

House Bill 249 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 47th, Smith of the 113th, Stephens of the 164th, Loudermilk of the 14th, Maxwell of the 17th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 7 of Title 47 of the Official Code of Georgia Annotated,
2 relating to miscellaneous provisions relative to the Georgia Firefighters' Pension Fund, so as
3 to define a certain term; to provide that such fund may invest fund assets in certain types of
4 alternative investments, private placements, and other private investments; to provide that
5 such investments may be made up to a certain amount; to shield information related to such
6 investment from public scrutiny; to provide for a code of ethics; to amend Code Section
7 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of
8 records is not required and disclosure exempting legal authority, so as to exempt certain
9 public records from public inspection; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Article 7 of Chapter 7 of Title 47 of the Official Code of Georgia Annotated, relating to
13 miscellaneous provisions relative to the Georgia Firefighters' Pension Fund, is amended by
14 adding a new Code section to read as follows:

15 "47-7-127.

16 (a) As used in this Code section, the term 'alternative investments' means the following
17 investments:

18 (1) Privately placed investment pools, including, without limitation, private investment
19 funds, such as:

20 (A) Leveraged buyout funds;

21 (B) Mezzanine funds;

22 (C) Workout funds;

23 (D) Debt funds;

24 (E) Venture capital funds;

25 (F) Merchant banking funds; and

26 (G) Funds of funds and secondary funds

27 that include investments in privately placed investment pools described in this paragraph,
 28 in each case whether structured as a partnership, limited liability company, trust,
 29 corporation, joint venture, or other entity or investment vehicle of any type; organized or
 30 operating in one of the states or territories of the United States or outside the United
 31 States; invested in the United States or outside the United States or any combination
 32 thereof; or as investments of the type described in paragraph (2) of this subsection or
 33 other investments of any type or any combination thereof;

34 (2) Private placements and other private investments, including without limitation:

35 (A) Leveraged buyouts;

36 (B) Venture capital investment;

37 (C) Equity investments, including, without limitation, preferred and common stock;

38 (D) Warrants;

39 (E) Options;

40 (F) Private investments in public securities;

41 (G) Recapitalizations;

42 (H) Privatizations;

43 (I) Mezzanine debt investments;

44 (J) Distressed debt and equity investments, including, without limitation, cases in
 45 which the investor may take control of the issuer;

46 (K) Other debt investments, whether secured or unsecured, senior or subordinated,
 47 recourse or nonrecourse, convertible, or otherwise;

48 (L) Convertible securities;

49 (M) Receivables;

50 (N) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the
 51 United States Code;

52 (O) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the
 53 United States Code;

54 (P) Debt and equity derivative instruments of all types; and

55 (Q) All other debt and equity private placements of all types, in each case whether
 56 issued by a partnership, limited liability company, trust, corporation, joint venture, or
 57 other entity or vehicle of any type or whether the issuer is organized or does business
 58 in one of the states or territories of the United States or outside the United States; and

59 (3) Any distribution in kind received by the fund in connection with any investment
 60 described in paragraphs (1) and (2) of this subsection.

61 (b) In addition to the eligible investments authorized by Code Section 47-20-82, and
 62 without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84,
 63 the fund is authorized to invest in alternative investments in accordance with the provisions

64 of this Code section. Further, when provisions of Code Section 47-20-83 or 47-20-84 or
65 any provisions of this article other than this Code section limit a particular form of
66 investment to a certain percentage of fund assets, the denominator will include alternative
67 investments with all other investments, but the numerator for any such calculation will not
68 include any alternative investments, even if any such alternative investment is of a like kind
69 as the investments that are included in the numerator.

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

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

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

79 Each alternative investment by the fund shall have previously been or shall be concurrently
80 made or committed to be made by at least four other investors not affiliated with the issuer.
81 Such four other investors shall be investing on substantially the same terms and conditions
82 as those applicable to the investment by the fund to the extent such other investors are
83 similarly situated with the fund. Alternative investments shall only be made in private
84 pools and issuers that have at least \$100 million in assets, including committed capital, at
85 the time the investment is initially made or committed to be made by the fund.

86 (d) Alternative investments by the fund may not in the aggregate exceed 5 percent of fund
87 assets at any time. The board shall have the discretion to designate whether any investment
88 that is permitted to be made as an alternative investment pursuant to this Code section and
89 is also permitted to be made as an investment pursuant to Code Section 47-20-83 shall be
90 treated for purposes of the 5 percent limitation and otherwise as an alternative investment
91 made pursuant to this Code section or as an investment made pursuant to Code Section
92 47-20-83. If the fund is not in compliance with the limitations imposed by this subsection,
93 it shall make a good faith effort to come into compliance within two years and in any event
94 as soon as practicable thereafter; provided, however, that during any period of
95 noncompliance the fund shall not increase the percentage of its assets committed to be
96 invested in alternative investments but shall be permitted during such period to continue
97 to make investments as required by the then existing commitments of the fund to
98 alternative investments made before the period of noncompliance.

99 (e)(1) As used in this subsection, the term 'proprietary information' means information
100 which meets all of the following criteria:

- 101 (A) The information is known outside the portfolio manager only to actual and
102 potential investors who have signed a nondisclosure agreement prior to receiving any
103 information, which nondisclosure agreement is required to be signed by participants in
104 the investment, and breach of confidentiality by the investors would be grounds for
105 terminating the investment contract between the investor and the portfolio manager;
106 (B) The information collected by the portfolio manager requires specialized expertise
107 and experience to research companies in which the firm invests, the market for those
108 companies, and their competitors. The portfolio manager has its own proprietary means
109 of selecting companies in which to invest and for packaging portfolios for the limited
110 partners, and research processes, methodologies and qualitative analysis of the data are
111 unique and specialized in each firm's organization. Additional value may be added to
112 the information with analysis, assessment, and conclusions, which serve as the basis for
113 the investor's decision to invest in a portfolio; and
114 (C) The portfolio manager guards the secrecy and confidentiality of the information
115 in their proprietary databases during all phases of its work, including research, analysis,
116 marketing, and dissemination and access to the information within the portfolio
117 manager or partnership is limited to the researchers, analysts, and senior management
118 of the general partner who put the information together for the limited partners and the
119 limited partners and the persons in their financial operations who have signed the
120 nondisclosure agreement.
- 121 (2) In addition to those records identified in Code section 47-1-14, and notwithstanding
122 to provisions of Code Section 50-18-72, proprietary information shall be exempt from
123 public disclosure for a period of two years from the date the fund enters into a
124 nondisclosure as provided in paragraph (1) of this subsection.
- 125 (3) The fund shall make publicly available the following nonproprietary information
126 after a period of one year from the date such records were created:
- 127 (A) The name of any alternative investment in which the fund has invested; excluding,
128 in the case of an alternative investment in a privately placed investment pool, any
129 information concerning the investments made by such privately placed investment pool;
130 (B) The date the fund first invested in an alternative investment described in
131 paragraph (1) of this subsection;
132 (C) The aggregate amount of money, expressed in dollars, the fund has invested in
133 alternative investments as of the end of any fiscal quarter;
134 (D) The aggregate amount of money and the value of any in kind or other distribution,
135 in each case, expressed in dollars, the fund received from alternative investments;

136 (E) The aggregate internal rate of return or the result under any other such standard
 137 used by the fund in connection with alternative investments for the asset class and for
 138 the period for which the return or standard was calculated; and

139 (F) The remaining aggregate cost of alternative investments in which the fund has
 140 invested as of the end of any fiscal quarter.

141 (4) The provisions of this Code section shall not restrict access to information and
 142 records under process of law or by officers otherwise entitled to them for official
 143 purposes, but such information and records shall have the same confidential status under
 144 process or with such officers as it does in the hands of the fund, and such officers shall
 145 respect such confidentiality to the extent consistent with their separate powers and duties.

146 (5) On the first Monday in March of each year, the executive director of the board shall
 147 provide a report to the Governor and the chairpersons of the House and Senate standing
 148 committees on retirement detailing the performance of the investments made pursuant to
 149 this Code section including, without limitation, a clear statement of the aggregate loss or
 150 profit on such investments for the preceding year. This paragraph shall not be construed
 151 so as to require the disclosure of any information otherwise protected by this subsection.

152 (f) The board shall adopt a code of ethics for the consideration of and investment in and
 153 disposition of alternative investments.

154 (g) Funds invested pursuant to this Code section and any return on such investment shall
 155 remain funds of this fund."

156 **SECTION 2.**

157 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
 158 disclosure of records is not required and disclosure of exempting legal authority, is amended
 159 by revising subsection (a) by striking "or" at the end of paragraph (21), by replacing the
 160 period with "; or" at the end of paragraph (22), and by adding a new paragraph to read as
 161 follows:

162 "(23) Records that are expressly exempt from public inspection pursuant to Code
 163 Sections 47-1-14 and 47-7-127."

164 **SECTION 3.**

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