

House Bill 805

By: Representative Collins of the 27<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and  
 2 pensions, so as to make conforming amendments and correct references relative to the  
 3 abolition of the State Personnel Administration and the transfer of certain functions of such  
 4 agency to the Department of Administrative Services as provided by a separate Act; to  
 5 provide for legislative purpose; to change certain provisions relating to definitions relative  
 6 to the Employees' Retirement System of Georgia; to change certain provisions relating to  
 7 involuntary separation from employment and grounds and procedures for discharge of  
 8 employees; to change certain provisions relating to power and duty of board of trustees to  
 9 administer and operate retirement system, membership of board, vacancies, expenses, oath,  
 10 and quorum; to change certain provisions relating to election of chairman and director,  
 11 actuarial services, application of the State Personnel Administration, and payment of costs  
 12 of the State Personnel Administration; to change certain provisions relating to credit for  
 13 accumulations of forfeited annual and sick leave; to change certain provisions relating to  
 14 allowance payable upon death, disability, or involuntary separation from employment,  
 15 restrictions on separation for disability, and restrictions on entitlement to involuntary  
 16 separation benefits; to change certain provisions relating to definitions relative to the  
 17 Teachers Retirement System of Georgia; to change certain provisions relating to eligibility,  
 18 termination, leaves of absence, service credit for postgraduate study, and transfer of service  
 19 credit; to change certain provisions relating to definitions relative to social security coverage  
 20 for employees of the state and political subdivisions of the state; to change certain provisions  
 21 relating to creation of the State Employees' Assurance Department, management of the  
 22 department, and membership of the board of directors; to change certain provisions relating  
 23 to application of the State Personnel Administration to employees of the department and  
 24 payment of pro rata share of costs; to provide an effective date; to provide for contingent  
 25 automatic repeal; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 The purpose of this Act is to make conforming amendments and correct references in Title  
29 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, relative  
30 to the abolition of the State Personnel Administration and the transfer of certain functions of  
31 such agency to the Department of Administrative Services as provided by a separate Act.

32 **SECTION 2.**

33 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is  
34 amended by revising Code Section 47-2-1, relating to definitions relative to the Employees'  
35 Retirement System of Georgia, as follows:

36 "47-2-1.

37 As used in this chapter, the term:

38 (1) 'Accumulated contributions' means the sum of all the amounts deducted from the  
39 earnable compensation of a member or paid by the member to establish or reestablish  
40 credit for service, which amounts are credited to the member's individual account in the  
41 annuity savings fund, together with regular interest thereon. Beginning July 1, 1980,  
42 'accumulated contributions' also includes the amount of employee contributions paid by  
43 the employer on behalf of the employee and credited to the employee's individual account  
44 in the annuity savings fund, together with regular interest thereon, excluding employee  
45 contributions paid by the employer or the employee for group term life insurance.

46 (2) 'Actuarial equivalent' means a benefit of equal value when computed at regular  
47 interest upon the basis of the mortality tables last adopted by the board of trustees.

48 (3) 'Annuity' means annual payments for life derived from the accumulated contributions  
49 of a member.

50 (4) 'Annuity reserve' means the present value of all payments to be made on account of  
51 an annuity, or benefit in lieu of an annuity, computed at regular interest upon the basis  
52 of the mortality tables last adopted by the board of trustees.

53 (5) 'Annuity savings fund' means the fund set forth under Code Section 47-2-51.

54 (6) 'Average final compensation' means the average annual earnable compensation of  
55 any employee during his or her last five years of creditable service or, if ~~he~~ the employee  
56 has had less than five years of creditable service, his or her average annual earnable  
57 compensation during his or her total creditable service.

58 (7) 'Beneficiary' means any person in receipt of a pension, an annuity, a retirement  
59 allowance, or other benefit under this chapter.

60 (8) 'Board of trustees' means the board of trustees provided for in Code Section 47-2-21  
61 to administer the retirement system.

62 (9) Reserved.

63 (10) Reserved.

64 (11) 'Court of record' means state courts, city courts, superior courts, the Georgia Court  
65 of Appeals, and the Supreme Court of Georgia handling within their jurisdiction general  
66 state law exclusively. This definition shall have no effect on creditable service  
67 determined or prior service certificates issued by the board of trustees before February  
68 13, 1956.

69 (12) 'Credit' means creditable service, as defined in this Code section.

70 (13) 'Creditable service' means prior service plus membership service and any other  
71 service recognized as creditable service under this chapter.

72 (14) 'Division A' means the division within the retirement system of members who are  
73 part of the Employees' Social Security Coverage Group, as set forth in Code Section  
74 47-2-71.

75 (15) 'Earnable compensation' means the full rate of regular compensation payable to a  
76 member employee for his or her full normal working time, excluding any supplements  
77 from local funds. In cases where compensation includes maintenance, the board of  
78 trustees shall fix the value of that part of the compensation not paid in cash. Such term  
79 shall include contributions made to a qualified transportation plan, within the meaning  
80 of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral  
81 contributions made under Section 125, 401(k), 402(g)(3), 457, or 414(h) of the federal  
82 Internal Revenue Code to this retirement system or to any other retirement plan  
83 maintained by an employer.

84 (16) 'Employee' means:

85 (A) Any regularly classified worker, elected or appointed officer, or employee of a  
86 state agency or any employee of a county, city-county, or city board, which agency or  
87 board is ~~under the State Personnel Administration~~ subject to the state system of  
88 personnel administration created by Chapter 20 of Title 45 and the State Personnel  
89 Board, including a merit system for employees of the Department of Public Safety;

90 (B) Any employee or officer of any other department, bureau, board, institution, or  
91 commission of the state:

92 (i) Which department, bureau, board, or commission operates under a merit system  
93 of personnel administration;

94 (ii) Which department operates under a tenure system as established by law; or

95 (iii) Which department, bureau, board, or commission becomes eligible for inclusion  
96 in the retirement system by Act of the General Assembly

97 who receives payment for performance of personal services from the state or any  
98 department, bureau, institution, board, or commission of the state or from a county,  
99 city-county, or city board and who is employed in a position normally requiring actual

100 performance of duty during not less than nine months of the year. 'Employee' shall not  
 101 include members of the Teachers Retirement System of Georgia, members of the Public  
 102 School Employees Retirement System, any person on the payroll of a third party with  
 103 whom an employer has contracted for the provision of such person's services, or any  
 104 person classified by an employer as other than a common law employee for federal tax  
 105 purposes, even if a court, tribunal, or administrative agency determines that such person  
 106 is a common law employee and not an independent contractor for federal tax purposes;  
 107 or

108 (C) Any other provisions of law to the contrary notwithstanding, any and all civilians  
 109 who are employed in or with the Army National Guard of Georgia and the Air National  
 110 Guard of Georgia shall, upon establishment of a merit system for such civilian  
 111 employees and upon the approval of the adjutant general, be entitled to the retirement  
 112 allowances, benefits, and privileges provided by this chapter, notwithstanding that such  
 113 employees may be paid by federal funds. No credit shall accrue to such civilian  
 114 employees for any service rendered prior to the effective date of coverage under the  
 115 retirement system. The adjutant general is authorized to make such arrangements and  
 116 agreements as may be necessary or proper in order to effect deductions from the  
 117 salaries or wages of such civilian employees as may be necessary or proper in the  
 118 administration of the retirement system as to such civilian employees. It is the intent  
 119 of the General Assembly that such persons be included in this definition only if federal  
 120 funds are available for payment of employer contributions for such employees and  
 121 other expenses of participation.

122 (16.1) 'Employee' may include new certified professional personnel employed on and  
 123 after July 1, 1983, for the first time by the State Board of Education or by the State  
 124 Department of Education only if such personnel elect membership in the retirement  
 125 system pursuant to subsection (h) of Code Section 47-3-60. As used in this paragraph,  
 126 the term 'certified professional personnel' shall have the meaning provided for in  
 127 paragraph (8.1) of Code Section 47-3-1.

128 (16.2) 'Employee' shall not include certified professional personnel who are in the  
 129 unclassified service ~~of the State Personnel Administration~~ as defined by Code Section  
 130 45-20-2 and who are employed by the State Board of Education or by the State  
 131 Department of Education and who elect to become members of the Teachers Retirement  
 132 System of Georgia pursuant to the authority of subsection (i) of Code Section 47-3-60.  
 133 As used in this paragraph, the term 'certified professional personnel' shall have the  
 134 meaning provided for in paragraph (8.1) of Code Section 47-3-1.

135 (16.3) 'Employee' may include persons employed on and after July 1, 1987, for the first  
 136 time by the Technical College System of Georgia or by postsecondary

137 vocational-technical schools governed by the Technical College System of Georgia only  
 138 if such personnel elect membership in the retirement system pursuant to subsection (j) of  
 139 Code Section 47-3-60.

140 (16.4) 'Employee' shall not include persons who are employed by the Technical College  
 141 System of Georgia or by a postsecondary vocational-technical school governed by the  
 142 Technical College System of Georgia and who elect to become members of the Teachers  
 143 Retirement System of Georgia pursuant to the authority of subsection (j) of Code Section  
 144 47-3-60.

145 (16.5) 'Employee' shall not include personnel employed by the State Board of Education  
 146 or by the State Department of Education who are authorized to elect and elect to become  
 147 or remain members of the Teachers Retirement System of Georgia pursuant to applicable  
 148 provisions of Chapter 3 of this title.

149 (16.6) 'Employee' shall not include an individual classified by an employer as an  
 150 independent contractor or a leased employee within the meaning of Section 414(n) of the  
 151 federal Internal Revenue Code, even if such individual is later reclassified by the Internal  
 152 Revenue Service as a common law employee.

153 (17) 'Employer' means:

154 (A) The state or any department, bureau, institution, board, or commission of the state  
 155 or any county, city-county, or city board, the employees of which are ~~under the State~~  
 156 ~~Personnel Administration~~ subject to the state system of personnel administration  
 157 created by Chapter 20 of Title 45 and the State Personnel Board, including a merit  
 158 system for employees of the Department of Public Safety, and all state departments  
 159 under a tenure system as established by law, provided that such county, city-county, or  
 160 city board may notify the board of trustees that it will not participate in the benefits of  
 161 the retirement system, such notice to be given in writing on or before the  
 162 commencement date or before persons are employed by it. Any employee of a county,  
 163 city-county, or city board having an existing local retirement system may elect to  
 164 continue to participate in such existing local system but shall not participate in two  
 165 systems, and his or her election shall be final on the commencement date under this  
 166 chapter. Any county, city-county, or city employee who elects to become a member  
 167 of this retirement system and who was a member of an existing local retirement system  
 168 shall transfer to the board of trustees any equity he or she has in the local system.;

169 (B) Any other provisions of law to the contrary notwithstanding, the adjutant general  
 170 is authorized, though not directed, to establish a merit system and to perform all of the  
 171 duties and obligations of an 'employer' for all civilians employed in or with the Army  
 172 National Guard of Georgia and the Air National Guard of Georgia, even though such  
 173 employees may be paid with federal funds. The adjutant general is further authorized

174 to make and enter into such agreements and take such actions as are necessary to  
 175 provide for all contributions and payments specified in this chapter, from funds made  
 176 available by the federal government, and otherwise to comply with this chapter so as  
 177 to make this chapter applicable to such civilian employees; or

178 (C) ~~'Employer' shall include any~~ Any new state agency described under Code Section  
 179 47-2-70.1 and any other entity authorized by law to report any of its employees as  
 180 members of this system.

181 (18) 'Expense fund' means the fund set forth under Code Section 47-2-60.

182 (19) 'Group term life insurance' means the survivors benefits established under Code  
 183 Section 47-2-128.

184 (20) 'Involuntary separation from employment without prejudice' means separation or  
 185 release from service other than by the willing choice of a member, provided that such  
 186 member has not been convicted in a court of competent jurisdiction of any crime  
 187 involving moral turpitude or malfeasance in office or has not been forced to make  
 188 restitution for any funds or property wrongfully taken by the member. Involuntary  
 189 separation shall not include the defeat in an election of an elected official who becomes  
 190 a member of this retirement system for the first time on or after July 1, 1971.

191 (21) 'Involuntary separation from employment with prejudice' means separation or  
 192 release from service other than by the willing choice of a member who has been  
 193 convicted in a court of competent jurisdiction of a crime involving moral turpitude or  
 194 malfeasance in office or who has been forced to make restitution for any funds or  
 195 property wrongfully taken by the member.

196 (22) 'Medical board' means the board of physicians established under Code Section  
 197 47-2-24 for the purpose of arranging for and passing upon medical examinations required  
 198 under this chapter.

199 (23) 'Member' means any employee included in the membership of this retirement  
 200 system. On and after July 1, 1967, no employee shall become a member unless his or her  
 201 position with an employer, as defined in paragraph (17) of this Code section, is his or her  
 202 primary occupation and such position requires that the employee spend at least the  
 203 number of hours specified in regulations adopted by the board of trustees in the actual  
 204 performance of his or her duties, provided that in no case shall the number of hours be  
 205 less than 30 hours per week during at least nine months of a year.

206 (24) 'Membership service' means service which is rendered by an employee while he or  
 207 she is a member of the retirement system and for which credit is allowable under this  
 208 chapter.

- 209 (25) 'Option one,' 'option two,' 'option three,' and 'option four' mean the optional forms  
210 in which a member may elect to receive his or her retirement allowance, which options  
211 are set forth in Code Section 47-2-121.
- 212 (26) 'Pension' means periodic payments for life derived from contributions of the state.
- 213 (27) 'Pension accumulation fund' means the fund set forth in Code Section 47-2-55.
- 214 (28) 'Pension reserve' means the present value of all payments to be made on account of  
215 a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of  
216 the mortality tables last adopted by the board of trustees.
- 217 (28.1) 'Plan year' means the 12 month period beginning on July 1 of each year.
- 218 (29) 'Prior service' means service rendered prior to January 1, 1954, for which credit is  
219 allowable under this chapter.
- 220 (30) 'Prior service certificate' means the certificate issued to a member under this chapter  
221 as proof of his or her prior service.
- 222 (31) 'Regular interest' means interest at such a rate as shall be determined by the board  
223 of trustees in accordance with Code Section 47-2-26, which interest shall be compounded  
224 annually.
- 225 (32) 'Retirement' means withdrawal from service with a retirement allowance granted  
226 under this chapter.
- 227 (33) 'Retirement allowance' means the sum of the annuity and the pension, or any  
228 optional benefit payable in lieu thereof. All retirement allowances shall be payable in  
229 equal monthly installments, except that the board of trustees may adopt regulations  
230 providing for the payment of a lump sum, not to exceed the equivalent actuarial value of  
231 the retirement allowance, in lieu of a retirement allowance of less than \$10.00 per month  
232 or in lieu of part of an annuity.
- 233 (34) 'Retirement system' means the Employees' Retirement System of Georgia.
- 234 (35) 'Service' means service rendered as an employee and paid for by an employer.
- 235 (36) 'Service credit' means creditable service, as defined in this Code section.
- 236 (37) 'Within one year after discharge from the armed forces' means within one year after  
237 the termination of the member's active service in the military or naval forces of the  
238 United States and shall not include any military reserve or naval reserve service."

239

**SECTION 3.**

240 Said title is further amended by revising Code Section 47-2-2, relating to involuntary  
 241 separation from employment and grounds and procedures for discharge of employees, as  
 242 follows:

243 "47-2-2.

244 (a) The provisions of this Code section are supplemental to, and not in lieu of, the  
 245 provisions of paragraphs (20) and (21) of Code Section 47-2-1 defining 'involuntary  
 246 separation from employment without prejudice' and 'involuntary separation from  
 247 employment with prejudice.'

248 (b) The word 'employee' as defined in paragraph (2) of subsection (c) of this Code section  
 249 shall include any such employee in the classified or unclassified service of the ~~State~~  
 250 ~~Personnel Administration~~ state system of personnel administration provided for by Chapter  
 251 20 of Title 45. The provisions of that law or any rules or regulations promulgated pursuant  
 252 thereto relative to the dismissal of employees from employment shall not be applicable to  
 253 the discharge of an employee from employment pursuant to the provisions of this Code  
 254 section. Any such employee who is otherwise subject to that law and rules or regulations  
 255 promulgated pursuant thereto shall continue to be subject thereto for the purpose of any  
 256 adverse personnel action other than discharge from employment or suspension pursuant to  
 257 this Code section, but for the purposes of such discharge from employment or suspension,  
 258 the provisions of this Code section shall be exclusive.

259 (c) As used in this Code section, the term:

260 (1) 'Duties' means duties and responsibilities assigned by an employer to an employee  
 261 which are reasonably related to the lawful objectives and responsibilities of the employer  
 262 and which are reasonably related to the position of employment held by the employee for  
 263 which the employee is compensated.

264 (2) 'Employee' means an employee, other than an elected public official, a public official  
 265 selected by a vote of a board to serve at the pleasure of the board, or a public official  
 266 appointed pursuant to law for a specific term of office, as defined in paragraph (16) of  
 267 Code Section 47-2-1 who was a member of the retirement system prior to April 1, 1972,  
 268 and who, if involuntarily separated from employment without prejudice, has sufficient  
 269 membership service under the retirement system to qualify for a retirement allowance  
 270 because of such involuntary separation from employment.

271 (3) 'Employer' means any person or group of persons authorized by law or having  
 272 authority delegated by law to discharge an employee.

273 (4) 'Insubordination' means the refusal by an employee to carry out the employee's duties  
 274 when instructed to do so by the employer or by the employee's supervisor upon the  
 275 instructions or under the authority of the employer.

276 (5) 'Irresponsible performance of duties' means the performance of any duties by an  
277 employee or the use of an employee's position of employment for any one or more of the  
278 following purposes:

279 (A) To make a financial gain or receive materials or services having financial value,  
280 except compensation received as an employee, under circumstances which would lead  
281 a reasonable person to believe that the financial gain or the receipt of materials or  
282 services was improperly related to the performance of duties by the employee;

283 (B) To purchase or authorize the purchase of materials or services from public funds  
284 when the employee knows or reasonably could be expected to know that the amount  
285 paid for such materials or services unreasonably exceeds the amount for which  
286 substantially equivalent materials or services could be purchased without excessive  
287 delay or inconvenience;

288 (C) To use publicly owned real or personal property or publicly supplied services for  
289 personal use when the employee knows or reasonably could be expected to know that  
290 such personal use of public property or services is unauthorized or improper; or

291 (D) To expend or authorize the expenditure of public funds in a manner which would  
292 lead a reasonable person to believe the employee shows a reckless disregard for the  
293 obligation to taxpayers to expend public funds in a prudent and efficient manner.

294 (6) 'Malingering' means frequent absences from work or the failure to perform duties  
295 during working hours because of claims of illness which are unsubstantiated as  
296 determined pursuant to subsection (e) of this Code section.

297 (7) 'Neglect of duty' means the repeated failure by an employee to carry out the  
298 employee's duties, either because of excessive unexcused absences from work or a failure  
299 to perform or the unsatisfactory performance of duties while at work or a combination  
300 thereof.

301 (8) 'Proof of illness' means a written opinion by one or more physicians designated by  
302 the medical board provided for by Code Section 47-2-24 stating that an employee's  
303 absences from work or unsatisfactory performance of duties are reasonably related to an  
304 illness suffered by the employee and describing the nature of such illness.

305 (9) 'Unsatisfactory performance of duties in a willful manner' means the unsatisfactory  
306 performance of duties by an employee when the past satisfactory performance of duties  
307 by the employee indicates the employee's unsatisfactory performance is willful as  
308 determined pursuant to subsection (f) of this Code section.

309 (d) An employee may be discharged from employment pursuant to the requirements of this  
310 Code section for insubordination, irresponsible performance of duties, malingering, neglect  
311 of duty, or unsatisfactory performance of duties in a willful manner or for any combination  
312 of such reasons. Any employee so discharged from employment shall not be entitled to

313 and shall not receive a retirement benefit based on involuntary separation from  
314 employment without prejudice pursuant to Code Section 47-2-123.

315 (e) An employer shall have a reasonable basis for believing an employee is malingering  
316 when:

317 (1) The employee has a pattern of absences from work because of illness or  
318 unsatisfactory performance of duties because of illness or a pattern of absences from  
319 work and unsatisfactory performance of duties because of illness;

320 (2) The employer has requested the employee, in writing, to provide proof of illness and  
321 the employee has been given a reasonable opportunity, which shall not be less than 30  
322 days after the date of the request made by the employer, to respond to the employer's  
323 request; and

324 (3) The employee has provided no or unsatisfactory proof of illness to the employer in  
325 response to the request made pursuant to paragraph (2) of this subsection.

326 (f) An employer shall have a reasonable basis for believing an employee is engaging in  
327 unsatisfactory performance of duties in a willful manner when:

328 (1) The past work history of the employee indicates the employee is capable of  
329 satisfactory performance of duties;

330 (2) The unsatisfactory performance of duties became increasingly apparent after the  
331 employee qualified for a retirement benefit based on involuntary separation from  
332 employment without prejudice; and

333 (3) The employee does not claim illness as a basis for unsatisfactory performance of  
334 duties and has offered no proof of illness to the employer.

335 (g) When an employer is considering the discharge from employment of an employee for  
336 any one or more reasons specified in subsection (d) of this Code section, the employer shall  
337 transmit a written notice to the employee containing the following:

338 (1) An explanation of the conduct or deficiencies of the employee which form the basis  
339 for the employer's considering the discharge of the employee;

340 (2) A statement that such conduct may result in the employee's discharge from  
341 employment on a specified date, which shall not be earlier than the tenth day following  
342 the date of the notice in the case of insubordination or irresponsible performance of duties  
343 and not earlier than the thirtieth day following the date of the notice if the basis for  
344 considering the discharge of the employee is for a reason or reasons other than  
345 insubordination or irresponsible performance of duties;

346 (3) A statement that the employee's discharge from employment for the reasons specified  
347 in the notice shall not constitute involuntary separation from employment without  
348 prejudice within the meaning of the applicable provisions of the Employees' Retirement  
349 System of Georgia and that if discharged, the employee shall not be entitled to receive

350 and shall not receive a retirement benefit based on involuntary separation from  
351 employment without prejudice;

352 (4) A statement that the employee has a right to a hearing before the employer on a  
353 specified date, which shall be at least five days prior to the date specified for the  
354 employee's discharge from employment; and

355 (5) A statement that at the hearing before the employer, the employee shall be given an  
356 opportunity to offer explanations for the employee's conduct or deficiencies and to  
357 present evidence on the employee's behalf.

358 (h) An employee being considered for discharge from employment because of  
359 insubordination or irresponsible performance of duties may be suspended without pay,  
360 except to the extent the employee has accumulated annual leave, pending the completion  
361 of the procedures provided for in subsections (g) and (i) of this Code section. If the  
362 employer's final decision is not to discharge the employee or if the employee's discharge  
363 is not upheld by the court upon judicial review provided for in Code Section 47-2-3, the  
364 compensation denied to the employee during suspension shall be reimbursed to the  
365 employee and, if applicable, accumulated leave used during the suspension shall be  
366 reinstated.

367 (i) If an employee subject to the provisions of subsection (g) of this Code section fails to  
368 respond to the notice sent to the employee pursuant to said subsection or if the employer  
369 is not satisfied with the explanation made by the employee for the conduct or deficiencies  
370 specified in said notice and is not satisfied with the evidence presented in the employee's  
371 behalf, the employee may be discharged from employment on the date specified in said  
372 notice or on such later date as shall be specified in writing by the employer to the  
373 employee. The employee shall be notified, in writing, of the final decision of the employer  
374 and such notice shall provide an explanation for the employer's decision.

375 (j) An employer discharging an employee pursuant to this Code section shall prepare a  
376 written report to the board of trustees on the discharge of the employee. Any notices or  
377 other written communications to the employee which relate to the employer's decision to  
378 discharge the employee shall be attached to and made a part of the employer's report to the  
379 board of trustees.

380 (k) It shall be the duty of any employer considering the discharge of an employee for any  
381 reason or combination of reasons specified in subsection (d) of this Code section to follow  
382 the procedures specified in this Code section as a condition precedent to the discharge of  
383 such employee."

384

**SECTION 4.**

385 Said title is further amended by revising Code Section 47-2-21, relating to power and duty  
 386 of board of trustees to administer and operate retirement system, membership of board,  
 387 vacancies, expenses, oath, and quorum, as follows:

388 "47-2-21.

389 (a) The administration and responsibility for the proper operation of the retirement system  
 390 and for effectuating this chapter are vested in the board of trustees, which shall be  
 391 organized immediately after a majority of the trustees have qualified and taken the oath of  
 392 office.

393 (b) The board of trustees shall consist of seven trustees as follows:

394 (1) The state auditor, ex officio;

395 (2) The state treasurer, ex officio;

396 (3) The commissioner of ~~personnel administration~~ administrative services, ex officio;

397 (4) One member appointed by the Governor for a term of four years, provided that the  
 398 first such term was from date of appointment to June 30, 1951;

399 (5) Two trustees elected by the trustees set forth in paragraphs (1) through (4) of this  
 400 subsection for a term of four years, provided that in their first terms one served for a term  
 401 from the date of election to June 30, 1950, and the other for a term from the date of  
 402 election to June 30, 1952; provided, further, that each of these two members shall have  
 403 had at least five years of creditable service with an agency included in this retirement  
 404 system; and

405 (6) The seventh trustee shall be a citizen of this state but not a member of the retirement  
 406 system nor shall he or she hold or be a candidate for public office during his or her term  
 407 of office as a trustee. He or she shall have had at least ten years of experience in the  
 408 investment of moneys and shall be elected by the remaining trustees for a term of four  
 409 years, provided that his or her first term was from the date of election to June 30, 1953.

410 (c) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the  
 411 unexpired term in the same manner as the original appointment or election.

412 (d) The trustees may receive the daily expense allowance authorized for members of the  
 413 General Assembly for each day spent attending meetings of the board of trustees and any  
 414 committee meetings called pursuant to authorization of the board of trustees and for time  
 415 spent in necessary travel. In addition to such amount, the trustees shall be reimbursed for  
 416 all actual travel and other expenses necessarily incurred through service on the board of  
 417 trustees. State officials serving ex officio shall not receive the daily expense allowance but  
 418 shall be entitled to reimbursement of actual expenses.

419 (e) Each trustee shall, within ten days after his or her appointment or election, take an oath  
 420 of office that he or she will diligently and honestly administer the affairs of the board of

421 trustees which have been entrusted to him or her and that he or she will not knowingly  
 422 violate or willingly permit to be violated any law applicable to the retirement system. The  
 423 oath shall be subscribed to by the trustee, certified by the officer before whom it is taken,  
 424 and filed immediately in the office of the Secretary of State.

425 (f) Five trustees at any meeting of the board of trustees shall constitute a quorum to  
 426 transact business. Each trustee shall be entitled to one vote and four votes shall be  
 427 necessary for a decision by the board of trustees."

428 **SECTION 5.**

429 Said title is further amended by revising Code Section 47-2-22, relating to election of  
 430 chairman and director, actuarial services, application of the State Personnel Administration,  
 431 and payment of costs of the State Personnel Administration, as follows:

432 "47-2-22.

433 (a) The board of trustees shall elect a ~~chairman~~ chairperson from its membership and shall  
 434 employ a director who shall not be a trustee.

435 (b) The board of trustees shall engage such actuarial and other services as shall be required  
 436 to transact the business of the retirement system.

437 (c) The director and all other employees of the board of trustees shall be governed by such  
 438 rules of position, classification, appointment, promotion, demotion, dismissal, transfer,  
 439 qualification, compensation, seniority, privileges, tenure, and other employment standards  
 440 as may now or hereafter be established under the ~~State Personnel Administration~~ state  
 441 system of personnel administration provided for by Chapter 20 of Title 45, including the  
 442 rules and regulations promulgated by the State Personnel Board.

443 (d) The board of trustees shall pay its ~~pro rata~~ share of the administrative costs of operating  
 444 the ~~State Personnel Administration~~ state system of personnel administration in the manner  
 445 prescribed in ~~paragraph (6) of subsection (b) of~~ Code Section 45-20-4."

446 **SECTION 6.**

447 Said title is further amended by revising Code Section 47-2-91, relating to credit for  
 448 accumulations of forfeited annual and sick leave, as follows:

449 "47-2-91.

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

451 (1) 'Classified member' means a member of the retirement system who is in the classified  
 452 service ~~of the State Personnel Administration provided for by Chapter 20 of Title 45~~ as  
 453 defined in Code Section 45-20-2.

454 (2) 'Commissioner' means the commissioner of ~~personnel administration~~ administrative  
 455 services provided for ~~in by~~ Code Section ~~45-20-4~~ 50-5-1.

456 (3) 'Compensatory time' means time off from work which is used in lieu of annual or sick  
 457 leave to offset overtime service rendered by an employee when the employee is  
 458 compensated by a fixed salary and is not financially compensated for such overtime  
 459 service.

460 (4) 'Elected state official' means the Governor, Lieutenant Governor, each member of the  
 461 Public Service Commission, the Secretary of State, Attorney General, State School  
 462 Superintendent, Commissioner of Insurance, Commissioner of Labor, Commissioner of  
 463 Agriculture, each Justice of the Supreme Court, and each Judge of the Court of Appeals.

464 (5) 'Unclassified member' means any member of the retirement system who is in the  
 465 unclassified service of the State Personnel Administration provided for by Chapter 20 of  
 466 Title 45 as defined in Code Section 45-20-2 or who is otherwise not covered by the rules  
 467 and regulations of the State Personnel Board, including elected state officials.

468 (b)(1) Accumulated days of forfeited annual and sick leave for which a member has not  
 469 been paid shall constitute creditable service if such member has at least six months of  
 470 such forfeited leave at the time of the member's retirement. The member shall be given  
 471 one month of creditable service for each 20 days of forfeited annual and sick leave. Upon  
 472 retirement of a classified member, the employer shall certify to the board of trustees the  
 473 total amount of that member's forfeited annual and sick leave based on leave records for  
 474 periods of service where employers have maintained adequate leave records. For periods  
 475 of service where no leave records are available for classified members, forfeited leave for  
 476 an undocumented period may be computed as provided in subsection (i) of this Code  
 477 section. The determination of accumulated days of forfeited annual and sick leave for  
 478 unclassified members shall be based on leave records for periods of service where  
 479 employers have maintained adequate leave records. For periods of service where no  
 480 leave records are available, forfeited leave for unclassified employees shall be computed  
 481 as follows:

482 (A) When 15 years or more of leave records are available for an unclassified member,  
 483 the determination of forfeited leave for undocumented periods shall be computed as  
 484 provided in subsection (i) of this Code section; or

485 (B) When less than 15 years of leave records are available for an unclassified member,  
 486 the determination of forfeited leave for undocumented periods shall be based on the  
 487 one-year average amount of forfeited annual and sick leave calculated by the  
 488 commissioner pursuant to subsection (f) of this Code section and as provided in  
 489 subsection (g) of this Code section, subject to the limitation in subsection (j) of this  
 490 Code section.

491 (2) For both classified and unclassified members, each employer shall contribute the  
 492 same amount as would have been contributed by the employer had the member obtaining

493       creditable service for forfeited annual and sick leave remained in state employment  
494       without change in compensation for a period of time equal to the amount of forfeited  
495       annual and sick leave for which creditable service is obtained.

496       (c) For unclassified members, the maximum number of days of annual and sick leave  
497       which may be accumulated in one year shall be in accordance with the rules and  
498       regulations of the State Personnel Board governing employees in classified service, as  
499       defined in ~~paragraph (2)~~ of Code Section 45-20-2.

500       (d) For the purposes of this Code section, compensatory time shall not be applicable to  
501       elected state officials and no elected state official may offset any annual or sick leave taken  
502       by any such official by any compensatory time which might otherwise be applicable to  
503       such official.

504       (e) When accumulated forfeited annual and sick leave is claimed for the purposes of this  
505       Code section by an elected state official based on records maintained by or pursuant to the  
506       order or supervision of the elected state official, any such accumulated annual and sick  
507       leave accepted by the board of trustees shall, in addition to such records, be based on the  
508       elected state official's sworn statement that the amount of accumulated forfeited annual and  
509       sick leave claimed by the elected state official is true and correct.

510       (f) The commissioner shall select a random representative sample of employees who, as  
511       of June 30, 1985, have ten years or more of continuous service in the classified service ~~of~~  
512       ~~the State Personnel Administration~~ as defined by Code Section 45-20-2. From an  
513       examination of the personnel records of the members in the sample, the commissioner shall  
514       calculate an annual average of the number of days of annual leave taken and an annual  
515       average of the number of days of sick leave taken by the members in the sample. The  
516       average days for annual leave taken and the average days for sick leave taken shall then  
517       each be deducted, respectively, from the maximum number of days of annual leave and the  
518       maximum number of days of sick leave which may be accumulated in one year under rules  
519       and regulations of the State Personnel Board by an employee in the classified service ~~of the~~  
520       ~~State Personnel Administration~~ as defined by Code Section 45-20-2. The two figures  
521       resulting after making such reductions shall be added together and the resulting figure shall  
522       be forfeited annual and sick leave for each year of membership service for the purposes of  
523       subsection (g) of this Code section, subject to the limitation in subsection (j) of this Code  
524       section.

525       (g) The average amount of forfeited annual and sick leave calculated by the commissioner  
526       pursuant to subsection (f) of this Code section shall be supplied by that officer to all  
527       employers. When less than 15 years of leave records are available, the determination of  
528       forfeited annual and sick leave for unclassified employees with undocumented periods may  
529       be certified by the employer based on the average amount of forfeited annual and sick leave

530 supplied by the commissioner. The amount which may be so certified shall be calculated  
531 by multiplying the figure representing the one-year average of forfeited annual and sick  
532 leave by the number of years of membership service for which leave records were not  
533 available at the time of retirement, subject to the limitation in subsection (j) of this Code  
534 section.

535 (h) For any member whose membership service includes service as both a classified and  
536 unclassified member, both classified and unclassified service may be considered in  
537 qualifying for undocumented forfeited annual and sick leave calculations based on 15 or  
538 more years where employers have maintained adequate records of annual and sick leave  
539 taken by members. When 15 or more years of leave records are available through a  
540 combination of both classified and unclassified service, forfeited annual and sick leave for  
541 an undocumented period may be computed as provided in subsection (i) of this Code  
542 section. When less than 15 years of leave records are available through a combination of  
543 both classified and unclassified service for a member, then the undocumented forfeited  
544 leave for the unclassified service shall be calculated pursuant to subsection (g) of this Code  
545 section and undocumented forfeited leave for classified service shall be calculated pursuant  
546 to subsection (i) of this Code section, subject to the limitation in subsection (j) of this Code  
547 section. The two calculations shall then be added together to determine the total amount  
548 of forfeited leave for the undocumented period.

549 (i) The formula provided by this subsection may be utilized for computation of forfeited  
550 annual and sick leave during the undocumented periods of service described in paragraph  
551 (1) of subsection (b) and subparagraph (b)(1)(A) of this Code section. The formula is as  
552 follows:

- 553 (1) Compute the maximum earnable sick and annual leave for the undocumented period;
- 554 (2) Compute the total sick and annual leave taken for all periods in which documentation  
555 is available;
- 556 (3) Compute the average sick and annual leave taken per month by dividing the answer  
557 under paragraph (2) of this subsection by the total number of documented months;
- 558 (4) Multiply the answer under paragraph (3) of this subsection by the total number of  
559 months in the undocumented period; and
- 560 (5) Subtract the answer under paragraph (4) of this subsection from the answer under  
561 paragraph (1) of this subsection to determine total leave earned and not taken during the  
562 undocumented period.

563 (j) For unclassified employees who have less than 15 years of leave records available, the  
564 determination of forfeited annual and sick leave shall be limited to the lesser of the amount  
565 calculated pursuant to subsections (f) and (g) of this Code section or the average of actual  
566 forfeited annual and sick leave for which leave records are available, whichever is less.

567 (k) The board of trustees may adopt rules and regulations, not inconsistent with the  
568 provisions of this Code section, to aid in administering and carrying out the provisions of  
569 this Code section."

570

**SECTION 7.**

571 Said title is further amended by revising Code Section 47-2-123, relating to allowance  
572 payable upon death, disability, or involuntary separation from employment, restrictions on  
573 separation for disability, and restrictions on entitlement to involuntary separation benefits,  
574 as follows:

575 "47-2-123.

576 (a) Upon the death or involuntary separation from employment without prejudice of any  
577 member in service, he or she shall be entitled to an allowance in accordance with  
578 subsection (c) of this Code section, provided that the provisions of this subsection that  
579 relate to 'upon becoming involuntarily separated from employment without prejudice' shall  
580 not be applicable to any person who first becomes a member after March 31, 1972.

581 (b)(1) Subject to the provisions of paragraphs (2) through (5) of this subsection, any  
582 member in service who has at least 15 years of creditable service may be retired on a  
583 disability allowance by the board of trustees, upon written application to the board of  
584 trustees by the member or his or her employer and upon certification by the medical  
585 board that he or she is medically or physically incapable of further performance of his or  
586 her duties in the position he or she held at the time his or her disability originated, that  
587 incapacity is likely to be permanent, and that he or she should be retired; provided,  
588 however, that the medical board shall not consider any evidence of such disability which  
589 is not submitted within 12 months after the date the member submits his or her first  
590 application for a disability retirement. The board of trustees may retire such member not  
591 less than 30 days nor more than 90 days after execution and filing of the written  
592 application.

593 (2) A member making application for a disability retirement pursuant to paragraph (1)  
594 of this subsection shall at the same time submit a copy of such application together with  
595 any supporting documentation accompanying such application to his or her employing  
596 agency. The member shall thereafter provide the employing agency with any additional  
597 information or documentation which he or she submits to the board of trustees in  
598 conjunction with such application.

599 (3) After receipt of the notice provided for in paragraph (2) of this subsection, the head  
600 of the member's agency or his or her designee shall conduct an interview with the  
601 member applying for disability retirement; provided, however, that any designee of the  
602 head of an agency shall be an official at such agency who is above the level of the

603 applicant's immediate supervisor and who has the authority to make job assignment  
604 decisions. The interview shall be held within ten business days after receipt of such  
605 notice. Based on the interview and information received by the agency pursuant to  
606 paragraph (2) of this subsection, the agency head or his or her designee shall determine  
607 if an alternative position is available for the member which meets the following  
608 requirements:

609 (A) The physical requirements for such position are compatible with the member's  
610 physical limitations;

611 (B) The annual compensation and possibility for future advancement for such position  
612 shall be the same as or greater than that of the current position of the member;

613 (C) The duties for such position shall be reasonably compatible with the experience  
614 and educational qualifications of the member;

615 (D) The position shall be one which includes the holder thereof as a member of the  
616 retirement system provided for by this chapter; and

617 (E) The position must be available for acceptance by the member and an offer of the  
618 position to the official or member must be made, in writing, by not later than 45 days  
619 after the member submitted his or her application for a disability retirement.

620 An agency making an offer of alternative employment as provided in this paragraph shall  
621 so notify the board of trustees within 45 days after the member submitted his or her  
622 application for a disability retirement. After receipt of such notice, the board of trustees  
623 shall not approve a disability retirement until the procedures of paragraph (4) of this  
624 subsection are resolved.

625 (4) Any member applying for a disability retirement who is offered a position of  
626 employment in conformity with the requirements of paragraph (3) of this subsection shall  
627 accept the offer or dispute his or her ability to perform the tasks required by the position  
628 offered by submitting a written appeal to the agency and to the board of trustees within  
629 30 days after receiving the offer. In the event of an appeal, the agency shall promptly  
630 submit to the medical board a detailed description of the requirements of the position  
631 offered and the medical board shall determine, based upon all information available to  
632 it, whether the member is reasonably capable of performing such tasks. The decision of  
633 the medical board shall be final. If the medical board determines that the member is  
634 unable to perform the tasks required either by the position held at the time of the  
635 application for a disability retirement or the position offered, the member shall be placed  
636 on disability retirement immediately.

637 (5) A member who refuses to accept a position offered or file an appeal in a timely  
638 manner or who refuses to accept a position which the medical board has determined on

639 appeal that he or she is capable of performing shall not be eligible to receive a disability  
640 retirement under this subsection.

641 (c)(1) The provisions of this paragraph shall apply only to persons who are members of  
642 the retirement system on June 30, 2007. Any member who is at least 60 years of age  
643 upon disability retirement, involuntary separation from employment without prejudice,  
644 or death shall receive the equivalent of a service retirement allowance. Any such member  
645 who is under 60 years of age shall receive, as appropriate, a disability allowance,  
646 allowance in case of involuntary separation from employment without prejudice, or death  
647 allowance, which shall consist of:

648 (A) In the case of a member with at least 15 years of service, 75 percent of the service  
649 retirement allowance which would have been payable upon service retirement at age  
650 60 had the member continued in service to age 60 without further change in  
651 compensation, provided that this subparagraph shall not apply to a member whose  
652 employment was terminated by involuntary separation without prejudice;

653 (B) In the case of a member with at least 20 years of service, the service retirement  
654 allowance which would have been payable upon service retirement at age 60 had the  
655 member continued in service to age 60 without further change in compensation;

656 (C) In the case of a member with at least 25 years of service, 75 percent of the service  
657 retirement allowance which would have been payable upon service retirement at age  
658 65 had he or she continued in service without further change in compensation; or

659 (D) In the case of a member with at least 30 years of service, the service retirement  
660 allowance which would have been payable upon service retirement at age 65 had he or  
661 she continued in service without further change in compensation.

662 Any provisions of this chapter to the contrary notwithstanding, in the application of  
663 subparagraphs (A), (B), (C), and (D) of this paragraph relating to allowances other than  
664 for disability or death, projected retirement allowance computations shall be made on the  
665 basis of the member's highest total monthly earnable compensation, as reflected by  
666 monthly contributions made during the last 24 calendar months in which he or she had  
667 made contributions, except that no salary increase by adjustment in compensation in any  
668 manner in excess of 10 percent during the last 12 months of membership service shall be  
669 included in the projected computation.

670 (2) The provisions of this paragraph shall apply only to persons who first or again  
671 become members of the retirement system on or after July 1, 2007. Any member who  
672 has at least 15 years of creditable service and who becomes disabled before becoming  
673 eligible for a service retirement as provided in subsection (a) of Code Section 47-2-110  
674 shall be eligible to retire forthwith without regard to age and to receive a disability  
675 retirement allowance calculated upon the number of years of creditable service attained

676 to the date of retirement and based upon his or her highest average monthly compensation  
677 during a period of 24 consecutive calendar months while a member of the retirement  
678 system. No member who is eligible for an equivalent service retirement shall be eligible  
679 to apply for a disability retirement allowance.

680 (3) In lieu of a death benefit as provided in paragraph (1) of this subsection, a member  
681 who first or again becomes a member of the retirement system on or after July 1, 2007,  
682 and who has at least ten years of creditable service and is at least 60 years of age or who  
683 is less than 60 years of age and has at least 15 years of creditable service shall upon death  
684 receive the equivalent of a service retirement allowance calculated upon the number of  
685 years of creditable service attained on the date of death and based upon his or her highest  
686 average monthly compensation during a period of 24 consecutive calendar months while  
687 a member of the retirement system.

688 (d) In the application of subsection (c) of this Code section to death allowances,  
689 computations of projected retirement allowances shall be made on the same basis as though  
690 option two had been in effect. In lieu of the amount of death allowance otherwise payable  
691 to the beneficiary under option two, the member, upon written request, may at any time  
692 elect a reduced level death allowance of equivalent actuarial value, which allowance is  
693 payable to the beneficiary during a period of years certain or to the estate of the beneficiary  
694 and during the lifetime of such named beneficiary thereafter. At the election of the  
695 member, in case of death of the beneficiary during a term of years certain, the balance of  
696 the years certain payments may be paid to the estate of the member; but if such beneficiary  
697 predeceases the member, the total amount of the member's contributions to the date of his  
698 or her death shall be payable to the member's estate. The method of determining the  
699 equivalent actuarial value shall be consistent with the actuarial method of determining the  
700 beneficiary's death allowance under option two.

701 (e) Anything in this chapter to the contrary notwithstanding, on and after March 6, 1963,  
702 a member who has not accumulated sufficient creditable service to qualify himself or  
703 herself for an allowance in case of involuntary separation from employment without  
704 prejudice shall not be deemed eligible for such allowances until he or she has accumulated  
705 sufficient membership service in a position classified under a merit system provided for by  
706 law or in a position covered under the retirement system. This subsection shall not affect  
707 the vesting of rights under Code Section 47-2-122. This subsection shall not be retroactive  
708 in any manner and shall not apply in any way to any person who was a member on or  
709 before February 13, 1962.

710 (f) The age and service requirements for a service retirement allowance shall not apply to  
711 allowances available under this Code section.

712 (g) From and after January 1, 1985, no employing unit within the government of the State  
 713 of Georgia, including every department, commission, board, bureau, agency, branch of  
 714 government, or any other employing unit by whatever name called, which has the authority  
 715 and power to appoint, employ, release, separate, or fail to reappoint public officials or  
 716 employees shall release or separate from state service, or fail to reappoint to continued state  
 717 service, any public official or employee who is entitled to coverage under the involuntary  
 718 separation retirement benefits provisions of this Code section. A release, separation, or  
 719 failure to reappoint in violation of the provisions of this subsection shall be illegal,  
 720 unlawful, and void. However, such releases or separations from state service or failures  
 721 to reappoint to continued state service shall not be subject to the provisions of this  
 722 subsection if such releases or separations from service or failures to reappoint occur under  
 723 any of the following circumstances:

724 (1) Separation or release from service of an official or employee pursuant to Code  
 725 Section 47-2-2 or separation or release from service of an official or the failure to  
 726 reappoint an official by a board when such official serves at the pleasure of the board;

727 (2) Separation or release from service of an official or employee for any reason which  
 728 would constitute cause as defined in the rules and regulations of the State Personnel  
 729 Board if such separation or release from service is not pursuant to Code Section 47-2-2;

730 (3) Separation or release from service of an official or employee for criminal conduct  
 731 under the laws of this state, any other state, or the United States; or

732 (4) A 'discretionary termination' which means any one of the following:

733 (A) Separation or release from service of an official or employee under circumstances  
 734 in which an official or employee is released or separated or any official's or employee's  
 735 position or job is abolished through a valid reduction-in-force plan approved by the  
 736 ~~State Personnel Administration~~ Department of Administrative Services;

737 (B) Separation or release from service of any official or employee by reason of a bona  
 738 fide reorganization of any employing unit, with respect to which reorganization any  
 739 such separations or releases have been approved in advance by the Governor; or

740 (C) Separation or release from service of an official or employee, or failure of  
 741 reappointment of an official or employee, who holds a confidential position to an  
 742 appointed or elected public official, or a group of appointed or elected public officials,  
 743 incurred as a result of a change of administration in the office of such appointed or  
 744 elected public official, or group of appointed or elected public officials.

745 (h)(1) Except where termination is required by a sudden and unexpected loss of federal  
 746 or state funds, an employer intending the discretionary termination of an official or  
 747 employee shall notify the commissioner of ~~personnel administration~~ administrative  
 748 services at least 60 but not more than 120 days prior to the effective date of the

749 discretionary termination of such official or employee. If termination is required by a  
750 sudden and unexpected loss of federal or state funds, the employer shall notify the  
751 commissioner of ~~personnel administration~~ administrative services as soon as the  
752 employer becomes aware of the loss of funds and the termination shall be delayed until  
753 the completion of the procedures required by this subsection. Pending the completion of  
754 such procedures, the employee or official proposed for termination because of a sudden  
755 and unexpected loss of federal or state funds shall be compensated from any funds  
756 appropriated or available to the employer which may be used for such purpose. The  
757 notice shall be in writing and a copy thereof shall be forwarded to the board of trustees  
758 at the same time it is forwarded to the commissioner of ~~personnel administration~~  
759 administrative services. The notice shall include the following information:

760 (A) The name and current annual compensation of the official or employee proposed  
761 for discretionary termination;

762 (B) The age, length of service, current job description, and summary of the work  
763 experience of the official or employee proposed for discretionary termination;

764 (C) The educational qualifications of the official or employee proposed for  
765 discretionary termination; and

766 (D) An explanation of the reasons for the proposed discretionary termination of the  
767 official or employee.

768 (2) After receipt of the notice provided for in paragraph (1) of this subsection, the  
769 commissioner of ~~personnel administration~~ administrative services shall schedule an  
770 interview with the official or employee proposed for discretionary termination. The  
771 interview shall be held within 15 days after receipt of the notice. Based on the interview  
772 with the official or employee proposed for discretionary termination and the information  
773 provided by the notice received by the commissioner pursuant to paragraph (1) of this  
774 subsection, the commissioner of ~~personnel administration~~ shall contact appropriate state  
775 departments, boards, bureaus, and other agencies of the state government for the purpose  
776 of seeking continued employment for the official or employee proposed for discretionary  
777 termination. Any position for continued employment of the official or employee  
778 proposed for discretionary termination which is obtained by the commissioner of  
779 ~~personnel administration~~ shall meet the following requirements:

780 (A) The annual compensation for such position shall be the same or greater than the  
781 current annual compensation of the official or employee proposed for discretionary  
782 termination;

783 (B) The duties for such position shall be reasonably compatible with the previous work  
784 experience and educational qualifications of the official or employee proposed for  
785 discretionary termination;

786 (C) The position shall be one which includes the holder thereof as a member of the  
787 retirement system provided for by this chapter; and

788 (D) The position must be available for acceptance by the official or employee proposed  
789 for discretionary termination at least one day prior to the effective date of such  
790 termination and an offer of the position to the official or employee must be made, in  
791 writing, by not later than the day immediately preceding the effective date of the  
792 discretionary termination.

793 (3) Any official or employee proposed for discretionary termination who is offered a  
794 position of continued employment in conformity with the requirements of paragraph (2)  
795 of this subsection shall be deemed to have resigned from service at his or her own choice  
796 upon the failure of such official or employee to accept the position of continued  
797 employment, and no such official or employee so resigning from service shall qualify for  
798 retirement benefits based upon involuntary separation from employment without  
799 prejudice as authorized by this Code section.

800 (4) If the commissioner of ~~personnel administration~~ administrative services fails to  
801 obtain a position of continued employment in conformity with the requirements of  
802 paragraph (2) of this subsection for an official or employee proposed for discretionary  
803 termination, then, on the effective date of the discretionary termination, the official or  
804 employee may be considered involuntarily separated from employment without prejudice  
805 for the purposes of this Code section.

806 (5) The commissioner of ~~personnel administration~~ administrative services shall notify  
807 the board of trustees in writing of the action taken by the commissioner pursuant to this  
808 subsection and of any position of continued employment which is offered to and accepted  
809 or refused by an official or employee proposed for discretionary termination.

810 (6) It is the intention of this subsection to provide procedures to secure the continued  
811 employment of officials and employees who may become subject to discretionary  
812 termination, and the provisions of this subsection shall not be construed to create any  
813 right to continue in a position of employment when that right does not exist  
814 independently of this subsection."

815 **SECTION 8.**

816 Said title is further amended by revising Code Section 47-3-1, relating to definitions relative  
817 to the Teachers Retirement System of Georgia, as follows:

818 "47-3-1.

819 As used in this chapter, the term:

820 (1) 'Accumulated contributions' means the sum of all the amounts deducted from the  
821 earnable compensation of a member or paid by the member to establish or reestablish

822 credit for service, which amounts are credited to his or her individual account in the  
823 annuity savings fund, together with regular interest on such amounts, as provided in Code  
824 Section 47-3-41. Beginning July 1, 1987, 'accumulated contributions' shall include the  
825 amount of employee contributions paid by employers on behalf of members and credited  
826 to the individual accounts of members in the annuity savings fund, together with regular  
827 interest thereon.

828 (2) 'Actuarial equivalent' means a benefit of equal value when computed at regular  
829 interest upon the basis of the mortality tables last adopted by the board of trustees.

830 (3) 'Annuity' means annual payments for life derived from the accumulated contributions  
831 of a member.

832 (4) 'Annuity reserve' means the present value of all payments to be made on account of  
833 an annuity or benefit in lieu of an annuity, computed at regular interest upon the basis of  
834 the mortality tables adopted by the board of trustees.

835 (5) 'Annuity savings fund' means the fund set forth under Code Section 47-3-41.

836 (6) 'Average final compensation' means the average annual earnable compensation of a  
837 teacher during the two consecutive years of membership service producing the highest  
838 such average.

839 (7) 'Beneficiary' means any person in receipt of a pension, an annuity, a retirement  
840 allowance, or other benefit under this chapter.

841 (8) 'Board of trustees' means the board of trustees as provided for in Code Section  
842 47-3-21 and whose purpose is to administer the retirement system.

843 (8.1) 'Certified professional personnel' means employees of the State Board of Education  
844 or the Professional Standards Commission who, by policy of the State Board of  
845 Education, are required to possess a valid professional certificate issued by the  
846 Professional Standards Commission.

847 (9) 'Commencement date' means January 1, 1945.

848 (10) 'Creditable service' means prior service plus membership service and any other  
849 service established under this chapter.

850 (11) 'Earnable compensation' means the full rate of regular compensation payable to a  
851 member for his or her full normal working time and includes compensation paid to a  
852 member by an employer from grants or contracts made by outside agencies with the  
853 employer. All moneys paid by an employer for a member or by a member into any plan  
854 of tax sheltered annuity shall be included as earnable compensation for the purpose of  
855 computing any contributions required to be made to the retirement system and also for  
856 the purpose of computing any benefits or allowances payable under this chapter. Such  
857 term shall include contributions made to a qualified transportation plan, within the  
858 meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary

859 deferral contributions made under Sections 125, 401(k), 402(g)(3), 457, or 414(h) of the  
 860 federal Internal Revenue Code to this retirement system or to any other retirement plan  
 861 maintained by an employer.

862 (12) 'Employer' means the State of Georgia, the county or independent board of  
 863 education, the State Board of Education, the Board of Regents of the University System  
 864 of Georgia, or any other agency of and within this state by which a teacher is paid.  
 865 Notwithstanding any provisions in prior or future Acts to the contrary, the county and  
 866 regional library boards of trustees shall be deemed to be the employer of the county or  
 867 regional librarians, whose salaries are paid in full or in part from state funds.

868 (13) 'Expense fund' means the fund set forth in Code Section 47-3-47.

869 (14) 'Local retirement fund' means any teachers' retirement fund or other arrangement  
 870 for the payment of retirement benefits to teachers, but not including the retirement system  
 871 created under this chapter, which fund was maintained during the calendar year 1943 and  
 872 is financed wholly or in part by contributions made by an employer.

873 (15) 'Member' means any teacher included in the membership of the retirement system.

874 (16) 'Membership service' means service as a teacher rendered while a member of the  
 875 retirement system for which credit is allowable.

876 (17) 'Pension' means periodic payments for life, derived from contributions of the state  
 877 or other employer.

878 (18) 'Pension accumulation fund' means the fund set forth under Code Section 47-3-43.

879 (19) 'Pension reserve' means the present value of all payments to be made on account of  
 880 a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of  
 881 the mortality tables last adopted by the board of trustees.

882 (19.1) 'Plan year' means the 12 month period beginning on July 1 of each year.

883 (20) 'Prior service' means service rendered prior to January 1, 1945, for which credit is  
 884 allowable under Code Sections 47-3-83 and 47-3-86.

885 (21) 'Public school' means any day school which is conducted within this state and which  
 886 is under the authority and supervision of a duly elected county or independent board of  
 887 education.

888 (22) 'Regular interest' means interest compounded annually at such a rate as shall be  
 889 determined by the board of trustees in accordance with this chapter.

890 (23) 'Retirement' means withdrawal from service with a retirement allowance granted  
 891 under this chapter.

892 (24) 'Retirement allowance' means the sum of the annuity and the pension, or any  
 893 optional benefit payable in lieu thereof, under Code Section 47-3-121. All retirement  
 894 allowances shall be payable in equal monthly installments, provided that the board of

895 trustees may pay a lump sum of equivalent actuarial value in lieu of a retirement  
896 allowance of less than \$10.00 per month.

897 (25) 'Retirement system' means the Teachers Retirement System of Georgia established  
898 under Code Section 47-3-20.

899 (25.1) 'Salary' shall have the same meaning as earnable compensation.

900 (26) 'Service' means service rendered as a teacher and paid for by this state or other  
901 employer.

902 (27) 'Service credit' means creditable service, as defined in this Code section.

903 (28) 'Teacher' means:

904 (A) Any of the following persons employed not less than half time by a public school:

905 (i) Persons who supervise the public schools;

906 (ii) Classroom teachers; and

907 (iii) Persons employed in a clerical capacity;

908 (B) Public school nurses who are employed on a regular basis as much as one-half time  
909 or more. The employer's contributions for such public school nurses on all salary  
910 amounts which are not paid from state funds shall be paid from local funds;

911 (C) School librarians;

912 (D) Administrative officials who supervise teachers;

913 (E) Full-time public school lunchroom managers or supervisors, full-time public school  
914 maintenance managers or supervisors, full-time public school transportation managers  
915 or supervisors, and full-time public school warehouse managers or supervisors, upon  
916 electing to participate in the retirement system pursuant to Code Section 47-3-63;

917 (F) Any new certified professional personnel employed for the first time by the State  
918 Board of Education or by the State Department of Education on and after July 1, 1983,  
919 unless such personnel elect membership in the Employees' Retirement System of  
920 Georgia pursuant to subsection (h) of Code Section 47-3-60, and any employee of the  
921 State Board of Education or the ~~State Board of Vocational Education~~ Technical College  
922 System of Georgia employed in a teaching, supervisory, or clerical capacity;

923 (F.1) Certified professional personnel who are in the unclassified service ~~of the State~~  
924 ~~Personnel Administration~~ as defined by Code Section 45-20-2 and who are employed  
925 by the State Board of Education or by the State Department of Education and who  
926 become members of this retirement system pursuant to the authority of subsection (i)  
927 of Code Section 47-3-60;

928 (F.2) Newly hired professional personnel employed for the first time by the Technical  
929 College System of Georgia on and after July 1, 1985, and all full-time nonprofessional  
930 personnel employed for the first time after July 1, 1987, by postsecondary  
931 vocational-technical schools governed by the Technical College System of Georgia if

932 otherwise eligible under laws, rules, and regulations, unless such personnel elect  
933 membership in the Employees' Retirement System of Georgia pursuant to subsection  
934 (j) of Code Section 47-3-60;

935 (F.3) All full-time employees of a postsecondary vocational-technical school formerly  
936 operated by a local board of education or area postsecondary vocational education  
937 board as of July 1, 1987, or the date on which the Technical College System of Georgia  
938 assumes governance of the postsecondary vocational-technical school if otherwise  
939 eligible under laws, rules, and regulations, unless such personnel elect membership in  
940 the Employees' Retirement System of Georgia pursuant to subsection (j) of Code  
941 Section 47-3-60;

942 (F.4) Personnel employed by the State Board of Education or by the State Department  
943 of Education who are authorized to elect and elect to become or remain members of the  
944 retirement system pursuant to the applicable provisions of Code Section 47-3-60;

945 (G) Any bona fide teacher, supervisor of teachers, or clerical employee in any school  
946 operated by the Department of Education;

947 (H) Teacher aides and paraprofessional personnel and members of the staff of any  
948 regional educational service agency created pursuant to Code Sections 20-2-270  
949 through 20-2-274;

950 (I) Registrars of each unit of the University System of Georgia;

951 (J) The secretary and treasurer of the Board of Regents of the University System of  
952 Georgia;

953 (K) Teachers, supervisors of teachers, and clerical workers who are employed and paid  
954 by the Board of Regents of the University System of Georgia;

955 (L) All personnel of the Cooperative Extension Service of the University of Georgia;

956 (M) Any other person employed not less than on a half-time basis and paid by the  
957 Board of Regents of the University System of Georgia, with the exception of such  
958 maintenance and custodial employees employed prior to July 1, 1978, who elected to  
959 forgo membership, provided that the board of trustees shall determine whether any  
960 particular employee is a maintenance or custodial employee;

961 (N) Any full-time employee of the Georgia Association of Educators, Georgia High  
962 School Association, or Georgia School Boards Association, provided that such  
963 association, as appropriate, and the employee request that the board of trustees permit  
964 them to pay the employer and employee contributions, respectively. The state shall  
965 make no contributions on account of such employee;

966 (O) Librarians and clerical personnel employed by regional and county libraries. Any  
967 of such librarians and clerical personnel who were members of a local retirement  
968 system on January 1, 1977, and who elected to remain members of such local

969 retirement system shall not be required to become members of this retirement system,  
 970 or if they were members of this retirement system on that date, they may withdraw from  
 971 such membership. This election must have been made, in writing, to the board of  
 972 trustees by not later than January 1, 1978. Any of such librarians and clerical personnel  
 973 failing to so notify the board of trustees by that date shall be members of this retirement  
 974 system. The employer contributions for such librarians and clerical personnel who are  
 975 or who become members of this retirement system shall be paid from local funds on all  
 976 salary amounts of such librarians and clerical personnel which are not paid from state  
 977 funds. Prior service of such librarians and other service for which such librarians have  
 978 contributed to the Teachers Retirement System of Georgia is ratified, subject to the  
 979 same laws and the same rules and regulations applicable to other members of this  
 980 retirement system;

981 (P) The full-time executive secretary of the Georgia Vocational Association. Such  
 982 association shall pay the required employer contribution for membership service. The  
 983 executive secretary shall be entitled to receive credit for prior teaching service by  
 984 paying the employee and employer contributions that would have been paid, plus  
 985 interest at the rate of 8 percent per annum; and

986 (Q) Attendance officers employed not less than half time for service rendered after  
 987 June 30, 1992. As used in this subparagraph, 'attendance officer' means an attendance  
 988 officer employed in lieu of a visiting teacher under Subpart 2 of Part 1 of Article 16 of  
 989 Chapter 2 of Title 20; provided, however, that the provisions of this subparagraph shall  
 990 not apply to any former member employed as an attendance officer who retired prior  
 991 to July 1, 1992.

992 The term 'teacher' shall not be deemed to include any emergency or temporary employee.  
 993 The term 'teacher' shall not include an individual classified by an employer as an  
 994 independent contractor or a leased employee within the meaning of Section 414(n) of the  
 995 federal Internal Revenue Code, even if such individual is later reclassified by the Internal  
 996 Revenue Service as a common law employee. The board of trustees shall determine in  
 997 doubtful cases whether any person is included within the definition set forth in this  
 998 paragraph. Notwithstanding the provisions of subparagraphs (N) and (P) of this  
 999 paragraph, no person becoming an employee of the Georgia Association of Educators,  
 1000 the Georgia High School Association, or the Georgia School Boards Association or  
 1001 becoming the executive secretary of the Georgia Vocational Association after June 30,  
 1002 1984, shall be a 'teacher' within the meaning of this paragraph or shall be eligible for  
 1003 membership in the retirement system provided for by this chapter unless the person  
 1004 holding any such position is also a 'teacher' within the meaning of a subparagraph of this  
 1005 paragraph other than subparagraph (N) or (P) of this paragraph. Except as otherwise

1006 provided by Code Section 47-3-84.2, subparagraphs (N) and (P) of this paragraph shall  
 1007 remain effective after June 30, 1984, only for the purpose of allowing any person who  
 1008 was a member of the retirement system on June 30, 1984, because the person held a  
 1009 position specified by subparagraph (N) or (P) of this paragraph to continue such  
 1010 membership as long as the person continues to hold such position."

### 1011 **SECTION 9.**

1012 Said title is further amended by revising Code Section 47-3-60, relating to eligibility,  
 1013 termination, leaves of absence, service credit for postgraduate study, and transfer of service  
 1014 credit, as follows:

1015 "47-3-60.

1016 (a) Any person who becomes a teacher after January 1, 1944, shall become a member of  
 1017 the retirement system as a condition of his or her employment, except as otherwise  
 1018 provided in this chapter.

1019 (b) Any person who was a teacher on January 1, 1943, or became a teacher prior to  
 1020 January 1, 1944, shall be a member unless prior to January 1, 1944, he or she filed with the  
 1021 board of trustees, on a form provided by it, a notice of his or her election not to be included  
 1022 in the membership of the retirement system and a duly executed waiver of all present and  
 1023 prospective benefits which would otherwise accrue to him or her by participating in the  
 1024 retirement system. Such a teacher who elected not to become a member may at any time  
 1025 thereafter apply for and be admitted to membership, but without credit for that service  
 1026 rendered after July 1, 1943, and before the time he or she becomes a member, and without  
 1027 prior service credit.

1028 (c) Reserved.

1029 (d) A teacher otherwise eligible shall be classified as a member only while he or she is in  
 1030 the service of an employer not operating a local retirement system.

1031 (e) The membership of any member shall terminate upon the member's:

1032 (1) Death;

1033 (2) Retirement under this retirement system;

1034 (3) Withdrawal of his or her contributions;

1035 (4) Rendering less than one year of service in a period of five consecutive years as a  
 1036 member; or

1037 (5) Employment by an employer which operates a local retirement fund, unless the  
 1038 member has ten or more years of creditable service with this retirement system, in which  
 1039 case the member may elect to continue membership in this retirement system, subject to  
 1040 the same terms and conditions as other members.

1041 (e.1) A member who has not withdrawn the member's contributions to the retirement  
1042 system and who has a break in service of more than four years but not more than five years  
1043 may be reinstated to membership if the member pays a sum equal to 12 1/2 percent of the  
1044 member's salary for the last year of service prior to the break in service. A member who  
1045 has not withdrawn the member's contributions to the retirement system and who has a  
1046 break in service of more than five years but not more than six years may be reinstated to  
1047 membership if the member pays a sum equal to 25 percent of the member's salary for the  
1048 last year of service prior to the break in service. A member who has not withdrawn the  
1049 member's contributions to the retirement system may be reinstated to membership without  
1050 paying the reinstatement fees after the member renders at least one year of membership  
1051 service subsequent to the break in service. All interest credits shall cease after any such  
1052 break in service but shall begin again on the date of payment of the sum required for  
1053 reinstatement to membership or on the first day of July immediately following the  
1054 completion of one year of membership service following the break in service. The board  
1055 of trustees may approve the continued membership of a member while in the armed forces  
1056 of the United States or other emergency wartime service of the United States, or a member  
1057 whose membership would be terminated because of illness which prevents the member  
1058 from rendering the service otherwise required by this Code section. The board of trustees  
1059 may also grant an additional year of leave to a teacher for each child born to or adopted by  
1060 such teacher while on authorized leave.

1061 (f)(1) In the event a member desires to pursue a program of full-time study which will  
1062 require that he or she render less than one year of service in a period of five consecutive  
1063 years and which would otherwise result in termination of his or her membership, the  
1064 board of trustees may approve a leave of absence for study purposes in addition to the  
1065 normal four-year break in service which the member could otherwise take, so that the  
1066 combined break in service does not exceed six years. Such study leave shall be  
1067 continuous. In no event shall such a member's account remain in an active status for  
1068 longer than six consecutive years for such purpose.

1069 (2) A member who undertakes full-time graduate study designed to advance or improve  
1070 his or her training or abilities as a teacher is entitled to receive creditable service for a  
1071 period of graduate study under the following conditions:

1072 (A) The member must have been a full-time teacher in the public schools of this state  
1073 or in the University System of Georgia under the board of regents immediately prior to  
1074 the period of graduate study. Any such period of graduate study interrupted solely for  
1075 a period of active duty military service begun during a period in which the military draft  
1076 is in effect shall be deemed not to have been interrupted for purposes of this  
1077 subparagraph;

- 1078 (B) The member must submit a transcript or similar document to the retirement system  
1079 as verification of the graduate study pursued;
- 1080 (C) The member must return to full-time employment as a teacher in the public schools  
1081 of this state or in the University System of Georgia under the board of regents for a  
1082 minimum of five years following such period of graduate study;
- 1083 (D) The member must pay the appropriate member contributions plus applicable  
1084 accrued interest in accordance with regulations adopted by the board of trustees on the  
1085 basis of the salary the member was receiving for full-time employment as a teacher  
1086 immediately prior to the period of graduate study; and
- 1087 (E) Either the member's present employer or the member must pay the appropriate  
1088 employer contributions and applicable accrued interest thereon if the source of funds  
1089 from which the member was paid immediately prior to his or her period of graduate  
1090 study was other than state funds.
- 1091 (3) The foregoing provisions of this subsection shall apply to periods of graduate study  
1092 heretofore and hereafter granted, but nothing contained in this subsection shall be  
1093 construed to rescind any creditable service granted prior to July 1, 1981, pursuant to this  
1094 subsection or its predecessors.
- 1095 (g) Any other provisions of law to the contrary notwithstanding, if a member with ten or  
1096 more years' creditable service after becoming a member is employed by an employer  
1097 operating a local retirement fund, his or her membership does not automatically terminate  
1098 and he or she may elect to maintain his or her membership rather than participate in the  
1099 local retirement fund, subject to the same terms and conditions as other members of the  
1100 retirement system.
- 1101 (h) New certified professional personnel employed for the first time by the State Board of  
1102 Education or by the State Department of Education on and after July 1, 1983, shall become  
1103 members of the retirement system as a condition of employment, unless such personnel  
1104 elect membership in the Employees' Retirement System of Georgia at the time of their  
1105 employment. Such election shall be made in writing to the board of trustees of this  
1106 retirement system and to the board of trustees of the Employees' Retirement System of  
1107 Georgia. Once such election is made by such personnel, the election is irrevocable during  
1108 the tenure of employment with the State Board of Education or the State Department of  
1109 Education. The State Board of Education shall provide by regulation for informing  
1110 prospective employees who are to be employed as certified professional personnel of the  
1111 option provided for by this subsection so that such personnel may choose membership in  
1112 this retirement system or the Employees' Retirement System of Georgia at the time of their  
1113 employment.

1114 (h.1) Personnel employed for the first time by the State Board of Education or by the State  
1115 Department of Education on or after July 1, 1988, who, at the time of becoming so  
1116 employed, are members of this retirement system shall continue as members of this  
1117 retirement system unless such personnel elect membership in the Employees' Retirement  
1118 System of Georgia at the time of their employment. Such election shall be made in writing  
1119 to the board of trustees of this retirement system and to the board of trustees of the  
1120 Employees' Retirement System of Georgia. Once such election is made by such personnel,  
1121 the election is irrevocable during the tenure of employment with the State Board of  
1122 Education or the State Department of Education. The State Board of Education shall  
1123 provide by regulation for informing prospective employees who are subject to the  
1124 provisions of this subsection of the option provided for by this subsection so that such  
1125 personnel may choose to continue membership in this retirement system or become  
1126 members of the Employees' Retirement System of Georgia at the time of their employment.

1127 (i)(1) This subsection shall apply to certified professional personnel in the unclassified  
1128 ~~service of the State Personnel Administration~~ as defined by Code Section 45-20-2 who  
1129 are employed by the State Board of Education or the State Department of Education on  
1130 July 1, 1986, and who are members of the Employees' Retirement System of Georgia and  
1131 have at least five years of membership service in said retirement system as of July 1,  
1132 1986.

1133 (2) This subsection shall also apply to any personnel employed by the State Board of  
1134 Education or by the State Department of Education at any time before July 1, 1988, who  
1135 are members of the Employees' Retirement System of Georgia and who, at the time of  
1136 becoming employed by said state board or department, had ten or more years of  
1137 membership service in this retirement system.

1138 (3) At any time from July 1, 1988, until not later than July 1, 1989, personnel described  
1139 in paragraphs (1) and (2) of this subsection are authorized to transfer service credits and  
1140 membership, including employer and employee contributions, from the Employees'  
1141 Retirement System of Georgia to this retirement system. Any such personnel electing to  
1142 transfer such service credits and membership to this retirement system shall be required  
1143 to make additional contributions to this retirement system so that the annuity account  
1144 balance of the transferring person shall be the same as though the transferring person had  
1145 been a member of this retirement system during the period of time for which service  
1146 credits are transferred from the Employees' Retirement System of Georgia to this  
1147 retirement system or, in the absence of such payment, the board of trustees of this  
1148 retirement system shall adjust the transferring person's credits in proportion to the  
1149 contributions transferred from the Employees' Retirement System of Georgia to this  
1150 retirement system. Any such personnel shall exercise the authority provided by this

1151 paragraph by written notification to the board of trustees of each of the retirement  
1152 systems.

1153 (4) If any person who transfers to this retirement system pursuant to the authority of this  
1154 subsection subsequently becomes employed in a position where membership in the  
1155 Employees' Retirement System of Georgia is required, any creditable service obtained  
1156 under this retirement system for teaching service in school systems of other states  
1157 pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service  
1158 to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code  
1159 Section 47-2-92 or any other provision of Chapter 2 of this title, relating to the  
1160 Employees' Retirement System of Georgia.

1161 (j)(1) Newly hired professional personnel employed for the first time by the Technical  
1162 College System of Georgia on and after July 1, 1985, and all full-time nonprofessional  
1163 personnel employed for the first time after July 1, 1987, by postsecondary  
1164 vocational-technical schools governed by the state board shall become members of the  
1165 Teachers Retirement System of Georgia as a condition of employment if otherwise  
1166 eligible under laws, rules, and regulations, unless such personnel elect membership in the  
1167 Employees' Retirement System of Georgia and are otherwise eligible under laws, rules,  
1168 and regulations. Once such election is made by such personnel, the election is  
1169 irrevocable during the tenure of employment with the Technical College System of  
1170 Georgia or any postsecondary vocational-technical school governed thereby. Newly  
1171 hired employees not eligible for membership in the Teachers Retirement System of  
1172 Georgia or the Employees' Retirement System of Georgia shall become members of the  
1173 Public School Employees Retirement System as a condition of employment if eligible.  
1174 The Technical College System of Georgia shall provide by regulation for informing  
1175 prospective employees who are to be employed as certified professional personnel of the  
1176 option provided for by this subsection so that such personnel shall choose membership  
1177 in the Teachers Retirement System of Georgia or the Employees' Retirement System of  
1178 Georgia or the Public School Employees Retirement System at the time of their  
1179 employment.

1180 (2) All full-time employees of a postsecondary vocational-technical school formerly  
1181 operated by a local board of education or area postsecondary vocational education board  
1182 as of July 1, 1987, or the date on which the state board assumes governance of the  
1183 postsecondary vocational-technical school shall elect either to continue membership in  
1184 the Teachers Retirement System of Georgia or to become members of the Employees'  
1185 Retirement System of Georgia. Once such election is made by such personnel, the  
1186 election is irrevocable during the tenure of employment with the Technical College  
1187 System of Georgia or any postsecondary vocational-technical school governed thereby.

1188 All employees who are members of the Public School Employees Retirement System  
1189 may elect to continue their membership in the Public School Employees Retirement  
1190 System or to become members of the Teachers Retirement System of Georgia or the  
1191 Employees' Retirement System of Georgia if otherwise eligible under laws, rules, or  
1192 regulations.

1193 (3) If any person who transfers to this retirement system pursuant to the authority of this  
1194 subsection subsequently becomes employed in a position where membership in the  
1195 Employees' Retirement System of Georgia is required, any creditable service obtained  
1196 under this retirement system for teaching service in school systems of other states  
1197 pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service  
1198 to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code  
1199 Section 47-2-92 or any other provision of Chapter 2 of this title.

1200 (k) Any other provisions of law to the contrary notwithstanding, any person at least 60  
1201 years of age who first becomes a teacher on or after July 1, 1987, and any former member  
1202 of the retirement system at least 60 years of age who has withdrawn from the retirement  
1203 system employee contributions made during such former membership again becoming a  
1204 teacher on or after July 1, 1987, shall have the right to decline membership in the  
1205 retirement system. The right shall be exercised by sending written notice to the board of  
1206 trustees on a form provided by the board for such purpose. The right must be exercised  
1207 within 90 days after becoming a teacher. Any person declining membership in the  
1208 retirement system pursuant to this subsection shall not at any time thereafter be eligible for  
1209 membership in the retirement system. Any person failing to exercise the right provided by  
1210 this subsection within 90 days after becoming a teacher shall become and remain a member  
1211 of the retirement system as a condition of continued employment. Any employee  
1212 contributions made during the first 90 days as a teacher by a person who exercises the right  
1213 provided by this subsection shall be reimbursed to the person within 30 days after the board  
1214 of trustees receives the written notice declining membership in the retirement system.

1215 (l) Any other provisions of this chapter or of Chapter 2 of this title to the contrary  
1216 notwithstanding, any member of this retirement system with five or more years of  
1217 continuous membership service who is employed by Central State Hospital and who,  
1218 without any break in employment, becomes employed in a position where membership in  
1219 the Employees' Retirement System of Georgia is ordinarily required shall have the option  
1220 to remain a member of this retirement system, notwithstanding the change in the member's  
1221 employment status. Such option shall be exercised by notification, in writing, to the boards  
1222 of trustees of this retirement system and the Employees' Retirement System of Georgia.  
1223 The employer of any such member who exercises the option provided by this subsection  
1224 shall be an employer for the purposes of this chapter.

1225 (m) Any other provision of law to the contrary notwithstanding, any person who is entitled  
 1226 pursuant to the provisions of this article to make an election between membership in this  
 1227 retirement system and membership in any other retirement system and who subsequently  
 1228 retires and is rehired by the same employer which employed him or her immediately prior  
 1229 to retirement shall continue membership in the retirement system under which he or she  
 1230 initially retired and shall not be entitled to elect membership in any other retirement  
 1231 system."

#### 1232 SECTION 10.

1233 Said title is further amended by revising Code Section 47-18-2, relating to definitions relative  
 1234 to social security coverage for employees of the state and political subdivisions of the state,  
 1235 as follows:

1236 "47-18-2.

1237 As used in this chapter, the term:

1238 (1) 'Employee' includes an officer of a political subdivision of the state. Any individual  
 1239 compensated for services as a school bus driver, either through a contractual relationship  
 1240 or otherwise, is deemed to be an employee of the governing board of education for which  
 1241 such services are performed.

1242 (2) 'Employee tax' means the tax imposed by Section 1400 of the federal Internal  
 1243 Revenue Code of 1939 and Section 3101 of the federal Internal Revenue Code.

1244 (3) 'Employment' means any service performed by an employee in the employ of the  
 1245 state or any political subdivision of the state, for such employer, except:

1246 (A) Service which in the absence of an agreement entered into under this chapter  
 1247 would constitute 'employment,' as defined in the Social Security Act; or

1248 (B) Service which under the Social Security Act may not be included in an agreement  
 1249 between the state and the secretary of health and human services entered into under this  
 1250 chapter. Service which under the Social Security Act may be included in an agreement  
 1251 only upon certification by the Governor in accordance with Section 218(d)(3) of the  
 1252 Social Security Act shall be included in the term 'employment' if and when the  
 1253 Governor issues, with respect to such service, a certificate to the secretary of health and  
 1254 human services, pursuant to subsection (b) of Code Section 47-18-42.

1255 (4) 'Federal Insurance Contributions Act' means Subchapter A of Chapter 9 of the federal  
 1256 Internal Revenue Code of 1939 and Subchapters A and B of Chapter 21 of the federal  
 1257 Internal Revenue Code, as such codes have been and may from time to time be amended.

1258 (5) 'Political subdivision' means counties and incorporated municipalities and includes  
 1259 an instrumentality of: (A) the state, (B) one or more political subdivisions of the state, or  
 1260 (C) the state and one or more of its political subdivisions. Such term also includes the

1261 Board of Regents of the University System of Georgia, the Federal-State Cooperative  
 1262 Inspection Service of the State of Georgia, the Board of Trustees of Georgia Military  
 1263 College, and the Georgia Municipal Association.

1264 (6) 'Secretary of health and human services' includes any individual to whom the  
 1265 secretary of health and human services has delegated any functions under the Social  
 1266 Security Act, with respect to coverage under such act, of employees of states and their  
 1267 political subdivisions, and with respect to any action taken prior to April 11, 1953,  
 1268 includes the federal security administrator and any individual to whom such administrator  
 1269 had delegated any such functions.

1270 (7) 'Social Security Act' means the act of Congress approved August 14, 1935, Chapter  
 1271 531, 49 Stat. 620, officially cited as the 'Social Security Act,' as such act has been and  
 1272 may from time to time be amended. Such term shall also include regulations and  
 1273 requirements issued pursuant to that act.

1274 (8) 'State agency' means the ~~State Personnel Administration~~ Employees' Retirement  
 1275 System of Georgia.

1276 (9) 'Wages' means all remuneration for employment, including the cash value of all  
 1277 remuneration paid in any medium other than cash; except that such term shall not include  
 1278 that part of such remuneration which, even if it were for 'employment' within the meaning  
 1279 of the Federal Insurance Contributions Act, would not constitute 'wages' within the  
 1280 meaning of that act."

1281 **SECTION 11.**

1282 Said title is further amended by revising Code Section 47-19-1, relating to creation of the  
 1283 State Employees' Assurance Department, management of the department, and membership  
 1284 of the board of directors, as follows:

1285 "47-19-1.

1286 There is created a department of the state government to be known as the State Employees'  
 1287 Assurance Department. The department shall be managed by a board of directors  
 1288 consisting of the state treasurer, the Commissioner of Labor, the state auditor, the  
 1289 commissioner of ~~personnel administration~~ administrative services, and two members to be  
 1290 appointed by the Governor."

1291 **SECTION 12.**

1292 Said title is further amended by revising Code Section 47-19-9, relating to application of the  
1293 State Personnel Administration to employees of the department and payment of pro rata  
1294 share of costs, as follows:

1295 "47-19-9.

1296 (a) The employees of the department shall be governed by such rules of position  
1297 classification, appointment, promotion, demotion, dismissal, transfer, qualification,  
1298 compensation, seniority, privileges, tenure, and other employment standards as may now  
1299 or hereafter be established under Chapter 20 of Title 45.

1300 (b) The department shall pay its ~~pro rata~~ share of the administrative costs of operating the  
1301 ~~State Personnel Administration~~ state system of personnel administration, in the manner  
1302 prescribed in ~~paragraph (6) of subsection (b) of~~ Code Section 45-20-4."

1303 **SECTION 13.**

1304 This Act shall become effective on July 1, 2012, only if an Act abolishing the State Personnel  
1305 Administration and providing for the transfer of certain functions of such agency to the  
1306 Department of Administrative Services is enacted and becomes effective on that same date;  
1307 otherwise, this Act shall not become effective and shall stand repealed on July 1, 2012.

1308 **SECTION 14.**

1309 All laws and parts of laws in conflict with this Act are repealed.