

House Bill 398

By: Representatives Fludd of the 66th, Bruce of the 64th, Jones of the 44th, and Taylor of the 55th

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, particularly by an Act approved May 19, 2009 (Ga.
4 L. 2009, p. 4004), so as to correct certain typographical errors; to amend certain provisions
5 so as to comply with the federal Uniformed Services Employment and Reemployment Rights
6 Act of 1994 and the federal Heroes Earnings Assistance and Relief Tax Act of 2008; to
7 repeal conflicting laws; and for other purposes.

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

9 **SECTION 1.**

10 An Act providing in Fulton County a system for pension and retirement pay to teachers and
11 employees of the Board of Education of Fulton County, approved February 2, 1945 (Ga. L.
12 1945, p. 528), as amended, particularly by an Act approved May 19, 2009 (Ga. L. 2009, p.
13 4004), is amended by revising paragraph (17) of Section 1.01 as follows:

14 "(17) 'Employee contribution' means the amounts paid to the plan by an employee, as set
15 forth in Sections 2.01 and 2.07 of this Act."

16 **SECTION 2.**

17 Said Act is further amended by revising subsection (a) of Section 2.02 as follows:

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

21 **SECTION 3.**

22 Said Act is further amended by revising paragraph (2) of subsection (c) of Section 2.02 as
23 follows:

24 "(2) A participant may continue to receive service credit by continuing to make
 25 employee contributions during the period of leave. Alternatively, the participant may
 26 purchase service credit for the period of the leave by making a payment in the amount of
 27 the employee contributions he or she would have made during the period of the leave,
 28 plus interest at the rate of 3 percent per annum, compounded annually from the date of
 29 the leave until the date paid. Such calculation shall include any employee contributions
 30 that would be required to opt in to an alternate plan, as described in subsection (c) of
 31 Section 4.02 of this Act. An election to make such payment may be made at any time
 32 during the participant's employment with the employer. Except as noted in paragraph (3)
 33 of this subsection for certain periods of military or Red Cross leave, the cost of such
 34 service may be paid in a lump sum or, at the discretion of the pension board, in
 35 installments for up to 60 months or such other period permitted by the pension board.
 36 The obligation to make such payments shall be secured in such manner as prescribed by
 37 the pension board. Interest on such installment payments shall be amortized at the rate
 38 of 3 percent per annum; however, interest shall not be charged for repayment of
 39 employee contributions accruing during a period of qualified military leave of absence
 40 on and after December 12, 1994, if such repayment is made within the time limit imposed
 41 under Section 414(u) of the Code, as amended."

42 **SECTION 4.**

43 Said Act is further amended by revising paragraph (6) of subsection (b) of Section 2.03 as
 44 follows:

45 "(6) The cost of service shall be calculated by determining the amount an eligible
 46 employee would have paid had he or she been a participant in the plan during the period
 47 of such prior service, provided that the cost shall be calculated on the basis of the period
 48 of service that results in the lowest total cost to the participant. The cost of service may
 49 include the amount of matching contributions as set out in subsection (c) of this section.
 50 The calculation shall be based on the compensation assumptions and interest rates set out
 51 in subsection (c) of this section. The calculation shall also include any contributions that
 52 would be required to opt in to an alternate plan, as described in subsection (c) of Section
 53 4.02 of this Act."

54 **SECTION 5.**

55 Said Act is further amended by revising paragraph (4) of subsection (c) of Section 2.03 as
 56 follows:

57 "(4) Subject to Section 414(u) of the Code, a participant who has served on active,
 58 full-time duty in the armed forces of the United States during any period of active conflict

59 or national emergency may receive credit toward retirement for such service upon the
60 terms and conditions set forth in this section. The maximum amount of military service
61 credit which may be allowed shall not exceed five years for any and all forms of military
62 service and, when combined with other forms of prior service credit available under this
63 section, shall not exceed ten years, to the extent such limits are permissible under the
64 Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").
65 The cost of such credit shall be based on the salary scale developed by the pension board,
66 shall include an equivalent amount for the matching funds that would have been paid by
67 the pension board or the board of commissioners, and shall be calculated at a simple
68 annual rate of interest of 6 percent from the later of October 3, 1972 or the date of
69 employment with the board, to the extent permissible under USERRA. If the participant
70 pays such cost in installment payments, payments shall be amortized at an annual rate of
71 6 percent."

72 **SECTION 6.**

73 Said Act is further amended by revising subsection (b) of Section 2.07 as follows:

74 "(b) If a participant does not make the additional employee contributions for survivor
75 benefits when he or she begins participation in the plan, he or she may elect to provide
76 survivor benefits at a later time, subject to the following: A participant may request to
77 purchase survivor benefits for prior periods of participation in the plan at any time during
78 his or her employment with the employer. The cost of such service may be paid in a lump
79 sum or, at the discretion of the pension board, in installments for up to 60 months or such
80 other period permitted by the pension board. The obligation to make such payments shall
81 be secured in such manner as prescribed by the pension board. The cost of such benefits
82 shall be calculated by determining the amount the participant would have paid for survivor
83 benefit coverage during all his or her years of creditable service, including those periods
84 of service credited under Section 2.03 of this Act. The calculation shall be based on the
85 participant's actual compensation during each such year of creditable service or, for periods
86 of prior service calculated under Section 2.03 of this Act, under the compensation
87 assumptions applicable to such service, with an annual simple interest rate of 3 percent.
88 If the participant pays such cost in installment payments, payments shall be amortized at
89 an annual rate of 3 percent. The calculation shall also include any contributions that would
90 be required for survivor benefits under an applicable alternate plan, as described in Section
91 4.02 of this Act."

92 **SECTION 7.**

93 Said Act is further amended by revising Section 4.03 as follows:

94 **"SECTION 4.03.**

95 Minimum retirement benefit.

96 Notwithstanding anything to the contrary contained in Section 4.02 of this Act, a participant
 97 who becomes entitled to a normal retirement benefit or a deferred vested benefit shall receive
 98 a monthly benefit of not less than \$17.00 multiplied by such participant's years of creditable
 99 service, not to exceed 40 years; provided, however, that this section shall not apply to any
 100 participant who receives a benefit under the Teachers Retirement System of Georgia. Any
 101 cost of living adjustments due to any participant or beneficiary shall be based on the pension
 102 he or she would be entitled to receive under this plan without regard to the provisions of this
 103 section, and no such increase shall operate to increase the minimum pension guaranteed by
 104 this section."

105 **SECTION 8.**

106 Said Act is further amended by revising subsection (a) of Section 8.01 as follows:

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

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

122 (2) For survivor benefits payable on or after the participant's benefit commencement
 123 date, the amounts which are payable under subsection (a) of Section 4.02 of this Act, as
 124 increased by any cost of living adjustments in effect on the date of his or her death;
 125 provided, however, that survivor benefits shall be reduced if the participant's surviving
 126 spouse is more than five years younger than the participant in accordance with the
 127 following schedule:

128 (3) If the spouse was married to the participant for less than ten years while the
 129 participant was in active service with the board, the spouse's benefit shall be reduced by
 130 1/12 of 2 percent per month for each month the spouse was more than five years younger
 131 than the participant;

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

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

139 Survivor benefits to a participant's spouse shall continue for the life of such spouse without
 140 regard to his or her remarriage."

141 **SECTION 9.**

142 Said Act is further amended by revising Section 10.04 as follows:

143 **"SECTION 10.04.**

144 **The Uniformed Services Employment And**
 145 **Reemployment Rights Act of 1994 (USERRA).**

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

147 (1) 'Qualified military service' means any service in the uniformed services by an
 148 individual if he or she is entitled to reemployment rights under federal law with respect
 149 to such service.

150 (2) 'Veteran participant' means an employee who:

151 (A) Enters qualified military service;

152 (B) Is reemployed by the employer within such period of time as his or her
 153 reemployment rights are guaranteed under Chapter 43 of Title 38 of the United States
 154 Code; and

155 (C) Already was or became a participant in the plan at the time of reemployment.

156 (b) Notwithstanding any provision of this Act to the contrary, contributions, benefits, and
 157 service credit for qualified military service shall be provided in accordance with Section
 158 414(u) of the Code.

159 (c) Reemployment Rights. A veteran participant shall not be treated as having incurred
 160 a break in service by reason of qualified military service. Each period of qualified military

161 service shall be taken into account in determining the years of creditable service used in
162 calculating the veteran participant's accrued benefits under the plan.

163 (d) Death During Qualified Military Service. If a participant dies on or after January 1,
164 2007, while performing qualified military service but prior to becoming a veteran
165 participant, the participant's beneficiaries shall be entitled to any additional benefits, other
166 than benefit accruals related to the period of qualified military service, provided under the
167 plan as if the deceased participant had resumed employment with the employer and then
168 severed employment on account of death. Moreover, the plan will credit such participant's
169 qualified military service as service for vesting purposes, as though the participant had
170 resumed employment immediately prior to the participant's death."

171 **SECTION 10.**

172 Said Act is further amended by adding a new section to read as follows:

173 **"SECTION 15.08.**

174 Amendment.

175 The employer reserves the right to amend the plan at any time by a vote of the majority of
176 the pension board members; provided, however, that a plan amendment will not go into
177 effect until the General Assembly amends this Act by local legislation."

178 **SECTION 11.**

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