

## House Bill 398 (COMMITTEE SUBSTITUTE)

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

A BILL TO BE ENTITLED  
AN ACT

1 To amend an Act providing in Fulton County a system for pension and retirement pay to  
2 teachers and employees of the Board of Education of Fulton County, approved February 2,  
3 1945 (Ga. L. 1945, p. 528), as amended, particularly by an Act approved May 19, 2009 (Ga.  
4 L. 2009, p. 4004), so as to correct certain typographical errors; to amend certain provisions  
5 so as to comply with the federal Uniformed Services Employment and Reemployment Rights  
6 Act of 1994 and the federal Heroes Earnings Assistance and Relief Tax Act of 2008; to  
7 repeal conflicting laws; and for other purposes.

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

9 **SECTION 1.**

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

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

16 **SECTION 2.**

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

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

21 **SECTION 3.**

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



55 "SECTION 4.03.

56 Minimum retirement benefit.

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

66 **SECTION 6.**

67 Said Act is further amended by revising Section 5.03 as follows:

68 "SECTION 5.02.

69 Amount of benefits.

70 Upon attaining early retirement age, a participant shall be entitled to receive the normal  
 71 retirement benefit calculated and payable as provided in Section 4.02 of this Act. The early  
 72 retirement benefit of a safety net participant shall be reduced as set forth in subsection (b)  
 73 of Section 4.02 of this Act. An early retirement benefit shall be unreduced for early  
 74 commencement except for a participant who retires prior to age 60 or with less than 30  
 75 years of creditable service, for whom such normal retirement benefit amount shall be  
 76 reduced by 1/12 of 2 percent per month for each month by which his or her age is less than  
 77 60; provided, however, that this reduction shall not apply to:

78 (1) A participant who retires under the Alternate Plan of 1959;

79 (2) A participant who retires under the terms of subsection (d) of Section 5.01 of this  
 80 Act; or

81 (3) A nonteacher participant who retires under the terms of subsection (e) of Section 5.01  
 82 of this Act."

83 **SECTION 7.**

84 Said Act is further amended by revising Section 7.03 as follows:

85 "SECTION 7.03.

86 Recovery of mistaken payments.

87 In the event any benefit is mistakenly paid to a participant, joint annuitant, or beneficiary  
 88 in an amount which is greater than the amount payable under the terms of this Act, the plan  
 89 shall recover such excess benefit amount by eliminating or reducing the participant's or  
 90 beneficiary's future benefit payments; provided, however, that, in addition to any other  
 91 remedy set forth in this section, the pension board also shall be authorized to recover,  
 92 collect, and settle any such overpayment amounts in accordance with the procedures set  
 93 forth by law, including any governmental correction program."

94 **SECTION 8.**

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

96 "(a) Except as provided in subsections (b) and (c) of this section, if a participant has made  
 97 the required employer contributions for survivor benefits and has a vested interest in all or  
 98 any portion of his or her accrued benefit, survivor benefits shall be payable on his or her  
 99 behalf to his or her surviving spouse, if any, or if none, to his or her minor children, if any.

100 If a participant is not married and has no minor children on the date of death, no death  
 101 benefits shall be payable under the plan, except as provided in Section 8.02 of this Act.

102 Survivor benefits shall be payable to his or her beneficiaries in an amount equal to 70  
 103 percent of the benefit which shall be determined under paragraphs (1) and (2) of this  
 104 subsection; provided, however, that, for a participant who would have retired under the  
 105 Alternate Plan of 1959 but for his or her death, survivor benefits shall be payable to the  
 106 participant's beneficiaries in an amount equal to 75 percent of the benefit which shall be  
 107 calculated as follows:

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

111 (2) For survivor benefits payable on or after the participant's benefit commencement  
 112 date, the amounts which are payable under subsection (a) of Section 4.02 of this Act, as  
 113 increased by any cost of living adjustments in effect on the date of his or her death;

114 provided, however, that survivor benefits shall be reduced if the participant's surviving  
 115 spouse is more than five years younger than the participant in accordance with the  
 116 following schedule:

117 (3) If the spouse was married to the participant for less than ten years while the  
 118 participant was in active service with the board, the spouse's benefit shall be reduced by

119 1/12 of 2 percent per month for each month the spouse was more than five years younger  
120 than the participant;

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

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

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

130 **SECTION 9.**

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

132 "SECTION 10.04.

133 The Uniformed Services Employment And  
134 Reemployment Rights Act of 1994 (USERRA).

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

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

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

140 (A) Enters qualified military service;

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

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

145 (b) Notwithstanding any provision of this Act to the contrary, contributions, benefits, and  
146 service credit for qualified military service shall be provided in accordance with Section  
147 414(u) of the federal Internal Revenue Code.

148 (c) Reemployment Rights. A veteran participant shall not be treated as having incurred  
149 a break in service by reason of qualified military service. Each period of qualified military  
150 service shall be taken into account in determining the years of creditable service used in  
151 calculating the veteran participant's accrued benefits under the plan.

152 (d) Death During Qualified Military Service. If a participant dies on or after January 1,  
 153 2007, while performing qualified military service but prior to becoming a veteran  
 154 participant, the participant's beneficiaries shall be entitled to any additional benefits, other  
 155 than benefit accruals related to the period of qualified military service, provided under the  
 156 plan as if the deceased participant had resumed employment with the employer and then  
 157 severed employment on account of death. Moreover, the plan will credit such participant's  
 158 qualified military service as service for vesting purposes, as though the participant had  
 159 resumed employment immediately prior to the participant's death."

160 **SECTION 10.**

161 Said Act is further amended by revising subsection (c) of Section 12.01 as follows:

162 "(c) The pension board shall elect its own chairperson and secretary and shall hold a  
 163 regular public meeting at least once a month at a time and place to be fixed by the pension  
 164 board. The members of the pension board shall serve without pay. The pension board may  
 165 employ an executive director and other personnel who shall serve at the will of the pension  
 166 board at salaries to be designated by the pension board. With the consent of the board of  
 167 education, such executive director shall be treated as an employee of the Fulton County  
 168 Board of Education for benefits and tax reporting purposes."

169 **SECTION 11.**

170 Said Act is further amended by adding a new Section to read as follows:

171 "SECTION 15.08.

172 Amendment.

173 The employer reserves the right to amend the plan at any time by a vote of the majority of  
 174 the pension board members; provided, however, that an amendment that constitutes a  
 175 "retirement bill having a fiscal impact," as such term is defined in O.C.G.A. Section 47-20-  
 176 30(6), also shall be approved by a vote of the majority of the board members' provided,  
 177 further, that a plan amendment shall not go into effect until the General Assembly of  
 178 Georgia enacts it."

179 **SECTION 12.**

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