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EDUCATION Elementary and Secondary Education: Amend Article 31 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Charter Schools, so as to Enact the "Charter Systems Act"; Provide for Legislative Findings; Provide for the Establishment of Charter Systems; Revise and Add Definitions; Provide for the Establishment of the Charter Advisory Committee; Provide for Requirements for Petitions for Charter Systems; Provide for Waivers and Operating Requirements, Control, and Management for Charter Systems; Provide for Termination of Charter Systems; Revise Certain

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EDUCATION

Elementary and Secondary Education: Amend Article 31 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Charter Schools, so as to Enact the “Charter Systems Act”; Provide for Legislative Findings; Provide for the Establishment of Charter Systems; Revise and Add Definitions; Provide for the Establishment of the Charter Advisory Committee; Provide for Requirements for Petitions for Charter Systems; Revise Certain Provisions Relating to the Approval or Denial of a Charter Petition; Revise Certain Provisions Relating to the Review of Charters; Provide for Terms and Renewals of Charter Systems; Provide for Waivers and Operating Requirements, Control, and Management for Charter Systems; Provide for Termination of Charter Systems; Revise Certain Provisions Relative to Funding of Charter Schools; Change Certain Provisions Relative to the Office of Charter School Compliance; Revise Provisions for Purposes of Conformity; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A §§ 20-2-2062 to -2063 (amended), 20-2-2063.1 to -2063.2 (new), 20-2-2064 to -2066 (amended), 20-2-2067.1 to - 2068.1 (amended), 20-2-2069 (amended)
BILL NUMBER:	SB 39
ACT NUMBER:	116
GEORGIA LAWS:	2007 Ga. Laws 185
SUMMARY:	The Act allows for the creation of charter systems and amends the process of converting public schools into charter schools. The Act provides flexibility for local schools and systems to tailor programs for the unique needs of their communities through the local management of schools and innovative educational programs. The Act requires the State Board of Education to

establish rules for charter petitioners and establishes a Charter Advisory Committee to review charter petitions for compliance with the standards set by the State Board.

The Act provides a grant for charter school systems and dictates the terms for renewing charter systems. The Act establishes how a charter school or system can amend the terms of its charter or terminate its charter. The Act establishes how local revenue earnings shall be calculated for start-up charter schools, and waives certain requirements required under Title 20 for charter schools and systems. The Act changes the responsibilities of the Office of Charter School Compliance.

EFFECTIVE DATE:

July 1, 2007¹

History

Georgia consistently ranks amongst the lowest states in the nation for public education.² To increase local control of public education in Georgia, Lieutenant Governor Casey Cagle wants to expand the use of charter schools.³ Charter schools are unique public schools controlled by a performance contract between local leaders, such as parents and teachers, and governmental entities designated by statutes to approve charters, such as state or local school boards.⁴ Charters

1. SB 39, as passed, 2007 Ga. Gen. Assem. Section 12 of the Act, relating to the application of the Quality Basic Education Formula, will not go into effect until July 1, 2008, and shall apply beginning in the 2008-2009 school year. *Id.* § 15.

2. See GA. BUDGET & POLICY INST., GEORGIA RANKINGS (2006), available at <http://www.gbpi.org/pubs/facts/20060715.pdf> (listing Georgia's public high school graduation rate as 49th among the 50 states); Kevin Duffy, *Legislature 2007: Cagle Proposes Charter School Systems*, ATLANTA J.-CONST., Jan. 19, 2007, at D4, available at 2007 WLNR 1059517 (Georgia's SAT scores ranked among the lowest nationally last year).

3. Duffy, *supra* note 2.

4. U.S. Charter Sch., Overview, http://www.uscharterschools.org/pub/uscs_docs/o/index.htm (last visited June 1, 2007) [hereinafter Overview].

allow local teachers, parents, and educators to define the missions, goals, and methods for achieving success at their schools by waiving many statutory and procedural requirements for traditional public schools.⁵ In return for this autonomy, charter schools are accountable for meeting the specific performance-based objectives established in the charter.⁶

The idea of a “charter” school began in the 1970s when Ray Budde, an educator from New England, suggested that small groups of teachers receive contracts by their local school boards to explore new approaches in teaching.⁷ Albert Shanker, the former president of American Federation of Teachers, expanded the idea by suggesting that local boards create a charter with a school to meet certain performance-based requirements in exchange for not having to follow certain regulations.⁸ In 1991, Minnesota was the first state to pass a charter school law.⁹ By 2003, forty states, Puerto Rico, and the District of Columbia had charter school legislation.¹⁰ Nearly 4000 charter schools exist today.¹¹

Georgia first adopted the Charter Schools Act in 1993.¹² Georgia’s original Charter Schools Act allowed for existing schools to convert to charter schools when two-thirds of faculty and parents approved the change.¹³ During the 2006-2007 school year, Georgia had fifty-eight charter schools.¹⁴ Last year, these schools outperformed traditional public schools in Georgia in a number of areas, including state test results, yearly progress reports, and high school graduation rates.¹⁵

5. *See id.*

6. *See id.*

7. U.S. Charter Sch., History, http://www.uscharterschools.org/pub/uscs_docs/o/history.htm (last visited June 1, 2007) [hereinafter History].

8. *Id.*

9. *Id.*

10. U.S. Charter Sch., State Information, http://www.uscharterschools.org/pub/uscs_docs/sp/index.htm (last visited June 1, 2007).

11. *Id.*

12. Denise M. Kazlauskas, *Review of Charter Schools Act of 1998*, 15 GA. ST. U. L. REV. 101, 103 (1998).

13. *Id.* at 105.

14. *Id.*

15. Kevin Duffy, *Legislature 2007: Senate Allows Charter Districts*, ATLANTA J.-CONST., Feb. 3, 2007, at B1, available at 2007 WLNR 2096651.

Though charter schools tailor the charter to meet the needs of the students and community, they are not radically different from traditional public schools.¹⁶ For example, charter schools cannot charge tuition, and must follow health and safety regulations.¹⁷ Supporters of charter schools argue that their benefits include increased opportunities for learning, creating choice for parents in the public school system, providing a system of accountability, encouraging innovative teaching practices, realizing an educational vision, and serving the needs of students in the community.¹⁸ However, the National Education Association points out that it is difficult to compare charter schools to traditional schools because charter documents differ, resulting in academic achievement that varies widely.¹⁹ In 2004, the National Assessment Governing Board released an analysis on charter school performance finding that charter school students on average scored lower than students in traditional public schools.²⁰

Throughout the 1990s, the Charter Schools Act in Georgia went through various changes, most of which were technical. However, a few notable changes made it easier for schools to receive a charter.²¹ In 1995, an amendment changed the voting requirement so that only a majority of the faculty and parents at a school need to agree for the conversion to occur.²² In 1998, an amendment expanded the reach of charter schools by allowing “start-up” schools, charter schools formed without a pre-existing school.²³ Start-up charter schools come from private organizations and groups that petition the State Board of Education to create a charter school.²⁴ In 2000, an amendment allowed the state board to grant a petition for a charter school even when a local school board does not want a school to convert, so long

16. See U.S. Charter Sch., About the Charter School Movement, http://www.uscharterschools.org/pub/uscs_docs/o/movement.htm (last visited June 1, 2007).

17. See *id.*; see also O.C.G.A. § 20-2-2065(b)(5) (Supp. 2007); Kazlauskas, *supra* note 12, at 103.

18. Overview, *supra* note 4.

19. Nat'l Educ. Ass'n, Charter Schools, <http://www.nea.org/charter/index.html> (last visited June 1, 2007).

20. *Id.*

21. Kazlauskas, *supra* note 12, at 105.

22. *Id.*

23. *Id.*

24. *Id.*; Ga. Charter Sch. Ass'n, Charter School Information, <http://www.gacharters.org/info> (last visited June 2, 2007).

as a majority of the faculty wants the change and the change is in the public interest.²⁵

Prior to SB 39, Georgia only granted individual charters to specific schools.²⁶ The success of those individual charter schools prompted Lieutenant Governor Cagle to push for entire school systems to receive charter status.²⁷ By giving a school system a charter, schools can become charter schools more quickly because they are relieved of having to submit their own petitions.²⁸ In addition, the Act creates system cohesion as all schools in the system will receive the charter.²⁹

Before the passage of the Act, school systems showed interest in converting to a charter system. For example, the Decatur City School District expressed interest in converting its system to a charter district prior to the Act's passage.³⁰ Superintendent of Decatur City Schools, Phyllis Edwards, stated, "When you're all going in the same direction, you're going to get where you need to go."³¹

Bill Tracking

Consideration and Passage by the Senate

Senators Dan Weber (R-40th), Dan Moody (R-56th), Tommie Williams (R-19th), Ed Tarver (D-22nd), and Joseph Carter (R-13th) sponsored SB 39.³² On January 23, 2007, the Senate first read SB 39, and Senate President Pro Tempore Eric Johnson (R-1st) assigned it to the Senate Education and Youth Committee.³³ There was not much opposition in committee because it was the Lieutenant Governor's signature bill.³⁴ With a few technical changes, the committee

25. 2000 Ga. Laws § 74, at 618.

26. See 2005 Ga. Laws § 9, at 798 (formerly found at O.C.G.A. § 20-2-2063 (2005)).

27. See Press Release, Lieutenant Governor Casey Cagle, Lieutenant Governor Cagle Announces Charter Systems Act and Career Academies Initiatives (Jan. 23, 2007), available at http://ltgov.georgia.gov/00/press/detail/0,2668,2199618_74277852_88822988,00.html.

28. See Duffy, *supra* note 15; see also O.C.G.A. § 20-2-2063.2 (Supp. 2007).

29. O.C.G.A. § 20-2-2063.2(d) (Supp. 2007).

30. Duffy, *supra* note 3.

31. *Id.*

32. SB 39, as introduced, 2007 Ga. Gen. Assem.

33. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

34. Interview with Sen. Vincent Fort (D-39th) (Apr. 13, 2007) [hereinafter Fort Interview].

favorably reported the bill to the Senate floor on January 31, 2007.³⁵ The changes included clarifying the effect of waivers that apply to charter systems by adding that the waiver “shall apply to each system charter school within the system,” and clarifying the applicability of the annual report to “each start-up and conversion [school] . . . and each charter system.”³⁶ The committee also added requirements that the annual report be sent to the parents and guardians of all system students, and include data “on all of its system schools,” and that the charter “delineate the performance based goals that the system and each school will be expected to meet as well as the criteria by which a system charter may be revoked.”³⁷

On February 1, 2007, the Senate read SB 39 for the second time.³⁸ The next day the bill was read for a third time.³⁹

On February 2, 2007, Senator Dan Weber introduced the bill and spoke enthusiastically in favor of the bill’s passage.⁴⁰ Senator Weber stated that the bill would be the beginning of “real education reform in the State of Georgia” and was “in accordance with the Lieutenant Governor’s vision and plan for education in the State of Georgia.”⁴¹ He explained the technical workings of the bill and stated it would allow the state to move away from a “top-down model of management heavily laden with regulation and mandates.”⁴² He spoke about the bill promoting “bottom-up management” where parents, teachers, and principals “will be empowered.”⁴³

Senator Weber identified three basic principles of the bill: recognition, empowerment, and faith. He said there must be recognition that “one size does not fit all” and that each school,

35. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007. Compare SB 39, as introduced, 2007 Ga. Gen. Assem., with SB 39 (SCS), 2007 Ga. Gen. Assem.

36. Compare SB 39, as introduced, 2007 Ga. Gen. Assem., with SB 39 (SCS), 2007 Ga. Gen. Assem.

37. Compare SB 39, as introduced, 2007 Ga. Gen. Assem., with SB 39 (SCS), 2007 Ga. Gen. Assem.

38. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

39. *Id.*

40. Video Recording of Senate Proceedings, Feb. 2, 2007 at 1 hr., 8 min., 3 sec. (remarks by Sen. Dan Weber (R-40th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html [hereinafter Senate Video].

41. *Id.*

42. *Id.*

43. *Id.*

community, and student is different.⁴⁴ He said teachers, parents, and principals should be empowered to determine how to allocate resources in their schools because they are the ones who will be held accountable through the charter.⁴⁵ He then told the Senate that the General Assembly must have “faith” that teachers, parents, and principals “know what is best for the students in their community.”⁴⁶

Senator Weber explained how the No Child Left Behind Act and federal mandates on schools will still apply to charter schools.⁴⁷ He also discussed how the Charter Advisory Committee will work with the State Board of Education to create a charter with local school boards that want to become charter systems.⁴⁸ Senator Weber said, “parents, teachers, business community members, and the principal . . . will be empowered to make decisions concerning personnel, financial decisions, curriculum, resource allocation, food service, transportation, scheduling, and facilities.”⁴⁹ He also emphasized that the bill provides for protection of due process rights, civil rights, and for the safety of children.⁵⁰ Senator Weber further expressed that it was his intent that the General Assembly look next year at what has been done with the 2007-2008 year regarding system charter schools and “address any concerns legislatively.”⁵¹

Several Senators asked questions about the bill. Senator Steve Thompson (D-33rd) asked questions about funding, teacher credentials, and accountability.⁵² First, when asked how funding might change, Senator Weber responded that it would not change.⁵³ Regarding teacher certification requirements, Senator Weber responded to Senator Thompson that the General Assembly would not require schools to hire certified teachers.⁵⁴ He gave an example of a superintendent wanting to involve “businesses in career education,”

44. *Id.*

45. *Id.*

46. Senate Video, *supra* note 40, at 1 hr., 11 min., 5 sec. (remarks by Sen. Dan Weber (R-40th)).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 1 hr., 38 min., 41 sec.

52. Senate Video, *supra* note 40, at 1 hr., 22 min., 50 sec. (remarks by Sen. Steve Thompson (D-33rd)).

53. *Id.* at 1 hr., 22 min., 50 sec. (remarks by Sen. Dan Weber (R-40th)).

54. *Id.* at 1 hr., 24 min., 25 sec.

such as an “auto mechanic or computer specialist.”⁵⁵ Senator Thompson then asked Senator Weber how charter systems will be held accountable.⁵⁶ Senator Weber responded that systems will be responsible for the federal requirements, such as No Child Left Behind, and must meet the criteria stated in their charter.⁵⁷ Finally, Senator Thompson inquired about whether parents and teachers would need a majority vote in order for a local school board to petition to become a charter system.⁵⁸ Senator Weber responded that a school system would not need the majority approval of the teachers because “the decision rests with the local board of education.”⁵⁹

Senator Ed Harbison (D-15th) asked about the local board of education’s role in applying for the charter petition.⁶⁰ Senator Weber stated that it is the local school board, being an elected body, which voluntarily initiates the petitioning process.⁶¹

Senator Vincent Fort (D-39th) expressed concern that a school system, which becomes a charter system, waives important protections provided by Title 20, and worried that the bill would not require school personnel to have background and fingerprint checks.⁶² Senator Weber pointed out that charter systems must comply with rules relating to the physical health and safety of students, employees, and visitors, which would include required background checks for charter schools.⁶³

Senator Fort also spoke adamantly about the unconstitutionality of the bill, stating that school boards have a constitutional obligation, as elected officials, to run school systems and cannot delegate their power to a governing council consisting of parents, teachers, and administrators.⁶⁴ Senator Weber responded by stating that the school board would be petitioning voluntarily for charter status and that a

55. *Id.* at 1 hr., 23 min., 50 sec.

56. *Id.* at 1 hr., 25 min., 4 sec. (remarks by Sen. Steve Thompson (D-33rd)).

57. *Id.* at 1 hr., 25 min., 28 sec. (remarks by Sen. Dan Weber (R-40th)).

58. Senate Video, *supra* note 40, at 1 hr., 35 min., 55 sec. (remarks by Sen. Steve Thompson (D-33rd)).

59. *Id.* at 1 hr., 36 min., 26 sec. (remarks by Sen. Dan Weber (R-40th)).

60. *Id.* at 1 hr., 28 min., 4 sec. (remarks by Sen. Ed Harbison (D-15th)).

61. *Id.* at 1 hr., 28 min., 32 sec. (remarks by Sen. Dan Weber (R-40th)).

62. *Id.* at 1 hr., 30 min., 2 sec. (remarks by Sen. Vincent Fort (D-39th)).

63. *Id.* at 1 hr., 31 min., 2 sec. (remarks by Sen. Dan Weber (R-40th)); O.C.G.A. § 20-2-2065(b)(5) (Supp. 2007).

64. Senate Video, *supra* note 40, at 1 hr., 33 min., 11 sec. (remarks by Sen. Vincent Fort (D-39th)).

local school board should have the authority to relinquish its power to a governing council just as a local school board can give up its authority to a start-up charter school.⁶⁵

Senator Kasim Reed (D-35th) inquired about what would happen if a “bad actor” school board wanted to create a charter system for wrongful purposes, such as to get around class-size requirements.⁶⁶ Senator Weber responded that the General Assembly must trust the process and the Charter Advisory Committee’s ability to screen the five systems petitioning for a charter to ensure that those systems are not “bad actors.”⁶⁷

At the end of the floor debate, Senator Fort spoke to explain his vote against the bill’s passage, expressing concern that a charter system would not have to follow classroom size requirements, and that local school boards would relinquish constitutionally mandated authority to unelected people.⁶⁸ He also stated a concern that teachers would not have the protections of fair dismissal under Title 20, and that attendance zones could be drawn to exclude black children.⁶⁹

By a vote of 53 to 2, the Senate passed SB 39 on February 2, 2007.⁷⁰

Consideration and Passage by the House

The House read SB 39 for the first time on February 8, 2007.⁷¹ Speaker of the House Glenn Richardson (R-19th) assigned the bill to the House Committee on Education.⁷² SB 39 was later assigned to a new subcommittee, the Charter Systems Subcommittee, for discussion. The House read the bill for the second time on February 9, 2007.⁷³ With a few minor changes, the House Committee on Education favorably reported the bill to the House floor on March 19,

65. *Id.* at 1 hr., 34 min., 4 sec. (remarks by Sen. Dan Weber (R-40th)).

66. *Id.* at 1 hr., 38 min., 56 sec. (remarks by Sen. Kasim Reed (D-35th)).

67. *Id.* at 1 hr., 40 min., 29 sec. (remarks by Sen. Dan Weber (R-40th)).

68. *Id.* at 1 hr., 44 min., 12 sec. (remarks by Sen. Vincent Fort (D-39th)).

69. *Id.*

70. Georgia Senate Voting Record, SB 39 (Feb. 2, 2007); State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

71. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

72. *Id.*

73. *Id.*

2007.⁷⁴ The Education Committee added definitions for “governing council,” “high school cluster,” and “school level governance”; took out the requirement that staff be “present” at the public meeting to vote; removed “system charter school” from the Quality Basic Education formula; set the maximum initial term of a charter system at five years; and provided for the date that the sections become applicable.⁷⁵ The committee also added requirements for an “on-site external evaluation of the system at least once every five years, as determined by the state board,” and the distribution of funds within the charter system to be defined in the charter with “an objective of maximizing spending at the school level.”⁷⁶

The House read the bill for the third time on April 20, 2007, and the House voted on the Committee version of the bill and passed SB 39 without a floor debate on April 20, 2007⁷⁷ by a vote of 113 to 46.⁷⁸ That same day, the Senate adopted the House substitute by a vote of 46 to 4.⁷⁹ On May 3, 2007, the Senate sent the Act to Governor Perdue, who signed the bill into law on May 18, 2007.⁸⁰

The Act

The Act amends Code section 20-2-2062, relating to definitions and terms applicable to Article 31.⁸¹ Specifically, the Act amends the definition of a “charter” to include charter systems.⁸² The Act amends the definition of “local revenue” and a “petition” for a charter.⁸³ The Act inserts new definitions for a “charter system” and a “system charter school,” which means “a school within a charter system.”⁸⁴ The Act defines a “governing council” as a group consisting of parents, teachers, administrators, and others involved in school level

74. *Id.*

75. Compare SB 39 (SCS), 2007 Ga. Gen. Assem., with SB 39 (HCS), 2007 Ga. Gen. Assem.

76. Compare SB 39 (SCS), 2007 Ga. Gen. Assem., with SB 39 (HCS), 2007 Ga. Gen. Assem.

77. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

78. Georgia House Voting Record, HB 39 (Apr. 20, 2007).

79. *Id.*

80. State of Georgia Final Composite Status Sheet, SB 39, June 5, 2007.

81. O.C.G.A. § 30-2-2062 (Supp. 2007).

82. *Id.*

83. *Id.*

84. *Id.*

governance.⁸⁵ The Act adds the term “school level governance” to mean the “decision-making authority in personnel decisions, financial decisions, curriculum and instruction, resource allocation, establishing and monitoring the achievement of school improvement goals, and school operations.”⁸⁶

The Act amends Code section 20-2-2063 by adding a new subsection requiring the State Board of Education to establish rules, regulations, policies, and procedures for petitioners to follow.⁸⁷ The charter petition must “contain an explanation of the structure, rights, and responsibilities of the principal, governing council, and local board of education,” and the objective of the petition must be to maximize school level governance by involving parents, teachers, and community leaders in governing school systems.⁸⁸

The Act adds Code section 20-2-2063.1, which was previously repealed, back into law by establishing a Charter Advisory Committee. The committee will review charter petitions to ensure they comply with the State Board of Education standards and make recommendations, as to which petitions to grant.⁸⁹ The Act requires the Charter Advisory Committee to give and specify the reason for its decision whether to approve a charter.⁹⁰ The committee must make plans and grants and can enter into contracts with consultants to assist charter petitioners in drafting and implementing their petitions.⁹¹ The committee also monitors and assists charter schools and systems and works with the Office of Charter School Compliance.⁹²

The members of the Committee are not to receive compensation for their services.⁹³ The Act assigns the committee administratively to the Department of Education.⁹⁴

85. *Id.*

86. *Id.*

87. O.C.G.A. § 20-2-2063(d) (Supp. 2007).

88. *Id.*

89. O.C.G.A. § 20-2-2063.1 (Supp. 2007). The Charter Advisory Committee has nine members, three appointed from the chairperson of the state board, three appointed by the Lieutenant Governor, and three appointed by the Speaker of the House. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

The Act adds Code section 20-2-2063.2, which states that the state board can enter into a charter with a local board to establish a charter school system.⁹⁵ The Act requires that a local board wanting to become a charter system meet the following requirements:

[A]dopt a resolution approving the proposed charter system petition; [c]onduct at least two public hearings and provide notice of the hearings as other legal notices of the local board; and [s]end a notice of the hearings to each principal within the local school system . . . with instructions that each school shall distribute [a] notice to the parent or guardian of each student enrolled in the school.⁹⁶

After consulting with the Charter Advisory Committee, the state board should approve the charter if the petition complies with the board's rules, the provisions in the Act, is in the public interest, and promotes school local governance.⁹⁷ All schools within the charter system will become charter schools once the local board receives that status, except a school wanting to become a conversion charter school or a pre-existing start-up or conversion charter school within the local school system.⁹⁸ The Act provides for the state board to disburse implementation grants for charter school systems in the amount of \$125,000 or another amount as determined by the state board, and allows the board to approve up to five charter system petitions for the 2008 fiscal year.⁹⁹ For the years following 2008, the state board can establish in its rules how many charter system petitions will be approved based on available funding.¹⁰⁰

The Act amends Code section 20-2-2064 relating to how a school becomes a conversion charter school.¹⁰¹ A school wanting to become a conversion charter school must have a meeting of parents, guardians, teachers, and instructional staff called two weeks in advance to agree on a petition, and the petition must be sent to the

95. O.C.G.A. § 20-2-2063.2 (Supp. 2007).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. O.C.G.A. § 20-2-2064 (Supp. 2007).

local board, which must approve or deny the petition within sixty days, unless the petitioner requests an extension.¹⁰² Additionally, the governing council, which is the school level council of parents, teachers, administrators, and others involved in school level governance, can petition to become a conversion charter school in the manner described above.¹⁰³ The Act requires that a local board approve the petition so long as it complies with the state board's rules, the Act, and is in the public interest.¹⁰⁴ If the board denies the petition, it must list specifically why it is denied.¹⁰⁵ If the local board denies the petition, the school can submit a revised petition that addresses deficiencies stated in the board's denial.¹⁰⁶ The Act allows the state board or Charter Advisory Committee, if directed by the state board, to mediate conflicts between the local board and the petitioner.¹⁰⁷

The Act amends Code Section 20-2-2064.1 to require that, prior to approving or denying a charter petition, the state board will receive input from the Charter Advisory Committee.¹⁰⁸ If a petition has been approved by the local school board and complies with the rules of the Act, and is in the public interest, then the state board should approve the charter petition.¹⁰⁹ If the state board denies the petition, it has sixty days to state the reasons for the denial.¹¹⁰ The Act states that a conversion charter school cannot be granted by the state board if the local board denies the petition, but a start-up charter school can be approved by a state board if there is a denial by the local board.¹¹¹

The Act amends Code section 20-2-2065 relating to the operating requirements, control, and management of charter schools.¹¹² Charter schools and systems do not have to comply with the provisions of

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. O.C.G.A. § 20-2-2064 (Supp. 2007).

108. O.C.G.A. § 20-2-2064.1 (Supp. 2007).

109. *Id.*

110. *Id.*

111. *Id.*

112. O.C.G.A. § 20-2-2065 (Supp. 2007).

Title 20,¹¹³ and state or local rules, except as the Act specifically requires.¹¹⁴ The Act also provides that, when a charter system is granted, the waiver applies to all schools within the system.¹¹⁵ In return for the waiver, the charter school or system must agree to meet or exceed the performance based goals included in the charter.¹¹⁶ Each school must meet the criteria in the charter or otherwise it may be revoked.¹¹⁷

The Act provides for the requirements for approving or renewing a charter petition.¹¹⁸ The school or system must be “a public, nonsecretarian, nonreligious, nonprofit school that is not home based.”¹¹⁹ The charter school or system is not prevented from contracting with a for-profit entity for services, including using computer and internet-based programs for students in a virtual setting.¹²⁰ The Act states that charter schools and systems are required to comply with rules, orders, “and statutes relating to civil rights, insurance, the protection of the physical health and safety of school students, employees, and visitors”¹²¹ The school or system is also subject to an annual financial audit.¹²² The charter system or school is not exempt from the requirements listed under Part 3 of Code section 20-2-14 and is subject to the reporting requirements of Code section 20-2-160, subsection (e) of 20-2-161, section 20-2-320, and section 20-2-740.¹²³ The school or system cannot charge tuition or fees to students, except as allowed by Code section 20-2-113, and must have a brief period of reflection, as required by Code section 20-2-1050.¹²⁴

113. Title 20 “outlines the legal guidelines which govern the state education program” and provides various requirements for public schools in Georgia. Ga. Prof'l Standards Comm'n, Educator Certification Section, <http://www.gapsc.com/teachercertification.asp> (last visited Apr. 1, 2008).

114. O.C.G.A. § 20-2-2065 (Supp. 2007).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. O.C.G.A. § 20-2-2065 (Supp. 2007).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

The Act amends Code section 20-2-2066 to state that a charter system shall enroll students in charter schools for the terms of the charter and in accord with state board rules.¹²⁵

The Act amends Code section 20-2-2067.1, relating to how to change the terms of a charter.¹²⁶ A charter school may amend its charter when the local and state board, along with the charter school, agree.¹²⁷ A charter system may amend its charter when the state and local board approves changes.¹²⁸ The Act establishes that a charter for a charter school should be granted for five to ten years, and may be renewed for another ten years.¹²⁹ For a charter system, the charter can only be granted for up to five years, and the state board may then renew the charter for another ten years.¹³⁰ The Act requires that each charter school and system submit an annual report outlining the previous year's progress to the authorizing state or local board, to parents of students enrolled in the school, and to the Department of Education no later than October 1 of each year.¹³¹

The Act requires that each charter system and school submit a report containing the following: 1) its progress toward the goals included in the charter; 2) academic data from the previous year; 3) unaudited financial statements; 4) contact information for the school; 5) proof of nonprofit status; 6) any additional information that the school or system wants to include to show its success; and 7) for a charter system, an on-site evaluation of the system once every five years.¹³²

The Act amends Code section 20-2-2068 relating to the termination of a charter.¹³³ For a charter school, a state board may terminate a charter if a majority of the parents at the charter school or a majority of faculty and instructional staff employed at the charter school vote at a public meeting called two weeks in advance to terminate the charter.¹³⁴ A charter system or school may also be

125. O.C.G.A. § 20-2-2066 (Supp. 2007).

126. O.C.G.A. § 20-2-2067.1 (Supp. 2007).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. O.C.G.A. § 20-2-2067.1 (Supp. 2007).

133. O.C.G.A. § 20-2-2068 (Supp. 2007).

134. *Id.*

terminated if it fails to comply with the charter or meet standards of fiscal management, violates the law, or the state board determines continuing the charter would not be in the best interest of the students or community.¹³⁵ A local board can also request a charter school be terminated, but it must conduct a hearing as to why the charter is being terminated.¹³⁶ For a system charter school, the state board can terminate the charter if the governing council requests that the charter be terminated or if the state board finds good cause to terminate the charter.¹³⁷

The Act amends Code section 20-2-2068.1 to include charter schools in the allotment of Quality Based Education Formula earnings and additional grants.¹³⁸ Local revenue should be allocated to the charter school on the same basis as any other local school.¹³⁹ The Act amends how local revenue earnings should be allocated for a start-up charter school.¹⁴⁰ The Act further amends Code section 20-2-2068.1 by adding a new subsection that requires for system charter schools to distribute funding in a manner provided by the terms of a charter with an objective of maximizing spending at the school level.¹⁴¹

The Act amends Code section 20-2-2069 by designating the responsibilities of the Office of Charter School Compliance to include preparing guidelines for charters to be approved by the state board, distributing petition information to inquiring parties, processing petitions, administering the implementation grant program, compiling information for the annual report, and contracting with an independent party to evaluate the charter schools and systems.¹⁴²

135. *Id.*

136. *Id.*

137. *Id.*

138. O.C.G.A. § 20-2-2068.1 (Supp. 2007).

139. *Id.*

140. *Id.*

141. *Id.*

142. O.C.G.A. § 20-2-2069 (Supp. 2007).

Analysis

The most significant change the Act creates is to allow entire school systems to become charter systems, rather than just individual schools becoming conversion or start-up charter schools.¹⁴³ The purpose of the Act is to remove most of Title 20's mandates that limit innovation in schools, in order to allow school systems to establish their own criteria to best fit the needs of their communities.¹⁴⁴ Senator Dan Weber (R-40th) believes the Charter Systems Act will provide "flexibility in education programs" and the "freedom to innovate" that teachers and parents need to operate schools.¹⁴⁵ In exchange for this waiver, local school boards must meet the requirements created in the contract with a state board, including the performance-based criteria which every school in the system will have to follow.¹⁴⁶ If a charter system does not meet the performance-based criteria established in the contract, the State Board of Education can terminate the charter, and the school would have to return to following the requirements mandated by Title 20.¹⁴⁷ Senator Weber believes this Act makes charter systems and schools accountable for the success of their students.¹⁴⁸

Under the Act, only five school systems can covert to receive charter status, and the bill's sponsor, Senator Dan Weber (R-40th) anticipated those spots will be in high demand.¹⁴⁹ However, Senator Vincent Fort (D-39th), who opposed the bill, feels there is not a great demand for charter systems because the idea behind creating a charter school is that an individual school petitions for charter status to address its own specific needs.¹⁵⁰

143. O.C.G.A. § 20-2-2063.2 (Supp. 2007); Interview with Jocelyn Whitfield, Director of Government Relations, Georgia Association of Educators (Apr. 3, 2007) [hereinafter Whitfield Interview].

144. Senate Video, *supra* note 40, 1 hr., 8 min., 2 sec. (remarks by Sen. Dan Weber (R-40th)).

145. *Id.*

146. *Id.*; O.C.G.A. § 20-2-2065(a) (Supp. 2007).

147. O.C.G.A. § 20-2-2065(a) (Supp. 2007).

148. Senate Video, *supra* note 40, 1 hr., 9 min., 54 sec. (remarks by Sen. Dan Weber (R-40th)).

149. O.C.G.A. § 20-2-2063.2(e)(2) (Supp. 2007); Doug Gross, *Charter School System Plan Moves Closer to a Vote*, MACON TELEGRAPH, Jan. 31, 2007 (on file with the Georgia State University Law Review).

150. Fort Interview, *supra* note 34.

Jocelyn Whitfield of the Georgia Association of Educators fears that charter systems will cause parents and teachers to lose their voice in the charter petitioning process.¹⁵¹ When a school petitions for conversion charter status, a majority of teachers and parents attending a public meeting must approve the petition before it is even sent to the local school board.¹⁵² Under a charter system petition, however, parents and teachers can only offer limited input as to what goes into the petition because the local school board creates the petition for the entire system.¹⁵³ Having limited parent and teacher input into the petition is alarming because the waiver of Title 20 requirements for charter schools and systems directly affects students and the rights of teachers.¹⁵⁴

Critics of the Act question why the General Assembly does not change the problems with Title 20 rather than allowing certain schools and systems to waive Title 20 requirements altogether.¹⁵⁵ By waiving Title 20, teachers lose many protections that, if not provided for in the charter, could leave them vulnerable.¹⁵⁶ Teachers may not have the same salary guarantees compared to teachers at traditional schools.¹⁵⁷ Jocelyn Whitfield fears that charter systems having funding issues will first cut teachers' pay.¹⁵⁸ However, she states that supporters of the Act argue that teachers can move to other school districts if they do not want to work under a charter system.¹⁵⁹ The problem with this argument is that teachers are often invested in their schools and communities, making it difficult to leave.¹⁶⁰ A charter system essentially would leave a teacher to choose between giving up his or her rights guaranteed under Title 20 or leaving his or her community.¹⁶¹

Waiving Title 20 impacts students as well as teachers. Teachers may not have to meet the certification requirements, classroom-size

151. Whitfield Interview, *supra* note 143.

152. O.C.G.A. § 20-2-2064(a) (Supp. 2007).

153. O.C.G.A. § 20-2-2065(a) (Supp. 2007).

154. See Whitfield Interview, *supra* note 143.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. Whitfield Interview, *supra* note 143.

161. *Id.*

requirements, and similar protections contained within Title 20.¹⁶² Senator Weber's response to this criticism is that local school boards, parents, and teachers will place in the charter many of the protections Title 20 already requires because they want to protect their students, and that people should have "faith" in those creating the charters.¹⁶³ In addition, there are still minimal requirements that systems must meet as required by the U.S. Department of Education and the No Child Left Behind Act.¹⁶⁴ The Act also specifically requires that charter systems and schools be subject to rules relating to civil rights, preventing unlawful conduct, and protecting the physical health and safety of students, employees, and visitors.¹⁶⁵ The Act's creation of a Charter Advisory Committee offers additional protection as it helps the State Board of Education to decide which petitions provide the best protections for students and, thus, which petitions to grant.¹⁶⁶

Smaller school systems, which have a smaller property tax base to fund their schools, are most likely to petition for one of the five spots given during the 2007-2008 school year because they will receive an additional \$125,000 in funding.¹⁶⁷ Additionally, low-performing schools are likely to become the ones converting to charter status.¹⁶⁸ This, however, is problematic because the best teachers may not choose to work in schools where they do not receive the protections of Title 20.¹⁶⁹ The National Assessment Governing Board found that charter schools which allowed uncertified teachers had students who scored significantly lower when compared with students at traditional public schools who had certified teachers.¹⁷⁰ Charter schools are twice as likely to employ inexperienced teachers, and students taught by teachers with at least five years of experience outperformed students with less experienced teachers.¹⁷¹

162. See O.C.G.A. § 20-2-2065(a) (Supp. 2007).

163. See Senate Video, *supra* note 40, at 1 hr., 30 min., 2 sec. (remarks by Sen. Dan Weber (R-40th)).

164. *Id.* at 1 hr., 11 min., 39 sec. (remarks by Sen. Dan Weber (R-40th)).

165. O.C.G.A. § 20-2-2065(b)(5) (Supp. 2007).

166. See O.C.G.A. § 20-2-2063.1 (Supp. 2007).

167. Whitfield Interview, *supra* note 143.

168. See Kathleen Kingsbury, *Charter Schools Remain Subject of Debate*, CNN.COM, Aug. 13, 2004, <http://www.cnn.com/2004/EDUCATION/08/13/b2s.charters/index.html>.

169. Fort Interview, *supra* note 34.

170. See Nat'l Educ. Ass'n, *Charter Schools*, <http://www.nea.org/charter/index.html> (last visited June 1, 2007).

171. See *id.*

Senator Vincent Fort (D-39th) believes that charter systems may be an unconstitutional delegation of authority.¹⁷² Local school boards consist of elected officials that are given the authority to run the local schools.¹⁷³ When a school becomes a charter school or a system receives a charter, the charter gives the power to run the school to the governing council which consists of unelected people, including teachers, parents, and administrators.¹⁷⁴ The control of the school is arguably no longer in the hands of the local board.¹⁷⁵ This scenario is exacerbated in the context of charter systems because one charter can take away the local board's control over the entire system, not just one school.¹⁷⁶ Senator Weber responded to the constitutional issue by saying that the petition is completely voluntary, and that the "Act expressly provides that charter schools remain under the control of the local school board."¹⁷⁷

A similar constitutional argument was raised in California under the California Charter School Act.¹⁷⁸ There the court held that the Act did not impermissibly delegate legislative powers because there is a difference between the "delegation of certain educational functions" and "the delegation of the public education system itself."¹⁷⁹ This same reasoning can be applied to the Georgia Charter School's plan. Even though the main day-to-day activities will be in the hands of the governing council, the control of the school system remains in the local board. Likewise, the school board maintains some input in amending or terminating the charter.¹⁸⁰

Another concern of opponents is that it could result in segregation because charter systems could redistrict their areas along racial lines after receiving charter status.¹⁸¹ Supporters of the Act point to the fact that it requires charter schools and systems to follow the laws

172. Senate Video, *supra* note 40, at 1 hr., 33 min., 4 sec. (remarks by Sen. Vincent Fort (D-39th)).

173. *Id.*

174. *Id.* at 1 hr., 44 min., 12 sec. (remarks by Sen. Vincent Fort (D-39th)).

175. *See id.*

176. *See id.*

177. Senate Video, *supra* note 40, at 1 hr., 34 min., 4 sec. (remarks by Sen. Dan Weber (R-40th)).

178. *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125 (1st Dist. 1999).

179. *Id.* at 1135.

180. *See* O.C.G.A. § 20-2-2067.1 (Supp. 2007).

181. Fort Interview, *supra* note 34.

pertaining to civil rights, and a petition must meet the requirements established by the state board.¹⁸²

The Act is likely to be revisited next year to measure the success of the process.¹⁸³ If charter systems are successful, the number of systems is likely to increase. As Governor Sonny Perdue stated, “Charter systems will allow local communities to have greater control, and greater flexibility in deciding how to design their schools.”¹⁸⁴ Lieutenant Governor Casey Cagle believes the Act is a “landmark decision.”¹⁸⁵

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182. See Senate Video, *supra* note 40, at 1 hr., 11 min., 39 sec. (remarks by Sen. Dan Weber (R-40th)).

183. See *id.*

184. Vicky Eckenrode, *Perdue Signs Charter School Bill*, FLA. TIMES-UNION, May 23, 2007, available at http://www.jacksonville.com/tu-online/stories/052307/geo_172016814.shtml.

185. *Id.*

