

_____ offers the following
substitute to HB 417:

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. For resident or nonresident
7 persons, the account contributor may also 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 on the earnings portion included
 11 within a withdrawal of funds for nonqualified higher educational expenses or for entering
 12 into a savings trust agreement 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, unless otherwise
 21 directed by the board;

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

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

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

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

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

34 20-3-634.

35 (a) The board shall make savings trust agreements available to the public, under which
 36 account contributors or other payors may make contributions on behalf of qualified

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

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

10 (1) The maximum and minimum contribution allowed on behalf of each beneficiary for
11 the payment of qualified higher education expenses at eligible institutions as defined in
12 Section 529 of the Internal Revenue Code of 1986 or other applicable federal law;
13 provided, however, that the total of annual contributions for all accounts for any
14 beneficiary shall not exceed \$8,000.00, except that an additional annual sum of \$8,000.00
15 for all accounts for any beneficiary age ten years old or older may be contributed during
16 the first three years in which savings trust agreements are made available by the board
17 to the public. Total savings trust account contributions for all accounts for any
18 beneficiary shall not exceed \$120,000.00;

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

21 (3) Provisions for withdrawals, refunds, rollovers, transfers, and any penalties. An
22 account contributor may roll over all or part of any balance in an account to an account
23 established on behalf of a different beneficiary to the extent allowed by Section 529 of
24 the Internal Revenue Code. Unqualified withdrawals of contributions and earnings shall
25 be subject to a 10 percent penalty on included earnings, and penalties shall be used by the
26 plan to defray expenses. Contributions and earnings shall not be eligible for qualified
27 withdrawal until three years from the date of establishment of the account;

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

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

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

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

35 (8) Any other terms and conditions that the board deems necessary or appropriate,
36 including without limitation those necessary to conform the savings trust account with

1 the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable
2 federal law.

3 20-3-635.

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

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

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

- 25 (A) The administrative account;
- 26 (B) The endowment account; and
- 27 (C) The plan account.

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

35 (c) The official location of the trust fund shall be the Office of Treasury and Fiscal
36 Services, and the facilities of the Office of Treasury and Fiscal Services shall be used and

1 employed in the administration of the fund, including without limitation the keeping of
2 records, the management of bank accounts and other investments, the transfer of funds, and
3 the safekeeping of securities evidencing investments. These functions may be administered
4 pursuant to a management agreement with a qualified entity or entities.

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

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

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

31 (g) The assets of the trust fund shall be preserved, invested, and expended solely pursuant
32 to and for the purposes of this article and shall not be loaned or otherwise transferred or
33 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) For taxable years beginning on or after January 1, 2002, contributions of up to
6 \$2,000.00 on behalf of a designated beneficiary who is claimed as a dependent on the
7 Georgia tax return of the beneficiary's parents or guardians shall constitute an additional
8 deduction from taxable net income pursuant to Chapter 7 of Title 48. If the parents or
9 guardians file separate or single returns, the sum of contributions constituting additional
10 deductions on their returns cannot exceed \$2,000.00. To claim the deduction, the
11 taxpayer's federal return must show itemized deductions from adjusted gross income and
12 the adjusted gross income cannot exceed \$100,000.00 for a joint return or \$50,000.00 for
13 a separate or single return. Such deduction shall decrease by \$400.00 for each \$1,000.00
14 of adjusted gross income over the applicable limit. Contributions or payments for any such
15 tax year may be made during or after such calendar year but before the deadline for making
16 contributions to an individual retirement account under federal law for such tax year.
17 Qualified withdrawals used solely for qualified higher education expenses shall not be
18 subject to state income tax pursuant to Chapter 7 of Title 48. For unqualified withdrawals,
19 the proportion of earnings in an account balance at the time of the withdrawal shall be
20 applied to the total funds withdrawn to determine the earnings portion to be added to the
21 account contributor's taxable net income in the year of withdrawal. The proportion of the
22 contributions in an account balance at the time of an unqualified withdrawal which
23 previously have been used to reduce taxable net income shall be applied to the nonearnings
24 portion of the total funds withdrawn to determine an amount to be added to the account
25 contributor's taxable net income in the same taxable year.

26 20-3-637.

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

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

4 (c) All investments shall be marked clearly to indicate ownership by the plan and, to the
5 extent possible, shall be registered in the name of the plan.

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

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

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

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

23 (h) The board may approve different investment plans and options to be offered to
24 participants to the extent permitted under Section 529 of the Internal Revenue Code of
25 1986 or other applicable federal law and consistent with the objectives of this article, and
26 the board may require the assistance of investment counseling before participation in
27 different options.

28 20-3-638.

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

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

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

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

11 20-3-639.

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

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

17 20-3-640.

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

24 20-3-641.

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

30 **SECTION 2.**

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

SECTION 3.

- 1
- 2 All laws and parts of laws in conflict with this Act are repealed.