

House Bill 843 (AS PASSED HOUSE AND SENATE)

By: Representatives Riley of the 50th, Battles of the 15th, Greene of the 151st, Maxwell of the 17th, Buckner of the 137th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and
2 pensions, so as to change certain provisions to ensure compliance with federal laws and
3 regulations; to change provisions relative to maximum allowable benefits; to provide that
4 certain employees shall have no right to receive as cash certain employer paid employee
5 contributions; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is
9 amended by revising Code Section 47-1-82, relating to maximum benefit limited to that
10 allowed by federal law, nonannuity benefit, reduction, and adjustments, as follows:

11 "47-1-82.

12 Notwithstanding any other provisions of this title to the contrary, the maximum annual
13 additions and maximum benefit payable to any active or retired member or beneficiary of
14 a public retirement or pension system subject to this title shall be limited to such extent as
15 may be necessary to conform to the requirements of subsections (b) and (c) of Section 415
16 of the federal Internal Revenue Code for a qualified retirement plan.

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

18 ~~(1) 'Annual benefit' means a retirement benefit under the public retirement or pension~~
19 ~~system which is payable annually in the form of a straight life annuity.~~

20 ~~(2) 'Applicable mortality table' means the table prescribed by the federal Internal~~
21 ~~Revenue Code or the secretary of the treasury of the United States which prescribes the~~
22 ~~mortality table to be applied pursuant to Section 415(b)(2)(E)(v) of the federal Internal~~
23 ~~Revenue Code; provided, however, that the board of trustees of a public retirement~~
24 ~~system may adopt a different definition of such term in the retirement system plan~~
25 ~~document.~~

26 ~~(3) 'Compensation' means, for purposes of applying the limitations of Section 415 of the~~
 27 ~~federal Internal Revenue Code and for no other purpose, a plan member's wages as~~
 28 ~~defined in Section 3401(a) of the federal Internal Revenue Code (wages subject to~~
 29 ~~income tax withholding at the source, but without regard to exceptions contained in~~
 30 ~~Section 3401(a) of the federal Internal Revenue Code for wages based on the nature or~~
 31 ~~location of the employment or the services performed). The term shall also include the~~
 32 ~~following:~~

33 ~~(A) For limitation years beginning on or after December 31, 1997, for purposes of~~
 34 ~~applying the limitations of Section 415 of the federal Internal Revenue Code, amounts~~
 35 ~~that would otherwise be included in compensation but for an election under Sections~~
 36 ~~125(a), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b) of the federal Internal Revenue~~
 37 ~~Code;~~

38 ~~(B) For limitation years beginning after December 31, 2000, any elective amounts that~~
 39 ~~are not includable in the plan member's gross income by reason of Section 132(f) of the~~
 40 ~~federal Internal Revenue Code, relating to qualified transportation plan; and~~

41 ~~(C) For limitation years beginning on and after January 1, 2007, compensation paid by~~
 42 ~~the later of 2 1/2 months after the plan member's severance from employment or the end~~
 43 ~~of the limitation year that includes the date of the plan member's severance from~~
 44 ~~employment if:~~

45 ~~(i) The payment is regular compensation for services during the plan member's~~
 46 ~~regular working hours or compensation for services outside the plan member's regular~~
 47 ~~working hours, including without limitation overtime or shift differential,~~
 48 ~~commissions, bonuses, or other similar payments, and, absent a severance from~~
 49 ~~employment, the payment would have been paid to the plan member while he or she~~
 50 ~~continued in employment with the employer; or~~

51 ~~(ii) The payment is for unused accrued bona fide sick leave, vacation leave, or the~~
 52 ~~leave that the member would have been able to use if employment had continued.~~

53 ~~'Compensation' also includes back pay, within the meaning of Treasury Regulation~~
 54 ~~Section 1.415 (c)-2(g)(8), for the limitation year to which the back pay relates to the~~
 55 ~~extent the back pay represents wages and compensation that would otherwise be included~~
 56 ~~in this definition.~~

57 ~~(4) 'Dollar limitation' means the maximum permissible amount as such term is defined~~
 58 ~~in paragraph (6) of this subsection.~~

59 ~~(5) 'Limitation year' means the calendar year; provided, however, that the board of~~
 60 ~~trustees of a public retirement system may adopt a different definition of such term in the~~
 61 ~~retirement system plan document.~~

62 ~~(6) 'Maximum permissible amount' means:~~

63 ~~(A) For limitation years beginning prior to January 1, 1995, 100 percent of the plan~~
 64 ~~member's average compensation for the period of three consecutive years during which~~
 65 ~~the plan member has the highest aggregate compensation from the employer;~~

66 ~~(B) For limitation years beginning on and after January 1, 1995, but before January 1,~~
 67 ~~2001, \$90,000; and~~

68 ~~(C) For limitation years beginning on and after January 1, 2002, \$160,000.00, as~~
 69 ~~adjusted by the secretary of the treasury of the United States for each calendar year,~~
 70 ~~with the new limitation to apply to limitation years ending within the calendar year of~~
 71 ~~the date of the adjustment.~~

72 ~~(7) 'Nonannuity benefit form' means a benefit, whether a normal form or an optional~~
 73 ~~form, which is not payable in a straight life annuity for the life of the plan member.~~

74 ~~(b) Notwithstanding any other provisions of this title to the contrary, the maximum annual~~
 75 ~~additions and the maximum benefit payable to any active or retired member or beneficiary~~
 76 ~~of a retirement or pension system subject to this title shall be limited to such extent as may~~
 77 ~~be necessary to conform to the requirements of subsections (b) and (c) of Section 415 of~~
 78 ~~the federal Internal Revenue Code for a qualified retirement plan.~~

79 ~~(c) If a plan member's benefit is payable in a nonannuity benefit form, whether as the~~
 80 ~~normal form of benefit or as an optional form which the plan member or his or her~~
 81 ~~designated beneficiary elects, the nonannuity benefit form shall be adjusted to an annual~~
 82 ~~benefit as described in subsections (d) and (e) of this Code section. No actuarial~~
 83 ~~adjustment to the nonannuity benefit form shall be required for:~~

84 ~~(1) The value of a qualified joint and survivor annuity; or~~

85 ~~(2) The value of benefits that are not directly related to retirement benefits, such as a~~
 86 ~~disability benefit, preretirement death benefits, and postretirement medical benefits.~~

87 ~~The determination of the annual benefit shall disregard benefits attributable to employee~~
 88 ~~contributions or rollover contributions or the assets transferred from a qualified plan that~~
 89 ~~was not maintained by an employer.~~

90 ~~(d) If the annual benefit commences when the plan member has fewer than ten years of~~
 91 ~~participation in the applicable public retirement or pension system or any predecessor~~
 92 ~~public retirement or pension system, the dollar limitation shall be reduced by one-tenth for~~
 93 ~~each year less than ten, but in no event shall be less than one-tenth of the unreduced dollar~~
 94 ~~limitation.~~

95 ~~(e)(1) If the payment of benefits under the public retirement or pension system~~
 96 ~~commences before age 62 or after age 65, the dollar limitation shall be adjusted as the~~
 97 ~~actuarial equivalent of the dollar limitation payable at age 62 or age 65, as follows:~~

98 ~~(A) If the age at which the benefit is payable is less than 62, the dollar limitation shall~~
 99 ~~be reduced to reflect the lesser of the following calculations:~~

100 ~~(i) Reduce the dollar limitation using the interest rate and mortality table or tabular~~
 101 ~~factors, as applicable, which are set forth in the public retirement or pension system~~
 102 ~~for the reduction of benefits for early retirement benefits; or~~
 103 ~~(ii) Reduce the dollar limitation using 5 percent interest and the applicable mortality~~
 104 ~~table;~~
 105 ~~(B) For limitation years beginning before January 1, 2002, nothing in this paragraph~~
 106 ~~shall reduce the applicable dollar limitation below \$75,000.00 if the annual benefit~~
 107 ~~begins at or after age 55; and~~
 108 ~~(C) For limitation years beginning before January 1, 2002, if the annual benefit begins~~
 109 ~~before age 55, nothing in this paragraph shall reduce the dollar limitation below the~~
 110 ~~actuarial equivalent of the \$75,000.00 limitation for age 55.~~
 111 ~~(2) If a plan member is a qualified member as such term is defined under Section~~
 112 ~~415(b)(2)(G) of the federal Internal Revenue Code, he or she may retire before age 62~~
 113 ~~without a reduction in the dollar limitation if at least 15 years of service is required to~~
 114 ~~receive a full benefit under the public retirement or pension system.~~
 115 ~~(3) If the age at which the benefit is payable is greater than age 65, the age-adjusted~~
 116 ~~dollar limitation shall be determined by increasing the dollar limitation on an actuarially~~
 117 ~~equivalent basis. The increased age-adjusted dollar limitation shall be the amount~~
 118 ~~computed using 5 percent interest and the applicable mortality table."~~

119 **SECTION 2.**

120 Said title is further amended by revising Code Section 47-1-83, relating to maximum
 121 permissible amount under Section 415(b) of federal Internal Revenue Code and adjustments,
 122 as follows:

123 "47-1-83.

124 In accordance with subsection (a) of the federal Treasury Regulation Section 1.401-6, in
 125 the event of a termination or partial termination of a public retirement or pension system,
 126 a member's accrued benefit as of the date of such termination or partial termination, to the
 127 extent then funded, shall be nonforfeitable and fully vested under federal Internal Revenue
 128 Code requirements.

129 ~~(a) Notwithstanding anything in this Code section to the contrary, the annual benefit~~
 130 ~~payable to a plan member shall not be deemed to exceed the limits of Section 415 of the~~
 131 ~~federal Internal Revenue Code if the annual benefit payable to the plan member under a~~
 132 ~~public retirement or pension system does not exceed \$10,000.00 for the plan year or any~~
 133 ~~prior plan year and the employer has not at any time maintained a defined contribution plan~~
 134 ~~in which the plan member participated.~~

135 ~~(b) Notwithstanding anything contained in this Code section to the contrary, the~~
 136 ~~adjustment prescribed by this Code section for benefits that commence before age 62 and~~
 137 ~~the reduction described in this Code section for fewer than ten years of participation shall~~
 138 ~~not apply to any benefit paid from a public retirement or pension system on account of a~~
 139 ~~plan member's becoming disabled by reason of personal injuries or sickness or to amounts~~
 140 ~~received by a designated beneficiary as a result of the plan member's death. This~~
 141 ~~subsection shall be interpreted in accordance with Section 415(b)(2)(I) of the federal~~
 142 ~~Internal Revenue Code and any regulations promulgated thereunder.~~

143 ~~(c) For purposes of applying the limits under Section 415(b) of the federal Internal~~
 144 ~~Revenue Code, a plan member's maximum permissible amount shall be applied taking into~~
 145 ~~consideration cost-of-living increases as required by Section 415(b) of the federal Internal~~
 146 ~~Revenue Code and applicable Treasury Regulations.~~

147 ~~(d) In no event shall a plan member's annual benefit payable in any limitation year from~~
 148 ~~a retirement or pension system be greater than the limit applicable at the annuity starting~~
 149 ~~date, as increased in subsequent years pursuant to Section 415(d) of the federal Internal~~
 150 ~~Revenue Code and regulations promulgated thereunder. If the form of benefit without~~
 151 ~~regard to the automatic benefit increases feature is not a straight life annuity, then the~~
 152 ~~preceding sentence is applied by reducing the Section 415(b) of the federal Internal~~
 153 ~~Revenue Code limit applicable at the annuity starting date to an actuarially equivalent~~
 154 ~~amount, to be determined by using the assumption specified in Treasury Regulation Section~~
 155 ~~1.415(b)-1(c)(2)(ii) that takes into account the death benefit under the form of benefit."~~

156 **SECTION 3.**

157 Said title is further amended in Code Section 47-6-60, relating to employee contributions to
 158 the Georgia Legislative Retirement System, payment of employee contributions on behalf
 159 of the member, and additional contributions, by adding a new subsection to read as follows:

160 "(g) The employee contributions described in this chapter that are paid by the employer
 161 are intended to be pick-up contributions in accordance with Section 414(h) of the federal
 162 Internal Revenue Code. Such contributions are mandatory, and no member is entitled
 163 under any circumstances to receive such contributions in cash in lieu of having them
 164 contributed to the retirement system. Such contributions shall be 100 percent vested for
 165 all purposes under the retirement system."

166 **SECTION 4.**

167 Said title is further amended in Code Section 47-23-80, relating to contributions by superior
 168 court judges and district attorneys to the Georgia Judicial Retirement System and employer
 169 contributions, by adding a new subsection to read as follows:

170 "(e) The employee contributions described in this chapter that are paid by the employer are
171 intended to be pick-up contributions in accordance with Section 414(h) of the federal
172 Internal Revenue Code. Such contributions are mandatory, and no member is entitled
173 under any circumstances to receive such contributions in cash in lieu of having them
174 contributed to the retirement system. Such contributions shall be 100 percent vested for
175 all purposes under the retirement system."

176 **SECTION 5.**

177 Said title is further amended in Code Section 47-23-81, relating to contributions by judges
178 and solicitors-general of state courts to the Georgia Judicial Retirement System, employer
179 contributions, and reports required, by adding a new subsection to read as follows:

180 "(e) The employee contributions described in this chapter that are paid by the employer are
181 intended to be pick-up contributions in accordance with Section 414(h) of the federal
182 Internal Revenue Code. Such contributions are mandatory, and no member is entitled
183 under any circumstances to receive such contributions in cash in lieu of having them
184 contributed to the retirement system. Such contributions shall be 100 percent vested for
185 all purposes under the retirement system."

186 **SECTION 6.**

187 Said title is further amended in Code Section 47-23-82, relating to contributions by juvenile
188 court judges to the Georgia Judicial Retirement System, employer contributions, and reports
189 required, by adding a new subsection to read as follows:

190 "(e) The employee contributions described in this chapter that are paid by the employer are
191 intended to be pick-up contributions in accordance with Section 414(h) of the federal
192 Internal Revenue Code. Such contributions are mandatory, and no member is entitled
193 under any circumstances to receive such contributions in cash in lieu of having them
194 contributed to the retirement system. Such contributions shall be 100 percent vested for
195 all purposes under the retirement system."

196 **SECTION 7.**

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