

House Bill 122

By: Representatives Hawkins of the 27<sup>th</sup>, Newton of the 127<sup>th</sup>, Hatchett of the 155<sup>th</sup>, Lott of the 131<sup>st</sup>, and Bennett of the 94<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 11 of Chapter 3 of Title 20 and Chapter 9 of Title 30 of the Official Code  
2 of Georgia Annotated, relating to the higher education savings plan and Georgia Achieving  
3 A Better Life Experience (ABLE), respectively, so as to provide for the governance of the  
4 Georgia ABLE program by the board of directors of the Georgia Higher Education Savings  
5 Plan; to revise the composition and chairperson of the board of directors of the Georgia  
6 Higher Education Savings Plan; to remove the maximum amount of contributions currently  
7 allowed per beneficiary; to authorize the board to establish such maximum amount; to  
8 provide for the transfer of rights and obligations; to provide for related matters; to provide  
9 for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 11 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to the  
13 higher education savings plan, is amended by revising subsection (a) of Code Section  
14 20-3-633, relating to creation, board of directors, and assignment to Department of  
15 Administrative Services, as follows:

H. B. 122

- 1 -

16 "(a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate  
17 and politic and an instrumentality of the state, for purposes of establishing and  
18 maintaining the Georgia Higher Education Savings Plan Trust Fund and qualified tuition  
19 programs under Section 529 of the Internal Revenue Code as provided by this article.  
20 The plan shall be governed by a board of directors consisting of ~~the Governor as~~  
21 ~~chairperson~~, the Chancellor of the Board of Regents of the University System of Georgia,  
22 the commissioner of the Technical College System of Georgia, the executive director of  
23 the Georgia Student Finance Commission, the commissioner of behavioral health and  
24 developmental disabilities, the commissioner of community health, the state auditor, the  
25 director of the Office of Planning and Budget, the state revenue commissioner, ~~three the~~  
26 state treasurer, and four directors who shall be appointed by and serve at the pleasure of  
27 the Governor, ~~and the~~ at least one of whom shall be a person with a disability, a family  
28 member of a person with a disability, or a disability advocacy professional. The state  
29 treasurer ~~who~~ shall act as administrative officer of the board. The board shall elect a  
30 chairperson from its membership. The state treasurer shall serve as vice chairperson of  
31 the board. A majority of the board shall constitute a quorum, and the acts of the majority  
32 shall be the acts of the board.

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

40 **SECTION 2.**

41 Said article is further amended by revising paragraph (1) of subsection (b) Code Section  
 42 20-3-634, relating to savings trust accounts, availability, and terms and provisions, as  
 43 follows:

44 "(1) The maximum and minimum contribution allowed on behalf of each beneficiary for  
 45 the payment of qualified higher education expenses at eligible institutions as defined in  
 46 Section 529 of the Internal Revenue Code of 1986 or other applicable federal law;  
 47 provided, however, that no additional contributions may be made to a savings trust  
 48 account when the total account balance for all accounts for the beneficiary equals or  
 49 exceeds ~~\$235,000.00~~ a reasonable maximum amount as determined by the board based  
 50 on current and anticipated education expenses;"

51 **SECTION 3.**

52 Chapter 9 of Title 30 of the Official Code of Georgia Annotated, relating to Georgia  
 53 Achieving A Better Life Experience (ABLE), is amended by revising Code Section 30-9-3,  
 54 relating to definitions, as follows:

55 "30-9-3.

56 As used in this chapter, the term:

57 (1) 'ABLE account' means an account established and owned by an eligible individual  
 58 pursuant to this chapter.

59 (2) 'Board' means the board of directors of the ~~Georgia ABLE Program Corporation~~  
 60 Georgia Higher Education Savings Plan established pursuant to Article 11 of Chapter 3  
 61 of Title 20.

62 (3) 'Corporation' means the Georgia ABLE Program Corporation created pursuant to  
 63 Code Section 30-9-4.

64 (4) 'Designated beneficiary' means the eligible individual who establishes an ABLE  
 65 account or to whom an ABLE account is transferred.

66 (5) 'Eligible individual' means an eligible individual as defined in Section 529A of the  
67 Internal Revenue Code.

68 (6) 'Georgia ABLE program' or 'program' means a qualified ABLE program established  
69 pursuant to this chapter.

70 (7) 'Internal Revenue Code' has the meaning provided in Code Section 48-1-2.

71 (8) 'Participation agreement' means the agreement between the board and an eligible  
72 individual participating in the Georgia ABLE Program Trust Fund or his or her fiduciary.

73 (9) 'Qualified ABLE Program' means a program established pursuant to Section 529A  
74 of the Internal Revenue Code.

75 (10) 'Qualified disability expense' means an expense as defined in Section 529A of the  
76 Internal Revenue Code.

77 (11) 'Trust fund' means the Georgia ABLE Program Trust Fund."

78 **SECTION 4.**

79 Said chapter is further amended by revising Code Section 30-9-4, relating to Georgia ABLE  
80 Program Corporation created, board of directors and its membership, and powers, duties, and  
81 administration, as follows:

82 "30-9-4.

83 (a)(1) There is created the Georgia ABLE Program Corporation, as a body corporate and  
84 politic and an instrumentality of the state, for purposes of establishing and administering  
85 the Georgia ABLE Program. ~~The~~ Prior to the effective date of this Code section, the  
86 corporation shall be governed by a board of directors consisting of the commissioner of  
87 behavioral health and developmental disabilities; the commissioner of community health;  
88 the state auditor; the director of the Office of Planning and Budget; the state revenue  
89 commissioner; the state treasurer; and three directors who shall be appointed by and serve  
90 at the pleasure of the Governor, who shall include at least two persons who are persons  
91 with a disability, a family member of a person with a disability, or a disability advocacy

92 professional; provided, however, that the board of directors of the Georgia ABLE  
93 Program Corporation shall cease to exist on the effective date of this Code section. The  
94 board shall elect a chairperson from its membership. The state treasurer shall act as  
95 administrative officer of the board. A majority of the board shall constitute a quorum,  
96 and the acts of the majority shall be the acts of the board. On and after the effective date  
97 of this Code section, the corporation shall be governed by the board of directors of the  
98 Georgia Higher Education Savings Plan established pursuant to Article 11 of Chapter 3  
99 of Title 20.

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

107 (2)(A) The rights, privileges, entitlements, and duties of parties to contracts, leases,  
108 agreements, and other transactions entered into before the effective date of this Code  
109 section by the board of directors of the Georgia ABLE Program Corporation as it  
110 existed on the day prior to the effective date of this Code section shall continue to exist,  
111 and none of these rights, privileges, entitlements, and duties shall be impaired or  
112 diminished by reason of the transfer of the functions of this chapter to the board of  
113 directors of the Georgia Higher Education Savings Plan. In all such instances, the  
114 board of directors of the Georgia Higher Education Savings Plan shall be substituted  
115 for the board of directors of the Georgia ABLE Program Corporation, and the board of  
116 directors of the Georgia Higher Education Savings Plan shall succeed to all such rights,  
117 privileges, entitlements, and duties under such contracts, leases, agreements, and other  
118 transactions.

119 (B) All rules, orders, and actions adopted pursuant to this chapter by the board of  
120 directors of the Georgia ABLE Program Corporation as it existed on the day prior to  
121 the effective date of this Code section shall remain in full force and effect as rules,  
122 orders, and actions of the board of directors of the Georgia Higher Education Savings  
123 Plan unless amended, repealed, or superseded by rule, order, or action of the board of  
124 directors of the Georgia Higher Education Savings Plan.

125 (C) All property, real and personal; funds; accounts receivable; liabilities; and  
126 obligations of the board of directors of the Georgia ABLE Program Corporation as it  
127 existed on the day prior to the effective date of this Code section shall become the  
128 property, funds, accounts receivable, liabilities, and obligations of the board of directors  
129 of the Georgia Higher Education Savings Plan on the effective date of this Code  
130 section.

131 (b) The board shall have the authority necessary or convenient to carry out the purposes  
132 and provisions of this chapter and the purposes and objectives of the trust fund, including,  
133 but not limited to, the authority to:

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

137 (2) Adopt such rules and regulations as are necessary to implement this chapter, subject  
138 to applicable federal laws and regulations;

139 (3) Contract for necessary goods and services; employ necessary personnel; engage the  
140 services of consultants and other qualified persons and entities for administrative and  
141 technical assistance in carrying out its responsibilities under this chapter; and contract  
142 with state or federal departments or agencies, upon such terms, for such consideration,  
143 and for such purposes as it deems advisable;

144 (4) Solicit and accept gifts, including bequests or other testamentary gifts made by will,  
145 trust, or other disposition grants, loans, and other funds or aid from any endowment or

146 other public or private source or participate in any other way in any federal, state, or local  
 147 governmental program in carrying out the purposes of this chapter;

148 (5) Define the terms and conditions under which payments may be withdrawn or  
 149 refunded from an ABLE account or the trust fund established under this chapter and  
 150 impose reasonable charges for a withdrawal or refund;

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

152 ~~(7) Require and collect fees and charges to cover the reasonable costs of administering~~  
 153 ~~ABLE accounts and impose a 10 percent penalty on the earnings portion included within~~  
 154 ~~a withdrawal of funds for nonqualified disability expenses or for entering into a~~  
 155 ~~participation agreement on a fraudulent basis;~~

156 ~~(8)~~(7) Procure insurance against any loss in connection with the property, assets, and  
 157 activities of the trust fund or the corporation;

158 ~~(9)~~(8) Establish other policies, procedures, and criteria and perform such other acts as  
 159 necessary or appropriate to implement and administer this chapter; and

160 ~~(10)~~(9) Authorize the state treasurer to carry out any or all of the powers and duties  
 161 enumerated in this chapter for efficient and effective administration of the program and  
 162 trust fund.

163 (c) The corporation is assigned to the Department of Administrative Services for  
 164 administrative purposes only."

165 **SECTION 5.**

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

168 **SECTION 6.**

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