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EDUCATION Elementary and Secondary Education: Revise Provisions Relating to Payment of Fees for Advances Placement Tests; Revise Provisions Regarding Expenditure Controls for the 2003-2004 School Year; Revise Provisions Regarding Maximum Class Size for the 2003-2004 School Year

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EDUCATION

Elementary and Secondary Education: Revise Provisions Relating to Payment of Fees for Advanced Placement Tests; Revise Provisions Regarding Expenditure Controls for the 2003-2004 School Year; Revise Provisions Regarding Maximum Class Size for the 2003-2004 School Year

CODE SECTIONS:	O.C.G.A. §§ 20-2-161.1 (amended), -167.1 (new), -182, -184.1, -281 (amended), -491 (new)
BILL NUMBER:	SB 249
ACT NUMBER:	30
GEORGIA LAWS:	2003 Ga. Laws 185
SUMMARY:	The Act amends four sections of Title 20 and adds two new sections. Section 1 of the Act allows the Georgia Board of Education more flexibility in paying fees for advanced placement tests. Section 2 provides more flexibility regarding school funding. Section 3 addresses the way in which Georgia's educators assess students receiving special education services. Section 4 freezes maximum class sizes for grades 4 through 12 for one year. Section 4 also requires each local school system to report to the Department of Education the number of students in each class at that school. Section 5 sets the criteria for costs associated with additional days of instruction, which include programs such as Saturday classes, intersession classes, and summer school. Finally, section 6 requires an ongoing performance audit of any sales tax imposed for capital

outlay projects used for educational purposes.

EFFECTIVE DATE: May 20, 2003

History

In 2000, the Georgia General Assembly passed the “A Plus Education Reform Act.”¹ This legislation was part of former Governor Roy Barnes’ “massive school reform package.”² It was described as implementing the “most sweeping changes within the Georgia educational system at the pre-kindergarten, elementary, and post-secondary levels since the passage of the Quality Basic Education Act in 1985.”³ Former Governor Barnes’ education reforms, approved in 2000 and in 2001, “mandate[d] annual testing and a state grading system that reward[ed] teachers at schools with good test scores and force[d] changes at schools with poor test scores.”⁴ The A Plus Education Reform Act, which included 98 sections, (1) “created local school councils,” (2) changed “the manner in which elementary and secondary-level students are tested,” (3) “creat[ed] the Education Coordinating Council and the Office of Education Accountability,” and (4) eliminated tenure for teachers hired after July 1, 2000.⁵ Former Governor Barnes’ education package also mandated that the state begin phasing in smaller class sizes in the 2000-2001 school year.⁶ The upcoming 2003-2004 school year represents the fourth year of the smaller class size phase-in.⁷ Furthermore, former Governor Barnes restricted local spending discretion “when he discovered state funds earmarked for classroom instruction were going elsewhere.”⁸ Former Governor Barnes

1. See generally Andrew T. Ordyna, *Review of Selected 2000 Georgia Legislation*, 17 GA. ST. U. L. REV. 146 (2000).

2. See Dona Tofig, *Education Bills Curb Changes by Barnes*, ATLANTA J. CONST., Feb. 22, 2003, available at 2003 WL 13242093.

3. See Ordyna, *supra* note 1.

4. See James Salzer, *Perdue’s 3 Rs: Revise Roy’s Reforms on Schools*, ATLANTA J. CONST., Jan. 12, 2003, available at 2003 WL 8962802 [hereinafter *Perdue’s 3 Rs*].

5. See Ordyna, *supra* note 1, at 147.

6. See James Salzer, *Teachers Win Dismissal Hearings*, ATLANTA J. CONST., Apr. 25, 2003, available at 2003 WL 19315316.

7. See *id.*

8. See Editorial, *Reject Cuts in Education Funding*, ATLANTA J. CONST., Apr. 18, 2003, available at 2003 WL 16552014 [hereinafter *Reject Cuts*].

“required that systems direct all the money to what he considered the core function of schools: ensuring a quality education for all the children of Georgia.”⁹

“[Governor Sonny] Perdue and incoming Georgia [S]chool Superintendent Kathy Cox criticized [former Governor] Barnes for [implementing] a state reform effort that they argued was top-down, bureaucratic and sold in a way that produced record-low teacher morale.”¹⁰ SB 249 was one of two bills that comprised Governor Perdue’s education package.¹¹ SB 248 was the other bill.¹² Governor Perdue dubbed his education package “STARS,” which stood for “Students + Teachers + Accountability + Respect = Success.”¹³ Governor Perdue intended STARS to provide “more local control,” while allowing state and local school officials the freedom to set goals and “to find ways to meet [those goals].”¹⁴

SB 249 provided for more flexibility over school funding and the postponement of the class size reduction that the A Plus Education Reform Act mandated.¹⁵ Because the State of Georgia’s high school completion and college attendance rates were “among the worst” in the country, and because education reform was a critical issue both locally and nationally, SB 249 was met with both criticism and support.¹⁶ The criticism came mostly from Democrats concerned that the bill would halt the progress made under the A Plus Education Reform Act.¹⁷ The Democrats criticized SB 249 as being a “fuzzy school improvement plan” that “will halt the gains made under the current education reforms . . . and send Georgia back to the education cellar.”¹⁸

Support for SB 249 came from school administrators, who “cheered Governor Perdue’s proposal to give [local school] systems

9. *See id.*

10. *See Perdue’s 3 Rs, supra* note 4.

11. *See* Telephone Interview with Ben Scafidi, Education Advisor, Governor’s Office (June 4, 2003) [hereinafter Scafidi Interview].

12. *See id.*

13. *See* James Salzer, *Perdue Pushes Local Control of Schools*, ATLANTA J. CONST., Feb. 19, 2003, available at 2003 WL 13241588 [hereinafter *Perdue Pushes Local Control of Schools*].

14. *See id.*

15. *See* Scafidi Interview, *supra* note 11.

16. *See Perdue’s 3 Rs, supra* note 4; *see also Perdue Pushes Local Control of Schools, supra* note 13.

17. *See* Tofig, *supra* note 2.

18. *See Reject Cuts, supra* note 8.

more flexibility” in determining how to spend state money.¹⁹ For instance, Dekalb County administrators “who face[d] 36 million in budget cuts for the upcoming [2003-2004] school year, welcomed [Governor] Perdue’s plan to give local systems more flexibility.”²⁰ Dekalb’s Chief Academic Officer “applaud[ed]” Governor Perdue’s efforts, noting that SB 249 would “allow[] the additional flexibility to use dollars where they are most needed, especially in these tough budget times when we’re dealing with cuts.”²¹ Support for SB 249 also came from Republican leaders, who believed that the bill took “big government out of the classroom.”²² The Senate Majority Leader, Tom Price, stated that SB 249 was “a step in the right direction.”²³

SB 249

Introduction

Senators Joey Brush, Daniel Lee, and Bill Stephens of the 24th, 29th, and 51st districts, respectively, sponsored SB 249, which was introduced to the Senate on March 5, 2003.²⁴ SB 249, as introduced, proposed changes to 13 Code sections.²⁵ SB 249 was assigned to the Senate Education Committee, which favorably reported a substitute on March 26, 2003.²⁶ Following floor debate and passage of one floor amendment, the Senate passed SB 249 by a vote of 31 to 20.²⁷ The Senate then sent the bill to the House.²⁸ The Speaker referred the bill to the House Education Committee, which passed a substitute.²⁹ On April 25, 2003, the final day of the session, Representatives Glenn Richardson, Bob Holmes, Kathy Ashe, Barbara Massey Reece, Carolyn Fleming Hugley, Teresa Green-Johnson, and DuBose Porter

19. See James Salzer, *Perdue Seeks to Give Schools Flexibility*, ATLANTA J. CONST., Feb. 6, 2003, available at 2003 WL 8966345.

20. See *id.*

21. See *id.*

22. See Tofig, *supra* note 2.

23. See *id.*

24. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

25. See SB 249, as introduced, 2003 Ga. Gen. Assem.

26. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

27. See *id.*; Georgia Senate Voting Record, SB 249 (Mar. 28, 2003).

28. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

29. See *id.*

of the 26th, 48th, 42nd, 11th, 113th, 60th, and 119th districts, respectively, offered a floor substitute to SB 249.³⁰ After it passed the floor substitute, the House adopted a floor amendment.³¹ The House passed SB 249, as substituted, on April 25, 2003, by a vote of 165 to 5.³² The Senate agreed to the House substitute by a vote of 48 to 7.³³

The Original Bill

As introduced, SB 249 proposed amendments to 13 Code sections.³⁴ Only two of these changes appear in the bill's final version.³⁵ Due to the original version's length, this Legislative Review will discuss only the proposed changes included in the final version, as well as proposals that would have changed important components of the A Plus Education Reform Act.³⁶

Maximum Class Size Changes

Section 4 of SB 249, as introduced, proposed changes to Code section 20-2-182.³⁷ Code section 20-2-182 was the original bill's focal point and remained the focal point throughout the debate.³⁸ Code section 20-2-182 sets forth the maximum class sizes and the class size reductions that were mandated under the 2000 legislation.³⁹ As introduced, the bill proposed to change Code section 20-2-182 to require schools to apply the "system average" formula to determine maximum class sizes.⁴⁰ It proposed that the "maximum number of

30. See *id.*; SB 249 (HFS), 2003 Ga. Gen. Assem.

31. See Audio Recording of House Proceedings, Apr. 25, 2003, at http://www.state.ga.us/services/legal/audio/2003_archive [hereinafter House Audio].

32. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003; Georgia House of Representatives Voting Record, SB 249 (Apr. 25, 2003).

33. See Georgia Senate Voting Record, SB 249 (Apr. 25, 2003).

34. See SB 249, as introduced, 2003 Ga. Gen. Assem.

35. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with O.C.G.A. § 20-2-182 (Supp. 2003), and O.C.G.A. § 20-2-184.1 (Supp. 2003).

36. See generally SB 249, as introduced, 2003 Ga. Gen. Assem.

37. See SB 249, as introduced, 2003 Ga. Gen. Assem.

38. See House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson); Audio Recording of Senate Proceedings, Mar. 28, 2003 (remarks by Sen. Joey Brush), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter Senate Audio].

39. See Bob Cribbs, *Online Lobbyist, Day 40—Legislative Hotline*, GA. ASS'N OF EDUCATORS, Apr. 28, 2003, at http://www.ciclt.com/gac/new_detail.asp?Client=gac&A15xi_ldKey_h=n103328165444 [hereinafter *Legislative Hotline*].

40. See SB 249, as introduced, 2003 Ga. Gen. Assem.

students who may be taught by a teacher in an instructional period shall not exceed the system average maximum class size for the program by more than two students.”⁴¹ During floor debate, Senator Brush described this new provision as meaning that a class can increase if, at the same time, another class decreases “to maintain the system average.”⁴² This proposed change would have allowed greater flexibility in the way schools determine maximum class sizes.⁴³

The original bill also proposed changing the time frame in which schools must comply with the A Plus Education Reform Act’s class size requirements.⁴⁴ SB 249, as introduced, would have pushed back the full compliance requirement from the 2003-2004 school year to the 2004-2005 school year.⁴⁵ Finally, the original bill would have allowed the use of a teacher’s aide to increase maximum class sizes for the upcoming 2003-2004 school year.⁴⁶ However, the bill, as introduced, would have prohibited the use of an aide to increase the maximum class size for kindergarten and grades one through three beginning with the 2004-2005 school year.⁴⁷

Additional Days of Instruction

The only other proposed change appearing in both the bill’s original version and in the bill’s final version was the proposed change to Code section 20-2-184.1.⁴⁸ The bill proposed to amend Code section 20-2-184.1 to provide additional days of instruction to address the academic needs of low-performing students.⁴⁹ Previously, Code section 20-2-184.1 required the “local school system [to] spend 100[%] of the funds designated for additional days of instruction for such costs.”⁵⁰ The proposed changes would have allowed the local school system to spend the money “at the system level.”⁵¹

41. *See id.*; Senate Audio, *supra* note 38 (remarks by Sen. Joey Brush).

42. Senate Audio, *supra* note 38 (remarks by Sen. Joey Brush).

43. *See id.*

44. *See* SB 249, as introduced, 2003 Ga. Gen. Assem.

45. *See id.*

46. *See id.*

47. *See id.*

48. *Compare* SB 249, as introduced, 2003 Ga. Gen. Assem., with O.C.G.A. § 20-2-184.1 (Supp. 2003).

49. *See* SB 249, as introduced, 2003 Ga. Gen. Assem.; *see also* O.C.G.A. § 20-2-184.1 (Supp. 2003).

50. *See* 2001 Ga. Laws 148, § 2, at 162 (formerly found at O.C.G.A. § 20-2-184.1 (2001)).

51. *See* SB 249, as introduced, 2003 Ga. Gen. Assem.

Additional Proposals

Although the General Assembly eliminated 11 other proposed changes from the original bill, a few of the proposed changes are worth mentioning in light of the turbulent nature of Georgia's education system over the past four years.⁵² SB 249, as introduced, proposed changing Code section 20-2-86 relating to school councils.⁵³ The A Plus Education Reform Act created Code section 20-2-86 to mandate the establishment of a "school council at each public school."⁵⁴ "[T]he school, the principal of the school, two parents of children enrolled in the school, two teachers who are employed at the school, and two business persons from the local community" would comprise a school council's membership.⁵⁵ In addition, the law required the school's principal to serve as the council's chairperson.⁵⁶ The school council's purpose was to provide "advice, recommendations, and assistance to the local board of education on a variety of matters including curriculum, the school budget, selection of a new principal, and evaluating the performance of school personnel."⁵⁷

During floor debate in the Senate, Senator Brush noted that SB 249, as introduced, provided some "flexibility with school councils."⁵⁸ He noted that the creation of school councils was a positive aspect of the A Plus Education Reform Act.⁵⁹ However, Senator Brush also noted that there were problems with the laws regarding the requirements of the school councils.⁶⁰ He pointed out that at the time the law mandated school councils, "some of the schools already had" them, and they consequently had to remove members in order to meet the newly imposed limits.⁶¹

The bill, as introduced, proposed changes to Code section 20-2-86 that would have eliminated the requirement that the council's

52. See generally Ordyna, *supra* note 1, at 146-47 (discussing only the section of the A Plus Education Reform Act that "received the most attention in debate and the press").

53. See SB 249, as introduced, 2003 Ga. Gen. Assem.

54. See Ordyna, *supra* note 1, at 158-59.

55. See *id.*

56. See *id.*

57. See *id.* at 159.

58. See Senate Audio, *supra* note 38 (remarks by Sen. Joey Brush).

59. See *id.*

60. See *id.*

61. See *id.*

chairperson be the school principal.⁶² Senator Brush stated that the proposed changes would have allowed the school council to elect “whoever they want.”⁶³ In addition, the original bill would have changed the number of council members from a *maximum* of seven to a *minimum* of seven.⁶⁴ Finally, the original bill would have provided more flexibility by changing the number of times the council would have to meet.⁶⁵ The House Committee substitute did not include any of these changes.⁶⁶

A second significant change proposed in SB 249, as introduced, was the elimination of the Office of Education Accountability (“OEA”), which the A Plus Education Reform Act created.⁶⁷ The OEA “set accountability policies and standards for the state.”⁶⁸ At the time of the OEA’s creation, many criticized it as “shift[ing] power dramatically to the state and away from the local elected school boards and individual school principals.”⁶⁹

Representative Brooks Coleman of the 65th district echoed this criticism during floor debate in the House.⁷⁰ Referring to the OEA, Representative Coleman noted that “[all] we have done in the last two or three years is to add three or four different levels for school systems to deal with,” and the original bill was a simple attempt “to bring everything under one leadership.”⁷¹ Despite Representative Coleman’s criticism, the proposal to eliminate the OEA did not appear in the House Committee substitute.⁷²

62. See SB 249, as introduced, 2003 Ga. Gen. Assem.

63. See Senate Audio, *supra* note 38 (remarks by Sen. Joey Brush).

64. Compare 2000 Ga. Laws 618 (formerly found at O.C.G.A. § 20-2-86 (2001)), with SB 249, as introduced, 2003 Ga. Gen. Assem.

65. Compare 2000 Ga. Laws 618 (formerly found at O.C.G.A. § 20-2-86 (2001)), with SB 249, as introduced, 2003 Ga. Gen. Assem.

66. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (HCS), 2003 Ga. Gen. Assem.

67. See SB 249, as introduced, 2003 Ga. Gen. Assem.; Ordyna, *supra* note 1, at 162-63.

68. See Ordyna, *supra* note 1, at 162-63.

69. See *id.* at 166 (quoting *Analyzing H.B. 1187*, AUGUSTA CHRON., Jan. 18, 2000, at A4).

70. See House Audio, *supra* note 31 (remarks by Rep. Brooks Coleman).

71. See *id.*

72. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (HCS), 2003 Ga. Gen. Assem.

Senate Consideration

SB 249 was introduced in the Senate on March 5, 2003.⁷³ During floor debate, Senator Brush stated that SB 249 represented the second part of the Governor's education package.⁷⁴ Senator Brush described the bill as being about flexibility, noting that it would provide school systems flexibility to meet the standards set by the General Assembly.⁷⁵

Members of the House later criticized the way in which SB 249 was introduced.⁷⁶ During floor debate, Representative Bob Holmes of the 48th district criticized SB 249 for being introduced without enough people knowing its content.⁷⁷ He stated that only "seven human beings on the face of the earth knew the content of SB 249" prior to its introduction and that "no people outside the Governor's office and a couple experts were consulted before the[] changes [to the education system] would have been made."⁷⁸

Senate Committee Consideration

The bill was assigned to the Senate Education Committee.⁷⁹ The Senate Committee passed a substitute, which was substantially the same as the as-introduced version.⁸⁰ The Senate Committee slightly modified the wording to the proposed changes to school councils but made no substantive changes.⁸¹

The Senate Committee substitute would have added the phrase "system average" before references to maximum class sizes found in Code section 20-2-182.⁸² The Senate Committee added the language to clarify that schools were to use the system average standard in

73. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

74. See Senate Audio, *supra* note 38 (remarks by Sen. Joey Brush).

75. See *id.*

76. See generally House Audio, *supra* note 31 (remarks by Rep. Bob Holmes).

77. See *id.*

78. See *id.*

79. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

80. See Scafidi Interview, *supra* note 11.

81. Compare SB 249 (SCS), 2003 Ga. Gen. Assem., with SB 249, as introduced, 2003 Ga. Gen. Assem.

82. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (SCS), 2003 Ga. Gen. Assem.

determining maximum class sizes.⁸³ Substantively, the Senate Committee substitute's changes to Code section 20-2-182 mirrored the original bill's proposed changes.⁸⁴

The Senate Committee's proposed changes to Code section 20-2-184, relating to additional days of instruction, remained identical to those found in SB 249, as introduced.⁸⁵ The Senate Committee substitute's omission of section 9 was the only other substantive difference between the two versions.⁸⁶ Section 9 of the original bill proposed striking Code section 20-2-259 in its entirety.⁸⁷

Senate Floor Consideration

On the Senate floor, Senator Steve Thompson of the 33rd district expressed his concerns about the bill.⁸⁸ He stated that SB 249 "destroys the education reform act in Georgia" and that it "destroys" the "main portions [of the A Plus Education Reform Act] that have been increasing scores."⁸⁹ Senator Thompson focused his attack on the class size changes and noted that the bill would "dismantle all the improvements [that have been] made."⁹⁰

On March 28, 2003, the Senate voted on 11 floor amendments to the Senate Committee substitute.⁹¹ Only one amendment passed.⁹² The successful amendment modified the proposed changes to Code section 20-2-86, dealing with the school council requirements.⁹³ The amendment changed the number of times the school council had to meet annually from four to six.⁹⁴ The amendment included additional minor changes that amounted to grammatical corrections and

83. See SB 249 (SCS), 2003 Ga. Gen. Assem.

84. See Scafidi Interview, *supra* note 11. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (SCS), 2003 Ga. Gen. Assem.

85. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (SCS), 2003 Ga. Gen. Assem.

86. Compare SB 249, as introduced, 2003 Ga. Gen. Assem., with SB 249 (SCS), 2003 Ga. Gen. Assem.

87. See SB 249, as introduced, 2003 Ga. Gen. Assem. Code section 20-2-259 relates to extended day programs. *Id.*

88. See Senate Audio, *supra* note 38 (remarks by Sen. Steve Thompson).

89. See *id.*

90. See *id.*

91. See *id.*; Georgia Senate Voting Record, SB 249 (Mar. 28, 2003).

92. See Georgia Senate Voting Record, SB 249 (Mar. 28, 2003).

93. See SB 249 (SCSFA), 2003 Ga. Gen. Assem.

94. See *id.*

language clarifications.⁹⁵ Once again, these proposed changes were not adopted into either the House Committee substitute or the House floor substitute.⁹⁶

Of the ten failed Senate floor amendments, one failed amendment is important considering the changes made in the House floor substitute.⁹⁷ The failed amendment proposed modifying the Senate Committee's changes to Code section 20-2-182.⁹⁸ It proposed that schools comply with the A Plus Education Reform Act class sizes for kindergarten and grades one through three by the 2003-2004 school year but delay implementing the class size requirements for grades 4 through 12 until the 2004-2005 school year.⁹⁹ The Senate Committee substitute would have delayed implementing the class size mandates for all grades.¹⁰⁰ The amendment failed by a vote of 23 to 28.¹⁰¹ However, the House ultimately incorporated a version of this proposed amendment in its floor substitute.¹⁰²

House Committee Consideration

Following Senate approval, SB 249 was sent to the House, and the Speaker referred it to the House Education Committee.¹⁰³ The House Committee adopted a substitute that resembled neither the as-introduced version nor the Senate Committee substitute version.¹⁰⁴ Of the changes the Senate approved, the House Committee substitute included only the proposal to change Code section 20-2-184.1.¹⁰⁵

The House Committee substitute's proposed changes to Code section 20-2-184.1 differed from the proposed changes found in the version of SB 249 that passed the Senate.¹⁰⁶ The House Committee

95. *See id.*

96. *Compare* SB 249 (SCS), 2003 Ga. Gen. Assem., *with* SB 249 (HCS), 2003 Ga. Gen. Assem., *and* SB 249 (HFS), 2003 Ga. Gen. Assem.

97. *See* Failed Senate Floor Amendment to SB 249, introduced by Sen. Michael Meyer von Bremen, Mar. 28, 2003.

98. *See id.*

99. *See id.*

100. *See* SB 249 (SCS), 2003 Ga. Gen. Assem.

101. *See* Georgia Senate Voting Record, SB 249 (Mar. 28, 2003).

102. *See* SB 249 (HFS), 2003 Ga. Gen. Assem.

103. *See* State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003.

104. *Compare* SB 249, as introduced, 2003 Ga. Gen. Assem., *and* SB 249 (SCS), 2003 Ga. Gen. Assem., *with* SB 249 (HCS), 2003 Ga. Gen. Assem.

105. *See* SB 249 (HCS), 2003 Ga. Gen. Assem.

106. *Compare* SB 249 (HCS), 2003 Ga. Gen. Assem., *with* SB 249 (SCSFA), 2003 Ga. Gen. Assem.

substitute added language that would allow “[u]p to 15[%] of funds designated for additional days of instruction [to] be spent [on] transportation costs incurred for transporting students who are attending the additional classes.”¹⁰⁷ This added provision would have allowed the school board more flexibility in deciding how to spend money allotted for additional days of instruction.¹⁰⁸ The House Committee revised this section in response to a problem faced by many rural school systems.¹⁰⁹ Although rural school systems incurred significant travel expenses to transport students to school for additional instruction, the Code prohibited the schools from spending the money on transportation costs.¹¹⁰

In addition to the proposed changes to Code section 20-2-184.1, the House Committee substitute also would have added new Code section 20-2-167.1.¹¹¹ This new Code section would have provided “[f]lexibility for school boards to use direct instructional funds for any of the 19 areas of direct instruction.”¹¹²

These two sections comprised the entire House Committee substitute.¹¹³ The House Committee substitute did not propose either eliminating the OEA or changing the provisions governing school councils.¹¹⁴

107. See SB 249 (HCS), 2003 Ga. Gen. Assem.

108. See Scafidi Interview, *supra* note 11.

109. See *id.*

110. See *id.*

111. See SB 249 (HCS), 2003 Ga. Gen. Assem.

112. See *Legislative Hotline*, *supra* note 39.

113. See SB 249 (HCS), 2003 Ga. Gen. Assem.

114. See *id.*

House Floor Consideration

Representative Richardson immediately introduced a floor substitute to SB 249.¹¹⁵ Representative Richardson, Governor Perdue's floor leader, stated that his "substitute represent[ed] a compromise to a very large package that the administration brought this year concerning education."¹¹⁶ He noted that the bill approved by the Senate contained only a "modest amount of the proposal[s]" the administration had originally submitted.¹¹⁷ In urging support for SB 249, Representative Richardson noted that the school districts "need" and "want" relief and that there would be a "major problem for [the] school system[s] if the General Assembly does not do something."¹¹⁸ Representative Richardson also noted that the A Plus Education Reform Act mandated smaller class sizes during a time in which the General Assembly cut school funding.¹¹⁹

House Democrats supported SB 249.¹²⁰ Representative Bob Holmes of the 48th district, Chairman of the Education Committee, voiced his support for the floor substitute.¹²¹ Representative Holmes recognized that the General Assembly did not provide enough funding to implement the 2000 reforms.¹²² Just like Representative Richardson, Representative Holmes noted that SB 249 was a compromise but was careful to note that it did not dismantle the progress made under the A Plus Education Reform Act.¹²³

The House floor substitute included five sections.¹²⁴ The floor substitute's proposed changes to Code section 20-2-184.1 remained the same as the House Committee's substitute proposed changes.¹²⁵ However, the floor substitute differed from the House Committee substitute in that it reintroduced the proposed changes to maximum class sizes found in Code section 20-2-182.¹²⁶ Proposed changes to

115. See House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson).

116. See *id.*

117. See *id.*

118. See *id.*

119. See *id.*

120. See House Audio, *supra* note 31 (remarks by Rep. Bob Holmes).

121. See *id.*

122. See *id.*

123. See *id.*

124. See SB 249 (HFS), 2003 Ga. Gen. Assem.

125. Compare SB 249 (HCS), 2003 Ga. Gen. Assem., with SB 249 (HFS), 2003 Ga. Gen. Assem.

126. Compare SB 249 (HCS), 2003 Ga. Gen. Assem., with SB 249 (HFS), 2003 Ga. Gen. Assem.

Code section 20-2-182 appeared in the version of SB 249 that passed the Senate but were omitted from the House Committee substitute.¹²⁷

The House floor substitute's proposed changes to maximum class sizes differed greatly from the proposed changes found in the version that passed the Senate.¹²⁸ The version that passed the Senate proposed a one-year delay in class size reduction for all grades.¹²⁹ In addition, the system average standard would have governed maximum class requirements indefinitely.¹³⁰ Under the House floor substitute, the General Assembly would have only delayed implementation of class size requirements by one year for grades 4 through 12.¹³¹ The maximum class size the Board of Education set for the 2003-2004 school year would have still applied to kindergarten and grades one through three.¹³² The only exception to this rule would be that a kindergarten class could be increased to 20 students if a paraprofessional is present.¹³³

The House floor substitute would have also allowed districts to use the system average formula for determining maximum class size, but only for one year.¹³⁴ SB 249, as introduced, and as passed by the Senate, would have used the system average formula indefinitely.¹³⁵ In addition to the proposed changes to Code sections 20-2-182 and 20-2-184.1, the House floor substitute also included changes to Code sections 20-2-161.1 and 20-2-281, and it proposed the addition of new Code section 20-2-167.1.¹³⁶

On the same day the House floor substitute was introduced, the House voted without debate to pass a floor amendment to SB 249.¹³⁷ The floor amendment contained the same five sections as the floor substitute.¹³⁸ The only difference between the House floor substitute and the House floor amendment is that the floor amendment would

127. Compare SB 249 (SCSFA), 2003 Ga. Gen. Assem., with SB 249 (HCS), 2003 Ga. Gen. Assem.

128. Compare SB 249 (SCSFA), 2003 Ga. Gen. Assem., with SB 249 (HFS), 2003 Ga. Gen. Assem.

129. See SB 249 (SCSFA), 2003 Ga. Gen. Assem.

130. See *id.*

131. See SB 249 (HFS), 2003 Ga. Gen. Assem.

132. See *id.*

133. See *id.*

134. See SB 249 (HFS), 2003 Ga. Gen. Assem.; House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson).

135. See Scafidi Interview, *supra* note 11.

136. See SB 249 (HFS), 2003 Ga. Gen. Assem.

137. See House Audio, *supra* note 31.

138. Compare SB 249 (HCSFA), 2003 Ga. Gen. Assem., with SB 249 (HFS), 2003 Ga. Gen. Assem.

have added new Code section 20-2-491 to require performance audits for certain capital projects.¹³⁹ On April 25, 2003, the House passed SB 249 by a vote of 165 to 5.¹⁴⁰

Senate Reconsideration

The Senate approved the House substitute on that same day by a vote of 48 to 7.¹⁴¹

The Act

The Act amends four Code sections and adds two new Code sections to Title 20.

Code Section 20-2-161.1

The Act amends Code section 20-2-161.1 by striking subsection (g), relating to enrollment in postsecondary courses, and inserting in its place a new subsection (g) to read as follows: “The department shall pay the fees charged for advanced placement tests according to rules set by the State Board of Education subject to appropriation by the General Assembly.”¹⁴²

The former subsection (g) required the payment of fees “charged for advanced placement tests taken by any eligible high school student who successfully completes an approved advanced placement course.”¹⁴³ Although not specifically addressed in SB 249’s final version, Representative Richardson added that the state would pay for one test per student and a second test for eligible students.¹⁴⁴ Regardless of the procedure for how the state will fund these tests, the newly amended subsection (g) affords the State Board of

139. Compare SB 249 (HCSFA), 2003 Ga. Gen. Assem., with SB 249 (HFS), 2003 Ga. Gen. Assem.

140. See Georgia House of Representatives Voting Record, SB 249 (Apr. 25, 2003).

141. See State of Georgia Final Composite Status Sheet, SB 249, Apr. 25, 2003; Georgia Senate Voting Record, SB 249 (Apr. 25, 2003).

142. Compare 1992 Ga. Laws 462, § 2, at 468 (formerly found at O.C.G.A. § 20-2-161.1 (2001)), with O.C.G.A. § 20-2-161.1(g) (Supp. 2003).

143. See 1992 Ga. Laws 462, § 2, at 468 (formerly found at O.C.G.A. § 20-2-161.1 (2001)).

144. See House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson).

Education more flexibility in deciding how to spend money with regard to advanced placement tests.¹⁴⁵

Code Section 20-2-167.1

The Act adds new Code section 20-2-167.1.¹⁴⁶ This Code section provides

flexibility for school boards to use direct instructional funds for any of the 19 areas of direct instruction. For example, a school system could use middle school funds for elementary instruction, etc. Direct instructional funds for the Early Intervention Program, remedial, and alternative education programs must be spent on those programs. However, flexibility is permitted in spending the funds, for example EIP funds may be spent on alternative schools. One hundred percent . . . of media material funding must be spent on media materials. Staff development funds may be used for any program approved under the "Quality Basic Education Act." School systems are required to report their expenditures.¹⁴⁷

The funding flexibility provisions found in Code section 20-2-167.1 apply only to the 2003-2004 school year.¹⁴⁸ During the House floor debate, Representative Richardson clarified that he anticipated another major education package in the 2004 legislative session but that this Act was necessary to "give immediate relief" to school districts.¹⁴⁹

145. See O.C.G.A. § 20-2-161.1(g) (Supp. 2003).

146. See O.C.G.A. § 20-2-167.1 (Supp. 2003).

147. See *Legislative Hotline*, *supra* note 39.

148. See O.C.G.A. § 20-2-167.1 (Supp. 2003).

149. See House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson).

Code Section 20-2-281

Section 3 of the Act amends Code section 20-2-281 by replacing subsections (d) and (f).¹⁵⁰ New subsection (d) provides that “[t]hose students with alternative assessments will not be counted in the state accountability measures.”¹⁵¹ Instead, a “special education IEP [Individualized Education Program] can serve as an alternative assessment for accountability.”¹⁵² Finally, the Act requires the “State Department of Education [to] release a sample of CRCT [Criterion-Referenced Competency Test] questions.”¹⁵³

Code Section 20-2-182

The Act also amends Code section 20-2-182 by striking subsection (i) and inserting in its place three new subsections.¹⁵⁴ These important provisions delay the class size reduction implementation.¹⁵⁵ Amended Code section 20-2-182 will delay class reductions originally “scheduled to be completed by 2003-2004 . . . until at least 2004-2005 [for] grades [4] through [12].”¹⁵⁶ However, “[s]cheduled class size reductions in K-3 must be completed” by the 2003-2004 school year.¹⁵⁷ The only exception is that “a kindergarten class may have 20 students with a paraprofessional” present.¹⁵⁸ The Act also amends Code section 20-2-182 to allow “[s]ystem-wide averages [to] be used for class size, and in grades [4 through 12,] two additional students may be added to a class if the system meets class size averages.”¹⁵⁹ Amended Code section 20-2-182 will effectively increase class sizes for most teachers.¹⁶⁰

150. Compare 2001 Ga. Laws 618, § 51, at 691 (formerly found at O.C.G.A. § 20-2-281 (2001)), with O.C.G.A. § 20-2-281 (Supp. 2003).

151. See *Legislative Hotline*, *supra* note 39.

152. See *id.*

153. See *id.*

154. Compare 2000 Ga. Laws 618, § 27, at 661 (formerly found at O.C.G.A. § 20-2-182 (2001)), with O.C.G.A. § 20-2-182 (Supp. 2003).

155. See House Audio, *supra* note 31 (remarks by Rep. Glenn Richardson).

156. See *Legislative Hotline*, *supra* note 39.

157. See *id.*

158. See *id.*

159. See *id.*

160. See *id.*

Code Section 20-2-184.1

The Act also amends Code section 20-2-184.1.¹⁶¹ The new Code section allows a school to spend up to 15% of funds designated for additional days of instruction on transportation costs incurred for transporting students who are attending the additional classes.¹⁶²

Code Section 20-2-491

Finally, the Act inserts new Code section 20-2-491.¹⁶³ The new Code section details procedures local boards of education should follow when imposing a sales tax for educational purposes for capital outlay projects.¹⁶⁴ Code section 20-2-491 requires that local boards conduct a performance audit “on SPLOST [Special Purpose Local Option Sales Tax] capital outlay projects of \$5 million or more.”¹⁶⁵

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161. Compare 2001 Ga. Laws 148, § 10, at 162 (formerly found at O.C.G.A. § 20-2-184.1 (2001)), with O.C.G.A. § 20-2-184.1 (Supp. 2003).

162. Compare 2001 Ga. Laws 148, § 10, at 162 (formerly found at O.C.G.A. § 20-2-184.1 (2001)), with O.C.G.A. § 20-2-184.1 (Supp. 2003).

163. See O.C.G.A. § 20-2-491 (Supp. 2003).

164. See *id.*

165. See *Legislative Hotline*, *supra* note 39.