

House Bill 353 (COMMITTEE SUBSTITUTE)

By: Representative Rogers of the 29<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia  
2 Annotated, relating to nonpublic postsecondary educational institutions, so as to revise  
3 definitions relative to said part; to revise provisions relating to educational institutions  
4 exempted from application of said part; to change the membership and rules of the Nonpublic  
5 Postsecondary Education Commission; to revise terminology; to revise procedures  
6 concerning applications to operate or conduct postsecondary activities; to revise surety bond  
7 requirements; to change provisions regarding the filing of a complaint against institutions or  
8 agents; to revise procedures for hearings and review by the commission; to revise provisions  
9 applicable to the Tuition Guaranty Trust Fund; to allow for the provision of consumer  
10 information to prospective and currently enrolled students; to amend Article 1 of Chapter 13  
11 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions  
12 regarding the Georgia Administrative Procedure Act, so as to exempt the commission from  
13 the Georgia Administrative Procedure Act; to provide for related matters; to repeal  
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,  
18 relating to nonpublic postsecondary educational institutions, is amended in Code Section  
19 20-3-250.2, relating to definitions, by revising paragraphs (11.1), (16), and (26), as follows:

20 "(11.1) 'Gross tuition' means the total amount collected by a postsecondary educational  
21 institution during the most recently completed 12 month fiscal year, reduced only by the  
22 amount of refunds paid during the fiscal year, for tuition, application fees, registration  
23 fees, and those other fees deemed appropriate by rule or regulation of the commission;  
24 provided, however, that for a postsecondary educational institution located outside of this  
25 state which is authorized only for the purpose of advertising and recruiting in this state,  
26 or is authorized only for the purpose of offering instruction by correspondence or any

27 telecommunications or electronic media technology, or a combination of these purposes,  
 28 'gross tuition' means only the amount of such tuition and fees collected from residents of  
 29 this state while such residents reside in this state."

30 "(16) 'Postsecondary degree' means a credential conferring on the recipient thereof the  
 31 title of 'Associate,' 'Bachelor,' 'Master,' 'Specialist,' or 'Doctor,' or an equivalent title,  
 32 signifying educational attainment based on:

33 (A) Study;

34 (B) A substitute for study in the form of equivalent experience or achievement testing;  
 35 or

36 (C) A combination of the foregoing, provided that 'postsecondary degree' shall not  
 37 include any honorary degree or other so-called 'unearned' degree."

38 "(26) 'To operate' an educational institution, or like term, means to establish, keep, or  
 39 maintain any facility or location in this state where, from which, or through which  
 40 education is offered or given or educational credentials are offered or granted and  
 41 includes contracting with any person, group, or entity to perform any such act and to  
 42 conduct postsecondary activities within this state or from a location outside of this state  
 43 by correspondence or by any telecommunications or electronic media technology,  
 44 provided that such educational institution specifically recruits persons located within this  
 45 state or has a physical presence within this state."

46 **SECTION 2.**

47 Said part is further amended in Code Section 20-3-250.3, relating to educational institutions  
 48 exempted from application of part, by revising subsection (a) as follows:

49 "(a) The following education and postsecondary educational institutions are exempted  
 50 from this part except as expressly provided to the contrary:

51 (1) Institutions exclusively offering instruction at any or all levels from preschool  
 52 through the twelfth grade regardless of the age of the student;

53 (2) Education sponsored by a bona fide trade, business, professional, or fraternal  
 54 organization, so recognized by the commission, solely for that organization's membership  
 55 or offered on a no-fee basis, not granting degrees;

56 (3) Education solely avocational or recreational in nature, as determined by the  
 57 commission, and institutions, not granting degrees, offering such education exclusively;

58 (4) Postsecondary educational institutions established, operated, ~~and~~ governed, or  
 59 licensed by this state, its agencies, or its political subdivisions, as determined by the  
 60 commission;

61 (5) Any flight school which holds an applicable federal air agency certificate issued by  
 62 the administrator of the Federal Aviation Administration;

63 (6) Nonpublic, nonprofit, postsecondary educational institutions which demonstrate  
64 annually to the satisfaction of the commission that their purposes are solely to provide  
65 programs of study in theology, divinity, religious education, and ministerial training, and  
66 that they do not grant postsecondary degrees of a nonreligious nature and that such  
67 institutions:

68 (A) Accept no federal or state funds; and

69 (B) Accept no student who has a federal or state education loan to attend such  
70 institutions;

71 (7) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, nonpublic  
72 law schools not accredited by the American Bar Association which are subject to the  
73 regulations and standards established by the Georgia Supreme Court for such schools;

74 (8) Nonpublic postsecondary educational institutions conducting postsecondary activity  
75 on the premises of military installations located in this state which are solely for military  
76 personnel stationed on active duty at such military installations, their dependents, or  
77 Department of Defense employees and other civilian employees of that installation;

78 (9) A school where the sole purpose of the instructional program is review or preparation  
79 for a specific occupational examination recognized by a government agency or bona fide  
80 trade, business, or fraternal organization and where the student's occupational training  
81 received from another school already makes the student eligible to sit for the  
82 examination;

83 (10) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any  
84 nonpublic, nonprofit college or university granting baccalaureate degrees whose principal  
85 office and campus are located in this state and its related graduate and professional  
86 programs, which have been in existence ten or more years as a nonpublic, nonprofit  
87 college or university prior to July 1, 1989, and is accredited by a national or regional  
88 accrediting agency recognized by the United States Department of Education; provided,  
89 however, that such nonpublic, nonprofit college or university shall be subject to the  
90 provisions of Code Section 20-3-250.14 for the purposes of satisfying the requirements  
91 of 34 C.F.R. Section 668.43(b) and shall designate the commission as the recipient of  
92 complaints from students of such nonpublic, nonprofit college or university as a  
93 prerequisite for such nonpublic, nonprofit college's or university's acceptance of federal  
94 student financial aid funds; and provided, further, that the designation provided for under  
95 this paragraph shall be provided solely to the extent necessary for institutional  
96 compliance of such nonpublic, nonprofit college or university with the laws and  
97 regulations governing federal student financial aid and shall not affect, rescind, or  
98 supersede any preexisting authorizations, charters, or recognition;

99 ~~(11)~~ Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any  
100 nonpublic institute of paper science and technology offering graduate degrees and which  
101 is allied with a public research university and accredited by a national or regional  
102 accrediting agency recognized by the United States Department of Education;

103 ~~(12)~~(11) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any  
104 liberal arts college or university whose principal office and campus are located in this  
105 state and its related graduate and professional programs, if any, which was chartered prior  
106 to 1955 as a nonpublic, nonprofit, degree-granting institution, provided that it is  
107 accredited by a regional or national accrediting agency recognized by the United States  
108 Department of Education; and provided, further, that such liberal arts college or  
109 university shall be subject to the provisions of Code Section 20-3-250.14 for the purposes  
110 of satisfying the requirements of 34 C.F.R. Section 668.43(b) and shall designate the  
111 commission as the recipient of complaints from students of such liberal arts college or  
112 university as a prerequisite for such liberal arts college's or university's acceptance of  
113 federal financial aid funds; and provided, further, that the designation provided for under  
114 this paragraph shall be provided solely to the extent necessary for institutional  
115 compliance of such liberal arts college or university with the laws and regulations  
116 governing federal student financial aid and shall not affect, rescind, or supersede any  
117 preexisting authorizations, charters, or recognition;

118 ~~(13)~~(12) Any institution offering only education or training in income tax theory or  
119 income tax return preparation when the total contract price for such education or training  
120 does not exceed ~~\$400.00~~ \$1,000.00, provided that the total charges incurred by any  
121 student for all instruction, other than instruction which is solely avocational or  
122 recreational in nature as provided in paragraph (3) of this subsection, do not exceed  
123 ~~\$400.00~~ \$1,000.00 in any one calendar year;

124 ~~(14)~~(13) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any  
125 nonpublic medical school accredited by the Liaison Committee on Medical Education  
126 and a national or regional accrediting agency recognized by the United States Department  
127 of Education; and

128 ~~(15)~~(14) Any college or university that confers both associate and baccalaureate or  
129 higher degrees, that is accredited by the Southern Association of Colleges and Schools,  
130 College Division, that is operated in a proprietary status, that provides a \$200,000.00  
131 surety bond, and that contributes to the Tuition Guaranty Trust Fund pursuant to Code  
132 Section 20-3-250.27; provided, however, that such college or university shall be subject  
133 to the provisions of Code Section 20-3-250.14 for the purposes of satisfying the  
134 requirements of 34 C.F.R. Section 668.43(b) and shall designate the commission as the  
135 recipient of complaints from students of such college or university as a prerequisite for

136 such college's or university's acceptance of federal student financial aid funds; and  
 137 provided, further, that the designation provided for under this paragraph shall be provided  
 138 solely to the extent necessary for institutional compliance of such college or university  
 139 with the laws and regulations governing federal student financial aid and shall not affect,  
 140 rescind, or supersede any preexisting authorizations, charters, or recognition."

141 **SECTION 3.**

142 Said part is further amended in Code Section 20-3-250.4, relating to the Nonpublic  
 143 Postsecondary Education Commission and membership, by revising subsections (a), (e), and  
 144 (g) as follows:

145 "(a) There is established the Nonpublic Postsecondary Education Commission consisting  
 146 of ~~14~~ 15 members who shall be appointed by the Governor and confirmed by the Senate.  
 147 One member shall be appointed from each congressional district and the remaining  
 148 ~~members~~ member shall be appointed as an at-large ~~members~~ member. ~~The first members~~  
 149 ~~appointed to the commission shall be appointed for terms of office beginning July 1, 1991,~~  
 150 ~~with four of those members to serve initial terms of one year each, four of those members~~  
 151 ~~to serve initial terms of two years each, and four of those members to serve initial terms of~~  
 152 ~~three years each. The initial terms of office shall be specified in the appointment. After~~  
 153 ~~these initial terms, members~~ Members serving a term of appointment on January 1, 2015,  
 154 shall complete their terms of appointment, thereafter members of the commission shall be  
 155 appointed for terms of three years each. Each member shall serve for the term of office to  
 156 which the person is appointed and until a successor is appointed, confirmed, and qualified.  
 157 Members may be appointed to succeed themselves but shall not serve for more than two  
 158 full consecutive terms."

159 "(e) The commission shall meet at least quarterly on the call of the chairperson or upon the  
 160 written petition of ~~at least seven members~~ a majority of the commission."

161 "(g) A majority of the currently appointed commission shall constitute a quorum for the  
 162 conduct of business, ~~but not less than seven voting members must concur in order for the~~  
 163 ~~commission to take official action."~~

164 **SECTION 4.**

165 Said part is further amended in Code Section 20-3-250.5, relating to the administration of the  
 166 Nonpublic Postsecondary Education Commission and general powers and duties, by revising  
 167 subsection (d) as follows:

168 "(d) The commission shall establish separate ~~divisions~~ listings for degree-granting  
 169 institutions and nondegree-granting institutions. All standards, rules, regulations, and

170 policies adopted by the commission pursuant to this part shall identify the ~~division listings~~  
171 to which such standards, rules, regulations, and policies are applicable."

172 **SECTION 5.**

173 Said part is further amended in Code Section 20-3-250.8, relating to applications to operate  
174 or conduct postsecondary activities, by revising subsection (f) as follows:

175 "(f) The authorization to operate shall be issued to the owner or governing body of the  
176 applicant institution and shall be nontransferable. In the event of a change in ownership  
177 of the institution, a new owner or governing body ~~must~~, shall within ten days after the  
178 change in ownership, ~~apply~~ notify the commission in writing and shall within 30 days after  
179 the change in ownership make application to the commission for a new authorization to  
180 operate; and in the event of failure to do so, the institution's authorization to operate shall  
181 terminate. Application for a new authorization to operate by reason of change in ownership  
182 of the institution shall, for purposes of subsection (b) of Code Section 20-3-250.12, be  
183 deemed an application for renewal of the institution's authorization to operate."

184 **SECTION 6.**

185 Said part is further amended in Code Section 20-3-250.10, relating to filing of surety bond  
186 by institutions and agents, by revising subsections (b) and (f) as follows:

187 "~~(b)(1)~~ The Except as otherwise provided in paragraph (2) of this subsection, the minimum  
188 amount of the bond required by subsection (a) of this Code section shall be based on the  
189 gross tuition of the nonpublic postsecondary educational institution during the previous  
190 year or on the estimated gross tuition for the current year, whichever is larger, and shall be  
191 as follows:

<u>Gross Tuition</u>	<u>Minimum Bond</u>
192 \$ 0.00 - \$ 50,000.00 .....	\$ 20,000.00
193 50,001.00 - 100,000.00 .....	30,000.00
194 100,001.00 - 200,000.00 .....	50,000.00
195 200,001.00 - 300,000.00 .....	75,000.00
196 300,001.00 - 400,000.00 .....	100,000.00
197 400,001.00 - 500,000.00 .....	150,000.00
198 500,001.00 and over .....	200,000.00

200 For situations where a nonpublic postsecondary educational institution is unable to secure  
201 a bond amount provided for by this subsection, a bank standby letter of credit secured from  
202 a federally insured financial institution shall be accepted pursuant to rules and regulations  
203 of the commission.

204 ~~(2) As an alternative to the amount of the bond determined under paragraph (1) of this~~  
 205 ~~subsection, the nonpublic postsecondary educational institution shall have the option of~~  
 206 ~~filing a bond in an amount equal to the total income collected by the institution during the~~  
 207 ~~previous fiscal year or the estimated total income for the current year, whichever is~~  
 208 ~~larger; provided, however, the amount so determined shall be rounded off to the next~~  
 209 ~~highest \$1,000.00."~~

210 ~~"(f) In lieu of the surety bond provided for in subsections (a) and (b) of this Code section,~~  
 211 ~~the commission by rule or regulation may authorize the executive director to accept a~~  
 212 ~~property bond when a principal of the nonpublic postsecondary educational institution~~  
 213 ~~owns property within the State of Georgia with sufficient equity therein to satisfy the~~  
 214 ~~requirements of subsection (b) of this Code section."~~

215 **SECTION 7.**

216 Said part is further amended in Code Section 20-3-250.14, relating to filing complaints  
 217 against institutions or agents, as follows:

218 "20-3-250.14.

219 (a) Any person claiming damage or loss as a result of any act or practice by a nonpublic  
 220 postsecondary educational institution or its agent, or both, which is a violation of this part  
 221 or of the rules and regulations promulgated pursuant thereto may file with the executive  
 222 director a ~~verified~~ complaint against such institution or against its agent, or both. A  
 223 complaint shall be filed with the executive director within a reasonable period of time, as  
 224 determined by regulations of the commission, after the event giving rise to the complaint.  
 225 The complaint shall set forth the alleged violation and shall contain such other information  
 226 as may be required by the commission. A complaint may also be filed with the executive  
 227 director by the commission's representatives or by the Attorney General. A complainant  
 228 may also file with the executive director as a representative of a class of complainants.

229 (b) The executive director shall investigate any such complaint and may, at his or her  
 230 discretion, attempt to effectuate a settlement by persuasion and conciliation. The executive  
 231 director ~~may~~ shall consider a complaint pursuant to rules, regulations, and procedures  
 232 promulgated by the commission. ~~after ten days' written notice sent by registered or~~  
 233 ~~certified mail or statutory overnight delivery, return receipt requested, to such institution~~  
 234 ~~or to such agent, or both, as appropriate, giving notice of a time and place for hearing~~  
 235 ~~thereon. Such hearing shall be conducted in accordance with Chapter 13 of Title 50, the~~  
 236 ~~'Georgia Administrative Procedure Act.'~~

237 (c) If, based upon all the evidence at a hearing or other procedure, the executive director  
 238 shall find that a nonpublic postsecondary educational institution or its agent, or both, have  
 239 engaged in or are engaging in any act or practice which violates this part or the rules and

240 regulations promulgated pursuant thereto, the executive director shall issue and cause to  
 241 be served upon such institution or agent, or both, an order requiring such institution or  
 242 agent, or both, to cease and desist from such act or practice. Additionally, if the executive  
 243 director shall find that the complainant or class of complainants has suffered loss or  
 244 damage as a result of such act or practice, the executive director may, at his or her  
 245 discretion, award the complainant or class of complainants full or partial restitution for  
 246 such damage or loss and may impose the penalties provided for in Code Section  
 247 20-3-250.21. The executive director may also, as appropriate, based on his or her own  
 248 investigation or the evidence adduced at such hearing or on the basis of such investigation  
 249 and evidence, commence an action to revoke an institution's authorization to operate or  
 250 revoke an agent's permit."

251 **SECTION 8.**

252 Said part is further amended in Code Section 20-3-250.15, relating to hearing and review by  
 253 commission of denial of permit, by revising subsections (c) and (d) as follows:

254 "(c) Upon receiving such notice from the aggrieved party, the executive director, after  
 255 consultation with the commission, shall within 30 days fix the time and place for a hearing  
 256 by the commission ~~within 30 days~~ and shall notify the aggrieved party thereof.

257 (d) At such hearing the party may employ counsel, shall have the right to hear the evidence  
 258 upon which the action is based, and may present evidence in opposition or in extenuation.  
 259 The commission as a whole may conduct such hearing and render a decision or the  
 260 commission may appoint a hearing officer to conduct such hearing and render a decision  
 261 on behalf of the commission. Such hearing officer may be a member of the commission  
 262 or any other person, other than the executive director or his or her staff, as designated by  
 263 the commission. The commission by rules and regulations shall provide for the rules of  
 264 evidence and order and procedure which is to be followed for such hearings. Any member  
 265 of the commission may participate in such hearing pursuant to this part except where a  
 266 clear conflict of interest may be designated. The hearing shall be conducted in accordance  
 267 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Any member of  
 268 the commission may preside except where a clear conflict of interest may be  
 269 demonstrated."

270 **SECTION 9.**

271 Said part is further amended in Code Section 20-3-250.27, relating to the Tuition Guaranty  
 272 Trust Fund, by revising subsection (a), paragraph (3) of subsection (d), and subsection (e)  
 273 as follows:



274 "(a) It is the purpose of this Code section to create a trust fund from participation fees from  
 275 postsecondary educational institutions to enable such institutions, collectively, to protect  
 276 students against financial loss when a postsecondary educational institution closes without  
 277 reimbursing its students and without completing its educational obligations to its students  
 278 and to provide consumer information, as necessary in the determination of the commission,  
 279 to prospective and currently enrolled students."

280 "(3) If earnings from investments, participation fees required under paragraph (2) of this  
 281 subsection, and claims experience ever cause the balance in the fund to exceed  
 282 ~~\$5,025,000.00~~ \$7,750,000.00, the commission, upon being notified by the board of  
 283 trustees, shall make refunds to postsecondary educational institutions which have  
 284 participated in the fund for at least five years, so that the fund balance is reduced to \$5  
 285 \$7.5 million. Any such refund shall be determined by the commission in proportion to  
 286 the total participation fees paid by a postsecondary educational institution until the time  
 287 of the refund; provided, however, no reimbursement shall be made to any postsecondary  
 288 educational institution whose students have been reimbursed from the fund or from bond  
 289 forfeiture as provided in subsection (g) of this Code section. The commission shall  
 290 establish by regulation the time and other procedures and requirements for making any  
 291 such refund, but refunds shall be issued no more than once during a fiscal year."

292 "(e) The annual cost incurred by the commission and by the board of trustees in  
 293 administering the Tuition Guaranty Trust Fund and providing consumer information as  
 294 necessary for prospective and currently enrolled students, including expenses incurred in  
 295 collecting from defaulting postsecondary educational institutions the amounts paid from  
 296 the fund to or on behalf of students pursuant to the provisions of subsection (g) of this Code  
 297 section, shall be paid from the fund; provided, however, such annual administrative costs  
 298 shall not exceed 2.5 percent of the ~~participation fees collected from postsecondary~~  
 299 ~~educational institutions~~ fund during the fiscal year. The commission shall issue a report  
 300 annually to each postsecondary educational institution participating in the fund. The report  
 301 shall provide an evaluation of the financial condition of the fund and a summary of claims  
 302 paid or other expenditures from the fund during the immediately preceding fiscal year."

### 303 SECTION 10.

304 Article 1 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated, relating to  
 305 general provisions regarding the Georgia Administrative Procedure Act, is amended in Code  
 306 Section 50-13-2, relating to definitions, by revising paragraph (1) as follows:

307 "(1) 'Agency' means each state board, bureau, commission, department, activity, or  
 308 officer authorized by law expressly to make rules and regulations or to determine  
 309 contested cases, except the General Assembly; the judiciary; the Governor; the State

310 Board of Pardons and Paroles; the State Financing and Investment Commission; the State  
 311 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its  
 312 penal institutions; the State Board of Workers' Compensation; all public authorities  
 313 except as otherwise expressly provided by law; the State Personnel Board; the  
 314 Department of Administrative Services or commissioner of administrative services; the  
 315 Technical College System of Georgia; the Nonpublic Postsecondary Education  
 316 Commission; the Department of Labor when conducting hearings related to  
 317 unemployment benefits or overpayments of unemployment benefits; the Department of  
 318 Revenue when conducting hearings relating to alcoholic beverages, tobacco, or bona fide  
 319 coin operated amusement machines or any violations relating thereto; the Georgia  
 320 Tobacco Community Development Board; the Georgia Higher Education Savings Plan;  
 321 any school, college, hospital, or other such educational, eleemosynary, or charitable  
 322 institution; or any agency when its action is concerned with the military or naval affairs  
 323 of this state. The term 'agency' shall include the State Board of Education and  
 324 Department of Education, subject to the following qualifications:

325 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid  
 326 rules adopted by the State Board of Education and Department of Education prior to  
 327 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,  
 328 whether or not such rules were adopted in compliance with the requirements of this  
 329 chapter; and

330 (B) Effective January 1, 1991, any rule of the State Board of Education or Department  
 331 of Education which has not been proposed, submitted, and adopted in accordance with  
 332 the requirements of this chapter shall be void and of no effect."

333 **SECTION 11.**

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