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# CONSTITUTION OF THE STATE OF GEORGIA A Resolution: Amend the Constitution of Georgia so as to Protect Lottery Funds so That They May Be Reserved Only for the HOPE Scholarship Program and Other Tuition Grants, Scholarships or Loans to Enable Citizens of This State to Attend Colleges and Universities Within This State, for Voluntary Pre-Kindergarten, and for Educational Shortfall Reserves; Provide for Submission of This Amendment for Ratification or Rejection; and for Other Purposes

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## CONSTITUTION OF THE STATE OF GEORGIA

***A Resolution: Amend the Constitution of Georgia so as to Protect Lottery Funds so That They May Be Reserved Only for the HOPE Scholarship Program and Other Tuition Grants, Scholarships, or Loans to Enable Citizens of This State to Attend Colleges and Universities Within This State, for Voluntary Pre-Kindergarten, and For Educational Shortfall Reserves; Provide for Submission of This Amendment for Ratification or Rejection; and for Other Purposes***

CODE SECTION:

GA. CONST. art. I, § 2, para. 8

BILL NUMBER:

SR 655, HR 1045

SUMMARY:

The resolutions were proposed to amend the Georgia Constitution to restrict the use of lottery proceeds to fund core areas, including the HOPE Scholarship Program; other college and university tuition grants, scholarships, and loans; pre-kindergarten programs; and the state educational shortfall reserve. The resolutions would have removed language from the Georgia Constitution that allows these funds to be used to provide training on the use of computers and electronic instructional materials to K-12 teachers, technical institute personnel, and university professors and instructors. The resolutions also would have removed language permitting lottery funds to be used for capital projects at educational facilities. Under the current Georgia Constitution, both are areas in which funding is permitted once the core areas, as listed above, have been fully funded.

*History*

According to the Georgia Constitution, all net proceeds from the state lottery must be used to support educational programs and purposes.<sup>1</sup> Since its inception, the lottery has provided more than \$8 billion for such programs and purposes in the State.<sup>2</sup>

The Constitution specifies that lottery proceeds be appropriated to the following five areas of educational programs: (1) university, college, and technical school tuition scholarships, loans, and grants; (2) pre-kindergarten programs; (3) one or more educational shortfall reserves, capped at 10% of the prior year's net lottery proceeds allocable to educational programs; (4) costs of providing certain computer and technological training to educators; (5) and educational facilities capital spending.<sup>3</sup>

The greatest portion of lottery proceeds has been spent for the scholarships, loans, and grants category; under which \$3.6 billion has been appropriated for the Helping Outstanding Pupils Educationally (HOPE) program since the program's inception in 1993.<sup>4</sup> The HOPE program can be further subdivided into three categories: (1) the HOPE Scholarship; (2) the HOPE Grant; and (3) the HOPE GED Grant.<sup>5</sup> The HOPE Scholarship is awarded to eligible Georgia students who enroll in a state public college, university, or technical school and it covers tuition, mandatory fees, and a book allowance.<sup>6</sup> If a student chooses to attend one of the state's private schools, the program covers \$3,000 for full-time or \$1,500 for part-time eligible students.<sup>7</sup> The HOPE Grant is a similar program, which covers tuition, mandatory fees, and a book allowance for non-traditional students, regardless of whether they are able to meet the high school graduation date or grade point average eligibility requirements of the

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1. See GA. CONST. art. I, § 2, para. 8.

2. See Georgia Lottery Homepage, Education, <http://www.galottery.com/stc/education/index.jsp> (last visited Aug. 11, 2006).

3. See GA. CONST. art. I, § 2, para. 8.

4. See Georgia Lottery Homepage, Hope Scholarships, <http://www.georgialottery.com/gen/education/hopescholarship.jsp> (last visited Aug. 11, 2006) (showing the total allocation to this category of \$3.6 billion of the \$8 billion in total lottery education spending).

5. See Georgia's HOPE Program, <http://gacollege411.org/FinAid/ScholarshipsAndGrants/HOPEScholarship/default.asp> (last visited Aug. 11, 2006).

6. *Id.*

7. *Id.*

HOPE Scholarship.<sup>8</sup> Finally, the HOPE GED Grant provides a one-time \$500 award to eligible students who receive their GED.<sup>9</sup> This award can be used to cover tuition, fees, or books at a public or private college, university, or technical school.<sup>10</sup>

The second largest program funded by the lottery is the Voluntary Pre-kindergarten (Pre-K) program, which has received approximately \$2.7 billion in funding since its inception in 1993.<sup>11</sup> The goal of the program is to prepare four-year olds for kindergarten by providing them with a chance to develop skills that will aid their success as future kindergarten students.<sup>12</sup> Funding for the Pre-K program is provided to school systems, public or private not-for-profits, and private for-profit program providers.<sup>13</sup>

The next category, educational shortfall reserves, holds a balance of \$600 million as of June 30, 2005, the date of the most recent Georgia balance sheet.<sup>14</sup> The reserves have grown consistently over the past few years, having increased almost \$140 million since June 30, 2003.<sup>15</sup>

The final two categories, technology spending and capital outlays, were the real focus of these two resolutions.<sup>16</sup> Since the lottery's inception, approximately \$1.8 billion has been spent on projects in these two categories, to the stated displeasure of supporters of the resolutions.<sup>17</sup> Funded projects have varied in nature and have included the installation of instructional technology at schools, construction of technology training centers, wiring of all public schools and libraries in the state to the internet, and outfitting schools

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8. *Id.*

9. *Id.*

10. *Id.*

11. See Georgia Lottery Homepage, Prekindergarten Program, <http://www.georgialottery.com/gen/education/prekindergartenprogram.jsp> (last visited Aug. 11, 2006) (showing the total allocation to this category of \$2.7 billion of the \$8 billion in total lottery education spending) [hereinafter Georgia Lottery Pre-K].

12. See Bright from the Start – Georgia Department of Early Care and Learning Homepage, <http://www.decal.state.ga.us/PreK/PreKServices.aspx?Header=1&SubHeader=&Position=0&HeaderName=About%20PreK> (last visited Aug. 14, 2006).

13. See Georgia Lottery Pre-K, *supra* note 11.

14. See Governor Sonny Perdue, THE GOVERNOR'S BUDGET REPORT FY 2007, [http://www.opb.state.ga.us/Budget/BudgetBook\\_Final\\_07.pdf](http://www.opb.state.ga.us/Budget/BudgetBook_Final_07.pdf) (last visited Aug. 14, 2006).

15. Compare THE GOVERNOR'S BUDGET REPORT FY 2007, *supra* note 14, with Governor Sonny Perdue, THE GOVERNOR'S BUDGET REPORT AMENDED FY 2005 & FY 2006, [http://www.opb.state.ga.us/Budget/Budget\\_Document\\_Final.pdf](http://www.opb.state.ga.us/Budget/Budget_Document_Final.pdf) (last visited Aug. 14, 2006).

16. See *infra* text accompanying notes 42-45.

17. See Press Release, Georgia Office of the Governor, Governor Perdue Unveils Education Agenda at Eggs and Issues Breakfast (Jan. 10, 2006) [hereinafter Eggs and Issues Breakfast].

with metal detectors, fences, and security cameras.<sup>18</sup> However, supporters of the resolutions considered these projects to be wasteful “pork” spending outside the scope of the original intention of the lottery-for-education idea.<sup>19</sup>

Though no spending in these categories was authorized in his term as governor, Governor Perdue made preventing this type of lottery spending a major focus of his 2006 legislative agenda.<sup>20</sup> His goal was to limit the categories of available lottery spending and prevent what he saw as wasteful spending on non-HOPE or Pre-K-related items, in an effort to protect the future of these two programs.<sup>21</sup> His idea for a constitutional amendment to restrict lottery spending to HOPE, Pre-K, and funding the educational reserves spawned from this goal.<sup>22</sup>

### *Bill Tracking*

Any proposal to amend the Constitution must originate in either the House or Senate as a resolution.<sup>23</sup> If approved by a two-thirds majority in the House and Senate each, the resolution is submitted to Georgia voters for ratification in the next general election as a proposed constitutional amendment.<sup>24</sup> If a simple majority of voters in the state ratify the proposed amendment, it is incorporated into the Constitution.<sup>25</sup>

### *SR 655*

Senators Joseph Carter, Seth Harp, Bill Hamrick, Brian Kemp, Ronnie Chance, and Nancy Schaefer of the 13th, 29th, 30th, 46th, 16th and 50th districts, respectively, sponsored SR 655.<sup>26</sup> On January 10, 2006, the Senate first read SR 655 and it was assigned to the

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18. See Georgia Lottery Homepage, Capital Outlays and Technology Grants, <http://www.georgialottery.com/gen/education/capitaloutlay.jsp> (last visited Aug. 14, 2006).

19. See Press Release, GA Republican Party, Governor Perdue's 2006 Legislative Agenda (Jan. 12, 2006) [hereinafter Perdue's 2006 Legislative Agenda].

20. See Eggs and Issues Breakfast, *supra* note 17.

21. See Perdue's 2006 Legislative Agenda, *supra* note 19.

22. See Eggs and Issues Breakfast, *supra* note 17.

23. See GA. CONST. art. X, § 1.

24. See *id.*

25. See *id.*

26. See SR 655, as introduced, 2006 Ga. Gen. Assem.

Committee on Higher Education.<sup>27</sup> Without any significant changes to the resolution, the Senate Committee on Higher Education reported favorably on the resolution on January 26, 2006.<sup>28</sup>

The Senate read the resolution for second time on January 31, 2006 and then for the third time on February 2, 2006.<sup>29</sup> Just prior to the third reading, supporters of the resolution carried a motion to engross by a vote of 32 to 23.<sup>30</sup> Under the rules of the Senate, a senator may make a motion to engross immediately prior to the third reading of any bill or resolution.<sup>31</sup> If passed by a simple majority of the Senate, engrossment precludes any amendments from being introduced or attached to the bill or resolution during floor debate.<sup>32</sup>

A few hours later the resolution failed by a vote of 35 to 20, failing to receive the necessary two-thirds majority.<sup>33</sup> The resolution was reconsidered on February 3, 2006, but again failed, 35 to 14.<sup>34</sup>

### *HR 1045*

Representatives Rich Golick, Bill Hembree, Vance Smith, Jay Roberts, David Knight, and Allen Freeman of the 34th, 67th, 129th, 154th, 126th, and 140th, respectively, sponsored HR 1045.<sup>35</sup> On January 9, 2006, the House first read HR 1045 and it was assigned to the Committee on Higher Education.<sup>36</sup> Without any significant changes, the House Committee on Higher Education reported favorably on the resolution on February 13, 2006.<sup>37</sup>

The House read the resolution for second time on January 10, 2006, and then for the third time on March 13, 2006.<sup>38</sup> On March 13,

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27. See State of Georgia Final Composite Status Sheet, SR 655, Jan. 10, 2006 (Mar. 30, 2006).

28. See State of Georgia Final Composite Status Sheet, SR 655, Jan. 26, 2006 (Mar. 30, 2006).

29. See State of Georgia Final Composite Status Sheet, SR 655, Jan. 31, 2006 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SR 655, Feb. 2, 2006 (Mar. 30, 2006).

30. Georgia Senate Voting Record, SR 655 (Feb. 2, 2006).

31. See Senate Rule 6-9.1 Motion to Engross, Senate Rules 2005 Session.

32. See *id.*

33. See Senate Voting Record, SR 655 (Feb. 2, 2006); State of Georgia Final Composite Status Sheet, SR 655, Feb. 2, 2006 (Mar. 30, 2006).

34. See Senate Voting Record, SR 655 (Feb. 3, 2006); State of Georgia Final Composite Status Sheet, SR 655, Feb. 3, 2006 (Mar. 30, 2006).

35. See HR 1045, as introduced, 2006 Ga. Gen. Assem.

36. See State of Georgia Final Composite Status Sheet, HR 1045, Jan. 9, 2006 (Mar. 30, 2006).

37. See State of Georgia Final Composite Status Sheet, HR 1045, Feb. 13, 2006 (Mar. 30, 2006).

38. See State of Georgia Final Composite Status Sheet, SR 655, Jan. 10, 2006 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SR 655, Mar. 13, 2006 (Mar. 30, 2006).

2006, by a vote of 102-68, HR 1045 failed to receive the necessary two-thirds majority.<sup>39</sup> The resolution was immediately reconsidered, but again failed, this time with a vote of 109 to 63.<sup>40</sup> The resolution was then tabled by a vote of 112 to 59.<sup>41</sup>

### *The Resolutions*

The resolutions sought to amend article I, section 2, paragraph 8 of the Georgia Constitution by striking provisions that permit lottery proceeds to be appropriated to fund the costs of computer and technology training for K–12 teachers, technical school personnel, and college and university professors and instructors, and to fund capital projects for educational facilities.<sup>42</sup> The text of the resolutions, and therefore the potential effect of each, was precisely the same.<sup>43</sup>

The resolutions would have specifically limited the use of lottery funds to the three remaining educational areas: university, college, and technical school tuition programs; voluntary pre-kindergarten programs; and educational shortfall reserves.<sup>44</sup> Finally, the resolutions provided that the proposed amendment was to be submitted to Georgia voters for ratification or rejection in accordance with the terms of article X, section 1, paragraph 2 of the Constitution.<sup>45</sup>

### *Analysis*

Supporters of the resolutions believe that they would have prevented lottery funds from being spent on items that Georgia voters never intended them to be spent on, specifically, capital projects and

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39. See Senate Voting Record, HR 1045 (Mar. 13, 2006); State of Georgia Final Composite Status Sheet, HR 1045, Mar. 3, 2006 (Mar. 30, 2006).

40. See Senate Voting Record, HR 1045 (Mar. 13, 2006); State of Georgia Final Composite Status Sheet, HR 1045, Mar. 13, 2006 (Mar. 30, 2006).

41. See Senate Voting Record, HR 1045 (Mar. 13, 2006); State of Georgia Final Composite Status Sheet, HR 1045, Mar. 13, 2006 (Mar. 30, 2006).

42. See SR 655, as introduced, 2006 Ga. Gen. Assem.; HR 1045, as introduced, 2006 Ga. Gen. Assem.

43. Compare SR 655, as introduced, 2006 Ga. Gen. Assem., with HR 1045, as introduced, 2006 Ga. Gen. Assem.

44. See SR 655, as introduced, 2006 Ga. Gen. Assem.; HR 1045, as introduced, 2006 Ga. Gen. Assem.

45. See GA. CONST. art. X, § 1, para. 2; SR 655, as introduced, 2006 Ga. Gen. Assem.; HR 1045, as introduced, 2006 Ga. Gen. Assem.

technology, and instead would limit spending to the areas for which voters originally intended.<sup>46</sup> Senator Joseph Carter implored his colleagues in the Senate to focus on what was best for the children and students of Georgia by ensuring the longevity of the pre-K and HOPE Scholarship programs.<sup>47</sup>

On the other hand, opponents of the resolutions, who were mostly Democrats, saw the resolutions as nothing more than election-year tactics by Governor Perdue and his fellow Republicans.<sup>48</sup> Opponents, such as Senator Regina Thomas, were quick to point out that Governor Perdue, the originator of the resolution, in fact never supported the HOPE Scholarship program, alluding to cuts made to pieces of the program during his term as Governor and his voting record against the program while serving in the General Assembly.<sup>49</sup> They felt that Governor Perdue and the Republican-controlled legislature were trying to cover themselves for their past history on the HOPE Scholarship program.<sup>50</sup>

Others saw the push to limit lottery spending as a hypocritical move by Republicans, including Governor Perdue, who had directly or indirectly voted for some of the largest of the technology training and capital outlay programs under scrutiny.<sup>51</sup> They felt the money that had been spent in the past on capital projects and technology was not wasteful spending, and furthermore, that the resolutions would not prevent future cuts to the HOPE scholarship program.<sup>52</sup> Other opponents, such as Senator Steve Thompson, saw the resolutions as unnecessary, in that they addressed areas in which no funds had been expended for at least two years.<sup>53</sup>

Supporters of Governor Perdue defend his “indirect” voting on the programs in question, because the programs were included as part of

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46. See Brandon Larrabee & Vicky Eckenrode, *Governor's Initiatives Fall Short*, AUGUSTA CHRON., Mar. 14, 2006, at B1.

47. See Audio Recording of Senate Proceedings, Feb. 2, 2006 (remarks by Sen. Joseph Carter), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_47120055,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_47120055,00.html) [hereinafter Senate Audio].

48. See Larrabee & Eckenrode, *supra* note 46.

49. See Senate Audio, *supra* note 47 (remarks by Sen. Regina Thomas).

50. See Press Release, Democratic Party of Georgia, Perdue Still Hopeless (Feb. 17, 2006), <http://www.georgiaparty.com/newsroom/pressRelease.asp?pressID=156>.

51. See Brandon Larrabee, *Perdue's Past Votes Conflict with HOPE Plan*, AUGUSTA CHRON., Feb. 17, 2006, at B1.

52. See Larrabee & Eckenrode, *supra* note 46.

53. See Telephone Interview with Sen. Steve Thompson, Senate Dist. No. 33 (Apr. 5, 2006) [hereinafter Thompson Interview].



multi-billion dollar budgets he voted for while in the General Assembly, despite containing the spending intended to be prevented by the resolutions, and further that Gov. Perdue himself never pushed for programs outside of his proposed limits.<sup>54</sup>

The disagreement over whether spending lottery funds on technology education and capital outlays is worthwhile was reflected in elected officials' support for or opposition to the amendment.<sup>55</sup> For example, Senator Thompson stated that he felt the technology and capital funding was very beneficial to students of the state, in that the largest of these capital outlays was very effective in accomplishing its goal of reducing class sizes in Georgia schools, and the largest technology program put state of the art technology in universities and "wired" every school throughout the state.<sup>56</sup> To the contrary, spending such as \$2.5 million allocated for a resource center at the Atlanta Zoo appears to have only a tangential connection to educational spending, and according to Governor Perdue, the Georgia Constitution should permanently prevent frivolous spending on such "pet projects" in order to secure the financial future of the HOPE Scholarship and Pre-K programs.<sup>57</sup>

Democrats such as Senator Thompson felt a better solution to regulating lottery spending was Lieutenant Governor Mark Taylor's proposal, introduced in the Senate as SR 801 by Senator Robert Brown of the 26th district.<sup>58</sup> That proposal would have removed the same language pertaining to technology spending and capital outlays as SR 655 and HR 1045.<sup>59</sup> In addition, SR 801 would have further restricted lottery spending by requiring the State to exhaust 35% of shortfall reserves before any future cuts to HOPE awards.<sup>60</sup> After exhausting 35% of the reserves, any cuts would require a two-thirds

54. See *Perdue's Past Votes Conflict with HOPE Plan*, *supra* note 51.

55. Compare Senate Audio, *supra* note 46 (remarks by Sen. Steve Thompson), with Senate Audio, *supra* note 46 (remarks by Sen. Seth Harp) (highlighting the differences in viewpoints between supporters of the resolutions who felt that technology and capital spending were wasteful and opponents of the resolutions who believed the spending served valid and useful purposes).

56. *Id.*

57. See *Perdue Pitches HOPE Chest Amendment*, ATLANTA BUS. CHRON., Jun. 24, 2005, <http://www.bizjournals.com/atlanta/stories/2005/06/20/daily17.html>.

58. See SR 801, as introduced, 2006 Ga. Gen. Assem.; Thompson Interview, *supra* note 53.

59. Compare SR 655, as introduced, 2006 Ga. Gen. Assem., and HR 1045, as introduced, 2006 Ga. Gen. Assem., with SR 801, as introduced, 2006 Ga. Gen. Assem. (striking subsections (4) and (5) from article I, section 2, paragraph 8 of the Georgia Constitution).

60. See SR 801, as introduced, 2006 Ga. Gen. Assem.

passage in both Houses of the General Assembly and ratification by Georgia voters.<sup>61</sup> In the words of the Lieutenant Governor, his proposal would have created HOPE and Pre-K safeguards “with real teeth, with real protections, [and] with a vote of the people.”<sup>62</sup> However, the proposal failed to make it out of committee and could not be incorporated into then-engrossed SR 655.<sup>63</sup>

Some opponents, such as Senator Thomas, felt that the lottery education programs did not need any “shoring up” in the first place, as hundreds of millions of dollars were sitting in the reserve accounts created by the original constitutional amendment.<sup>64</sup> This sentiment was echoed by Senator Thompson, who stated that the reserves should serve their proper purpose and be used in years when needed, prior to making any cuts, such as those made to books and fees supported by Governor Perdue in 2004.<sup>65</sup> Supporters of Governor Perdue respond that those cuts were based on the recommendation of a panel charged with studying the financial future of the HOPE Scholarship program and were necessary to secure its financial viability.<sup>66</sup> Furthermore, the limits would only go into effect if there were shortfalls in lottery revenues in a given year.<sup>67</sup>

Contrary to the fears of shortfalls and budget gaps that were forecasted for the HOPE scholarship program two years ago, the program is currently stable.<sup>68</sup> As of the most recent state balance sheet, the educational reserves sit at a balance of \$600 million.<sup>69</sup> Additionally, based on estimates, 2006 state tax revenues will be up

61. *See id.*

62. *See Lt. Governor Taylor Offers Proposal to Protect HOPE Scholarship from Future Cuts*, Taylor for Governor Homepage, <http://www.marktaylor.com/campaignnewsitem.jsp?navigation=3&content=9> (last visited Aug. 14, 2006).

63. *See supra* text accompanying notes 26-34.

64. *See* GA. CONST. art. I, § 2, para. 8; Senate Audio, *supra* note 46 (remarks by Sen. Regina Thomas).

65. *See* Thompson Interview, *supra* note 53; Press Release, Office of the Governor, Governor Perdue Signs Legislation Preserving HOPE Scholarship (May 17, 2004), <http://www.gov.state.ga.us/press/2004/press457.shtml> (last visited Apr. 23, 2006).

66. *See* Jeff Emanuel, *Georgia's HOPE Chest*, <http://www.townhall.com/opinion/columns/JeffEmanuel/2006/03/14/189671.html> (last visited Aug. 14, 2006).

67. *See* Cristen Conger, *HOPE Bill Still Under Review*, Feb. 6, 2006, [http://www.redandblack.com/vnews/display.v/ART/2006/02/06/43e69584c6faa?in\\_archive=1](http://www.redandblack.com/vnews/display.v/ART/2006/02/06/43e69584c6faa?in_archive=1).

68. *See* James Salzer, *Spending on HOPE Stabilizes: Enrollment Lag, Hot Lottery Sales Avert Projected Crisis*, ATLANTA J.-CONST., Nov. 7, 2005, at B1.

69. *See* Governor Sonny Perdue, THE GOVERNOR'S BUDGET REPORT FY 2007, [http://www.opb.state.ga.us/Budget/BudgetBook\\_Final\\_07.pdf](http://www.opb.state.ga.us/Budget/BudgetBook_Final_07.pdf) (last visited Aug. 14, 2006).

more than eight percent over the last year, leaving additional money to spend on items such as education.<sup>70</sup>

After failing in both the House and the Senate, the future of a constitutional amendment restricting lottery spending to the HOPE Scholarship and Pre-K programs is uncertain.<sup>71</sup> Whatever the future might hold for such an amendment, politicians on both sides of the aisle, though they may disagree on the means to accomplish such a goal, will most certainly claim that their side is “focus[ing] on what is best for the child and for the student.”<sup>72</sup>

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70. See Jim Tharpe & James Salazar, *Legislators Back in Town*, ATLANTA J.-CONST., Jan. 9, 2006, at C1.

71. See *supra* text accompanying notes 23-41.

72. Senate Audio, *supra* note 47 (remarks of Sen. Joseph Carter).