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EDUCATION Elementary and Secondary Education: Bill to be Entitled. General Provisions: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide that a Local School System may Enter into a Contract with the State Board of Education for Increased Flexibility; Provide for a Local School System to Remain under Current Requirements; Provide for Public Input; Provide for Strategic Plans; Provide for Submission of a Proposed Contract; Provide for Negotiations; Provide for Contract Requirements; Provide for Accountability, Flexibility, and Consequences

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Components of the Contract; Provide for Certain Laws which may be Waived; Provide for Loss of Governance Consequences; Provide for Duties of the Office of Student Achievement; Provide for Implementation; Provide for Other Funding Options; Provide for Exceptions for Charter Systems; Provide for Rules, Regulations, and Guidelines; Change Certain Provisions Relating to Appointment of Local School Superintendents; Change Certain Provisions Relating to Waivers to Improve Student Performance; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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EDUCATION

Elementary and Secondary Education: Bill to be Entitled. General Provisions: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide that a Local School System may Enter into a Contract with the State Board of Education for Increased Flexibility; Provide for a Local School System to Remain under Current Requirements; Provide for Public Input; Provide for Strategic Plans; Provide for Submission of a Proposed Contract; Provide for Negotiations; Provide for Contract Requirements; Provide for Accountability, Flexibility, and Consequences Components of the Contract; Provide for Certain Laws which may be Waived; Provide for Loss of Governance Consequences; Provide for Duties of the Office of Student Achievement; Provide for Implementation; Provide for Other Funding Options; Provide for Exceptions for Charter Systems; Provide for Rules, Regulations, and Guidelines; Change Certain Provisions Relating to Appointment of Local School Superintendents; Change Certain Provisions Relating to Waivers to Improve Student Performance; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 20-2-80 (amended), -81 (amended), -82 (amended), -83 (amended), -84 (amended), -101 (amended), -244 (amended)
BILL NUMBER:	HB 1209
ACT NUMBER:	394
GEORGIA LAWS:	2008 Ga. Laws 82
SUMMARY:	The Act provides that local school systems shall create a strategic plan regarding the future of the school system. The Act further allows local school systems to enter into a five-year contract with the State Board of Education whereby the school is given additional flexibility by being granted a

waiver from agreed upon requirements in exchange for additional accountability in the form of an agreement to meet specified benchmarks of student performance. If the benchmarks are not met within a three year period, the Act provides for consequences to the local school system or the under-performing schools within the system.

EFFECTIVE DATE:

July 1, 2008

History

History of Georgia Education Laws

Title 20 of the Georgia Code deals with education in Georgia and includes, *inter alia*, chapters devoted to postsecondary education,¹ libraries,² the Georgia Tech Research Institute,³ and the Education Coordinating Council.⁴ Chapter 2 of Title 20 is devoted to elementary and postsecondary education. This chapter includes Governor Joe Harris' Quality Basic Education (QBE) Act of 1985.⁵

QBE is a comprehensive approach to education improvement. QBE authorized the State Board of Education to establish certain mandatory standards and rules for local school systems as evidenced by its creation of the uniform Quality Core Curriculum (QCC).⁶ QBE requires that the QCC be updated to keep up with the rising expectations for students.⁷ The "Georgia School Improvement Panel" was appointed by the Governor and the State Superintendent of

1. See O.C.G.A. § 20-3-1 to -660 (2005).

2. See O.C.G.A. § 20-5-1 to -65 (2005).

3. See O.C.G.A. § 20-11-1 to -7 (2005).

4. See O.C.G.A. § 20-14-1 to -91 (2005).

5. The New Georgia Encyclopedia, Education Reform, <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-860> (last visited June 1, 2008).

6. Georgia Department of Education, Quality Basic Education Act Overview, <http://www.glc.k12.ga.us/qcc/qbe.htm> (last visited June 1, 2008).

7. Georgia Learning Connections, Georgia Standards, <http://www.edgateteam.net/Matrixsummary/ga.htm> (last visited June 1, 2008).

Schools to update the QCC.⁸ The QCC revision process has continued since 1995 and has included much input from in-the-classroom teachers.⁹ The results of the QCC program were evaluated according to certain benchmarks measured in the Criterion Referenced Competency Test (CRCT).¹⁰ The QCC was in effect for over two decades.¹¹

The QBE also established minimum salary levels for teachers as well as pay incentives for outstanding teachers.¹² Additionally, the QBE increased the professional standards for teacher certification.¹³ Certain funding was provided for continuing education opportunities for teachers.¹⁴ The QBE also mandated that the state school board set teacher-student ratios.¹⁵

However, the main issue that the QBE addressed was funding. Prior to the QBE, funding for the local school system was inadequate as it came from the state and from local taxes.¹⁶ The portion received from the state was based solely on the number of students enrolled.¹⁷ As a result, by not accounting for the different funding ability of districts, urban and rural districts suffered, and legislators began demanding funding equalization.¹⁸

The QBE introduced a funding formula based on numerous factors increasing the overall amount of money to be allotted for education.¹⁹ Funding depended on a number of factors including: the enrollment of the school; the types of programs offered; and amounts of these programs (e.g., primary grades early intervention program, programs for persons with disabilities, vocational training programs).²⁰ QBE also established program weights and funding requirements detailing the proportion of school funds earmarked for staff salaries,²¹ school

8. *Id.*

9. *Id.*

10. *Id.*

11. The New Georgia Encyclopedia, Education Reform, *supra* note 5.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. The New Georgia Encyclopedia, Education Reform, *supra* note 5.

18. *Id.*

19. See O.C.G.A. § 20-2-160 to -172 (2005).

20. See O.C.G.A. § 20-2-161 (2005).

21. See O.C.G.A. § 20-2-186 (2005).

lunch programs,²² transportation costs,²³ and migrant student costs.²⁴ Further, QBE allowed the state to mandate that certain schools spend more money in areas that the state found to be deficient.²⁵ Additionally, in order to reward school districts with excellent local funding, a “local fair share” provision was added.²⁶ This provision gave additional state funding to those districts with increased local funding.²⁷ Another provision, the “student full-time equivalent,” rewarded districts based on the number of hours students were in class as compared to the number of students in the school.²⁸

The Investing in Educational Excellence Task Force

In August 2004, Governor Sonny Perdue created the Education Finance Task Force to review current education funding and devise a new way to fund Georgia public schools.²⁹ The Task Force is developing a new funding mechanism to replace Quality Basic Education (QBE) funding and has termed the new funding mechanism Investing in Educational Excellence (IE²).³⁰ Governor Purdue stated, “[w]e’ve had the QBE funding formulas in place for almost twenty years now. And let me tell you, Quality Basic Education was a great step forward for Georgia when it passed. But twenty years later, basic is not good enough. Georgians expect more. . . . They expect excellence. . . .”³¹

There are four stated objectives of IE²: “[1] focus on student achievement, [2] ensure access to an excellent education for all Georgia students, [3] simple to understand and administer, and [4]

22. See O.C.G.A. § 20-2-187 (2005).

23. See O.C.G.A. § 20-2-188 (2005).

24. See O.C.G.A. § 20-2-189 (2005).

25. The New Georgia Encyclopedia, Education Reform, *supra* note 5.

26. *Id.*

27. *Id.*

28. *Id.*

29. Press Release, Georgia Department of Education, Governor Sonny Perdue and State Superintendent of Schools Kathy Cox To Hold a Community Conversation Aimed at Defining Educational Excellence (Jan. 27, 2005), http://www.doe.k12.ga.us/pea_communications.aspx?ViewMode=1&obj=865 (last visited June 1, 2008).

30. *Id.*

31. Governor’s Education Finance Task Force, Investing in Educational Excellence, <http://www.ie2.org/index.html> (last visited June 1, 2008).

transparent for accountability purposes.”³² In trying to achieve these objectives the IE² committee focuses on two things: funding and flexibility.³³

A funding model has not yet been introduced. The goal of producing a funding model, however, has not been abandoned.³⁴ Until the funding model is developed, QBE is still operative.³⁵

In addition to funding issues, the House has been working to increase flexibility for Georgia public schools as evidenced by its passing the recent charter schools legislation.³⁶ This legislation provides additional flexibility in exchange for increased accountability. Additionally, the IE² Task Force has been studying ways to increase flexibility for local schools and evaluating “the partnership of education and how we respond and react with the local system and the state and what our partnership should be.”³⁷

Bill Tracking of HB 1209

Consideration and Passage by the House

The Bill as Introduced

The bill was introduced to the House by Rep. Brooks Coleman (R-97th), Rep. Rich Golick (R-34th),³⁸ Rep. Vance Smith (R-129th), Rep. Jim Cole (R-125th), Rep. Howard Maxwell (R-17th), and others and was first read on February 14, 2008.³⁹ After the second reading of the bill, which occurred on February 19, 2008, Speaker of the

32. *Id.*

33. See Video Recording of House Floor Debate, Mar. 5, 2008 (I) at 73 min., 33 sec. (remarks by Rep. Brooks Coleman (R-97th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html [hereinafter House Floor (I) Video].

34. *Id.*

35. *Id.*

36. See, e.g., HB 881, as passed, 2008 Ga. Gen. Assem.

37. House Floor (I) Video, *supra* note 33 at 73 min., 33 sec. (remarks by Rep. Brooks Coleman (R-97th)).

38. Representative Rich Golick, the editors are proud to note, is an alum of the Georgia State University College of Law.

39. HB 1209, as introduced, 2008 Ga. Gen. Assem.

House Glenn Richardson (R-19th)⁴⁰ assigned the bill to the House Education Committee.⁴¹

The bill contained four sections, including the repealer clause. The first section added Article 4 to Title 20, adding Code Sections 20-2-80, 20-2-81, 20-2-82, 20-2-83, 20-2-84, 20-2-84.1, 20-2-84.2, 20-2-84.3, 20-2-84.4, and 20-2-84.5.

Code Section 20-2-80 was added to require local school systems to create a strategic plan establishing a partnership framework of flexibility, accountability, and consequences between the local school system and the State Board of Education.⁴² This section also permitted schools to enter into a contract with the State Board of Education based on the strategic plan that was created.⁴³

Code Section 20-2-81 was added to detail the required contents of the strategic plan discussed in Code Section 20-2-80.⁴⁴ This section also provided that subsequent to developing the strategic plan but prior to submitting it to the State Board of Education, the local school system shall hold a public hearing to receive input from the public concerning the strategic plan.⁴⁵ The local school system, once the strategic plan is finalized, shall submit the plan to the State Board of Education, which shall review the plan and respond with suggestions or accept the plan as is.⁴⁶ The local board, if suggestions are made, may redraft the strategic plan to incorporate the board's recommendations.⁴⁷

In addition, Code Section 20-2-81 provided that the state board shall be authorized to approve requests by the local school system to waive specific rules.⁴⁸ The bill further provided, however, that certain specified requirements could not be waived by the state board and the local system.⁴⁹ The waiver provision is permissive; however,

40. Speaker Glen Richardson, the editors are proud to note, is an alum of the Georgia State University College of Law.

41. State of Georgia Final Composite Status Sheet, HB 1209, Feb. 19, 2008 (Apr. 4, 2008).

42. HB 1209, § 1, p. 1, ln. 22, as introduced, 2008 Ga. Gen. Assem.

43. *Id.*

44. HB 1209, § 1, p. 2, ln. 8, as introduced, 2008 Ga. Gen. Assem.

45. HB 1209, § 1, p. 2, ln. 21, as introduced, 2008 Ga. Gen. Assem.

46. HB 1209, § 1, p. 2, ln. 28, as introduced, 2008 Ga. Gen. Assem.

47. HB 1209, § 1, p. 3, ln. 1, as introduced, 2008 Ga. Gen. Assem.

48. HB 1209, § 1, p. 3, ln. 13, as introduced, 2008 Ga. Gen. Assem.

49. HB 1209, § 1, p. 3, ln. 17, as introduced, 2008 Ga. Gen. Assem.

school systems opting for the status quo must notify the public of their decision to do so.⁵⁰

Code Section 20-2-82 was also added by the bill. This section provides that, upon approval of a strategic plan, the state board shall enter into a contract with the local school system incorporating the plan.⁵¹ The bill provided that the three-year contract,⁵² if requested, should include a request for increased flexibility⁵³ in exchange for increased accountability⁵⁴ with resulting consequences⁵⁵ for failing to meet these accountability requirements.⁵⁶

The bill also added Code Section 20-2-83 that included a subsection addressing accountability,⁵⁷ a subsection addressing flexibility,⁵⁸ and a subsection addressing consequences.⁵⁹ The accountability subsection permitted the school system to choose its mode of assessment from one or more of the following four criteria: high school graduation rates, SAT and ACT scores, state standardized test data, and advanced placement or international baccalaureate performance.⁶⁰ The flexibility subsection permitted the school system to choose from one of four common waiver requests or to seek state board approval of any other requirement identified by the local school system.⁶¹ The consequences subsection provided the state board with possible consequences for failure to achieve the accountability requirements outlined in the contract.⁶² This subsection lists possible consequences including restructuring of local school system staff, reconstitution of the local school system, loss of governance of one or more schools, and acceleration of sanctions pursuant to Code Section 20-14-41.⁶³ Code Section 20-2-83 also provided that the flexibility, accountability, and consequences

50. HB 1209, § 1, p. 3, ln. 28, as introduced, 2008 Ga. Gen. Assem.

51. HB 1209, § 1, p. 4, ln. 2, as introduced, 2008 Ga. Gen. Assem.

52. HB 1209, § 1, p. 4, ln. 10, as introduced, 2008 Ga. Gen. Assem.

53. O.C.G.A. § 20-2-83(b) (Supp. 2008).

54. O.C.G.A. § 20-2-83(a) (Supp. 2008).

55. O.C.G.A. § 20-2-83(c) (Supp. 2008).

56. HB 1209, § 1, p. 4, ln. 6, as introduced, 2008 Ga. Gen. Assem.

57. HB 1209, § 1, p. 4, ln. 14, as introduced, 2008 Ga. Gen. Assem.

58. HB 1209, § 1, p. 4, ln. 23, as introduced, 2008 Ga. Gen. Assem.

59. HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

60. HB 1209, § 1, p. 4, ln. 14, as introduced, 2008 Ga. Gen. Assem.

61. HB 1209, § 1, p. 4, ln. 23, as introduced, 2008 Ga. Gen. Assem.

62. HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

63. HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

provisions of the contracts should be as equal in magnitude as possible.⁶⁴

Code Section 20-2-84 clarified the loss of governance consequence introduced in Code Section 20-2-83(c)(3). The loss of governance may include one of three options: conversion to charter status, operation by a successful school system, or privatization.⁶⁵

Code Section 20-2-84.1 was added to describe the Office of Student Achievement's duties in monitoring and aiding local school systems.⁶⁶ Code Section 20-2-84.2 was added to phase this bill in rather than allowing all schools to immediately sign a contract with the state.⁶⁷ Code Section 20-2-84.3, on the other hand, was added to exempt charter school systems from the bill.⁶⁸ Finally, Code Section 20-2-84.4 was added to authorize the State Board of Education and the Office of Student Achievement to promulgate rules and regulations to implement this bill.⁶⁹

Section 2 of the bill amended Code Section 20-2-101 pertaining to school superintendents and permits superintendents to be concurrently employed in other positions within a school including principal or teacher.⁷⁰ Section 3 of the bill amended Code Section 20-2-244 concerning waivers from QBE requirements.⁷¹ A local school system that had entered into a contract would not be permitted to receive a waiver, and any local school system that had already received a waiver before entering into a contract would be required to include it in the strategic plan.⁷² Furthermore, this section prohibited waivers after August 1, 2013.⁷³

64. HB 1209, § 1, p. 5, ln. 8, as introduced, 2008 Ga. Gen. Assem.

65. HB 1209, § 1, p. 5, ln. 11, as introduced, 2008 Ga. Gen. Assem.

66. HB 1209, § 1, p. 5, ln. 23, as introduced, 2008 Ga. Gen. Assem.

67. HB 1209, § 1, p. 5, ln. 29, as introduced, 2008 Ga. Gen. Assem.

68. HB 1209, § 1, p. 6, ln. 3, as introduced, 2008 Ga. Gen. Assem.

69. HB 1209, § 1, p. 6, ln. 7, as introduced, 2008 Ga. Gen. Assem.

70. HB 1209, § 2, p. 7, ln. 17, as introduced, 2008 Ga. Gen. Assem.

71. HB 1209, § 3, p. 7, ln. 32, as introduced, 2008 Ga. Gen. Assem.

72. HB 1209, § 3, p. 9, ln. 1, as introduced, 2008 Ga. Gen. Assem.

73. HB 1209, § 3, p. 9, ln. 5, as introduced, 2008 Ga. Gen. Assem.

Amendments to the Bill

The bill did not remain in its original form before passage.⁷⁴ The House Committee on Education submitted a substitute. In the substitute, the Education Committee changed the preamble to state a different purpose of the bill.⁷⁵ The preamble was amended to remove “to provide that a local school system may enter into a contract with the State Board of Education for increased flexibility in exchange for increased accountability; to provide that a local school system can opt for the status quo; to provide for the development of a three-year strategic plan; to provide for contract requirements; to provide for monitoring of strategic plans;” and replace this text with “to provide that a local school system may enter into a contract with the State Board of Education for increased flexibility; to require all local school systems to develop a five-year strategic plan; to provide for public input; to provide for peer review teams; to provide for approval of strategic plans.”⁷⁶ The preamble was also amended by changing “to provide for loss of governance under certain conditions” to “to provide for loss of governance consequences.”⁷⁷ The changes to the preamble include an emphasis on local control—specifically, the public input and the peer review teams, which have been identified as particularly important by the author of the bill.⁷⁸

The substitute also changed Section 1 of the bill.⁷⁹ The substitute added “and defined consequences” after “in exchange for increased accountability” in Code Section 20-2-80(a).⁸⁰ The substitute also changed Code Section 20-2-80(b) from “which elects” and “but

74. See State of Georgia Final Composite Status Sheet, HB 1209, Feb. 19, 2008 (Apr. 4, 2008).

75. Compare HB 1209 (HCS), p. 1, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, p. 1, ln. 1, as introduced, 2008 Ga. Gen. Assem.

76. Compare HB 1209 (HCS), p. 1, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, p. 1, ln. 1, as introduced, 2008 Ga. Gen. Assem.

77. Compare HB 1209 (HCS), p. 1, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, p. 1, ln. 1, as introduced, 2008 Ga. Gen. Assem.

78. See House Floor (I) Video, *supra* note 33 at 75 min., 51 sec. (remarks by Rep. Brooks Coleman (R-97th)).

79. Compare HB 1209 (HCS), § 1, p. 1, ln. 20, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 1, ln. 17, as introduced, 2008 Ga. Gen. Assem.

80. Compare HB 1209 (HCS), § 1, p. 1, ln. 22, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 1, ln. 22, as introduced, 2008 Ga. Gen. Assem.

which opts” to “may elect” and “and opt to”, respectively.⁸¹ This change simply clarifies that accountability is enforced through the defined consequences of the bill.⁸²

The Education Committee substitute made other changes to Section 1, including a change to Code Section 20-2-81(a) which removed “which elects to request increased flexibility” after “Each local school system” and changed “three-year strategic plan” to “five-year strategic plan.”⁸³ The substitute also added “for each school” after “Performance goals” in subsection (2).⁸⁴ In addition, “for each school” was added after “Performance measures and benchmarks” in subsection (3).⁸⁵

“The Office of Student Achievement shall submit recommendations on minimum performance measures and benchmarks for evaluating improvement and achievement and monitoring progress toward yearly performance goals to a local board of education which is in the development of its strategic plan” was also added to Code Section 20-2-81(a).⁸⁶ This clarifies the duties of the Office of Student Achievement in its relationship with the local school systems.

The substitute amended Code Section 20-2-81(b) by removing “any” before “school improvement plans” and by removing “any of the” before “schools in the local system.”⁸⁷ Code Section 20-2-81(c) was amended by the substitute by changing “develop” to “provide” after “[t]he department shall.”⁸⁸

81. Compare HB 1209 (HCS), § 1, p. 2, ln. 3, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 3, as introduced, 2008 Ga. Gen. Assem.

82. See House Floor (I) Video, *supra* note 33 at 83 min., 36 sec. (remarks by Rep. Brooks Coleman (R-97th)).

83. Compare HB 1209 (HCS), § 1, p. 2, ln. 8, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 8, as introduced, 2008 Ga. Gen. Assem.

84. Compare HB 1209 (HCS), § 1, p. 2, ln. 13, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 13, as introduced, 2008 Ga. Gen. Assem.

85. Compare HB 1209 (HCS), § 1, p. 2, ln. 15, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 15, as introduced, 2008 Ga. Gen. Assem.

86. Compare HB 1209 (HCS), § 1, p. 2, ln. 17, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 8, as introduced, 2008 Ga. Gen. Assem.

87. Compare HB 1209 (HCS), § 1, p. 2, ln. 21, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 16, as introduced, 2008 Ga. Gen. Assem.

88. Compare HB 1209 (HCS), § 1, p. 2, ln. 23, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 18, as introduced, 2008 Ga. Gen. Assem.

The substitute also amended Code Section 20-2-81(d).⁸⁹ The substitute removed “local board of education’s” before “proposed strategic plan.”⁹⁰ The substitute also added “and the strategic plan’s impact on each school” after “flexibility requests and performance goals”.⁹¹ The substitute also removed “and conduct an initial review of the appropriateness of the flexibility and performance measures requested” from the end of Code Section 20-2-81(e).⁹² The initial review of the strategic plan is designated as the duty of the peer review team leader in subsection (h).⁹³

The Education Committee substitute completely rewrote Code Sections 20-2-81(f) through 20-2-81(l).⁹⁴ The substitute also moved what had been Code Section 20-2-82 to Code Section 20-2-83, adding an entire new Code Section 20-2-82 in its place.⁹⁵ The updated Code Sections 20-2-81(f) through (l) and the new Code Section 20-2-82 describe the peer review team, its duties, compositions, and its relationship with the state board and the Office of Student Achievement.⁹⁶

The substitute also changed what was moved to Code Section 20-2-83. The substitute added “of a local school system which has requested flexibility” after “a strategic plan” in Code Section 20-2-83(a).⁹⁷ The substitute also changed “the” to “such” before “local school system” and changed “such” to “the” before “strategic plan”.⁹⁸ The substitute updated Code Section 20-2-83(b) to refer to “Code

89. Compare HB 1209 (HCS), § 1, p. 2, ln. 26, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 21, as introduced, 2008 Ga. Gen. Assem.

90. Compare HB 1209 (HCS), § 1, p. 2, ln. 26, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 21, as introduced, 2008 Ga. Gen. Assem.

91. Compare HB 1209 (HCS), § 1, p. 2, ln. 30, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 25, as introduced, 2008 Ga. Gen. Assem.

92. Compare HB 1209 (HCS), § 1, p. 2, ln. 36, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 28, as introduced, 2008 Ga. Gen. Assem.

93. Compare HB 1209 (HCS), § 1, p. 3, ln. 13, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 3, ln. 4, as introduced, 2008 Ga. Gen. Assem.

94. Compare HB 1209 (HCS), § 1, p. 3, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 32, as introduced, 2008 Ga. Gen. Assem.

95. Compare HB 1209 (HCS), § 1, p. 4, ln. 4, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 3, ln. 4, as introduced, 2008 Ga. Gen. Assem.

96. HB 1209 (HCS), § 1, p. 3, ln. 1, 2008 Ga. Gen. Assem.

97. Compare HB 1209 (HCS), § 1, p. 5, ln. 5, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 1, as introduced, 2008 Ga. Gen. Assem.

98. Compare HB 1209 (HCS), § 1, p. 5, ln. 6, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 2, as introduced, 2008 Ga. Gen. Assem.

Section 20-2-84” instead of “Code Section 20-2-83” due to the numbering change.⁹⁹

Subsection (c) of the initial bill read “[t]he state board shall provide that increased flexibility requested by a local school system pursuant to subsection (b) of Code Section 20-2-83 shall result in increased accountability pursuant to subsection (a) of Code Section 20-2-83 and potential consequences pursuant to subsection (c) of Code Section 20-2-83.”¹⁰⁰ The substitute changed this subsection to read “[t]he state board shall ensure that the flexibility requested by a local school system pursuant to subsection (b) of Code Section 20-2-84 shall result in consequences in accordance with subsection (c) of Code Section 20-2-84 and Code Section 20-2-84.1 for noncompliance with the accountability requirements established pursuant to subsection (a) of Code Section 20-2-84.”¹⁰¹ This reflects the new numbering that has resulted from the changes above and changes the wording slightly to emphasize the relationship of flexibility, accountability, and consequences.¹⁰²

The substitute changed Code Section 20-2-83(d) from a term of “three years” to “five years.”¹⁰³ The substitute also changed “[t]he state board may provide for automatic renewal of a contract is in compliance with its accountability requirements” to “[t]he terms of the contract shall provide for automatic extension of such contract if a local school system is in noncompliance with its accountability requirements.”¹⁰⁴

The substitute made one other change to Code Section 20-2-83 by adding subsection (e) that states “[t]he terms of a contract may be amended during the term of the contract upon approval of the state board and the local board of education.”¹⁰⁵

99. Compare HB 1209 (HCS), § 1, p. 5, ln. 9, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 4, as introduced, 2008 Ga. Gen. Assem.

100. HB 1209, § 1, p. 4, ln. 6, as introduced, 2008 Ga. Gen. Assem.

101. Compare HB 1209 (HCS), § 1, p. 5, ln. 10, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 6, as introduced, 2008 Ga. Gen. Assem.

102. See House Floor (I) Video, *supra* note 33 at 75min., 51 sec. (remarks by Rep. Brooks Coleman (R-97th)).

103. Compare HB 1209 (HCS), § 1, p. 5, ln. 15, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 10, as introduced, 2008 Ga. Gen. Assem.

104. Compare HB 1209 (HCS), § 1, p. 5, ln. 15, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 10, as introduced, 2008 Ga. Gen. Assem.

105. HB 1209 (HCS), § 1, p. 5, ln. 18, 2008 Ga. Gen. Assem.

The substitute also changed what is now Code Section 20-2-84 (formerly 20-2-83) by updating the Code Section reference in subsection (a) and adding subsection (a)(5) which states “[a]ny other accountability measures included pursuant to Part 3 of Article 2 of Chapter 14 of this title.”¹⁰⁶ The substitute changed Code Section 20-2-84(b) by adding a new subsection (4) and moving what had been subsections (4) and (5) to subsections (5) and (6), respectively.¹⁰⁷ Code Section 20-2-84(b)(4) now reads “[s]alary schedule requirements in Code Section 20-2-212”.¹⁰⁸ This adds another waiver to the “top five” in the accountability section, which can now only be waived through contract under this bill.¹⁰⁹

Code Section 20-2-84(c) was amended by updating the Code Section reference and by changing “may” to “shall” before “include” and removing “one or more of the following” after “include.”¹¹⁰ The specific consequences listed were also changed. In the original version of the bill, the consequences listed were: “(1) Restructuring of local school system leadership staff; (2) Reconstitution of local school system; (3) Loss of governance of one or more nonperforming schools by the local school system in accordance with Code Section 20-2-84; and (4) Acceleration of interventions or sanctions for failure to meet identified levels of achievement or for not showing specified levels of progress pursuant to Code Section 20-14-41.”¹¹¹ These were replaced by the substitute with: “(1) Interventions or sanctions for failure to meet identified levels of achievement or for not showing specified levels of progress pursuant to Code Section 20-14-41, which may be accelerated; and (2) Loss of governance of one or more nonperforming schools by the local school system in accordance with Code Section 20-2-84.1. [and] Consequences shall be incurred upon noncompliance of a local school system with the accountability

106. Compare HB 1209 (HCS), § 1, p. 5, ln. 31, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 13, as introduced, 2008 Ga. Gen. Assem.

107. Compare HB 1209 (HCS), § 1, p. 6, ln. 7, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 23, as introduced, 2008 Ga. Gen. Assem.

108. Compare HB 1209 (HCS), § 1, p. 6, ln. 7, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 23, as introduced, 2008 Ga. Gen. Assem.

109. HB 1209 (HCS), § 3, p. 9, ln. 22, 2008 Ga. Gen. Assem.

110. Compare HB 1209 (HCS), § 1, p. 6, ln. 13, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

111. HB 1209, as introduced, § 1, p. 4, ln. 35, 2008 Ga. Gen. Assem.

component of its contract.”¹¹² Also, subsection (d), which required that the state board and the “department” make “all reasonable efforts...to ensure that” the flexibility, accountability, and consequences were “relatively equal”, was removed by the substitute.¹¹³

The substitute also changed what had been Code Section 20-2-84 to Code Section 20-2-84.1, labeling the first paragraph subsection (a) and changing “shall be authorized, if provided” to “shall, as provided.”¹¹⁴ The substitute amended subsection (a)(1) by removing “with the appointment of the charter governing board members to be made by the Governor.”¹¹⁵ The appointment of the board members is no longer clearly defined. The substitute also added subsection (b) which includes four subsections contained therein.¹¹⁶ Subsection (b) provides for how long local school systems are given to comply with the accountability provisions of their contract, depending on which flexibility waivers had been granted.¹¹⁷

The substitute changed Code Section 20-2-84.2 by adding a new subsection (a) and labeling what had been Code Section 20-2-84.1 as subsection (b).¹¹⁸ The new subsection (a) provides the Office of Student Achievement with a duty to revise the state-wide accountability system pursuant to Code Section 20-14-26.¹¹⁹ Code Section 20-2-84.3 was amended by changing “or opt for the status quo and shall phase in the remaining local school systems so that all local school systems shall have a strategic plan and contract in place or have signed a statement indicating their election to maintain the status quo by the 2013-2014 school year, except as otherwise provided for in Code Section 20-2-84.3” to “and shall phase in the remaining local school systems so that all local school systems shall

112. Compare HB 1209 (HCS), § 1, p. 6, ln. 15, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

113. Compare HB 1209 (HCS), § 1, p. 6, ln. 21, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 5, ln. 8, as introduced, 2008 Ga. Gen. Assem.

114. Compare HB 1209 (HCS), § 1, p. 6, ln. 23, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 5, ln. 17, as introduced, 2008 Ga. Gen. Assem.

115. *Id.*

116. HB 1209 (HCS), § 1, p. 6, ln. 33, 2008 Ga. Gen. Assem.

117. *Id.*

118. Compare HB 1209 (HCS), § 1, p. 7, ln. 10, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 5, ln. 23, as introduced, 2008 Ga. Gen. Assem.

119. HB 1209 (HCS), § 1, p. 7, ln. 11, 2008 Ga. Gen. Assem.

have a strategic plan in place by the 2015-2016 school year, except as otherwise provided for in Code Section 20-2-84.4.”¹²⁰

Finally, the last change the substitute made to Section 1 of the bill was to remove “and the Office of Student Achievement, as appropriate” after “Board of Education” and “and shall, to the extent practicable, integrate the requirements of this article with existing procedures, data collection methods, and policy” from the end of Code Section 20-2-84.5.¹²¹ This removed one duty imposed on the Office of Student Achievement in the original version of the bill.

The substitute made no changes to Section 2, but it did change Section 3 of the bill. The change to this section prohibits the State Board of Education from granting waivers on the “top five” grounds specified in Section 1 of the bill.¹²²

Consideration and Passage by the Senate

The bill, sponsored in the Senate by Sen. Eric Johnson (R-1st), was first read on March 6, 2008.¹²³ The bill was then referred to the Senate Education & Youth Committee.¹²⁴ The Committee favorably reported a substitute version on March 27, 2008.¹²⁵ The bill was read for a second time on March 28, 2008.¹²⁶ The final reading was on March 31, 2008 and the substitute version passed the Senate that same day.¹²⁷

The Senate Committee on Education & Youth offered a substitute of the bill that made several changes.¹²⁸ The substitute amended the preamble in several places to reflect the changes made in the text of the bill.¹²⁹ The substitute adopted the changes to Code Section 20-2-

120. Compare HB 1209 (HCS), § 1, p. 7, ln. 21, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 5, ln. 32, as introduced, 2008 Ga. Gen. Assem.

121. Compare HB 1209 (HCS), § 1, p. 8, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 6, ln. 8, as introduced, 2008 Ga. Gen. Assem.

122. HB 1209 (HCS), § 3, p. 10, ln. 28, 2008 Ga. Gen. Assem.

123. State of Georgia Final Composite Status Sheet, HB 1209, Mar. 6, 2008 (Apr. 4, 2008).

124. *Id.*

125. *Id.* at Mar. 27, 2008.

126. *Id.* at Mar. 28, 2008.

127. *Id.* at Mar. 31, 2008.

128. HB 1209 (SCS), 2008 Ga. Gen. Assem.

129. Compare HB 1209 (SCS), § 1, p. 1, ln. 1, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 1, ln. 1, as introduced, 2008 Ga. Gen. Assem.

80 of the bill introduced by the House substitute.¹³⁰ The substitute also changed “rules, and regulations shall be required to comply with the requirements of subsection (k) of Code Section 20-2-81” in subsection (b) to “rules, regulations, policies, and procedures, and such local school system shall:” in addition to adding two subsections which describe procedure for a local school system opting for the status quo.¹³¹

The substitute amends Code Section 20-2-81(a) by changing “shall develop a three-year strategic plan which sets out the school system’s vision and mission for improving the performance of its schools. The strategic plan shall clearly delineate” to “shall clearly delineate in a proposed contract the following for measuring the improvement of the performance of its schools.”¹³²

The substitute removes subsections (b) and (c) from Code Section 20-2-81.¹³³ The substitute also changes what had been subsection (d), and is now subsection (b), by replacing references to the strategic plan with references to the contract with the state board.¹³⁴ The substitute then moves what had been Code Sections 20-2-82 to Code Section 20-2-83.¹³⁵ Code Section 20-2-82 is then replaced with what had been Code Sections 20-2-81(e) through (k), in part, and in part with new language not previously used.¹³⁶ Code Section 20-2-82 now deals with the interaction between the local school systems and the state board in obtaining a mutually agreeable contract.¹³⁷

The substitute changed Code Section 20-2-83 by updating references to the strategic plan to refer to the contract between the local system and the state board.¹³⁸ The substitute also combines

130. Compare HB 1209 (SCS), § 1, p. 1, ln. 21, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 1, ln. 21, 2008 Ga. Gen. Assem.

131. Compare HB 1209 (SCS), § 1, p. 2, ln. 5, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 8, as introduced, 2008 Ga. Gen. Assem.

132. Compare HB 1209 (SCS), § 1, p. 2, ln. 13, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 8, as introduced, 2008 Ga. Gen. Assem.

133. Compare HB 1209 (SCS), § 1, p. 2, ln. 21, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 16, as introduced, 2008 Ga. Gen. Assem.

134. HB 1209 (SCS), § 1, p. 2, ln. 21, 2008 Ga. Gen. Assem.

135. Compare HB 1209 (SCS), § 1, p. 3, ln. 26, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 1, as introduced, 2008 Ga. Gen. Assem.

136. Compare HB 1209 (SCS), § 1, p. 2, ln. 29, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 2, ln. 28, as introduced, 2008 Ga. Gen. Assem.

137. *Id.*

138. HB 1209 (SCS), § 1, p. 3, ln. 27, 2008 Ga. Gen. Assem.

what had been subsections (b) and (c) into a more concise subsection (b).¹³⁹ The substitute also modified subsection (c) (introduced as subsection (d)), to a five-year term instead of a three-year term and adds subsection (d), which allows amendment of the contract only for unforeseen circumstances and approved by the state and local boards of education.¹⁴⁰

The substitute amended Code Section 20-2-84 (introduced as 20-2-83) by changing “shall include one or more of the following student achievement measures, including both total scores and any needed targeted subgroups” to “shall include performance goals and measures in one or more of the following student achievement categories, including both total scores and any needed targeted subgroups.”¹⁴¹

The substitute changed Code Section 20-2-84(b) by adding a subsection (4), which states “(4) Salary schedule requirements in Code Section 20-2-212; and;” and by removing subsection (5), (the “any other requirements” provision).¹⁴² The Senate substitute also modified 20-2-84(c) in very similar fashion to the House substitute.¹⁴³ The only difference between the House substitute and the Senate substitute in this subsection is an additional provision in the Senate version, which reads “provided, however, that if a local school system has been in compliance with the accountability component of its contract for at least three consecutive years, consequences shall not be invoked upon the fifth year of the contract, and such school system may request an extension of its contract and corresponding flexibility from the state board.”¹⁴⁴

139. Compare HB 1209 (SCS), § 1, p. 3, ln. 29, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 4, as introduced, 2008 Ga. Gen. Assem.

140. Compare HB 1209 (SCS), § 1, p. 3, ln. 32, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 10, as introduced, 2008 Ga. Gen. Assem.

141. Compare HB 1209 (SCS), § 1, p. 4, ln. 5, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 14, as introduced, 2008 Ga. Gen. Assem.

142. Compare HB 1209 (SCS), § 1, p. 4, ln. 14, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 31, as introduced, 2008 Ga. Gen. Assem.

143. Compare HB 1209 (HCS), § 1, p. 6, ln. 13, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 4, ln. 35, as introduced, 2008 Ga. Gen. Assem.

144. HB 1209 (SCS), § 1, p. 4, ln. 32, 2008 Ga. Gen. Assem.

The Senate substitute also changed Code Section 20-2-84.1 in a similar fashion to the House substitute.¹⁴⁵ The Senate substitute modified the House substitute by adding “with independent school level governance and a governance board with strong parental involvement” after “charter status” in subsection (a)(1).¹⁴⁶ The Senate substitute also modified subsection (a)(2) by adding “and pursuant to funding criteria established by the state board” after “Office of Student Achievement.”¹⁴⁷ The other change the Senate substitute made to the House substitute was in removing all three subsections of subsection (b) and replacing them with “Loss of governance shall be invoked upon the fifth year of the contract if the school system is in noncompliance as set out in the terms of the contract.”¹⁴⁸ However, as discussed above, loss of governance will not be invoked for a noncompliant school in the fifth year if it has been in compliance for each of the last three years.¹⁴⁹

The Senate substitute also adopted the changes made by the House substitute to Code Section 20-2-84.2, only modifying one reference to strategic plan to refer to a contract instead.¹⁵⁰ The Senate substitute does differ from the House substitute in Code Sections 20-2-84.3, 84.4, and 84.5. The Senate substitute amended Code Section 20-2-84.3(a) to allow no more than five schools to enter into a contract the first year.¹⁵¹ The substitute amended Code Section 20-2-84.3(b) to require notification of intention to request a contract or opt for the status quo by June 30, 2013.¹⁵² The Senate substitute amended Code Sections 20-2-84.4 and 20-2-84.5 to deal with charter schools and

145. Compare HB 1209 (HCS), § 1, p. 6, ln. 21, 2008 Ga. Gen. Assem. with HB 1209, § 1, p. 5, ln. 8, as introduced, 2008 Ga. Gen. Assem.

146. Compare HB 1209 (SCS), § 1, p. 5, ln. 7, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 6, ln. 28, 2008 Ga. Gen. Assem.

147. Compare HB 1209 (SCS), § 1, p. 5, ln. 10, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 6, ln. 30, 2008 Ga. Gen. Assem.

148. Compare HB 1209 (SCS), § 1, p. 5, ln. 17, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 6, ln. 33, 2008 Ga. Gen. Assem.

149. Consideration and Passage by the Senate, *supra* note 144.

150. Compare HB 1209 (SCS), § 1, p. 5, ln. 26, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 7, ln. 17, 2008 Ga. Gen. Assem.

151. Compare HB 1209 (SCS), § 1, p. 5, ln. 31, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 7, ln. 21, 2008 Ga. Gen. Assem.

152. Compare HB 1209 (SCS), § 1, p. 5, ln. 33, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 7, ln. 21, 2008 Ga. Gen. Assem.

allow the state board to offer flexible funding options to charter schools, contrary to the House substitute.¹⁵³

Finally, the Senate substitute adopted the change the House substitute made to Section 3 of the bill.¹⁵⁴

The Act

The House and the Senate disagreed on substitutes and a Conference Committee was appointed by both the House and the Senate.¹⁵⁵ The Conference Committee adopted a new version of the bill on April 4, 2008, taking parts of both the Senate substitute and the House substitute.¹⁵⁶ This version was sent to the Governor on April 8 and became law with his signature on April 9, 2008.¹⁵⁷

The Act adopts a combination of the Senate substitute and the House substitute. The Act adds several clauses to the Senate substitute version of the preamble, including “to provide for submission of a proposed contract;” “to provide for implementation;” and “to provide for other funding options.”¹⁵⁸ The Act also removes some of the provisions that the Senate substitute had added, specifically “to provide for a recommendation by the Office of Student Achievement;” and “to provide for state board approval.”¹⁵⁹

The Act adopts the Senate substitute for Code Section 20-2-80.¹⁶⁰ This provision establishes the right of local school systems to ask to enter into a contract with the State Board of Education to receive increased flexibility in exchange for accountability and consequences.¹⁶¹ The Act also establishes that there is no affirmative duty imposed on local school systems that decide not to seek waivers save the need to hold a public hearing to inform the public of the

153. Compare HB 1209 (SCS), § 1, p. 6, ln. 1, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 1, p. 7, ln. 21, 2008 Ga. Gen. Assem.

154. Compare HB 1209 (SCS), § 3, p. 7, ln. 32, 2008 Ga. Gen. Assem. with HB 1209 (HCS), § 3, p. 9, ln. 19, 2008 Ga. Gen. Assem.

155. State of Georgia Final Composite Status Sheet, HB 1209, Apr. 4, 2008 (Apr. 4, 2008).

156. *Id.*

157. *Id.* at Apr. 9, 2008 (Apr. 4, 2008).

158. O.C.G.A. § 20-2-80 (Supp. 2008).

159. *Id.*

160. *Id.*

161. *Id.*

decision not to enter into a contract.¹⁶² The completely permissive nature of the Act is illustrated in this section and has been cited as a positive, even by opponents of the bill.¹⁶³

The Act uses a combination of the Senate substitute and the House substitute for Code Section 20-2-81(a).¹⁶⁴ After using the language from the Senate substitute and the House substitute that states “[e]ach local school system,” Subsection (a) incorporates the Senate substitute language “which elects to request increased flexibility.”¹⁶⁵ Next the Act adds “pursuant to this article” and then incorporates the House substitute, “shall develop a five-year strategic plan which sets out the school system’s vision and mission for improving the performance of its schools.”¹⁶⁶ Then the Act adds the Senate substitute language “and shall clearly delineate in a proposed contract the following for measuring the improvement and performance of its schools.”¹⁶⁷ The Act adopts the three required delineations directly from the identical House and Senate substitutes.¹⁶⁸ The Act clearly sets forth the requirements for measuring performance: current benchmarks, proposed goals for each school, and proposed interim achievement measures per school, as well.¹⁶⁹

Code Section 20-2-81 (b) through (e) adopts the House substitute with three exceptions. First, the Act changes the House substitute language of “strategic plans” to “contracts” in subsection (c), (d), and (e).¹⁷⁰ Second, the Act adds “and performance goals” to what should be discussed at the public hearing. Third, the Act removes the last sentence of subsection (e).¹⁷¹ The Act in subsection (d) provides that the local school system should seek public input on the proposed contract in the form of a public hearing and formal written comments

162. *Id.*

163. See Telephone Interview with Rep. Alisha Morgan (D-39th) (Apr. 10, 2008) [hereinafter Morgan Interview].

164. O.C.G.A. § 20-2-81(a) (Supp. 2008).

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. O.C.G.A. § 20-2-81(c) (Supp. 2008).

171. O.C.G.A. § 20-2-81(e) (Supp. 2008).

from superintendents.¹⁷² The opportunity for the public to comment on the Act is critical to ensure local control of the process.¹⁷³

Code Section 20-2-82 primarily adopts the House substitute. Subsection (a) changes “[t]he local school system” to “[t]he local board of education” concerning who shall enter into the negotiations.¹⁷⁴ Subsection (a) also adds the additional sentence to the end of (a): “The accountability, flexibility, and consequences components may vary between schools and clusters.”¹⁷⁵ This variance between schools and clusters allows the contract to be tailored to the individual needs of schools and communities and helps ameliorate the concern voiced by opponents that high performing schools could be penalized for failing to reach even higher goals.¹⁷⁶ However, the Act does not speak to whether individual schools may be completely removed from the contract made by the system as a whole, so even with tailored penalties per school and cluster, this may remain a concern.¹⁷⁷

Subsections (b), (c), (d)(1), and (d)(2) adopt the House substitute with no changes.¹⁷⁸ These sections of the Act detail the approval procedure by the State Board of Education and the interaction, if the initial plan is disapproved, pertaining to amendments to the contracts.¹⁷⁹ Subsection (e) adopts the Senate substitute, notwithstanding a change in the number of the Code Section, which is also the same as the House substitute with one minor exception.¹⁸⁰ This subsection describes the waiver and variance procedure and describes what may and may not be waived, as well as reiterates the goal of the waivers – to improve student performance.¹⁸¹ This focus on accountability has been reiterated throughout the bill, and

172. O.C.G.A. § 20-2-81(d) (Supp. 2008).

173. See House Floor (I) Video, *supra* note 33 at 75 min., 51 sec. (remarks by Rep. Brooks Coleman (R-97th)).

174. O.C.G.A. § 20-2-82(a) (Supp. 2008).

175. *Id.*

176. See Video Recording of House Floor Debate, Mar. 5, 2008 (II) at 26 min., 17 sec. (remarks by Rep. Brian Thomas (D-100th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html [hereinafter House Floor (II) Video].

177. See *Id.* at 26 min., 17 sec. (remarks by Rep. Brian Thomas (D-100th)).

178. O.C.G.A. § 20-2-82 (Supp. 2008).

179. *Id.*

180. O.C.G.A. § 20-2-82(e) (Supp. 2008).

181. *Id.*

throughout the floor debates discussing the bill.¹⁸² The Act adopts the Senate substitute language “upon the inclusion of such request in the local school system’s proposed contract and in accordance with subsection (b) of Code Section 20-2-84” to refer to when the state board is authorized to approve a waiver or variance.¹⁸³

The Act primarily adopts the Senate substitute for Code Section 20-2-83. Subsection (a) simply states, “Upon approval of a proposed contract” which removes the Senate substitute language, “a local school system’s” proposed contract.¹⁸⁴ Subsections (b), (c), and (d) use the Senate substitute’s exact language.¹⁸⁵ The Act provides that a contract shall be entered into between the State and the local school system pursuant to the approved contract.¹⁸⁶ This contract should not be amended unless unforeseen circumstances warrant, with approval of the state and local boards.¹⁸⁷ The Act specifies the contract term at five years, and permits the contract to contain an automatic extension, provided the local system meets its accountability requirements.¹⁸⁸ This is a permissive provision, not a requirement, and thus the overall theme of permissiveness is maintained.

Code Section 20-2-84 subsection (a) is similar to the House substitute. Subsection (a) replaces the House substitute language of “shall include one or more of the following student achievement measures,” with “shall include at least one of the student achievement measures in paragraphs (1) through (4) of this subsection.”¹⁸⁹ The Act adopts the House substitute’s (1) through (4) student achievement measures.¹⁹⁰ The Act also adopts the House substitute’s (5), but this is not referred to in subsection (a) and thus is not mandatorily included by the language “shall”.¹⁹¹ These five paragraphs are the five accountability measures and include four specific criteria and one allowance of additional criteria from another

182. See generally House Floor (I) Video, *supra* note 33.

183. O.C.G.A. § 20-2-82(e) (Supp. 2008).

184. O.C.G.A. § 20-2-83(a) (Supp. 2008).

185. O.C.G.A. § 20-2-83 (Supp. 2008).

186. O.C.G.A. § 20-2-83(a) (Supp. 2008).

187. O.C.G.A. § 20-2-83(d) (Supp. 2008).

188. O.C.G.A. § 20-2-83(c) (Supp. 2008).

189. Compare HB 1209 (HCS), § 1, p. 4, ln. 14, 2008 Ga. Gen. Assem. with O.C.G.A. § 20-2-84(a) (2005).

190. *Id.*

191. *Id.*

source in the law.¹⁹² However, the Act does not in any way specify what types of performance using these criteria is required, but instead leaves this to the local school system and the state to negotiate during the contracting process.

Code Section 20-2-84 subsection (b) is also similar to the House substitute.¹⁹³ The Act changes subsection (b) to read that the flexibility component shall include the waiver or variance “of at least one of the areas in paragraphs (1) through (4) of this subsection as requested by the local school system” replacing the House substitute language of “any one or more of the following areas as requested by the local school system and as approved by the state board in the local school system’s strategic plan.”¹⁹⁴ The Act adopts the House substitute paragraphs (1) through (4); but the Act refuses to adopt the House substitute paragraph (5); and the Act adopts the House substitute paragraph (6) by changing it to paragraph (5) and removing the language “in the local school system’s strategic plan.”¹⁹⁵ This is the flexibility component of the Act and includes four specific criteria, including class size, expenditure controls, certification requirements, and salary schedules.¹⁹⁶ The Act also permits other flexibility waivers, but again references the prohibited waivers of Code Section 20-2-82(e).¹⁹⁷ This permits the local school systems to request flexibility waivers and allows the local school system to determine what “direction they want to take.”¹⁹⁸

Code Section 20-2-84 subsection (c) adopts the Senate substitute for subsection (c)(1) and (c)(2).¹⁹⁹ The Act states that the consequences in this contract “shall include” the two paragraphs listed: intervention or sanctions, and loss of governance.²⁰⁰ The “interventions or sanctions” are not described in any more detail,

192. *Id.*

193. O.C.G.A. § 20-2-84(b) (Supp. 2008).

194. Compare HB 1209 (HCS), § 1, p. 4, ln. 24, 2008 Ga. Gen. Assem. with O.C.G.A. § 20-2-84(b) (Supp. 2008).

195. *Id.*

196. *Id.*

197. O.C.G.A. § 20-2-84(b)(5) (Supp. 2008).

198. See House Floor (I) Video, *supra* note 33 at 75 min., 51 sec. (remarks by Rep. Brooks Coleman (R-97th)).

199. O.C.G.A. § 20-2-84(c) (Supp. 2008).

200. *Id.*

save that they should be mutually agreed upon in the contract.²⁰¹ The “loss of governance” consequences are detailed in Code Section 20-2-84.1.²⁰²

The Act also adopts the Senate substitute language after subsection (c)(2) and adds the following two sentences: “The schedule of interventions or sanctions, including loss of governance, for failure to meet identified levels of achievement or specified levels of progress shall be mutually agreed upon in the contract. If the Office of Student Achievement recommends to the state board that loss of governance not be included in a contract with respect to a high performing school, the contract may provide alternate terms with respect to that school.”²⁰³ The Act adopts this language to specifically single out high performing schools as capable of receiving alternate consequences for failure to meet its accountability requirements, an issue pointed out by Rep. Thomas in the House floor debate concerning this bill.²⁰⁴

The Act primarily adopts the Senate substitute for Code Section 20-2-84.1.²⁰⁵ The Act changes the last sentence of subsection (a) to read that loss of governance “may include, but shall not be limited to,” removing “shall include one or more of the following.”²⁰⁶ Additionally, the Act adopts subsections (a)(1), (a)(2), and (a)(3); however, the Act fails to adopt the House substitute’s (a)(4).²⁰⁷ The Act’s subsection (b) is the same as the Senate substitute’s subsection (b).²⁰⁸ Code Section 20-2-84.1 provides guidance for the loss of governance consequences described in Code Section 20-2-84(c).²⁰⁹ However, the Act specifies the loss of governance “may include,” a permissive, open-ended recitation. This open-ended description of

201. *Id.*

202. O.C.G.A. § 20-2-84.1 (Supp. 2008).

203. O.C.G.A. § 20-2-84(c) (Supp. 2008).

204. See House Floor (II) Video, *supra* note 176 at 26min., 17 sec. (remarks by Rep. Brian Thomas (D-100th)).

205. O.C.G.A. § 20-2-84.1 (Supp. 2008).

206. Compare HB 1209 (SCS), § 1, p. 5, ln. 5, 2008 Ga. Gen. Assem. with O.C.G.A. § 20-2-84.1 (Supp. 2008).

207. *Id.*

208. *Id.*

209. O.C.G.A. § 20-2-84(c) (Supp. 2008).

the loss of governance leaves the door open to other loss of governance consequences not detailed in the Act.²¹⁰

The listed loss of governance consequences have been identified by opponents of the Act as “unrealistic.”²¹¹ The first paragraph allows for conversion to charter school status, which was criticized as implausible because “charter schools are organic creations. They develop from the community, parents and teachers getting together to develop a school. You are not going to impose a charter school from outside.”²¹² The second paragraph allows for operation of the failing school by a successful school system, which to some seems a doubtful option.²¹³ However, the Act has added “pursuant to funding criteria established by the state board” to the second possible consequence – takeover of the school by a “successful school system,” assuaging fears by some that funding of schools adopted by another system would cause problems.²¹⁴ The third paragraph provides for operation of the under-performing school by a private entity.²¹⁵ The Senate substitute had permitted a fourth option – tuition vouchers for students of the under-performing school, but the Act does not adopt this paragraph.²¹⁶

The Act adopts the Senate substitute for Code Sections 20-2-84.2, 20-2-84.3, 20-2-84.4, 20-2-84.5, and 20-2-84.6.²¹⁷ The Act provides two duties for the Office of Student Achievement in Code Section 20-2-84.2, including the duty to revise the state-wide accountability system and monitoring local school system progress toward the established goals.²¹⁸ The Act also sets forth a maximum number of contracts for the first year and provides a deadline to local school systems to elect to enter into a contract or remain with the status quo.²¹⁹

210. See Morgan Interview, *supra* note 163, at 11:19.

211. See Morgan Interview, *supra* note 163, at 5:50.

212. See House Floor (II) Video, *supra* note 176, at 28 min., 33 sec. (remarks by Rep. Brian Thomas (D-100th)).

213. See *id.* at 28 min., 33 sec. (remarks by Rep. Brian Thomas (D-100th)); *id.* at 2 min., 50 sec. (remarks by Rep. Alisha Morgan (D-39th)).

214. See *id.* at 2 min., 50 sec. (remarks by Rep. Alisha Morgan (D-39th)).

215. O.C.G.A. § 20-2-84.1(a) (Supp. 2008).

216. See HB 1209 (SCS), § 1, p. 5., ln. 2, 2008 Ga. Gen. Assem.

217. O.C.G.A. § 20-2-80 (Supp. 2008).

218. O.C.G.A. § 20-2-84.2 (Supp. 2008).

219. O.C.G.A. § 20-2-84.3 (Supp. 2008).

The Act provides alternate funding arrangements for local school systems and for charter schools in Code Section 20-2-84.4, and exempts charter schools from the rest of the Act in Code Section 20-2-84.5.²²⁰ The Act does not specify what “other funding options” are offered to charter schools, whether such funding must be negotiated, or how it is reviewed or managed. The final provision of Section 1 of the Act provides the State Board of Education the right to establish rules and regulations in order to implement the Act.²²¹

The Act adopts Section 2 as originally introduced and adopts Section 3 pursuant to the House and Senate substitutes.²²² The amendment to O.C.G.A. §20-2-244 prohibits the State Board of Education from issuing waivers or variances pursuant to any of four specified requirements: class sizes, expenditure controls, certification requirements and salary schedules, the same four listed in the flexibility section of Code Section 20-2-84(b).²²³

Analysis

In the House Education Committee, numerous speakers voiced their concerns about the Act on behalf of various Georgia organizations. One topic of concern for the Georgia Science Teachers Association (GSTA) as well as the Georgia Association of Educators (GAE) and the Professional Association of Georgia Educators (PAGE) was that the removal of the Title 20 waivers allowed for the ability to increase class sizes.²²⁴ If the Act allows for flexibility including increased classroom sizes, many teachers are apprehensive that the Georgia Performance Standards will be more difficult to reach.²²⁵ Jeff Hubbard, who spoke on behalf of the GAE, stated, “By allowing systems the flexibility to possibly increase class size, we’re

220. O.C.G.A. §§ 20-2-84.4 to -84.5 (Supp. 2008).

221. O.C.G.A. § 20-2-84.6 (Supp. 2008).

222. O.C.G.A. § 20-2-80 (Supp. 2008).

223. O.C.G.A. § 20-2-244 (Supp. 2008).

224. See Video Recording of House Education Committee, Feb. 26, 2008 at 41 min., 24 sec. (remarks by Ms. Gail Marshall, University Representative, GSTA), <http://media.legis.ga.gov/hav/08/comm/edu/edu022808.wmv>. [hereinafter House Education Committee Video].

225. See House Education Committee Video, *supra* note 224 at 45 min., 12 sec. (remarks by Mr. Jeff Hubbard, President, GAE).

not contributing to success, but rather are engineering a possible setup for failure.”²²⁶

Funding was also a concern for PAGE and GSTA. The bill does not contain the promised funding model. Mr. Hubbard stated, “the bill as presented does not fulfill the governor’s charge to deliver a cost model for a great Georgia public school.”²²⁷

Concerns were also expressed regarding the lack of teacher input in the contract provisions. By placing teachers on the peer review team, however, members of the education community would be able to make contributions to the strategic plans and ultimately the contracts themselves.²²⁸ On behalf of PAGE, Ms. Cicarelli stated:

Parents and teachers don’t get to vote on which provisions of Title 20 are waived in the contract model. So teacher salaries and tenure rights can be waived without a vote and parents don’t get to vote on the fact that their children might be put in much larger class sizes. . . . So that’s not really a good incentive to get our teachers motivated to buy into this process.²²⁹

The consequences of failing to reach the goals set out in the contract also cause concern. “The penalties for non-compliance of the contract provisions are . . . so severe that there will be few if any systems that will actually enter into the contract.”²³⁰ For example, “[i]n some cases, [such as class size], . . . the penalties begin before the contract ends.”²³¹

The Act also changes the way local school systems interact with the state board of education. The Act includes a provision which removes the ability of local school systems to obtain a waiver from the State Board of Education on the “top five” requested waivers pursuant to Code Section 20-2-244, and replaces this option with the ability to enter into a contract with the state whereby this added

226. *Id.*

227. *Id.*

228. See O.C.G.A. § 20-2-82 (Supp. 2008).

229. See House Education Committee Video, *supra* note 224 at 47 min., 47 sec. (remarks by Ms. Cicarelli, Staff Attorney, PAGE).

230. See *id.* at 57 min., 20 sec. (remarks by Mr. Puckett).

231. *Id.*

flexibility is given in exchange for increased accountability.²³² Opponents of this bill argue that this prohibition will decrease the flexibility afforded to schools by not allowing waivers on a school by school basis without the local school system entering into a contract with the state.²³³ Opponents argue that this accountability will result in school systems losing control of schools which need the most help.²³⁴ On or after July 1, 2008, waivers will not be permitted regarding the “top five” requirements and any school which has an existing waiver must include it in any contract entered into by that school system.²³⁵ However, only five school systems will be permitted to enter into a contract the first year and there is the potential that some school systems will lose their waiver status and not be permitted to obtain a new waiver, and also be prohibited from obtaining a contract because the maximum number have already been adopted.²³⁶

In addition, the Act has two listed mandatory consequences, including loss of governance. The loss of governance consequence is detailed in the Act and “may” include three specific consequences.²³⁷ The list is not exhaustive, however, and the potential for other consequences is left open by the bill. The Act, however, also provides that the contract between the local school and the state must detail the consequences of failing to satisfy the accountability requirements, so the local school system should have notice of the potential consequences.²³⁸ Moreover, this notice should be extended to the public through the public hearing requirement in the bill. The specific listed consequences and potential issues with them are discussed above in the Bill Tracking section.²³⁹

232. See House Floor (I) Video, *supra* note 33 at 89 min., 40 sec. (remarks by Rep. Brooks Coleman (R-97th)).

233. See House Floor (II) Video, *supra* note 176 at 2 min., 50 sec. (remarks by Rep. Alisha Morgan (D- 39th)). *Id.* at 23 min., 37 sec. (remarks by Rep. Brian Thomas (D- 100th)); Telephone Interview with Rep. Kathy Ashe (D-56th) (June 16, 2008) (on file with the Georgia State Law Review office). Representative Ashe serves on the GSU College of Law’s Board of Visitors.

234. See House Floor (II) Video, *supra* note 176 at 2 min., 50 sec. (remarks by Rep. Alisha Morgan (D- 39th)).

235. See O.C.G.A. § 20-2-80 (Supp. 2008).

236. See O.C.G.A. § 20-2-84.3 (Supp. 2008).

237. See O.C.G.A. § 20-2-84.1 (Supp. 2008).

238. See O.C.G.A. § 20-2-84 (Supp. 2008).

239. See text accompanying notes 142–49.

Opponents are also concerned about the potential scope of “unforeseen consequences” in Code Section 20-2-83(d). This provision allows amendment of the contract in case of “unforeseen circumstances” if approved by the state and local boards. There is no guidance provided as to what would constitute “unforeseen consequences” to enable amendment of the bill. As opponents of the bill have noted, there is no negotiation after the contract has been adopted, and therefore if a school system finds that a school is unexpectedly under-performing, they will be faced with loss of governance with no ability to renegotiate an extension except for this provision.²⁴⁰

The Act requires any local school system desiring to enter into a contract to “develop a five-year strategic plan which sets out the school system’s vision and mission for improving the performance of its schools.”²⁴¹ The Act does not specify what is required in the description of a school system’s “vision and mission,” although it does specify how to measure “improvement and performance” in this subsection.²⁴²

The Act permits local school systems to enter into a contract and waive the portions of Title 20 that have been identified as the most important provisions. Any school that opts not to enter into a contract is still bound by those laws, but “we’re basically doing that [eliminating Title 20], I guess, under the contract method” and this could potentially result in every school in the state being exempt from Title 20 and instead subject to these contract requirements.²⁴³ The Act does not, however, in any way impact the applicability of federal law on the topic—the No Child Left Behind Act.²⁴⁴

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240. See House Floor (II) Video, *supra* note 176 at 28 min., 33 sec. (remarks by Rep. Brian Thomas (D-100th)).

241. O.C.G.A. § 20-2-81 (Supp. 2008).

242. *Id.*

243. See House Floor (I) Video, *supra* note 33 at 83 min., 30 sec. (remarks by Rep. Brooks Coleman (R-97th)).

244. *Id.*

