

House Bill 249

By: Representatives Martin of the 47th, Smith of the 113th, Stephens of the 164th, Loudermilk of the 14th, Maxwell of the 17th, and others

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 expand the definition of the
3 term "large retirement system"; to define certain terms; to provide that certain public
4 retirement systems may invest retirement system assets in certain types of alternative
5 investments, private placements, and other private investments; to provide that such
6 investments may be made up to a certain amount; to shield information related to such
7 investment from public scrutiny; to provide for a code of ethics; to amend Code Section
8 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of
9 records is not required and disclosure exempting legal authority, so as to exempt certain
10 public records from public inspection; to 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 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 revising subsection (a) of
15 Code Section 47-20-84, relating to large retirement systems, as follows:

16 "(a) As used in this Code section, the term 'large retirement system' means:

- 17 (1) Any retirement system created by this title which has an accumulated unfunded
18 actuarial accrued liability not greater than ~~25~~ 50 percent of the total of its assets;
- 19 (2) The Georgia Municipal Employees Benefit System created by Chapter 5 of this title;
- 20 (3) Any association of like political subdivisions which, on, before, or after July 1, 1999,
21 contracts with its members for the pooling of assets; and
- 22 (4) Any public retirement system other than a retirement system defined in paragraphs
23 (1), (2), and (3) of this subsection which meets the following criteria:
- 24 (A) The retirement system assets are in excess of \$50 million;
- 25 (B) The retirement system provides a defined benefit plan;

26 (C) The retirement system investments are managed by one or more independent
 27 professional investment managers recognized by the National Association of Securities
 28 Dealers and the United States Securities and Exchange Commission and which adhere
 29 to the code of ethical standards and conduct of the Association for Investment
 30 Management and Research;

31 (D) The retirement system investments are limited to those equities of investment
 32 grade quality or better, provided that leverage techniques, option techniques, futures,
 33 commodities, private placements, and direct participation plans may not be used in
 34 making equity investments; and

35 (E) Has an accumulated unfunded actuarial liability not greater than ~~25~~ 50 percent of
 36 the total of its assets."

37 **SECTION 2.**

38 Said article is further amended by adding a new Code section to read as follows:

39 "47-20-87.

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

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

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

44 (i) Leveraged buyout funds;

45 (ii) Mezzanine funds;

46 (iii) Workout funds;

47 (iv) Debt funds;

48 (v) Venture capital funds;

49 (vi) Merchant banking funds; and

50 (vii) Funds of funds and secondary funds

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

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

60 (i) Leveraged buyouts;

61 (ii) Venture capital investment;

- 62 (iii) Equity investments, including, without limitation, preferred and common stock;
 63 (iv) Warrants;
 64 (v) Options;
 65 (vi) Private investments in public securities;
 66 (vii) Recapitalizations;
 67 (viii) Privatizations;
 68 (ix) Mezzanine debt investments;
 69 (x) Distressed debt and equity investments, including, without limitation, cases in
 70 which the investor may take control of the issuer;
 71 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,
 72 recourse or nonrecourse, convertible, or otherwise;
 73 (xii) Convertible securities;
 74 (xiii) Receivables;
 75 (xiv) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the
 76 United States Code;
 77 (xv) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the
 78 United States Code;
 79 (xvi) Debt and equity derivative instruments of all types; and
 80 (xvii) All other debt and equity private placements of all types, in each case whether
 81 issued by a partnership, limited liability company, trust, corporation, joint venture, or
 82 other entity or vehicle of any type or whether the issuer is organized or does business
 83 in one of the states or territories of the United States or outside the United States; and
 84 (C) Any distribution in kind received by an eligible large retirement system in
 85 connection with any investment described in subparagraphs (A) and (B) of this
 86 paragraph.
- 87 (2) 'Eligible large retirement system' means a large retirement system as defined in
 88 subsection (a) of Code Section 47-20-84; provided, however, that such term shall not
 89 include the Teachers Retirement System of Georgia.
- 90 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
 91 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
 92 an eligible large retirement system is authorized to invest in alternative investments in
 93 accordance with the provisions of this Code section. Further, when provisions of Code
 94 Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section
 95 limit a particular form of investment to a certain percentage of retirement system assets,
 96 the denominator will include alternative investments with all other investments, but the
 97 numerator for any such calculation will not include any alternative investments, even if any

98 such alternative investment is of a like kind as the investments that are included in the
99 numerator.

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

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

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

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

118 (d) Alternative investments by an eligible large retirement system may not in the aggregate
119 exceed 5 percent of the retirement system assets at any time. The board of trustees of an
120 eligible large retirement system shall have the discretion to designate whether any
121 investment that is permitted to be made as an alternative investment pursuant to this Code
122 section and is also permitted to be made as an investment pursuant to Code Section
123 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an
124 alternative investment made pursuant to this Code section or as an investment made
125 pursuant to Code Section 47-20-83. If the eligible large retirement system is not in
126 compliance with the limitations imposed by this subsection, it shall make a good faith
127 effort to come into compliance within two years and in any event as soon as practicable
128 thereafter; provided, however, that during any period of noncompliance the eligible large
129 retirement system shall not increase the percentage of its assets committed to be invested
130 in alternative investments but shall be permitted during such period to continue to make
131 investments as required by the then existing commitments of the eligible large retirement
132 system to alternative investments made before the period of noncompliance.

133 (e) The provisions of this subsection shall apply only to the Employees' Retirement System
134 of Georgia. New commitments to alternative investments may not in the aggregate exceed

135 1 percent of the retirement system assets in any calendar year until the first occurrence that
136 4 1/2 percent of the retirement system assets are invested in alternative investments, at
137 which time there shall be no limit on the percentage of commitments that may be made in
138 any calendar year, subject to compliance with the other provisions of this Code section.

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

144 (2) In addition to those records that are exempted from being open to inspection by the
145 general public under Code Section 47-1-14 and except as otherwise provided in this
146 subsection, an eligible large retirement system may in its discretion treat as confidential
147 and withhold from public inspection and disclosure all information prepared or provided
148 by the issuer of a potential or actual alternative investment or prepared by or for an
149 eligible large retirement system or otherwise relating to a potential or actual alternative
150 investment and held by an eligible large retirement system and may agree in making an
151 alternative investment to treat such information as confidential and withhold it from
152 public inspection and disclosure.

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

158 (A) The name of any alternative investment in which the eligible large retirement
159 system has invested; excluding, in the case of an alternative investment in a privately
160 placed investment pool, any information concerning the investments made by such
161 privately placed investment pool;

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

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

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

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

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

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

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

187 (g) Unless the information has been publicly released, preinvestment and postinvestment
 188 diligence information, including reviews and analyses, prepared or maintained by the large
 189 retirement system or by an alternative investment firm is confidential and exempted from
 190 being open to inspection by the general public pursuant to Article 4 of Chapter 18 of Title
 191 50, except to the extent it is subject to disclosure from the requirements of subsection (f)
 192 of this Code section.

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

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

198 **SECTION 3.**

199 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
 200 disclosure of records is not required and disclosure of exempting legal authority, is amended
 201 in subsection (a) by striking "or" at the end of paragraph (21), by replacing the period with
 202 "; or" at the end of paragraph (22), and by adding a new paragraph to read as follows:

203 "(23) Records that are expressly exempt from public inspection pursuant to Code Sections
 204 47-1-14 and 47-20-87."

205 **SECTION 4.**

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