

The Senate Higher Education Committee offered the following substitute to HB 417:

ADOPTED SENATE

**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 provide for the Georgia Higher Education Savings Plan;
3 to provide a short title; to provide for legislative intent; to define certain terms; to provide for
4 a board of directors of the plan and its membership, powers, duties, and administration; to
5 provide for a program of savings trust agreements and savings trust accounts; to provide for
6 a trust fund and the administration thereof; to provide for investment and management of
7 trust funds; to provide a tax exemption; to provide for account statements; to deny certain
8 promises or guarantees; to provide for effect of account deposits on eligibility for certain
9 financial aid; to provide for confidentiality and nondisclosure of certain records; to amend
10 Code Section 48-7-27 of the Official Code of Georgia Annotated, relating to computation of
11 taxable net income, so as to provide for certain deductions related to contributions to savings
12 trust accounts; to provide for tax treatment of withdrawals from savings trust accounts; to
13 amend Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to the
14 definitions for purposes of the Georgia Administrative Procedure Act, so as to exclude the
15 Georgia Higher Education Savings Plan from the meaning of "agency"; to provide for related
16 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

17
18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **SECTION 1.**

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

"ARTICLE 11

20-3-630.

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

20-2-631.

The purposes of this article are to:

- (1) Provide a program of savings trust agreements to apply distributions toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or other applicable federal law;
- (2) Provide for the creation of the Georgia Higher Education Savings Plan, as an instrumentality of the State of Georgia, to assist qualified students in financing costs of attending institutions of higher education;
- (3) Encourage timely financial planning for higher education by the creation of savings trust accounts;
- (4) Provide a savings program for those persons who wish to save to meet postsecondary educational needs, including postgraduate educational needs; and
- (5) Attract students to institutions of higher education within the state.

20-3-632.

As used in this article, the term:

- (1) 'Account contributor' means a resident or nonresident person, corporation, trust, charitable organization, or other entity which contributes to or invests money in a savings trust account under the program on behalf of a beneficiary. For resident or nonresident persons, the account contributor may also be the designated beneficiary of the account.
- (2) 'Beneficiary' means a resident or nonresident beneficiary of a savings trust agreement who meets the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable federal law and any regulations established by the board.
- (3) 'Board' means the Board of Directors of the Georgia Higher Education Savings Plan.
- (4) 'Director' means the director of the Office of Treasury and Fiscal Services.
- (5) 'Financial organization' means an organization which is:
 - (A) A fiduciary authorized to act as a trustee pursuant to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, or an insurance company or affiliate; and
 - (B)(i) Licensed or chartered by the Insurance Department;

- 1 (ii) Licensed or chartered by the Department of Banking and Finance;
2 (iii) Chartered by an agency of the federal government;
3 (iv) Subject to the jurisdiction and regulation of the federal Securities and Exchange
4 Commission;
5 (v) Is any other entity otherwise authorized to act in this state as a trustee pursuant
6 to the provisions of the federal Employee Retirement Income Security Act of 1974,
7 as amended; or
8 (vi) Any investment advisor registered with the United States Securities and
9 Exchange Commission pursuant to the Investment Advisers Act of 1940.

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

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

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

16 (9) 'Program' means the program of savings trust agreements and savings trust accounts
17 provided by the plan.

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

20 (11) 'Qualified withdrawal' means a withdrawal by an account contributor or beneficiary
21 for qualified higher education expenses or as otherwise permitted under Section 529 of
22 the Internal Revenue Code of 1986 without a penalty required under the Internal Revenue
23 Code.

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

29 (13) 'Savings trust agreement' means the agreement entered into between the board and
30 the account contributor establishing a savings trust account.

31 (14) 'Trust fund' means the Georgia Higher Education Savings Plan Trust Fund.
32

33 20-3-633.

34 (a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate
35 and politic and an instrumentality of the state, for purposes of establishing and
36 maintaining the Georgia Higher Education Savings Plan Trust Fund provided by this

1 article. The plan shall be governed by a board of directors consisting of the Governor as
2 chairperson, the Chancellor of the Board of Regents of the University System of Georgia,
3 the commissioner of Adult and Technical Education, the executive director of the
4 Georgia Student Finance Commission, the state auditor, the director of the Office of
5 Planning and Budget, the state revenue commissioner, three directors who shall be
6 appointed by and serve at the pleasure of the Governor, and the director of the Office of
7 Treasury and Fiscal Services who shall act as administrative officer of the board. A
8 majority of the board shall constitute a quorum, and the acts of the majority shall be the
9 acts of the board.

10 (2) Members of the board who are state officials or employees shall receive no
11 compensation for their service on the board but may be reimbursed for expenses incurred
12 by them in the performance of their duties as members of the board. Any members of the
13 board who are not state officials or employees shall receive a daily expense allowance in
14 the amount specified in subsection (b) of Code Section 45-7-21 for each day such
15 member is in attendance at a meeting of the board. Expense allowances and other costs
16 authorized in this paragraph shall be paid from moneys in the trust fund.

17 (b) The board shall have the authority necessary or convenient to carry out the purposes
18 and provisions of this article and the purposes and objectives of the trust fund, including,
19 but not limited to, the authority to:

20 (1) Have a seal and alter the same at its pleasure; bring and defend actions; make,
21 execute, and deliver contracts, conveyances, and other instruments necessary or
22 convenient to the exercise of its powers; and make and amend bylaws;

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

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

33 (4) Solicit and accept gifts, including bequests or other testamentary gifts made by will,
34 trust, or other disposition grants, loans, and other aids from any personal source or
35 participate in any other way in any federal, state, or local governmental program in
36 carrying out the purposes of this article;

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

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

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

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

11 (9) Procure insurance against any loss in connection with the property, assets, and
12 activities of the trust fund or the plan;

13 (10) Require that account contributors of savings trust agreements verify in writing,
14 before a person authorized to administer oaths, any requests for contract conversions,
15 substitutions, transfers, cancellations, refund requests, or contract changes of any nature;

16 (11) Solicit proposals and contract for the marketing of the program, provided that any
17 materials produced by a marketing contractor for the purpose of marketing the program
18 must be approved by the board before being made available to the public, unless
19 otherwise directed by the board;

20 (12) Delegate responsibility for administration of the comprehensive investment plan to
21 a financial organization that the board determines is qualified;

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

24 (14) Establish other policies, procedures, and criteria and perform such other acts as
25 necessary or appropriate to implement and administer this article; and

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

29 (c) The plan is assigned to the Department of Administrative Services for administrative
30 purposes only.

31 20-3-634.

32 (a) The plan shall make savings trust agreements available to the public, under which
33 account contributors or other payors may make contributions on behalf of qualified
34 beneficiaries. Contributions and investment earnings on the contributions may be used for
35 any qualified higher educational expenses of a designated beneficiary. The state shall not

1 guarantee that such contributions, together with the investment return on such
2 contributions, if any, will be adequate to pay for qualified education expenses in full.
3 Savings trust agreements shall be available to both residents of the State of Georgia and
4 nonresidents of the State of Georgia. One or more savings trust accounts may be
5 established for any qualified beneficiary, subject to the limitations of this article.

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

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

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

19 (3) Provisions for withdrawals, refunds, rollovers, transfers, and any penalties. An
20 account contributor may roll over all or part of any balance in an account to an account
21 established on behalf of a different beneficiary to the extent allowed by Section 529 of
22 the Internal Revenue Code. Unqualified withdrawals of contributions and earnings shall
23 be subject to a 10 percent penalty on included earnings, and penalties shall be used by the
24 plan to defray expenses; provided, however, that no such penalty shall apply to any
25 withdrawal made following the death of the beneficiary. Contributions and earnings shall
26 not be eligible for qualified withdrawal until three years from the date of establishment
27 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 program account.

28 (2) The administrative account shall accept, deposit, and disburse funds for the purpose
29 of administering and marketing the program. 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 program. The program
34 account 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 program to maintain
15 adequate safeguards against contributions in excess of what may be required for qualified
16 higher education expenses. The trust fund, through the director, may receive and deposit
17 into the trust fund any gift of any nature, real or personal property, made by an individual
18 by testamentary disposition, including without limitation any specific gift or bequest made
19 by 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 program 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 The trust fund property and income shall be subject to taxation by the state only as
3 provided by Code Section 48-7-27 and shall not be subject to taxation by any of the state's
4 political subdivisions.

5
6 20-3-637.

7 (a) The board shall have authority to establish a comprehensive investment plan for the
8 purposes of this article and to invest any funds of the trust fund through the director. The
9 director shall invest the trust fund moneys pursuant to an investment policy adopted by the
10 board. Notwithstanding any state law to the contrary, the board, through the director, shall
11 invest or cause to be invested amounts on deposit in the trust fund, including the program
12 account, in a manner reasonable and appropriate to achieve the objectives of the plan,
13 exercising the discretion and care of a prudent person in similar circumstances with similar
14 objectives. The board shall give due consideration to the risk of, expected rate of return of,
15 term or maturity of, diversification of total investments of, liquidity of, and anticipated
16 investments in and withdrawals from the trust fund.

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

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

22 (d) Subject to the terms, conditions, limitations, and restrictions set forth in this Code
23 section, the board may sell, assign, transfer, and dispose of any of the securities and
24 investments of the plan if the sale, assignment, or transfer has the majority approval of the
25 entire board. The board may employ or contract with financial organizations, investment
26 managers, evaluation services, or other such services as determined by the board to be
27 necessary for the effective and efficient operation of the program.

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

30 (f) The board shall establish criteria for financial organizations, investment managers,
31 mutual funds, or other such entities to act as contractors or consultants to the board. The
32 board may contract, either directly or through such contractors or consultants, to provide
33 such services as may be a part of the comprehensive investment plan or as may be deemed
34 necessary or proper by the board, including without limitation providing consolidated
35 billing, individual and collective record keeping and accounting, and asset purchase,
36 control, and safekeeping.

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

4 (h) The board may approve different investment plans and options to be offered to
5 participants to the extent permitted under Section 529 of the Internal Revenue Code of
6 1986 or other applicable federal law and consistent with the objectives of this article, and
7 the board may require the assistance of investment counseling before participation in
8 different options.

9 20-3-638.

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

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

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

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

28 20-3-639.

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

- 30 (1) Admitted to any institution of higher education;
- 31 (2) Admitted to a particular institution of higher education after admission;
- 32 (3) Allowed to continue enrollment at an institution of higher education; or
- 33 (4) Graduated from an institution of higher education.

1 20-3-640.

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

8 20-3-641.

9 Notwithstanding any state law to the contrary, no moneys on deposit in any savings trust
10 account shall be considered an asset of the parent, guardian, or student for purposes of
11 determining an individual's eligibility for a need based grant, need based scholarship, or
12 need based work opportunity offered or administered by any state agency except as may
13 be required by the funding source of such financial aid.

14 20-3-642.

15 (a) The provisions of Article 4 of Chapter 18 of Title 50 notwithstanding, the following
16 records, or portions thereof, shall not constitute public records and shall not be open to
17 inspection by the general public:

18 (1) Completed savings trust account applications, executed savings trust account
19 agreements, and savings trust account numbers;

20 (2) All wiring or automated clearing house transfer of funds instructions;

21 (3) Records of savings trust account transactions and savings trust account analysis
22 statements received or prepared by or for the plan;

23 (4) All bank account numbers in the possession of the plan and any record or document
24 containing such numbers;

25 (5) All proprietary computer software in the possession or under the control of the plan;
26 and

27 (6) All security codes and procedures related to physical, electronic, or other access to
28 any savings trust account or the trust fund, its systems, and its software.

29 (b) For a period from the date of creation of the record until the end of the calendar quarter
30 in which the record is created, the following records, or portions thereof, of the trust fund
31 shall not constitute public records and shall not be open to inspection by the general public:

32 (1) Investment trade tickets; and

33 (2) Bank statements.

34 (c) The restrictions of subsections (a) and (b) of this Code section shall not apply to access:

1 (1) Required by subpoena or other legal process of a court or administrative agency
2 having competent jurisdiction in legal proceedings where the State of Georgia or the plan
3 is a party;

4 (2) In prosecutions or other court actions to which the State of Georgia or the plan is a
5 party;

6 (3) Given to federal or state regulatory or law enforcement agencies;

7 (4) Given to any person or entity in connection with a savings trust account to which
8 such person or entity is an account contributor or given to any person in connection with
9 a savings trust account of which such person is a beneficiary; or

10 (5) Given to the board or any member, employee, or contractor thereof for use and public
11 disclosure in the ordinary performance of its duties pursuant to this chapter."

12 SECTION 2.

13 Code Section 48-7-27 of the Official Code of Georgia Annotated, relating to computation of
14 taxable net income, is amended in subsection (a) by striking "and" at the end of paragraph
15 (9), striking the period and inserting in lieu thereof "; and" at the end of paragraph (10), and
16 adding a new paragraph (11) to read as follows:

17 "(11) For taxable years beginning on or after January 1, 2002, an amount equal to the
18 amount of contributions to a savings trust account established pursuant to Article 11 of
19 Chapter 3 of Title 20 on behalf of a designated beneficiary who is claimed as a dependent
20 on the Georgia tax return of the beneficiary's parents or guardians, but not exceeding
21 \$2,000.00. If the parents or guardians file separate or single returns, the sum of
22 contributions constituting deductions on their returns under this paragraph shall not
23 exceed \$2,000.00. To claim the deduction, the taxpayer's federal return must show
24 itemized deductions from adjusted gross income, and the federal adjusted gross income
25 cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return;
26 the maximum deduction authorized by this paragraph shall decrease by \$400.00 for each
27 \$1,000.00 of federal adjusted gross income over the applicable limit. For purposes of this
28 paragraph, contributions or payments for any such taxable year may be made during or
29 after such calendar year but before the deadline for making contributions to an individual
30 retirement account under federal law for such taxable year."

31 SECTION 3.

32 Said Code section is further amended in subsection (b) by adding a new paragraph (10) to
33 read as follows:

