits, eligibility for partial benefits, optional pension benefits, vesting of rights
 248 to pension benefits, and early retirement provisions, as follows:

249 "(2) Option B, the ten years' certain and life option, shall consist of a decreased
 250 retirement benefit payable to the member during the member's lifetime; and, in the event
 251 of the member's death within ten years after the member's retirement, the same monthly
 252 benefits shall be payable to the member's selected beneficiary, or, if the member so elects,
 253 the total monthly benefit may be divided equally among up to five selected beneficiaries,
 254 for the balance of such ten-year period."

255 "(2) If any member who has not elected an option under subsection (d) of this Code
 256 section dies after accruing at least 15 years of creditable service but before applying for
 257 retirement as provided in this Code section, and such member is not survived by a spouse,
 258 the up to five selected beneficiary beneficiaries shall be entitled to receive a benefit,
 259 equally apportioned among the selected beneficiaries, as if the member had elected to
 260 receive Option B as provided in paragraph (2) of subsection (d) of this Code section."

261 **SECTION 11.**

262 Said title is further amended in said chapter by revising Code Section 47-7-103, relating to
 263 benefits payable to a named beneficiary upon death of a member before benefits have
 264 commenced or before benefits equal to the member's dues have been paid, as follows:

265 "47-7-103.

266 (a) In the event of the death of a an active member of the fund who is in good standing and
 267 who has not commenced receiving any benefits under this chapter, the designated
 268 beneficiary up to five selected beneficiaries of such deceased member shall be entitled to
 269 be paid the amount of \$5,000.00 split equally among the selected beneficiaries, upon any
 270 selected beneficiary making proper application to the executive director of the fund. Such
 271 application shall be accompanied by a certified copy of the death certificate of the deceased
 272 member and such other information as may be required by the board.

273 (b) In the event of the death of a retired member of the fund ~~who is in good standing~~, who
 274 has not elected survivor benefits under Option A or B as provided for in subsection (d) of
 275 Code Section 47-7-100; and who has commenced receiving benefits under this chapter, but
 276 who has not received total benefits in an amount equal to \$5,000.00, ~~the member's named~~
 277 beneficiary up to five beneficiaries selected by the member shall be entitled to receive an
 278 equally apportioned amount from the difference between \$5,000.00 and the amount of
 279 benefits received by such deceased member, upon making application as provided for in
 280 subsection (a) of this Code section."

281 **SECTION 12.**

282 Said title is further amended in said chapter by revising Code Section 47-7-126, relating to
 283 penalty for false statements or falsified records and correction of errors by the board, as
 284 follows:

285 "47-7-126.

286 (a) Any person who knowingly makes any false statements or falsifies or permits to be
 287 falsified any records of the fund in an attempt to defraud the fund shall be guilty of a
 288 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
 289 punished by a fine not to exceed ~~\$500.00~~ \$2,000.00, imprisonment for up to 12 months, or
 290 both.

291 (b) On and after July 1, 2015, if the board finds, after notice and opportunity for a hearing
 292 conducted in accordance with the procedure for contested cases under Chapter 13 of Title
 293 50, the 'Georgia Administrative Procedure Act,' that any person on or after July 1, 2015,
 294 has knowingly:

295 (1) Made a material false statement or falsified or permitted to be falsified any records
 296 of the fund or documents of the fund in an attempt to defraud the fund;

297 (2) Obtained or continued membership in the fund while not eligible to become or
 298 remain a member of the fund;

299 (3) Obtained benefits that he or she is not entitled to receive; or

300 (4) Obtained benefits in an amount greater than he or she is entitled to receive,

301 the board may order that such person shall forfeit all rights and benefits that he or she may
 302 be entitled to under the fund. Any person who is aggrieved or adversely affected by a final
 303 action of the board under this subsection shall have the right of judicial review in the
 304 superior courts.

305 (c) If any change or error in the records of the fund results in any member or beneficiary
 306 receiving from it more or less than such member or beneficiary would have been entitled
 307 to receive had the records been correct, the board shall have the power to correct such error
 308 and to adjust the payments as far as is practicable and in such manner that the actuarial

309 equivalent of any additional benefit to which such member or beneficiary was correctly
310 entitled shall be paid or in such manner that any excess payment shall be recovered."

311 **SECTION 13.**

312 All laws and parts of laws in conflict with this Act are repealed.