Senate Bill 463

By: Senators Hufstetler of the 52nd, Albers of the 56th, Williams of the 25th, Halpern of the 39th and Anavitarte of the 31st

A BILL TO BE ENTITLED

AN ACT

To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, so as to provide for the creation of the Peach Save plan, a defined contribution retirement plan; to provide for definitions; to provide for appointment of a board of trustees; to provide for the responsibilities and duties of such board; to provide for the powers of such board; to provide for voluntary participation; to provide for compliance with federal law; to provide for a legal adviser; to provide for regular audits; to provide for membership and eligibility requirements; to provide for the closure of accounts; to provide for the death of a participant; to provide for varied investment options; to provide for default investments; to provide for allowable investments; to provide for intergovernmental agreements; to provide for the creation of the Peach Save expense fund; to provide for the allowable uses of such fund; to provide for the purchasing of insurance; to provide for the hiring or retention of personnel; to provide for the securing of loans; to provide for limitations on liability; to provide for the confidentiality of plan participants; to provide for a date for the establishment of the plan; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is amended by adding a new chapter to read as follows:

"CHAPTER 26

ARTICLE 1

47-26-1.

As used in this chapter, the term:

(1) 'Administrative expenses' means all expenses incurred in the operation of the plan, including investment expenses, board expenses, and expenses associated with operating the Peach Save expense fund.

(2) 'Board' means the Peach Save plan board of trustees as provided for in Code Section 47-26-3 and whose purpose is to administer the plan.

(3) 'Eligible employee' means an individual who is employed by a participating employer, who has wages or other compensation that is taxable by the state, and who is 18 years of age or older. Such term shall not include:

(A) Any employee covered under the federal Railway Labor Act, 45 U.S.C. Section 151;

(B) Any employee on whose behalf an employer makes contributions to a multiemployer pension trust fund under 29 U.S.C. Section 186; or

(C) Any individual who is an employee of:

(i) The federal government;

(ii) Any state government in the United States; or

(iii) Any county, municipal corporation, or political subdivision of this state or any other state of the United States.

(4) 'Eligible employer' means a person or entity engaged in a business, industry, profession, trade, or other enterprise in this state, whether for profit or not for profit, provided that such a person or entity employs no more than 100 employees. Such term shall not include:

(A) The federal government;

(B) The State of Georgia;

(C) Any county, municipal corporation, or political subdivision of the state; or

(D) Any employer that has maintained a specified tax-favored retirement plan, other than the Peach Save plan, for its employees at any time within the preceding two years.

(5) 'ERISA' means the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq.

(6) 'Internal Revenue Code' means the United States Internal Revenue Code of 1986, as amended.

(7) 'Participant' means an eligible employee or other individual who has a balance credited to his or her account under the plan.

(8) 'Participating employer' means an eligible employer that is participating in the plan.

(9) 'Peach Save expense fund' means the administrative fund described in this chapter.

(10) 'Plan' and 'Peach Save plan' means the Peach Save plan provided for in this chapter.

(11) 'Self-employed individual' means an individual who is 18 years of age or older, is self-employed, and has self-employment income or other compensation from self-employment that is taxable by the state.

(12) 'Specified tax-favored retirement plan' means a retirement plan that is tax qualified under, or is described in and satisfies the requirements of, Section 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

47-26-2.

(a) There is created and placed under the administration of the board the Peach Save plan.

(b) Such plan shall be treated as a single plan for the purposes of Title I of ERISA and is described in Sections 401(a), 401(k), and 413(c) of the Internal Revenue Code, in which multiple employers may choose to participate regardless of whether any relationship exists between and among the employers other than their participation in the plan.

47-26-3.

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

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

(1) The state auditor, ex officio;

(2) The state treasurer, ex officio;

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

(4) One trustee appointed by the Governor for a term of four years, provided that the first such term was from the date of appointment to June 30, 2026;

(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, 2026, and the other for a term from the date of election to June 30, 2028; and

(6) A citizen of this state but neither a plan participant nor a holder of or candidate for public office during his or her term of office as a trustee. Such trustee 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, 2027.

(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. In addition to such amount, the trustees shall be reimbursed for all actual travel and other expenses necessarily incurred through service on the board. 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 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 plan. 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 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.

47-26-4.

(a) The board shall have the authority, powers, and duties to:

(1) Design and implement the plan consistent with the provisions of this chapter;

(2) Establish trusts consistent with the provisions of this chapter;

(3) Provide for the collection of all moneys provided for in this chapter;

(4) Provide for the payment of all administrative expenses;

(5) Make and promulgate all necessary rules and regulations, not inconsistent with the laws of this state, to carry out this chapter and to distribute such rules and regulations to plan participants;

(6) Determine eligibility of persons to receive retirement benefits under this chapter;

(7) Make provisions for refunds and repayments to persons who may be entitled to receive them; and

(8) Keep records of all of its meetings.

(b) The trustees of the board shall be fiduciaries of the plan under ERISA.

(c) The board shall also have all other powers necessary for the proper administration of this chapter.

(d) The board has the responsibility to:

(1) Administer the Peach Save expense fund;

(2) Establish rules and procedures promoting portability of benefits, including the ability to make rollovers or transfers to and from the plan that are exempt from federal income tax, provided that any rollover is initiated by participants;

(3) Establish rules and procedures governing the distribution of funds from the plan, including such distributions as may be permitted or required by the plan and any applicable provisions of ERISA, the tax qualification rules, and the other tax laws, with the objectives of maximizing financial security in retirement, protecting spousal rights, and assisting participants to effectively manage the decumulation of their savings and to receive payment of their benefits under the plan. The board shall have the authority, in its discretion, to provide for one or more reasonably priced distribution options to provide a source of fixed regular retirement income, including income for life or for the participant's life expectancy, or for joint lives and life expectancies, as applicable;

(4) Evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the plan, including fiduciary liability coverage;

(5) Evaluate the need for, and procure as needed, pooled private insurance;

(6) Indemnify, including procurement of insurance as needed for this purpose, each trustee of the board from personal loss or liability resulting from a trustee's action or inaction; and

(7) Develop and disseminate educational information designed to educate participants and potential participants about the benefits of planning and saving for retirement and to

help participants decide the level of participation and savings strategies that may be appropriate, including information in furtherance of financial capability and financial literacy.

47-26-5.

The board shall design and operate the plan and accounts established under the plan:

(1) In accordance with best practices for retirement savings vehicles;

(2) To maximize simplicity and ease of administration for eligible employers;

(3) To minimize costs, including by collective investment and economies of scale;

(4) To promote portability of benefits;

(5) To arrange for collective, common, and pooled investment of assets of the plan, including investments in conjunction with other funds with which assets are permitted to be collectively invested, to save costs through efficiencies and economies of scale; and

(6) To employ or retain a plan administrator, executive director, staff, trustee, record keeper, investment managers, investment advisers, and other administrative, professional, and expert advisers and service providers, none of whom shall be trustees of the board and all of whom shall serve at the pleasure of the board, which shall determine their duties and compensation. The board may authorize the executive director and other officials to oversee requests for proposals or other public competitions and enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the plan or the board.

47-26-6.

A trustee of the board, program administrator, or other staff of the board shall not:

(1) Directly or indirectly, have any interest in the making of any investment under the plan or in any gains or profits accruing from any such investment;

(2) Borrow any plan related funds or deposits, or use any such funds or deposits in any manner, for himself or herself or as an agent or partner of others; or

(3) Become an endorser, surety, or obligor on investments made under the plan.

47-26-7.

The Attorney General shall be the legal adviser of the board.

ARTICLE 2

47-26-8.

(a) A person or entity that qualifies as an eligible employer but that later employs more than 100 employees shall be permitted to remain an eligible employer for a period of five years, beginning on the date on which the person or entity first employs more than 100 employees. After such five-year period has ended, the person or entity shall immediately cease to qualify as an eligible employer and shall be prohibited from further participation in the plan unless the employer no longer has more than 100 employees.

(b) The board may establish any processes to verify whether a person or entity is an eligible employer, including reference to online data and possible use of questions in employer tax filings.

47-26-9.

Contributions by participants shall be made through payroll deductions. Such amount so deducted shall be credited to the individual account of the participant. Earnings shall be credited to each participant's account pursuant to rules and regulations adopted by the board.

47-26-10.

(a) Upon the written request of a participant, a lump sum amount shall be paid to such participant equal to the total amount credited to his or her account at the time his or her request was received.

(b) If the participant ceases to be an eligible employee and does not provide the written request in subsection (a) of this Code section, such participant's account shall continue to accrue earnings in the same manner as any participant's account.

(c) Notwithstanding the provisions of subsection (a) of this Code section, if any participant who ceases to be an eligible employee has less than such minimum amount as determined by the board, but not more than $5,000.00, credited to such participant's account, the board may, at its option, require such participant to withdraw all such moneys and such participant's account shall be closed; provided, however, that the board's option to require withdrawal of small account balances shall be applied in a consistent manner; provided, further, that if the board provides for mandatory distributions of account balances greater than $1,000.00 and if a participant does not elect to have such distribution paid directly to an eligible retirement plan specified by such participant in a direct rollover or to receive the distribution directly, the plan shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code.

(d) A participant's account balance in the plan shall at all times be 100 percent vested and nonforfeitable.

47-26-11.

Upon the death of any participant, a lump sum amount shall be paid to such person as such participant has nominated by written designation, filed with the board; otherwise, such amount shall be paid to such participant's estate. Such amount shall be equal to the total amount credited to such participant's account on the date of his or her death.

ARTICLE 3

47-26-12.

(a) The board shall, consistent with federal law and regulation, adopt and implement the plan, which shall remain in compliance with federal law and regulations once implemented and shall be called the Peach Save plan.

(b) In accordance with plan terms and conditions and any rules and regulations promulgated by the board, the plan shall:

(1) Be set forth in documents prescribing the terms and conditions of the plan;

(2) Be available on a voluntary basis to eligible employers and self-employed individuals;

(3) Allow voluntary pre-tax or designated Roth 401(k) contributions;

(4) Allow voluntary employer contributions;

(5) Be professionally managed as provided in this chapter;

(6) Offer investment options available to holders of accounts that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk;

(7) Provide on a uniform basis, if and when the board so determines, in its discretion, for an increase of each participant's contribution rate, by a minimum increment of 1 percent of salary or wages per year, for each additional year the participant is employed or is participating in the plan up to the maximum percentage of such participant's salary or wages that may be contributed to the plan under federal law. Any such increases shall apply to participants, as determined by the board, by default or only if initiated by affirmative participant election;

(8) Provide for direct deposit of contributions into investments under the plan. To the extent consistent with ERISA, the investment alternatives under the plan shall be limited to an automatic investment for participants who do not actively and affirmatively elect a particular investment option, which unless the board provides otherwise, shall be a

diversified target date fund, including a series of such diversified funds to apply to different participants depending on their choice or their target retirement dates, a principal-protected option, and at least four additional investment alternatives as may be selected by the board in its discretion. To the extent consistent with ERISA, the investment options may, at the discretion of the board, include a principal-protection fund as a temporary security corridor option that applies as the sole initial investment before participants may choose other investments or as the initial default investment for a specified period of time or up to a specified dollar amount of contributions or account balance; and

(9) Provide for reports on the status of each participant's account to be provided to each participant at least quarterly and make best efforts to provide participants frequent or continual online access to information on the status of their accounts.

47-26-13.

(a) The board shall be the trustee of the funds of the plan; may invest and reinvest such funds; and may hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created under this chapter shall have been invested, as well as the proceeds of such investments and any moneys belonging to such funds, all in such manner as funds of the Employees' Retirement System of Georgia are invested and reinvested.

(b) Except as otherwise provided for in this chapter, no trustee or person employed by the board shall have a direct interest in the gains or profits of any investment made by the board. No trustee or employee of the board shall, directly or indirectly, for himself or herself or as an agent, in any manner use the funds of the plan except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an endorser, surety, or in any manner an obligor for moneys loaned or borrowed from the board.

(c) The board shall be the custodian of the funds of the plan. All payments from such funds shall be made by the board only upon vouchers signed by two persons designated by the board.

47-26-14.

The board may enter into an intergovernmental agreement or memorandum of understanding with the state, another state or states, and any agency thereof to receive outreach; technical assistance; enforcement and compliance services; collection or dissemination of information pertinent to the plan, subject to such obligations of confidentiality as may be agreed or required by law; or other services or assistance. The state, another state or states, and any agency thereof that enters into such agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the board. The memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

47-26-15.

(a) There is hereby created the Peach Save expense fund which shall consist of moneys collected under this Code section. The Peach Save expense fund shall consist of:

(1) Moneys appropriated to the administrative fund by the General Assembly;

(2) Moneys transferred to the administrative fund from the federal government, other state agencies, or local governments;

(3) Moneys from the payment of application, account, administrative, or other fees and the payment of other moneys due to the board;

(4) Any gifts, donations, or grants made to the State of Georgia for deposit in the administrative fund;

(5) Moneys collected for the administrative fund from contributions to, or investment returns or assets of, the plan or other moneys collected by or for the plan or pursuant to arrangements established under the plan to the extent permitted under federal and state law; and

(6) Earnings on moneys in the administrative fund.

(b) To the extent consistent with ERISA, the tax qualification rules, and other federal law, the board shall accept any grants, gifts, appropriations, or other moneys from the state; any unit of federal, state, or local government; or any other person, firm, partnership, corporation, or other entity solely for deposit into the administrative fund, whether for investment or administrative expenses.

(c) To enable or facilitate the start-up and continuing operation, maintenance, administration, and management of the plan until the plan accumulates sufficient balances and can generate sufficient funding through fees assessed on participant accounts for the plan to become financially self-sustaining:

(1) The board may borrow from the state; any unit of federal, state, or local government; or any other person, firm, partnership, corporation, or other entity working capital funds and other funds as may be necessary for this purpose, provided that such funds are borrowed in the name of the plan and board only and that any such borrowings shall be payable solely from the revenues of the plan; and

(2) The board may enter into long-term procurement contracts with one or more financial providers that provide a fee structure that would assist the plan in avoiding or minimizing the need to borrow or to rely upon general assets of the state.

(d) Subject to appropriation, the state may pay administrative costs associated with the creation, maintenance, operation, and management of the plan until sufficient assets are available in the administrative fund for that purpose.

(e) The board may use the moneys in the administrative fund solely to pay the administrative expenses of the plan.

47-26-16.

The board shall keep an accurate account of all the activities, operations, receipts, and expenditures of the plan, the trust, and the board.

47-26-17.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of that audit to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the board and all its expenditures, including administrative expenses and payments made to participants. The state auditor shall also make an audit of the affairs of the board at any time when requested by a majority of the board or the Governor.

ARTICLE 4

47-26-18.

An eligible employer, a participating employer, or other employer is not and shall not be liable for or bear responsibility for:

(1) An employee's decision as to which investments to choose;

(2) Investment decisions of the board or participants;

(3) The administration, investment, investment returns, or investment performance of the plan, including, but not limited to, any interest rate or other rate of return on any contribution or account balance, provided that the eligible employer, participating employer, or other employer is not involved in the administration or investment of the plan;

(4) The plan design or the benefits paid to participants; or

(5) Any loss, failure to realize any gain, or any other adverse consequences, including, but not limited to, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person solely and directly as a result of participating in the plan.

47-26-19.

(a) The state, the board, each trustee of the board, any other state official, state board, commission, and agency, any member, officer, and employee thereof, and the plan:

(1) Shall not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

(2) Shall not be liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences, including, but not limited to, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the plan.

(b) The debts, contracts, and obligations of the plan or the board are not the debts, contracts, and obligations of the state, and neither the faith and credit nor the taxing power of the state is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the plan or the board.

(c) Nothing in this chapter shall be construed to guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance.

47-26-20.

(a) Individual account information relating to accounts under the plan and relating to individual participants, including, but not limited to, names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions, and earnings shall be confidential and shall be maintained as confidential, provided that such information may be disclosed:

(1) To the extent necessary to administer the plan in a manner consistent with this article, ERISA, the Internal Revenue Code, or any other federal or state law; or

(2) If the individual who provides the information or who is the subject of the information expressly agrees in writing to the disclosure of the information.

(b) Information required to be confidential under subsection (a) of this Code section shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

47-26-21.

(a) The board shall establish the plan so that individuals are able to begin contributing under the plan on or before September 1, 2025.

(b) The board may, in its discretion, phase in the plan so that the ability to contribute first applies on different dates for different classes of individuals, including employees of employers of different sizes or types and individuals who are not employees, provided that any such staged or phased-in implementation schedule shall be substantially completed on or before September 1, 2025.″

SECTION 2.

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