

The House Committee on Intragovernmental Coordination - Local Legislation offers the following substitute to HB 459:

A BILL TO BE ENTITLED  
AN ACT

1 To amend an Act providing in Fulton County a system for pension and retirement pay to  
2 teachers and employees of the Board of Education of Fulton County, approved February 2,  
3 1945 (Ga. L. 1945, p. 528), as amended, so as to revise extensively such Act and amendatory  
4 Acts; to provide for definitions; to provide for employee participation; to provide for  
5 employer contributions; to provide for normal retirement benefits; to provide for early  
6 retirement benefits; to provide for disability benefits; to provide for deferred vested benefit;  
7 to provide for a death benefit; to provide for payment of accrued benefit; to provide for  
8 miscellaneous provisions; to provide for administration; to provide for contributions; to  
9 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 An Act providing in Fulton County a system for pension and retirement pay to teachers and  
14 employees of the Board of Education of Fulton County, approved February 2, 1945 (Ga. L.  
15 1945, p. 528), as amended, is amended by striking all provisions of such Act and all  
16 amendatory Acts and inserting in lieu thereof the following:

17 "ARTICLE I  
18 DEFINITIONS  
19 **SECTION 1.01.**  
20 Definitions.

21 As used in this Act, the term:

22 (1) 'Accrued benefit' means a participant's normal retirement benefit under Section 4.02  
23 of this Act based on his or her average annual compensation and years of creditable  
24 service as of any date of reference.

H. B. 459 (SUB)

(2) 'Actuary' means an enrolled actuary, or firm of actuaries, selected by the employer to provide actuarial services to the plan.

(3) 'Average compensation' means, as applicable:

(A) 'Three-year high average compensation' means the three periods of 12 consecutive months during which the participant received his or her highest compensation; and

(B) 'Five-year high average compensation' means the average of the participant's monthly compensation for the five consecutive periods of 12 consecutive months during which the participant had the highest monthly salary or wage.

(4) 'Beneficiary' means a participant's surviving spouse or, if a participant has no surviving spouse as of the date of his or her death, the participant's surviving minor children.

(5) 'Benefit commencement date' means, when referring to a participant or beneficiary, the first day of the first period for which payment of the benefit under the plan is scheduled to commence, either as a result of a written election or by operation of the plan, whichever is applicable.

(6) 'Board' means the Fulton County Board of Education.

(7) 'Board of commissioners' means the Board of Commissioners of Fulton County.

(8) 'Code' means the federal Internal Revenue Code of 1986, as amended.

(9) 'Compensation' means the total amount of all payments, direct or indirect, made by the employer to an employee for services rendered to the employer for a calendar year which ends within a plan year, as defined in Section 3401(a) of the Code for purposes of tax withholding at the source as reported to the employee on form W-2 for such year. Compensation shall include employee contributions and before-tax or salary deferral contributions made under Sections 125, 402(g)(3), 401(k), 457, or 414(h) of the Code to the plan or any other plan of the employer on behalf of a participant for such plan year; provided, however, that for purposes of calculating limits on benefits under Section 415 of the Code, employee contributions made with respect to service on and after July 1, 1990, shall not be included in compensation. Notwithstanding the foregoing, in no event shall the annual compensation taken into account under the plan for plan years or other applicable periods exceed \$200,000.00, as adjusted by the Internal Revenue Service under Section 401(a)(17) of the Code for cost of living increases and prorated on the basis of months for any period less than 12 months. If a participant receives differential pay from the employer for qualified military service while on a military leave of absence under USERRA, such differential pay shall be treated as compensation for plan years starting after December 31, 2008, in accordance with Section 414(u) of the Code and the regulations thereunder.

(10) 'Cost of living adjustment' means the adjustment in the amount of a participant's benefit made in accordance with Section 9.05 of this Act.

(11) 'Deferred vested benefit' means, when referring to a participant, the benefit described in Article VII of this Act.

(12) 'Disability or disabled' means a condition of a participant arising from illness or injury which is expected to be permanent and which prevents him or her from performing a substantial portion of his or her occupation or such other line of work as he or she might reasonably be expected to follow, considering his or her education, experience, age, and natural abilities, as determined in the sole discretion of the pension board in accordance with Article VI of this Act.

(13) 'Early retirement age' means the age of a participant as described in Section 5.01 of this Act.

(14) 'Effective date' means July 1, 2009; provided, however, that provisions of this Act which reference Section 401(a)(9) of the Code shall be applicable to plan provisions on and after July 1, 1976; provisions which reference Section 401(a)(31) of the Code shall be applicable to plan provisions on and after January 1, 1993; provisions which reference Section 414(u) of the Code shall be applicable to plan provisions on and after December 12, 1994; and provisions which reference Section 415 of the Code shall be applicable to plan provisions on and after July 1, 1976.

(15) 'Eligible employee' means any full-time employee who is not eligible for the TRS. Such term shall include a teacher who was employed by the employer before July 1, 1988, and a nonteacher management or supervisory employee who is eligible for the TRS but is otherwise an eligible employee. Notwithstanding the foregoing, the following individuals shall not be eligible to participate in the plan:

(A) A teacher who was employed by the employer before July 1, 1988, separates from service after July 1, 1988, and subsequently returns to employment with the employer. Such teacher shall be eligible for any benefits accrued under the plan prior to his or her separation from service but shall not accrue any additional benefits under the plan;

(B) Any individual who is an employee solely by means of being a 'leased employee' under Section 414(n)(2) of the Code;

(C) Temporary, casual, and part-time employees; and

(D) Employees hired on a contract basis.

(16) 'Employee' means any person employed by the employer as a common law employee and shall include the superintendent of the Fulton County school system if such superintendent is an employee when promoted to superintendent.

(17) 'Employee contribution' means the amounts paid to the plan by an employee, as set forth in Sections 2.01 and 2.06 of this Act.

(18) 'Employer' means the Fulton County Board of Education.

(19) 'Full-time employee' means an employee who regularly performs services for the employer for at least 50 percent of the number of hours per week established by the employer as full time for that employee's employment classification.

(20) 'Grandfathered participant' means a participant whose last day of employment with the employer occurred prior to the effective date of this Act.

(21) 'Joint and 70 percent or 75 percent survivor annuity' means an annuity payable for the life of the participant, with 70 or 75 percent, as applicable, of the participant's benefit payable to his or her surviving spouse, if any, and at the death of surviving spouse or, if none, with such payments of the 70 or 75 percent benefit continuing to the participant's then surviving minor children, if any, until the earlier of the date such minor child dies, is married, or reaches the age of 21. If more than one minor child shall become eligible for benefits, benefits shall be paid on a per capita basis. If a minor child becomes ineligible to receive such benefit by reason of death, marriage, or reaching age 21, the portion of the 70 or 75 percent benefit payable to such minor child shall be distributed per capita among any remaining minor children of the participant. The 70 or 75 percent benefit shall be based on the benefit amount payable to the participant as of the date of death, including any cost-of-living adjustments.

(22) 'Limitation year' means the calendar year, which shall be the 'limitation' year for purposes of Section 415 of the Code and the regulations promulgated thereunder.

(23) 'Minor child' means the unmarried child of a participant who has not attained age 21.

(24) 'Normal retirement age' means age 65 with at least ten years' creditable service.

(25) 'Normal retirement benefit' means, when referring to a participant, the benefit described in Article IV of this Act.

(26) 'Participant' means an eligible employee who becomes a participant in the plan in accordance with the provisions of Section 2.01 of this Act.

(27) 'Pension board' means the committee of individuals chosen pursuant to Section 12.01 of this Act to administer the plan.

(28) 'Plan' means the Fulton County School Employees Pension Fund as contained in this Act, all amendments hereto, and the applicable provisions of Title 47 of the O.C.G.A. which are incorporated herein by this reference.

(29) 'Plan year' means the 12 month period beginning on July 1 of each year and ending on the following June 30.

(30) 'Prior plan' means the Fulton County Employees Pension Fund as set forth in the Act entitled 'An Act to provide in Fulton County a system for pension and retirement pay to teachers and employees of the Board of Education of Fulton County' as originally

approved February 2, 1945, (Ga. L. 1245, p. 528) and all amendments thereto prior to the effective date.

(31) 'Qualified military leave of service' means any service in the uniformed services by an individual who is entitled to reemployment rights under USERRA.

(32) 'Safety net participant' means a participant who was employed by the employer before July 1, 1988, as a teacher or a participant who becomes eligible for and participates in the TRS by virtue of his or her status as a nonteacher management or supervisory employee.

(33) 'Surviving spouse' means the person who is treated as married to a participant under the laws of the state in which the participant resides as of the date of death and is married to the participant as of the date immediately preceding the participant's date of retirement and date of death.

(34) 'Survivor benefits' means the benefits payable to a participant's surviving spouse or minor children, or both, in accordance with subsection (a) of Section 4.02 or Article VIII of this Act.

(35) 'Teacher' means any full-time employee employed by the board in a position which is included in the definition of 'teacher' under the provisions of the TRS.

(36) 'TRS' means the Georgia Teachers Retirement System, as set forth in Title 47, Chapter 3 of the O.C.G.A.

(37) 'Trust fund' means the total amount of cash and other property held or acquired by the trustee under the trust.

(38) 'Trustee' means the pension board.

(39) 'USERRA' means the federal Uniform Services Employment and Reemployment Rights Act of 1994, as amended.

(40) 'Year of creditable service' means (A) each period during which the participant is a plan participant and works as a full-time employee for at least 50 percent of the officially scheduled working days in each of nine months in the 12 month period from July 1 through June 30; and (B) each year of service credited under the terms of subsection (c) of Section 2.02 and Section 2.03 of this Act. If a participant works less than said nine months during any such period, he or she shall be credited with a fraction of a year computed by dividing the actual months of service by nine months. In no event shall a participant be credited with more than one year of creditable service for any 12 month period.

## ARTICLE II

EMPLOYEE PARTICIPATION;  
CREDITABLE SERVICE**SECTION 2.01.**

## Eligibility.

An eligible employee shall become a participant in this Act effective on the first date of employment as an eligible employee. All participants who are employed by the board as of the effective date shall continue in accordance with the terms of this Act. The rights and benefits of grandfathered participants shall be governed by the terms of the prior plan except to the extent specifically set forth in this Act.

**SECTION 2.02.**

## Years of creditable service.

(a) Except as provided in subsection (d) of Section 4.02 of this Act, in calculating a participant's years of creditable service, all complete months of service with the employer shall be aggregated.

(b) A participant shall not receive service credit for periods during which (1) he or she is not employed by the employer unless he or she meets the requirements of Section 2.03 of this Act; (2) he or she is not an eligible employee; or (3) except as set forth in subsection (c) of this section, he or she is on leave of absence from the employer.

(c)(1) A participant may receive credit for periods of an authorized leave of absence with the employer, subject to the terms and conditions of this subsection. Any such credit that is granted pursuant to the terms of this subsection shall be treated as credit while in active service.

(2) A participant may continue to receive service credit by continuing to make employee contributions during the period of leave. Alternatively, the participant may purchase service credit for the period of the leave by making a payment in the amount of the employee contributions he or she would have made during the period of the leave, plus interest at the rate of 3 percent per annum, compounded annually from the date of the leave until the date paid. Such calculation shall include any employee contributions that would be required to opt in to an alternate plan, as described in subsection (c) of Section 4.02 of this Act. An election to make such payment may be made at any time during participant's employment with the employer. Except as noted in paragraph (3) of this subsection for certain periods of military or Red Cross leave, the cost of such service may be paid in a lump sum or, at the discretion of the pension board, in installments for up to

60 months or such other period permitted by the pension board. The obligation to make such payments shall be secured in such manner as prescribed by the pension board. Interest on such installment payments shall be amortized at the rate of 3 percent per annum; however, interest shall not be charged for repayment of employee contributions accruing during a period of qualified military leave of absence on and after December 12, 1994, if such repayment is made within the time limit imposed under Section 414(u) of the Code, as amended.

(3) For periods on and after December 12, 1994, all prior service credit for a qualified military leave of absence shall be granted in accordance with Section 414(u) of the Code, as amended. For approved military leaves of absence prior to that date, and for all approved Red Cross leaves of absence, all repayment of employee contributions shall be made within 36 months of reassignment by the board. Except to the extent required by USERRA, no credit shall be allowed to a participant who voluntarily reenlists in the military service after the end of said leave for the period of reenlistment unless he or she is granted an additional military leave by the board.

(4) A participant who is granted a leave by the board for reasons of illness or study may purchase service credit for such leave by repaying employee contributions in accordance with paragraph (1) of this subsection; provided, however, that no participant shall be entitled to such credit for a time exceeding two years of creditable service; and provided, further, that limit of two years of creditable service shall not be included in determining the limit on service credit that can be purchased for prior service with other employers under the terms of Section 2.03 of this Act.

### **SECTION 2.03.**

#### **Prior service.**

(a) A participant shall receive credit toward his or her years of creditable service for certain periods during which he or she is not an eligible employee, provided he or she meets the requirements of this section.

(b)(1) A participant shall purchase all prior service credit in the amount and on the terms set out in this section and shall provide any proof or documentation of prior service as is required by the pension board.

(2) A participant may not purchase or receive credit for more than a total of ten years of prior service. This provision shall not apply to a purchase of service credit under Section 2.06 of this Act.

(3) A participant who was first employed by the board after March 14, 1978, shall not receive credit for any prior service that is used to calculate a pension benefit under any other pension plan.

(4) Prior service shall be credited only for periods of full-time employment.

(5) A participant may request prior service credit at any time during his or her employment with the employer. The cost of such service may be paid in a lump sum or, at the discretion of the pension board, in installments for up to 60 months or such other period permitted by the pension board. The obligation to make such payments shall be secured in such manner as prescribed by the board. All such payments shall be paid in full prior to retirement.

(6) The cost of service shall be calculated by determining the amount an eligible employee would have paid had he or she been a participant in the plan during the period of such prior service, provided that the cost shall be calculated on the basis of the period of service that results in the lowest total cost to the participant. The cost of service may include the amount of matching contributions as set out in subsection (c) of this section. The calculation shall be based on the compensation assumptions and interest rates set out in subsection (c) of this section. The calculation shall also include any contributions that would be required to opt in to an alternate plan, as described in subsection (e) of Section 4.02 of this Act.

(7) Notwithstanding anything to the contrary contained in this section, all prior service credit for a qualified military leave of absence shall be granted in accordance with Section 414(u) of the Code.

(c)(1) Credit may be given for all experience as a teacher or principal in schools in this state receiving public funds in whole or in part. The cost of such credit shall be based on the participant's compensation as of the date of his or her employment with the board and calculated at an annual interest rate of 3 percent from the date of employment with the board, compounded annually. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 3 percent. No matching contribution is required. If such service was rendered during a period prior to March 5, 1957, such contribution shall be based upon the requirements of the prior plan prior to that date.

(2) As used in this paragraph, the term 'prior service' means service rendered in a state public school system, college or university, or American dependents' school outside the State of Georgia prior to employment by the board. A participant may receive credit for prior service, up to a maximum of five years, after having been employed as a teacher by the employer for a period of five years. For each additional year beyond five years, credit may be given for one year's prior service for each year such teacher shall continue in the service of the employer, with a maximum of ten years' prior service credit to be allowed.



The cost of such credit shall be based on the salary scale developed by the pension board, shall include an equivalent amount for the matching funds that would have been paid by the board or the board of commissioners, and shall be calculated at a simple annual rate of interest of 6 percent from the later of October 9, 1963, or the date of employment with the board. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 6 percent.

(3) The provisions for receiving credit for prior service as provided in this section for teachers shall likewise apply upon the same terms and conditions to all other eligible employees, except no prior service credit shall be given to nonteaching employees for service rendered to an employer other than some branch of the governing authority of Fulton County, or the governing authorities of the Counties of Campbell and Milton, which have previously been merged with Fulton County, or any independent school district that has been or may be merged with the Fulton County system. The cost of such credit shall be based on the participant's compensation as of the date of his or her employment with the board and calculated at an annual interest rate of 3 percent from the date of employment with the board, compounded annually. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 3 percent. No matching contribution is required.

(4) Subject to Section 414(u) of the Code, a participant who has served on active, full-time duty in the armed forces of the United States during any period of active conflict or national emergency may receive credit towards retirement for such service upon the terms and conditions set forth in this section. The maximum amount of military service credit which may be allowed shall not exceed four years for any and all forms of military service and, when combined with other forms of prior service credit available under this section, shall not exceed ten years. The cost of such credit shall be based on the salary scale developed by the pension board, shall include an equivalent amount for the matching funds that would have been paid by the board or the board of commissioners, and shall be calculated at a simple annual rate of interest of 6 percent from the later of October 3, 1972, or the date of employment with the board. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 6 percent.

(5) A participant who has served as a certificated teacher in a private school accredited at the time of service by a state or regional accrediting agency may receive credit towards retirement for such teaching service upon the terms and conditions set forth in this section. The cost of such credit shall be based on the salary scale developed by the pension board, shall include an equivalent amount for the matching funds that would have been paid by the board or the board of commissioners, and shall be calculated at a simple annual rate of interest of 6 percent from the later of October 3, 1972, or the date of

309 employment with the board. If the participant pays such cost in installment payments,  
310 payments shall be amortized at an annual rate of 6 percent.

311 **SECTION 2.04.**

312 Participation upon reemployment.

313 A reemployed participant who is an eligible employee as of his or her reemployment date  
314 shall reenter the plan as a participant on the date of reemployment. For this purpose, 'date  
315 of reemployment' means the first day for which the reemployed participant is entitled to  
316 compensation for the performance of services with the employer.

317 **SECTION 2.05.**

318 Change in eligible employee status.

319 If a participant does not terminate employment but ceases to be an eligible employee, then  
320 during the period that such participant is not an eligible employee the participant shall not  
321 make employee contributions to the plan nor accrue a benefit under the plan attributable to  
322 that period.

323 **SECTION 2.06.**

324 Service upon reemployment.

325 Except as otherwise provided in this section, a participant who is reemployed by the  
326 employer and again participates in the plan upon reemployment shall have all prior years of  
327 creditable service restored. If the participant was previously paid a lump sum refund of his  
328 or her employee contributions, the participant shall not be credited his or her prior years of  
329 creditable service unless the participant repays the amount of the lump sum upon his or her  
330 return to employment in the manner described in Section 2.03 of this Act. If the participant  
331 elects to repay such amount in installment payments, payments shall be amortized at an  
332 annual rate of 3 percent.

333 **SECTION 2.07.**

334 Mandatory participation; employee contributions.

335 (a) Participation in the plan shall be mandatory for all eligible employees, except that an  
336 eligible employee who is employed or reemployed by the employer on or after attaining age  
337 61 may make a one-time irrevocable election with the pension board whether to make

employee contributions and participate in the plan. Each participant shall contribute to the plan an employee contribution of 5.6 percent of his or her compensation; in addition, a participant may make an additional employee contribution of 1 percent of his or her compensation, for a total employee contribution of 6.6 percent, if such participant wishes to provide survivor benefits for his or her beneficiary; provided, however, that the amount of employee contributions required by this Act for a safety net participant shall be reduced by the amount of his or her employee contributions that are required for his or her participation in the TRS.

(b) If a participant does not make the additional employee contributions for survivor benefits when he or she begins participation in the plan, he or she may elect to provide survivor benefits at a later time, subject to the following: A participant may request to purchase survivor benefits for prior periods of participation in the plan at any time during his or her employment with the employer. The cost of such service may be paid in a lump sum or, at the discretion of the pension board, in installments for up to 60 months or such other period permitted by the pension board. The obligation to make such payments shall be secured in such manner as prescribed by the pension board. The cost of such benefits shall be calculated by determining the amount the participant would have paid for survivor benefit coverage during all his or her years of creditable service, including those periods of service credited under Section 2.03 of this Act. The calculation shall be based on participant's actual compensation during each such year of creditable service or, for periods of prior service calculated under Section 2.03 of this Act, under the compensation assumptions applicable to such service, with an annual simple interest rate of 3 percent. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 3 percent. The calculation shall also include any contributions that would be required for survivor benefits under an applicable alternate plan, as described in subsection (e) of Section 4.02 of this Act.

(c) A participant, after electing and paying for survivor benefits, may at his or her option cease to make further contributions for such survivor benefits, in which event contributions made for survivor benefits shall not be refunded except in accordance with the provisions of Sections 4.04 and 8.02 and subsection (b) of Section 9.03 of this Act.

(d) Employee contributions shall be withheld from each of a participant's paychecks in an amount not exceeding the amount of the employee contributions paid by the board on behalf of the participant as provided in subsection (a) of this section. Such reduction in the compensation may be made notwithstanding the fact that the compensation provided by or pursuant to law for the participant may be reduced. Except as provided in subsection (a) of this section for employees hired after age 61, a participant shall not have the right to receive the amount of his or her employee contributions in cash in lieu of having them contributed to the plan by the board.

375 (e) Employee contributions made on or after July 1, 1990, shall be treated as employer  
376 contributions for purposes of determining the tax treatment of such contributions under the  
377 Code; provided, however, that the board shall continue to withhold federal income taxes on  
378 the basis of such contributions until the Internal Revenue Service or the federal courts rule  
379 that, pursuant to Section 414(h) of the Code, these contributions shall not be included as  
380 gross income of the employee until such time as they are distributed or made available.

381 (f) Employee contributions made by the board on behalf of participants as provided in  
382 subsection (a) of this section shall continue to be taxable income for the purposes of Chapter  
383 7 of Title 48 of the O.C.G.A., relating to Georgia income taxes, notwithstanding the fact that  
384 under subsection (e) of this section such contributions may be treated as employer  
385 contributions in determining federal tax treatment under the Code.

### 386 ARTICLE III

### 387 EMPLOYER CONTRIBUTIONS

#### 388 SECTION 3.01.

389 Amount.

390 In general, the employer or the board of commissioners, if applicable, shall match employee  
391 contributions to fund the plan. In addition, the employer and the board of commissioners,  
392 if applicable, shall make such contributions as are necessary to fund the plan in accordance  
393 with the minimum funding standards under Georgia law as provided in O.C.G.A. Section  
394 47-20-10. Each contribution shall be contingent upon the maintenance of qualified status by  
395 the plan for the year in which such contribution is made.

#### 396 SECTION 3.02.

397 Irrevocability of employer contributions.

398 Except as provided under Section 14.06 of this Act, the contributions made by the employer  
399 to the trust are irrevocable and no part of any income or corpus of the trust fund shall revert  
400 to the employer or be used for or diverted to purposes other than the exclusive benefit of  
401 participants and beneficiaries.

## ARTICLE IV

## NORMAL RETIREMENT BENEFIT.

**SECTION 4.01.**

Normal retirement benefit.

The normal retirement benefit shall be paid on a monthly basis in accordance with the terms of Article IX of this Act to a participant whose employment with the employer terminates on or after attaining normal retirement age.

**SECTION 4.02.**

Amount of benefits.

(a)(1) Subject to the annual benefit limitations of Article XI of this Act, and except as provided in this section, a participant's normal retirement benefit shall be equal to 2 percent of the participant's three-year high average compensation multiplied by the number of years of creditable service, not to exceed 37 1/2 years of creditable service. In no event shall such benefit exceed 75 percent of the participant's three-year high average compensation.

(2) The normal retirement benefit of a participant who has elected to participate under the Alternate Plan of 1962 shall be equal to 1.76 percent of the participant's three-year high average compensation multiplied by the number of years of creditable service; provided, however, that in no event shall such participant's benefit exceed 75 percent of the participant's three-year high average compensation.

(3) The normal retirement benefit of a participant under the Alternate Plan of 1959 shall be equal to 50 percent of the greater of the participant's five-year high average compensation or three-year final average compensation; provided, however, that in no event shall such monthly benefit exceed \$150.00, plus:

(A) Five dollars per month for each full year of a participant's years of creditable service in excess of 25 years; and

(B) An additional \$5.00 per month for each full year of a participant's years of creditable service in excess of 30 years.

(b) The normal retirement benefit of a safety net participant shall be equal to such participant's benefit calculated under subsection (a) of this section, reduced by the maximum monthly benefit payable to such participant under the TRS. If a safety net participant begins receiving benefits from the plan before receiving benefits from the TRS, such participant shall receive a normal retirement benefit from the plan equal to the benefit calculated under

subsection (a) of this section, but such benefit shall be automatically reduced in accordance with this subsection when benefits from the TRS begin.

(c) An eligible participant may elect to retire under the terms of subsection (a) of this section, subject to the following:

(1) *Alternate Plan of 1962.* A participant who would otherwise retire under the Alternate Plan of 1962 shall make additional employee contributions equal to the contributions such participant would have paid since July 1, 1978, together with interest on such amount at the rate of 6 percent, compounded annually from the year such amounts would have been first due. The amount of such payment shall be calculated by multiplying the participant's compensation from the later of July 1, 1967, or the date of employment with the employer by a factor of 0.006 percent. Payments may be made in installment payments in accordance with the rules set out in Section 2.03 of this Act, amortized at an annual rate of 6 percent; or

(2) *Alternate Plan of 1959.* A participant who would otherwise retire under the Alternate Plan of 1959 shall make additional employee contributions equal to the contributions such participant would have been required to pay under the Alternate Plan of 1962, calculated as 5 percent multiplied by the total compensation from the date his or her monthly compensation exceeded \$300.00, minus the amount of employee contributions made by the participant from the date of employment with the employer until the date of election, together with simple interest on such amount at the rate of 4 percent from April 1, 1962, and the date of election. The employee shall pay this amount, plus the amount calculated under paragraph (1) of this subsection. Payments of the amount due under this paragraph may be made in installment payments in accordance with the rules set out in Section 2.03 of this Act, amortized at an annual rate of 6 percent.

#### **SECTION 4.03.**

##### **Minimum retirement benefit.**

Notwithstanding anything to the contrary contained in Section 4.02 of this Act, a participant who becomes entitled to a normal retirement benefit or a deferred vested benefit shall receive a monthly benefit of not less than \$17.00 multiplied by such participant's years of creditable service, not to exceed 40 years; provided, however, this section shall not apply to any participant who receives a benefit under the TRS unless the total of his or her TRS benefit and safety net benefit is less than the minimum benefit described in this section.

**SECTION 4.04.**

Late retirement.

Subject to Section 9.04 of this Act, a participant shall receive credit for his or her years of creditable service completed after attainment of normal retirement age until actual retirement, subject to the limit on years of creditable service set out in Section 4.02 of this Act.

**SECTION 4.05.**

Commencement of benefit.

The normal retirement benefit shall be payable monthly, commencing on the later of the date of the participant's attainment of normal retirement age or termination of employment.

**ARTICLE V****EARLY RETIREMENT BENEFITS****SECTION 5.01.**

Early retirement benefit.

(a) An early retirement benefit shall be paid on a monthly basis in accordance with the terms of Article IX of this Act to a participant whose employment with the employer terminates on or after attaining his or her early retirement age.

(b) Except as set forth in subsections (c), (d), and (e) of this section, a participant's early retirement age shall be the earliest of the date such participant attains, while employed by the employer: (1) age 60 and 25 years of creditable service; or (2) age 55 and 25 years of creditable service.

(c) For a participant who retires under the Alternate Plan of 1959, the early retirement age shall be the date such participant attains age 55 and 25 years of creditable service while employed by the employer.

(d) For a participant with at least 25 years of creditable service who is discharged, compelled to resign for any reason, or not granted reappointment, the early retirement age shall be the date of severance from service.

(e) For a participant who is not a teacher, early retirement age in addition to those set forth in subsection (b) of this section shall be the date he or she attains 30 years of creditable service.

**SECTION 5.02.**

## Amount of benefits.

Upon attaining early retirement age, a participant shall be entitled to receive the normal retirement benefit calculated and payable as provided in Section 4.02 of this Act. The early retirement benefit of a safety net participant shall be reduced as set forth in subsection (b) of Section 4.02 of this Act. An early retirement benefit shall be unreduced for early commencement except for a participant who retires prior to age 60 or with less than 30 years of creditable service, for whom such normal retirement benefit amount shall be reduced by 1/12 of 2 percent per month for each month by which his or her age is less than 60 or his or her years of creditable service are less than 30, whichever is less; provided, however, that this reduction shall not apply to:

- (1) A participant who retires under the Alternate Plan of 1959;
- (2) A participant who retires under the terms of subsection (d) of Section 5.01 of this Act; or
- (3) A nonteacher participant who retires under the terms of subsection (e) of Section 5.01 of this Act.

**ARTICLE VI****DISABILITY****SECTION 6.01.**

## Disability benefit.

A participant who becomes disabled while employed by the employer after attaining at least ten years of creditable service, as calculated under Sections 2.02 and 2.03 of this Act, and prior to attaining normal retirement age, shall be eligible for a disability benefit, calculated as of the date of disability in the same manner as set out in Article IV of this Act, without adjustment for early commencement. A participant who:

- (1) Becomes disabled after separation from the service of the employer;
  - (2) Is eligible for an early retirement benefit or a deferred vested benefit; and
  - (3) Who has not commenced receipt of his or her benefit as of the date of disability
- shall be eligible for a disability benefit calculated as of the date of his or her separation from service in accordance with Article V or Article VII of this Act, as applicable, without adjustment for early commencement.



**SECTION 6.02.**

Disability benefit for disability incurred in line of duty.

(a) Notwithstanding the terms of Section 6.01 of this Act, a participant who, prior to satisfying the requirements for an early or normal retirement benefit, becomes disabled in the line of duty while employed by the employer is eligible to receive a disability benefit in the amount set out in subsection (c) of this section.

(b) A disabled participant shall be considered disabled in the line of duty if such disability occurs as the direct and proximate cause of:

(1) An accident suffered in the line of duty resulting immediately in the disability of such member;

(2) An occupational disease due to specific poisons, mechanical or chemical irritants, and the like which are recognized as a peculiar hazard of the particular employment in the service of the board in which such member was engaged and of a character which other persons not engaged in such employment do not contract; or

(3) A disease or illness resulting immediately and exclusively from emergency exposure in the line of duty as an employee of the board without the intervention of natural causes.

(c) The amount of a participant's disability benefit under this section shall be calculated in the same manner set out in Section 4.02 of this Act on the basis of:

(1) The participant's average compensation at the time of disability;

(2) The greater of the participant's actual age at the date of his or her disability or age 55; and

(3) The greater of the participant's years of creditable service at the date of disability or 25 years of creditable service.

Such benefit shall be reduced by 1/12 of 2 percent for each month by which the participant's age is less than 60 or the participant's years of creditable service are less than 30, whichever is less. If a participant has fewer than three years of creditable service, his or her average compensation, for purposes of calculating the disability benefit, shall be determined by dividing the total monthly compensation by the total number of months he or she was employed by the employer.

**SECTION 6.03.**

Safety net benefit.

The disability benefit of a safety net participant shall be reduced in the manner set forth in subsection (b) of Section 4.02 of this Act.

**SECTION 6.04.**

## Payment of disability benefit.

The trustee shall commence payment to the participant of the disability benefit in the form of a single life annuity payable monthly for the life of the participant; provided, however, that subject to satisfaction of the requirements for survivor benefits and any employee contribution as provided in Section 2.07 of this Act, the disability benefit shall be paid as a joint and 70 percent survivor annuity; provided, further, that a disability benefit payable to a participant pursuant to Section 6.01 of this Act, the Alternate Plan of 1959, shall be payable in the form of a joint and 75 percent survivor annuity.

**SECTION 6.05.**

## Determination of disability by pension board.

Notwithstanding anything to the contrary contained in this Act, a participant shall not be considered disabled until he or she is determined to be disabled by the pension board. The disability benefit shall be granted under such rules, terms, and regulations as may be fixed by the pension board. In determining whether or not a participant shall be granted a disability benefit due to accident or illness, the pension board shall consider, among other things, whether or not the participant has served the required number of years, whether or not the participant has complied with the laws, rules, and regulations governing pensions, and whether or not the participant is actually totally and permanently disabled. The pension board shall require that the applicant be examined by competent physicians and surgeons. In deciding upon the question of permanent and total disability, the pension board may receive and consider the reports and recommendations of such examining medical officers, and the applicant shall have the right to submit medical and other competent evidence on the question of his or her or her disability and right to be retired. The pension board's final determination that an applicant is not totally and permanently disabled shall be binding on all parties. If the pension board determines that the applicant is totally and permanently disabled, he or she shall be retired; provided, however, that the pension board shall have the right at least once a year to require the participant to submit to a medical examination for the purpose of determining whether or not the participant has sufficiently recovered from his or her or her disability and is able to return to his or her or her former position of employment. If the pension board, after such examination, determines that the participant is not actually totally and permanently disabled but is able to return to the position of employment he or she occupied at the time of retirement or a comparable position with the employer, and if such employment and status as to position, pay, and service credit at the time of retirement is

594 offered to such member and he or she either accepts or fails or refuses to accept such offer,  
595 then the payment of such disability benefit shall cease.

596 **ARTICLE VII**  
597 **DEFERRED VESTED BENEFIT**  
598 **SECTION 7.01.**  
599 **Deferred vested benefit.**

600 A participant who terminates employment with at least ten years of creditable service but  
601 prior to attaining eligibility for a disability retirement benefit, an early retirement benefit, or  
602 a normal retirement benefit shall be fully vested in his or her accrued benefit and shall  
603 receive a deferred vested benefit. A terminated participant's deferred vested benefit shall  
604 become payable in accordance with Article IX of this Act upon the participant's attaining  
605 normal retirement age; provided, however, that a participant with 25 years of creditable  
606 service may elect to receive the benefit on or after attaining age 55, subject to reduction of  
607 1/12 of 2 percent for each month that the benefit commencement date precedes the  
608 participant's 60th birthday.

609 **SECTION 7.02.**  
610 **Amount of deferred vested benefit.**

611 The participant's deferred vested benefit shall be calculated as of the date of termination of  
612 employment in the same manner as set out in Article IV of this Act. The deferred vested  
613 benefit of a safety net participant shall be reduced as set forth in subsection (b) of Section  
614 4.02 of this Act.

615 **SECTION 7.03.**  
616 **Recovery of mistaken payments.**

617 In the event any benefit is mistakenly paid to a participant, joint annuitant, or beneficiary in  
618 an amount which is greater than the amount payable under the terms of this Act, the plan  
619 shall recover such excess benefit amount by eliminating or reducing the participant's or  
620 beneficiary's future benefit payments.

ARTICLE VIII  
DEATH BENEFIT  
**SECTION 8.01.**

Payments of survivor benefits.

(a) Except as provided in subsections (b) and (c) of this section, if a participant has made the required employer contributions for survivor benefits and has a vested interest in all or any portion of his or her accrued benefit, survivor benefits shall be payable on his or her behalf to his or her surviving spouse, if any, or if none, to his or her minor children, if any. If a participant is not married and has no minor children on the date of death, no death benefits shall be payable under the plan, except as provided in Section 8.02 of this Act. Survivor benefits shall be payable to his or her beneficiaries in an amount equal to 70 percent of the benefit which shall be determined under paragraphs (1) and (2) of this subsection; provided, however, that for a participant who would have retired under the Alternate Plan of 1959 but for his or her death, survivor benefits shall be payable to the participant's beneficiaries in an amount equal to 75 percent of the benefit which shall be calculated as follows:

(1) For survivor benefits payable prior to the participant's benefit commencement date, the amount which would have been payable under Section 6.01 of this Act if the participant had become disabled on the date of his or her death; and

(2) For survivor benefits payable on or after participant's benefit commencement date, the amounts which are payable under subsection (a) of Section 4.02 of this Act, as increased by any cost of living adjustments in effect on the date of his or her death;

provided, however, that survivor benefits shall be reduced if the participant's surviving spouse is more than five years younger than participant in accordance with the following schedule:

(3) If the spouse was married to the participant for less than ten years while the participant was in active service with the board, the spouse's benefit shall be reduced by 1/12 of 2 percent per month for each month the spouse was more than five years younger than the participant;

(4) If the spouse was married to the participant for ten years or more but less than 15 years while the participant was in active service with the board, the spouse's benefit shall be reduced by 1/12 of 1 percent per month for each month the spouse was more than five years younger than the participant;

(5) If the spouse was married to the participant for 15 years or more while the participant was in the active service of the board, or if the spouse is 60 years of age at the time of becoming eligible for benefits, there shall be no reduction in benefits.

Survivor benefits to a participant's spouse shall end upon the spouse's remarriage.

(b) If a participant with at least ten years of creditable service dies while in active service with the employer and such participant has made the required employee contributions for survivor benefits, then the survivor benefit shall be an amount equal to 70 percent of the benefit that would have been payable under Section 6.01 of this Act if the participant had been disabled on the date of death; provided, however, that for a participant who would have retired under the Alternate Act of 1959 but for his or her death, the survivor benefit shall be an amount equal to 75 percent of the benefit that would have been payable under Section 6.01 of this Act if the participant had become disabled on the date of his or her death. Effective with respect to a participant death on or after January 1, 2007, a participant on a leave of absence under USERRA who otherwise meets the requirements of this section and who dies while on a leave of absence under USERRA performing qualified military service shall be treated for purposes of this benefit as though he or she died while in active service with the employer.

(c) If a participant is killed as the result of an accident in the line of duty, such participant's surviving spouse or minor children shall be eligible to receive a survivor benefit. If a participant with at least ten years of creditable service dies while in active service with the employer, then, for a participant who would have retired under the Alternate Act of 1959 but for his or her death, the survivor benefit shall be an amount equal to 75 percent, and for all other participants the survivor benefit shall be an amount equal to 70 percent, of the benefit that would have been payable under Section 6.02 of this Act if the participant had become disabled in the line of duty on the date of his or her death, provided that:

(1) Such benefit shall be calculated as though the participant has attained age 55 and 25 years of creditable service as of the date of death;

(2) Such benefit shall be payable without regard to whether participant has a vested interest in any portion of his or her accrued benefit; and

(3) Such benefit shall be payable without regard to whether the participant has made required employer contributions for survivor benefits.

(d) No death benefit shall be payable under this section to any person who is not living on the date the payment is scheduled to commence under Section 8.02 of this Act.

## **SECTION 8.02.**

### **Optional distribution of employee contributions.**

A beneficiary who is eligible to receive a benefit under Section 8.01 of this Act may elect in lieu of such benefit to receive a refund of the participant's employee contributions. Such payment shall be made in accordance with the terms of Section 9.03 of this Act. If there is

691 no living beneficiary on the date of the participant's death, such distribution shall be made  
692 to the participant's estate.

693 **SECTION 8.03.**

694 Commencement of survivor benefits.

695 (a) Payment of survivor benefits shall commence as of the date following the participant's  
696 death.

697 (b) Notwithstanding any plan provision to the contrary, all distributions shall be made in  
698 accordance with the pension board's good faith interpretation of O.C.G.A. Section 47-1-80,  
699 Section 401(a)(9) of the Code, the regulations promulgated under Section 401(a)(9) of the  
700 Code, including Treasury Regulation Section 1.401(a)(9)-2 and any other provisions  
701 reflecting the requirements of Section 401(a)(9) of the Code, and prescribed by the Internal  
702 Revenue Service, as amended from time to time, as applicable to a governmental plan within  
703 the meaning of Section 414(d) of the Code, all of which are incorporated by reference; and  
704 the terms of this Act reflecting the requirements of Section 401(a)(9) of the Code override  
705 the distribution options, if any, in the plan which are inconsistent with those requirements.

706 **ARTICLE IX**

707 **PAYMENT OF ACCRUED BENEFIT**

708 **SECTION 9.01.**

709 Normal form of benefit.

710 A participant's accrued benefit shall be paid in the form of a single life annuity for the life  
711 of the participant, or in the form of a joint and 70 percent or 75 percent survivor annuity, as  
712 applicable, if such participant has paid all required employee contributions for survivor  
713 benefits. Such survivor benefits generally shall be paid in the form of a joint and 70 percent  
714 survivor annuity; provided, however, that for a participant who retires under the Alternate  
715 Plan of 1959, such benefits shall be paid in the form of a joint and 75 percent survivor  
716 annuity. Annuity payments shall commence as of the benefit commencement date and  
717 continue until the last scheduled payment coincident with or immediately preceding the date  
718 of the participant's death or, if applicable, the date of his or her beneficiary's death or  
719 ineligibility as a beneficiary.

**SECTION 9.02.**

## Commencement of benefits.

Payment of a participant's normal retirement benefit shall commence no later than the first day of April in the calendar year following the calendar year in which the participant attains age 70 1/2 or the calendar year in which the participant retires, whichever is later. Payment to the participant of his or her early retirement benefit or of his or her deferred vested benefit shall commence no later than 60 days after the close of the plan year in which the participant attains normal retirement age unless the participant elects an earlier distribution. All distributions shall be made in accordance with the pension board's good faith interpretation of Section 401(a)(9) of the Code, the regulations promulgated under Section 401(a)(9) of the Code, and any other provisions reflecting the requirements of Section 401(a)(9) of the Code and prescribed by the Internal Revenue Service; and the terms of this Act reflecting the requirements of Section 401(a)(9) of the Code override the distribution options, if any, in the plan which are inconsistent with those requirements. All benefit payments shall begin within 60 days of the date elected by the participant, if such date is earlier than any of the aforementioned dates in this section.

**SECTION 9.03.**

## Distribution of employee contributions.

(a) Any participant or beneficiary who is eligible to receive a benefit under Sections 4.01, 5.01, 6.01, 7.01, or 8.01 of this Act may elect in lieu of such benefit to receive a refund of his or her employee contributions.

(b) Notwithstanding any other provision of this Act, at such time as all benefits payable to a participant and his or her or her beneficiaries under other provisions of this Act have been paid, if such benefits have not equaled the amount of the employee's contributions under this plan, then the difference between the benefits paid and the total employee's contributions under this plan shall be paid to the participant's estate.

(c) Such payment shall be made in the form of a lump sum payment or, at the participant's election, in the form of a direct rollover. For purposes of this section, the term:

(1) 'Direct rollover' means a payment of an eligible rollover distribution by the plan to the eligible retirement plan specified by the distributee, who shall be the participant or his or her beneficiary.

(2) 'Eligible rollover distribution' means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include any distribution that is one of a series of substantially equal periodic

payments, not less frequently than annually, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(3) 'Eligible retirement plan,' when referring to a distributee other than a nonspouse beneficiary, means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any instrumentality thereof which agrees to account separately for any direct rollover from this plan, or a qualified trust described in Section 401(a) of the Code that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a beneficiary other than a participant's surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity, and the terms of Section 401(a)(9)(B) of the Code, other than subdivision (iv), shall apply to such plan.

(4) 'Distributee' includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on and after January 1, 2008, a distributee shall also include a beneficiary who is not the participant's spouse.

#### **SECTION 9.04.**

##### **Reemployment after benefit commencement date.**

If a participant who is receiving benefit payments under the plan returns to employment with the employer, his or her benefit shall be suspended during the period of reemployment; provided, however, that:

- (1) The benefit shall not be suspended if such employee is reemployed as a temporary, casual, part-time, or contract employee; and
- (2) Such employee, if he or she is rehired as an eligible employee, may make a one-time irrevocable election with the pension board whether to make employee contributions and participate in the plan during the period of reemployment.



**SECTION 9.05.**

## Cost-of-living adjustments.

The benefit payable to an eligible participant or his or her beneficiaries shall be increased annually, on a date to be determined by the pension board, in an amount equal to 3 percent of the benefit then payable to such participant or beneficiary; provided:

(1) A participant and the beneficiary of such participant shall be eligible for such cost-of-living adjustment as of the second adjustment date following the benefit commencement date;

(2) A beneficiary who becomes entitled to a benefit by reason of a participant's death prior to retirement shall be eligible for such cost-of-living adjustment as of the second adjustment date following the benefit commencement date, provided that such participant was eligible for retirement at the time of his or her death or actively employed by the employer at the time of death; and

(3) A participant who becomes eligible to receive a deferred vested benefit but is not eligible to retire, and a beneficiary of such participant, shall not be eligible for cost-of-living adjustments.

**SECTION 9.06.**

## Required minimum distributions.

Notwithstanding any plan provision to the contrary, all distributions shall be made in accordance with the pension board's good faith interpretation of O.C.G.A. Section 47-1-80, Section 401(a)(9) of the Code, the regulations promulgated under Section 401(a)(9) of the Code, including Treasury Regulation Section 1.401(a)(9)-2, and any other provisions reflecting the requirements of Section 401(a)(9) of the Code and prescribed by the Internal Revenue Service, as amended from time to time, as applicable to a governmental plan within the meaning of Section 414(d) of the Code, all of which are incorporated by reference; and the terms of this Act reflecting the requirements of Section 401(a)(9) of the Code override the distribution options, if any, in the plan which are inconsistent with those requirements.

816 ARTICLE X  
817 MISCELLANEOUS PROVISIONS AFFECTING  
818 THE PAYMENT OF BENEFITS  
819 SECTION 10.01.  
820 General.

821 The trustee shall make payment of any benefit payments directly to the participant entitled  
822 to the payment.

823 SECTION 10.02.  
824 Nonduplication of benefits.

825 In the event the trustee distributes any part or all of a participant's accrued benefit to him or  
826 her and the participant later resumes active employment with the employer before or after  
827 retirement, the trustee shall compute the participant's accrued benefit by taking into account  
828 all of the participant's years of creditable service; however, the trustee shall offset the  
829 participant's accrued benefit so computed by the participant's accrued benefit attributable to  
830 any prior distribution.

831 SECTION 10.03.  
832 Merger.

833 The trustee, in its sole discretion, may consent to, or be a party to, any merger or  
834 consolidation with another plan, or to a transfer of assets or liabilities to another plan, only  
835 if immediately after the merger, consolidation, or transfer, the surviving plan provides each  
836 participant a benefit equal to or greater than the benefit each participant would have received  
837 had the plan terminated immediately before the merger or consolidation or transfer. The  
838 trustee possesses the specific authority to enter into a merger agreement or a direct transfer  
839 of assets agreement with the trustees of other retirement plans described in Section 401(a)  
840 of the Code and to accept the direct transfer of plan assets, or to transfer plan assets, as a  
841 party to any such agreement.

842                                   **SECTION 10.04.**  
843                                   The Uniformed Services Employment And  
844                                   Reemployment Rights Act of 1994 (USERRA).

845   Notwithstanding any provision of this Act to the contrary, contributions, benefits, and service  
846   credit for qualified military service shall be provided in accordance with Section 414(u) of  
847   the Code.

848                                   **SECTION 10.05.**  
849                                   Forfeiture of benefits.

850   Notwithstanding any other provision of this Act to the contrary, all benefits under the plan  
851   shall be forfeited in the manner and to the extent provided under O.C.G.A. Sections 47-1-20  
852   through 47-1-25 if convicted of a public employment, drug related, or other covered crime.

853                                   **SECTION 10.06.**  
854                                   Payments to legally incompetent distributee.

855   Whenever any benefit is to be paid to or for the benefit of any person who is a minor or  
856   determined to be incompetent by qualified medical advice, the pension board need not  
857   require the appointment of a guardian or custodian, but may cause the benefit to be paid to  
858   the person having custody of the minor or incompetent, to the minor or incompetent without  
859   the intervention of a guardian or custodian, or to the legal guardian or custodian if one has  
860   been appointed or may cause the benefit to be used for the benefit of the minor or  
861   incompetent.

862                                   **SECTION 10.07.**  
863                                   Workers' compensation.

864   This plan shall not affect nor be affected by the provisions of Chapter 9 of Title 34 of the  
865   O.C.G.A., relating to workers' compensation, or by similar laws.

866 ARTICLE XI  
867 OTHER PROVISIONS AFFECTING BENEFITS  
868 SECTION 11.01.  
869 Assignment or alienation.

870 Except with respect to federal income tax withholding, benefits payable under this plan shall  
871 not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge,  
872 encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or  
873 involuntary, including any such liability which is for alimony or other payments for the  
874 support of a spouse or former spouse or for any other relative of the participant or  
875 beneficiary, prior to actually being received by the person entitled to the benefit under the  
876 terms of this Act; and any attempt to anticipate, alienate, sell, transfer, assign, pledge,  
877 encumber, charge, or otherwise dispose of any right to benefits payable under the plan shall  
878 be void.

879 SECTION 11.02.  
880 Overfunding.

881 If the employer has overfunded the plan at the time it terminates the plan, the trustee may  
882 return the amount by which the employer has overfunded the plan. The employer shall state  
883 by written request to the trustee the amount of the overfunding it wishes the trustee to return  
884 to it upon termination of this Act.

885 SECTION 11.03.  
886 Limitation on benefit.

887 Notwithstanding any provision of this Act to the contrary, the maximum benefit payable to  
888 any participant or beneficiary shall be limited to the extent necessary to conform to the  
889 requirements of Section 415 of the Code and the regulations thereunder, all as amended from  
890 time to time, as applicable to government plans within the meaning of Section 414(d) of the  
891 Code, and incorporated herein by this reference.

ARTICLE XII  
ADMINISTRATION  
**SECTION 12.01.**

Pension board: appointment and term of office.

- (a) The pension board shall consist of seven members to be qualified and chosen as follows:
- (1) Two members of the board of education are to be chosen by the board of education and to be known as Positions 1 and 2;
  - (2) One member who shall be an active teacher or employee of the board of education and a participant in the plan, to be known as Position 3. Such member shall be elected by active teachers and employees of the board of education who are participants in the plan;
  - (3) One member who shall be an active employee of the board of education who is a participant in the plan and who is not a member of the TRS, to be known as Position 4. Such member shall be elected by active employees of the board of education who are participants in the plan and who are not members of the TRS;
  - (4) One member selected by the other six members of the pension board, but in the case of a tie vote by the other members of the pension board, the members of the Fulton County legislative delegation who are qualified shall appoint such member, to be known as Position 5. Such member, regardless of the manner in which he or she is selected, shall not be a current member of this Act or a current or former teacher or employee of the board of education, or a member of the General Assembly, but shall be a citizen of Fulton County with substantial prior experience in financial and investment matters; and
  - (5) Two members who shall be former teachers or employees of the board of education who shall be pensioners to be chosen by pensioners and to be known as Positions 6 and 7.
- (b)(1) Except as provided in this subsection, the members of the pension board shall hold office for terms of four years and until their successors are duly elected and qualified.
- (2) Subject to the provisions of subsection (a) of this section, in the event of the death, resignation, or other disability of a pension board member which renders him or her incapable of performing the duties of a member of the pension board during his or her or her term of office, said pension board member's replacement shall be selected in the manner specified in subsection (a) of this section for such position and shall serve the remaining balance of such term of office.
- (c) The pension board shall elect its own chairperson and secretary and shall hold a regular public meeting at least once a month at a time and place to fixed by the pension board. The members of the pension board shall serve without pay. The pension board may employ an executive director and other personnel who shall serve at the will of the pension board at

928 salaries to be designated by the pension board. With the consent of the board of education,  
929 such executive director shall be treated as an employee of the Fulton County Board of  
930 Education for benefits and tax reporting purposes.

931 (d) The pension board shall have the authority to adopt rules and regulations in the  
932 administration of this Act and in carrying out the provisions of this Act and to provide for  
933 the equitable disposition of any matter not specifically covered by the provisions of this Act;  
934 provided, however, that all such rules shall be consistent with the terms and spirit of this Act.

935 (e) The administrator of finance for the board of education shall be designated as the  
936 treasurer and custodian of this Act and shall be subject to the direction of the pension board  
937 for the purpose of carrying out his or her or her duties under the plan. Whenever any pension  
938 has been granted by the pension board, a check shall be drawn on the pension fund, providing  
939 for the payment of the pension as the same matures, and shall be signed by the chairperson  
940 of the pension board and countersigned and paid by the treasurer.

941 (f) Four members of the pension board shall constitute a quorum, and notice by the secretary  
942 shall be given for special or called meetings of the pension board. The chairperson of the  
943 pension board shall give a bond with a good corporate surety in the sum of not less than  
944 \$5,000.00 for his or her or her faithful performance as chairperson of the pension board, and  
945 the treasurer shall give a bond with a good corporate surety in the sum of not less than  
946 \$25,000.00 for the faithful performance as treasurer and custodian of the pension fund. The  
947 premiums on such bonds shall be an expense of this Act.

948 (g) Except as otherwise provided in the plan, no member or employee of the pension board  
949 shall have any personal interest in the gains or profits from any investment made by the  
950 pension board or use the assets of this Act in any manner, directly or indirectly, for himself  
951 or herself or as an agent, except to make such payments as are authorized by the pension  
952 board in accordance with the plan.

## 953 **SECTION 12.02.**

### 954 **Appointment of agents.**

955 In addition to those powers set forth elsewhere in the plan or this Act, the pension board may  
956 appoint such agents, who need not be members of such pension board, as it may deem  
957 necessary for the effective performance of its duties and may delegate to such agents such  
958 powers and duties, whether ministerial or discretionary, as the pension board may deem  
959 expedient or appropriate. The pension board shall act by majority vote.

960

**SECTION 12.03.**

961

**Powers and responsibility.**

962 The pension board shall have complete control of the administration of the plan, with all  
963 powers necessary to enable it properly to carry out its duties as set forth in this Act. The  
964 pension board shall have the following duties and responsibilities:

- 965 (1) To serve as trustee of the trust fund;
- 966 (2) To construe the plan and to determine all questions that shall arise out of the plan;
- 967 (3) To select and/or remove all service providers to the plan, including the actuary,  
968 broker and investment advisor, custodians, and other advisors;
- 969 (4) To decide all questions relating to the eligibility of employees to participate in the  
970 plan;
- 971 (5) To determine the benefits of this Act to which any participant or beneficiary may be  
972 entitled;
- 973 (6) To maintain and retain records relating to the participants and beneficiaries;
- 974 (7) To prepare and furnish to the participants all information required under applicable  
975 state or federal law or provisions of this Act to be furnished to them, which may be  
976 provided electronically where appropriate; provided, however, any such information  
977 required to be provided in written form under the terms of the Code may be provided by  
978 electronic means in a manner consistent with the requirements of Treasury Regulations  
979 Section 1.401(a)(21), as amended;
- 980 (8) To prepare and furnish to agents and service providers to the plan sufficient  
981 employee data so that such service providers may carry out their obligations to the plan  
982 and its participants and beneficiaries;
- 983 (9) To prepare and file or publish with all other appropriate government officials all  
984 reports and other information required under law to be so filed or published;
- 985 (10) To provide directions to the trustee or custodian for the methods of benefit payment  
986 and all other matters where called for in the plan or requested by the trustee or custodian;
- 987 (11) To engage assistants and professional advisers;
- 988 (12) To arrange for fiduciary bonding, if necessary;
- 989 (13) To provide procedures for determination of claims for benefits; and
- 990 (14) To delegate any or all of these responsibilities.

**SECTION 12.04.**

## Records of pension board.

(a) Any notice, direction, order, request, certification, or instruction of the pension board to the trustee or custodian shall be in writing and shall be signed by a member of the pension board. The trustee or custodian and every other person shall be entitled to rely conclusively upon any and all such notices, directions, orders, requests, certifications, and instructions received from the pension board and reasonably believed to be properly executed and shall act in accordance therewith.

(b) All acts and determinations of the pension board shall be duly recorded by its secretary or under the secretary's supervision, and all such records, together with such other documents as may be necessary for the administration of this Act, shall be preserved in the custody of the secretary.

**SECTION 12.05.**

## Reporting and disclosure.

The pension board shall keep all individual and group records relating to the participants and beneficiaries and all other records necessary for the proper operation of this Act. The pension board shall prepare and shall file as required by law or regulation all reports, forms, documents and other items required by the Code and every other relevant statute, each as amended, and all regulations thereunder. This provision shall not be construed as imposing upon the pension board the responsibility or authority for the preparation, preservation, publication, or filing of any document required to be prepared, preserved, or filed by the trustee or custodian to whom such responsibilities are delegated by law or by the plan.

**SECTION 12.06.**

## Construction of this Act.

The pension board shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The pension board shall interpret the plan and shall determine the questions arising in the administration, interpretation, and application of the plan. The pension board shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any person and so as to treat all persons in similar circumstances uniformly. The pension board shall correct any defect of, reconcile any inconsistency in, or supply any omission from the plan.



**SECTION 12.07.**

Assistants and advisers.

(a) The pension board shall have the right to delegate any of its responsibility and to hire such professional assistants and consultants as it, in its sole discretion, deems necessary or advisable. To the extent that the costs for such assistants and advisers are not paid by the board of education, they shall be paid at the direction of the pension board from the trust fund as an expense of the trust fund.

(b) The pension board shall be entitled to rely upon all certificates and reports made by an accountant, attorney, or other professional adviser selected pursuant to this section; the pension board shall be fully protected in respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such accountant, attorney, or other professional adviser; and any action so taken or suffered shall be conclusive upon each of them and upon all other persons interested in the plan.

**ARTICLE XIII****PARTICIPANT ADMINISTRATIVE PROVISIONS****SECTION 13.01.**

Personal data to committee.

Each participant and each beneficiary of a deceased participant shall furnish to the pension board such evidence, data, or information as the pension board considers necessary or desirable for the purpose of administering the plan. The provisions of this plan are effective for the benefit of each participant upon the condition precedent that each participant will furnish promptly full, true, and complete evidence, data, and information when requested by the pension board, provided the pension board shall advise each participant of the effect of his or her failure to comply with its request.

**SECTION 13.02.**

Address for notification.

Each participant and each beneficiary of a deceased participant shall file with the pension board from time to time, in writing, his or her post office address and any change of post office address. Any communication, statement, or notice addressed to a participant, or beneficiary, at his or her last post office address filed with the pension board, or shown on the records of the employer, shall bind the participant, or beneficiary, for all purposes of this plan.

## ARTICLE XIV

CONTRIBUTIONS, INVESTMENTS,  
AND ADMINISTRATION OF FUNDS**SECTION 14.01.**

## Investment of trust fund.

(a) The pension board shall be the trustee of the plan and shall have full power to receive all employer and employee contributions required to be made under the plan or other provisions of law; to receive gifts or donations of money or property, real or personal; to receive and disburse pension or retirement funds from any state or local teachers' retirement agency; and to invest and reinvest its assets, in accordance with the investment policy statement established by the pension board in accordance with the terms of Article 7 of Chapter 20 of Title 47 of the O.C.G.A., the Public Retirement Systems Investment Authority Law. The pension board shall invest and reinvest said funds and use all of said funds and the income therefrom for the purposes authorized by this Act. Subject to these restrictions, the pension board shall have the power to hold, transfer, and dispose of any investments in which trust fund assets are invested, including proceeds of investments. The pension board is authorized to employ agents, including banks and trust companies, to act as investment advisors and make investments if the pension board so authorizes. For the purpose of meeting disbursements for pensions and other payments, the pension board may keep available cash on deposit in one or more banks or trust companies organized under the laws of this state or of the United States, provided that the sum on deposit in any one bank or trust company shall not exceed 25 percent of the paid-up capital and surplus of each bank or trust company. Each bank or trust company shall give a depository bond in an amount sufficient to cover the deposits or shall place in trust a sufficient amount of federal or state securities to cover the deposits. The terms of the plan shall govern the establishment of the trust fund from which the benefits provided by the plan shall be paid. All contributions paid over to the trustee or its investment advisor shall be invested in accordance with the terms of the investment policy statement established by the pension board.

(b) Use of Group annuity contracts. In the discretion of the trustee, the plan may use one or more group annuity contracts as a funding vehicle in lieu of or in addition to the trust fund. In the event of any conflict between terms of the plan and those of any such group annuity contract, the terms of the plan shall control.

**SECTION 14.02.**

## Contributions.

All employer and employee contributions shall be paid into the trust fund.

**SECTION 14.03.**

## Contingent nature of employer contributions.

Contributions made by the employer are hereby made expressly contingent on the maintenance of a qualified status by the plan for the year in which such contribution is made.

**SECTION 14.04.**

## Form of employer contribution.

The employer may pay its contributions to the trust fund manager in cash or cash equivalent or marketable securities if acceptable to the trustee.

**SECTION 14.05.**

## Exclusive benefit.

Except as otherwise provided in this Act, the employer shall have no beneficial interest in any asset of the trust fund and no part of any asset in the trust fund shall ever revert to or be repaid to the employer, either directly or indirectly, nor, prior to the satisfaction of all liabilities with respect to the participants and their beneficiaries under the plan, shall any part of the corpus or income of the trust fund be used at any time for or diverted to purposes other than the exclusive benefit of the participants or their beneficiaries.

**SECTION 14.06.**

## Condition for refund of contributions.

(a) Notwithstanding Section 14.05 of this Act, if and to the extent permitted by the Code and other applicable laws and regulations thereunder, upon the employer's written request, a contribution which is made by a mistake in fact or is conditional on initial qualification of the plan with the plan receiving an adverse determination shall be returned to the employer making the contribution within one year after the mistaken payment of the contribution or denial of qualification, whichever is applicable.

1114 (b) If through inadvertence or mistake, any participant has paid to the pension board, either  
1115 by salary deduction or direct payment, any sum which is in excess of the employee  
1116 contributions which should have been paid by the participant, then the pension board, upon  
1117 request of the participant or upon the pension board's own motion, shall refund such  
1118 overpayment to the participant, or, if such participant is deceased, to his or her beneficiary  
1119 or estate.

1120 **ARTICLE XV**  
1121 **MISCELLANEOUS**  
1122 **SECTION 15.01.**  
1123 **Evidence.**

1124 Anyone required to give evidence under the terms of this Act may do so by certificate,  
1125 affidavit, document, or other information which may be considered pertinent, reliable, and  
1126 genuine and to have been signed, made, or presented by the proper party or parties. The  
1127 pension board shall be fully protected in acting and relying upon any evidence described  
1128 under this section.

1129 **SECTION 15.02.**  
1130 **Waiver of notice.**

1131 Any person entitled to notice under the plan may waive the notice.

1132 **SECTION 15.03.**  
1133 **Successors.**

1134 The plan shall be binding upon all persons entitled to benefits under the plan and their  
1135 respective heirs and legal representatives, upon the employer and its successors and assigns,  
1136 and upon the pension board and its successors.

1137 **SECTION 15.04.**  
1138 **Word usage.**

1139 Words used in the masculine shall apply to the feminine where applicable, and wherever the  
1140 context of this Act dictates, the plural shall be read as the singular and the singular as the  
1141 plural.

**SECTION 15.05.**

State law.

The laws of the State of Georgia shall determine all questions arising under the provisions of this Act except to the extent federal statute supersedes that state law.

**SECTION 15.06.**

Employment not guaranteed.

Nothing contained in this plan or any modification or amendment to the plan, in the creation of any account, or in the payment of any benefit shall give any employee, participant, or beneficiary any right to continue employment or any legal or equitable right against the employer or employee of the employer, the trustee or its agents or employees, or the pension board, except as expressly provided by the plan or by a separate agreement.

**SECTION 15.07.**

Tax treatment.

It is intended that benefits provided under this Act shall qualify for tax treatment under Sections 401 and 414(d) of the federal Internal Revenue Code of 1986, as amended."

**SECTION 2.**

This Act shall become effective on July 1, 2009.

**SECTION 3.**

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