

May 2012

EDUCATION Elementary and Secondary Education: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide for Legislative Findings and Intent; Provide for Definitions; Establish the Georgia Charter Schools Commission; Provide for its Powers and Duties; Provide for Commission Charter Schools; Provide for Cosponsors; Provide for Petitions and Review; Provide for Petitions from Existing Charter Schools; Provide for Access to Information for Parents; Provide for an Annual Report; Provide for Debts of Commission Charter Schools; Provide for

Recommended Citation

Georgia State University Law Review, *EDUCATION Elementary and Secondary Education: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide for Legislative Findings and Intent; Provide for Definitions; Establish the Georgia Charter Schools Commission; Provide for its Powers and Duties; Provide for Commission Charter Schools; Provide for Cosponsors; Provide for Petitions and Review; Provide for Petitions from Existing Charter Schools; Provide for Access to Information for Parents; Provide for an Annual Report; Provide for Debts of Commission Charter Schools; Provide for Funding for Commission Charter Schools; Provide for Collaboration by the Commission with the Department of Education; Provide for Rules and Regulations; Provide for Application of General Charter School Laws; Provide for Retention of Administrative Fees by a Local Board of Education for Newly Approved Local Charter Schools; Provide for Additional QBE Funding for Full-time Equivalent Students in System Charter Schools; Include such Amount in the Total State Funds Allotted to a School System; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes*, 25 GA. ST. U. L. REV. (2012).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol25/iss1/15>

Funding for Commission Charter Schools; Provide for Collaboration by the Commission with the Department of Education; Provide for Rules and Regulations; Provide for Application of General Charter School Laws; Provide for Retention of Administrative Fees by a Local Board of Education for Newly Approved Local Charter Schools; Provide for Additional QBE Funding for Full-time Equivalent Students in System Charter Schools; Include such Amount in the Total State Funds Allotted to a School System; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

Georgia State University Law Review

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

EDUCATION

Elementary and Secondary Education: Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Elementary and Secondary Education, so as to Provide for Legislative Findings and Intent; Provide for Definitions; Establish the Georgia Charter Schools Commission; Provide for its Powers and Duties; Provide for Commission Charter Schools; Provide for Cosponsors; Provide for Petitions and Review; Provide for Petitions from Existing Charter Schools; Provide for Access to Information for Parents; Provide for an Annual Report; Provide for Debts of Commission Charter Schools; Provide for Funding for Commission Charter Schools; Provide for Collaboration by the Commission with the Department of Education; Provide for Rules and Regulations; Provide for Application of General Charter School Laws; Provide for Retention of Administrative Fees by a Local Board of Education for Newly Approved Local Charter Schools; Provide for Additional QBE Funding for Full-time Equivalent Students in System Charter Schools; Include such Amount in the Total State Funds Allotted to a School System; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 20-2-2080 to -2092 (new)
BILL NUMBER:	HB 881
ACT NUMBER:	571
GEORGIA LAWS:	2008 Ga. Laws 603
SUMMARY:	The Act creates a state-level commission to authorize charter schools and cosponsors of these charter schools. If a charter school petition is denied by a local board of education, the petitioner may submit the petition to the commission for approval unless the school would be located in a charter system. Commission charter schools receive a proportional share of federal, state, and local funding.
EFFECTIVE DATE:	July 1, 2008

History

Overview

A charter school is a public school that operates pursuant to a contract between a local school board and a charter petitioner.¹ Charter schools have been a part of the education reform movement in Georgia for fifteen years.² The Georgia General Assembly passed the first charter school law in 1993, and three charter schools opened two years later.³ Since then, the number of charter schools has increased to fifty-nine during the 2006-07 school year, and the law has been amended several times.⁴ One of these amendments was the Charter Systems Act passed in 2007 which allows a local board to file a petition with the state board to become a charter system.⁵ Designed to give systems more flexibility in meeting student needs, charter systems are organized around the provisions in the charter rather than the rules and regulations that govern school systems in Georgia.⁶

Approval Process

Before a proposed charter school can open its doors, the petitioner must seek approval from the local school board of the school system

1. O.C.G.A. § 20-2-2062 (2005 & Supp. 2008).

2. See Denise M. Kazlauskas, *Elementary and Secondary Education*, 15 GA. ST. U. L. REV. 101 (1998) (discussing charter school legislation in Georgia).

3. GEORGIA DEPARTMENT OF EDUCATION, 2006-2007 ANNUAL REPORT ON GEORGIA'S CHARTER SCHOOLS 4, available at http://public.doe.k12.ga.us/DMGetDocument.aspx/2007_Charter_Schools_Report.pdf?p=6CC6799F8C1371F61720589DA528C3BF5E0341B3E22C3CAE5ADFF13E0ECCEB79&Type=D (last visited Mar. 28, 2008).

4. *Id.* During the 2006-07 school year, 26,299 students enrolled in charter schools, and 1,629,157 students enrolled in traditional public schools. *Id.*; see 1998 Ga. Laws 1080, §§ 1-5, at 1080; 2001 Ga. Laws 148, § 22, at 183; 2002 Ga. Laws 388, §§ 1-2, at 388; 2005 Ga. Laws 798, §§ 6-17, at 806; 2007 Ga. Laws 185, §§ 1-16, at 185.

5. Diane R. Stepp, *New Route to Charter Status Sought*, ATLANTA J.-CONST., Jan. 27, 2008, at C4, available at 2008 WLNR 1567778.

6. *Id.*; see O.C.G.A. § 20-2-2063.2 (2005 & Supp. 2008).

where the charter school will operate.⁷ The board has sixty days to approve or deny the charter petition by a majority vote.⁸

A local board shall approve a petition that complies with the rules, regulations, policies, and procedures promulgated in accordance with Code Section 20-2-2063 and the provisions of this title and is in the public interest. If a local board denies a petition, it must within 60 days specifically state the reasons for the denial, list all deficiencies with respect to Code Section 20-2-2063 [Contents of Charter School Petitions], and provide a written statement of the denial to the charter petitioner and the state board.⁹

The charter schools that are approved are to be treated by the state board and the local board “no less favorably than other local schools . . . with respect to provisions of funds for instruction, school administration, transportation, food services, and, where feasible, building programs.”¹⁰ This means that charter schools receive state education funding, known as quality basic education (QBE) formula earnings, as well as any applicable state and federal grants.¹¹ Additionally, “local revenue shall be allocated to a local charter school on the same basis as for any local school.”¹²

If a local school board denies a petition for a start-up charter school, the petitioner may apply to the state board of education to become a state chartered special school.¹³ “[T]he state board shall approve the charter . . . if the state board finds . . . that such petition meets the requirements set forth in Code Section 20-2-2063 and the provisions of this title and is in the public interest.”¹⁴ These state chartered special schools receive QBE formula earnings and applicable state and federal grants, but they are not eligible to receive

7. O.C.G.A. § 20-2-2064 (2005 & Supp. 2008).

8. *Id.*

9. *Id.*

10. O.C.G.A. § 20-2-2068.1(a) (2005 & Supp. 2008).

11. O.C.G.A. § 20-2-2068.1(b) (2005 & Supp. 2008).

12. O.C.G.A. § 20-2-2068.1(c) (2005 & Supp. 2008).

13. O.C.G.A. § 20-2-2064.1(c) (2005 & Supp. 2008).

14. *Id.*

local tax dollars.¹⁵ As of April 2008, the state board had chartered four state charter schools.¹⁶

Multiple Authorizers

The Center for Education Reform defines an authorizer as “the entity or body approved by the legislature to bring into existence charter schools.”¹⁷ Seventeen states have created a charter school approval process that includes multiple authorizers.¹⁸ Multiple authorizers are generally “bodies outside of the regular education structure of a state” such as a commission, municipality, or university.¹⁹ These states with multiple authorizers are home to eighty percent of the 4,150 charter schools in this country.²⁰

Bill Tracking of HB 881

Consideration and Passage by the House

Representatives Jan Jones (R-46th), Brooks Coleman (R-97th), Edward Lindsey (R-54th), Fran Millar (R-79th), Melvin Everson (R-106th), and Donna Sheldon (R-105th) sponsored HB 881.²¹ The House of Representatives first read HB 881 on April 20, 2007, the last day of the first session of the 2007-08 term.²² It was assigned to the House Education Committee the same day.²³

Prior to the start of the second session of this term, the House Education Subcommittee on Charter Schools, chaired by Representative Lindsey, held three hearings and heard approximately

15. O.C.G.A. § 20-2-2068.1(d) (2005 & Supp. 2008).

16. Ga. Dep't of Educ., State Schools, http://public.doe.k12.ga.us/pea_stateschools.aspx (last visited Apr. 19, 2008).

17. The Ctr. for Educ. Reform, Multiple Authorizers in Charter School Laws (July 2007), http://www.edreform.com/legislators/CER_multiplecharterauthorizerprimer.pdf.

18. *Georgians Want Fundamental Change in State's Charter School Law*, PR Newswire (Jan. 24, 2008), <http://news.corporate.findlaw.com/prnewswire/20080124/24jan20081822.html>. [hereinafter *Georgians Want*]

19. The Ctr. for Educ. Reform, *supra* note 17.

20. *Georgians Want*, *supra* note 18.

21. See HB 881, as introduced, 2008 Ga. Gen. Assem.

22. State of Georgia Final Composite Status Sheet, HB 881, Apr. 20, 2007 (April 4, 2008).

23. *Id.*

ten hours of testimony on HB 881.²⁴ The subcommittee examined several options including not changing the approval process at all, allowing many different entities to authorize charter schools as Ohio has done, and creating a statewide authorizer that could approve charter school petitions but would not prevent local school boards from approving them as Florida has done.²⁵ The subcommittee decided that Ohio's approach was too broad.²⁶ In addition to local school boards, Ohio law allows state universities, educational service centers, and any qualified tax-exempt entity to approve petitions.²⁷ The subcommittee found Florida's approach to be a better model for Georgia to follow. Under Florida law, both local school boards and a state commission serve as authorizers.²⁸ Charter schools approved by the commission are entitled to local funding just as charter schools approved by local school boards are.²⁹

HB 881 was read for a second time in the House on January 14, 2008, the first day of the second session of the 2007-08 term.³⁰ It passed out of the Subcommittee on Charter Schools the next day with a unanimous "do pass" recommendation.³¹ The House Education Committee considered the bill on January 29, 2008.³² Representative Jan Jones presented some of the changes that had been made to the bill since it was introduced in the House, and then she and Andrew Broy, Department of Education Associate Superintendent for Policy and Charter Schools, responded to committee members' questions. She explained that HB 881 is needed because "parents absolutely want more public school options than an attendance zone," and local school boards are not approving charter petitions.³³ In 2007 twenty-

24. Video Recording of House Education Committee Proceedings, Jan. 29, 2008 at 14 min., 15 sec. (remarks by Rep. Edward Lindsey (R-54th)), http://www.legis.ga.gov/legis/2007_08/house/Committees/education/eduArchives.htm [hereinafter House Education Video].

25. See Telephone Interview with Rep. Edward Lindsey (R-54th) (Mar. 26, 2008) [hereinafter Lindsey Interview].

26. *Id.*

27. See OHIO REV. CODE ANN. § 3314.02 (2007).

28. See Lindsey Interview, *supra* note 25; FLA. STAT. ANN. § 1002.335 (2007).

29. See Lindsey Interview, *supra* note 25.

30. State of Georgia Final Composite Status Sheet, HB 881, Jan. 14, 2008 (Apr. 4, 2008).

31. House Education Video, *supra* note 24, at 14 min., 15 sec. (remarks by Rep. Edward Lindsey (R-54th)).

32. State of Georgia Final Composite Status Sheet, HB 881, April 10, 2008.

33. House Education Video, *supra* note 24, at 22 min, 27 sec. (remarks by Rep. Jan Jones (R-46th)).

eight charter school petitions were submitted in Georgia, and twenty-six were denied.³⁴ Representative Jones explained that HB 881 is similar to Florida legislation that created the Florida Schools of Excellence Commission but has been modified slightly to fit the needs of Georgia.³⁵

Several changes were made to the bill by the House committee post-introduction. A new proposed Code section 20-2-2080 was added to include definitions of commission, commission charter school, cosponsor, and department.³⁶ The description of commission members was expanded from “individuals who have experience in finance, administration, law, education, and school governance” to “diverse individuals representative of Georgia’s school population who [have] experience in finance, administration, law, education, public school teaching, and school governance.”³⁷ The provision about hiring an executive director was replaced with “[t]he commission shall determine the manner in which it reviews commission charter school applications and may, in its discretion, use existing department personnel to conduct such review.”³⁸ A provision was added giving the state board the ability to

overrule the authorization or endorsement of a commission charter school by the commission within 60 days of the commission approval, upon a vote to overrule of at least two-thirds of the members of the state board; provided, however, that this shall not preclude a commission charter school applicant from re-applying for authorization or endorsement to the commission after remedying any deficiencies cited by the State Board of Education in its overrule decision.³⁹

34. *Id.* at 23 min., 23 sec.

35. *Id.* at 18 min., 36 sec.

36. See HB 881 (HCS), at p. 2, lines 15–27, 2008 Ga. Gen. Assem.

37. Compare HB 881 (HCS), p. 3, lines 20–22, 2008 Ga. Gen. Assem. with HB 881, p. 3, lines 2–3, as introduced, 2008 Ga. Gen. Assem.

38. See HB 881 (HCS), p. 3, lines 27–29, 2008 Ga. Gen. Assem.

39. See HB 881 (HCS), p. 4, lines 5–10, 2008 Ga. Gen. Assem.

A sentence was added to the end of subsection 20-2-2082(a)(5) that says “[t]he commission’s duties to monitor the charter school shall not constitute the basis for a private cause of action.”⁴⁰

Section 20-2-2082, which would have given local school system the ability to retain exclusive authority to authorize charter schools, was removed.⁴¹ Subsection 20-2-2083(b) was added. It says

Cosponsors shall have no authority to authorize charter schools. Instead, interested municipalities, counties, consolidated governments, universities and colleges of the board of regents, technical institutions of the Department of Technical and Adult Education, and regional educational service agencies, once approved by the commission, may partner with charter applicants to provide local sources of community support for the proposed charter school. This support may include providing technical assistance, academic support, curriculum review, financial assistance, or other support as agreed to between the cosponsor and the charter school.⁴²

Section 20-2-2085, now labeled section 20-2-2084 in the Education Committee substitute, was greatly shortened to “[u]pon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor’s rights and obligations.”⁴³

The end of the bill was substantially reorganized and rewritten.⁴⁴ Section 20-2-2092 was moved to the end of Section 2 and became 20-2-2094, and “commission” was replaced with “State Board of Education.”⁴⁵ Sections 20-2-2093, 20-2-2094, and 20-2-2096 were removed.⁴⁶ In the Education Committee substitute, sections 20-2-

40. See HB 881 (HCS), p. 5, lines 7–8, 2008 Ga. Gen. Assem.

41. Compare HB 881 (HCS), p. 6, lines 28–30, 2008 Ga. Gen. Assem. with HB 881, p. 5, lines 20–36, p. 6 lines 1–37, and p. 7, lines 1–36, as introduced, 2008 Ga. Gen. Assem.

42. See HB 881 (HCS), at p. 6, lines 29–36 and p. 7, lines 1–4, 2008 Ga. Gen. Assem.

43. Compare HB 881 (HCS), p. 8, lines 1–3, 2008 Ga. Gen. Assem., with HB 881, p. 9, lines 1–31, as introduced, 2008 Ga. Gen. Assem.

44. Compare HB 881 (HCS), 2008 Ga. Gen. Assem., with HB 881, as introduced, 2008 Ga. Gen. Assem.

45. Compare HB 881 (HCS), p. 10, lines 28–30, 2008 Ga. Gen. Assem., with HB 881, p. 11, lines 7–9, as introduced, 2008 Ga. Gen. Assem.

46. Compare HB 881 (HCS), 2008 Ga. Gen. Assem. with HB 881, as introduced, 2008 Ga. Gen. Assem.

2092 and 20-2-2093 were added to address funding and Department of Education collaboration.⁴⁷ These sections state:

20-2-2092.

(a) A commission charter school shall be entitled to funding, through state appropriation of state and federal funds, so that the school shall receive a full proportional share for each student enrolled in such school equivalent to the federal, state, and local funding from the local school system in which the student attending the commission charter school resides. Such funding shall be based on the charter school's student enrollment and student characteristics, including all applicable categorical grants, equalization grants, and all other grant programs for which such students qualify. The department, however, may retain up to 3 percent of the funding so calculated for each charter school it has approved for use in administering the duties required pursuant to Code Section 20-2-2082. The total allotment of state and federal funds to the local school system in which a student attending a commission charter school resides shall be calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of state and federal funds appropriated to the commission charter schools from such local school system.

(b) For purposes of funding students enrolled in commission charter schools in the first year of such charter school's operation and prior to the initial student count, the Department of Education shall calculate and distribute the funding for the charter school on the basis of its projected enrollment according to an enrollment counting procedure or projection method stipulated in the terms of the charter. After the initial student count during the first year of such charter school's operation and in all years of operation thereafter, each charter school's student enrollment shall be based on the actual enrollment in the current school year according to the most recent student count. Nothing in this Code section shall be construed to require the Department of Education to conduct more than two student counts per year.

47. See HB 881 (HCS), at p. 9, lines 22-33, p. 10, lines 1-24, 2008 Ga. Gen. Assem.

20-2-2093.

The commission shall work in collaboration with the department on all matters related to charter authorizing and shall be assigned to the department for administrative purposes only, as prescribed in Code Section 50-4-3. For administrative purposes, including data reporting, student enrollment counting procedures, student achievement reporting, funding allocations, and related purposes as defined by the State Board of Education, commission charter schools should, consistent with department rules and regulations, be treated as contained within a single, state-wide local education agency. This local education agency shall be administered by the Department of Education, which shall ensure that commission charter schools receive the support required by this article, including, but not limited to, establishing procedures to ensure that commission charter schools receive the funding required by Code Section 20-2-2092.⁴⁸

In addition, Section 3, which amended section 20-2-2068.1, was added, and states:

Said chapter is further amended in Code Section 20-2-2068.1, relating to application of the Quality Basic Education Formula, grants, local tax revenue, and funds from local bonds, by adding a new subsection to read as follows:

“(c.2) For newly approved local charter schools, including charter renewals, the local board of education may retain an amount of the charter school’s per pupil share of state and local funding not to exceed 3 percent of the total funds earned by the charter school to reimburse the local school system for administrative services actually provided to the charter school.”⁴⁹

Several committee members voiced concerns about the bill. Both Representative Barbara Massey Reece (D-11th) and Representative Tom Dickson (R-6th) expressed funding concerns. Rep. Reece noted that it would be difficult for school systems to anticipate the amount

48. *Id.*

49. See HB 881 (HCS), p. 10, lines 28–33, p. 11, lines 1–2, 2008 Ga. Gen. Assem.

of local revenue needed if part of that revenue had to go to commission charter schools.⁵⁰ Rep. Dickson explained that charter schools have an economic impact on local systems.⁵¹ It is more expensive to run several small schools rather than one larger school.⁵² As more charter schools are created, “we need at some point to figure out a way to hold the local schools financially harmless.”⁵³ Rep. Mike Keown (R-173rd) viewed this bill as “more government” and “another way to go around . . . our local school boards that have been elected and charged by the constitution to education the children in those counties.”⁵⁴

After the questions and concerns, Representative Lindsey offered an amendment to proposed Code section 20-2-2092 to clarify that “money follows the child.”⁵⁵ The original version of the bill did not explain how the funding flowed.⁵⁶ The revised section states:

(a) A commission charter school shall be entitled to funding, through state appropriation of state and federal funds, so that the school shall receive a full proportional share for each student enrolled in such school equivalent to the federal, state, and local funding from the local school system in which the student attending the commission charter school resides. Such funding shall be based on the charter school’s student enrollment and student characteristics, including all applicable categorical grants, equalization grants, and all other grant programs for which such students qualify. The department, however, may retain up to 3 percent of the funding so calculated for each charter school it has approved for use in administering the duties required pursuant to Code Section 20-2-2082. The total allotment of state and federal funds to the local school system in which a student attending a commission charter school resides shall be

50. House Education Video, *supra* note 24, at 54 min, 25 sec. (remarks by Rep. Barbara Massey Reece (D-11th)).

51. House Education Video, *supra* note 24, at 1 hr., 28 min, 36 sec. (remarks by Rep. Tom Dickson (R-6th)).

52. *Id.*

53. *Id.*

54. *Id.*, at 1 hr., 13 min, 56 sec. (remarks by Rep. Mike Keown (R-173rd)).

55. *Id.*, at 1 hr., 33 min., 27 sec. (remarks by Rep. Edward Lindsey (R-54th)).

56. See HB 881, as introduced, 2008 Ga. Gen. Assem.

calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of state and federal funds appropriated to the commission charter schools from such local school system.

(b) For purposes of funding students enrolled in commission charter schools in the first year of such charter school's operation and prior to the initial student count, the Department of Education shall calculate and distribute the funding for the charter school on the basis of its projected enrollment according to an enrollment counting procedure or projection method stipulated in the terms of the charter. After the initial student count during the first year of such charter school's operation and in all years of operation thereafter, each charter school's student enrollment shall be based on the actual enrollment in the current school year according to the most recent student count. Nothing in this Code section shall be construed to require the Department of Education to conduct more than two student counts per year.⁵⁷

The amendment passed unanimously. Next Representative Fran Millar offered an amendment to ensure that "unelected people [are not] extending appointments" to the commission.⁵⁸ He added the phrase "and upon recommendation by the initial recommending authority" in subsection (b) of proposed Code section 20-2-2081.⁵⁹ The amendment passed unanimously. After a failed motion to table the bill offered by Representative Earnest "Coach" Williams (D-89th), the committee gave the HB 881 substitute as amended a "do pass" recommendation by a vote of twenty-two to four.⁶⁰

The House Rules Committee placed the House Education Committee substitute to HB 881 on the calendar for January 31, 2008.⁶¹ The bill was read for a third time.⁶² Then a two and half hour

57. See HB 881 (HCS), p. 9, lines 23–33, p. 10, lines 1–12. 2008 Ga. Gen. Assem.

58. House Education Video, *supra* note 24, at 1 hr., 39 min., 6 sec. (remarks by Rep. Fran Millar (R-79th)).

59. See HB 881 (HCS), p.3, lines 14–15, 2008 Ga. Gen. Assem.

60. House Education Video, *supra* note 24, at 1 hr., 48 min., 40 sec. (remarks by Rep. Brooks Coleman (R-97th)).

61. Georgia General Assembly, General Calendar Legislative Day 9, http://www.legis.ga.gov/legis/2007_08/calendars/hg/01312008.htm (last visited Apr. 3, 2008).

62. State of Georgia Final Composite Status Sheet, HB 881, Jan. 31, 2008 (Apr. 10, 2008).

debate began with many Representatives speaking both for and against HB 881.⁶³ Much of the debate centered on the role of local school boards and whether this bill takes too much authority away from them.⁶⁴ Representative Reece voiced her concern that “the local school board [would not be] involved with [a commission] charter school and yet . . . local school board members are elected by the people of that system . . . [t]o plan and provide for the educational needs of the children in that area.”⁶⁵ Speaking in support of local boards and against the bill, Representative Carolyn Hugley (D-133rd) explained, “if our constituents are smart enough to elect us, they are smart enough to elect our local school board members!”⁶⁶ Toward the end of the debate, Representative Coleman stated that school boards “claim[] they want local control. No. [W]hat they want is total control.”⁶⁷ In his opinion, this bill does not give local boards total control, but it also “does not prevent [charter petitioners from] coming to the local board[s] of education.”⁶⁸ After the debate the House adopted the House Education Committee substitute without objection and then voted.⁶⁹ The committee substitute passed 119 to 48.⁷⁰

Consideration and Passage by the Senate

The Senate read and referred HB 881 to the Education and Youth Committee on February 1, 2008.⁷¹ The committee, chaired by Senator

63. Bridget Gutierrez, *Legislature 2008: Bushel of Peaches House Votes to Create Charter School Panel*, ATLANTA J.-CONST., Feb. 1, 2008, at D8, available at 2008 WLNR 1911006.

64. *Id.*

65. Video Recording of House Proceedings, Jan. 31, 2008 at 29 min., 48 sec. (remarks by Rep. Barbara Massey Reece (D-11th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html [hereinafter House Video].

66. Herbert Garrett, Georgia School Superintendents Association Report from the Capitol Day Nine 2008, http://www.ciclt.net/sn/new/n_detail.aspx?N_ID=200305&ClientCode=gssa (last visited Apr. 19, 2008).

67. House Video, *supra* note 65, at 54 min., 33 sec. (remarks by Rep. Brooks Coleman (R-97th)).

68. *Id.*

69. House Video, *supra* note 65, at 1 hr., 6 min., 19 sec. (remarks by Speaker Glenn Richardson (R-19th)). Speaker Richardson is a graduate of Georgia State University College of Law.

70. Georgia House of Representatives Voting Record, HB 881 (Jan. 31, 2008).

71. State of Georgia Final Composite Status Sheet, HB 881, Feb. 1, 2008 (Apr. 4, 2008).

Dan Weber (R-40th), met on February 12, 2008.⁷² Representative Jones presented the bill and her reasons for sponsoring it and then answered questions.⁷³ The committee started hearing testimony at this meeting and continued hearing more testimony at its next meeting on February 14, 2008.⁷⁴ The committee discussed its substitute to HB 881 at a meeting on March 12, 2008.⁷⁵

Several changes were made by the Senate Committee to the House version of the bill.⁷⁶ The legislative findings at the beginning of the bill were assigned section number 20-2-2080.⁷⁷ The first part of subsection 20-2-2082(a)(1) was rewritten to say “(a) The commission shall have the power to: (1) [a]pprove or deny petitions for commission charter schools and renew, nonrenew, or terminate commission charter school petitions in accordance with State Board of Education rules and regulations established pursuant to this article.”⁷⁸ In the second part of subsection (a)(1), “authorization or endorsement” was changed to “approval, denial, renewal, nonrenewal, or termination.”⁷⁹ In subsection (a)(2) the description of who can be a cosponsor was shortened to “cosponsor.”⁸⁰

The last sentence of 20-2-2082(b)(1) was removed.⁸¹ Subsection 20-2-2082(b)(4) was shortened to “[m]onitor and annually review the performance of cosponsors.”⁸² Subsection 20-2-2082(b)(10) was

72. Herbert Garrett, Georgia School Superintendents Association Report from the Capitol Day Sixteen 2008, http://www.ciclt.net/sn/new/n_detail.aspx?N_ID=200315&ClientCode=gssa (last visited Apr. 19, 2008).

73. *Id.*

74. Jim Puckett, Georgia School Superintendents Association Report from the Capitol Day Eighteen 2008, http://www.ciclt.net/sn/new/n_detail.aspx?N_ID=200318&ClientCode=gssa (last visited Apr. 19, 2008).

75. Herbert Garrett, Georgia School Superintendents Association Report from the Capitol Day Thirty-One 2008, http://www.ciclt.net/sn/new/n_detail.aspx?N_ID=200335&ClientCode=gssa (last visited Apr. 19, 2008) [hereinafter Garrett, Day Thirty-One].

76. Compare HB 881 (SCS), 2008 Ga. Gen. Assem., with HB 881 (HCS), 2008 Ga. Gen. Assem.

77. HB 881 (HCS), at p. 1, line 18, 2008 Ga. Gen. Assem.

78. Compare HB 881 (SCS), p. 3, lines 35–36, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 3, lines 35–36, p. 4, line 1, 2008 Ga. Gen. Assem.

79. Compare HB 881 (SCS), p. 4, lines 5–6, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 4, line 5, 2008 Ga. Gen. Assem.

80. Compare HB 881 (SCS), p. 4, line 11, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 4, lines 11–13, 2008 Ga. Gen. Assem.

81. Compare HB 881 (SCS), p. 4, line 17, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 4, lines 20–22, 2008 Ga. Gen. Assem.

82. Compare HB 881 (SCS), p. 4, line 27, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 4, lines 33–37, p. 5, lines 1–3, 2008 Ga. Gen. Assem.

removed.⁸³ The end of subsection 20-2-2082(b)(11) was changed to “standards and accountability for commission charter schools.”⁸⁴ In subsection 20-2-2082(b)(13) the description of who can be a cosponsor was shortened to “cosponsor;” “all students, including, but not limited to” was added before “low-income;” and “or” was changed to “and” both after “gifted” and after “populations.”⁸⁵ In subsection 20-2-2083(b)(13)(B) was changed to “[a]ssist in determining the feasibility of establishing commission charter schools for students with disabilities.”⁸⁶ The text that followed this subsection was eliminated.⁸⁷ Subsection 20-2-2082(b)(14) was eliminated.⁸⁸ The second sentence of subsection 20-2-2083(a) was changed after the “applications” to say “in accordance with commission rules and regulations established pursuant to this article to encourage technical assistance, academic support, curriculum review, financial assistance, or other support from cosponsors.”⁸⁹ The description of who can be a cosponsor was shortened to “cosponsor” in the second sentence of subsection 20-2-2083(b).⁹⁰ Subsection 20-2-2083(c) was changed to “[u]pon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor’s rights and obligations,” and subsections 20-2-2083(d) and (e) were removed.⁹¹ Sections 20-2-2084 and 20-2-2085 were also removed.⁹² Section 20-2-2086 was divided into subsections

83. Compare HB 881 (SCS), p. 5, lines 8–10, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 5, lines 20–24, 2008 Ga. Gen. Assem.

84. Compare HB 881 (SCS), p. 5, lines 8–10, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 5, lines 26–27, 2008 Ga. Gen. Assem.

85. Compare HB 881 (SCS), p. 5, lines 14–16, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 5, lines 31–36, 2008 Ga. Gen. Assem.

86. Compare HB 881 (SCS), p. 5, lines 22–23, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 6, lines 5–6, 2008 Ga. Gen. Assem.

87. Compare HB 881 (SCS), p. 5, lines 22–23, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 6, lines 7–13, 2008 Ga. Gen. Assem.

88. Compare HB 881 (SCS), p. 5, lines 24–26, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 5, lines 14–17, 2008 Ga. Gen. Assem.

89. Compare HB 881 (SCS), p. 6, lines 3–6, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 6, lines 30–32, 2008 Ga. Gen. Assem.

90. Compare HB 881 (SCS), p. 6, line 7, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 6, lines 33–36, 2008 Ga. Gen. Assem.

91. Compare HB 881 (SCS), p. 6, lines 12–13, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 7, lines 5–34, 2008 Ga. Gen. Assem.

92. Compare HB 881 (SCS), p. 6, lines 13–14, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 8, lines 1–9, 2008 Ga. Gen. Assem.

and lengthened to include a provision that petitioners must go to their local school boards before going to the commission.⁹³ The new wording is

(a) Charter school petitions submitted to the commission shall be subject to State Board of Education rules and regulations established pursuant to this article and as otherwise applicable to charter schools.

(b) A petitioner for a commission charter school shall submit a petition for a start-up charter school to the local board of education in which the school is to be located and to each local school system from which the commission charter school plans to enroll students prior to or concurrently with a corresponding petition to the commission unless the proposed commission charter school plans to enroll students from five or more counties; provided, however, that the commission shall not act on the commission charter school petition until the local board of education or local boards of education have had the opportunity to approve or deny the petition for a start-up charter school in accordance with State Board of Education rules and regulations. Local board of education approval or denial of a start-up charter school petition shall not preclude the petitioner from seeking authorization from the commission. A petitioner shall not be required to seek authorization from the commission for a commission charter school if the local board of education or local boards of education approve the petition for a start-up charter school; provided, however, that such start-up charter school shall be governed by Article 31 of this chapter. The commission shall take into consideration any support or opposition by the local board of education or local boards of education on a start-up charter school petition when it votes to approve or deny a corresponding commission charter school petition.⁹⁴

93. *Compare* HB 881 (SCS), p. 6, lines 14–34, 2008 Ga. Gen. Assem., *with* HB 881 (HCS), p. 8, lines 10–15, 2008 Ga. Gen. Assem.

94. HB 881 (SCS), p. 6, lines 15–34, 2008 Ga. Gen. Assem.

Subsection 20-2-2087(b) was removed.⁹⁵ The last sentence of what used to be subsection (a) was changed to “[a]n existing charter school that is established as a commission charter school pursuant to this Code section shall be allowed to continue the use of all facilities, equipment, and other assets it used prior to the expiration or rescission of its charter with a local board of education.”⁹⁶ Section 20-2-2088 was removed.⁹⁷ In section 20-2-2091 the “is” between school and responsible was changed to “shall be,” and the second part of the last sentence after “debt” was changed to say “for which the local school system agreed upon in writing to assume responsibility.”⁹⁸

Section 20-2-2092(a) was rewritten; subsection (b) became subsection (d); and new subsections (b) and (c) were added.⁹⁹ Subsections (a), (b), and (c) now say

(a) The Department of Education shall pay to each commission charter school through appropriation of state and federal funds an amount equal to the sum of:

(1) QBE formula earnings, QBE grants, and federal grants earned by the commission charter school based on the school’s enrollment, school profile, and student characteristics. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, additional days of instruction in accordance with Code Section 20-2-184.1, and staff development;

95. Compare HB 881 (SCS), p. 7, lines 11–12, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 8, lines 27–34, 2008 Ga. Gen. Assem.

96. Compare HB 881 (SCS), p. 7, lines 8–11, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 8, lines 23–26, 2008 Ga. Gen. Assem.

97. Compare HB 881 (SCS), p. 7, lines 11–12, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 9, lines 1–3, 2008 Ga. Gen. Assem.

98. Compare HB 881 (SCS), p. 7, lines 24–29, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 9, lines 15–21, 2008 Ga. Gen. Assem.

99. Compare HB 881 (SCS), p. 7, lines 30–32, p. 8, lines 1–38 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 9, lines 22–33 and p. 10, lines 1–12, 2008 Ga. Gen. Assem.

(2) A proportional share of state categorical grants, nonQBE state grants, state equalization grants, and all other state and federal grants; and

(3) An amount determined by the commission for each student enrolled in such school equal to a proportional share of local revenue from the local school system in which the student attending the commission charter school resides; provided, however, that the commission may reduce the amount calculated pursuant to this paragraph based on cost factors it deems relevant, including but not limited to the commission charter school's operational and capital costs, efficiency, and special programs offered by the school.

(b) The department may withhold up to 3 percent of the amount determined pursuant to subsection (a) of this Code section for each commission charter school for use in administering the duties required pursuant to Code Section 20-2-2083; provided, however, that any amount withheld pursuant to this subsection shall be spent solely on expenses incurred by the commission in performing the duties required by this article.

(c) The total allotment of state and federal funds to the local school system in which a student attending a commission charter school resides shall be calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of state and federal funds appropriated to the commission charter schools pursuant to subsection (a) of this Code section.¹⁰⁰

Section 20-2-2094 was changed to

The commission and the State Board of Education, as appropriate, shall adopt rules and regulations necessary to facilitate the implementation of this article. Except as otherwise provided in this article, any rules and regulations adopted by the State Board of Education pursuant to this article, to the extent

100. HB 881 (SCS), p. 7, lines 30–32, p. 8, lines 1–25, 2008 Ga. Gen. Assem.

practicable, shall be established in the same manner as for state chartered special schools under Article 31 of this chapter.¹⁰¹

Throughout the bill, the words “applicant” and “application” were changed to “petitioner” and “petition.”¹⁰² The committee voted “do pass” along party lines to the committee substitute, with Republicans for and Democrats against.¹⁰³

The Senate debated HB 881 on April 2, 2008. Senator Weber, Education and Youth Committee Chair, presented the bill.¹⁰⁴ He emphasized that “this legislation is important to allow our families to have . . . true local control.”¹⁰⁵ He also addressed his floor amendment “designed to first and foremost explain how this new legislation will work with the legislation [the General Assembly] had last year for the Charter System Act.”¹⁰⁶ The first part of the amendment adds subsection (b) to proposed Code section 20-2-2086.¹⁰⁷ This subsection states “[a] petition may not be submitted pursuant to this article for the establishment of a commission charter school by a school in a charter system or in a system having applied to become a charter system.”¹⁰⁸ The second part of the amendment changed some of the language in proposed Code section 20-2-2090 to add more factors that the commission can consider when determining funding.¹⁰⁹ Subsection (a)(3) was replaced with the following language:

(A) An amount determined by the commission for each student enrolled in such school equal to a proportional share of local revenue from the local school system in which the student

101. Compare HB 881 (SCS), p. 9, lines 13–18, 2008 Ga. Gen. Assem., with HB 881 (HCS), p. 10, lines 25–27, 2008 Ga. Gen. Assem.

102. Compare HB 881 (SCS), 2008 Ga. Gen. Assem., with HB 881 (HCS), 2008 Ga. Gen. Assem.

103. Garrett, Day Thirty-One, *supra* note 75.

104. Video Recordings of Senate Proceedings, Apr. 2, 2008 at 2 hr., 1 min., 55 sec. (remarks by Sen. Daniel J. Weber (R-40th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744254,00.html [hereinafter Senate Video].

105. *Id.*

106. *Id.*

107. See HB 881 (SCSFA), 2008 Ga. Gen. Assem.

108. *Id.*

109. Senate Video, *supra* note 104, at 2 hr., 12 min., 37 sec. (remarks by Sen. Daniel J. Weber (R-40th)).

attending the commission charter school resides; provided, however, that the commission may reduce the amount calculated pursuant to this paragraph based on factors that affect the cost of providing instruction, including but not limited to the commission charter school's fiscal impact on the school system in which it plans to locate, taking into account the size of the student population in such school system; the commission charter school's location and the operational and capital costs of such location; and any special programs offered by the commission charter school.

(B) In making the funding determination required pursuant to this paragraph, the commission shall take into account the following factors:

(i) In the case of a commission charter school that draws students from multiple school systems, the commission shall take into account the actual costs of operating such a commission charter school and any efficiencies gained by using an expanded attendance zone; and

(ii) In the case of a commission charter school that plans to offer virtual instruction, the commission shall reduce the amount calculated pursuant to this paragraph based on the factors specified in subparagraph (A) of this paragraph.¹¹⁰

Two senators argued in opposition to the bill. Senator Vincent Fort (D-39th) argued against the bill because “the local boards of education that are elected by the people are reduced to making advisory recommendations to a state commission.”¹¹¹ In addition, the funding provision in HB 881 is a “backdoor grab at the local money.”¹¹² Senator Ronald Ramsey (D-43rd) questioned the constitutionality of commission charter schools and stated his belief that “this legislation clearly will draw a legal challenge.”¹¹³

110. See HB 881 (SCSFA), 2008 Ga. Gen. Assem.

111. Senate Video, *supra* note 104, at 2 hr., 24 min., 1 sec. (remarks by Sen. Vincent D. Fort (D-39th)).

112. *Id.*

113. Senate Video, *supra* note 104, at 2 hr., 30 min., 49 sec. (remarks by Sen. Ronald Ramsey (D-43rd)).

After the debate ended, both Amendment 1a, which added the word “having” after the words “a system” and changed “applying” to “applied” in Amendment 1, as presented by Senator Weber, were adopted without objection.¹¹⁴ The committee substitute was then adopted as amended, and the Senate voted.¹¹⁵ The bill narrowly received the requisite Constitutional majority by a vote of 29 to 18.¹¹⁶

The House considered an amended version of the Senate substitute bill on April 4, 2008.¹¹⁷ This version did not include subsection (b) in 20-2-2086 which stated “[a] petition may not be submitted pursuant to this article for the establishment of a commission charter school by a school in a charter system or in a system having applied to become a charter system.”¹¹⁸ This version also eliminated the last part of section 20-2-2090(3)(A) that listed factors the commission could consider when determining the proportional share of local revenue that a commission charter school receives.¹¹⁹ The version added provisions about funding charter systems. The last part of section 20-2-2090(a)(1) now states “[f]or purposes of this paragraph, QBE formula earnings shall not include the additional amount provided for in Code Section 20-2-165.1 earned by a charter system for full-time equivalent students in its schools.”¹²⁰ Section 2A creates a new Code section 20-2-165.1.¹²¹ “In addition to the amounts earned by a charter system pursuant to subsection (b) of Code Section 20-2-161, a charter system shall earn 3.785 percent of the base amount established pursuant to subsection (a) of Code Section 20-2-161 for each full-time equivalent student in each school within the charter system.”¹²² Section 2B amends section 20-2-166 by adding subsection (4).¹²³ “If a charter system, adding any additional amount which may be earned

114. Senate Video, *supra* note 104, at 2 hr., 36 min., 52 sec. (remarks by Lt. Gov. Casey Cagle (R)).

115. *Id.*

116. Georgia Senate Voting Record, HB 881 (Apr. 2, 2008).

117. State of Georgia Final Composite Status Sheet, HB 881, Apr. 4, 2008 (Apr. 4, 2008).

118. Compare HB 881 (SCSFS), p. 7, lines 1–14, 2008 Ga. Gen. Assem., with O.C.G.A. § 20-2-2086 (Supp. 2008).

119. Compare HB 881 (SCSFS), p. 8, lines 13–21, 2008 Ga. Gen. Assem., with O.C.G.A. § 20-2-2090(a)(3)(A) (Supp. 2008).

120. See O.C.G.A. § 20-2-2090(a)(1) (Supp. 2008).

121. See O.C.G.A. § 20-2-165.1 (Supp. 2008).

122. *Id.*

123. See O.C.G.A. § 20-2-166 (Supp. 2008).

pursuant to Code Section 20-2-165.1.”¹²⁴ The House approved the amended version of the Senate substitute by a vote of 114 to 40.¹²⁵ The Senate agreed to the House amendment to the Senate substitute by a vote of 30 to 21.¹²⁶

The Act

The Act creates Code sections 20-2-2080 to -2092.¹²⁷ The Act establishes the Georgia Charter Schools Commission, a state-level charter school authorizer that works in collaboration with the Department of Education.¹²⁸ The commission has seven members who serve two year terms.¹²⁹ The Governor recommends three appointees; the President of the Senate recommends two appointees; and the Speaker of the House of Representatives recommends two appointees.¹³⁰ They must recommend at least two nominees for each position to the State Board of Education who appoints the commission.¹³¹ The commission is supposed to be composed of a diverse group of individuals “representative of Georgia’s school population,” and each member must have at least a bachelor’s degree.¹³²

The commission has the power to approve or deny petitions for commission charter schools.¹³³ The State Board of Education may overrule the approval or denial by a two-thirds vote that takes place within sixty days.¹³⁴ Before the commission can act on a petition, the charter school petitioner has to submit the petition to the local school board of the system in which the charter school plans to locate.¹³⁵ A

124. *Id.*

125. Georgia House Voting Record, HB 881 (Apr. 4, 2008).

126. *Id.*

127. See HB 881 (SCSFA), 2008 Ga. Gen. Assem.

128. O.C.G.A. § 20-2-2082 (Supp. 2008).

129. *Id.*

130. *Id.*

131. O.C.G.A. § 20-2-2082(b) (Supp. 2008).

132. *Id.*

133. O.C.G.A. § 20-2-2083(a)(1) (Supp. 2008).

134. *Id.*

135. O.C.G.A. § 20-2-2085(b) (Supp. 2008).

petitioner does not have to go to the commission for authorization if the local school board approves the petition.¹³⁶

Commission charter schools receive state funds from the Department of Education QBE formula earnings, state grants, and federal grants.¹³⁷ They also receive an amount set by the commission that is equal to a proportional share of local revenue from the local school system.¹³⁸ The commission may reduce this local amount based on several factors including the commission charter school's fiscal impact on the local school system.¹³⁹ The Department of Education may retain up to three percent of the amount the charter school receives for administrative costs.¹⁴⁰ In addition, charter systems receive additional funding, "3.785 percent of the base amount . . . for each full-time equivalent student in each school within the charter system."¹⁴¹

The commission is also empowered to authorize cosponsors of commission charter schools.¹⁴² A cosponsor can be a municipality, county, consolidated government, public university or technical institution, or regional education service agency.¹⁴³ The role of a cosponsor is to partner with a commission charter school to provide community support.¹⁴⁴ A cosponsor cannot authorize a charter school.¹⁴⁵

Analysis

Charter school advocates complain that local school boards are "hostile" to charter school petitions.¹⁴⁶ They view the approval process in Georgia as too restrictive, in part, because it lacks multiple authorizers.¹⁴⁷ In support of their view, advocates point to survey

136. *Id.*

137. O.C.G.A. § 20-2-2090(a) (Supp. 2008).

138. *Id.*

139. *Id.*

140. O.C.G.A. § 20-2-2090(b) (Supp. 2008).

141. O.C.G.A. § 20-2-165.1 (Supp. 2008).

142. O.C.G.A. § 20-2-2083(a)(2) (Supp. 2008).

143. O.C.G.A. § 20-2-2081 (Supp. 2008).

144. O.C.G.A. § 20-2-2084 (Supp. 2008).

145. *Id.*

146. Stepp, *supra* note 5.

147. See Lindsey Interview, *supra* note 25.

released by the Georgia Charter Schools Association and My School My Choice Georgia in January 2008. Seventy-two percent of survey participants “understand and support [Georgia] having more than one entity in the state authorized to approve and oversee charter public schools.”¹⁴⁸ Prior to this Act when a petition was rejected at the local board level, the petitioner’s only option was to go to the State Board of Education and seek to become a state chartered special school. Special schools, however, do not receive any local funding.¹⁴⁹ Even when charter schools are approved, local school systems tend not to fund them at the same level as traditional schools.¹⁵⁰ They “hold back dollars for administrative and other costs.”¹⁵¹ This Act was passed to address these approval and funding issues and to ensure that all students are treated the same whether they go to traditional schools or charter schools.¹⁵² Representative Kathy Ashe, the legislator who sponsored the first piece of charter school legislation in Georgia, views this Act as “the next logical step in growing charter schools in Georgia.”¹⁵³

Opponents of the Act are not necessarily anti-charter school. Some of them, however, have a problem with a state-level commission creating charter schools and requiring local school boards who never approved their creation to provide funding.¹⁵⁴ “The commission [has no] accountability to local voters, who, if angry over their school board member’s resistance to charters, could always vote the rascal out of office.”¹⁵⁵ The Act is an “end run around local school systems” according to Herb Garrett, Executive Director of the School Superintendents Association.¹⁵⁶ There is no way the commission

148. The Ctr. for Educ. Reform, New Poll Shows Georgians Want More Educational Choice, <http://www.edreform.com/index.cfm?fuseAction=document&documentID=2797§ionID=0> (last visited Mar. 28, 2008).

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

150. See Lindsey Interview, *supra* note 25.

151. Stepp, *supra* note 5.

152. See Lindsey Interview, *supra* note 25.

153. Telephone Interview with Rep. Kathy Ashe (D-56th) (Apr. 16, 2008) [hereinafter “Ashe Interview”]. Representative Ashe is on the Board of Visitors for the Georgia State University College of Law.

154. Gutierrez, *supra* note 63.

155. Maureen Downey, *Our Opinion: Charter School Hustle*, ATLANTA J.-CONST., Jan. 31, 2008, at A20, available at 2008 WLNR 1786715.

156. See Interview with Herbert Garrett, Executive Director, Georgia School Superintendents Association (Mar. 24, 2008).

could directly give local tax dollars to a charter school.¹⁵⁷ Instead, the Act provides for a “backdoor funding approach.”¹⁵⁸ The Department of Education will provide the commission charter school with a proportional share of local revenue and then deduct that amount from the amount of funding given to the local school system where the charter school is located.¹⁵⁹ Opponents argue this provision “violate[s] communities’ rights to spend their own tax dollars.”¹⁶⁰ City Schools of Decatur, one of the first school systems to apply to become a charter system, threatened to withdraw their application because school board members view the Act “as an attack on local government.”¹⁶¹

As the bill moved through the legislative process, some changes were made to address concerns raised by opponents. The Senate Education and Youth Committee added a provision that charter school petitioners must first seek approval from their local school board before the commission can rule on the petition.¹⁶² Herb Garrett called this “window dressing” because the commission would still be empowered to create charter schools that are funded, in part, with local dollars.¹⁶³ During the Senate floor debate, an amendment that addressed the concerns of charter systems was added.¹⁶⁴ Charter systems and systems who have applied to be charter systems like the City Schools of Decatur would have no commission charter schools.¹⁶⁵ Viewed as a “poison pill” by Representative Jan Jones, this amendment infuriated House sponsors.¹⁶⁶ As a compromise on the last day, this provision was deleted and one that provided additional funding to charter systems was added.¹⁶⁷

157. *Id.*

158. *Id.*

159. Gutierrez, *supra* note 63.

160. *Id.*

161. Kristina Torres, *Decatur Board Rethinks Charter School Status*, ATLANTA J.-CONST., Mar. 16, 2008, at D3, available at 2008 WLNR 5153201.

162. See HB 881 (SCS), 2008 Ga. Gen. Assem. at p. 6, lines 15–34..

163. Garrett, *supra* note 75.

164. See Senate Video, *supra* note 104, at 2 hr., 1 min., 55 sec. (remarks by Sen. Daniel J. Weber (R-40th)).

165. See HB 881 (SCSFA), 2008 Ga. Gen. Assem.

166. Aaron Gould Sheinin, *Amendment Could Sink Charter School Measure*, ATLANTA J.-CONST., Apr. 3, 2008, at D4, available at 2008 WLNR 6238146.

167. See Ashe Interview, *supra* note 153; O.C.G.A. § 20-2-165.1 (Supp. 2008).

Even with the changes that were made by legislators before the Act passed, opponents continue to raise constitutionality concerns. They view the Act as “a frontal assault on the constitutional powers of school boards and a shift of critical decision-making to a political commission that will have no firsthand knowledge of the district’s needs.”¹⁶⁸ The Act defines a commission charter school as “a charter school authorized by the commission pursuant to this article whose creation is authorized as a special school pursuant to Article VIII, Section V, Paragraph VII of the Constitution.”¹⁶⁹ This part of the constitution says “no bonded indebtedness may be incurred nor a school tax levied for the support of special schools without the approval of a majority of qualified voters thereon in each of the systems affected.”¹⁷⁰ According to the analysis of the Georgia School Boards Association, the Act “in effect circumvents the constitution and takes indirectly funds that have not been raised.”¹⁷¹ The constitutionality of the Act will likely be litigated. Florida passed similar legislation in 2006, and now twenty school systems have filed suit on the grounds that the state law creating the Florida Schools of Excellence Commission is unconstitutional.¹⁷² Perhaps Georgians will watch the litigation in Florida to get an idea of what may be another chapter in the story of charter schools in this state.

Caroline Freeman

168. See Downey, *supra* note 155.

169. See HB 881 (SCSFA), 2008 Ga. Gen. Assem.

170. GA. CONST. art. VIII, § V, para. 7.

171. Georgia School Boards Association, Capitol Watch Online HB 0881, http://www.ciclt.net/sn/leg/l_detail.aspx?ClientCode=gsba&L_State=ga&L_Session=2007-2008&L_ID=254396 (last visited Apr. 19, 2008).

172. *Local Control: School Board Right to Challenge State*, DAYTONA NEWS-JOURNAL, Dec. 20, 2007, at 4A, available at 2007 WLNR 25194543.