

House Bill 1345 (COMMITTEE SUBSTITUTE)

By: Representatives Cummings of the 27<sup>th</sup> and Shanahan of the 10<sup>th</sup>

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 provide that each local retirement system shall adopt written guidelines  
3 and procedures for the investment of retirement system assets; to provide that upon the  
4 failure of a local governing authority to provide certain actuarial investigation and financial  
5 report, the state auditor shall cause notice of such failure to be published; to provide that if  
6 a local governing authority fails to comply with minimum funding requirements, it must  
7 publish notice of such failure; to provide that the state auditor may monitor the investment  
8 activities of any public retirement system; to provide requirements for such guidelines; to  
9 provide for reporting and penalties; to change certain references within such title; to clarify  
10 provisions relating to the enforcement of noncompliance with the investment restrictions of  
11 said title; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is  
15 amended by striking subsection (a) of Code Section 47-1-3, relating to the power of a local  
16 retirement system to hire an actuary, payment of the administrative costs of a local  
17 retirement system, periodic actuarial investigations, and an annual financial report, and  
18 inserting in lieu thereof the following:

19 "(a) As used in this Code section, the term 'local retirement system' means any retirement,  
20 pension, or emeritus system covering an employee or employees of a county, municipality,  
21 local board of education, or other political subdivision, or any groups or classifications of  
22 such employees which is funded at least in part by such political subdivisions for the  
23 purpose of paying benefits to employees or their beneficiaries after employees cease active  
24 employment by retirement, disability, death, or other termination. Such term shall include  
25 any plan or program which creates a retired position, commonly referred to as 'emeritus,'  
26 and provides a salary for the retired position in lieu of a retirement benefit. Such term shall

1 not include an individual retirement account or other plan which provides for an individual  
 2 account for each participant and for benefits based solely upon the amount contributed to  
 3 the participant's account and any income, expenses, gains and losses, and any forfeitures  
 4 of accounts of other participants which may be allocated to a participant's account."

## 5 SECTION 2.

6 Said title is further amended by striking in its entirety paragraph (3) of subsection (f) of said  
 7 Code Section 47-1-3 and inserting in lieu thereof the following:

8 "(3) The certificate of the chairperson of the board of trustees stating that the investment  
 9 practices of the fund have been in compliance with the provisions of Article 7 of Chapter  
 10 20 of this title at all times during the reporting period or, if the practices have at any time  
 11 been out of compliance with such provisions, providing a description of the  
 12 noncompliance, the reason for the noncompliance, and the corrective action taken. The  
 13 chairperson shall also certify that written investment guidelines and procedures have  
 14 been adopted pursuant to the provisions of subsection (a) of Code Section 47-1-12."

## 15 SECTION 3.

16 Said title is further amended by striking in its entirety Code Section 47-1-5, relating to the  
 17 duty of governing authorities to make and file actuarial investigations and to file financial  
 18 reports and the withholding of state funds for failure to meet this duty, and inserting in lieu  
 19 thereof the following:

20 "47-1-5.

21 (a) It shall be the duty of the governing authority of each county, municipality, or other  
 22 political subdivision whose employees are covered under a local retirement system and the  
 23 duty of a local board of education whose employees are covered under a local retirement  
 24 system to cause the actuarial investigations required by subsection (d) of Code Section  
 25 47-1-3 to be made and to cause such actuarial investigations to be filed with the state  
 26 auditor as required by that subsection. It shall also be their duty to cause financial reports  
 27 to be submitted to the state auditor as required by subsections (e) through (j) of Code  
 28 Section 47-1-3.

29 (b)(1) If a ~~required~~ actuarial investigation and financial report required by subsection (a)  
 30 of this Code section are not submitted, ~~then~~ within 30 days after the date on which such  
 31 investigation and report were due in the office of the state auditor, the state auditor shall  
 32 notify, in writing, the governing authority of the county, municipality, or other political  
 33 subdivision whose employees are covered under the applicable local retirement system.  
 34 If the actuarial investigation and financial report are not received by the state auditor

1 within 60 days after the date such notice is sent to the governing authority, the state auditor  
2 shall:

3 (A) notify ~~Notify~~ the director of the Office of Treasury and Fiscal Services; and it shall  
4 be the duty of the director to withhold any state funds payable to the applicable  
5 political subdivision or local board of education until the actuarial investigation and  
6 financial report are submitted to the state auditor; and

7 (B) Cause to be published in the legal organ of the the governing authority of the  
8 county, municipality, or other political subdivision and may cause to be published in  
9 any newspaper of general circulation notice that the governing authority of the local  
10 government has failed to file the information required by subsection (a) of this Code  
11 section. Such notice shall be prominently displayed in the journal and shall not be  
12 placed in the section containing the legal advertisements.

13 (2) The state auditor shall advise the director of the Office of Treasury and Fiscal  
14 Services within five days after receiving the actuarial investigation and financial report  
15 to release any state funds payable to the applicable political subdivision."

#### 16 SECTION 4.

17 Said title is further amended by striking in its entirety Code Section 47-1-12, relating to  
18 investment and reinvestment of assets of local retirement systems, valuation and limitation  
19 on investments, and duties of state auditor, and inserting in lieu thereof the following:

20 "47-1-12.

21 ~~(a) The board of trustees of any local retirement system shall have full power to invest and~~  
22 ~~reinvest assets of the retirement system and to purchase, hold, sell, assign, transfer, and~~  
23 ~~dispose of any securities and other investments in which assets of the retirement system~~  
24 ~~have been invested, any proceeds of any investments, and any money belonging to the~~  
25 ~~retirement system; provided, however, that, except as otherwise provided in this Code~~  
26 ~~section, such power shall be subject to all terms, conditions, limitations, and restrictions~~  
27 ~~imposed by the laws of this state upon domestic life insurance companies in making and~~  
28 ~~disposing of their investments.~~

29 ~~(b) Notwithstanding the provisions of Code Section 33-11-21, the board of trustees of any~~  
30 ~~local retirement system shall not be restricted to investing in those equities which have~~  
31 ~~paid a cash dividend in at least three of the last five years preceding the purchase of such~~  
32 ~~equities.~~

33 ~~(c) Nothing in this Code section shall be construed to limit or restrict the authority of the~~  
34 ~~board of trustees of any retirement system to invest or reinvest assets of such system in~~  
35 ~~such manner and under such conditions as are authorized by law.~~

1 ~~(d) The state auditor shall monitor the investment activity of local retirement systems and~~  
 2 ~~shall submit a report to the Governor and the presiding officer of each chamber of the~~  
 3 ~~General Assembly describing the effect, if any, changes in investment policy have had on~~  
 4 ~~those systems. Such report shall be submitted not later than December 31, 2001. Each local~~  
 5 ~~retirement system shall adopt written guidelines and procedures for the investment of~~  
 6 ~~retirement system assets. Such written guidelines shall meet all requirements of general~~  
 7 ~~law and shall be adopted by ordinance or resolution of the governing authority of the~~  
 8 ~~political subdivision maintaining such retirement system. Such guidelines shall, at a~~  
 9 ~~minimum, address the investment goals of the retirement system, the authorized~~  
 10 ~~investments of system assets, the frequency of evaluation of retirement plan investment~~  
 11 ~~returns, and the ratio between fixed income and equity investments of system assets.~~  
 12 ~~(b) The state auditor shall be authorized to monitor the investment activity of any public~~  
 13 ~~retirement system.~~"

#### 14 SECTION 5.

15 Said title is further amended by striking in its entirety subsection (h) of Code Section  
 16 47-20-10, relating to minimum annual employer contributions, and inserting in lieu thereof  
 17 the following:

18 "(h) The minimum funding requirements of this Code section shall not apply to  
 19 prefunding, in whole or in part, of anticipated future costs of providing health care benefits  
 20 and related expenses including, without limitation, provision of all or part of the cost of  
 21 health insurance coverage and health maintenance organization participation costs for  
 22 retired employees of a political subdivision including those presently retired and those  
 23 anticipated to retire in the future. Such prefunding may be maintained as part of the same  
 24 investment pool as the fund receiving employer and employee contributions to pay the cost  
 25 of providing retirement benefits under any retirement system maintained by the political  
 26 subdivision for its employees so long as such funds are separately accounted for and  
 27 separate records are maintained with respect to each fund. Funds maintained by a political  
 28 subdivision for the purpose of prefunding health care benefits for retired employees may  
 29 be invested and reinvested in accordance with the provisions of ~~Code Section 47-1-12~~  
 30 Article 7 of this chapter, and, for the purposes of that ~~Code section~~ article and the home  
 31 rule provisions of the laws and the Constitution of the State of Georgia, such funds shall  
 32 be considered retirement funds."

**SECTION 6.**

Said title is further amended by striking in its entirety Code Section 47-20-21, relating to triennial actuarial investigations, penalties for violations shown, and a list of local systems not in conformance reported triennially, and inserting in lieu thereof the following:

"(a) The retirement system administrator of each retirement system of a political subdivision shall comply fully with the requirements of Code Section 47-1-3 requiring the employment of an actuary and the completion of actuarial investigations once every ~~three~~ two years. In addition to the other requirements specified by Code Section 47-1-3 for such actuarial investigations, each such investigation shall express the actuary's opinion, which shall be supported by such analysis as the actuary determines necessary, of the status of the retirement system with regard to the minimum funding standards specified in Code Section 47-20-10. Each such actuarial investigation shall also include an analysis of each change in or amendment to the retirement system since the previous investigation and shall identify any change or amendment which granted a benefit increase.

(b) If an actuarial investigation or a financial report which is submitted to the state auditor under Code Section 47-1-3 shows that an amendment or change was made in a retirement system of a political subdivision granting a benefit increase in violation of subsection (a) of Code Section 47-20-20 or shows that a retirement system of a political subdivision is not in conformity with the requirements of subsection (b) of Code Section 47-20-20, it shall be the duty of the state auditor to:

(1) notify ~~Notify~~ the director of the Office of Treasury and Fiscal Services; and it shall be the duty of the director to withhold any state funds payable to the applicable political subdivision until the actuary of the applicable retirement system certifies to the state auditor and to the director that employer contributions to each retirement system of the political subdivision are in conformity with the minimum funding standards specified in Code Section 47-20-10;

(2) Require the political subdivision to post a notice of the noncompliance with Code Section 47-20-20 in an appropriate and conspicuous location at its principal office until such time as the political subdivision is in compliance with the specified standards. The political subdivision shall make such notice and a copy of the documentation submitted to the state auditor in accordance with the provisions of subsection (a) of Code Section 47-1-5 documenting such noncompliance available for inspection by the employees and job applicants during regular business hours in its personnel office or other suitable location; provided, however, that information protected from public disclosure pursuant to Code Section 47-1-14 shall not be disclosed; and

(3) Cause to be published in the legal organ of the the governing authority of the county, municipality, or other political subdivision and may cause to be published in any

1 newspaper of general circulation notice that the governing authority of the local  
 2 government has failed to fund the local retirement system in accordance with the  
 3 provisions of the minimum funding standards provided in Code Section 47-20-10 and  
 4 that such failure constitutes a violation of state law. Such notice shall be prominently  
 5 displayed in the journal and shall not be placed in the section containing the legal  
 6 advertisements.

7 (c) The report on the condition of local retirement systems submitted to the Governor and  
 8 to members of the General Assembly pursuant to Code Section 47-1-4 shall include a  
 9 ~~separate list~~ of each retirement system of each political subdivision which is not in  
 10 conformity with the minimum funding standards specified by Code Section 47-20-10 and  
 11 ~~a separate attachment~~ giving a full explanation of any action taken pursuant to subsection  
 12 (b) of this Code section."

### 13 SECTION 7.

14 Said title is further amended by inserting at the end of Code Section 47-20-81, relating to the  
 15 definition of the term "fund" and applicability, the following:

16 "(c) The board of trustees of any local retirement system shall have full power to invest  
 17 and reinvest assets of the retirement system and to purchase, hold, sell, assign, transfer, and  
 18 dispose of any securities and other investments in which assets of the retirement system  
 19 have been invested, any proceeds of any investments, and any money belonging to the  
 20 retirement system, subject to all terms, conditions, limitations, and restrictions imposed by  
 21 the provisions of this article."

### 22 SECTION 8.

23 Said title is further amended by striking in their entirety subsections (b) and (c) of Code  
 24 Section 47-20-84, relating to a limitation on the amount of equities in which retirement  
 25 systems may invest, and inserting in lieu thereof the following:

26 "(b) A large retirement system may not invest more than 10 percent of the retirement  
 27 system assets, based on asset costs, in corporations or in obligations of corporations  
 28 organized in a country other than the United States or Canada subject to the provisions of  
 29 paragraph (1) of subsection (a) of Code Section 47-20-83.

30 (c) A fund shall not invest more than 55 percent of retirement system assets, based on  
 31 asset costs, in equities; provided, however, that a large retirement system shall invest not  
 32 more than 60 percent of its assets in equities. Any fund which is not in compliance with  
 33 the provisions of this subsection shall immediately be subject to the provisions of Code  
 34 Section 47-20-86; provided, however, that any fund which is was not in compliance with  
 35 the limitations imposed by this subsection on July 1, 2000, shall be granted a ~~two-year~~

1 grace period until July 1, 2002, to come into compliance; provided, ~~however~~ further, that  
2 during such ~~two-year~~ period, the fund shall not increase the percentage of its assets  
3 invested in equities."

4 **SECTION 9.**

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