

The House Committee on Appropriations offers the following substitute to SB 498:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 31B of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,  
2 relating to charter school capital finance, so as to establish the Georgia Charter School  
3 Facilities Authority for the purpose of enabling charter schools to obtain revolving loan funds  
4 and other public financing assistance for purposes of constructing, renovating, and  
5 rehabilitating educational facilities for such schools; to provide for definitions; to provide for  
6 the composition, duties, and powers of such authority; to assign such authority to the Georgia  
7 State Financing and Investment Commission for administrative purposes; to amend Article 2  
8 of Chapter 17 of Title 50 of the Official Code of Georgia Annotated, the "Georgia State  
9 Financing and Investment Commission Act," so as to provide for responsibilities of the  
10 Georgia State Financing and Investment Commission; to provide for definitions; to provide  
11 for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 31B of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to  
15 charter school capital finance, is amended by designating Code Sections 20-2-2095  
16 through 20-2-2095.5 as Part 1, by replacing the term "article" with the term "part" wherever

S. B. 498 (SUB)

17 the former term appears in any of such Code sections, and by adding a new part to read as  
18 follows:

19 "Part 2

20 20-2-2095.20.

21 As used in this part, the term:

22 (1) 'Authority' means the Georgia Charter School Facilities Authority created in this part.

23 (2) 'Charter school' shall have the same meaning as set forth in Code Section  
24 20-2-2095.1.

25 (3) 'Cost of project' or 'cost of any project' means:

26 (A) All costs of acquisition, by purchase or otherwise, construction, assembly,  
27 installation, modification, renovation, extension, or rehabilitation incurred in  
28 connection with any project or any part of any project;

29 (B) All costs of real property, fixtures, or personal property used in or in connection  
30 with or necessary for any project or for any facilities related thereto, including, but not  
31 limited to, the costs of all land, interests in land, estates for years, easements, rights,  
32 improvements, water rights, and connections for utility services; the costs of fees,  
33 franchises, permits, approvals, licenses, and certificates; the costs of securing any such  
34 franchises, permits, approvals, licenses, or certificates; the costs of preparation of any  
35 application therefor; and the costs of all fixtures, machinery, equipment, furniture, and  
36 other property used in or in connection with or necessary for any project;

37 (C) All financing charges and loan or loan guarantee fees and all interest on notes of  
38 the authority which accrue or are paid prior to and during the period of construction of  
39 a project and during such additional period as the authority may reasonably determine  
40 to be necessary to place such project in operation;

41 (D) All costs of engineering, surveying, planning, environmental assessments, financial  
42 analyses, and architectural, legal, and accounting services and all expenses incurred by  
43 engineers, surveyors, planners, environmental scientists, fiscal analysts, architects,  
44 attorneys, accountants, and any other necessary technical personnel in connection with  
45 any project;

46 (E) All expenses for inspection of any project;

47 (F) All fees and all other costs and expenses incurred relative to the issuance of any  
48 notes for any project;

49 (G) All fees of any type charged by the authority in connection with any project;

50 (H) All expenses of or incidental to determining the feasibility or practicability of any  
51 project;

52 (I) All costs of plans and specifications for any project;

53 (J) All costs of title insurance and examinations of title with respect to any project;

54 (K) Repayment of any loans for the advance payment of any part of any of the  
55 foregoing costs, including interest thereon and any other expenses of such loans;

56 (L) Administrative expenses of the authority, including, but not limited to, personnel  
57 and operational costs, and such other expenses as may be necessary or incidental to any  
58 project or the financing thereof or the placing of any project in operation; and

59 (M) The establishment of a fund or funds as the authority may approve with respect to  
60 the financing and operation of any project and as may be authorized by any instrument  
61 or agreement pursuant to the provisions of which the issuance of any notes of the  
62 authority may be authorized.

63 Any cost, obligation, or expense incurred for any of the purposes specified in this  
64 paragraph shall be a part of the cost of the project and may be paid or reimbursed as such  
65 out of the proceeds of notes issued by the authority.

66 (4) 'Educational facilities' shall include buildings, fixtures, and equipment necessary for  
67 the effective and efficient operation of charter schools, which, without limiting the

68 generality of the foregoing, shall include: classrooms; libraries; rooms and space for  
69 physical education; space for fine arts; restrooms; specialized laboratories; cafeterias;  
70 media centers; building equipment; building fixtures; furnishings; career, technical, and  
71 agricultural education labs and facilities to support industry credentialing; related exterior  
72 facilities; landscaping and paving; and similar items which the State Board of Education  
73 may determine necessary. The following facilities are specifically excluded: swimming  
74 pools, tracks, stadiums, and other facilities or portions of facilities used primarily for  
75 athletic competition.

76 (5) 'Project' means the acquisition, construction, installation, modification, renovation,  
77 repair, extension, renewal, replacement, or rehabilitation of land, interest in land,  
78 buildings, structures, facilities, or other improvements and the acquisition, installation,  
79 modification, renovation, repair, extension, renewal, replacement, rehabilitation, or  
80 furnishing of fixtures, machinery, equipment, furniture, or other property of any nature  
81 whatsoever used on, in, or in connection with any such land, interest in land, building,  
82 structure, facility, or other improvement, all for the essential public purpose of providing  
83 educational facilities.

84 (6) 'Qualified charter school organization' shall have the same meaning as set forth in  
85 Code Section 20-2-2095.1.

86 (7) 'Renovation' or 'modernization' or both refers to construction projects which consist  
87 of the installation or replacement of major building components including lighting,  
88 heating, air-conditioning, plumbing, roofing, electrical, electronic, or flooring systems;  
89 millwork; cabinet work and fixed equipment; energy retrofit packages; or room-size  
90 modifications within an existing facility, but excluding routine maintenance and repair  
91 items or operations.

92 20-2-2095.21.  
93 (a) There is created a body corporate and politic to be known as the Georgia Charter  
94 School Facilities Authority which shall be deemed an instrumentality of the state and a  
95 public corporation; and by that name, style, and title such body may contract and be  
96 contracted with and bring and defend actions in all courts of this state. The authority shall  
97 consist of 15 members: the State School Superintendent, ex officio; the chairperson of the  
98 State Board of Education, ex officio; the state property officer, ex officio; the state auditor,  
99 ex officio; the executive director of the State Charter Schools Commission, ex officio; the  
100 director of the Office of Charter School Compliance, ex officio; three members to be  
101 appointed by the Governor; three members to be appointed by the President of the Senate;  
102 and three members to be appointed by the Speaker of the House of Representatives. The  
103 Governor, the President of the Senate, and the Speaker of the House of Representatives  
104 shall each appoint one member to serve until July 1, 2028, and two members to serve until  
105 July 1, 2030. Upon the expiration of each such initial terms, the terms of all succeeding  
106 members shall be for four years.  
107 (b) A majority of the members of the authority shall constitute a quorum. No vacancy on  
108 the authority shall impair the right of a majority of the appointed members from exercising  
109 all rights and performing all duties of the authority.  
110 (c) The members of the authority shall be accountable in all respects as trustees. The  
111 authority shall keep suitable books and records of all actions and transactions and shall  
112 submit such books together with a statement of the authority's financial position to an  
113 independent auditing firm selected by the authority on or about the close of the state's fiscal  
114 year for the purpose of obtaining a certified audit of the authority's finances.  
115 (d) The authority shall make rules and regulations for its own government. The authority  
116 shall have perpetual existence. Any change in the name or composition of the authority  
117 shall in no way affect the vested rights of any person under this part or impair the  
118 obligations of any contracts existing under this part.

119 (e) The Attorney General shall provide legal services for the authority and in connection  
120 therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

121 (f) The members of the commission shall not be compensated for their services on the  
122 commission but may be reimbursed for per diem and travel expenses in the same manner  
123 as provided for in Code Section 45-7-21.

124 (g) Until such time as proceeds generated from the issuance of notes are adequate to cover  
125 the personnel and operational costs of the authority, the authority may withhold up to 5  
126 percent of the authority's total appropriation to cover personnel and operational costs.

127 (h) The authority is assigned to the Georgia State Financing and Investment Commission  
128 for administrative purposes, which shall include providing .the authority with facilities,  
129 office space, telephones, furniture, office equipment, supplies, and such personnel as may  
130 be considered necessary to the proper functioning of the authority.

131 20-2-2095.22.

132 (a) The corporate purpose and the general nature of the business of the authority shall be  
133 assistance in constructing, extending, rehabilitating, repairing, replacing, and renewing  
134 educational facilities necessary for educational purposes or necessary or incidental to such  
135 purposes by providing loans and other forms of financial and technical assistance to  
136 qualified charter school organizations to finance any project or pay the cost of any project.

137 (b) The authority shall have power:

138 (1) To have a seal and alter the same at its pleasure;

139 (2) To adopt bylaws governing the conduct of business by the authority, the election and  
140 duties of officers of the authority, and other matters which the authority determines to  
141 deal with in its bylaws;

142 (3) To designate three or more of its number to constitute an executive committee who,  
143 to the extent provided in such resolution or in the bylaws of the authority, shall have and

144 may exercise the powers of the authority in the management of the affairs and property  
145 of the authority and the exercise of its powers;

146 (4) To make and execute contracts, lease agreements, and all other instruments necessary  
147 or convenient to exercise the powers of the authority or to further the public purpose for  
148 which the authority is created, such contracts, leases, or instruments to include contracts  
149 for construction, operation, management, or maintenance of projects and facilities owned  
150 by a charter school organization, a local government, the authority, or by the state or any  
151 state authority; and any and all local governments, departments, institutions, authorities,  
152 or agencies of the state are authorized to enter into contracts, leases, agreements, or other  
153 instruments with the authority upon such terms and to transfer real and personal property  
154 to the authority for such consideration and for such purposes as the authority deems  
155 advisable;

156 (5) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or  
157 personal property of every kind and character, or any interest therein, in furtherance of  
158 the public purpose of the authority;

159 (6) To make loans to qualified charter school organizations to finance projects and to pay  
160 the cost of any project by qualified charter school organizations and to adopt rules,  
161 regulations, and procedures for making such loans, including to fund a revolving loan  
162 fund;

163 (7) To make loans to any qualified charter school organization for the cost or expense  
164 of any project or any part of the cost or expense of any project, which loans may be  
165 evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to  
166 secure debt, trust deeds, security agreements, or assignments, on such terms and  
167 conditions as the authority shall determine to be reasonable in connection with such  
168 loans, including provision for the establishment and maintenance of reserve funds; and,  
169 in the exercise of powers granted by this part in connection with any project, the authority  
170 shall have the right and power to require the inclusion in any such trust indentures, loan

171 agreement, note, mortgage, deed to secure debt, trust deed, security agreement,  
172 assignment, or other instrument such provisions or requirements for guaranty of any  
173 obligations, insurance, construction, use, operation, maintenance, and financing of a  
174 project and such other terms and conditions as the authority may deem necessary or  
175 desirable;

176 (8) To finance projects by loan, loan guarantee, lease, or otherwise, and to pay the cost  
177 of any project from any funds of the authority or from any contributions or loans by  
178 persons, corporations, partnerships, whether limited or general, or other entities, all of  
179 which the authority is authorized to receive, accept, and use;

180 (9) To collect fees and charges in connection with its loans, loan guarantees,  
181 commitments, management services, and servicing including, but not limited to,  
182 reimbursements of costs of financing, as the authority shall determine to be reasonable  
183 and as shall be approved by the authority;

184 (10) To lease to qualified charter school organizations any authority owned facilities or  
185 property or any state owned facilities or property which the authority is managing under  
186 contract with the state;

187 (11) To acquire or contract to acquire from any person, firm, corporation, local  
188 government, federal or state agency, or corporation by grant, purchase, or otherwise,  
189 leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange,  
190 transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and  
191 qualified charter school organization is authorized to grant, sell, or otherwise alienate  
192 leaseholds, real and personal property, or any interest therein to the authority;

193 (12) To apply for and to accept any gifts or grants or loan guarantees or loans of funds  
194 or property or financial or other aid in any form from the federal government or any  
195 agency or instrumentality thereof, or from the state or any agency or instrumentality  
196 thereof, or from any other source for any or all of the purposes specified in this part and  
197 to comply, subject to the provisions of this part, with the terms and conditions thereof;

198 (13) To contract with state agencies or any qualified charter school organization for the  
199 use by the authority of any property or facilities or services of the state or any such state  
200 qualified charter school organization or for the use by any state agency or qualified  
201 charter school organization of any facilities or services of the authority and such state  
202 agencies and qualified charter school organizations are authorized to enter into such  
203 contracts;

204 (14) As security for repayment of any obligations of the authority, to pledge, lease,  
205 mortgage, convey, assign, hypothecate, or otherwise encumber any property of the  
206 authority including, but not limited to, real property, fixtures, personal property, and other  
207 assets and to execute any lease, trust indenture, trust agreement, agreement for the sale  
208 of the authority's obligations, loan agreement, mortgage, deed to secure debt, trust deed,  
209 security agreement, assignment, or other agreement or instrument as may be necessary  
210 or desirable, in the judgment of the authority, to secure any such obligations, which  
211 instruments or agreements may provide for foreclosure or forced sale of any property of  
212 the authority upon default in any obligation of the authority, either in payment of  
213 principal, premium, if any, or interest or in the performance of any term or condition  
214 contained in any such agreement or instrument;

215 (15) To use income earned on any investment for such corporate purposes of the  
216 authority as the authority in its discretion shall determine;

217 (16) To incorporate one or more nonprofit corporations as subsidiary corporations of the  
218 authority for the purpose of carrying out any of the powers of the authority and to  
219 accomplish any of the purposes of the authority. Any such subsidiary corporation shall  
220 be a nonprofit corporation, a public body corporate and politic, a political subdivision of  
221 the state, and an instrumentality of the state and shall exercise essential governmental  
222 functions. Any subsidiary corporations created pursuant to this power shall be created  
223 pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the  
224 Secretary of State shall be authorized to accept such filings. Upon dissolution of any

225 subsidiary corporation of the authority, any assets shall revert to the authority or to any  
226 successor to the authority or, failing such succession, to the State of Georgia. The  
227 authority shall not be liable for the debts or obligations of any subsidiary corporation or  
228 for the actions or omissions to act of any subsidiary corporation unless the authority  
229 expressly so consents;

230 (17) To cooperate and act in conjunction with educational organizations; with agencies  
231 of the federal government and this state and local government; with other states and their  
232 political subdivisions; and with joint agencies thereof, and such state agencies, local  
233 government, and joint agencies are authorized and empowered to cooperate and act in  
234 conjunction and to enter into contracts or agreements with the authority and qualified  
235 charter school organizations to achieve or further the policies of the state declared in this  
236 part;

237 (18) To procure insurance against any loss in connection with its property and other  
238 assets or obligations or to establish cash reserves to enable it to act as self-insurer against  
239 any and all such losses;

240 (19) To lend any of the securities of the type described in this subsection;

241 (20) To transfer to the state any funds of the authority determined by the authority to be  
242 in excess of those needed for its corporate purposes;

243 (21) To make loan commitments and loans to qualified charter school organizations for  
244 educational facilities projects;

245 (22) To exercise any power granted by the laws of this state to public or private  
246 corporations which is not in conflict with the public purpose of the authority;

247 (23) To do all things necessary or convenient to carry out the powers conferred by this  
248 part; and

249 (24) To promulgate and adopt rules and regulations to carry out the purposes of this part.

250 (c) The authority shall not have the power of eminent domain.

251 20-2-2095.23.

252 (a) The authority may make loans to a qualified charter school organization to pay all or  
253 any part of the cost of:

254 (1) A project, up to a maximum of the lesser of 20 percent of the project total or \$2  
255 million, except as provided for in paragraph (2) of this subsection; and

256 (2) A renovation or modernization project, up to a maximum of \$200,000.00.

257 (b) The authority shall not enter into any loan or loan commitment with a qualified charter  
258 school organization for a term that exceeds the earlier of the expiration date of such  
259 qualified charter school organization's current charter agreement with the State Board of  
260 Education or five years.

261 (c) The authority and a qualified charter school organization may enter into such loan or  
262 other loan commitments as may be determined appropriate by the authority.

263 (d) The authority may require as a condition of any loan to a qualified charter school  
264 organization that such qualified charter school organization shall perform any or all of the  
265 following:

266 (1) Create and maintain a special fund or funds as additional security for the payment of  
267 any amounts becoming due under any agreement as shall be sufficient to make such  
268 payment as the same shall become due and payable;

269 (2) Create and maintain such other special funds as may be required by the authority; and

270 (3) Such other acts, including the conveyance of real and personal property together with  
271 all right, title, or interest therein to the authority, as may be deemed necessary or desirable  
272 by the authority to secure the payment of the principal of and interest on notes or  
273 obligations and to provide for the remedies of the authority in the event of any default by  
274 such qualified charter school organization in such payment.

275 (e) All qualified charter school organizations are authorized to perform such acts, take  
276 such action, adopt such proceedings, and make and carry out such contracts with the  
277 authority as may be contemplated by this part.

278 (f) In connection with the making of any loan authorized by this part, the authority may  
279 fix and collect such fees and charges, including, but not limited to, the reimbursement of  
280 all costs of financing by the authority, as the authority shall determine to be reasonable.

281 20-2-2095.24.

282 (a) For the purposes of this Code section, the term 'lease agreement' means and includes  
283 a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease  
284 agreement having a term of not more than 50 years and concerning real, personal, or mixed  
285 property, any right, title, or interest therein by and between the state, the authority, a  
286 qualified charter school organization, or any combination thereof.

287 (b) A qualified charter school organization may enter into a lease agreement for the  
288 provision of educational facilities owned by the authority upon such terms and conditions  
289 as the authority shall determine to be reasonable including, but not limited to, the  
290 reimbursement of all costs of construction and financing and claims arising therefrom.

291 (c) No lease agreement shall be deemed to be a contract subject to any law requiring that  
292 a contract shall be let only after receipt of competitive bids.

293 (d) Any lease agreement may provide for the construction of an educational facility by the  
294 qualified charter school organization as agent for the authority. In such event, all contracts  
295 for such construction shall be let by such qualified charter school organization in  
296 accordance with the provisions of law otherwise applicable to the letting of such contracts  
297 by such qualified charter school organization and with the provisions of state law  
298 pertaining to prevailing wages, labor standards, and working hours. Any such lease  
299 agreement may contain provisions by which such qualified charter school organization  
300 shall indemnify the authority against any and all damages resulting from acts or omissions  
301 to act on the part of such qualified charter school organization or its officers, agents, or  
302 employees in constructing such facility or facilities, in letting any contracts in connection  
303 therewith, or in operating and maintaining the same.

304 (e) Any lease agreement directly between the state or authority and a qualified charter  
305 school organization may contain provisions requiring the qualified charter school  
306 organization to perform any or all of the following:

307 (1) Create and maintain a special fund or funds as additional security for the payment of  
308 any amounts becoming due under any agreement as shall be sufficient to make such  
309 payment as the same shall become due and payable;

310 (2) Create and maintain such other special funds as may be required by the authority; and

311 (3) Such other acts and take such other action as may be deemed necessary and desirable  
312 by the authority to secure the complete and punctual performance by such qualified  
313 charter school organization of such lease agreements and to provide for the remedies of  
314 the authority in the event of a default by such qualified charter school organization in  
315 such payment.

316 20-2-2095.25.

317 Neither the members of the authority nor any officer or employee of the authority acting  
318 on behalf thereof, while acting within the scope of his or her authority, shall be subject to  
319 any liability resulting from:

320 (1) The construction, ownership, maintenance, or operation of any project financed with  
321 the assistance of the authority; or

322 (2) Carrying out any of the powers expressly given in this part.

323 20-2-2095.26.

324 No notice, proceeding, or publication except those required in this part shall be necessary  
325 to the performance of any act authorized in this part; nor shall any such act be subject to  
326 referendum.

327 20-2-2095.27.

328 No obligations of and no indebtedness incurred by the authority shall constitute an  
329 indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of  
330 its agencies; nor shall any act of the authority in any manner constitute or result in the  
331 creation of an indebtedness of the state or its agencies or a cause of action against the state  
332 or its agencies.

333 20-2-2095.28.

334 It is found, determined, and declared that the creation of this authority and the carrying out  
335 of its corporate purposes is in all respects for the benefit of the people of the state and that  
336 the authority is an institution of purely public charity and will be performing an essential  
337 governmental function in the exercise of the power conferred upon it by this part. For such  
338 reasons, the state covenants with the holders from time to time of obligations issued under  
339 this part that the authority shall not be required to pay any taxes or assessments imposed  
340 by the state or any of its counties, municipal corporations, political subdivisions, or taxing  
341 districts upon any property acquired by the authority or under its jurisdiction, control,  
342 possession, or supervision or leased by it to others, or upon its activities in the operation  
343 or maintenance of any such property or on any income derived by the authority in the form  
344 of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that  
345 the notes of the authority, their transfer, and the income therefrom shall at all times be  
346 exempt from taxation within the state. The tax exemption provided in this part shall not  
347 include any exemption from sales and use tax on property purchased by the authority or for  
348 use by the authority.

349 20-2-2095.29.

350 The authority shall have all rights afforded the state by virtue of the Constitution of the  
351 United States, and nothing in this part shall be construed to remove any such rights.

352 20-2-2095.30.

353 This part, being for the welfare of this state and its inhabitants, shall be liberally construed  
 354 to effect the purposes specified in this part.

355 20-2-2095.31.

356 (a) In the event of a failure of any qualified charter school organization to collect and remit  
 357 in full all amounts due to the authority and all amounts due to others which involve the  
 358 authority, on the date such amounts are due under the terms of any note of the qualified  
 359 charter school organization, it shall be the duty of the authority to notify the state treasurer  
 360 who shall withhold all funds of the state and all funds administered by the state and its  
 361 agencies, boards, and instrumentalities allotted to such qualified charter school  
 362 organization until such qualified charter school organization has collected and remitted in  
 363 full all sums due and cured or remedied all defaults on any such note.

364 (b) Nothing contained in this Code section shall mandate the withholding of funds  
 365 allocated to a qualified charter school organization which would violate contracts to which  
 366 the state is a party, the requirements of federal law imposed on the state, or judgments of  
 367 any court binding the state."

368 **SECTION 2.**

369 Article 2 of Chapter 17 of Title 50 of the Official Code of Georgia Annotated, the "Georgia  
 370 State Financing and Investment Commission Act," is amended in Code Section 50-17-22,  
 371 relating to the State Financing and Investment Commission, by revising subsection (a) as  
 372 follows:

373 "(a) **Responsibilities.** Subject to the limitations contained in this article, the commission  
 374 shall be responsible for the issuance of all public debt incurred hereunder, for the proper  
 375 application of the proceeds of such debt to the purposes for which it is incurred, for the  
 376 proper application of an appropriation to the commission for capital outlay to the purpose

377 for which it is appropriated, and for the application and administration of this article;  
378 provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the  
379 issuer thereof, and such proceeds and the application thereof shall be the responsibility of  
380 the issuer. The commission shall also be responsible for the proper disbursement of an  
381 appropriation to it for public school capital outlay, including charter school capital outlay,  
382 and the commission and the State Board of Education will be concurrently responsible for  
383 its proper application. The commission shall be responsible for the issuance of guaranteed  
384 revenue debt, except that bonds themselves evidencing such debt shall be in the name of  
385 the instrumentality of this state issuing the same and shall be issued and executed in  
386 accordance with the laws relative to such instrumentality and the applicable provisions of  
387 this article."

388

**SECTION 3.**

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