

House Bill 997

By: Representatives Maxwell of the 17th, Benton of the 31st, and Weldon of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 18 of Title 47 of the Official Code of Georgia Annotated, relating to
2 social security coverage for employees of the state and political subdivisions of the state, so
3 as to provide that the Employees' Social Security Coverage Group shall be under the
4 jurisdiction and control of the State Personnel Administration; to repeal certain obsolete
5 provisions; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 18 of Title 47 of the Official Code of Georgia Annotated, relating to social security
9 coverage for employees of the state and political subdivisions of the state, is amended by
10 revising paragraph (8) of Code Section 47-18-2, relating to definitions, as follows:

11 "(8) 'State agency' means the ~~Employees' Retirement System of Georgia State Personnel~~
12 Administration."

13 **SECTION 2.**

14 Said chapter is further amended by revising Article 2, relating to administration by the state
15 agency generally, as follows:

16 "ARTICLE 2

17 47-18-20.

18 The state agency shall ~~make and publish such rules and regulations~~ policies and
19 procedures, not inconsistent with this chapter, as it finds necessary or appropriate to the
20 efficient administration of the functions with which it is charged under this chapter.

21 47-18-21.

22 ~~The state agency shall make studies concerning the problem of old-age, survivors, and~~
 23 ~~disability insurance protection for employees of the political subdivisions of the state and~~
 24 ~~concerning the operation of agreements made and plans approved under this chapter. It~~
 25 ~~shall submit a report to the General Assembly at the beginning of each regular session,~~
 26 ~~covering the administration and operation of this chapter during the period since the last~~
 27 ~~session or report and including such recommendations for such amendments to this chapter~~
 28 ~~as it considers proper.~~

29 ~~47-18-22.~~

30 All expenses ~~of the state agency~~ incurred by the state agency relative to and incidental to
 31 the administration of this chapter, including, without limitation, the creation of a full-time
 32 position for such purpose, shall be paid from funds ~~paid into~~ appropriated to the state
 33 agency ~~by participating subdivisions for such purpose and as shall be provided for by the~~
 34 ~~rules and regulations of such state agency."~~

35 **SECTION 3.**

36 Said chapter is further amended by revising Code Section 47-18-40, relating to plans,
 37 agreements, and referendums regarding social security coverage, as follows:

38 "47-18-40.

39 (a) The state agency, with the approval of the Governor, is authorized to enter on behalf
 40 of the state into an agreement with the secretary of health and human services, consistent
 41 with the terms of this chapter, for the purpose of extending the benefits of the federal
 42 old-age, survivors, and disability insurance system to employees of the political
 43 subdivisions of this state and with respect to services specified in such agreement which
 44 constitute employment within the meaning of this chapter. Such agreement may contain
 45 such provisions relating to coverage, benefits, contributions, effective date, modification
 46 and termination of the agreement, administration, and other appropriate provisions as the
 47 state agency and the secretary of health and human services shall agree upon. Except as
 48 may be otherwise required by or under the Social Security Act as to the services to be
 49 covered, such agreement shall provide that:

50 (1) Benefits shall be provided for employees whose services are covered by the
 51 agreement, and their dependents and survivors, on the same basis as though such services
 52 constituted employment within the meaning of Title II of the Social Security Act;

53 (2) At such times as may be prescribed under the Social Security Act, the state shall pay
 54 contributions to the secretary of the treasury with respect to wages equal to the sum of the

55 taxes which would be imposed by the Federal Insurance Contributions Act, if the services
56 covered by the agreement constituted employment within the meaning of that ~~act~~ Act;

57 (3) Such agreement shall be effective as of the date specified in the agreement, provided
58 that it shall not be effective prior to the date permitted by the federal Social Security Act
59 with respect to services in employment covered by the agreement;

60 (4) All services which (A) constitute employment, (B) are performed in the employ of
61 the state or a political subdivision of the state, and (C) are covered by a plan which is in
62 conformity with the terms of the agreement and has been approved by the state agency
63 under Code Section 47-18-41 shall be covered by the agreement; and

64 (5) As modified, the agreement shall include all services described in paragraph (4) of
65 this subsection and performed by individuals in positions covered by a retirement system
66 with respect to which the Governor has issued a certificate to the secretary of health and
67 human services, pursuant to subsection (b) of Code Section 47-18-42.

68 (b) Any instrumentality jointly created by this state and any other states is authorized,
69 upon the granting of like authority by such other states:

70 (1) To enter into an agreement with the secretary of health and human services whereby
71 the benefits of the federal old-age, survivors, and disability insurance system shall be
72 extended to employees of such instrumentality;

73 (2) To require its employees to pay, and for that purpose to deduct from their wages,
74 contributions equal to the amounts which they would be required to pay under subsection
75 (a) of Code Section 47-18-41 if they were covered by an agreement made pursuant to
76 subsection (a) of this Code section; and

77 (3) ~~To make payments to the secretary of the treasury in accordance with such~~
78 ~~agreement, including payments from its own funds, and otherwise to comply with such~~
79 ~~agreements~~ in accordance with federal law.

80 Such agreement, to the extent practicable, shall be consistent with the terms and provisions
81 of subsection (a) of this Code section and other provisions of this chapter.

82 (c) Pursuant to Section 218(d)(6) of the Social Security Act and for purposes of this
83 chapter, at the election of the Governor, any retirement system which covers employees of
84 more than one political subdivision or employees of the state and one or more political
85 subdivisions shall be deemed a separate retirement system with respect to each such
86 political subdivision or as to the state and one or more political subdivisions with positions
87 covered by such retirement system. Pursuant to Section 218(p) of the Social Security Act
88 and also for the purposes of this chapter, any retirement system which covers positions of
89 policemen or firemen, or both, and other positions shall, if the Governor so elects, be
90 deemed to be a separate retirement system with respect to the positions of such policemen
91 or firemen, or both, as the case may be.

92 (d) For the purposes of this chapter, any retirement system established by this state or any
 93 political subdivision thereof or established by an Act of the General Assembly; which, on,
 94 before, or after March 21, 1958, is divided into two divisions or parts, one of which is
 95 composed of positions of members of such system who desire coverage under the
 96 agreement under this chapter and the other of which is composed of positions of members
 97 of such system who do not desire such coverage, shall, upon the Governor's authorization
 98 of a referendum for a retirement system pursuant to Section 218 of the Social Security Act,
 99 be deemed to be a separate retirement system with respect to each such division or part.
 100 At the election of the Governor, the referendum and the division of such system may occur
 101 simultaneously as authorized by Section 218(d)(7) of the Social Security Act. The
 102 positions of individuals who become members of such system after such coverage is
 103 extended shall be included in such division or part of such system composed of members
 104 desiring such coverage. The position of any individual which is covered by any such
 105 retirement system, if such individual is ineligible to become a member of such system on
 106 August 1, 1956, or, if later, the day he or she first occupies such position, shall be deemed
 107 to be covered by the separate retirement system consisting of the positions of members of
 108 the division or part who do not desire coverage under this chapter.

109 ~~(e) The position of any member of the division or part of the Superior Court Judges
 110 Retirement Fund of Georgia who does not desire coverage may be transferred to the
 111 separate retirement fund composed of positions of members who do desire coverage upon
 112 such terms and conditions and at such time as permitted by federal law. In the event of
 113 such transfer, the employee contributions of such member required for social security
 114 coverage shall be deducted by the Council of Superior Court Judges of Georgia and
 115 remitted to the state agency, together with the required employer contributions. The
 116 Council of Superior Court Judges of Georgia is authorized and directed to pay, from funds
 117 appropriated or otherwise available for the operation of the superior courts, the required
 118 employer contributions on any such transferred member."~~

119 **SECTION 4.**

120 Said chapter is further amended by revising Code Section 47-18-41, relating to plans for
 121 old-age, survivors, and disability insurance coverage submitted by state political
 122 subdivisions, contents, approval, contributions required, and penalties, as follows:

123 "47-18-41.

124 (a) Each political subdivision of the state is authorized to submit for approval by the state
 125 agency a plan for extending the benefits of Title II of the Social Security Act to employees
 126 of such political subdivision. The adjutant general, acting on behalf of the state, is
 127 authorized to submit and enter into a similar plan with the state agency for extending such

128 benefits to the civilian employees of the National Guard units of this state, who are, for the
129 purposes of this chapter, deemed to be a separate coverage group as provided for in the
130 federal Social Security Act; provided, however, that nothing contained in this chapter shall
131 be construed to deem or designate the civilian employees of the National Guard units of
132 this state to be employees of this state. Each such plan and any amendments thereof shall
133 be approved by the state agency if it finds that such plan, as amended, is in conformity with
134 such requirements as are provided in regulations of the state agency, except that no such
135 plan shall be approved unless:

136 (1) It is in conformity with the requirements of the Social Security Act and with the
137 agreement entered into under Code Section 47-18-40;

138 (2) It provides that all services which constitute employment and are performed in the
139 employ of a political subdivision by employees thereof shall be covered by the plan
140 except that it may exclude services performed by individuals to whom Section
141 218(c)(3)(C) of the Social Security Act is applicable;

142 (3) It specifies the sources from which the funds necessary to make the payments
143 required by paragraph (1) of subsection (c) of this Code section and by subsection (d) of
144 this Code section are expected to be derived and contains reasonable assurance that such
145 sources will be adequate for such purpose;

146 (4) It provides for such methods of administration of the plan by the political subdivision
147 as are found by the state agency to be necessary for the proper and efficient
148 administration of the plan;

149 (5) It provides that the political subdivision will make such reports in such form and
150 containing such information as the state agency may from time to time require and will
151 comply with such provisions as the state agency or the secretary of health and human
152 services may from time to time find necessary in order to assure the correctness and
153 verification of such reports; and

154 (6) It authorizes the state agency to terminate the plan in its entirety, in the discretion of
155 the state agency, if it finds that there has been a failure to comply with any provision
156 contained in such plan, such termination to take effect at the expiration of such notice and
157 on such conditions as may be provided by regulations of the state agency and which are
158 consistent with the Social Security Act, provided that such conditions as may be provided
159 by the regulations of the state agency for such termination shall assure that the state shall
160 not incur any debt or loss in relation to any amounts due the state from other provisions
161 of the Social Security Act, including grants in aid for public assistance and for maternal
162 and child welfare.

163 (b) The state agency shall not finally refuse to approve a plan submitted by a political
164 subdivision under subsection (a) of this Code section and shall not terminate an approved

165 plan without reasonable notice and opportunity for hearings to the political subdivision
166 affected thereby.

167 ~~(c)(1)~~ Each political subdivision as to which a plan has been approved under this Code
168 section shall pay ~~into the contribution fund, with respect to wages at such times as the state~~
169 ~~agency may by regulation prescribe~~ to the federal Social Security Administration;
170 contributions in the amounts and at the rates specified in the applicable agreement entered
171 into by the state agency under Code Section 47-18-40.

172 ~~(2) Each political subdivision required to make payments under paragraph (1) of this~~
173 ~~subsection is authorized in consideration of the employee's retention in or entry upon~~
174 ~~employment after enactment of this chapter to impose upon each of its employees, as to~~
175 ~~services which are covered by an approved plan, a contribution with respect to his wages,~~
176 ~~which contribution shall not exceed the amount of the employees tax which would be~~
177 ~~imposed by the Federal Insurance Contributions Act if such services constituted~~
178 ~~employment within the meaning of that act and to deduct the amount of such contribution~~
179 ~~from his wages as and when paid. Contributions so collected shall be paid into the~~
180 ~~contribution fund in partial discharge of the liability of such political subdivision or~~
181 ~~instrumentality under paragraph (1) of this subsection. Failure to deduct such~~
182 ~~contributions shall not relieve the employee or employer of liability therefor.~~

183 ~~(3) Delinquent payments due under paragraph (1) of this subsection, including interest~~
184 ~~at the rate of 6 percent per annum, may be recovered by action in a court of competent~~
185 ~~jurisdiction against the political subdivision liable therefor or may, at the request of the~~
186 ~~state agency, be deducted from any other moneys payable to such subdivision by any~~
187 ~~department or agency of the state.~~

188 ~~(d) If any county board of education, independent board of education, area board of~~
189 ~~education, or incorporated municipality which has entered into a plan of coverage for its~~
190 ~~employees under this Code section fails to make collection from its employees and to make~~
191 ~~reports and payments agreed to in its plan of coverage, it shall be the duty of the state~~
192 ~~agency to notify the State Board of Education of such failure; and thereupon it shall be the~~
193 ~~duty of the State Board of Education to withhold from such county board of education,~~
194 ~~independent board of education, area board of education, or incorporated municipality~~
195 ~~failing to make the reports and payments, all appropriations allotted to such board of~~
196 ~~education or municipality until such board of education or municipality has fully complied~~
197 ~~with the provisions agreed to in its plan of coverage. It shall be illegal for the State Board~~
198 ~~of Education or Department of Education to pay out or release such funds, unless the~~
199 ~~provisions of this Code section are complied with.~~

200 ~~(e) If the governing authority of any county which has entered into a plan of coverage for~~
201 ~~its employees under this Code section fails to make collection from its employees and to~~

202 ~~make reports and payments agreed to in such plan of coverage, it shall be the duty of the~~
203 ~~state agency to notify the State Transportation Board and the director of the Office of~~
204 ~~Treasury and Fiscal Services of such failure, and thereupon, it shall be the duty of the State~~
205 ~~Transportation Board and the director of the Office of Treasury and Fiscal Services to~~
206 ~~withhold from such county governing authority all appropriations for highway and road~~
207 ~~purposes allotted to such county, until such county governing authority has fully complied~~
208 ~~with the provisions agreed to in its plan of coverage by making the required reports and~~
209 ~~remittances. It shall be illegal for the State Transportation Board or the director of the~~
210 ~~Office of Treasury and Fiscal Services to pay out or release such funds, unless this Code~~
211 ~~section has been complied with. The State Transportation Board and the director of the~~
212 ~~Office of Treasury and Fiscal Services are authorized and directed, upon authorization or~~
213 ~~certified request of the state agency, to remit to the state agency from such withheld funds~~
214 ~~the amount necessary to cover the remittances which such county governing authority has~~
215 ~~failed to pay to the state agency.~~

216 (f) ~~If the governing authority of any municipal corporation which has entered into a plan~~
217 ~~of coverage for its employees under this Code section fails to make collection from its~~
218 ~~employees and to make reports and payments agreed to in such plan of coverage, it shall~~
219 ~~be the duty of the state agency to notify the director of the Office of Treasury and Fiscal~~
220 ~~Services of such failure; and thereupon it shall be the duty of the director of the Office of~~
221 ~~Treasury and Fiscal Services to withhold from such municipal governing authority any~~
222 ~~state appropriations allocated to such municipality until the director of the Office of~~
223 ~~Treasury and Fiscal Services receives authorization from the state agency to release such~~
224 ~~funds. The director of the Office of Treasury and Fiscal Services is authorized and~~
225 ~~directed, upon authorization and certified request of the state agency, to remit to the state~~
226 ~~agency from such withheld funds the amount necessary to cover the remittances which~~
227 ~~such municipal governing authority has failed to pay to the state agency under the~~
228 ~~provisions agreed to in its plan of coverage. It shall be illegal for the director of the Office~~
229 ~~of Treasury and Fiscal Services to pay out or release such funds, after notice from the state~~
230 ~~agency, unless this Code section is complied with.~~

231 (g) ~~If any municipal corporation fails to make collections from its employees or fails to~~
232 ~~make reports and payments to the state agency as agreed to in its plan of coverage, such~~
233 ~~defaulting municipal corporation shall be subject to a penalty of 10 percent of the~~
234 ~~delinquent payments.~~

235 (h) ~~The governing authority of each municipal corporation which has entered into a plan~~
236 ~~of coverage under this Code section shall enact an ordinance in which it agrees to abide by~~
237 ~~the rules and regulations of the state agency in regard to collections from its employees and~~
238 ~~in making reports and payments to the state agency. The municipal corporation shall~~

239 ~~pledge in such ordinance the amount which it would receive in state grant funds as security~~
 240 ~~for assurance that it will make collections from its employees, submit required reports, and~~
 241 ~~remit payments to the state agency as agreed to in its plan of coverage. If the amount of~~
 242 ~~state grant funds which a municipal corporation is entitled to receive is less than its annual~~
 243 ~~payment to the state agency, then the state agency may require such municipal corporation~~
 244 ~~to deposit in escrow in accordance with rules and regulations of the state agency an amount~~
 245 ~~which, when added to the state grant funds to which such municipality is entitled, would~~
 246 ~~total an amount sufficient to meet the municipal corporation's obligations of reporting and~~
 247 ~~remitting collections to the state agency."~~

248

SECTION 5.

249 Said chapter is further amended by revising Code Section 47-18-43, relating to referendum
 250 on the question of coverage of positions covered by Chapter 12, as follows:

251 "47-18-43.

252 Anything in this chapter to the contrary notwithstanding, the Governor is empowered to
 253 authorize a referendum in accordance with the requirements of Section 218(d)(3) of the
 254 Social Security Act on the question of whether services in positions covered by the District
 255 Attorneys Retirement Fund of Georgia, Chapter 12 of this title, shall be excluded from or
 256 included under an agreement under this chapter with an effective date of July 1, 1956. If
 257 the referendum results in an affirmative vote, employee contributions required for social
 258 security coverage shall be deducted by the Prosecuting Attorneys' Council of the State of
 259 Georgia from the compensation or other funds due the employee ~~and shall be remitted to~~
 260 ~~the state agency, together with the required employer contributions.~~ Such employee
 261 deductions shall be based on an affidavit from each individual as to the total wages
 262 received by him or her each calendar quarter as district attorney. Such affidavit shall be
 263 forwarded to the Prosecuting Attorneys' Council of the State of Georgia before the fifth day
 264 of the month following the end of each calendar quarter. If any district attorney fails to
 265 submit the required affidavit to the Prosecuting Attorneys' Council of the State of Georgia
 266 within the required time, any and all funds due such individual shall be withheld by the
 267 Prosecuting Attorneys' Council of the State of Georgia until an appropriate affidavit has
 268 been received. The Prosecuting Attorneys' Council of the State of Georgia is authorized
 269 and directed to pay the required employer contribution from the funds appropriated or
 270 otherwise available."

271

SECTION 6.

272 Said chapter is further amended by revising Article 4, relating to contribution fund, as
 273 follows:

274

"ARTICLE 4

275 ~~47-18-60.~~

276 ~~(a) There is established a special fund to be known as the 'contribution fund.' Such fund~~
 277 ~~shall consist of and there shall be deposited in such fund: (1) all contributions, interest, and~~
 278 ~~penalties collected under Code Section 47-18-41; (2) all moneys appropriated to this fund~~
 279 ~~under this chapter; (3) any property or securities and earnings of the fund acquired through~~
 280 ~~the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund;~~
 281 ~~and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained~~
 282 ~~by the fund and all other moneys received for the fund from any other source. All moneys~~
 283 ~~in the fund shall be mingled and undivided. Subject to this chapter, the state agency is~~
 284 ~~vested with full power, authority, and jurisdiction over the fund, including all moneys and~~
 285 ~~property or securities belonging to the fund, and may perform any and all acts whether or~~
 286 ~~not specifically designated, which are necessary to the administration of the fund and are~~
 287 ~~consistent with this chapter.~~

288 ~~(b) The contribution fund shall be established and held separate and apart from any other~~
 289 ~~funds or moneys of the state and shall be used and administered exclusively for the purpose~~
 290 ~~of this chapter. Withdrawals from such fund shall be made solely for: (1) payment of~~
 291 ~~amounts required to be paid to the secretary of the treasury pursuant to an agreement~~
 292 ~~entered into under Code Section 47-18-40; (2) refunds of overpayments, not otherwise~~
 293 ~~adjustable, made by a political subdivision or instrumentality; and (3) expenses incurred~~
 294 ~~in the administration of this chapter. Notwithstanding any other provision of this chapter,~~
 295 ~~the balance of the contribution fund, less a reasonable reserve to cover potential liabilities~~
 296 ~~in an amount not to exceed \$50,000.00, shall be transferred to the general fund annually~~
 297 ~~on or before the last day of the month following the close of the fiscal year.~~

298 ~~(c) From the contribution fund the custodian of the fund shall pay to the secretary of the~~
 299 ~~treasury such amounts and at such time or times as may be directed by the state agency in~~
 300 ~~accordance with any agreement entered into under Code Section 47-18-40 and the Social~~
 301 ~~Security Act.~~

302 ~~(d) The treasurer of the state agency shall be treasurer and custodian of the contribution~~
 303 ~~fund and shall administer such fund in accordance with this chapter and the directions of~~
 304 ~~the state agency. He shall pay all warrants drawn upon it in accordance with this Code~~
 305 ~~section and with such regulations as the state agency may prescribe pursuant to this Code~~
 306 ~~section. He shall be compensated for these services in an amount established by the board~~
 307 ~~of trustees of the state agency, commensurate to his duties and responsibilities.~~

308 ~~(e) There are authorized to be appropriated annually to the contribution fund such sums~~
 309 ~~as are found to be necessary for the purpose of making the payments to the secretary of the~~

310 ~~treasury required under subsections (b) and (c) of this Code section, pursuant to the~~
311 ~~agreement entered into under Code Section 47-18-40. Such sums shall be in addition to~~
312 ~~contributions collected and paid into the contribution fund under Code Section 47-18-41.~~
313 Reserved."

314 **SECTION 7.**

315 Said chapter is further amended by revising subsection (b) of Code Section 47-18-70, relating
316 to establishment of the Employees' Social Security Coverage Group and control and
317 administration of such coverage group, as follows:

318 "(b) The Employees' Social Security Coverage Group shall for the purposes of this Code
319 section be under the jurisdiction and control of the ~~Board of Trustees of the Employees'~~
320 ~~Retirement System of Georgia~~ State Personnel Board. Such board is authorized to
321 establish such rules and regulations as are necessary to provide for payment of the
322 contributions required under the Social Security Act and the proper administration of this
323 Code section. Such board is further authorized to modify the present agreement with the
324 secretary of health and human services for the purpose of extending the benefits of old-age,
325 survivors, and disability insurance to members of such coverage group in a manner
326 consistent with the terms of this chapter. Such coverage shall become effective not earlier
327 than July 1, 1956."

328 **SECTION 8.**

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