

House Bill 559

By: Representatives Cummings of the 27th and Shanahan of the 10th

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 The General Assembly finds that for several years, state agencies have experienced great
12 difficulty in attracting and retaining quality employees. Most state employees now leave
13 state service after a few years, and the resulting shortage of experienced personnel
14 jeopardizes the ability of state agencies to carry out their missions. The public sector
15 competes directly with the private sector for employees, and for a number of years, the
16 public sector has not been competitive. First-rate employees are eschewing public
17 employment for the higher salaries, better benefits, and more lucrative pension packages
18 offered by the private sector. Most large private sector employers, which are the state's
19 greatest competitor for employees, offer a pension package which is a combination of a
20 defined contribution and a defined benefit plan. Such employers attract employees by
21 offering to contribute to a portable tax deferred savings fund. They also offer a defined
22 benefit plan, similar to the Employees' Retirement System of Georgia, to encourage
23 employees to stay with the employer and to reward those who do so. The General Assembly
24 further finds that the performance of the stock market over the past few years and the astute
25 investments of the management of the Employees' Retirement System of Georgia have
26 resulted in higher than projected earnings which may warrant a reduction in the amount of

1 employer contributions into the retirement system for each employee. The General Assembly
 2 feels that any such reduction would benefit the operation of state government if it were used
 3 to match employee deposits into an employee savings account established in accordance
 4 with Section 401(k) of the federal Internal Revenue Code. Such a combination would, at no
 5 increase in the cost to the state over the current budget, make public employment more
 6 competitive in attracting quality employees and would entice experienced employees to stay
 7 with state government throughout their careers.

8 **SECTION 2.**

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

11 "CHAPTER 24

12 ARTICLE 1

13 47-24-1.

14 As used in this chapter, the term:

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

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

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

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

25 (5) 'Employee' means any active member of the Employees' Retirement System of
 26 Georgia.

27 (6) 'Employer' means the public entity which pays the employer's contribution to the
 28 Employees' Retirement System of Georgia for an employee.

29 (7) 'Plan' means the Public Employees' Savings Plan.

ARTICLE 2

1
2
3 47-24-20.

4 The State Personnel Board shall manage the Public Employees' Savings Plan established
5 by this chapter as provided in Code Section 47-24-23 for the purpose of providing a
6 source of retirement income for public employees. The plan shall not exist as a separate
7 entity but rather is a service provided by the state for certain public employees. The board
8 is the fiduciary and trustee of the plan.

9 47-24-21.

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

17 47-24-22.

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

21 47-24-23.

22 In order to implement the provisions of this chapter, not later than December 31, 2001, the
23 board shall establish an account in the deferred compensation plan offered by the state for
24 public employees pursuant to Section 401(k) of the federal Internal Revenue Code for each
25 eligible employee.

ARTICLE 3

26
27 47-24-40.

28 Every employee shall be eligible to participate in the plan and shall also be entitled to
29 participate in the Employees' Retirement System of Georgia.

30 47-24-41.

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

1 (b) Each participant's employer shall contribute to the participant's account an amount
2 equal to the amount contributed by the employee, up to an annual limit of 4 percent of the
3 participant's compensation.

4 (c) A participant may periodically elect to contribute to his or her account such additional
5 amount as shall not exceed the amount allowed by the federal Internal Revenue Service
6 for a qualified plan.

7
8 ARTICLE 4

9 47-24-60.

10 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 47-24-61.

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

21 47-24-62.

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

24 (b) Upon the death of a participant or former participant, the accumulated balance
25 belonging to that deceased participant is considered to belong to the beneficiary, if any, of
26 that deceased participant. If a valid nomination of the beneficiary is not on file with the
27 board, the board, in a lump sum distribution, shall distribute the accumulated balance to
28 the legal representative, if any, of the deceased participant or, if there is no legal
29 representative, to the deceased participant's estate.

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

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

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

- 1 (3) Periodic distributions to the recipient, as authorized by the board; or
2 (4) No current distribution, in which case the accumulated balance shall remain in the
3 plan until the former participant or the beneficiary elects a method or methods of
4 distribution under paragraphs (1) through (3) of this subsection, to the extent allowed by
5 federal law.

6 **ARTICLE 5**

7 47-24-90.

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

10 47-24-91.

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

15 47-24-92.

16 If a participant commits a public employment related crime in the capacity of a public
17 employee and is convicted for the commission of such crime, he or she shall forfeit any
18 right to the employer contributions made on his or her behalf and the earnings thereon,
19 effective on the date of the final conviction. Any employee contributions made by any such
20 person shall be refunded to him or her, with earnings thereon, within 60 days of the final
21 conviction."

22 **SECTION 3.**

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