

House Bill 459 (COMMITTEE SUBSTITUTE)

By: Representatives Fludd of the 66th, Bruce of the 64th, Willard of the 49th, Wilkinson of the 52nd, Jones of the 44th, and others

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 style="text-align:center">**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 style="text-align:center">"ARTICLE I
18 style="text-align:center">DEFINITIONS
19 style="text-align:center">**SECTION 1.01.**
20 style="text-align:center">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.

- 25 (2) 'Actuary' means an enrolled actuary, or firm of actuaries, selected by the employer
26 to provide actuarial services to the plan.
- 27 (3) 'Average compensation' means, as applicable:
- 28 (A) 'Three-year high average compensation' means the three periods of 12 consecutive
29 months during which the participant received his or her highest compensation; and
- 30 (B) 'Five-year high average compensation' means the average of the participant's
31 monthly compensation for the five consecutive periods of 12 consecutive months
32 during which the participant had the highest monthly salary or wage.
- 33 (4) 'Beneficiary' means a participant's surviving spouse or, if a participant has no
34 surviving spouse as of the date of his or her death, the participant's surviving minor
35 children.
- 36 (5) 'Benefit commencement date' means, when referring to a participant or beneficiary,
37 the first day of the first period for which payment of the benefit under the plan is
38 scheduled to commence, either as a result of a written election or by operation of the plan,
39 whichever is applicable.
- 40 (6) 'Board' means the Fulton County Board of Education.
- 41 (7) 'Board of commissioners' means the Board of Commissioners of Fulton County.
- 42 (8) 'Code' means the federal Internal Revenue Code of 1986, as amended.
- 43 (9) 'Compensation' means the total amount of all payments, direct or indirect, made by
44 the employer to an employee for services rendered to the employer for a calendar year
45 which ends within a plan year, as defined in Section 3401(a) of the Code for purposes of
46 tax withholding at the source as reported to the employee on form W-2 for such year.
47 Compensation shall include employee contributions and before-tax or salary deferral
48 contributions made under Sections 125, 402(g)(3), 401(k), 457, or 414(h) of the Code to
49 the plan or any other plan of the employer on behalf of a participant for such plan year;
50 provided, however, that for purposes of calculating limits on benefits under Section 415
51 of the Code, employee contributions made with respect to service on and after July 1,
52 1990, shall not be included in compensation. Notwithstanding the foregoing, in no event
53 shall the annual compensation taken into account under the plan for plan years or other
54 applicable periods exceed \$200,000.00, as adjusted by the Internal Revenue Service
55 under Section 401(a)(17) of the Code for cost of living increases and prorated on the
56 basis of months for any period less than 12 months. If a participant receives differential
57 pay from the employer for qualified military service while on a military leave of absence
58 under USERRA, such differential pay shall be treated as compensation for plan years
59 starting after December 31, 2008, in accordance with Section 414(u) of the Code and the
60 regulations thereunder.

- 61 (10) 'Cost of living adjustment' means the adjustment in the amount of a participant's
62 benefit made in accordance with Section 9.05 of this Act.
- 63 (11) 'Deferred vested benefit' means, when referring to a participant, the benefit
64 described in Article VII of this Act.
- 65 (12) 'Disability or disabled' means a condition of a participant arising from illness or
66 injury which is expected to be permanent and which prevents him or her from performing
67 a substantial portion of his or her occupation or such other line of work as he or she might
68 reasonably be expected to follow, considering his or her education, experience, age, and
69 natural abilities, as determined in the sole discretion of the pension board in accordance
70 with Article VI of this Act.
- 71 (13) 'Early retirement age' means the age of a participant as described in Section 5.01 of
72 this Act.
- 73 (14) 'Effective date' means July 1, 2009; provided, however, that provisions of this Act
74 which reference Section 401(a)(9) of the Code shall be applicable to plan provisions on
75 and after July 1, 1976; provisions which reference Section 401(a)(31) of the Code shall
76 be applicable to plan provisions on and after January 1, 1993; provisions which reference
77 Section 414(u) of the Code shall be applicable to plan provisions on and after December
78 12, 1994; and provisions which reference Section 415 of the Code shall be applicable to
79 plan provisions on and after July 1, 1976.
- 80 (15) 'Eligible employee' means any full-time employee who is not eligible for the TRS.
81 Such term shall include a teacher who was employed by the employer before July 1,
82 1988, and a nonteacher management or supervisory employee who is eligible for the TRS
83 but is otherwise an eligible employee. Notwithstanding the foregoing, the following
84 individuals shall not be eligible to participate in the plan:
- 85 (A) A teacher who was employed by the employer before July 1, 1988, separates from
86 service after July 1, 1988, and subsequently returns to employment with the employer.
87 Such teacher shall be eligible for any benefits accrued under the plan prior to his or her
88 separation from service but shall not accrue any additional benefits under the plan;
 - 89 (B) Any individual who is an employee solely by means of being a 'leased employee'
90 under Section 414(n)(2) of the Code;
 - 91 (C) Temporary, casual, and part-time employees; and
 - 92 (D) Employees hired on a contract basis.
- 93 (16) 'Employee' means any person employed by the employer as a common law
94 employee and shall include the superintendent of the Fulton County school system if such
95 superintendent is an employee when promoted to superintendent.
- 96 (17) 'Employee contribution' means the amounts paid to the plan by an employee, as set
97 forth in Sections 2.01 and 2.06 of this Act.

- 98 (18) 'Employer' means the Fulton County Board of Education.
- 99 (19) 'Full-time employee' means an employee who regularly performs services for the
100 employer for at least 50 percent of the number of hours per week established by the
101 employer as full time for that employee's employment classification.
- 102 (20) 'Grandfathered participant' means a participant whose last day of employment with
103 the employer occurred prior to the effective date of this Act.
- 104 (21) 'Joint and 70 percent or 75 percent survivor annuity' means an annuity payable for
105 the life of the participant, with 70 or 75 percent, as applicable, of the participant's benefit
106 payable to his or her surviving spouse, if any, and at the death of surviving spouse or, if
107 none, with such payments of the 70 or 75 percent benefit continuing to the participant's
108 then surviving minor children, if any, until the earlier of the date such minor children
109 dies, is married, or reaches the age of 21. If more than one minor child shall become
110 eligible for benefits, benefits shall be paid on a per capita basis. If a minor child becomes
111 ineligible to receive such benefit by reason of death, marriage, or reaching age 21, the
112 portion of the 70 or 75 percent benefit payable to such minor child shall be distributed per
113 capita among any remaining minor children of the participant. The 70 or 75 percent
114 benefit shall be based on the benefit amount payable to the participant as of the date of
115 death, including any cost-of-living adjustments.
- 116 (22) 'Limitation year' means the calendar year, which shall be the 'limitation' year for
117 purposes of Section 415 of the Code and the regulations promulgated thereunder.
- 118 (23) 'Minor child' means the unmarried child of a participant who has not attained age
119 21.
- 120 (24) 'Normal retirement age' means age 65 with at least ten years' creditable service.
- 121 (25) 'Normal retirement benefit' means, when referring to a participant, the benefit
122 described in Article IV of this Act.
- 123 (26) 'Participant' means an eligible employee who becomes a participant in the plan in
124 accordance with the provisions of Section 2.01 of this Act.
- 125 (27) 'Pension board' means the committee of individuals chosen pursuant to Section
126 12.01 of this Act to administer the plan.
- 127 (28) 'Plan' means the Fulton County School Employees Pension Fund as contained in this
128 Act, all amendments hereto, and the applicable provisions of Title 47 of the O.C.G.A.
129 which are incorporated herein by this reference.
- 130 (29) 'Plan year' means the 12 month period beginning on July 1 of each year and ending
131 on the following June 30.
- 132 (30) 'Prior plan' means the Fulton County Employees Pension Fund as set forth in the
133 Act entitled 'An Act to provide in Fulton County a system for pension and retirement pay
134 to teachers and employees of the Board of Education of Fulton County' as originally

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

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

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

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

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

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

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

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

156 (38) 'Trustee' means the pension board.

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

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

202 60 months or such other period permitted by the pension board. The obligation to make
 203 such payments shall be secured in such manner as prescribed by the pension board.
 204 Interest on such installment payments shall be amortized at the rate of 3 percent per
 205 annum; however, interest shall not be charged for repayment of employee contributions
 206 accruing during a period of qualified military leave of absence on and after December 12,
 207 1994, if such repayment is made within the time limit imposed under Section 414(u) of
 208 the Code, as amended.

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

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

224 **SECTION 2.03.**

225 **Prior service.**

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

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

232 (2) A participant may not purchase or receive credit for more than a total of ten years of
 233 prior service. This provision shall not apply to a purchase of service credit under Section
 234 2.06 of this Act.

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

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

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

245 (6) The cost of service shall be calculated by determining the amount an eligible
246 employee would have paid had he or she been a participant in the plan during the period
247 of such prior service, provided that the cost shall be calculated on the basis of the period
248 of service that results in the lowest total cost to the participant. The cost of service may
249 include the amount of matching contributions as set out in subsection (c) of this section.
250 The calculation shall be based on the compensation assumptions and interest rates set out
251 in subsection (c) of this section. The calculation shall also include any contributions that
252 would be required to opt in to an alternate plan, as described in subsection (e) of Section
253 4.02 of this Act.

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

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

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

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

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

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

302 (5) A participant who has served as a certificated teacher in a private school accredited
303 at the time of service by a state or regional accrediting agency may receive credit towards
304 retirement for such teaching service upon the terms and conditions set forth in this
305 section. The cost of such credit shall be based on the salary scale developed by the
306 pension board, shall include an equivalent amount for the matching funds that would have
307 been paid by the board or the board of commissioners, and shall be calculated at a simple
308 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

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

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

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

367 (d) Employee contributions shall be withheld from each of a participant's paychecks in an
368 amount not exceeding the amount of the employee contributions paid by the board on behalf
369 of the participant as provided in subsection (a) of this section. Such reduction in the
370 compensation may be made notwithstanding the fact that the compensation provided by or
371 pursuant to law for the participant may be reduced. Except as provided in subsection (a) of
372 this section for employees hired after age 61, a participant shall not have the right to receive
373 the amount of his or her employee contributions in cash in lieu of having them contributed
374 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.

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

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

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

448 (2) *Alternate Plan of 1959.* A participant who would otherwise retire under the Alternate
449 Plan of 1959 shall make additional employee contributions equal to the contributions
450 such participant would have been required to pay under the Alternate Plan of 1962,
451 calculated as 5 percent multiplied by the total compensation from the date his or her
452 monthly compensation exceeded \$300.00, minus the amount of employee contributions
453 made by the participant from the date of employment with the employer until the date of
454 election, together with simple interest on such amount at the rate of 4 percent from April
455 1, 1962, and the date of election. The employee shall pay this amount, plus the amount
456 calculated under paragraph (1) of this subsection. Payments of the amount due under this
457 paragraph may be made in installment payments in accordance with the rules set out in
458 Section 2.03 of this Act, amortized at an annual rate of 6 percent.

459 **SECTION 4.03.**

460 Minimum retirement benefit.

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

467 **SECTION 4.04.**

468 Late retirement.

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

472 **SECTION 4.05.**

473 Commencement of benefit.

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

476 **ARTICLE V**

477 **EARLY RETIREMENT BENEFITS**

478 **SECTION 5.01.**

479 Early retirement benefit.

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

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

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

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

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

496

SECTION 5.02.

497

Amount of benefits.

498 Upon attaining early retirement age, a participant shall be entitled to receive the normal
 499 retirement benefit calculated and payable as provided in Section 4.02 of this Act. The early
 500 retirement benefit of a safety net participant shall be reduced as set forth in subsection (b) of
 501 Section 4.02 of this Act. An early retirement benefit shall be unreduced for early
 502 commencement except for a participant who retires prior to age 60 or with less than 30 years
 503 of creditable service, for whom such normal retirement benefit amount shall be reduced by
 504 1/12 of 2 percent per month for each month by which his or her age is less than 60 or his or
 505 her years of creditable service are less than 30, whichever is less; provided, however, that this
 506 reduction shall not apply to:

507

(1) A participant who retires under the Alternate Plan of 1959;

508

(2) A participant who retires under the terms of subsection (d) of Section 5.01 of this
 509 Act; or

510

(3) A nonteacher participant who retires under the terms of subsection (e) of Section 5.01
 511 of this Act.

512

ARTICLE VI

513

DISABILITY

514

SECTION 6.01.

515

Disability benefit.

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

521

(1) Becomes disabled after separation from the service of the employer;

522

(2) Is eligible for an early retirement benefit or a deferred vested benefit; and

523

(3) Who has not commenced receipt of his or her benefit as of the date of disability

524

524 shall be eligible for a disability benefit calculated as of the date of his or her separation from
 525 service in accordance with Article V or Article VII of this Act, as applicable, without
 526 adjustment for early commencement.

527

SECTION 6.02.

528

Disability benefit for disability incurred in line of duty.

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

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

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

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

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

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

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

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

548 (3) The greater of the participant's years of creditable service at the date of disability or
549 25 years of creditable service.

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

556

SECTION 6.03.

557

Safety net benefit.

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

560

SECTION 6.04.

561

Payment of disability benefit.

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

569

SECTION 6.05.

570

Determination of disability by pension board.

571 Notwithstanding anything to the contrary contained in this Act, a participant shall not be
572 considered disabled until he or she is determined to be disabled by the pension board. The
573 disability benefit shall be granted under such rules, terms, and regulations as may be fixed
574 by the pension board. In determining whether or not a participant shall be granted a
575 disability benefit due to accident or illness, the pension board shall consider, among other
576 things, whether or not the participant has served the required number of years, whether or not
577 the participant has complied with the laws, rules, and regulations governing pensions, and
578 whether or not the participant is actually totally and permanently disabled. The pension
579 board shall require that the applicant be examined by competent physicians and surgeons.
580 In deciding upon the question of permanent and total disability, the pension board may
581 receive and consider the reports and recommendations of such examining medical officers,
582 and the applicant shall have the right to submit medical and other competent evidence on the
583 question of his or her or her disability and right to be retired. The pension board's final
584 determination that an applicant is not totally and permanently disabled shall be binding on
585 all parties. If the pension board determines that the applicant is totally and permanently
586 disabled, he or she shall be retired; provided, however, that the pension board shall have the
587 right at least once a year to require the participant to submit to a medical examination for the
588 purpose of determining whether or not the participant has sufficiently recovered from his or
589 her or her disability and is able to return to his or her or her former position of employment.
590 If the pension board, after such examination, determines that the participant is not actually
591 totally and permanently disabled but is able to return to the position of employment he or she
592 occupied at the time of retirement or a comparable position with the employer, and if such
593 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.

621 ARTICLE VIII
 622 DEATH BENEFIT
 623 SECTION 8.01.

624 Payments of survivor benefits.

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

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

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

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

645 (3) If the spouse was married to the participant for less than ten years while the
 646 participant was in active service with the board, the spouse's benefit shall be reduced by
 647 1/12 of 2 percent per month for each month the spouse was more than five years younger
 648 than the participant;

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

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

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

657 (b) If a participant with at least ten years of creditable service dies while in active service
658 with the employer and such participant has made the required employee contributions for
659 survivor benefits, then the survivor benefit shall be an amount equal to 70 percent of the
660 benefit that would have been payable under Section 6.01 of this Act if the participant had
661 been disabled on the date of death; provided, however, that for a participant who would have
662 retired under the Alternate Act of 1959 but for his or her death, the survivor benefit shall be
663 an amount equal to 75 percent of the benefit that would have been payable under Section
664 6.01 of this Act if the participant had become disabled on the date of his or her death.
665 Effective with respect to a participant death on or after January 1, 2007, a participant on a
666 leave of absence under USERRA who otherwise meets the requirements of this section and
667 who dies while on a leave of absence under USERRA performing qualified military service
668 shall be treated for purposes of this benefit as though he or she died while in active service
669 with the employer.

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

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

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

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

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

686 **SECTION 8.02.**

687 Optional distribution of employee contributions.

688 A beneficiary who is eligible to receive a benefit under Section 8.01 of this Act may elect in
689 lieu of such benefit to receive a refund of the participant's employee contributions. Such
690 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.

720

SECTION 9.02.

721

Commencement of benefits.

722 Payment of a participant's normal retirement benefit shall commence no later than the first
 723 day of April in the calendar year following the calendar year in which the participant attains
 724 age 70 1/2 or the calendar year in which the participant retires, whichever is later. Payment
 725 to the participant of his or her early retirement benefit or of his or her deferred vested benefit
 726 shall commence no later than 60 days after the close of the plan year in which the participant
 727 attains normal retirement age unless the participant elects an earlier distribution. All
 728 distributions shall be made in accordance with the pension board's good faith interpretation
 729 of Section 401(a)(9) of the Code, the regulations promulgated under Section 401(a)(9) of the
 730 Code, and any other provisions reflecting the requirements of Section 401(a)(9) of the Code
 731 and prescribed by the Internal Revenue Service; and the terms of this Act reflecting the
 732 requirements of Section 401(a)(9) of the Code override the distribution options, if any, in the
 733 plan which are inconsistent with those requirements. All benefit payments shall begin within
 734 60 days of the date elected by the participant, if such date is earlier than any of the
 735 aforementioned dates in this section.

736

SECTION 9.03.

737

Distribution of employee contributions.

738 (a) Any participant or beneficiary who is eligible to receive a benefit under Sections 4.01,
 739 5.01, 6.01, 7.01, or 8.01 of this Act may elect in lieu of such benefit to receive a refund of
 740 his or her employee contributions.

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

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

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

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

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

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

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

779 **SECTION 9.04.**

780 Reemployment after benefit commencement date.

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

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

789

SECTION 9.05.

790

Cost-of-living adjustments.

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

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

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

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

805

SECTION 9.06.

806

Required minimum distributions.

807 Notwithstanding any plan provision to the contrary, all distributions shall be made in
808 accordance with the pension board's good faith interpretation of O.C.G.A. Section 47-1-80,
809 Section 401(a)(9) of the Code, the regulations promulgated under Section 401(a)(9) of the
810 Code, including Treasury Regulation Section 1.401(a)(9)-2, and any other provisions
811 reflecting the requirements of Section 401(a)(9) of the Code and prescribed by the Internal
812 Revenue Service, as amended from time to time, as applicable to a governmental plan within
813 the meaning of Section 414(d) of the Code, all of which are incorporated by reference; and
814 the terms of this Act reflecting the requirements of Section 401(a)(9) of the Code override
815 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.

892 ARTICLE XII
 893 ADMINISTRATION
 894 SECTION 12.01.

895 Pension board: appointment and term of office.

- 896 (a) The pension board shall consist of seven members to be qualified and chosen as follows:
- 897 (1) Two members of the board of education are to be chosen by the board of education
 898 and to be known as Positions 1 and 2;
- 899 (2) One member who shall be an active teacher or employee of the board of education
 900 and a participant in the plan, to be known as Position 3. Such member shall be elected
 901 by active teachers and employees of the board of education who are participants in the
 902 plan;
- 903 (3) One member who shall be an active employee of the board of education who is a
 904 participant in the plan and who is not a member of the TRS, to be known as Position 4.
 905 Such member shall be elected by active employees of the board of education who are
 906 participants in the plan and who are not members of the TRS;
- 907 (4) One member selected by the other six members of the pension board, but in the case
 908 of a tie vote by the other members of the pension board, the members of the Fulton
 909 County legislative delegation who are qualified shall appoint such member, to be known
 910 as Position 5. Such member, regardless of the manner in which he or she is selected,
 911 shall not be a current member of this Act or a current or former teacher or employee of
 912 the board of education, or a member of the General Assembly, but shall be a citizen of
 913 Fulton County with substantial prior experience in financial and investment matters; and
- 914 (5) Two members who shall be former teachers or employees of the board of education
 915 who shall be pensioners to be chosen by pensioners and to be known as Positions 6 and 7.
- 916 (b)(1) Except as provided in this subsection, the members of the pension board shall hold
 917 office for terms of four years and until their successors are duly elected and qualified.
- 918 (2) Subject to the provisions of subsection (a) of this section, in the event of the death,
 919 resignation, or other disability of a pension board member which renders him or her
 920 incapable of performing the duties of a member of the pension board during his or her or
 921 her term of office, said pension board member's replacement shall be selected in the
 922 manner specified in subsection (a) of this section for such position and shall serve the
 923 remaining balance of such term of office.
- 924 (c) The pension board shall elect its own chairperson and secretary and shall hold a regular
 925 public meeting at least once a month at a time and place to fixed by the pension board. The
 926 members of the pension board shall serve without pay. The pension board may employ an
 927 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.

991 **SECTION 12.04.**

992 Records of pension board.

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

999 (b) All acts and determinations of the pension board shall be duly recorded by its secretary
1000 or under the secretary's supervision, and all such records, together with such other documents
1001 as may be necessary for the administration of this Act, shall be preserved in the custody of
1002 the secretary.

1003 **SECTION 12.05.**

1004 Reporting and disclosure.

1005 The pension board shall keep all individual and group records relating to the participants and
1006 beneficiaries and all other records necessary for the proper operation of this Act. The
1007 pension board shall prepare and shall file as required by law or regulation all reports, forms,
1008 documents and other items required by the Code and every other relevant statute, each as
1009 amended, and all regulations thereunder. This provision shall not be construed as imposing
1010 upon the pension board the responsibility or authority for the preparation, preservation,
1011 publication, or filing of any document required to be prepared, preserved, or filed by the
1012 trustee or custodian to whom such responsibilities are delegated by law or by the plan.

1013 **SECTION 12.06.**

1014 Construction of this Act.

1015 The pension board shall take such steps as are considered necessary and appropriate to
1016 remedy any inequity that results from incorrect information received or communicated in
1017 good faith or as the consequence of an administrative error. The pension board shall interpret
1018 the plan and shall determine the questions arising in the administration, interpretation, and
1019 application of the plan. The pension board shall endeavor to act, whether by general rules
1020 or by particular decisions, so as not to discriminate in favor of or against any person and so
1021 as to treat all persons in similar circumstances uniformly. The pension board shall correct
1022 any defect of, reconcile any inconsistency in, or supply any omission from the plan.

1023 **SECTION 12.07.**

1024 Assistants and advisers.

1025 (a) The pension board shall have the right to delegate any of its responsibility and to hire
 1026 such professional assistants and consultants as it, in its sole discretion, deems necessary or
 1027 advisable. To the extent that the costs for such assistants and advisers are not paid by the
 1028 board of education, they shall be paid at the direction of the pension board from the trust fund
 1029 as an expense of the trust fund.

1030 (b) The pension board shall be entitled to rely upon all certificates and reports made by an
 1031 accountant, attorney, or other professional adviser selected pursuant to this section; the
 1032 pension board shall be fully protected in respect to any action taken or suffered by them in
 1033 good faith in reliance upon the advice or opinion of any such accountant, attorney, or other
 1034 professional adviser; and any action so taken or suffered shall be conclusive upon each of
 1035 them and upon all other persons interested in the plan.

1036 **ARTICLE XIII**

1037 **PARTICIPANT ADMINISTRATIVE PROVISIONS**

1038 **SECTION 13.01.**

1039 Personal data to committee.

1040 Each participant and each beneficiary of a deceased participant shall furnish to the pension
 1041 board such evidence, data, or information as the pension board considers necessary or
 1042 desirable for the purpose of administering the plan. The provisions of this plan are effective
 1043 for the benefit of each participant upon the condition precedent that each participant will
 1044 furnish promptly full, true, and complete evidence, data, and information when requested by
 1045 the pension board, provided the pension board shall advise each participant of the effect of
 1046 his or her failure to comply with its request.

1047 **SECTION 13.02.**

1048 Address for notification.

1049 Each participant and each beneficiary of a deceased participant shall file with the pension
 1050 board from time to time, in writing, his or her post office address and any change of post
 1051 office address. Any communication, statement, or notice addressed to a participant, or
 1052 beneficiary, at his or her last post office address filed with the pension board, or shown on
 1053 the records of the employer, shall bind the participant, or beneficiary, for all purposes of this
 1054 plan.

ARTICLE XIV

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

Investment of trust fund.

1060 (a) The pension board shall be the trustee of the plan and shall have full power to receive all
 1061 employer and employee contributions required to be made under the plan or other provisions
 1062 of law; to receive gifts or donations of money or property, real or personal; to receive and
 1063 disburse pension or retirement funds from any state or local teachers' retirement agency; and
 1064 to invest and reinvest its assets, in accordance with the investment policy statement
 1065 established by the pension board in accordance with the terms of Article 7 of Chapter 20 of
 1066 Title 47 of the O.C.G.A., the Public Retirement Systems Investment Authority Law. The
 1067 pension board shall invest and reinvest said funds and use all of said funds and the income
 1068 therefrom for the purposes authorized by this Act. Subject to these restrictions, the pension
 1069 board shall have the power to hold, transfer, and dispose of any investments in which trust
 1070 fund assets are invested, including proceeds of investments. The pension board is authorized
 1071 to employ agents, including banks and trust companies, to act as investment advisors and
 1072 make investments if the pension board so authorizes. For the purpose of meeting
 1073 disbursements for pensions and other payments, the pension board may keep available cash
 1074 on deposit in one or more banks or trust companies organized under the laws of this state or
 1075 of the United States, provided that the sum on deposit in any one bank or trust company shall
 1076 not exceed 25 percent of the paid-up capital and surplus of each bank or trust company. Each
 1077 bank or trust company shall give a depository bond in an amount sufficient to cover the
 1078 deposits or shall place in trust a sufficient amount of federal or state securities to cover the
 1079 deposits. The terms of the plan shall govern the establishment of the trust fund from which
 1080 the benefits provided by the plan shall be paid. All contributions paid over to the trustee or
 1081 its investment advisor shall be invested in accordance with the terms of the investment policy
 1082 statement established by the pension board.

1083 (b) Use of Group annuity contracts. In the discretion of the trustee, the plan may use one
 1084 or more group annuity contracts as a funding vehicle in lieu of or in addition to the trust fund.
 1085 In the event of any conflict between terms of the plan and those of any such group annuity
 1086 contract, the terms of the plan shall control.

SECTION 14.02.

Contributions.

1089 All employer and employee contributions shall be paid into the trust fund.

SECTION 14.03.

Contingent nature of employer contributions.

1092 Contributions made by the employer are hereby made expressly contingent on the
1093 maintenance of a qualified status by the plan for the year in which such contribution is made.

SECTION 14.04.

Form of employer contribution.

1096 The employer may pay its contributions to the trust fund manager in cash or cash equivalent
1097 or marketable securities if acceptable to the trustee.

SECTION 14.05.

Exclusive benefit.

1100 Except as otherwise provided in this Act, the employer shall have no beneficial interest in
1101 any asset of the trust fund and no part of any asset in the trust fund shall ever revert to or be
1102 repaid to the employer, either directly or indirectly, nor, prior to the satisfaction of all
1103 liabilities with respect to the participants and their beneficiaries under the plan, shall any part
1104 of the corpus or income of the trust fund be used at any time for or diverted to purposes other
1105 than the exclusive benefit of the participants or their beneficiaries.

SECTION 14.06.

Condition for refund of contributions.

1108 (a) Notwithstanding Section 14.05 of this Act, if and to the extent permitted by the Code and
1109 other applicable laws and regulations thereunder, upon the employer's written request, a
1110 contribution which is made by a mistake in fact or is conditional on initial qualification of
1111 the plan with the plan receiving an adverse determination shall be returned to the employer
1112 making the contribution within one year after the mistaken payment of the contribution or
1113 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.

1142

1143

State law.

1144 The laws of the State of Georgia shall determine all questions arising under the provisions
1145 of this Act except to the extent federal statute supersedes that state law.

SECTION 15.06.

1146

1147

Employment not guaranteed.

1148 Nothing contained in this plan or any modification or amendment to the plan, in the creation
1149 of any account, or in the payment of any benefit shall give any employee, participant, or
1150 beneficiary any right to continue employment or any legal or equitable right against the
1151 employer or employee of the employer, the trustee or its agents or employees, or the pension
1152 board, except as expressly provided by the plan or by a separate agreement.

SECTION 15.07.

1153

1154

Tax treatment.

1155 It is intended that benefits provided under this Act shall qualify for tax treatment under
1156 Sections 401 and 414(d) of the federal Internal Revenue Code of 1986, as amended."

SECTION 2.

1157

1158

This Act shall become effective on July 1, 2009.

SECTION 3.

1159

1160

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