

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

AS PASSED SENATE

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

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

19 **SECTION 1.**

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

22 **SECTION 2.**

23 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public
24 Retirement Systems Investment Authority Law," is amended by revising subsection (c) of

25 Code Section 47-20-82, relating to investing funds, eligibility, and investment limitations,
 26 as follows:

27 "(c) Any investment limitation based upon the amount of the fund's assets shall relate to
 28 such assets on the basis of the assets' aggregate historical cost. For purposes of any
 29 investment made in alternative investments pursuant to Code Section 47-7-127 or
 30 47-20-87, aggregate historical cost shall include all contractually committed, unpaid
 31 amounts."

32 SECTION 3.

33 Said article is further amended by adding a new Code section to read as follows:

34 "47-20-87.

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

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

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

39 (i) Leveraged buyout funds;

40 (ii) Mezzanine funds;

41 (iii) Workout funds;

42 (iv) Debt funds;

43 (v) Venture capital funds;

44 (vi) Merchant banking funds; and

45 (vii) Funds of funds and secondary funds

46 that include investments in privately placed investment pools described in this
 47 subparagraph, in each case whether structured as a partnership, limited liability
 48 company, trust, corporation, joint venture, or other entity or investment vehicle of any
 49 type; organized or operating in one of the states or territories of the United States or
 50 outside the United States; such pool will invest in the United States or outside the
 51 United States or any combination thereof; or such pool makes investments of the type
 52 described in subparagraph (B) of this paragraph or other investments of any type or any
 53 combination thereof;

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

55 (i) Leveraged buyouts;

56 (ii) Venture capital investment;

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

58 (iv) Warrants;

59 (v) Options;

60 (vi) Private investments in public securities;

- 61 (vii) Recapitalizations;
 62 (viii) Privatizations;
 63 (ix) Mezzanine debt investments;
 64 (x) Distressed debt and equity investments, including, without limitation, cases in
 65 which the investor may take control of the issuer;
 66 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,
 67 recourse or nonrecourse, convertible, or otherwise;
 68 (xii) Convertible securities;
 69 (xiii) Receivables;
 70 (xiv) Interests, as such term is referred to in 11 U.S.C. Sections 501 and 502;
 71 (xv) Claims, as such term is defined in 11 U.S.C. Section 101(5);
 72 (xvi) Debt and equity derivative instruments of all types; and
 73 (xvii) All other debt and equity private placements of all types, in each case whether
 74 issued by a partnership, limited liability company, trust, corporation, joint venture, or
 75 other entity or vehicle of any type or whether the issuer is organized or does business
 76 in one of the states or territories of the United States or outside the United States; and
 77 (C) Any distribution in kind received by an eligible large retirement system in
 78 connection with any investment described in subparagraphs (A) and (B) of this
 79 paragraph.
- 80 (2) 'Eligible large retirement system' means a large retirement system as defined in
 81 subsection (a) of Code Section 47-20-84; provided, however, that such term shall not
 82 include the Teachers Retirement System of Georgia.
- 83 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
 84 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
 85 an eligible large retirement system is authorized to invest in alternative investments in
 86 accordance with the provisions of this Code section. Further, when provisions of Code
 87 Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section
 88 limit a particular form of investment to a certain percentage of retirement system assets,
 89 the denominator will include alternative investments with all other investments, but the
 90 numerator for any such calculation shall not include any alternative investments, even if
 91 any such alternative investment is of a like kind as the investments that are included in the
 92 numerator.
- 93 (c) An alternative investment shall not exceed in any case 20 percent of the aggregate
 94 amount of:
- 95 (1) The capital to be invested in the applicable private pool, including all parallel pools
 96 and other related investment vehicles established as part of the investment program of the
 97 applicable private pool; and

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

102 Each alternative investment by an eligible large retirement system shall have previously
103 been or shall be concurrently made or committed to be made by at least four other investors
104 not affiliated with the issuer. Such four other investors shall be investing on substantially
105 the same terms and conditions as those applicable to the investment by the eligible large
106 retirement system to the extent such other investors are similarly situated with the eligible
107 large retirement system. Alternative investments shall only be made in private pools and
108 issuers that have at least \$100 million in assets, including committed capital, at the time the
109 investment is initially made or committed to be made by an eligible large retirement
110 system.

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

127 (e) The provisions of this subsection shall apply only to the Employees' Retirement System
128 of Georgia. New commitments to alternative investments shall not in the aggregate exceed
129 1 percent of the retirement system assets in any calendar year until the first occurrence that
130 4 1/2 percent of the retirement system assets are invested in alternative investments, at
131 which time there shall be no limit on the percentage of commitments that may be made in
132 any calendar year, subject to compliance with the other provisions of this Code section.

133 (f)(1) For purposes of this subsection, the term 'information' shall include, without
134 limitation, preinvestment and postinvestment diligence information, including reviews

135 and analyses prepared or provided by the issuer of a potential or actual alternative
136 investment or prepared by or for an eligible large retirement system or otherwise relating
137 to a potential or actual alternative investment.

138 (2) In addition to those records that are exempted from being open to inspection by the
139 general public under Code Section 47-1-14 and except as otherwise provided in this
140 subsection, an eligible large retirement system may in its discretion treat as confidential
141 and withhold from public inspection and disclosure all information prepared or provided
142 by the issuer of a potential or actual alternative investment or prepared by or for an
143 eligible large retirement system or otherwise relating to a potential or actual alternative
144 investment and held by an eligible large retirement system and may agree in making an
145 alternative investment to treat such information as confidential and withhold it from
146 public inspection and disclosure.

147 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, any
148 public retirement system created by this title, other than by Chapter 5 of this title, shall
149 make publicly available the following information, but only to the extent the following
150 information is otherwise available or maintained by said retirement system in the normal
151 course and only after a period of one year from the date such records were created:

152 (A) The name of any alternative investment in which the retirement system has
153 invested; excluding, in the case of an alternative investment in a privately placed
154 investment pool, any information concerning the investments made by such privately
155 placed investment pool;

156 (B) The date the retirement system first invested in an alternative investment;

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

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

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

165 (F) The remaining cost of alternative investments in which the retirement system has
166 invested as of the end of any fiscal quarter.

167 (4) The provisions of this Code section shall not restrict access to information and
168 records under process of law or by officers otherwise entitled to them for official
169 purposes, but such information and records shall have the same confidential status under
170 process or with such officers as it does in the hands of an eligible large retirement system,

171 and such officers shall respect such confidentiality to the extent consistent with their
 172 separate powers and duties.

173 (5) On the third Monday in January of each year, the director of any public retirement
 174 system created by this title, other than by Chapter 5 of this title, shall provide a report to
 175 the Governor and the chairpersons of the House and Senate standing committees on
 176 retirement detailing the performance of any investments made pursuant to this Code
 177 section, including, without limitation, a clear statement of the aggregate loss or profit on
 178 such investments for the preceding year. This paragraph shall not be construed so as to
 179 require the disclosure of any information otherwise protected by this subsection.

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

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

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

191 **SECTION 4.**

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

196 "(24) Records that are expressly exempt from public inspection pursuant to Code Section
 197 47-20-87."

198 **SECTION 5.**

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