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## EDUCATION Postsecondary Education: Amend Provisions Regarding Postsecondary Education; Enact Georgia Higher Education Savings Plan; Provide for a Board of Directors of the Plan and Its Membership, Powers, Duties, and Administration; Provide for a Program of Savings Trust Agreements and Savings Trust Accounts; Provide for a Trust Fund and the Administrations Thereof; Provide for Investment and Management of Trust Funds; Provide a Tax Exemption; Provide for Account Statements; Provide for Effect of Account Deposits on Eligibility for Certain Financial Aid; Provide for Confidentiality and Nondisclosure of Certain

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Computation of Taxable Net Income; Provide for  
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## EDUCATION

***Postsecondary Education: Amend Provisions Regarding Postsecondary Education; Enact Georgia Higher Education Savings Plan; Provide for a Board of Directors of the Plan and Its Membership, Powers, Duties, and Administration; Provide for a Program of Savings Trust Agreements and Savings Trust Accounts; Provide for a Trust Fund and the Administrations Thereof; Provide for Investment and Management of Trust Funds; Provide a Tax Exemption; Provide for Account Statements; Provide for Effect of Account Deposits on Eligibility for Certain Financial Aid; Provide for Confidentiality and Nondisclosure of Certain Records; Amend Tax Provisions Relating to Computation of Taxable Net Income; Provide for Tax Treatment of Withdrawals From Savings Trust Accounts; Amend Certain Definitions for Purposes of the Georgia Administrative Procedure Act so as to Exclude the Georgia Higher Education Savings Plan from the Meaning of "Agency"***

**CODE SECTIONS:** O.C.G.A. §§ 20-3-630 to -642 (new), 48-7-27, 50-13-2 (amended)

**BILL NUMBER:** HB 417

**ACT NUMBER:** 15

**GEORGIA LAWS:** 2001 Ga. Laws 76

**SUMMARY:** The Act, known as the "Georgia Higher Education Savings Plan Act," creates the Georgia Higher Education Savings Plan which operates by way of a program of Trust Agreements and Savings Trust Accounts. The Act provides for the investment and management of the trust funds. The Act provides for a board of directors of the Plan and its membership, powers, duties, and administration. Further, the Act provides for a two thousand dollar tax exemption for qualified contributors to the Plan, amends tax provisions relating to the computation of taxable net income, and provides for tax treatment for withdrawals from the Plan. The Act provides for annual

account statements to each account contributor. The Act provides that the assets in the Plan shall not be considered as assets of the parent, guardian, or student for purposes of determining eligibility for certain financial aid. The Act also provides for the confidentiality of certain records pertaining to the Plan.

EFFECTIVE DATE: March 23, 2001<sup>1</sup>

### *History*

In 1996, the United States Congress enacted Internal Revenue Code section 529, creating “qualified state tuition programs,” which provide for preferential tax treatment of income from state established higher education tuition savings plans that meet certain requirements.<sup>2</sup> In its 2000 session, the Georgia General Assembly considered a bill that would have created a state tuition program under section 529,<sup>3</sup> but after unanimously passing the House,<sup>4</sup> the bill died in the Senate.<sup>5</sup> By the 2001 session of the Georgia General Assembly, forty-eight states had state tuition programs which qualified under section 529 of the Internal Revenue Code.<sup>6</sup> With Governor Roy E. Barnes’ support, this state tuition program bill was introduced in the General Assembly during the 2001 session.<sup>7</sup>

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1. See 2001 Ga. Laws 76, §§ 5-6, at 88. The Act took effect upon approval by the Governor. See *id.*
  2. See Internal Revenue Code, 26 U.S.C. § 529 (1996).
  3. See HB 1189, as introduced, 2000 Ga. Gen. Assem.
  4. See Georgia House of Representatives Voting Record, HB 1189 (Mar. 8, 2000); State of Georgia Final Composite Status Sheet, HB 1189, Mar. 22, 2000.
  5. See James Salzer, *Tuition Tax Breaks Are Shelved*, ATLANTA J. CONST., Mar. 18, 2000, at A1. The bill was not placed on the Senate calendar “after Governor Roy Barnes raised concerns about the potential cost.” *Id.* Rep. Mitchell Kaye of the 37th District introduced a similar bill in the 2000 session of the General Assembly. See *id.*; see also Electronic Mail Interview with Rep. Mitchell Kaye, House District No. 37 (Apr. 16, 2001) [hereinafter Kaye Interview].
  6. See Rep. Mitchell Kaye, Editorial, *Least Attractive in Nation: State’s College Savings Plan Lacking*, ATLANTA J. CONST., Mar. 2, 2001, at A21.
  7. See Electronic Mail Interview with Rep. Charlie Smith, Jr., House District No. 175 (Apr. 16, 2001) [hereinafter Smith Interview].

*HB 417**Introduction*

Representatives Charlie Smith, Jr., Louise McBee, Henrietta E. Turnquest, Winfred J. Dukes, DuBose Porter, and Jeanette Jamieson of the 175th, 88th, 73rd, 161st, 143rd, and 22nd Districts, respectively, sponsored the bill.<sup>8</sup> Representative Smith introduced the bill on the House floor on February 7, 2001.<sup>9</sup> The House assigned the bill to its Higher Education Committee, which favorably reported the bill as substituted.<sup>10</sup> The House adopted the Committee substitute and unanimously passed the bill on February 20, 2001.<sup>11</sup> On February 21, 2001, the Senate assigned the bill to its own Higher Education Committee, which created its own substitute and favorably reported the bill on March 1, 2001.<sup>12</sup> The Senate adopted the Committee substitute, adopted a floor amendment, and unanimously passed the bill on March 12, 2001.<sup>13</sup> The bill returned to the House on March 14, 2001, and the House agreed with the Senate substitute.<sup>14</sup> The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 417 into law on March 23, 2001.<sup>15</sup>

*Consideration by the House Higher Education Committee*

After introduction, the House assigned the bill to its Higher Education Committee.<sup>16</sup> The Committee favorably reported the bill, as substituted, on February 15, 2001.<sup>17</sup> The Higher Education Committee substitute added language in Code section 20-3-632 which provided that residents and nonresidents alike may be both the account contributor and the

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8. See HB 417, as introduced, 2001 Ga. Gen. Assem.

9. See State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

10. See *id.*

11. See Georgia House of Representatives Voting Record, HB 417 (Feb. 20, 2001); State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

12. See State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

13. See Georgia Senate Voting Record, HB 417 (Mar. 12, 2001); State of Georgia Final Composite Status Sheet, HB 417 (Mar. 21, 2001); see also Audio Recording of Senate Proceedings, Mar. 12, 2001 (vote on amendments), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

14. See Georgia House of Representatives Voting Record, HB 417 (Mar. 14, 2001); State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

15. See 2001 Ga. Laws 76, § 6, at 88.

16. See State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

17. See *id.*

designated beneficiary of the account.<sup>18</sup> The substitute also added language to Code section 20-3-633, which clarified that the ten percent penalty on the withdrawal of funds for unqualified purposes would apply only to the earnings on deposited amounts.<sup>19</sup> Further, the substitute added language to Code section 20-3-633, which gave the Board of Directors of the Georgia Higher Education Savings Plan the power to make public marketing contractors' proposals regarding the plan before the materials are approved by the Board.<sup>20</sup>

The Committee substitute amended language in Code section 20-3-634, to provide for an \$8000 cap on total annual contributions and additional catch-up contributions, an increase from the previous \$6000 figure.<sup>21</sup> The substitute added language to Code section 20-3-634 clarifying that the ten percent penalty on unqualified withdrawals pertained to the earnings portion of the account, and further clarifying that the earnings are ineligible for qualified withdrawal until three years after the account is opened.<sup>22</sup> The substitute omitted language from Code section 20-3-634, which required that all account funds be withdrawn or rolled over to another beneficiary within five years of the first qualified withdrawal, lest the remaining funds be returned and taxed to the account contributor.<sup>23</sup>

The Higher Education Committee substitute also added language to Code section 20-3-636 to provide for an inception date of January 1, 2002, for contributions that would count toward the \$2000 deduction.<sup>24</sup> The Committee also added language limiting the deduction to a total of \$2000 if the parents or guardians contributing to the plan filed separate returns.<sup>25</sup> Further, the Committee amended Code section 20-3-636 to raise the income limit for those able to take the deduction before phase-

18. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

19. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

20. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

21. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

22. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

23. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

24. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

25. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

out starts from \$75,000 if the taxpayer files as head of household or is married filing jointly, and \$37,500 for single filers up to a limit of \$100,000 and \$50,000, respectively.<sup>26</sup> In addition, the Committee substitute added language to Code section 20-3-636 to provide for a method of calculating the earnings portion of unqualified withdrawals, which would be added to the account contributor's taxable net income.<sup>27</sup> The substitute also excluded language from Code section 20-3-637, which provided that the limitations set forth in the Code section should not require the liquidation of any investment at any time and that the limitations should be applicable only at the time of purchase.<sup>28</sup>

*From the House Committee on Higher Education to the House Floor*

The House considered several floor amendments before adopting the Committee substitute and passing the bill on February 20, 2001.<sup>29</sup> The first proposed amendment, by Representative Mitchell Kaye of the 37th District, would have provided the \$2000 deduction for taxpayers who choose not to itemize deductions,<sup>30</sup> but the proposed amendment failed by a vote of 74 to 96.<sup>31</sup> The second proposed amendment to the Committee substitute, also by Representative Kaye, would have provided for status as a spend-thrift trust,<sup>32</sup> but this proposed amendment also failed.<sup>33</sup> The House then failed to pass Representative Kaye's third proposed amendment, which would have eliminated the \$8000 cap on annual contributions.<sup>34</sup> Representative Kaye's fourth

26. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

27. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

28. Compare HB 417, as introduced, 2001 Ga. Gen. Assem., with HB 417 (HCS), 2001 Ga. Gen. Assem.

29. See Audio Recording of House Proceedings, Feb. 20, 2001 (vote on amendments), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

30. See First Failed House Floor Amendment to HB 417, introduced by Rep. Mitchell Kaye, Feb. 20, 2001; House Audio, *supra* note 29 (remarks by Rep. Mitchell Kaye and vote on amendment). Rep. Kaye pointed out that without this amendment, the sixty percent of Georgians who do not itemize would be unable to take this deduction. See House Audio, *supra* note 29 (remarks by Rep. Mitchell Kaye).

31. See Georgia House of Representatives Voting Record, HB 417 (Feb. 20, 2001).

32. Spend-thrift trust status would protect certain assets in the accounts from bankrupt contributors' creditors. See Second Failed House Floor Amendment to HB 417, introduced by Rep. Mitchell Kaye, Feb. 20, 2001; House Audio, *supra* note 29 (remarks by Rep. Mitchell Kaye).

33. See House Audio, *supra* note 29 (remarks by Rep. Mitchell Kaye and vote on amendment).

34. See Third Failed House Floor Amendment to HB 417, introduced by Rep. Mitchell Kaye, Feb. 20, 2001; House Audio, *supra* note 29 (remarks by Rep. Mitchell Kaye and vote on amendment). The proposed

proposed amendment, which also failed, would have provided for status as a spend-thrift trust for account protection from bankruptcy of the account contributor, but would have excepted contributions for the most recent two years from such protection.<sup>35</sup>

The House then considered, but failed to pass, a fifth proposed amendment by Representative Fran Millar of the 59th District which would have removed the income limitation on the \$2000 deduction.<sup>36</sup> Next, the House failed to pass a sixth amendment, proposed by Representative Ginger Collins of the 29th District, which would have allowed the deduction for all Georgians, whether they itemize or not.<sup>37</sup> Finally, the House considered, but refused to pass, a seventh amendment, proposed by Representative Gene Callaway of the 81st District, which would have provided that the three directors who were to be appointed by the Governor would require confirmation by the Senate.<sup>38</sup> After considering the numerous amendments, the House passed HB 417 without change on February 20, 2001.<sup>39</sup> The bill was referred to the Senate Higher Education Committee on February 21, 2001.<sup>40</sup>

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amendment eliminating the \$8000 annual contribution cap failed by a vote of 70 to 100. *See Georgia House of Representatives Voting Record*, HB 417 (Mar. 12, 2001). During floor debate, Rep. Mitchell Kaye noted that with the annual contributions cap, Georgia would be the only state to so limit annual contributions. *See House Audio, supra* note 29 (remarks by Rep. Mitchell Kaye); *see also* Representative Mitchell Kaye, Editorial, *Least Attractive in Nation: State's College Savings Plan Lacking*, ATLANTA J. CONST., Mar. 2, 2001, at A21. Rep. Kaye also suggested that with such a cap, Georgia investors would avail themselves of other states' contribution plans which have no annual contributions cap. *See House Audio, supra* note 29 (remarks by Rep. Mitchell Kaye). Representatives' concerns over the Plan's fiscal impact, coupled with the opportunity to revisit the issue in future years, gave rise to the \$8000 annual contribution cap. *See House Audio, supra* note 29 (remarks by Rep. DuBose Porter).

35. *See* Fourth Failed House Floor Amendment to HB 417, introduced by Rep. Mitchell Kaye, Feb. 20, 2001; *House Audio, supra* note 29 (remarks by Rep. Mitchell Kaye and vote on amendment).

36. *See* Failed House Floor Amendment to HB 417, introduced by Rep. Fran Millar, Feb. 20, 2001; *House Audio, supra* note 29 (remarks by Rep. Fran Millar and vote on amendment).

37. *See* Failed House Floor Amendment to HB 417, introduced by Rep. Ginger Collins, Feb. 20, 2001; *House Audio, supra* note 29 (remarks by Rep. Ginger Collins and vote on amendment). This proposed amendment was substantially the same as the first proposed amendment. *See House Audio, supra* note 29 (remarks by Rep. Ginger Collins and vote on amendment).

38. *See* Failed House Floor Amendment to HB 417, introduced by Rep. Gene Callaway, Feb. 20, 2001; *House Audio, supra* note 29 (remarks by Rep. Gene Callaway and vote on amendment).

39. *See Georgia House of Representatives Voting Record*, HB 417 (Feb. 20, 2001); *State of Georgia Final Composite Status Sheet*, HB 417, Mar. 21, 2001.

40. *See State of Georgia Final Composite Status Sheet*, HB 417, Mar. 21, 2001.



*Consideration by the Senate Higher Education Committee*

The Senate Higher Education Committee favorably reported HB 417, as substituted, on March 1, 2001.<sup>41</sup> The Higher Education Committee changed language in Code section 20-2-631 to name the created trust fund the Georgia Higher Education Savings Plan (“the Plan”).<sup>42</sup> The Committee amended Code section 20-3-632 by adding a definition for “program”<sup>43</sup> and deleting a definition for “tuition.”<sup>44</sup>

The Committee substitute added language to Code section 20-3-633, which provided for the creation of the Plan, as an instrumentality of the state and as a corporate and political body.<sup>45</sup> Further, the substitute added language to Code section 20-3-633 to provide that members of the Board who are state officials or employees would not be paid for their services on the Board, but could be reimbursed for expenses incurred through their Board membership.<sup>46</sup> The Committee also changed language in Code section 20-3-633 to provide that Board members who are not state officials or employees should receive a daily expense allowance.<sup>47</sup> The Committee substitute also added language to Code section 20-3-633 which gave the Board authority to have a seal, to bring and defend actions, to enter into contracts necessary to carry out its power, and to make and amend bylaws.<sup>48</sup>

The Senate Higher Education Committee also added language to Code section 20-3-633 requiring written confirmation under oath for certain requests.<sup>49</sup> The substitute clarified language in Code section 20-3-633 to provide that the responsibility for administration of the plan should be delegated to a financial organization.<sup>50</sup> Further, the Committee added language to Code section 20-3-633, which gave the Board authority to perform additional activities necessary to carry out its duties.<sup>51</sup> The Committee substitute added language to Code section 20-

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41. *See id.*

42. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

43. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

44. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

45. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

46. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

47. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

48. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

49. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

50. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

51. *Compare* HB 417 (HCS), 2001 Ga. Gen. Assem., *with* HB 417 (SCS), 2001 Ga. Gen. Assem.

3-634 providing that the ten percent penalty on unqualified withdrawals would not be assessed for withdrawals after the beneficiary's death.<sup>52</sup>

The Senate Higher Education Committee altered Code section 20-3-636 by adding language to provide that the fund's property and income would only be taxable by the state under Code section 48-7-27 and not by other state political subdivisions.<sup>53</sup> Further, the Committee moved language from Code section 20-3-636 to create a new section 2 of the bill, which amended Code section 48-7-27 to provide for the \$2000 tax deduction afforded by the Plan.<sup>54</sup> The substitute also moved language from Code section 20-3-636 to create a new section 3 of the bill, which further amended Code section 48-7-27 to provide for tax-free qualified withdrawals from the savings accounts and taxation of unqualified withdrawals from the savings accounts.<sup>55</sup>

The Committee substitute added the words "financial organizations" in Code section 20-3-637 to specifically provide that the Board may use these entities' services in carrying out the administrative responsibilities of the program.<sup>56</sup>

The Committee substitute created a new Code section 20-3-642 to provide that certain records resulting from the Plan would not constitute public records.<sup>57</sup> Further, the Committee substitute created a new section 4 of the bill which amended Code section 50-13-2, relating to the Georgia Administrative Procedure Act, by adding the Plan to the meaning of "Agency" defined therein.<sup>58</sup> The Committee favorably reported the bill on March 1, 2001.<sup>59</sup>

### *Senate Passage and Floor Amendment*

The Senate adopted the Committee's version of the bill and passed HB 417 with a floor amendment, on March 12, 2001.<sup>60</sup> The Senate adopted an amendment by Senator Steve Thompson of the 33rd District, which altered Code section 48-7-27 relating to the computation of net

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52. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

53. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

54. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

55. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

56. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

57. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

58. Compare HB 417 (HCS), 2001 Ga. Gen. Assem., with HB 417 (SCS), 2001 Ga. Gen. Assem.

59. See State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

60. See Georgia Senate Voting Record, HB 417 (Mar. 12, 2001); State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001; Senate Audio, *supra* note 13 (remarks by President Mark Taylor and vote on amendments).

taxable income, to clarify that the \$2000 deduction under the Plan would be available per beneficiary.<sup>61</sup> The Senate considered, but failed to pass, an amendment proposed by Senator Sonny Perdue of the 18th District which would have removed the income limits on the availability of the income tax deduction.<sup>62</sup> After adopting the new language and passing the bill, the Senate sent HB 417 back to the House for consideration.<sup>63</sup>

### *House Agreement and Failed Floor Amendment*

The House agreed to the Senate version of the bill on March 14, 2001.<sup>64</sup> Representative Mitchell Kaye of the 37th District unsuccessfully proposed a floor amendment which would have eliminated both the contribution cap and the requirement that a taxpayer itemize in order to get the \$2000 deduction, but would have allowed the income cap on those to whom the deduction would be available.<sup>65</sup> Governor Roy Barnes signed the bill into law on March 23, 2001.<sup>66</sup>

### *The Act*

Section 1 states that the Act amends Title 20 of the Code by adding a new Article 11, which creates new Code sections 20-3-630 to -642.<sup>67</sup> New Code section 20-3-630 entitles the new article the "Georgia Higher Education Savings Plan Act."<sup>68</sup> Section 20-3-631 states that the purposes of the article are to provide a savings trust agreement program

61. See Senate Audio, *supra* note 13 (remarks by Sen. Steve Thompson and vote on amendment). Compare HB 417 (SCS), 2001 Ga. Gen. Assem., with HB 417 (SCSFA), 2001 Ga. Gen. Assem.

62. See Failed Senate Floor Amendment to HB 417, introduced by Sen. Sonny Perdue, Mar. 12, 2001; Senate Audio, *supra* note 13 (remarks by Sen. Sonny Perdue and vote on the proposed amendment).

63. See State of Georgia Final Composite Status Sheet, HB 417, Mar. 21, 2001.

64. See *id.*

65. See Failed House Floor Amendment to HB 417, introduced by Rep. Mitchell Kaye, Mar. 14, 2001; Audio Recording of House Proceedings, Mar. 14, 2001 (remarks by Rep. Mitchell Kaye and vote on proposed amendment), at <http://www.state.ga.us/services/leg/audio/2001archive.html>. Rep. Kaye again debated that the annual contribution limit would cause Georgians to invest in section 529 plans offered in other states, and that limiting the Plan's deduction to those who itemize would exclude sixty percent of the least wealthy Georgians who would most benefit from the plan. See Audio Recordings of House proceedings, Mar. 14, 2001, *supra* (remarks by Rep. Mitchell Kaye). Rep. Charlie Smith responded that an amendment to include those who do not itemize would be unnecessary and probably meaningless. See *id.* (remarks by Rep. Charlie Smith). Also, Rep. Porter pointed out that the issue could be revisited next year, and that the proposed amendment was unwise without information on its fiscal impact. See *id.* (remarks by Rep. DuBose Porter).

66. See 2001 Ga. Laws 76, § 6, at 88.

67. See O.C.G.A. §§ 20-3-630 to -642 (2001).

68. See *id.* § 20-3-630.

under section 529 of the Internal Revenue Code; to provide for creation of the Georgia Higher Education Savings Plan; to encourage planning for higher education; to provide a savings plan for persons who want to save for higher education, including postgraduate studies; and to “[a]ttract students to institutions of higher education within the state.”<sup>69</sup> New Code section 20-3-632 defines terms used in the new article.<sup>70</sup>

Section 20-3-633 of the Act creates the Plan as an instrumentality of the state in order to establish the Georgia Higher Education Savings Plan Trust Fund (“the Trust Fund”).<sup>71</sup> The section further provides for a board of directors to administer the Plan, provides for Board member compensation, provides for the scope of the Board’s authority, and assigns the Plan to the Department of Administrative Services for administrative purposes.<sup>72</sup>

The Act creates new Code section 20-3-634, which requires that the Plan make savings trust agreements available to the public, both residents and non-residents of Georgia, and that contributors to these plans may contribute on behalf of qualified beneficiaries up to an annual account limit of \$8000, and a lifetime account limit of \$120,000.<sup>73</sup> Section 20-3-634 also provides for the assessment of administrative fees on the account, provides for a ten percent penalty on earnings included in unqualified withdrawals, and provides for conditions by which a beneficiary may be substituted.<sup>74</sup>

Section 20-3-635 of the Act provides for the creation and administration of the Trust Fund as a separate fund in the state treasury.<sup>75</sup> Further, the Act creates new Code section 20-3-636, which provides that property and income in the Trust Fund will be taxable by the state under Code section 48-7-27 and will not be taxed by any state subdivisions.<sup>76</sup>

New Code section 20-3-637 of the Act provides authority and criteria for the Board to set up an investment plan to invest the funds of the

69. *See id.* § 20-3-631.

70. *See id.* § 20-3-632.

71. *See id.* § 20-3-633.

72. *See id.*

73. *See id.* § 20-3-634. An additional contribution of \$8000 per year for three years may be contributed for any child aged ten years or older at the time the Board makes the savings trust agreements publicly available. *See id.*

74. *See id.* The ten percent penalty does not apply for unqualified withdrawals upon the death of the beneficiary. *See id.*

75. *See id.* § 20-3-635.

76. *See id.* § 20-3-636.

Trust Fund.<sup>77</sup> The Act, in new Code section 20-3-638, provides that the Board will issue annual statements to each contributor and an annual report to the Governor, President of the Senate, and Speaker of the House regarding the Plan.<sup>78</sup>

New Code section 20-3-639 of the Act provides that the Act does not guarantee admission, continued enrollment, or graduation from an institution of higher learning.<sup>79</sup> Further, Code section 20-3-640 provides that the Act does not guarantee that higher education expenses will be completely covered by contributions or earnings in the beneficiary's account and also provides that the savings trust accounts and agreements are not guaranteed by the full faith and credit of the State of Georgia.<sup>80</sup>

New Code section 60-3-641 provides for exclusion of savings trust account funds as assets of the parent, guardian, or student when determining eligibility of need based financial aid.<sup>81</sup> Further, new Code section 20-3-642 provides that certain of the records produced as a result of the Act will not be considered public records.<sup>82</sup>

Section 2 of the Act amends Code section 48-7-27, relating to computation of taxable net income, by adding a new paragraph that provides for a deduction from taxable net income of the amount contributed to a savings trust account up to a maximum of \$2000 per beneficiary for parents or guardians of the beneficiary.<sup>83</sup>

The Act further amends Code section 48-7-27 by adding a new paragraph providing for tax free qualified withdrawals and taxation of unqualified withdrawals from the savings trust accounts.<sup>84</sup>

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77. *See id.* § 20-3-637.

78. *See id.* § 20-3-638. The annual statement to contributors is subject to administrative fees and charges. *See id.* The annual Plan report is also available to account contributors. *See id.*

79. *See id.* § 20-3-639.

80. *See id.* § 20-3-640.

81. *See id.* § 20-3-641.

82. *See id.* § 20-3-642.

83. *Compare* 1998 Ga. Laws 1515, § 1, at 1515 (formerly found at O.C.G.A. § 48-7-27 (Supp. 2000)), with O.C.G.A. § 48-7-27 (Supp. 2001). The deduction is phased out as federal adjusted gross income rises above \$100,000 for a joint return or \$50,000 for a single return. *See* O.C.G.A. § 48-7-27 (Supp. 2001). The deduction decreases at a rate of \$400 per \$1000 of federal adjusted gross income over the threshold amounts. *See id.*

84. *Compare* 1999 Ga. Laws 13, § 2, at 14 (formerly found at O.C.G.A. § 48-7-27 (Supp. 2000)), with O.C.G.A. § 48-7-28 (Supp. 2001).

The Act amends Code section 50-13-2, relating to definitions for purposes of the Georgia Administrative Procedures Act, by adding the Georgia Higher Education Savings Plan to the meaning of "Agency."<sup>85</sup>

*Randy Haston Luffman*

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85. Compare 1999 Ga. Laws 721, § 2, at 724 (formerly found at O.C.G.A. § 50-13-2 (Supp. 2000)), with O.C.G.A. § 50-13-2 (Supp. 2001).