

The Senate Committee on Higher Education offered the following substitute to HB 122:

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:

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 and~~
26 four directors who shall be appointed by and serve at the pleasure of the Governor, ~~and~~
27 the at least one of whom shall be a person with a disability, a family member of a person
28 with a disability, or a disability advocacy professional. The state treasurer ~~who~~ shall act
29 as administrative officer of the board. The board shall elect a chairperson from the
30 membership. A majority of the board shall constitute a quorum, and the acts of the
31 majority shall be the acts of the board.

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

39

SECTION 2.

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

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

50

SECTION 3.

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

54 "30-9-3.

55 As used in this chapter, the term:

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

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

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

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

- 65 (5) 'Eligible individual' means an eligible individual as defined in Section 529A of the
 66 Internal Revenue Code.
- 67 (6) 'Georgia ABLE program' or 'program' means a qualified ABLE program established
 68 pursuant to this chapter.
- 69 (7) 'Internal Revenue Code' has the meaning provided in Code Section 48-1-2.
- 70 (8) 'Participation agreement' means the agreement between the board and an eligible
 71 individual participating in the Georgia ABLE Program Trust Fund or his or her fiduciary.
- 72 (9) 'Qualified ABLE Program' means a program established pursuant to Section 529A
 73 of the Internal Revenue Code.
- 74 (10) 'Qualified disability expense' means an expense as defined in Section 529A of the
 75 Internal Revenue Code.
- 76 (11) 'Trust fund' means the Georgia ABLE Program Trust Fund."

77

SECTION 4.

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

81 "30-9-4.

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

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

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

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

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

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

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

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

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

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

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

- 145 other public or private source or participate in any other way in any federal, state, or local
146 governmental program in carrying out the purposes of this chapter;
- 147 (5) Define the terms and conditions under which payments may be withdrawn or
148 refunded from an ABLE account or the trust fund established under this chapter and
149 impose reasonable charges for a withdrawal or refund;
- 150 (6) Regulate the receipt of contributions or payments to the trust fund;
- 151 (7) Require and collect fees and charges to cover the reasonable costs of administering
152 ABLE accounts and impose a 10 percent penalty on the earnings portion included within
153 a withdrawal of funds for nonqualified disability expenses or for entering into a
154 participation agreement on a fraudulent basis;
- 155 (8) Procure insurance against any loss in connection with the property, assets, and
156 activities of the trust fund or the corporation;
- 157 (9) Establish other policies, procedures, and criteria and perform such other acts as
158 necessary or appropriate to implement and administer this chapter; and
- 159 (10) Authorize the state treasurer to carry out any or all of the powers and duties
160 enumerated in this chapter for efficient and effective administration of the program and
161 trust fund.
- 162 (c) The corporation is assigned to the Department of Administrative Services for
163 administrative purposes only."

164 **SECTION 5.**

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

167 **SECTION 6.**

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