

House Bill 417

By: Representatives Smith of the 175<sup>th</sup>, McBee of the 88<sup>th</sup>, Turnquest of the 73<sup>rd</sup>, Dukes of the 161<sup>st</sup>, Porter of the 143<sup>rd</sup> and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to  
2 postsecondary education, so as to enact the Georgia Higher Education Savings Plan; to  
3 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
4 other purposes.

5

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7

**SECTION 1.**

8 Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to postsecondary  
9 education, is amended by adding a new Article 11 to read as follows:

10

"ARTICLE 11

11 20-3-630.

12 This article shall be known and may be cited as the 'Georgia Higher Education Savings  
13 Plan.'

14 20-2-631.

15 The purposes of this article are to:

16 (1) Provide a program of savings trust agreements to apply distributions toward qualified  
17 higher education expenses at eligible educational institutions, as defined in Section 529  
18 of the Internal Revenue Code or other applicable federal law;

19 (2) Provide for the creation of a trust fund, as an instrumentality of the State of Georgia,  
20 to assist qualified students in financing costs of attending institutions of higher education;

21 (3) Encourage timely financial planning for higher education by the creation of savings  
22 trust accounts;

23 (4) Provide a savings program for those persons who wish to save to meet postsecondary  
24 educational needs, including postgraduate educational needs; and

1 (5) Attract students to institutions of higher education within the state.

2 20-3-632.

3 As used in this article, the term:

4 (1) 'Account contributor' means a resident or nonresident person, corporation, trust,  
5 charitable organization, or other entity which contributes to or invests money in a savings  
6 trust account under the plan on behalf of a beneficiary. The account contributor may also  
7 be the designated beneficiary of the account.

8 (2) 'Beneficiary' means a resident or nonresident beneficiary of a savings trust agreement  
9 who meets the requirements of Section 529 of the Internal Revenue Code of 1986 or  
10 other applicable federal law and any regulations established by the board.

11 (3) 'Board' means the Board of Directors of the Georgia Higher Education Savings Plan.

12 (4) 'Director' means the director of the Office of Treasury and Fiscal Services.

13 (5) 'Financial organization' means an organization which is:

14 (A) A fiduciary authorized to act as a trustee pursuant to the provisions of the federal  
15 Employee Retirement Income Security Act of 1974, as amended, or an insurance  
16 company or affiliate; and

17 (B)(i) Licensed or chartered by the Insurance Department;

18 (ii) Licensed or chartered by the Department of Banking and Finance;

19 (iii) Chartered by an agency of the federal government;

20 (iv) Subject to the jurisdiction and regulation of the federal Securities and Exchange  
21 Commission;

22 (v) Is any other entity otherwise authorized to act in this state as a trustee pursuant  
23 to the provisions of the federal Employee Retirement Income Security Act of 1974,  
24 as amended; or

25 (vi) Any investment advisor registered with the United States Securities and  
26 Exchange Commission pursuant to the Investment Advisers Act of 1940.

27 (6) 'Institution of higher education' means an eligible educational institution as defined  
28 in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

29 (7) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' has the meaning provided  
30 by Code Section 48-1-2.

31 (8) 'Plan' means the Georgia Higher Education Savings Plan established under this  
32 article.

33 (9) 'Qualified higher education expense' means any higher education expense as defined  
34 in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

35 (10) 'Qualified withdrawal' means a withdrawal by an account contributor or beneficiary  
36 for qualified higher education expenses or as otherwise permitted under Section 529 of

1 the Internal Revenue Code of 1986 without a penalty required under the Internal Revenue  
2 Code.

3 (11) 'Savings trust account' means an account established by an account contributor  
4 pursuant to this article on behalf of a beneficiary in order to apply distributions from the  
5 account toward qualified higher education expenses at eligible educational institutions  
6 as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable  
7 federal law.

8 (12) 'Savings trust agreement' means the agreement entered into between the board and  
9 the account contributor establishing a savings trust account.

10 (13) 'Trust fund' means the Georgia Higher Education Trust Fund.

11 (14) 'Tuition' means the quarter, semester, or term charges and all required fees imposed  
12 by an institution of higher education as a condition of enrollment by any student.

13 20-3-633.

14 (a) The Board of Directors of the Georgia Higher Education Savings Plan is created,  
15 consisting of the Governor as chair, the Chancellor of the Board of Regents of the  
16 University System of Georgia, the commissioner of Adult and Technical Education, the  
17 executive director of the Georgia Student Finance Commission, the state auditor, the  
18 director of the Office of Planning and Budget, the state revenue commissioner, three  
19 directors who shall be appointed by and serve at the pleasure of the Governor, and the  
20 director of the Office of Treasury and Fiscal Services who shall act as administrative  
21 officer of the board. A majority of the board shall constitute a quorum, and the acts of the  
22 majority shall be the acts of the board. The board shall have the authority necessary or  
23 convenient to carry out the purposes and provisions of this article and the purposes and  
24 objectives of the trust fund, including, but not limited to, the authority to:

25 (1) Adopt such rules and regulations as are necessary to implement this article, subject  
26 to applicable federal laws and regulations, including rules regarding transfers of funds  
27 between accounts established under savings trust agreements;

28 (2) Contract for necessary goods and services, employ necessary personnel, and engage  
29 the services of consultants and other qualified persons and entities for administrative and  
30 technical assistance in carrying out the responsibilities of the trust fund under terms and  
31 conditions that the board deems reasonable; and any and all state departments or agencies  
32 are authorized to contract with the board, and the board is authorized to contract with  
33 such departments or agencies, upon such terms, for such consideration, and for such  
34 purposes as they deem advisable;

35 (3) Solicit and accept gifts, including bequests or other testamentary gifts made by will,  
36 trust, or other disposition grants, loans, and other aids from any personal source or

1 participate in any other way in any federal, state, or local governmental program in  
2 carrying out the purposes of this article;

3 (4) Define the terms and conditions under which payments may be withdrawn or  
4 refunded from the trust fund established under this article and impose reasonable charges  
5 for a withdrawal or refund;

6 (5) Impose reasonable time limits on the use of savings trust account distributions  
7 provided by the plan;

8 (6) Regulate the receipt of contributions or payments to the trust fund;

9 (7) Require and collect fees and charges to cover the reasonable costs of administering  
10 savings trust accounts and impose a 10 percent penalty for withdrawal of funds for  
11 nonqualified higher educational expenses or for entering into a savings trust agreement  
12 on a fraudulent basis;

13 (8) Procure insurance against any loss in connection with the property, assets, and  
14 activities of the trust fund or the board;

15 (9) Require that account contributors of savings trust agreements verify, under oath, any  
16 requests for contract conversions, substitutions, transfers, cancellations, refund requests,  
17 or contract changes of any nature;

18 (10) Solicit proposals and contract for the marketing of the plan, provided that any  
19 materials produced by a marketing contractor for the purpose of marketing the plan must  
20 be approved by the board before being made available to the public;

21 (11) Delegate responsibility for administration of the comprehensive investment plan to  
22 a contractor or contractors or a consultant or consultants that the board determines is  
23 qualified;

24 (12) Make all necessary and appropriate arrangements with colleges and universities or  
25 other entities in order to fulfill its obligations under savings trust agreements;

26 (13) Establish other policies, procedures, and criteria necessary to implement and  
27 administer this article; and

28 (14) Authorize the director of the Office of Treasury and Fiscal Services to carry out any  
29 or all of the powers and duties enumerated in this subsection for efficient and effective  
30 administration of the plan and the trust fund.

31 (b) The board is assigned to the Department of Administrative Services for administrative  
32 purposes only.

33 20-3-634.

34 (a) The board shall make savings trust agreements available to the public, under which  
35 account contributors or other payors may make contributions on behalf of qualified  
36 beneficiaries. Contributions and investment earnings on the contributions may be used for

1 any qualified higher educational expenses of a designated beneficiary. The state shall not  
2 guarantee that such contributions, together with the investment return on such  
3 contributions, if any, will be adequate to pay for qualified education expenses in full.  
4 Savings trust agreements shall be available to both residents of the State of Georgia and  
5 nonresidents of the State of Georgia. One or more savings trust accounts may be  
6 established for any qualified beneficiary, subject to the limitations of this article.

7 (b) Each savings trust agreement made pursuant to this article shall include the following  
8 terms and provisions:

9 (1) The maximum and minimum contribution allowed on behalf of each beneficiary for  
10 the payment of qualified higher education expenses at eligible institutions as defined in  
11 Section 529 of the Internal Revenue Code of 1986 or other applicable federal law;  
12 provided, however, that the total of annual contributions for all accounts for any  
13 beneficiary shall not exceed \$6,000.00, except that an additional annual sum of \$6,000.00  
14 for all accounts for any beneficiary age ten years old or older may be contributed during  
15 the first three years in which savings trust agreements are made available by the board  
16 to the public. Total savings trust account contributions for all accounts for any  
17 beneficiary shall not exceed \$120,000.00;

18 (2) Provisions for assessment and collection of reasonable fees which shall be charged  
19 to cover the administration of the account;

20 (3) Provisions for withdrawals, refunds, rollovers, transfers, and any penalties. An  
21 account contributor may roll over all or part of any balance in an account to an account  
22 established on behalf of a different beneficiary to the extent allowed by Section 529 of  
23 the Internal Revenue Code. Unqualified withdrawals shall be subject to a 10 percent  
24 penalty, and penalties shall be used by the plan to defray expenses. Contributions shall  
25 not be eligible for qualified withdrawal until three years from the date of establishment  
26 of the account. All funds must be withdrawn from an account within five years following  
27 the first qualified withdrawal; any funds remaining in an account after such five years  
28 which have not been rolled over to another beneficiary shall be returned to the account  
29 contributor; and the earnings on any such returned funds shall constitute income for  
30 purposes of Chapter 7 of Title 48;

31 (4) The name, address, and date of birth of the beneficiary on whose behalf the savings  
32 trust account is opened;

33 (5) Terms and conditions for a substitution of the beneficiary originally named;

34 (6) Terms and conditions for termination of the account, including any refunds,  
35 withdrawals, or transfers, applicable penalties, and the name of the person or persons  
36 entitled to terminate the account;

37 (7) All other rights and obligations of the account contributor and the trust fund; and

1 (8) Any other terms and conditions that the board deems necessary or appropriate,  
2 including without limitation those necessary to conform the savings trust account with  
3 the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable  
4 federal law.

5 20-3-635.

6 (a)(1) There is created the Georgia Higher Education Savings Plan Trust Fund as a  
7 separate fund in the state treasury. The trust fund shall be administered by the director.  
8 The director shall credit to the trust fund all amounts transferred to such fund. The trust  
9 fund shall consist of money remitted in accordance with savings trust agreements and any  
10 moneys acquired from other governmental or private sources, and shall receive and hold  
11 all payments, contributions, and deposits intended for it as well as gifts, bequests, or  
12 endowments; grants; any other public or private source of funds; and all earnings on the  
13 fund until disbursed as provided under this Code section. The amounts on deposit in the  
14 trust fund shall not constitute property of the state. Amounts on deposit in the trust fund  
15 shall not be commingled with state funds, and the state shall have no claim to or interest  
16 in such funds other than the amount of reasonable fees and charges assessed to cover  
17 administration costs. Savings trust agreements or any other contract entered into by or on  
18 behalf of the trust fund shall not constitute a debt or obligation of the state, and no  
19 account contributor shall be entitled to any amounts except for those amounts on deposit  
20 in or accrued to the account of such contributor.

21 (2) The trust fund shall continue in existence so long as it holds any funds belonging to  
22 an account contributor or otherwise has any obligations to any person or entity until its  
23 existence is terminated by law and remaining assets on deposit in the trust fund are  
24 returned to account contributors or transferred to the state in accordance with unclaimed  
25 property laws.

26 (b)(1) The following three separate accounts are created within the trust fund:

- 27 (A) The administrative account;
- 28 (B) The endowment account; and
- 29 (C) The plan account.

30 (2) The administrative account shall accept, deposit, and disburse funds for the purpose  
31 of administering and marketing the plan. The endowment account shall receive and  
32 deposit accounts received in connection with the sales of interests in the trust fund, other  
33 than amounts for the administrative account and other than amounts received pursuant  
34 to a savings trust agreement. Amounts on deposit in the endowment account may be  
35 applied as specified by the board for any purpose related to the plan. The plan account  
36 shall receive, invest, and disburse amounts pursuant to savings trust agreements.

1 (c) The official location of the trust fund shall be the Office of Treasury and Fiscal  
2 Services, and the facilities of the Office of Treasury and Fiscal Services shall be used and  
3 employed in the administration of the fund, including without limitation the keeping of  
4 records, the management of bank accounts and other investments, the transfer of funds, and  
5 the safekeeping of securities evidencing investments. These functions may be administered  
6 pursuant to a management agreement with a qualified entity or entities.

7 (d) Payments received by the board on behalf of beneficiaries from account contributors,  
8 other payors, or from any other source, public or private, shall be placed in the trust fund,  
9 and the board shall cause there to be maintained separate records and accounts for  
10 individual beneficiaries as may be required under Section 529 of the Internal Revenue  
11 Code of 1986 or other applicable federal law.

12 (e) Account contributors shall be permitted only to contribute cash or any other form of  
13 payment or contribution as is permitted under Section 529 of the Internal Revenue Code  
14 of 1986 and approved by the board. The board shall cause the plan to maintain adequate  
15 safeguards against contributions in excess of what may be required for qualified higher  
16 education expenses. The trust fund, through the director, may receive and deposit into the  
17 trust fund any gift of any nature, real or personal property, made by an individual by  
18 testamentary disposition, including without limitation any specific gift or bequest made by  
19 will, trust, or other disposition to the extent permitted under Section 529 of the Internal  
20 Revenue Code of 1986. The trust fund may receive amounts transferred under Article 5 of  
21 Chapter 5 of Title 44, 'The Georgia Transfers to Minors Act'; under the Uniform Transfers  
22 to Minors Act, Uniform Gift to Minors Act, or other substantially similar act of another  
23 state, subject to the provisions of subsection (c) of Code Section 44-5-112; or from some  
24 other account established for the benefit of a minor if the trust beneficiary of such an  
25 account is identified as the legal owner of the trust fund account upon attaining majority  
26 age.

27 (f) Earnings derived from investment of the contributions shall be considered to be held  
28 in trust in the same manner as contributions, except as applied for purposes of the  
29 designated beneficiary and for purposes of maintaining and administering the plan as  
30 provided in this article. Amounts on deposit in an account contributor's account shall be  
31 available for administrative fees and expenses and penalties imposed by the board for the  
32 plan as disclosed in the savings trust agreement.

33 (g) The assets of the trust fund shall be preserved, invested, and expended solely pursuant  
34 to and for the purposes of this article and shall not be loaned or otherwise transferred or  
35 used by the state for any other purpose.

1 20-3-636.

2 (a) The trust fund shall constitute a fund of an instrumentality of the state, and its property  
3 and income shall be exempt from all taxation by the state and by all of its political  
4 subdivisions.

5 (b) Contributions by any parent or guardian up to a maximum amount per income tax  
6 return of \$2,000.00 per dependent claimed on such parent's or guardian's income tax return  
7 for any tax year shall constitute an itemized deduction from state income tax pursuant to  
8 Chapter 7 of Title 48 provided such taxpayer's adjusted gross income does not exceed  
9 \$75,000.00 if the taxpayer's filing status is married filing jointly or head of household or  
10 \$37,500.00 if the taxpayer's filing status is married filing a separate return or single. Such  
11 deduction shall decrease by \$400.00 for each \$1,000.00 of adjusted gross income over the  
12 applicable limit. Contributions or payments for any tax year may be made during or after  
13 such calendar year but before the deadline for making contributions to an individual  
14 retirement account under federal law for such tax year. Qualified withdrawals used solely  
15 for qualified higher education expenses shall not be subject to state income tax pursuant  
16 to Chapter 7 of Title 48. The earnings portion of any withdrawal from an account that is  
17 not a qualified withdrawal, as well as any amounts included in such nonqualified  
18 withdrawals previously deducted from taxable income under this Code section, shall be  
19 included in the gross income of the resident recipient of the withdrawal for purposes of  
20 state income tax pursuant to Chapter 7 of Title 48 in the year of such withdrawal.

21 20-3-637.

22 (a) The board shall have authority to establish a comprehensive investment plan for the  
23 purposes of this article and to invest any funds of the trust fund through the director. The  
24 director shall invest the trust fund moneys pursuant to an investment policy adopted by the  
25 board. Notwithstanding any state law to the contrary, the board, through the director, shall  
26 invest or cause to be invested amounts on deposit in the trust fund, including the plan  
27 account, in a manner reasonable and appropriate to achieve the objectives of the plan,  
28 exercising the discretion and care of a prudent person in similar circumstances with similar  
29 objectives. The board shall give due consideration to the risk of, expected rate of return of,  
30 term or maturity of, diversification of total investments of, liquidity of, and anticipated  
31 investments in and withdrawals from the trust fund.

32 (b) All contractors, vendors, or other service providers, including, but not limited to,  
33 financial organizations, investments, and investment options shall be selected by  
34 competitive solicitation, unless otherwise directed by the board.

35 (c) Any limitations set forth in this Code section shall be applicable only at the time of  
36 purchase and shall not require the liquidation of any investment at any time. All

1 investments shall be marked clearly to indicate ownership by the plan and, to the extent  
2 possible, shall be registered in the name of the plan.

3 (d) Subject to the terms, conditions, limitations, and restrictions set forth in this Code  
4 section, the board may sell, assign, transfer, and dispose of any of the securities and  
5 investments of the plan if the sale, assignment, or transfer has the majority approval of the  
6 entire board. The board may employ or contract with investment managers, evaluation  
7 services, or other such services as determined by the board to be necessary for the effective  
8 and efficient operation of the plan.

9 (e) Members and employees of the board shall be subject to the provisions of Chapter 10  
10 of Title 45, relating to codes of ethics and conflicts of interest.

11 (f) The board shall establish criteria for investment managers, mutual funds, or other such  
12 entities to act as contractors or consultants to the board. The board may contract, either  
13 directly or through such contractors or consultants, to provide such services as may be a  
14 part of the comprehensive investment plan or as may be deemed necessary or proper by the  
15 board, including without limitation providing consolidated billing, individual and collective  
16 record keeping and accounting, and asset purchase, control, and safekeeping.

17 (g) No account contributor or beneficiary shall directly or indirectly direct the investment  
18 of any account except as may be permitted under Section 529 of the Internal Revenue Code  
19 of 1986 or other applicable federal law.

20 (h) The board may approve different investment plans and options to be offered to  
21 participants to the extent permitted under Section 529 of the Internal Revenue Code of  
22 1986 or other applicable federal law and consistent with the objectives of this article, and  
23 the board may require the assistance of investment counseling before participation in  
24 different options.

25 20-3-638.

26 (a) The board shall furnish, subject to reasonable administrative fees and charges, to each  
27 account contributor an annual statement of the following:

- 28 (1) The amount contributed by the account contributor under the savings trust agreement;
- 29 (2) The annual earnings and accumulated earnings on the savings trust account; and
- 30 (3) Any other terms and conditions that the board deems by rule are necessary or  
31 appropriate, including without limitation those necessary to conform the savings trust  
32 account with the requirements of Section 529 of the Internal Revenue Code of 1986 or  
33 other applicable federal law.

34 (b) The board shall furnish an additional statement complying with subsection (a) of this  
35 Code section to an account contributor or beneficiary on written request. The board may  
36 charge a reasonable fee for each statement furnished under this subsection.

1 (c) The board shall prepare or cause to be prepared an annual report setting forth in  
 2 appropriate detail an accounting of the funds and a description of the financial condition  
 3 of the plan at the close of each fiscal year. Such report shall be submitted to the Governor,  
 4 the President of the Senate, and the Speaker of the House of Representatives. In addition,  
 5 the board shall make the report available to account contributors of savings trust  
 6 agreements. The accounts of the trust fund shall be subject to annual audits by the state  
 7 auditor or his or her designee.

8 20-3-639.

9 This article is not a promise or guarantee that any beneficiary will be:

- 10 (1) Admitted to any institution of higher education;
- 11 (2) Admitted to a particular institution of higher education after admission;
- 12 (3) Allowed to continue enrollment at an institution of higher education; or
- 13 (4) Graduated from an institution of higher education.

14 20-3-640.

15 Nothing in this article or in any savings trust agreement entered into pursuant to this article  
 16 shall be construed as a promise or guarantee by the state or any agency or instrumentality  
 17 of the state that either qualified higher education expenses in general or any specific  
 18 qualified higher education expense shall be covered in full by contributions or earnings on  
 19 any savings trust account. Savings trust accounts and agreements entered into pursuant to  
 20 this article are not guaranteed by the full faith and credit of the State of Georgia.

21 20-3-641.

22 Notwithstanding any state law to the contrary, no moneys on deposit in the plan shall be  
 23 considered an asset of the parent, guardian, or student for purposes of determining an  
 24 individual's eligibility for a need based grant, need based scholarship, or need based work  
 25 opportunity offered or administered by any state agency except as may be required by the  
 26 funding source of such financial aid."

27 **SECTION 2.**

28 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 29 without such approval.

30 **SECTION 3.**

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