Senate Bill 226

By: Senators Hufstetler of the 52nd, Williams of the 25th, Burns of the 23rd, Summers of the 13th, Albers of the 56th and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to provide for the creation of the Peach State Saves program, a defined contribution retirement program; to provide for definitions; to provide for appointment of a board of trustees; to provide for vacancies on such board; to provide for quorum, expenses, authority, powers, and duties of such board; to provide for voluntary participation in the program; to provide for compliance with federal law; to provide for a legal adviser; to provide for membership and eligibility requirements; to provide for certain program details; to provide for varied investment options; to provide for intergovernmental agreements; to provide for disclosures; 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 regular audits; to provide for violations of chapter and penalties; to provide for limitations on liability; to provide for the confidentiality of program participants; to provide for a date for the establishment of the program; 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 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by adding a new chapter to read as follows:

"CHAPTER 11

34-11-1.

As used in this chapter, the term:

(1) 'Administrative expenses' means all expenses incurred in the operation of the program, including investment expenses, board expenses, and expenses associated with operating the Peach State Saves program.

(2) 'Board' means the Peach State Saves program board of trustees as provided for in Code Section 34-11-3, whose purpose is to administer the program.

(3) 'Covered employee' means an individual who is employed by a covered 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;

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

(iv) Any employee for whom the employer does not pay unemployment insurance premiums in this state according to the records of the Department of Labor; or

(v) Any employee who has been employed by a covered employer who was first employed by such covered employer on or after January 1 of the current calendar year.

(4) 'Covered employer' means any person, partnership, limited liability company, corporation, or other entity engaged in a business, industry, profession, trade, or other enterprise in the state, including a nonprofit entity, that employs, and during the previous calendar year employed, at least five covered employees, and that has been in business in this state for at least one complete calendar year. 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 State Saves program, 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) 'IRA' means a traditional or Roth individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of the Internal Revenue Code.

(8) 'Participant' means a covered employee or other individual who has a balance credited to his or her account under the program.

(9) 'Participating employer' means a covered employer that is participating in the program.

(10) 'Payroll deduction IRA' means an arrangement by which a covered employer allows covered employees to contribute to an IRA by means of payroll deduction.

(11) 'Program' means the Peach State Saves program provided for in this chapter.

(12) 'Roth IRA' means a Roth individual retirement account or individual retirement annuity under Section 408A of the Internal Revenue Code.

(13) '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.

(14) 'Total fees and expenses' means all fees, costs, and expenses, including, but not limited to, administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs, and other miscellaneous costs.

(15) 'Traditional IRA' means a traditional individual retirement account or traditional individual retirement annuity under Section 408(a) or (b) of the Internal Revenue Code.

(16) 'Wages' means any compensation, as such term is defined in Section 219(f)(1) of the Internal Revenue Code, paid to a covered employee by his or her employer during a calendar year.

34-11-2.

There is created, for the purposes described in this chapter, the Peach State Saves program which shall be a budget unit to which funds may be appropriated as provided in Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act.'

34-11-3.

(a) The administration and responsibility for the proper operation of the program and for effectuating this chapter are vested in the board.

(b) The board shall be composed of all members of the Board of Trustees of the Employees' Retirement System of Georgia and three additional members appointed by the Governor, each of whom shall have relevant expertise in retirement, investments, or small business.

(c) To effect staggered terms of office for members of the board appointed by the Governor, and effective with members appointed for terms beginning in 2025, the Governor shall appoint for terms effective January 1, 2026, one member for a two-year term of office, one member for a three-year term of office, and one member for a four-year term of office. Thereafter, all members appointed by the Governor shall be appointed to serve four-year terms of office. Members shall be eligible for reappointment.

(d) If a vacancy occurs on the board, the vacancy shall be filled for the unexpired term in the same manner as the original appointment.

(e) The board members 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.

(f) A majority of the voting members of the board shall constitute a quorum to transact business.

34-11-4.

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

(1) Design and implement the program 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 the provisions of this chapter and to distribute such rules and regulations to program participants;

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

(7) Keep an accurate account of all the activities, operations, receipts, and expenditures of the program and the board;

(8) Cause the program to be designed, established, and operated to:

(A) Encourage participation, saving, sound investment practices, and appropriate selection of default investments;

(B) Maximize simplicity and ease of administration of the program for eligible employers;

(C) Minimize total fees and expenses;

(D) Minimize costs, including by collective investment and economies of scale; and

(E) Establish rules and procedures promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax qualified plans that accept such rollovers or transfers, provided that any such rollover is initiated by a participant;

(9) Design, develop, and implement the program, and, to that end, conduct market, legal, and feasibility analyses;

(10) Establish rules and procedures governing the distribution of funds from the program, including such distributions as may be permitted or required by the program and any applicable provisions of 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 program. 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;

(11) Arrange for collective, common, and pooled investment of assets of the program, 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;

(12) Employ or retain an executive director, who shall be the executive director of the Employees' Retirement System of Georgia, and a program administrator, 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 program or the board;

(13) Arrange for and facilitate compliance by the program, or arrangements established under the program, with all applicable requirements for the program under the Internal Revenue Code, including requirements for favorable tax treatment of the IRAs, and under any other applicable federal or state law and accounting requirements, including using best efforts to implement procedures minimizing the risk that covered employees will contribute more to an IRA than the amount they are eligible under the Internal Revenue Code to contribute to the IRA on a tax-favored basis, and otherwise providing or arranging for assistance to covered employers and covered employees in complying with applicable law and tax related requirements in a cost-effective manner;

(14) Establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation;

(15) Evaluate the need for, and procure if and as deemed necessary, insurance against any and all loss in connection with the property, assets, or activities of the program. Evaluate the need for, and procure if and as deemed necessary, pooled private insurance;

(16) Indemnify each trustee of the board from personal loss or liability resulting from a trustee's action or inaction;

(17) Develop and implement an investment policy defining the program's investment objectives, consistent with the objectives of the program, and providing for policies and procedures consistent with such investment objectives;

(18) Cause expenses incurred in the initiation, implementation, maintenance, and administration of the program to be paid from contributions to, or investment returns or assets of, the program or other funds collected by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law;

(19) Collect application, account, or administrative fees and to accept any grants, gifts, legislative appropriation, loans, and other moneys from the state; any unit of federal, state, or local government; or any other person, firm, or entity to defray the costs of administering and operating the program;

(20) Ensure that all contributions to IRAs under the program may be used only to

(A) Pay benefits to participants under the program;

(B) Pay the administrative costs the program; and

(C) Make investments for the benefit of the program; and

(21) Collaborate with, and evaluate the role of, financial advisors or other financial professionals, including in assisting and providing guidance for covered employees.

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

34-11-5.

(a) Trustees of the board shall discharge their duties as fiduciaries with respect to the program solely in the interest of the program participants as follows:

(1) For the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the program; and

(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(b) 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 program or in any gains or profits accruing from any such investment;

(2) Borrow any program 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 program.

34-11-6.

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

34-11-7.

The board may establish any processes to verify whether a person or entity is a covered employer, including reference to online data and possible use of questions in employer tax filings, consistent with the objective of avoiding to the fullest extent practicable any requirement that an employer that is not a covered employer register with the program or take other action to demonstrate that it maintains a specified tax-favored retirement plan or is exempt for other reasons from being treated as a covered employer.

34-11-8.

(a) 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.

(b) If the participant ceases to be a covered employee, such participant's account shall continue to accrue earnings in the same manner as any participant's account.

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

34-11-9.

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

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

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

(2) Allow eligible individuals in the state to choose whether or not to contribute to an IRA under the program, including allowing covered employees in the state the choice to contribute to an IRA through payroll deduction under the program;

(3) Allow for voluntary contributions by others, including self-employed individuals and independent contractors, through payroll deduction or otherwise;

(4) Require each covered employer to offer its employees the choice whether or not to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out;

(5) Allow, at the discretion of the board, employers that are not covered employers because they are exempt from covered employer status to participate in the program by

offering program enrollment to their employees, taking into account, among other considerations, the potential legal consequences and the degree of employer demand to participate or facilitate participation by employees;

(6) Provide that the IRA to which contributions are made will be a Roth IRA, except that the board shall have the authority at any time to add an option for all participants to affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA or to have both a traditional and a Roth IRA through the program;

(7) Provide that, unless otherwise specified by a covered employee, the covered employee shall automatically contribute 5 percent of his or her wages to the program, subject in all cases to the IRA contribution dollar limits applicable under the Internal Revenue Code. The board is authorized, in its discretion, from time to time to change, the 5 percent automatic default contribution rate as provided for in paragraph (9) of this subsection;

(8) The board shall strive to design and implement investment options available to participants established as part of the program and other program features that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA based environment consistent with the investment objectives under the policy. The investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options shall be determined taking into account the nature and objectives of the program, the desirability of limiting investment choices under the program to a reasonable number, and the extensive investment choices available to participants in the event that such participants roll over to an IRA outside the program;

(9) Provide on a uniform basis, if and when the board so determines and in its discretion, for annual increases of each participant's contribution rate by not more than 1 percent of wages per year, up to a maximum of 10 percent. Any such increases shall apply to

participants, as determined by the board, by default or only if initiated by affirmative participant election, in either case subject to the IRA contribution limits applicable under the Internal Revenue Code;

(10) Permit no employer contributions;

(11) Be professionally managed;

(12) Provide for direct deposit of contributions into investments under the program; and

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

34-11-10.

(a) The board may enter into an intergovernmental agreement with the state or any agency thereof to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program, or other services or assistance. The state and any agencies thereof that enter into such agreements shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the board. The agreement may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance. In order to facilitate the implementation of this chapter, the Department of Labor and the Department of Revenue shall be required to enter into such agreements as are necessary to effectuate the program requirements.

(b) The board may make and enter into competitively procured contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements to collaborate and cooperate with, and to retain, employ, and contract with or for any of the following to the extent necessary or desirable, for the effective and efficient design, implementation, and administration of the program consistent with the purposes set forth in this chapter and to maximize outreach to covered employers and covered employees:

(1) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisers, investment administrators, investment management firms, other investment firms, third-party administrators, other professionals and service providers, and state public retirement systems;

(2) Research, technical, financial, administrative, and other services; and

(3) Services of other state agencies to assist the board in the exercise of its powers and duties.

(c) The board may make and enter into competitively procured contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements to collaborate and cooperate with, coordinate, or combine resources, investments, or administrative functions with other governmental entities, including states or their agencies or instrumentalities that maintain or are establishing retirement savings programs compatible with the program, including collective, common, or pooled investments with other funds of other states' programs with which the assets of the program are permitted by law to be collectively invested, to the extent necessary or desirable for the effective and efficient design, administration, and implementation of the program consistent with the purposes set forth in this chapter, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants and the provisions of this chapter.

(d) When possible and practicable, the board shall use employer, other private sector, and public infrastructure as well as common, collective, or pooled investment arrangements to the extent desirable, to facilitate and enhance the effectiveness and efficiency of program outreach, enrollment, contributions, record keeping, investment, distributions, compliance, and other aspects of program design, administration, and implementation consistent with the purposes set forth in this chapter, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants and the provisions of this chapter.

(e) The board shall ensure that the program is designed and implemented in a manner consistent with federal law, including favorable federal tax treatment, to the extent that it applies and consistent with the program not being preempted by ERISA.

34-11-11.

(a) The board shall develop and disseminate materials 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.

(b) The board shall adopt rules that specify the contents, frequency, timing, and means of required disclosures from the program to covered employees, participants, other individuals eligible to participate in the program. Such disclosures shall include at least:

(1) The benefits associated with tax-favored retirement saving;

(2) The potential advantages and disadvantages associated with contributing to Roth IRAs and, if applicable, traditional IRAs under the program;

(3) The eligibility rules for Roth IRAs and, if applicable, traditional IRAs;

(4) That the individual will be solely responsible for determining whether, and, if so, how much, the individual is eligible to contribute on a tax-favored basis to an IRA;

(5) The penalty for excess contributions to IRAs and the method of correcting excess contributions;

(6) Instructions for enrolling, making contributions, and opting out of participation;

(7) Instructions for opting out of the Roth IRA, the default contribution rate, and the default investment if the covered employee prefers a traditional IRA, a higher or lower contribution rate, or a different investment alternative;

(8) The potential availability of a saver's tax credit or saver's match program, including the eligibility conditions for the credit and instructions on how to claim it;

(9) That employees seeking tax, investment, or other financial advice should contact appropriate professional advisors, and that covered employers are not in a position to provide such advice and are not liable for decisions individuals make in relation to the program;

(10) That the payroll deduction IRAs are intended not to be employer sponsored retirement plans and that the program is not an employer sponsored retirement plan;

(11) The potential implications of account balances under the program for the application of asset limits under certain public assistance programs;

(12) That the account owner is solely responsible for investment performance, including market gains and losses, and that IRA accounts and rates of return are not guaranteed by any employer, the state, the board, any board member or state official, or the program;

(13) Additional information about retirement and saving and other information designed to promote financial literacy and capability; and

(14) How to obtain additional information about the program.

34-11-12.

(a) The board shall annually cause an audit of activities of the board, including, operations, receipts, and expenditures to be maintained. Such audit shall be conducted by a certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees for the administration of the program. For the purposes of the audit, an auditor shall have access to the properties and records of the program and board and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

(b) By six months after the end of each fiscal year, the board shall prepare and provide to the Governor, the state treasurer, the appropriate committees of the Senate and House of Representatives, and the public an audited financial report, prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts, and expenditures of the program and board during the preceding calendar year.

34-11-13.

(a) If a covered employer fails without reasonable cause to enroll a covered employee as required under this chapter, the covered employer shall be subject to a penalty, payable to the state, equal to:

(1) For the first calendar year the covered employer is noncompliant, $250.00 per employee; or

(2) For each subsequent calendar year the covered employer is noncompliant, $500.00 per employee; noncompliance does not need to be consecutive to qualify for such $500.00 penalty.

(b) The Department of Labor or the board shall have authority to impose the penalty in subsection (a) of this Code section upon a finding that such violation has occurred.

(c) No penalty shall be imposed under subsection (a) of this Code section for any failure for which it is established that the covered employer subject to liability for the penalty did not know the failure existed and exercised reasonable diligence to meet the requirements of this chapter.

(d) No penalty shall be imposed under subsection (a) of this Code section for any failure if the covered employer corrects the violation within 90 days from the first date the covered employer knew, or exercising reasonable diligence would have known, the violation of subsection (a) of this Code section existed.

(e) A covered employer shall transmit a payroll deduction contribution to the program on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the covered employer's assets, but not later than the fifteenth day of the month following the month in which the covered employee's contribution amounts are withheld from his or her paycheck. Failure to remit such contributions on a timely basis shall be subject to a penalty, payable to the state, equal to $500.00 per violation. The Department of Labor or the board shall have authority to impose such penalty, upon a finding that such violation has occurred.

34-11-14.

(a) 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 program, 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 program;

(4) Individuals' awareness of or compliance with the conditions and other provisions of the tax laws that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;

(5) The program design or the benefits paid to participants; or

(6) 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 program.

(b) No covered employer or other employer shall be, or shall be considered to be, a fiduciary in relation to the program or any arrangement under the program.

34-11-15.

(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 program shall:

(1) Have no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;

(2) Have no duty, responsibility, or liability to any party for the payment of any benefits under the program, regardless of whether sufficient funds are available under the program to pay such benefits;

(3) Not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

(4) 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 program.

(b) 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.

34-11-16.

(a) Individual account information relating to accounts under the program 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 program in a manner consistent with this chapter, 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.

34-11-17.

The board may, in its discretion, phase in the program 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 January 1, 2028. ~~Reserved.~~"

SECTION 2.

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