

Senate Bill 80

By: Senators Hill of the 32nd, Thompson of the 5th, Hudgens of the 47th, Heath of the 31st,
Hill of the 4th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the
2 "Public Retirement Systems Investment Authority Law," so as to define certain terms; to
3 provide that certain public retirement systems may invest retirement system assets in certain
4 types of alternative investments, private placements, and other private investments; to
5 provide that such investments may be made up to a certain amount; to shield information
6 related to such investment from public scrutiny; to provide for a code of ethics; to amend
7 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
8 disclosure of records is not required and disclosure exempting legal authority, so as to
9 exempt certain public records from public inspection; to repeal conflicting laws; and for
10 other purposes.

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

12 **SECTION 1.**

13 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public
14 Retirement Systems Investment Authority Law," is amended by adding a new Code section
15 to read as follows:

16 "47-20-87.

17 (a) As used in this Code section, the term:

18 (1) 'Alternative investments' means the following investments:

19 (A) Privately placed investment pools, including, without limitation, private investment
20 funds, such as:

21 (i) Leveraged buyout funds;

22 (ii) Mezzanine funds;

23 (iii) Workout funds;

24 (iv) Debt funds;

25 (v) Venture capital funds;

26 (vi) Merchant banking funds; and

(vii) Funds of funds and secondary funds that include investments in privately placed investment pools described in this subparagraph, in each case whether structured as a partnership, limited liability company, trust, corporation, joint venture, or other entity or investment vehicle of any type; organized or operating in one of the states or territories of the United States or outside the United States; such pool will invest in the United States or outside the United States or any combination thereof; or such pool makes investments of the type described in subparagraph (B) of this paragraph or other investments of any type or any combination thereof;

(B) Private placements and other private investments, including without limitation:

- (i) Leveraged buyouts;
 - (ii) Venture capital investment;
 - (iii) Equity investments, including, without limitation, preferred and common stock;
 - (iv) Warrants;
 - (v) Options;
 - (vi) Private investments in public securities;
 - (vii) Recapitalizations;
 - (viii) Privatizations;
 - (ix) Mezzanine debt investments;
 - (x) Distressed debt and equity investments, including, without limitation, cases in which the investor may take control of the issuer;
 - (xi) Other debt investments, whether secured or unsecured, senior or subordinated, recourse or nonrecourse, convertible, or otherwise;
 - (xii) Convertible securities;
 - (xiii) Receivables;
 - (xiv) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the United States Code;
 - (xv) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the United States Code;
 - (xvi) Debt and equity derivative instruments of all types; and
 - (xvii) All other debt and equity private placements of all types, in each case whether issued by a partnership, limited liability company, trust, corporation, joint venture, or other entity or vehicle of any type or whether the issuer is organized or does business in one of the states or territories of the United States or outside the United States; and
- (C) Any distribution in kind received by an eligible large retirement system in connection with any investment described in subparagraphs (A) and (B) of this paragraph.

(2) 'Eligible large retirement system' shall be a large retirement system as defined in subsection (a) of Code Section 47-20-84; provided, however, that such term shall not include the Teachers Retirement System of Georgia.

(b) In addition to the eligible investments authorized by Code Section 47-20-82, and without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84, an eligible large retirement system is authorized to invest in alternative investments in accordance with the provisions of this Code section. Further, when provisions of Code Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section limit a particular form of investment to a certain percentage of retirement system assets, the denominator will include alternative investments with all other investments, but the numerator for any such calculation will not include any alternative investments, even if any such alternative investment is of a like kind as the investments that are included in the numerator.

(c) An alternative investment may not exceed in any case 20 percent of the aggregate amount of:

(1) The capital to be invested in the applicable private pool, including all parallel pools and other related investment vehicles established as part of the investment program of the applicable private pool; and

(2) The securities being issued in the applicable private placement, in each case determined at the time such alternative investment is initially either made or committed to be made, as applicable, but taking into consideration any investments that have previously been or are concurrently being made or committed to be made.

Each alternative investment by an eligible large retirement system shall have previously been or shall be concurrently made or committed to be made by at least four other investors not affiliated with the issuer. Such four other investors shall be investing on substantially the same terms and conditions as those applicable to the investment by the eligible large retirement system to the extent such other investors are similarly situated with the eligible large retirement system. Alternative investments shall only be made in private pools and issuers that have at least \$100 million in assets, including committed capital, at the time the investment is initially made or committed to be made by an eligible large retirement system.

(d) Alternative investments by an eligible large retirement system may not in the aggregate exceed 5 percent of the retirement system assets at any time. The board of trustees of an eligible large retirement system shall have the discretion to designate whether any investment that is permitted to be made as an alternative investment pursuant to this Code section and is also permitted to be made as an investment pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an

1 alternative investment made pursuant to this Code section or as an investment made
2 pursuant to Code Section 47-20-83. If the eligible large retirement system is not in
3 compliance with the limitations imposed by this subsection, it shall make a good faith
4 effort to come into compliance within two years and in any event as soon as practicable
5 thereafter; provided, however, that during any period of noncompliance the eligible large
6 retirement system shall not increase the percentage of its assets committed to be invested
7 in alternative investments but shall be permitted during such period to continue to make
8 investments as required by the then existing commitments of the eligible large retirement
9 system to alternative investments made before the period of noncompliance.

10 (e) The provisions of this subsection shall apply only to the Employees' Retirement
11 System of Georgia. New commitments to alternative investments may not in the aggregate
12 exceed 1 percent of the retirement system assets in any calendar year until the first
13 occurrence that 4 1/2 percent of the retirement system assets are invested in alternative
14 investments, at which time there shall be no limit on the percentage of commitments that
15 may be made in any calendar year, subject to compliance with the other provisions of this
16 Code section.

17 (f)(1) For purposes of this subsection, the term 'information' shall include, without
18 limitation, preinvestment and postinvestment diligence information, including reviews
19 and analyses prepared or provided by the issuer of a potential or actual alternative
20 investment or prepared by or for an eligible large retirement system or otherwise relating
21 to a potential or actual alternative investment.

22 (2) In addition to those records that are exempted from being open to inspection by the
23 general public under Code Section 47-1-14 and except as otherwise provided in this
24 subsection, an eligible large retirement system may in its discretion treat as confidential
25 and withhold from public inspection and disclosure all information prepared or provided
26 by the issuer of a potential or actual alternative investment or prepared by or for an
27 eligible large retirement system or otherwise relating to a potential or actual alternative
28 investment and held by an eligible large retirement system and may agree in making an
29 alternative investment to treat such information as confidential and withhold it from
30 public inspection and disclosure.

31 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, an
32 eligible large retirement system shall make publicly available the following information,
33 but only to the extent the following information is otherwise available or maintained by
34 said eligible large retirement system in the normal course and only after a period of one
35 year from the date such records were created:

36 (A) The name of any alternative investment in which the eligible large retirement
37 system has invested; excluding, in the case of an alternative investment in a privately

1 placed investment pool, any information concerning the investments made by such
2 privately placed investment pool;

3 (B) The date the eligible large retirement system first invested in an alternative
4 investment described in paragraph (1) of this subsection;

5 (C) The aggregate amount of money, expressed in dollars, the eligible large retirement
6 system has invested in alternative investments as of the end of any fiscal quarter;

7 (D) The aggregate amount of money and the value of any in kind or other distribution,
8 in each case, expressed in dollars, the large retirement system received from alternative
9 investments;

10 (E) The internal rate of return or the result under any other such standard used by the
11 eligible large retirement system in connection with alternative investments for the asset
12 class and for the period for which the return or standard was calculated; and

13 (F) The remaining cost of alternative investments in which the eligible large retirement
14 system has invested as of the end of any fiscal quarter.

15 (4) The provisions of this Code section shall not restrict access to information and
16 records under process of law or by officers otherwise entitled to them for official
17 purposes, but such information and records shall have the same confidential status under
18 process or with such officers as it does in the hands of an eligible large retirement system,
19 and such officers shall respect such confidentiality to the extent consistent with their
20 separate powers and duties.

21 (5) On the third Monday in January of each year, the director of each large retirement
22 system shall provide a report to the Governor and the chairpersons of the House and
23 Senate standing committees on retirement detailing the performance of the investments
24 made pursuant to this Code section including, without limitation, a clear statement of the
25 aggregate loss or profit on such investments for the preceding year. This paragraph shall
26 not be construed so as to require the disclosure of any information otherwise protected
27 by this subsection.

28 (g) Unless the information has been publicly released, preinvestment and postinvestment
29 diligence information, including reviews and analyses, prepared or maintained by the large
30 retirement system or by an alternative investment firm is confidential and exempted from
31 being open to inspection by the general public pursuant to Article 4 of Chapter 18 of Title
32 50, except to the extent it is subject to disclosure from the requirements of subsection (f)
33 of this Code section.

34 (h) The respective boards of trustees of eligible large retirement systems making
35 investments authorized by this Code section shall adopt a code of ethics for the
36 consideration of and investment in and disposition of alternative investments.

- 1 (i) Funds invested pursuant to this Code section and any return on such investment shall
2 remain funds of the retirement system."

3 **SECTION 2.**

4 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
5 disclosure of records is not required and disclosure of exempting legal authority, is amended
6 in subsection (a) by striking "or" at the end of paragraph (19), by replacing the period with
7 "; or" at the end of paragraph (20), and by adding a new paragraph to read as follows:
8 "(21) Records that are expressly exempt from public inspection pursuant to Code Sections
9 47-1-14 and 47-20-87."

10 **SECTION 3.**

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