

House Bill 383

By: Representatives Holcomb of the 81st, Harbin of the 122nd, and Smith of the 134th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 47-20-87 of the Official Code of Georgia Annotated, relating to
2 eligible large retirement systems authorized to invest in certain alternative investments, so
3 as to modify provisions related to alternative investments; to repeal conflicting laws; and for
4 other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Code Section 47-20-87 of the Official Code of Georgia Annotated, relating to eligible large
8 retirement systems authorized to invest in certain alternative investments, is amended as
9 follows:

10 "47-20-87.

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

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

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

15 (i) Leveraged buyout funds;

16 (ii) Mezzanine funds;

17 (iii) Workout funds;

18 (iv) Debt funds;

19 (v) Venture capital funds;

20 (vi) Merchant banking funds; and

21 (vii) Funds of funds and secondary funds

22 that include investments in privately placed investment pools described in this
23 subparagraph, in each case whether structured as a partnership, limited liability
24 company, trust, corporation, joint venture, or other entity or investment vehicle of any
25 type; organized or operating in one of the states or territories of the United States or
26 outside the United States; such pool will invest in the United States or outside the

27 United States or any combination thereof; or such pool makes investments of the type
 28 described in subparagraph (B) of this paragraph or other investments of any type or any
 29 combination thereof;

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

- 31 (i) Leveraged buyouts;
 - 32 (ii) Venture capital investment;
 - 33 (iii) Equity investments, including, without limitation, preferred and common stock;
 - 34 (iv) Warrants;
 - 35 (v) Options;
 - 36 (vi) Private investments in public securities;
 - 37 (vii) Recapitalizations;
 - 38 (viii) Privatizations;
 - 39 (ix) Mezzanine debt investments;
 - 40 (x) Distressed debt and equity investments, including, without limitation, cases in
 41 which the investor may take control of the issuer;
 - 42 (xi) Other debt investments, whether secured or unsecured, senior or subordinated,
 43 recourse or nonrecourse, convertible, or otherwise;
 - 44 (xii) Convertible securities;
 - 45 (xiii) Receivables;
 - 46 (xiv) Interests, as such term is referred to in 11 U.S.C. Sections 501 and 502;
 - 47 (xv) Claims, as such term is defined in 11 U.S.C. Section 101(5);
 - 48 (xvi) Debt and equity derivative instruments of all types; and
 - 49 (xvii) All other debt and equity private placements of all types, in each case whether
 50 issued by a partnership, limited liability company, trust, corporation, joint venture, or
 51 other entity or vehicle of any type or whether the issuer is organized or does business
 52 in one of the states or territories of the United States or outside the United States; and
- 53 (C) Any distribution in kind received by an eligible large retirement system in
 54 connection with any investment described in subparagraphs (A) and (B) of this
 55 paragraph.

56 (2) 'Eligible large retirement system' means a large retirement system as defined in
 57 subsection (a) of Code Section 47-20-84; provided, however, that such term shall not
 58 include the Teachers Retirement System of Georgia.

59 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
 60 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
 61 an eligible large retirement system is authorized to invest in alternative investments in
 62 accordance with the provisions of this Code section. Further, when provisions of Code
 63 Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section

64 limit a particular form of investment to a certain percentage of retirement system assets,
 65 the denominator will include alternative investments with all other investments, but the
 66 numerator for any such calculation shall not include any alternative investments, even if
 67 any such alternative investment is of a like kind as the investments that are included in the
 68 numerator.

69 (c) An alternative investment shall not exceed in any case 20 percent of the aggregate
 70 amount of:

71 (1) The capital to be invested in the applicable private pool, including all parallel pools
 72 and other related investment vehicles established as part of the investment program of the
 73 ~~applicable private pool, and~~ alternative investments;

74 (2) The securities being issued in the applicable private placement, in each case
 75 determined at the time such alternative investment is initially either made or committed
 76 to be made, as applicable, but taking into consideration any investments that have
 77 previously been or are concurrently being made or committed to be made; and

78 (3) The underlying investments, in the case of a Fund of funds;

79 as of the date the alternative investment is closed to new investors. Each alternative
 80 investment approved by an eligible large retirement system board of trustees shall have
 81 previously been or shall be ~~concurrently~~ made or committed to be made within one year
 82 by at least four other investors not affiliated with the issuer, seller, or alternative investment
 83 firm. At the time of initial investment, such investors shall not include any trustee of the
 84 eligible large retirement system making the investment or any public official as defined in
 85 paragraph (9) of Code Section 45-10-20. Such four other investors shall be investing on
 86 substantially the same terms and conditions as those applicable to the investment by the
 87 eligible large retirement system to the extent such other investors are similarly situated with
 88 the eligible large retirement system. Alternative investments made by an eligible
 89 retirement system shall only be made in private pools ~~and~~ with issuers, sellers, or
 90 investment firms, that have at least \$100 million in assets at the time the investment is
 91 initially made, including which may include assets under management, committed capital,
 92 ~~at the time the investment is initially made or~~ capital committed to be made ~~by an eligible~~
 93 ~~large retirement system.~~

94 (d) Alternative investments actually invested by an eligible large retirement system shall
 95 not in the aggregate exceed 5 percent of the eligible large retirement system assets at any
 96 time. The board of trustees of an eligible large retirement system shall have the discretion
 97 to designate whether any investment that is permitted to be made as an alternative
 98 investment pursuant to this Code section and that is also permitted to be made as an
 99 investment pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent
 100 limitation and otherwise as an alternative investment made pursuant to this Code section

101 or as an investment made pursuant to Code Section 47-20-83. If the eligible large
 102 retirement system is not in compliance with the limitations imposed by this subsection, it
 103 shall make a good faith effort to come into compliance within two years and in any event
 104 as soon as practicable thereafter; provided, however, that during any period of
 105 noncompliance, the eligible large retirement system shall not increase the percentage of its
 106 assets committed to be invested in alternative investments but shall be permitted during
 107 such period to continue to make investments as required by the then existing commitments
 108 of the eligible large retirement system to alternative investments made before the period
 109 of noncompliance.

110 (e) The provisions of this subsection shall apply only to the Employees' Retirement System
 111 of Georgia. New commitments to alternative investments shall not in the aggregate exceed
 112 1 percent of the retirement system assets in any calendar year until the first occurrence that
 113 4 1/2 percent of the retirement system assets are invested in alternative investments, at
 114 which time there shall be no limit on the percentage of commitments that may be made in
 115 any calendar year, subject to compliance with the other provisions of this Code section.

116 (f)(1) For purposes of this subsection, the term 'information' shall include, without
 117 limitation, preinvestment and postinvestment diligence information, including reviews
 118 and analyses prepared or provided by the issuer, seller, or alternative investment firm, of
 119 a potential or actual alternative investment or prepared by or for an eligible large
 120 retirement system or otherwise relating to a potential or actual alternative investment.

121 (2) In addition to those records that are exempted from being open to inspection by the
 122 general public under Code Section 47-1-14 and except as otherwise provided in this
 123 subsection, an eligible large retirement system may in its discretion treat as confidential
 124 and withhold from public inspection and disclosure all information prepared or provided
 125 by the issuer, seller, or alternative investment firm, of a potential or actual alternative
 126 investment or prepared by or for an eligible large retirement system or otherwise relating
 127 to a potential or actual alternative investment and held by an eligible large retirement
 128 system and may agree in making an alternative investment to treat such information as
 129 confidential and withhold it from public inspection and disclosure.

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

135 (A) The name of any alternative investment in which the retirement system has
 136 invested; excluding, in the case of an alternative investment in a privately placed

- 137 investment pool, any information concerning the investments made by such privately
138 placed investment pool;
- 139 (B) The date the retirement system first invested in an alternative investment;
- 140 (C) The aggregate amount of money, expressed in dollars, the retirement system has
141 invested in alternative investments as of the end of any fiscal quarter;
- 142 (D) The aggregate amount of money and the value of any in kind or other distribution,
143 in each case, expressed in dollars, the retirement system received from alternative
144 investments;
- 145 (E) The internal rate of return or the result under any other such standard used by the
146 retirement system in connection with alternative investments for the asset class and for
147 the period for which the return or standard was calculated; and
- 148 (F) The remaining cost of alternative investments in which the retirement system has
149 invested as of the end of any fiscal quarter.
- 150 (4) The provisions of this Code section shall not restrict access to information and
151 records under process of law or by officers otherwise entitled to them for official
152 purposes, but such information and records shall have the same confidential status under
153 process or with such officers as it does in the hands of an eligible large retirement system,
154 and such officers shall respect such confidentiality to the extent consistent with their
155 separate powers and duties.
- 156 (5) On the second Monday in March of each year, the director of any public retirement
157 system created by this title, other than by Chapter 5 of this title, shall provide a report to
158 the Governor and the chairpersons of the House and Senate standing committees on
159 retirement detailing the performance of any investments made pursuant to this Code
160 section, including, without limitation, a clear statement of the aggregate loss or profit on
161 such investments for the preceding year. Such report shall also be posted on the
162 retirement system's official website. This paragraph shall not be construed so as to
163 require the disclosure of any information otherwise protected by this subsection.
- 164 (g) Unless the information has been publicly released, preinvestment and postinvestment
165 diligence information, including reviews and analyses, prepared or maintained by the
166 eligible large retirement system or by an alternative investment firm shall be confidential
167 and exempted from being open to inspection by the general public pursuant to Article 4 of
168 Chapter 18 of Title 50, except to the extent it is subject to disclosure from the requirements
169 of subsection (f) of this Code section.
- 170 (h) The respective boards of trustees of eligible large retirement systems making
171 investments authorized by this Code section shall adopt a code of ethics for the
172 consideration of and investment in and disposition of alternative investments.

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

175 **SECTION 2.**

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