

House Bill 404

By: Representatives Kaye of the 37th, Ehrhart of the 36th, Watson of the 70th, Mills of the 21st, Harbin of the 113th and others

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 establish the Public Employees' Retirement 401(k) Plan; to provide a
3 statement of legislative findings; to define certain terms; to provide that the State Personnel
4 Board shall establish an account for certain public employees pursuant to Section 401(k) of
5 the federal Internal Revenue Code; to provide for participation in such plan; to provide for
6 the transfer of funds from the Teachers Retirement System of Georgia into such plan; to
7 provide for a calculation of the value of benefits; to provide for employee and employer
8 contributions; to provide for vesting; to provide for the distribution of funds; to provide for
9 matters related thereto; to provide conditions for an effective date and automatic repeal; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 The General Assembly recognizes that public school teachers in this state are no longer
14 entitled to the job protection offered by tenure and that a portable plan would best attract and
15 protect teachers.

16 style="text-align:center">**SECTION 2.**

17 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is
18 amended by inserting at the end thereof the following:

19 style="text-align:center">"CHAPTER 24
20 style="text-align:center">ARTICLE 1

21 47-24-1.

22 As used in this chapter, the term:

1 (1) 'Average annual compensation' means the average annual compensation of a
2 participant during the 24 consecutive months of creditable service producing the highest
3 such average.

4 (2) 'Beneficiary' means an individual nominated by a participant or a former participant
5 to receive a distribution of the participant's accumulated balance.

6 (3) 'Board' means the State Personnel Board.

7 (4) 'Compensation' means the remuneration paid to an employee on account of the
8 employee's services rendered to an employer. Such term includes only wages and other
9 compensation as reported by the employer on the employee's wage and tax statement,
10 federal form W-2.

11 (5) 'Eligible employee' means an employee as defined in paragraph (6) of this Code
12 section who first becomes employed on or after July 1, 2002, or who again becomes
13 employed and is not eligible for continued or renewed membership in another public
14 retirement system pursuant to the provisions of his or her prior employment and who is
15 employed on a full-time basis. Such term shall also mean any other person who is first
16 employed on or after July 1, 2002, and who, if employed on June 30, 2002, would have
17 been eligible for membership in the Teachers Retirement System of Georgia as such
18 membership is established by law on that date.

19 (6) 'Employee' means:

20 (A) All persons who are active members of the Teachers Retirement System of
21 Georgia on July 1, 2002;

22 (B) Any of the following persons employed not less than half time by a public school:

23 (i) Persons who supervise the public schools;

24 (ii) Classroom teachers; and

25 (iii) Persons employed in a clerical capacity;

26 (C) Public school nurses who are employed on a regular basis not less than half time.
27 The employer's contributions for such public school nurses on all salary amounts which
28 are not paid from state funds shall be paid from local funds;

29 (D) School librarians;

30 (E) Administrative officials who supervise teachers;

31 (F) Any new certified professional personnel employed for the first time by the State
32 Board of Education or by the State Department of Education on and after July 1, 2002,
33 and any employee of the State Board of Education or the State Board of Vocational
34 Education employed in a teaching, supervisory, or clerical capacity;

35 (G) Newly hired professional personnel employed for the first time by the Department
36 of Technical and Adult Education on and after July 1, 2002, and all full-time
37 nonprofessional personnel employed for the first time after July 1, 2002, by

1 postsecondary vocational-technical schools governed by the Department of Technical
2 and Adult Education if otherwise eligible under laws, rules, and regulations;

3 (H) All full-time employees of a postsecondary vocational-technical school formerly
4 operated by a local board of education or area postsecondary vocational education
5 board as of July 1, 2002, or the date on which the Department of Technical and Adult
6 Education assumes governance of the postsecondary vocational-technical school if
7 otherwise eligible under laws, rules, and regulations;

8 (I) Any bona fide teacher, supervisor of teachers, or clerical employee in any school
9 operated by the Department of Education;

10 (J) Teacher aides and paraprofessional personnel and members of the staff of any
11 regional educational service agency created pursuant to Code Sections 20-2-270
12 through 20-2-274;

13 (K) Registrars of each unit of the University System of Georgia;

14 (L) The secretary and treasurer of the Board of Regents of the University System of
15 Georgia;

16 (M) Teachers, supervisors of teachers, and clerical workers who are employed and paid
17 by the Board of Regents of the University System of Georgia;

18 (N) All personnel of the Cooperative Extension Service of the University of Georgia;

19 (O) Any other person employed not less than on a half-time basis and paid by the
20 Board of Regents of the University System of Georgia, with the exception of such
21 maintenance and custodial employees employed prior to July 1, 1978, who elected to
22 forego membership, provided that the board of trustees shall determine whether any
23 particular employee is a maintenance or custodial employee;

24 (P) Librarians and clerical personnel employed by regional and county libraries;

25 (Q) The full-time executive secretary of the Georgia Vocational Association. Such
26 association shall pay the required employer contribution for membership service. The
27 executive secretary shall be entitled to receive credit for prior teaching service by
28 paying the employee and employer contributions that would have been paid, plus
29 interest at the rate of 8 percent per annum; and

30 (R) Attendance officers employed not less than half time. As used in this
31 subparagraph, 'attendance officer' means an attendance officer employed in lieu of a
32 visiting teacher under Subpart 2 of Part 1 of Article 16 of Chapter 2 of Title 20. The
33 term 'teacher' shall not be deemed to include any emergency or temporary employee.
34 The board of trustees shall determine in doubtful cases whether any person is included
35 within the definition set forth in this subparagraph.

36 (7) 'Employer' means the State of Georgia, the county or independent board of education,

1 the State Board of Education, the Board of Regents of the University System of Georgia,
 2 or any other agency of and within this state by which a teacher is paid. Notwithstanding
 3 any provisions in prior or future laws to the contrary, the county and regional library
 4 boards of trustees shall be deemed to be the employers of the county and regional
 5 librarians, whose salaries are paid in full or in part from state funds.

6 (8) 'Plan' means the Public Employees' Retirement 401(k) Plan.

7 ARTICLE 2

8 47-24-20.

9 The State Personnel Board shall manage the Public Employees' Retirement 401(k) Plan
 10 established by this chapter for the purpose of providing a source of retirement income for
 11 public employees. The plan shall not exist as a separate entity but rather is a service
 12 provided by the state for certain public employees. The board is the fiduciary and trustee
 13 of the plan.

14 47-24-21.

15 The board shall establish the provisions and procedures of the plan in conformity with this
 16 chapter and the federal Internal Revenue Code. The board may appoint an advisory board
 17 to assist in carrying out the duties imposed by this chapter. The board has the authority and
 18 responsibility to employ or contract with personnel and for services that the board
 19 determines are necessary for the proper administration of and investment of the assets of
 20 the plan, including, but not limited to, managerial, professional, legal, clerical, technical,
 21 and administrative personnel or services.

22 47-24-22.

23 The administrative expenses of the plan shall be paid by the participants, former
 24 participants, and beneficiaries who have not closed their accounts in a manner determined
 25 by the board.

26 47-24-23.

27 On and after July 1, 2002, the board shall establish an account in the deferred compensation
 28 plan offered by the state for public employees pursuant to Section 401(k) of the federal
 29 Internal Revenue Code for each eligible employee.

30 ARTICLE 3

1 47-24-40.

2 Every eligible employee shall be a participant in the plan. No eligible employee shall be
3 entitled to participate in the Teachers Retirement System of Georgia created by Chapter 2
4 of this title.

5 47-24-41.

6 (a) This Code section is subject to the vesting provisions in Code Section 47-24-60.

7 (b) A participant's employer shall contribute to the participant's account an amount equal
8 to 7.5 percent of the participant's compensation.

9 (c) A participant may periodically elect to contribute to his or her account such amount as
10 shall not exceed the amount allowed by the federal Internal Revenue Service for a qualified
11 plan. The participant's employer shall make additional contributions to the participant's
12 account in an amount equal to the contribution made by the participant, not to exceed 5
13 percent.

14 (d) A participant may make contributions in addition to contributions made under
15 subsection (c) of this Code section as permitted by the federal Internal Revenue Code. The
16 employer shall not match contributions made under this subsection.

17 47-24-42.

18 (a) Each active member of the Teachers Retirement System of Georgia on July 1, 2002,
19 shall have the opportunity to make an irrevocable election to terminate his or her
20 membership in such retirement system and become a participant in the plan. Such election
21 shall be made in writing to the board of trustees of such retirement system prior to October
22 1, 2002. A member who does not make such an election shall continue to be a member of
23 such retirement system. A member who makes and files a written election under this
24 subsection elects to do all of the following:

25 (1) Cease to be a member of the Teachers Retirement System as of 12:00 Midnight,
26 December 31, 2002;

27 (2) Become a participant in the plan effective 12:01 A.M., January 1, 2003; and

28 (3) Waive all of his or her rights to a pension, an annuity, a retirement allowance, an
29 insurance benefit, or any other benefit under the Teachers Retirement System of Georgia
30 effective 12:00 Midnight, December 31, 2002.

31 (b) Any former member of the Teachers Retirement System of Georgia who again
32 becomes a member of such retirement system on or after July 1, 2002, shall make the
33 election as provided in subsection (a) of this Code section within 90 days after the date he
34 or she again becomes a member of such retirement system, subject to the same conditions
35 as provided for persons who were active members of such retirement system on July 1,

1 2002.

2 47-24-43.

3 For a member of the Teachers Retirement System of Georgia who elects to terminate
4 membership in such retirement system as provided in Code Section 47-24-42, the
5 retirement system shall transfer to the board a lump sum amount equal to the employee
6 contributions paid by such member together with interest thereon at the rate of 5 percent
7 per annum to be credited to the member's plan account on or before February 1, 2003.

8 ARTICLE 4

9 47-24-60.

10 (a) A participant is immediately 100 percent vested in his or her contributions made to the
11 plan. A participant shall vest in the employer contributions made on his or her behalf to the
12 plan in accordance with the following schedule:

13 (1) Upon completion of three years of service, 50 percent;

14 (2) Upon completion of four years of service, 75 percent; and

15 (3) Upon completion of five years of service, 100 percent.

16 (b) A participant who was a member of the Teachers Retirement System of Georgia and
17 who elected to participate in the plan pursuant to Code Section 47-24-42 shall be credited
18 with the years of creditable service he or she had accrued at the time of transfer for
19 purposes of meeting the vesting requirement for benefits under subsection (a) of this Code
20 section.

21 47-24-61.

22 A participant or former participant may nominate one or more individuals as beneficiary
23 by filing written notice of nomination with the board. In lieu of appointing an individual,
24 the participant or former participant may appoint his or her estate to receive distribution of
25 his or her accumulated balance.

26 47-24-62.

27 (a) A participant is eligible to receive distribution of his or her accumulated balance in the
28 plan upon becoming a former qualified participant.

29 (b) Upon the death of a participant or former participant, the accumulated balance
30 belonging to that deceased participant is considered to belong to the beneficiary, if any, of
31 that deceased participant. If a valid nomination of the beneficiary is not on file with the

1 board, the board, in a lump sum distribution, shall distribute the accumulated balance to the
 2 legal representative, if any, of the deceased participant or, if there is no legal representative,
 3 to the deceased participant's estate.

4 (c) A former participant or beneficiary may elect one or a combination of the following
 5 methods of distribution:

6 (1) A lump sum distribution to the recipient;

7 (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal
 8 law;

9 (3) Periodic distributions to the recipient, as authorized by the board; or

10 (4) No current distribution, in which case the accumulated balance shall remain in the
 11 plan until the former participant or the beneficiary elects a method or methods of
 12 distribution under paragraphs (1) through (3) of this subsection, to the extent allowed by
 13 federal law.

14 ARTICLE 5

15 47-24-90.

16 The provisions of this chapter shall not become part of the employment contract and shall
 17 be subject to future legislation.

18 47-24-91.

19 The adjutant general is authorized, but not directed, to establish a merit system and to
 20 perform all of the duties and obligations of an employer for all civilians employed in or
 21 with the Army National Guard of Georgia and the Air National Guard of Georgia, even
 22 though such employees may be paid with federal funds. The adjutant general is further
 23 authorized to make and enter into such agreements and to take such actions as are
 24 necessary to provide for all contributions and payments specified in this chapter from funds
 25 made available by the federal government and otherwise to comply with this chapter so as
 26 to make this chapter applicable to such civilian employees.

27 47-24-92.

28 The board has the right to recover overpayments made under this chapter and to satisfy any
 29 claims arising from embezzlement or fraud committed by a participant, a former
 30 participant, a beneficiary, or any other person who has a claim to a distribution from the
 31 plan.

32 47-24-93.

1 If a participant commits a public employment related crime in the capacity of a public
2 employee and is convicted for the commission of such crime, he or she shall forfeit any
3 right to the employer contributions made on his or her behalf and the earnings thereon and
4 to any earnings on employee contributions, effective on the date of the final conviction.
5 Any employee contributions made by any such person shall be refunded to him or her,
6 without earnings or interest, within 60 days of the final conviction."

7 **SECTION 3.**

8 Said title is further amended by inserting immediately following Code Section 47-3-68 a new
9 Code section to read as follows:

10 "47-3-69.

11 Any other provision of this chapter to the contrary notwithstanding, no person shall first
12 become a member of this retirement system on or after July 1, 2002. Any such person
13 otherwise meeting the description of an 'employee' as such term is defined in Code Section
14 47-2-1 shall become a participant in the Public Employees' Retirement 401(k) Plan
15 established by Chapter 24 of this title. In the event no express provision is made for such
16 person in such chapter, he or she shall become a participant under the conditions provided
17 by the State Personnel Board by regulation."

18 **SECTION 4.**

19 This Act shall become effective on July 1, 2002, only if it is determined to have been
20 concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia
21 Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not
22 become effective and shall be automatically repealed in its entirety on July 1, 2002, as
23 required by subsection (a) of Code Section 47-20-50.

24 **SECTION 5.**

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