

Senate Bill 562

By: Senator Weber of the 40th and Williams of the 19th

AS PASSED

AN ACT

To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to create the Georgia Higher Education Facilities Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; to provide a short title; to define terms; to provide for the members of the authority and their appointment, service, and compensation; to provide for the powers, duties, and operations of the authority; to provide for tax-exempt status of the authority; to provide for legislative oversight; to provide for other related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by adding at the end a new chapter to read as follows:

"CHAPTER 16

20-16-1.

This chapter shall be known and may be cited as the 'Georgia Higher Education Facilities Authority Act.'

20-16-2.

(a) As used in this chapter, the term:

- (1) 'Authority' means the Georgia Higher Education Facilities Authority.
- (2) 'Board of regents' means the Board of Regents of the University System of Georgia.
- (3) 'Board of technical and adult education' means the State Board of Technical and Adult Education.
- (4) 'Bonds' or 'revenue bonds' means any bonds issued by the authority under this chapter, including refunding bonds.

(5) 'Construction' means construction, renovation, improvement, rehabilitation, or restoration.

(6) 'Cost of the project' means the cost of construction; the cost of all lands, real properties, personal properties, fixtures, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural, and legal expenses; cost of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of any project, or the placing of it in operation and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this chapter for such project.

(7) 'Project' means facilities of every kind, type, and character deemed by the authority necessary or convenient for the efficient operation of any unit.

(8) 'Unit' means any institution, school, academy, university, or experiment station at any particular location which forms a part of the university system or is under the control of the board of technical and adult education.

(9) 'University system' means the University System of Georgia.

(b) Any project or combination of projects shall be deemed 'self-liquidating,' if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal of and interest on revenue bonds which may be issued for the cost of such project, projects, or combination of projects.

20-16-3.

(a) There is created a body corporate and politic to be known as the Georgia Higher Education Facilities Authority, which shall be deemed to be an instrumentality of this state and a public corporation; and by that name, style, and title such body may contract and be contracted with, bring and defend actions, and implead and be impleaded. The authority shall consist of five members, as follows: three appointees of the Governor, one appointee of the Speaker of the House of Representatives who is a member of the board of technical and adult education, and one appointee of the President Pro Tempore of the Senate who is

a member of the board of regents. The initial term of office of the Governor's appointees shall end on June 30, 2007. The initial term of office of the Speaker of the House of Representative's appointee shall end on June 30, 2008. The initial term of office of the President Pro Tempore of the Senate's appointee shall end on June 30, 2009. After the expiration of these initial terms of office, the terms of office of all succeeding members shall be for three years. If, at the end of any term of office of any member, a successor thereto has not been appointed, the member whose term of office has expired shall continue to hold office until his or her successor is so appointed.

(b) The authority shall elect one of its members as chairperson and another as vice chairperson and a secretary and treasurer, who need not necessarily be a member of the authority. The majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority, except as otherwise provided in this chapter. The members of the authority shall be entitled to and shall be reimbursed for their reasonable travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority may hire staff or may have staff assigned from within the university system or from the Department of Technical and Adult Education for the purposes of carrying out the duties and responsibilities contained in this chapter, with compensation paid from resources available to the authority or the board of regents or the board of technical and adult education, as such boards and the authority may agree. The authority shall make bylaws for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this chapter or impair the obligations of any contracts existing under this chapter.

(c) The authority is assigned to the Georgia State Financing and Investment Commission for administrative purposes only as prescribed in Code Section 50-4-3.

(d) No member of the authority shall transact any business, as such term is defined in Code Section 45-10-20, with the state, the University System of Georgia or any of its institutions, or the Department of Technical and Adult Education or any of its institutions.

20-16-4.

The authority shall have power:

- (1) To have a seal and alter it at pleasure;

- (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions, and in such manner as it may deem proper, real property or estates for years, usufructs, or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use them so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or dispose of them in any manner it deems to the best advantage of the authority; and if the authority shall deem it expedient to construct or finance any project on lands which are a part of the campus, grounds, or other real estate holdings of a unit, the Governor and the board of regents, as may be applicable, are authorized to execute for and on behalf of the state a lease for the term of the financing, such lease to terminate when the bonds for the project are retired, upon such lands to the authority or to an entity borrowing funds from the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years, provided that such lands shall remain subject to the police power jurisdiction of the board of regents or the board of technical and adult education, as may be applicable;
- (4) To appoint an executive director who shall be the executive officer and administrative head of the authority. The executive director shall be appointed by and shall serve at the pleasure of the members of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the members of this authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;
- (5) To make and execute contracts, leases, rental agreements, and other instruments necessary or convenient to exercise the powers of the authority, including contracts for construction of projects and leases of projects or contracts with respect to the use or operation of projects which the authority causes to be erected or acquired;
- (6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects to be located on property owned by or leased by the authority;
- (7) To extend credit or make loans to any person, firm, corporation, limited liability company, or other type of entity for the planning, design, construction, acquisition, refinancing, or carrying out of any project, which credit or loans shall be secured by loan agreements, deeds to secure debt, security agreements, contracts, and all other

instruments, fees, or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and to require the inclusion in any contract, loan agreement, deed to secure debt, security agreement, or other instrument, of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by deed to secure debt, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, with any such instrument terminating when the bonds for the project are retired, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose;

(10) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of such bonds and for the rights of the holders thereof;

(11) To borrow money for any of its corporate purposes, on either an unsecured or secured basis, and to execute loan agreements, promissory notes, and other contracts and instruments in connection therewith and to provide for the repayment of such loans and for the rights of the lenders thereof;

(12) As security for repayment of its revenue bonds, loans, or notes, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority, to the extent of its interest therein, and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such bonds, loans, or notes, either in payment of principal or interest or in the performance of any term or condition as are contained in such agreement or indenture. The state waives any right which it may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, to the extent of the interest of the authority therein but not any interest of the state therein, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof;

- (13) To procure or to provide insurance against any loss in connection with its programs, property, and other assets.
- (14) To receive and administer gifts, grants, and devises of money and property of any kind from any source and to administer trusts;
- (15) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state; and
- (16) To do all things necessary or convenient to carry out the powers expressly given in this chapter.

20-16-5.

- (a) Revenue bonds issued by the authority shall be paid solely from the property (including, but not limited to, real property, fixtures, personal property, revenues, or other funds) pledged, mortgaged conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds. No revenue bonds shall be issued by the authority under this chapter unless its members adopt a resolution finding that the project or combination of projects for which such bonds are to be issued will be self-liquidating.
- (b) All revenue bonds shall be authorized by resolution of the authority, adopted by a majority vote of the full membership of the authority at a regular or special meeting.
- (c) Revenue bonds shall bear such date or dates, shall mature at such time or times (not more than 40 years from their respective dates), shall bear interest at such rate or rates (which may be fixed or may fluctuate or otherwise change from time to time), shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds shall bind the members of the authority then in office and their successors.
- (d) The authority shall have power from time to time and whenever it deems it expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(e) Any limitations with respect to interest rates or any maximum interest rate or rates found in the usury laws of this state or any other laws of this state shall not apply to revenue bonds of the authority.

(f) The authority shall not have outstanding at any one time bonds and notes exceeding \$300 million.

20-16-6.

(a) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36.

(b) Bonds issued by the authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions, as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(c) Bonds shall bear a certificate of validation. The signature of the clerk of the Superior Court of Fulton County may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

20-16-7.

(a) Subject to the limitations and procedures provided by this Code section and by Code Section 20-16-6, the agreements or instruments executed by the authority may contain such provisions not inconsistent with law as shall be determined by the members of the authority.

(b) The proceeds derived from the sale of all bonds issued by the authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, or for the purpose of refunding any bonds or bond anticipation notes issued in accordance with this chapter.

(c) Issuance by the authority of one or more series of bonds or bond anticipation notes for one or more projects shall not preclude it from issuing other bonds in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior

issue of bonds, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds on a parity with such prior issue.

(d) The authority shall have the power and is authorized, whenever bonds of the authority shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The authority may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority of any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which the authority is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

20-16-8.

The authority may sell its bonds in such manner and for such price as it may determine to be for the best interests of the authority. Whenever the authority shall determine to issue its bonds, it shall request the Georgia State Financing and Investment Commission to approve the bonds and carry out other services for the authority as provided by Article 2 of Chapter 17 of Title 50.

20-16-9.

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one unit or any number of units. Any resolution providing for the issuance of revenue bonds under this chapter shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed

at any regular or special or adjourned meeting of the authority by a majority of its full membership.

20-16-10.

Revenue bonds issued under this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the property provided for in Code Section 20-16-5; and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section.

20-16-11.

The bonds authorized in this chapter are made securities in which all public officers and public bodies of this state and all municipalities and all political subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and public bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is authorized.

20-16-12.

The creation of the authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this state and is a public purpose, and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter; and this state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased

by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority, and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state.

20-16-13.

(a) The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(b) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining an audit of the authority's finances.

20-16-14.

Any action to protect or enforce any rights under this chapter shall be brought in the Superior Court of Fulton County; and any action pertaining to validation of any bonds issued under this chapter shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions.

20-16-15.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

20-16-16.

This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized by this chapter, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

20-16-17.

This chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

20-16-18.

(a) There is created as a joint committee of the General Assembly the Georgia Higher Education Facilities Authority Committee to be composed of five members of the House of Representatives appointed by the Speaker of the House, two of whom shall be members of the minority party, five members of the Senate appointed by the Senate Committee on Assignments, two of whom shall be members of the minority party, the chairperson of the House Committee on Higher Education or his or her designee, and the chairperson of the Senate Higher Education Committee or his or her designee. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The Senate Committee on Assignments shall appoint a cochairperson from the Senate members of the committee, and the Speaker of the House shall appoint a cochairperson from the House of Representatives members of the committee. The cochairpersons shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of cochairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Georgia Higher Education Facilities Authority, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this chapter.

(b) The state auditor, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties set forth in this Code section. The committee may employ not more than two staff members and may secure the services of independent accountants, engineers, and consultants.

(c) The Georgia Higher Education Facilities Authority shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee, set forth in this Code section, may be timely and efficiently discharged. The authority shall submit to the committee such reports and data as the committee shall reasonably require of the authority in order that the committee may adequately perform its functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Higher Education Facilities Authority. The committee shall, on or

before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the Georgia Higher Education Facilities Authority, as set forth in this chapter.

(d) In the discharge of its duties, the committee shall evaluate the performance of the Georgia Higher Education Facilities Authority consistent with the following criteria:

- (1) Prudent, legal, and accountable expenditure of public funds;
- (2) Efficient operation; and
- (3) Performance of its statutory responsibilities.

(e)(1) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Such funds may be used for the purposes of compensating staff personnel; paying for services of independent accountants, engineers, and consultants; and paying all other necessary expenses incurred by the committee in performing its duties.

(2) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(3) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government."

SECTION 2.

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