House Bill 398 (AS PASSED HOUSE AND SENATE)

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

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

SECTION 2.

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

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

SECTION 3.

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

"(6) The cost of service shall be calculated by determining the amount an eligible employee would have paid had he or she been a participant in the plan during the period of such prior service, provided that the cost shall be calculated on the basis of the period of service that results in the lowest total cost to the participant. The cost of service may include the amount of matching contributions as set out in subsection (c) of this section. The calculation shall be based on the compensation assumptions and interest rates set out in subsection (c) of this section. The calculation shall also include any contributions that would be required to opt in to an alternate plan, as described in subsection (c) of Section 4.02 of this Act."

SECTION 4.

Said Act is further amended by revising subsection (b) of Section 2.07 as follows:

"(b) If a participant does not make the additional employee contributions for survivor benefits when he or she begins participation in the plan, he or she may elect to provide survivor benefits at a later time, subject to the following: A participant may request to purchase survivor benefits for prior periods of participation in the plan at any time during his or her employment with the employer. The cost of such service may be paid in a lump sum or, at the discretion of the pension board, in installments for up to 60 months or such other period permitted by the pension board. The obligation to make such payments shall be secured in such manner as prescribed by the pension board. The cost of such benefits shall be calculated by determining the amount the participant would have paid for survivor benefit coverage during all his or her years of creditable service, including those periods of service credited under Section 2.03 of this Act. The calculation shall be based on the participant's actual compensation during each such year of creditable service or, for periods of prior service calculated under Section 2.03 of this Act, under the compensation assumptions applicable to such service, with an annual simple interest rate of 3 percent. If the participant pays such cost in installment payments, payments shall be amortized at an annual rate of 3 percent. The calculation shall also include any contributions that would be required for survivor benefits under an applicable alternate plan, as described in Section 4.02 of this Act."

SECTION 5.

Said Act is further amended by revising Section 4.03 as follows:

"SECTION 4.03.

Minimum retirement benefit.

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

SECTION 6.

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

"SECTION 5.02.

Amount of benefits.

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

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

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

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

SECTION 7.

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

″SECTION 7.03.

Recovery of mistaken payments.

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

SECTION 8.

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

″(a) Except as provided in subsections (b) and (c) of this section, if a participant has made the required employer contributions for survivor benefits and has a vested interest in all or any portion of his or her accrued benefit, survivor benefits shall be payable on his or her behalf to his or her surviving spouse, if any, or if none, to his or her minor children, if any. If a participant is not married and has no minor children on the date of death, no death benefits shall be payable under the plan, except as provided in Section 8.02 of this Act. Survivor benefits shall be payable to his or her beneficiaries in an amount equal to 70 percent of the benefit which shall be determined under paragraphs (1) and (2) of this subsection; provided, however, that, for a participant who would have retired under the Alternate Plan of 1959 but for his or her death, survivor benefits shall be payable to the participant's beneficiaries in an amount equal to 75 percent of the benefit which shall be calculated as follows:

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

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

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

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

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

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

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

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

SECTION 9.

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

″SECTION 10.04.

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

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

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

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

(A) Enters qualified military service;

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

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

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

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

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

SECTION 10.

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

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

SECTION 11.

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

"SECTION 15.08.

Amendment.

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

SECTION 12.

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