

Senate Bill 498

By: Senators Dixon of the 45th, Hickman of the 4th, Kemp of the 38th, Still of the 48th and Halpern of the 39th

AS PASSED SENATE

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

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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 only.

129 20-2-2095.22.

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

135 (b) The authority shall have power:

136 (1) To sue and be sued in all courts of this state, the original jurisdiction and venue of
137 such actions being the Superior Court of Fulton County;

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

139 (3) 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 (4) 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 (5) To appoint an executive director who shall be executive officer and administrative
147 head of the authority. The executive director shall be appointed and serve at the pleasure
148 of the authority. The executive director shall hire officers, agents, and employees,
149 prescribe their duties and qualifications and fix their compensation, and perform such
150 other duties as may be prescribed by the authority. Such officers, agents, and employees
151 shall serve at the pleasure of the executive director;

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

162 (7) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or
163 personal property of every kind and character, or any interest therein, in furtherance of
164 the public purpose of the authority;

165 (8) To make loans to qualified charter school organizations to finance projects and to pay
166 the cost of any project by qualified charter school organizations and to adopt rules,
167 regulations, and procedures for making such loans, including to fund a revolving loan
168 fund;

169 (9) To make loans to any qualified charter school organization for the cost or expense
170 of any project or any part of the cost or expense of any project, which loans may be

171 evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to
172 secure debt, trust deeds, security agreements, or assignments, on such terms and
173 conditions as the authority shall determine to be reasonable in connection with such
174 loans, including provision for the establishment and maintenance of reserve funds; and,
175 in the exercise of powers granted by this part in connection with any project, the authority
176 shall have the right and power to require the inclusion in any such trust indentures, loan
177 agreement, note, mortgage, deed to secure debt, trust deed, security agreement,
178 assignment, or other instrument such provisions or requirements for guaranty of any
179 obligations, insurance, construction, use, operation, maintenance, and financing of a
180 project and such other terms and conditions as the authority may deem necessary or
181 desirable;

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

186 (11) To collect fees and charges in connection with its loans, loan guarantees,
187 commitments, management services, and servicing including, but not limited to,
188 reimbursements of costs of financing, as the authority shall determine to be reasonable
189 and as shall be approved by the authority;

190 (12) To lease to qualified charter school organizations any authority owned facilities or
191 property or any state owned facilities or property which the authority is managing under
192 contract with the state;

193 (13) To provide advisory, technical, consultative, training, educational, and project
194 assistance services to qualified charter school organizations and to enter into contracts
195 with qualified charter school organizations to provide such services. Qualified charter
196 school organizations are authorized to enter into contracts with the authority for such
197 services and to pay for such services as may be provided them;

198 (14) To acquire or contract to acquire from any person, firm, corporation, local
199 government, federal or state agency, or corporation by grant, purchase, or otherwise,
200 leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange,
201 transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and
202 qualified charter school organization is authorized to grant, sell, or otherwise alienate
203 leaseholds, real and personal property, or any interest therein to the authority;

204 (15) To apply for and to accept any gifts or grants or loan guarantees or loans of funds
205 or property or financial or other aid in any form from the federal government or any
206 agency or instrumentality thereof, or from the state or any agency or instrumentality
207 thereof, or from any other source for any or all of the purposes specified in this part and
208 to comply, subject to the provisions of this part, with the terms and conditions thereof;

209 (16) To contract with state agencies or any qualified charter school organization for the
210 use by the authority of any property or facilities or services of the state or any such state
211 qualified charter school organization or for the use by any state agency or qualified
212 charter school organization of any facilities or services of the authority and such state
213 agencies and qualified charter school organizations are authorized to enter into such
214 contracts;

215 (17) As security for repayment of any obligations of the authority, to pledge, lease,
216 mortgage, convey, assign, hypothecate, or otherwise encumber any property of the
217 authority including, but not limited to, real property, fixtures, personal property, and other
218 funds and to execute any lease, trust indenture, trust agreement, agreement for the sale
219 of the authority's obligations, loan agreement, mortgage, deed to secure debt, trust deed,
220 security agreement, assignment, or other agreement or instrument as may be necessary
221 or desirable, in the judgment of the authority, to secure any such obligations, which
222 instruments or agreements may provide for foreclosure or forced sale of any property of
223 the authority upon default in any obligation of the authority, either in payment of

224 principal, premium, if any, or interest or in the performance of any term or condition
225 contained in any such agreement or instrument;

226 (18) To use income earned on any investment for such corporate purposes of the
227 authority as the authority in its discretion shall determine;

228 (19) To incorporate one or more nonprofit corporations as subsidiary corporations of the
229 authority for the purpose of carrying out any of the powers of the authority and to
230 accomplish any of the purposes of the authority. Any such subsidiary corporation shall
231 be a nonprofit corporation, a public body corporate and politic, a political subdivision of
232 the state, and an instrumentality of the state and shall exercise essential governmental
233 functions. Any subsidiary corporations created pursuant to this power shall be created
234 pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the
235 Secretary of State shall be authorized to accept such filings. Upon dissolution of any
236 subsidiary corporation of the authority, any assets shall revert to the authority or to any
237 successor to the authority or, failing such succession, to the State of Georgia. The
238 authority shall not be liable for the debts or obligations of any subsidiary corporation or
239 for the actions or omissions to act of any subsidiary corporation unless the authority
240 expressly so consents;

241 (20) To cooperate and act in conjunction with educational organizations; with agencies
242 of the federal government and this state and local government; with other states and their
243 political subdivisions; and with joint agencies thereof, and such state agencies, local
244 government, and joint agencies are authorized and empowered to cooperate and act in
245 conjunction and to enter into contracts or agreements with the authority and qualified
246 charter school organizations to achieve or further the policies of the state declared in this
247 part;

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

- 251 (22) To lend any of the securities of the type described in this subsection;
252 (23) To transfer to the state any funds of the authority determined by the authority to be
253 in excess of those needed for its corporate purposes;
254 (24) To make loan commitments and loans to qualified charter school organizations for
255 educational facilities projects;
256 (25) To exercise any power granted by the laws of this state to public or private
257 corporations which is not in conflict with the public purpose of the authority;
258 (26) To do all things necessary or convenient to carry out the powers conferred by this
259 part; and
260 (27) To promulgate and adopt rules and regulations to carry out the purposes of this part.
261 (c) The authority shall not have the power of eminent domain.

262 20-2-2095.23.

- 263 (a) The authority may make loans to a qualified charter school organization to pay all or
264 any part of the cost of:
265 (1) A project, up to a maximum of the lesser of 20 percent of the project total or \$2
266 million, except as provided for in paragraph (2) of this subsection; and
267 (2) A renovation or modernization project, up to a maximum of \$200,000.00.
268 (b) The authority shall not enter into any loan or loan commitment with a qualified charter
269 school organization for a term that exceeds the earlier of the expiration date of such
270 qualified charter school organization's current charter agreement with the State Board of
271 Education or five years.
272 (c) The authority and a qualified charter school organization may enter into such loan or
273 other loan commitments as may be determined appropriate by the authority.
274 (d) The authority may require as a condition of any loan to a qualified charter school
275 organization that such qualified charter school organization shall perform any or all of the
276 following:

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

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

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

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

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

292 20-2-2095.24.

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

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

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

304 (d) Any lease agreement may provide for the construction of an educational facility by the
305 qualified charter school organization as agent for the authority. In such event, all contracts
306 for such construction shall be let by such qualified charter school organization in
307 accordance with the provisions of law otherwise applicable to the letting of such contracts
308 by such qualified charter school organization and with the provisions of state law
309 pertaining to prevailing wages, labor standards, and working hours. Any such lease
310 agreement may contain provisions by which such qualified charter school organization
311 shall indemnify the authority against any and all damages resulting from acts or omissions
312 to act on the part of such qualified charter school organization or its officers, agents, or
313 employees in constructing such facility or facilities, in letting any contracts in connection
314 therewith, or in operating and maintaining the same.

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

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

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

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

327 20-2-2095.25.

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

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

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

334 20-2-2095.26.

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

338 20-2-2095.27.

339 No obligations of and no indebtedness incurred by the authority shall constitute an
340 indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of
341 its agencies; nor shall any act of the authority in any manner constitute or result in the
342 creation of an indebtedness of the state or its agencies or a cause of action against the state
343 or its agencies.

344 20-2-2095.28.

345 It is found, determined, and declared that the creation of this authority and the carrying out
346 of its corporate purposes is in all respects for the benefit of the people of the state and that
347 the authority is an institution of purely public charity and will be performing an essential
348 governmental function in the exercise of the power conferred upon it by this part. For such
349 reasons, the state covenants with the holders from time to time of obligations issued under
350 this part that the authority shall not be required to pay any taxes or assessments imposed

351 by the state or any of its counties, municipal corporations, political subdivisions, or taxing
352 districts upon any property acquired by the authority or under its jurisdiction, control,
353 possession, or supervision or leased by it to others, or upon its activities in the operation
354 or maintenance of any such property or on any income derived by the authority in the form
355 of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that
356 the notes of the authority, their transfer, and the income therefrom shall at all times be
357 exempt from taxation within the state. The tax exemption provided in this part shall not
358 include any exemption from sales and use tax on property purchased by the authority or for
359 use by the authority.

360 20-2-2095.29.

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

363 20-2-2095.30.

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

366 20-2-2095.31.

367 (a) In the event of a failure of any qualified charter school organization to collect and remit
368 in full all amounts due to the authority and all amounts due to others which involve the
369 authority, on the date such amounts are due under the terms of any note of the qualified
370 charter school organization, it shall be the duty of the authority to notify the state treasurer
371 who shall withhold all funds of the state and all funds administered by the state and its
372 agencies, boards, and instrumentalities allotted to such qualified charter school
373 organization until such qualified charter school organization has collected and remitted in
374 full all sums due and cured or remedied all defaults on any such note.

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

379 **SECTION 2.**

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

384 "(a) **Responsibilities.** Subject to the limitations contained in this article, the commission
385 shall be responsible for the issuance of all public debt incurred hereunder, for the proper
386 application of the proceeds of such debt to the purposes for which it is incurred, for the
387 proper application of an appropriation to the commission for capital outlay to the purpose
388 for which it is appropriated, and for the application and administration of this article;
389 provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the
390 issuer thereof, and such proceeds and the application thereof shall be the responsibility of
391 the issuer. The commission shall also be responsible for the proper disbursement of an
392 appropriation to it for public school capital outlay, including charter school capital outlay,
393 and the commission and the State Board of Education will be concurrently responsible for
394 its proper application. The commission shall be responsible for the issuance of guaranteed
395 revenue debt, except that bonds themselves evidencing such debt shall be in the name of
396 the instrumentality of this state issuing the same and shall be issued and executed in
397 accordance with the laws relative to such instrumentality and the applicable provisions of
398 this article."

399

SECTION 3.

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