

House Bill 805 (AS PASSED HOUSE AND SENATE)

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:

**SECTION 1.**

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

**SECTION 2.**

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

"47-2-1.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

(9) Reserved.

(10) Reserved.

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

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

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

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

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

(16) 'Employee' means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) 'Employer' means:

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

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

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

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

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

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

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

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

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

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

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

(25) 'Option one,' 'option two,' 'option three,' and 'option four' mean the optional forms in which a member may elect to receive his or her retirement allowance, which options are set forth in Code Section 47-2-121.

(26) 'Pension' means periodic payments for life derived from contributions of the state.

(27) 'Pension accumulation fund' means the fund set forth in Code Section 47-2-55.

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

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

(29) 'Prior service' means service rendered prior to January 1, 1954, for which credit is allowable under this chapter.

(30) 'Prior service certificate' means the certificate issued to a member under this chapter as proof of his or her prior service.

(31) 'Regular interest' means interest at such a rate as shall be determined by the board of trustees in accordance with Code Section 47-2-26, which interest shall be compounded annually.

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

(33) 'Retirement allowance' means the sum of the annuity and the pension, or any optional benefit payable in lieu thereof. All retirement allowances shall be payable in equal monthly installments, except that the board of trustees may adopt regulations providing for the payment of a lump sum, not to exceed the equivalent actuarial value of the retirement allowance, in lieu of a retirement allowance of less than \$10.00 per month or in lieu of part of an annuity.

(34) 'Retirement system' means the Employees' Retirement System of Georgia.

(35) 'Service' means service rendered as an employee and paid for by an employer.

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

(37) 'Within one year after discharge from the armed forces' means within one year after the termination of the member's active service in the military or naval forces of the United States and shall not include any military reserve or naval reserve service."

**SECTION 3.**

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

"47-2-2.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 4.**

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

"47-2-21.

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

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

(1) The state auditor, ex officio;

(2) The state treasurer, ex officio;

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

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

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

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

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

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

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

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

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

## SECTION 5.

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

"47-2-22.

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

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

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

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

## SECTION 6.

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

"47-2-91.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION 8.

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

"47-3-1.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) 'Teacher' means:

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

(i) Persons who supervise the public schools;

(ii) Classroom teachers; and

(iii) Persons employed in a clerical capacity;

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

(C) School librarians;

(D) Administrative officials who supervise teachers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SECTION 9.

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

"47-3-60.

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

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

(c) Reserved.

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

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

(1) Death;

(2) Retirement under this retirement system;

(3) Withdrawal of his or her contributions;

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

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

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

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

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

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

(B) The member must submit a transcript or similar document to the retirement system as verification of the graduate study pursued;

(C) The member must return to full-time employment as a teacher in the public schools of this state or in the University System of Georgia under the board of regents for a minimum of five years following such period of graduate study;

(D) The member must pay the appropriate member contributions plus applicable accrued interest in accordance with regulations adopted by the board of trustees on the basis of the salary the member was receiving for full-time employment as a teacher immediately prior to the period of graduate study; and

(E) Either the member's present employer or the member must pay the appropriate employer contributions and applicable accrued interest thereon if the source of funds from which the member was paid immediately prior to his or her period of graduate study was other than state funds.

(3) The foregoing provisions of this subsection shall apply to periods of graduate study heretofore and hereafter granted, but nothing contained in this subsection shall be construed to rescind any creditable service granted prior to July 1, 1981, pursuant to this subsection or its predecessors.

(g) Any other provisions of law to the contrary notwithstanding, if a member with ten or more years' creditable service after becoming a member is employed by an employer operating a local retirement fund, his or her membership does not automatically terminate and he or she may elect to maintain his or her membership rather than participate in the local retirement fund, subject to the same terms and conditions as other members of the retirement system.

(h) New certified professional personnel employed for the first time by the State Board of Education or by the State Department of Education on and after July 1, 1983, shall become members of the retirement system as a condition of employment, unless such personnel elect membership in the Employees' Retirement System of Georgia at the time of their employment. Such election shall be made in writing to the board of trustees of this retirement system and to the board of trustees of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the State Board of Education or the State Department of Education. The State Board of Education shall provide by regulation for informing prospective employees who are to be employed as certified professional personnel of the option provided for by this subsection so that such personnel may choose membership in this retirement system or the Employees' Retirement System of Georgia at the time of their employment.

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

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

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

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



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

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

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

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

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

#### SECTION 10.

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

"47-18-2.

As used in this chapter, the term:

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

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

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

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

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

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

(5) 'Political subdivision' means counties and incorporated municipalities and includes an instrumentality of: (A) the state, (B) one or more political subdivisions of the state, or (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."

**SECTION 12.**

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

"47-19-9.

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

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

**SECTION 13.**

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

**SECTION 14.**

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