

House Bill 1008 (COMMITTEE SUBSTITUTE)

By: Representatives Hawkins of the 27th, Newton of the 123rd, Dempsey of the 13th, Hatchett of the 150th, Lott of the 122nd, and others

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 provide for the transfer of rights and obligations; to
7 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

15 "(a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate
16 and politic and an instrumentality of the state, for purposes of establishing and

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17 maintaining the Georgia Higher Education Savings Plan Trust Fund and qualified tuition
 18 programs under Section 529 of the Internal Revenue Code as provided by this article.
 19 The plan shall be governed by a board of directors consisting of ~~the Governor as~~
 20 ~~chairperson~~, the Chancellor of the Board of Regents of the University System of Georgia,
 21 the commissioner of the Technical College System of Georgia, the executive director of
 22 the Georgia Student Finance Commission, the commissioner of behavioral health and
 23 developmental disabilities, the commissioner of community health, the state auditor, the
 24 director of the Office of Planning and Budget, the state revenue commissioner, the state
 25 treasurer, and three four directors who shall be appointed by and serve at the pleasure of
 26 the Governor, ~~and the~~ at least one of whom shall be a person with a disability, a family
 27 member of a person with a disability, or a disability advocate. The state treasurer who
 28 shall act as administrative officer of the board. The board shall elect a chairperson from
 29 its membership. The state treasurer shall serve as vice chairperson of the board. A
 30 majority of the board shall constitute a quorum, and the acts of the majority shall be the
 31 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 Chapter 9 of Title 30 of the Official Code of Georgia Annotated, relating to Georgia
 41 Achieving A Better Life Experience (ABLE), is amended by revising Code Section 30-9-3,
 42 relating to definitions, as follows:

43 "30-9-3.

44 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

66

SECTION 3.

67 Said chapter is further amended by revising Code Section 30-9-4, relating to the creation of
68 the Georgia ABLE Program Corporation, board of directors, and membership, powers,
69 duties, and administration, as follows:

70 "30-9-4.

71 (a)(1) There is created the Georgia ABLE Program Corporation, as a body corporate and
72 politic and an instrumentality of the state, for purposes of establishing and administering
73 the Georgia ABLE Program. ~~The~~ Prior to the effective date of this Act, the corporation
74 shall be governed by a board of directors consisting of the commissioner of behavioral
75 health and developmental disabilities; the commissioner of community health; the state
76 auditor; the director of the Office of Planning and Budget; the state revenue
77 commissioner; the state treasurer; and three directors who shall be appointed by and serve
78 at the pleasure of the Governor, who shall include at least two persons who are persons
79 with a disability, a family member of a person with a disability, or a disability advocacy
80 professional; provided, however, that the board of directors of the Georgia ABLE
81 Program Corporation shall cease to exist on the effective date of this Act. ~~The board~~
82 ~~shall elect a chairperson from its membership. The state treasurer shall act as~~
83 ~~administrative officer of the board. A majority of the board shall constitute a quorum,~~
84 ~~and the acts of the majority shall be the acts of the board.~~ On and after the effective date
85 of this Act, the corporation shall be governed by the board of directors of the Georgia
86 Higher Education Savings Plan established pursuant to Article 11 of Chapter 3 of Title
87 20.

88 ~~(2) Members of the board who are state officials or employees shall receive no~~
89 ~~compensation for their service on the board but may be reimbursed for expenses incurred~~
90 ~~by them in the performance of their duties as members of the board. Any members of the~~
91 ~~board who are not state officials or employees shall receive a daily expense allowance in~~
92 ~~the amount specified in subsection (b) of Code Section 45-7-21 for each day such~~

93 ~~member is in attendance at a meeting of the board. Expense allowances and other costs~~
94 ~~authorized in this paragraph shall be paid from moneys in the trust fund.~~

95 (2)(A) The rights, privileges, entitlements, and duties of parties to contracts, leases,
96 agreements, and other transactions entered into before the effective date of this Act by
97 the board of directors of the Georgia ABLE Program Corporation as it existed on the
98 day prior to the effective date of this Act shall continue to exist; and none of these
99 rights, privileges, entitlements, and duties are impaired or diminished by reason of the
100 transfer of the functions of this chapter to the board of directors of the Georgia Higher
101 Education Savings Plan. In all such instances, the board of directors of the Georgia
102 Higher Education Savings Plan shall be substituted for the board of directors of the
103 Georgia ABLE Program Corporation, and the board of directors of the Georgia Higher
104 Education Savings Plan shall succeed to all such rights, privileges, entitlements, and
105 duties under such contracts, leases, agreements, and other transactions.

106 (B) All rules, orders, and actions adopted pursuant to this chapter by the board of
107 directors of the Georgia ABLE Program Corporation as it existed on the day prior to
108 the effective date of this Act shall remain in full force and effect as rules, orders, and
109 actions of the board of directors of the Georgia Higher Education Savings Plan unless
110 amended, repealed, or superseded by rule, order, or action of the board of directors of
111 the Georgia Higher Education Savings Plan.

112 (C) All property, real and personal, funds, accounts receivable, liabilities, and
113 obligations of the board of directors of the Georgia ABLE Program Corporation as it
114 existed on the day prior to the effective date of this Act shall become the property,
115 funds, accounts receivable, liabilities, and obligations of the board of directors of the
116 Georgia Higher Education Savings Plan on the effective date of this Act.

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

- 120 (1) Have a seal and alter the same at its pleasure; bring and defend actions; make,
121 execute, and deliver contracts, conveyances, and other instruments necessary or
122 convenient to the exercise of its powers; and make and amend bylaws;
- 123 (2) Adopt such rules and regulations as are necessary to implement this chapter, subject
124 to applicable federal laws and regulations;
- 125 (3) Contract for necessary goods and services; employ necessary personnel; engage the
126 services of consultants and other qualified persons and entities for administrative and
127 technical assistance in carrying out its responsibilities under this chapter; and contract
128 with state or federal departments or agencies, upon such terms, for such consideration,
129 and for such purposes as it deems advisable;
- 130 (4) Solicit and accept gifts, including bequests or other testamentary gifts made by will,
131 trust, or other disposition grants, loans, and other funds or aid from any endowment or
132 other public or private source or participate in any other way in any federal, state, or local
133 governmental program in carrying out the purposes of this chapter;
- 134 (5) Define the terms and conditions under which payments may be withdrawn or
135 refunded from an ABLE account or the trust fund established under this chapter and
136 impose reasonable charges for a withdrawal or refund;
- 137 (6) Regulate the receipt of contributions or payments to the trust fund;
- 138 ~~(7) Require and collect fees and charges to cover the reasonable costs of administering~~
139 ~~ABLE accounts and impose a 10 percent penalty on the earnings portion included within~~
140 ~~a withdrawal of funds for nonqualified disability expenses or for entering into a~~
141 ~~participation agreement on a fraudulent basis;~~
- 142 ~~(8)~~(7) Procure insurance against any loss in connection with the property, assets, and
143 activities of the trust fund or the corporation;
- 144 ~~(9)~~(8) Establish other policies, procedures, and criteria and perform such other acts as
145 necessary or appropriate to implement and administer this chapter; and

146 ~~(10)~~(9) Authorize the state treasurer to carry out any or all of the powers and duties
147 enumerated in this chapter for efficient and effective administration of the program and
148 trust fund.

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

151 **SECTION 4.**

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

154 **SECTION 5.**

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