

Senate Bill 402

By: Senators Golden of the 8th, Millar of the 40th, Stoner of the 6th, Rogers of the 21st, Tolleson of the 20th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the
2 "Public Retirement Systems Investment Authority Law," so as to provide a short title; to
3 define certain terms relating to certain types of investments; to provide that the provisions
4 of this Act shall be applicable only to the Employees' Retirement System of Georgia; to
5 provide that the Teachers Retirement System of Georgia (T.R.S.) shall be exempt from the
6 provisions of this Act; to provide that certain public retirement systems may invest retirement
7 system assets in certain types of alternative investments, private placements, and other
8 private investments; to provide that such investments may be made up to a certain amount;
9 to shield information related to such investment from public scrutiny; to provide that the
10 director of the Employees' Retirement System of Georgia shall provide an annual report to
11 the Governor and the chairperson of the Senate and House of Representatives standing
12 committees on retirement; to provide for the contents of such report; to provide for a code
13 of ethics; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated,
14 relating to when public disclosure of records is not required and disclosure exempting legal
15 authority, so as to exempt certain public records from public inspection; to repeal conflicting
16 laws; and for other purposes.

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

18 **SECTION 1.**

19 This Act shall be known and may be cited as the "Employees' Retirement System of Georgia
20 Enhanced Investment Authority Act."

21 **SECTION 2.**

22 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public
23 Retirement Systems Investment Authority Law," is amended by adding a new Code section
24 to read as follows:

25 "47-20-87.

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

27 (1) 'Alternative investments' means the following investments:

28 (A) Privately placed investment pools, including, without limitation, private investment
29 funds, such as:

30 (i) Leveraged buyout funds;

31 (ii) Mezzanine funds;

32 (iii) Workout funds;

33 (iv) Debt funds;

34 (v) Venture capital funds;

35 (vi) Merchant banking funds; and

36 (vii) Funds of funds and secondary funds

37 that include investments in privately placed investment pools described in this
38 subparagraph, in each case whether structured as a partnership, limited liability
39 company, trust, corporation, joint venture, or other entity or investment vehicle of any
40 type; organized or operating in one of the states or territories of the United States or
41 outside the United States; such pool will invest in the United States or outside the
42 United States or any combination thereof; or such pool makes investments of the type
43 described in subparagraph (B) of this paragraph or other investments of any type or any
44 combination thereof;

45 (B) Private placements and other private investments, including without limitation:

46 (i) Leveraged buyouts;

47 (ii) Venture capital investment;

48 (iii) Equity investments, including, without limitation, preferred and common stock;

49 (iv) Warrants;

50 (v) Options;

51 (vi) Private investments in public securities;

52 (vii) Recapitalizations;

53 (viii) Privatizations;

54 (ix) Mezzanine debt investments;

55 (x) Distressed debt and equity investments, including, without limitation, cases in
56 which the investor may take control of the issuer;

57 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,
58 recourse or nonrecourse, convertible, or otherwise;

59 (xii) Convertible securities;

60 (xiii) Receivables;

61 (xiv) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the
 62 United States Code;

63 (xv) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the
 64 United States Code;

65 (xvi) Debt and equity derivative instruments of all types; and

66 (xvii) All other debt and equity private placements of all types, in each case whether
 67 issued by a partnership, limited liability company, trust, corporation, joint venture, or
 68 other entity or vehicle of any type or whether the issuer is organized or does business
 69 in one of the states or territories of the United States or outside the United States; and

70 (C) Any distribution in kind received by an eligible large retirement system in
 71 connection with any investment described in subparagraphs (A) and (B) of this
 72 paragraph.

73 (2) 'Eligible large retirement system' means a large retirement system as defined in
 74 subsection (a) of Code Section 47-20-84; provided, however, that such term shall not
 75 include the Teachers Retirement System of Georgia.

76 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
 77 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
 78 an eligible large retirement system is authorized to invest in alternative investments in
 79 accordance with the provisions of this Code section. Further, when provisions of Code
 80 Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section
 81 limit a particular form of investment to a certain percentage of retirement system assets,
 82 the denominator will include alternative investments with all other investments, but the
 83 numerator for any such calculation shall not include any alternative investments, even if
 84 any such alternative investment is of a like kind as the investments that are included in the
 85 numerator.

86 (c) An alternative investment shall not exceed in any case 20 percent of the aggregate
 87 amount of:

88 (1) The capital to be invested in the applicable private pool, including all parallel pools
 89 and other related investment vehicles established as part of the investment program of the
 90 applicable private pool; and

91 (2) The securities being issued in the applicable private placement, in each case
 92 determined at the time such alternative investment is initially either made or committed
 93 to be made, as applicable, but taking into consideration any investments that have
 94 previously been or are concurrently being made or committed to be made.

95 Each alternative investment by an eligible large retirement system shall have previously
 96 been or shall be concurrently made or committed to be made by at least four other investors
 97 not affiliated with the issuer. Such four other investors shall be investing on substantially

98 the same terms and conditions as those applicable to the investment by the eligible large
99 retirement system to the extent such other investors are similarly situated with the eligible
100 large retirement system. Alternative investments shall only be made in private pools and
101 issuers that have at least \$100 million in assets, including committed capital, at the time the
102 investment is initially made or committed to be made by an eligible large retirement
103 system.

104 (d) Alternative investments by an eligible large retirement system shall not in the
105 aggregate exceed 5 percent of the eligible large retirement system assets at any time. The
106 board of trustees of an eligible large retirement system shall have the discretion to
107 designate whether any investment that is permitted to be made as an alternative investment
108 pursuant to this Code section and that is also permitted to be made as an investment
109 pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent limitation
110 and otherwise as an alternative investment made pursuant to this Code section or as an
111 investment made pursuant to Code Section 47-20-83. If the eligible large retirement
112 system is not in compliance with the limitations imposed by this subsection, it shall make
113 a good faith effort to come into compliance within two years and in any event as soon as
114 practicable thereafter; provided, however, that during any period of noncompliance, the
115 eligible large retirement system shall not increase the percentage of its assets committed
116 to be invested in alternative investments but shall be permitted during such period to
117 continue to make investments as required by the then existing commitments of the eligible
118 large retirement system to alternative investments made before the period of
119 noncompliance.

120 (e) The provisions of this subsection shall apply only to the Employees' Retirement System
121 of Georgia. New commitments to alternative investments shall not in the aggregate exceed
122 1 percent of the retirement system assets in any calendar year until the first occurrence that
123 4 1/2 percent of the retirement system assets are invested in alternative investments, at
124 which time there shall be no limit on the percentage of commitments that may be made in
125 any calendar year, subject to compliance with the other provisions of this Code section.

126 (f)(1) For purposes of this subsection, the term 'information' shall include, without
127 limitation, preinvestment and postinvestment diligence information, including reviews
128 and analyses prepared or provided by the issuer of a potential or actual alternative
129 investment or prepared by or for an eligible large retirement system or otherwise relating
130 to a potential or actual alternative investment.

131 (2) In addition to those records that are exempted from being open to inspection by the
132 general public under Code Section 47-1-14 and except as otherwise provided in this
133 subsection, an eligible large retirement system may in its discretion treat as confidential
134 and withhold from public inspection and disclosure all information prepared or provided

135 by the issuer of a potential or actual alternative investment or prepared by or for an
136 eligible large retirement system or otherwise relating to a potential or actual alternative
137 investment and held by an eligible large retirement system and may agree in making an
138 alternative investment to treat such information as confidential and withhold it from
139 public inspection and disclosure.

140 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, an
141 eligible large retirement system shall make publicly available the following information,
142 but only to the extent the following information is otherwise available or maintained by
143 said eligible large retirement system in the normal course and only after a period of one
144 year from the date such records were created:

145 (A) The name of any alternative investment in which the eligible large retirement
146 system has invested; excluding, in the case of an alternative investment in a privately
147 placed investment pool, any information concerning the investments made by such
148 privately placed investment pool;

149 (B) The date the eligible large retirement system first invested in an alternative
150 investment;

151 (C) The aggregate amount of money, expressed in dollars, the eligible large retirement
152 system has invested in alternative investments as of the end of any fiscal quarter;

153 (D) The aggregate amount of money and the value of any in kind or other distribution,
154 in each case, expressed in dollars, the large retirement system received from alternative
155 investments;

156 (E) The internal rate of return or the result under any other such standard used by the
157 eligible large retirement system in connection with alternative investments for the asset
158 class and for the period for which the return or standard was calculated; and

159 (F) The remaining cost of alternative investments in which the eligible large retirement
160 system has invested as of the end of any fiscal quarter.

161 (4) The provisions of this Code section shall not restrict access to information and
162 records under process of law or by officers otherwise entitled to them for official
163 purposes, but such information and records shall have the same confidential status under
164 process or with such officers as it does in the hands of an eligible large retirement system,
165 and such officers shall respect such confidentiality to the extent consistent with their
166 separate powers and duties.

167 (5) On the third Monday in January of each year, the director of each eligible large
168 retirement system shall provide a report to the Governor and the chairpersons of the
169 House and Senate standing committees on retirement detailing the performance of the
170 investments made pursuant to this Code section, including, without limitation, a clear
171 statement of the aggregate loss or profit on such investments for the preceding year. This

172 paragraph shall not be construed so as to require the disclosure of any information
173 otherwise protected by this subsection.

174 (g) Unless the information has been publicly released, preinvestment and postinvestment
175 diligence information, including reviews and analyses, prepared or maintained by the
176 eligible large retirement system or by an alternative investment firm shall be confidential
177 and exempted from being open to inspection by the general public pursuant to Article 4 of
178 Chapter 18 of Title 50, except to the extent it is subject to disclosure from the requirements
179 of subsection (f) of this Code section.

180 (h) The respective boards of trustees of eligible large retirement systems making
181 investments authorized by this Code section shall adopt a code of ethics for the
182 consideration of and investment in and disposition of alternative investments.

183 (i) Funds invested pursuant to this Code section and any return on such investment shall
184 remain funds of the retirement system."

185 **SECTION 3.**

186 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
187 disclosure of records is not required and disclosure of exempting legal authority, is amended
188 in subsection (a) by striking "or" at the end of paragraph (22), by replacing the period with
189 "; or" at the end of paragraph (23), and by adding a new paragraph to read as follows:

190 "(24) Records that are expressly exempt from public inspection pursuant to Code Section
191 47-20-87."

192 **SECTION 4.**

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