

SENATE SUBSTITUTE TO HOUSE BILL 417:

AS PASSED 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:

1 "ARTICLE 11

2 20-3-630.

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

5 20-2-631.

6 The purposes of this article are to:

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

18 20-3-632.

19 As used in this article, the term:

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

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

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

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

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

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

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

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

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

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

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

31
32 20-3-633.

33 (a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate
34 and politic and an instrumentality of the state, for purposes of establishing and
35 maintaining the Georgia Higher Education Savings Plan Trust Fund provided by this
36 article. The plan shall be governed by a board of directors consisting of the Governor as
37 chairperson, the Chancellor of the Board of Regents of the University System of Georgia,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 20-3-634.

29 (a) The plan shall make savings trust agreements available to the public, under which
30 account contributors or other payors may make contributions on behalf of qualified
31 beneficiaries. Contributions and investment earnings on the contributions may be used for
32 any qualified higher educational expenses of a designated beneficiary. The state shall not
33 guarantee that such contributions, together with the investment return on such
34 contributions, if any, will be adequate to pay for qualified education expenses in full.
35 Savings trust agreements shall be available to both residents of the State of Georgia and

1 nonresidents of the State of Georgia. One or more savings trust accounts may be
2 established for any qualified beneficiary, subject to the limitations of this article.

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

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

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

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

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

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

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

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

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

1 20-3-635.

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

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

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

- 23 (A) The administrative account;
- 24 (B) The endowment account; and
- 25 (C) The program account.

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

33 (c) The official location of the trust fund shall be the Office of Treasury and Fiscal
34 Services, and the facilities of the Office of Treasury and Fiscal Services shall be used and
35 employed in the administration of the fund, including without limitation the keeping of
36 records, the management of bank accounts and other investments, the transfer of funds, and

1 the safekeeping of securities evidencing investments. These functions may be administered
2 pursuant to a management agreement with a qualified entity or entities.

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

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

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

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

32 20-3-636.

33 The trust fund property and income shall be subject to taxation by the state only as
34 provided by Code Section 48-7-27 and shall not be subject to taxation by any of the state's
35 political subdivisions.

36

1 20-3-637.

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

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

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

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

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

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

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

35 (h) The board may approve different investment plans and options to be offered to
36 participants to the extent permitted under Section 529 of the Internal Revenue Code of
37 1986 or other applicable federal law and consistent with the objectives of this article, and

1 the board may require the assistance of investment counseling before participation in
2 different options.

3 20-3-638.

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

6 (1) The amount contributed by the account contributor under the savings trust agreement;

7 (2) The annual earnings and accumulated earnings on the savings trust account; and

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

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

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

22 20-3-639.

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

24 (1) Admitted to any institution of higher education;

25 (2) Admitted to a particular institution of higher education after admission;

26 (3) Allowed to continue enrollment at an institution of higher education; or

27 (4) Graduated from an institution of higher education.

28 20-3-640.

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

1 20-3-641.

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

7 20-3-642.

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

11 (1) Completed savings trust account applications, executed savings trust account
12 agreements, and savings trust account numbers;

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

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

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

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

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

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

25 (1) Investment trade tickets; and

26 (2) Bank statements.

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

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

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

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

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

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

3 **SECTION 2.**

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

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

23 **SECTION 3.**

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

26 "(10)(A) For taxable years beginning on or after January 1, 2002, the amount of any
27 qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of
28 Title 20 used solely for qualified higher education expenses shall not be subject to state
29 income tax under this chapter.

30 (B) For unqualified withdrawals from such a savings trust account, the proportion of
31 earnings in the account balance at the time of the withdrawal shall be applied to the
32 total funds withdrawn to determine the earnings portion to be included in the account
33 contributor's taxable net income in the year of withdrawal. The proportion of the
34 contributions in an account balance at the time of an unqualified withdrawal which
35 previously have been used to reduce taxable net income pursuant to paragraph (11) of

1 subsection (a) of this Code section shall be applied to the nonearnings portion of the
2 total funds withdrawn to determine an amount to be included in the account
3 contributor's taxable net income in the same taxable year."

4 **SECTION 4.**

5 Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions for
6 purposes of the Georgia Administrative Procedure Act, is amended by striking paragraph (1)
7 and inserting in lieu thereof the following:

8 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
9 officer authorized by law expressly to make rules and regulations or to determine
10 contested cases, except the General Assembly; the judiciary; the Governor; the State
11 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
12 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
13 penal institutions; the State Board of Workers' Compensation; all public authorities; the
14 State Personnel Board (Merit System); the Department of Administrative Services or
15 commissioner of administrative services; the Department of Technical and Adult
16 Education; the Department of Revenue when conducting hearings relating to alcoholic
17 beverages; the Georgia Tobacco Community Development Board; the Georgia Higher
18 Education Savings Plan; any school, college, hospital, or other such educational,
19 eleemosynary, or charitable institution; or any agency when its action is concerned with
20 the military or naval affairs of this state. The term 'agency' shall include the State Board
21 of Education and Department of Education, subject to the following qualifications:

22 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid
23 rules adopted by the State Board of Education and Department of Education prior to
24 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,
25 whether or not such rules were adopted in compliance with the requirements of this
26 chapter; and

27 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
28 of Education which has not been proposed, submitted, and adopted in accordance with
29 the requirements of this chapter shall be void and of no effect."

30 **SECTION 5.**

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

33 **SECTION 6.**

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