

House Bill 928 (AS PASSED HOUSE AND SENATE)

By: Representatives Riley of the 50th, Greene of the 149th, Maddox of the 172nd, Wilkerson of the 33rd, Anderson of the 117th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 17 of Title 47 of the Official Code of Georgia Annotated, relating to the
2 Peace Officers' Annuity and Benefit Fund, so as to provide that the board of trustees of such
3 fund shall be authorized to employ a hearing officer; to provide for dispute resolution; to
4 provide for powers and duties of the hearing officer; to provide for hearings; to provide for
5 a record of hearings; to provide for judicial review; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 17 of Title 47 of the Official Code of Georgia Annotated, relating to the Peace
10 Officers' Annuity and Benefit Fund, is amended by adding a new Code section to read as
11 follows:

12 "47-17-27.

13 (a) The board is authorized and empowered to appoint and compensate a hearing officer
14 for the purpose of holding hearings, compiling evidence and information, and submitting
15 evidence, information, and recommendations to the board in any contested case.

16 (b) The hearing officer shall have the authority to do the following in connection with any
17 hearing: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of
18 proof; regulate the course of the hearing, set the time and place for the hearing or any
19 continued hearings, and fix the time for filing any briefs; provide for the taking of
20 testimony by deposition or interrogatory; and reprimand or exclude from the hearing any
21 person for any indecorous or improper conduct committed in the presence of the hearing
22 officer. When a subpoena issued by the hearing officer is disobeyed, any interested party
23 may apply to the superior court of the county where the hearing is being held for an order
24 requiring obedience. Failure to comply with such order shall be cause for punishment as
25 for contempt of court. Any applicant for disability benefits shall have the right to be
26 represented by counsel before the hearing officer.

27 (c) With respect to all hearings before the hearing officer:

28 (1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules
29 of evidence as applied in the trial of civil nonjury cases in the superior courts shall be
30 followed. Evidence not admissible under such rules of evidence may be admitted if it is
31 of a type commonly relied upon by reasonably prudent persons in the conduct of their
32 affairs. The hearing officer shall give effect to the rules of privilege recognized by law;
33 and

34 (2) Documentary evidence may be received in the form of copies or excerpts if the
35 original is not readily available. At the discretion of the hearing officer, the original shall
36 be compared with the copy or excerpt.

37 (d) The hearing officer, within 30 days from the close of the evidence or, if necessary, a
38 longer period of time approved by the board, shall certify the entire record from the hearing
39 to the board, together with his or her recommendation on the application. On review of the
40 entire record from the hearing officer, the board shall have all the powers it would have in
41 presiding at the reception of the evidence. In its discretion, the board may take additional
42 testimony or remand the matter to the hearing officer for such purpose. The
43 recommendation of the hearing officer to the board shall be made a part of the record
44 before the board.

45 (e) As a part of its decision subsequent to any hearing, the board shall include findings of
46 fact and conclusions of law, separately stated, and the effective date of the decision. The
47 decision of the board shall be mailed to the parties as soon after the rendition of the
48 decision as is practicable.

49 (f) Any party who is adversely affected by any final decision of the board may seek
50 judicial review of the final decision of the board in the Superior Court of Spalding County.
51 Proceedings for review shall be instituted by filing a petition with the court within 30 days
52 after the decision is rendered. A copy of the petition shall be served upon the board. The
53 petition shall state the nature of the petitioner's interest, the facts showing that the petitioner
54 is aggrieved by the decision of the hearing officer, and the grounds upon which the
55 petitioner contends the decision should be reversed or remanded. The petition may be
56 amended with leave of the court.

57 (g) Within 30 days after the service of the petition or within further time allowed by the
58 court, the hearing officer shall transmit to the reviewing court the original or a certified
59 copy of the entire record of the proceeding under review. By agreement of the petitioner,
60 the record may be shortened. The court may require or permit subsequent corrections or
61 additions to the record.

62 (h) The filing of the petition shall in no manner stay the enforcement of the decision of the
63 hearing officer.

64 (i) The review shall be conducted by the court without a jury and shall be confined to the
 65 record. The court shall not substitute its judgment for that of the hearing officer as to the
 66 weight of the evidence on questions of fact. The court may affirm the decision of the
 67 hearing officer or remand the case for further proceedings. The court may reverse the
 68 decision of the hearing officer if substantial rights of the petitioner have been prejudiced
 69 because the findings, inferences, conclusions, or decisions of the hearing officer are:

70 (1) In violation of constitutional or statutory provisions;

71 (2) In excess of the statutory authority of the hearing officer;

72 (3) Made upon unlawful procedure;

73 (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the
 74 whole record; or

75 (5) Arbitrary or capricious.

76 (j) A petitioner who is aggrieved by an order of the court in a proceeding authorized under
 77 this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of
 78 Georgia in accordance with Title 5."

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SECTION 2.

81 Said chapter is further amended by revising Code Section 47-17-81, relating to eligibility for
 82 disability benefits, periodic medical examination, termination of disability benefits,
 83 application, hearings, powers of hearing officer, and appeal, as follows:

84 "47-17-81.

85 (a) Any dues-paying member who became a member prior to July 1, 1993, who is
 86 rendered totally and permanently disabled by disease or injury so as to be unable to
 87 perform substantially all of the duties of the position to which the member was regularly
 88 assigned when the disability originated or so as to be unable to engage in any occupation
 89 or gainful employment for which the member is reasonably suited by virtue of the
 90 member's background, training, education, and experience shall be entitled to disability
 91 benefits of \$257.00 per month for life or until the member's disability ceases, provided that
 92 the member makes application to the board for disability benefits within 12 months of
 93 becoming totally and permanently disabled.

94 (b) The disability benefits provided under this Code section shall be payable upon the
 95 event of disability as provided in subsection (a) of this Code section regardless of the cause
 96 of the disability and shall be payable when the disability is a result of any mental or
 97 physical injury or disease, whether caused by reason of the peace officer's employment or
 98 not, provided that no benefits shall be payable under this Code section for any disability
 99 resulting from the chronic and excessive consumption of alcoholic beverages, addiction to
 100 drugs, the use of which is prohibited in this state by law, engagement by the member in any

101 criminal act, willful misconduct of the member, or injury sustained by the member while
102 serving in the armed forces of any country or while on active duty in the National Guard
103 or other armed forces reserve force.

104 (c) Any other provision of law to the contrary notwithstanding, any member who is
105 receiving disability benefits pursuant to this Code section on June 30, 1990, and who had
106 at least 20 years of creditable service at the time such member first became eligible for
107 such disability benefits shall receive the same benefits as a member who retires at age 55
108 or older with 20 years of creditable service under the provisions of Code Section 47-17-80.
109 For each year of service above 20 years but not more than 30 years which such member
110 had when first becoming eligible to receive disability benefits, the benefits shall be the
111 same as those provided for the same number of years of creditable service under the
112 provisions of Code Section 47-17-80. The benefits of such members who are receiving
113 disability benefits pursuant to this Code section on June 30, 1990, shall be recomputed and
114 the increased benefits shall be paid to such members beginning July 1, 1990. Any member
115 who first becomes eligible to receive disability benefits on or after July 1, 1990, who has
116 the required years of creditable service as provided in this subsection shall have disability
117 benefits computed and paid in the same manner as provided in this subsection.

118 (d) The amount of disability benefits in this Code section shall apply to those members
119 who have retired on disability prior to July 1, 1990, as well as to those members who retire
120 on disability on or after that date. The service of each such member who retired prior to
121 July 1, 1990, shall be recomputed, and the benefits provided under this Code section shall
122 be paid to such member in the future beginning July 1, 1990.

123 (e) Once each year during the first five years following the commencement of disability
124 benefits under this Code section, and once in every three-year period thereafter, the board
125 may require a disability beneficiary who has not yet attained 65 years of age to undergo a
126 medical examination, such examination to be made at his or her place of residence, or other
127 place mutually agreed upon, by physicians designated by the board. The disability benefits
128 recipient may himself or herself request such an examination. The designated physicians
129 shall report to the board, following each such examination, the current status and condition
130 of the recipient's disability.

131 (f) A disabled member's disability benefits shall cease:

132 (1) Upon his or her return to gainful employment with the employer for which he or she
133 worked at the time his or her disability originated;

134 (2) If he or she refuses to submit to any medical examination requested under this Code
135 section, in which case the benefits shall remain discontinued until the member's
136 withdrawal of such refusal and submission to the requested medical examination; and,

137 if his or her refusal continues for one year, all his or her rights in and to disability benefits
 138 may be revoked by the board;

139 (3) If the board determines on the basis of any medical examination that the member has
 140 sufficiently recovered from his or her disability so as to again be able to perform
 141 substantially all of the duties of the position to which he or she was regularly assigned
 142 when the disability originated, or so as to be able to engage in an occupation or gainful
 143 employment for which he or she is reasonably suited by virtue of his or her background,
 144 training, education, and experience;

145 (4) If the member does in fact obtain gainful employment compensating him or her at a
 146 level equal to or greater than the current compensation for the position he or she occupied
 147 at the time his or her disability originated; or

148 (5) When he or she dies.

149 (g) The board shall prescribe and furnish a form and procedure for the application for
 150 disability benefits. Applications shall contain such information as the board shall require.
 151 Upon the receipt of an application, the board may pass upon and decide whether to grant
 152 or deny the application on the basis of the submitted information or may refer the
 153 application to its duly appointed hearing officer for a recommendation. Any applicant for
 154 disability benefits shall have the right to request the board to refer his or her application to
 155 the hearing officer for a recommendation. In the consideration of any application for
 156 disability benefits, the receipt of disability benefits or payments by the applicant under the
 157 federal Social Security Act shall be deemed sufficient for eligibility for disability benefits
 158 under this Code section.

159 ~~(h) The board is authorized and empowered to appoint and compensate a hearing officer
 160 for the purpose of holding hearings, compiling evidence and information, and submitting
 161 evidence, information, and recommendations to the board in any disability benefits case.~~

162 ~~(i) The hearing officer shall have the authority to do the following in connection with any
 163 hearing on a disability application: administer oaths and affirmations; sign and issue
 164 subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and
 165 place for the hearing or any continued hearings, and fix the time for filing any briefs;
 166 provide for the taking of testimony by deposition or interrogatory; and reprimand or
 167 exclude from the hearing any person for any indecorous or improper conduct committed
 168 in the presence of the hearing officer. When a subpoena issued by the hearing officer is
 169 disobeyed, any interested party may apply to the superior court of the county where the
 170 hearing is being held for an order requiring obedience. Failure to comply with such order
 171 shall be cause for punishment as for contempt of court. Any applicant for disability
 172 benefits shall have the right to be represented by counsel before the hearing officer.~~

173 ~~(j) With respect to all hearings before the hearing officer:~~

- 174 ~~(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules~~
175 ~~of evidence as applied in the trial of civil nonjury cases in the superior courts shall be~~
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177 ~~of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~
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179 ~~(2) Documentary evidence may be received in the form of copies or excerpts if the~~
180 ~~original is not readily available. At the discretion of the hearing officer, the original shall~~
181 ~~be compared with the copy or excerpt.~~
- 182 ~~(k) The hearing officer, within 30 days from the close of the evidence or, if necessary, a~~
183 ~~longer period of time approved by the board, shall certify the entire record from the hearing~~
184 ~~to the board, together with his recommendation on the application. On review of the entire~~
185 ~~record from the hearing officer, the board shall have all the powers it would have in~~
186 ~~presiding at the reception of the evidence. In its discretion, the board may take additional~~
187 ~~testimony or remand the matter to the hearing officer for such purpose. The~~
188 ~~recommendation of the hearing officer to the board shall be made a part of the record~~
189 ~~before the board.~~
- 190 ~~(l) As a part of its decision subsequent to any hearing, the board shall include findings of~~
191 ~~fact and conclusions of law, separately stated, and the effective date of the decision. The~~
192 ~~decision of the board shall be mailed to the applicant for disability benefits as soon after~~
193 ~~the rendition of the decision as is practicable.~~
- 194 ~~(m) Any applicant for disability benefits who is adversely affected by any final decision~~
195 ~~of the board may seek judicial review of the final decision of the board in the Superior~~
196 ~~Court of Spalding County. Proceedings for review shall be instituted by filing a petition~~
197 ~~with the court within 30 days after the decision is rendered. A copy of the petition shall~~
198 ~~be served upon the board. The petition shall state the nature of the petitioner's interest, the~~
199 ~~facts showing that the petitioner is aggrieved by the decision of the board, and the grounds~~
200 ~~upon which the petitioner contends the decision should be reversed or remanded. The~~
201 ~~petition may be amended with leave of the court.~~
- 202 ~~(n) Within 30 days after the service of the petition or within further time allowed by the~~
203 ~~court, the board shall transmit to the reviewing court the original or a certified copy of the~~
204 ~~entire record of the proceeding under review. By agreement of the petitioner, the record~~
205 ~~may be shortened. The court may require or permit subsequent corrections or additions to~~
206 ~~the record.~~
- 207 ~~(o) The filing of the petition shall in no manner stay the enforcement of the decision of the~~
208 ~~board.~~
- 209 ~~(p) The review shall be conducted by the court without a jury and shall be confined to the~~
210 ~~record. The court shall not substitute its judgment for that of the board as to the weight of~~

211 ~~the evidence on questions of fact. The court may affirm the decision of the board or~~
 212 ~~remand the case for further proceedings. The court may reverse the decision of the board~~
 213 ~~if substantial rights of the petitioner have been prejudiced because the findings, inferences,~~
 214 ~~conclusions, or decisions of the board are:~~

215 ~~(1) In violation of constitutional or statutory provisions;~~

216 ~~(2) In excess of the statutory authority of the board;~~

217 ~~(3) Made upon unlawful procedure;~~

218 ~~(4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the~~
 219 ~~whole record; or~~

220 ~~(5) Arbitrary or capricious.~~

221 ~~(q) A petitioner who is aggrieved by an order of the court in a proceeding authorized under~~
 222 ~~this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of~~
 223 ~~Georgia in accordance with Title 5.~~

224 ~~(r)(h)~~ Any other provision of this Code section to the contrary notwithstanding, no person
 225 who becomes a member or again becomes a member of this fund on or after July 1, 1993,
 226 shall be entitled to any benefit provided for in this Code section."

227 **SECTION 3.**

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