

The House Committee on Intragovernmental Coordination - Local Legislation offers the following substitute to HB 380:

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 11, 2009 (Ga.
4 L. 2009, p. 4004), and an Act approved April 11, 2012 (Ga. L. 2012, p. 4982), so as to
5 provide that the Board of Education of Fulton County shall be the plan sponsor and funding
6 agent of such plan; to provide for the administration of the plan through a committee of the
7 board of education; to provide for a committee known as the pension board; to provide for
8 membership and duties of the pension board; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 An Act providing in Fulton County a system for pension and retirement pay to teachers and
13 employees of the Board of Education of Fulton County, approved February 2, 1945 (Ga. L.
14 1945, p. 528), as amended, particularly by an Act approved May 11, 2009 (Ga. L. 2009, p.
15 4004), and an Act approved April 11, 2012 (Ga. L. 2012, p. 4982), is amended by revising
16 Article XII of the plan as follows:

17 "ARTICLE XII
18 ADMINISTRATION
19 **SECTION 12.01.**

20 Pension board, appointment, and term of office.

- 21 (a) The Board of Education of Fulton County shall be the plan sponsor and funding agent
22 and shall have full responsibility and authority for interpreting and implementing the plan.
23 (b) Administration of the plan shall be carried out under the direction of the board of
24 education by a committee of the board of education which shall be known as the 'pension

25 board' and which shall consist of seven voting members and one nonvoting member. Except
 26 as otherwise provided in subsection (b.1) of this section, members shall be qualified and
 27 chosen as follows:

28 (1) The superintendent of the Fulton County School System, ex officio, who shall not
 29 have a vote;

30 (2) The chief financial officer of the Fulton County School System, ex officio;

31 (3) The executive director of fiscal services of the Fulton County School System, ex
 32 officio; and

33 (4) Two members nominated by the pension board and appointed by the board of
 34 education for four-year terms who shall be former teachers or employees of the board of
 35 education and who shall be pensioners;

36 (5) Two members nominated by the pension board and appointed by the board of
 37 education for four-year terms who shall be active teachers or employees of the board of
 38 education and participants in the plan; and

39 (6) One member nominated by the pension board and appointed by the board of
 40 education for a four-year term who shall be a school administrator within the Fulton
 41 County School System and a participant in the plan.

42 (b.1)(1) The terms of office of the members of the pension board serving on the effective
 43 date of this Act shall end on the 30th day following the effective date of this Act. The
 44 initial members shall be as provided in subsection (b) of this section; provided, however,
 45 that the board of education shall appoint members from plan participant groups according
 46 to paragraphs (4), (5), and (6) of such subsection without nominations by the pension
 47 board. The members so appointed shall take office on the 30th day following the
 48 effective date of this Act.

49 (2) If at any time the pension board has four or more vacancies, the nomination process
 50 provided by paragraphs (4), (5), and (6) of subsection (b) of this section shall be
 51 suspended in part and the board of education shall appoint members to any vacant
 52 positions on the pension board from the participation group from which the vacancy
 53 occurs.

54 (3) If the board of education fails to confirm two successive pension board nominations
 55 for membership to the pension board, then the board of education shall appoint a member
 56 to that position from the participation group from which the vacancy occurs.

57 (4) Members of the pension board shall serve at the pleasure of the board of education.
 58 The board of education may by majority vote remove any member of the pension board
 59 without notice or hearing.

60 (c) In the event of the death, resignation, removal, or other disability of a pension board
 61 member which renders him or her incapable of performing the duties of a member of the

62 pension board during his or her or her term of office, such pension board member's
63 replacement shall be selected in the manner specified in subsection (b) of this section for
64 such position and shall serve the remaining balance of such term of office.

65 (d) The superintendent of the Fulton County School System or his or her designee shall
66 serve as chairperson of the pension board. The pension board shall elect one member to
67 serve as secretary and shall hold a regular public meeting at least once a month at a time and
68 place to be fixed by the pension board. The members of the pension board shall serve
69 without pay. The pension board may employ an executive director and other personnel who
70 shall serve at the will of and under the direction of the superintendent of the Fulton County
71 School System at salaries to be designated by the pension board. With the consent of the
72 board of education, such executive director shall be treated as an employee of the Fulton
73 County Board of Education for benefits and tax reporting purposes.

74 (e) The pension board shall have the authority, subject to the approval of the board of
75 education, to adopt rules and regulations in the administration of this Act and in carrying out
76 the provisions of this Act and to provide for the equitable disposition of any matter not
77 specifically covered by the provisions of this Act; provided, however, that all such rules shall
78 be consistent with the terms and spirit of this Act.

79 (f) The chief financial officer of the Fulton County School System shall be designated as the
80 treasurer and custodian of this Act and shall be subject to the direction of the superintendent
81 of the Fulton County School System for the purpose of carrying out his or her or her duties
82 under the plan. Whenever any pension has been granted by the pension board, a check shall
83 be drawn on the pension fund, providing for the payment of the pension as the same matures,
84 and shall be signed by the chairperson of the pension board and countersigned and paid by
85 the treasurer.

86 (g) Four members of the pension board shall constitute a quorum, and notice by the secretary
87 shall be given for special or called meetings of the pension board. The chairperson of the
88 pension board shall provide a bond with a good corporate surety in the sum of not less than
89 \$5,000.00 for his or her faithful performance as chairperson of the pension board, and the
90 treasurer shall provide a bond with a good corporate surety in the sum of not less than
91 \$25,000.00 for his or her faithful performance as treasurer and custodian of the pension fund.
92 The premiums on such bonds shall be an expense of this Act.

93 (h) Except as otherwise provided in the plan, no member or employee of the pension board
94 shall have any personal interest in the gains or profits from any investment made by the
95 pension board or use the assets of this Act in any manner, directly or indirectly, for himself
96 or herself or as an agent, except to make such payments as are authorized by the pension
97 board in accordance with the plan.

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SECTION 12.02.

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Appointment of agents.

100 In addition to those powers set forth elsewhere in the plan or this Act, the pension board may,
 101 with the consent of the board of education, appoint such agents, who need not be members
 102 of such pension board, as it may deem necessary for the effective performance of its duties
 103 and may delegate to such agents such powers and duties, whether ministerial or
 104 discretionary, as the pension board and the board of education may deem expedient or
 105 appropriate. The pension board shall act by majority vote.

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SECTION 12.03.

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Powers and responsibility.

108 Subject to the approval of the board of education, the pension board shall have responsibility
 109 for the administration of the plan, with all powers necessary to enable it properly to carry out
 110 its duties as set forth in this Act. The pension board shall have the following duties and
 111 responsibilities:

- 112 (1) To serve as trustee of the trust fund;
- 113 (2) To construe the plan and to answer all questions that arise out of the plan;
- 114 (3) To select and remove all service providers to the plan, including the actuary, broker
 115 and investment advisor, custodians, and other advisors;
- 116 (4) To decide all questions relating to the eligibility of employees to participate in the
 117 plan;
- 118 (5) To determine the benefits of this Act to which any participant or beneficiary may be
 119 entitled;
- 120 (6) To maintain and retain records relating to the participants and beneficiaries;
- 121 (7) To prepare and furnish to the participants all information required under applicable
 122 state or federal law or provisions of this Act to be furnished to them, which may be
 123 provided electronically where appropriate; provided, however, any such information
 124 required to be submitted in written form may be provided by electronic means in a
 125 manner consistent with the requirements of Treasury Regulations Section 1.401(a)(21),
 126 as amended;
- 127 (8) To prepare and furnish to agents and service providers to the plan sufficient
 128 employee data so that such service providers may carry out their obligations to the plan
 129 and its participants and beneficiaries;
- 130 (9) To prepare and file or publish with all other appropriate government officials all
 131 reports and other information required under law to be so filed or published;

- 132 (10) To provide directions to the trustee or custodian for the methods of benefit payment
133 and all other matters where called for in the plan or requested by the trustee or custodian;
134 (11) To engage assistants and professional advisers;
135 (12) To arrange for fiduciary bonding, if necessary;
136 (13) To provide procedures for determination of claims for benefits; and
137 (14) To delegate any or all of these responsibilities.

138 **SECTION 12.04.**

139 Records of pension board.

140 (a) Any notice, direction, order, request, certification, or instruction of the pension board to
141 the trustee or custodian shall be in writing and shall be signed by a member of the pension
142 board. The trustee or custodian and every other person shall be entitled to rely conclusively
143 upon any and all such notices, directions, orders, requests, certifications, and instructions
144 received from the pension board and reasonably believed to be properly executed and shall
145 act in accordance therewith.

146 (b) All acts and determinations of the pension board shall be duly recorded by its secretary
147 or under the secretary's supervision, and all such records, together with such other documents
148 as may be necessary for the administration of this Act, shall be preserved in the custody of
149 the secretary.

150 **SECTION 12.05.**

151 Reporting and disclosure.

152 The pension board shall keep all individual and group records relating to the participants and
153 beneficiaries and all other records necessary for the proper operation of this Act. The
154 pension board shall prepare and shall file as required by law or regulation all reports, forms,
155 documents, and other items required by the Code and every other relevant statute, each as
156 amended, and all regulations thereunder. This provision shall not be construed as imposing
157 upon the pension board the responsibility or authority for the preparation, preservation,
158 publication, or filing of any document required to be prepared, preserved, or filed by the
159 trustee or custodian to whom such responsibilities are delegated by law or by the plan.

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SECTION 12.06.

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Construction of this Act.

162 The pension board shall take such steps as are considered necessary and appropriate to
163 remedy any inequity that results from incorrect information received or communicated in
164 good faith or as the consequence of an administrative error. The board of education shall
165 interpret the plan and shall answer any questions arising in the administration, interpretation,
166 and application of the plan. The pension board shall endeavor to act, whether by general
167 rules or by particular decisions, so as not to discriminate in favor of or against any person and
168 so as to treat all persons in similar circumstances uniformly. The pension board shall correct
169 any defect of, reconcile any inconsistency in, or supply any omission from the plan.

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SECTION 12.07.

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Assistants and advisers.

172 (a) The pension board shall have the right, subject to the consent of the board of education,
173 to delegate any of its responsibility and to hire such professional assistants and consultants
174 as it deems necessary or advisable. To the extent that the costs for such assistants and
175 advisers are not paid by the board of education, they shall be paid at the direction of the
176 pension board from the trust fund as an expense of the trust fund.

177 (b) The pension board and the board of education shall be entitled to rely upon all
178 certificates and reports made by an accountant, attorney, or other professional adviser
179 selected pursuant to this section; the pension board and the board of education shall be fully
180 protected in respect to any action taken or suffered by them in good faith in reliance upon the
181 advice or opinion of any such accountant, attorney, or other professional adviser; and any
182 action so taken or suffered shall be conclusive upon each of them and upon all other persons
183 interested in the plan."

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SECTION 2.

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