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EDUCATION Elementary and Secondary Education: Amend Title 20 and 48 of the Official Code of Georgia Annotated Relating, Respectively to Education and Revenue Taxation, so as to Provide for a Program of Educational Improvement; Provide for Student Scholarship Organizations; Provide for an Income Tax Credit with Respect to Qualified Education Expenses; Provide for an Income Tax Exclusion with Respect to Certain Scholarship Amounts; Provide for Powers, Duties, and Authority of the State Revenue Commissioner with Respect to the Foregoing; Provide for Related Matters; Provide an Effective

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EDUCATION

Elementary and Secondary Education: Amend Titles 20 and 48 of the Official Code of Georgia Annotated Relating, Respectively to Education and Revenue Taxation, so as to Provide for a Program of Educational Improvement; Provide for Student Scholarship Organizations; Provide for an Income Tax Credit with Respect to Qualified Education Expenses; Provide for an Income Tax Exclusion with Respect to Certain Scholarship Amounts; Provide for Powers, Duties, and Authority of the State Revenue Commissioner with Respect to the Foregoing; Provide for Related Matters; Provide an Effective Date; Provide for Applicability; Repeal Conflicting Laws; and for Other Purposes

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| CODE SECTIONS: | O.C.G.A. §§ 20-2A-1 (new), -6 (new), 48-7-29.16 (new) ¹ |
| BILL NUMBER: | HB 1133 |
| ACT NUMBER: | 773 |
| GEORGIA LAWS: | 2008 Ga. Laws 1108 |
| SUMMARY: | The stated goal of the Act is educational improvement. The Act allows taxpayers to claim tax credits for donations to charitable student scholarship organizations that provide tuition for current public school students who wish to attend private schools. The Act creates a system by which citizens and corporations can donate to charitable organizations which meet certain specific criteria as defined in the Act. Taxpayers and corporations are then allowed to claim a tax credit up to a specified limit. The Act allows tax credits to be claimed on |

1. After the legislature enacted HB 1133, creating Code section 48-7-29.13, the Code Commission redesignated Code section 48-7-29.13 as 48-7-29.16. O.C.G.A. § 48-7-29.16, Code Commission Notes (Supp. 2008).

a first-come, first-served basis up to the total tax credit limit.

EFFECTIVE DATE: May 14, 2008²

History

School choice has been an issue in Georgia since 1993 when Governor Zell Miller signed into law the state's "first charter school bill."³ As national conservative groups have succeeded in getting this issue on legislative agendas around the United States, school choice has become a major component of the Georgia Republicans' legislative platform.⁴ Supporters of school choice believe that "[p]ublic education is really the only monopoly left in government."⁵ They are advocates of a free market in which citizens can choose which school they would like to attend.⁶ Particularly, parents whose children are in poorly performing public schools could benefit from more scholarship money becoming available to their children to use for private schools.⁷ Realizing that Georgians are not yet fully supportive of a full-fledged school choice system, supporters are taking small steps to achieve the end goal of circumscribing a struggling public education system.⁸ In 2007, Senator Eric Johnson (R-1st) offered special education vouchers, and in 2008 he introduced SB 458 to provide vouchers for students who attend a school that is no longer accredited or has a "needs improvement" rating.⁹ In keeping with the goal of allowing students to choose their school, HB 1133 was also introduced in February 2008 to create tax credits for individuals and corporations who make donations to "school-choice

2. The Act shall be applicable to all taxable years beginning on or after January 1, 2008. 2008 Ga. Laws 1108, §3, at 1112.

3. Aaron Gould Sheinin, *School Choice Bills Face Political Squabble*, ATLANTA J.-CONST., Mar. 26, 2008, at A1 [hereinafter Sheinin, *School Choice*].

4. *Id.*; see generally Jim Wooten, Editorial, *Our Opinion: Winds Shifting in the Debate Over Education*, ATLANTA J.-CONST., Feb. 17, 2008, at C8, available at 2008 WLNR 3104383.

5. Sheinin, *School Choice*, *supra* note 3.

6. See generally Maureen Downey, Editorial, *Our Opinions: Achieving Failure*, ATLANTA J.-CONST., Mar. 28, 2008, at A12, available at 2008 WLNR 5900389 [hereinafter Downey, *Achieving Failure*].

7. See Wooten, *supra* note 4.

8. Downey, *Achieving Failure*, *supra* note 6.

9. See *id.*

scholarship organizations”.¹⁰ Critics of school vouchers have found HB 1133 and SB 458 analogous, stating that HB 1133 is nothing more than a disguised voucher system.¹¹

HB 1133 and other school choice bills have been inspired by the continued failure of some public schools in Georgia.¹² More recently, the threatened loss of accreditation for Clayton County schools has encouraged legislators to act promptly to rescue “passengers on a sinking ship”—an analogy made by Senator Eric Johnson in describing students attending troubled public schools.¹³

Bill Tracking of HB 1133

Consideration and Passage by the House

HB 1133 was sponsored by Representative David Casas (R-103rd).¹⁴ Co-sponsors of the bill included Earl Ehrhart (R-36th), Edward Lindsey (R-54th), Jeff Lewis (R-15th), Ron Stephens (R-164th), and others.¹⁵ Following the first reading in the House of Representatives on February 8, 2008, and the second reading on February 11, 2008, the bill was referred to the House Committee on Ways and Means.¹⁶ The Committee favorably reported the bill, by substitute, on March 6, 2008.¹⁷

House Bill 1133, as introduced, would provide tax credits for individual corporations and taxpayers who donate to approved student scholarship organizations.¹⁸ The student scholarship organizations would provide educational scholarships or tuition grants for students enrolled in Georgia secondary or primary schools to attend private schools in Georgia.¹⁹ The bill capped the “aggregate

10. Wooten, *supra* note 4.

11. Aaron Gould Sheinin, *Tuition Tax Credit Bill OK'd*, ATLANTA J.-CONST., Apr. 2, 2008, at B1, available at 2008 WLNR 6179836.

12. Maureen Downey, Editorial, *Our Opinion: Gutting Our Schools*, ATLANTA J.-CONST., Mar. 13, 2008, at A18, available at 2008 WLNR 4886129 [hereinafter Downey, *Gutting Our Schools*].

13. *Id.*

14. HB 1133, as introduced, 2008 Ga. Gen. Assem.

15. HB 1133, as introduced, 2008 Ga. Gen. Assem.

16. See State of Georgia Final Composite Status Sheet, HB 1133, Feb. 8, 2008 (Apr. 4, 2008).

17. See State of Georgia Final Composite Status Sheet, HB 1133, Mar. 6, 2008 (Apr. 4, 2008).

18. HB 1133, as introduced, 2008 Ga. Gen. Assem.

19. *Id.*

amount of tax credits [to] \$50 million per tax year.²⁰ The Ways & Means Committee made several changes to the original bill, the most significant of which was to restrict the scholarships to students currently in public schools.²¹ The Committee also added a restriction that the funds must be donated by the taxpayer during the tax year for which the credit is claimed.²² The Committee substitute came before the House for a vote on March 11, 2008, and passed by a count of 92 to 73, mostly along party lines, with Democrats opposing the bill and Republicans supporting it.²³ The bill's passage was reconsidered and that vote failed by the opposite count of 92 to 73.²⁴

During the House floor debate, Representative David Casas (R-103rd) described the bill as "the right thing to do in this day and age as far as investing in our children's future."²⁵ When asked by Representative Don Parsons (R-43rd) if the bill would lead to a "reduction in contributions to charitable organizations,"²⁶ Representative Casas denied that the bill would have such an effect, because there is a \$50M cap on the donation amount, and people generally donate to charitable organizations "way beyond their tax liability."²⁷

Representative Joe Heckstall (D-62nd) attacked the bill as a means for using public schools funds for private school education.²⁸ In particular, Representative Heckstall suggested that individuals and corporations should be encouraged to make donations to benefit public schools rather than private schools as proposed by HB 1133.²⁹

20. *Id.*

21. Video Recording of House Proceedings, Mar. 11, 2008 at 0 hr., 58 min., 22 sec. (remarks by Rep. David Casas (R-103rd)) [hereinafter House Video]; Compare HB 1133, as introduced, 2008 Ga. Gen. Assem. with HB 1133 (HCS), 2008 Ga. Gen. Assem.

22. Compare HB 1133, as introduced, 2008 Ga. Gen. Assem., with HB 1133 (HCS) 2008 Ga. Gen. Assem.

23. See State of Georgia Final Composite Status Sheet, HB 1133, Mar. 11, 2008 (Apr. 4, 2008); Georgia House of Representatives Voting Record, HB 1133 (Mar. 11, 2008, 4:08 PM); Ben Smith, *Metro News: Legislature 2008*, ATLANTA J.-CONST., at B3, Mar. 12, 2008 [hereinafter Smith, *Legislature 2008*].

24. See State of Georgia Final Composite Status Sheet, HB 1133, Mar. 11, 2008 (Apr. 4, 2008); Georgia House of Representatives Voting Record, HB 1133 (Mar. 11, 2008).

25. House Video, *supra* note 21 at 1 hr., 0 min., 27 sec. (remarks by Rep. David Casas (R-103rd)).

26. *Id.* at 0 hr., 59 min., 50 sec. (remarks by Rep. Don Parsons (R-42nd)).

27. *Id.* at 1 hr., 0 min., 1 sec. (remarks by Rep. David Casas (R-103rd)).

28. *Id.* at 1 hr., 0 min., 46 sec.; 1 hr., 1 min., 15 sec.; 1 hr., 2 min., 7 sec.; 1 hr., 2 min., 54 sec. (remarks by Rep. Joe Heckstall (D-62nd)).

29. *Id.* at 1 hr., 2 min., 54 sec. (remarks by Rep. Joe Heckstall (D-62nd)).

In response, Representative Casas stressed that parents need to be empowered to make educational decisions for their children, and HB 1133 accomplishes that by giving parents the choice to send their children to public or private schools.³⁰ Representative Dubose Porter (D-143rd) spoke out passionately against HB 1133, calling it “the most convoluted way to address public education [he’s] ever heard” and “the most dangerous thing [he’s] ever seen.”³¹ Representative Porter continued by stating that HB 1133 undermines the efforts of parents who work diligently to support the public school system.³² Overall, debate in the House was brief and the bill was allowed to pass.³³

Consideration and Passage by the Senate

On March 11, 2008, the Senate first read HB 1133 and it was assigned to the Senate Finance Committee.³⁴ The Senate Finance Committee favorably reported the bill on March 27, 2008.³⁵ The next day, the Senate read HB 1133 a second time.³⁶ The bill came up for debate on the Senate floor on April 1, 2008.³⁷ After introducing the bill, Senator Eric Johnson (R-1st) stated that the bill would help children who wanted to “better their education and prepare themselves for college.”³⁸ He anticipated that enacting the bill would save the State of Georgia \$6 million while saving local school boards \$93 million.³⁹

Senator Emanuel Jones (D-10th) expressed a few concerns about the bill.⁴⁰ First, he confirmed that the bill was only to provide

30. *Id.* at 1 hr., 3 min., 8 sec. (remarks by Rep. David Casas (R-103rd)).

31. House Video, *supra* note 21, at 1 hr., 4 min., 24 sec. (remarks by Rep. Dubose Porter (D-143rd)).

32. *Id.*

33. Interview with Rep. Kathy Ashe (D-56th) (Aug. 1, 2008) [hereinafter Ashe Interview]. Representative Ashe serves on the GSU College of Law’s Board of Visitors.

34. See State of Georgia Final Composite Status Sheet, HB 1133, Mar. 11, 2008 (Apr. 4, 2008).

35. See *id.* at Mar. 27, 2008.

36. See *id.* at Mar. 28, 2008.

37. Video Recording of Senate Proceedings, Apr. 1, 2008 at 1 hr., 10 min., 43 sec. (remarks by Sen. Eric Johnson (R-1st)), available at mms://mediam1.gpb.org/ga/leg/2008/ga-leg-senate-4_1_2008-PM.wmv [hereinafter Senate Video].

38. *Id.*

39. *Id.*

40. *Id.* at 1 hr., 13 min., 48 sec. (remarks by Sen. Emanuel Jones (D-10th)).

scholarships for children currently in public school.⁴¹ Then, he inquired as to how long a child currently in private school would need to be in public school to qualify for scholarships under the program.⁴² Senator Johnson replied that the Department of Revenue would need to establish those rules and regulations.⁴³ Senator Johnson then cautioned that there is no guarantee that a child pulled out of private school in order to qualify for a scholarship under the program would actually qualify for a scholarship.⁴⁴ The Department of Revenue is also required to handle the process of setting up a student scholarship organization.⁴⁵ Senator Jones raised one final concern about the impact of the \$50 million cap on the state's budget.⁴⁶ Senator Johnson reiterated that the state and local governments will actually save money under the bill, especially since the scholarships are only available to student currently in the public school system.⁴⁷

Senator Daniel Weber (R-40th) expressed confusion about which date would determine who was the first to come in order to receive the tax credit.⁴⁸ Again, Senator Johnson stated that "the revenue department will have to handle the details."⁴⁹

Senator Valencia Seay (D-34th) professed concern for public schools, and did not see the bill as being beneficial towards them.⁵⁰ With the limited funding of the program, the scholarships would not help every child that needed it, but only would help a "choice few".⁵¹ Johnson responded that while all children may not be helped, those that most need it likely will be helped.⁵² Senator Horacena Tate (D-38th) inquired about income limits for those applying for scholarships.⁵³ Senator Johnson's response was that, just as the Red

41. *Id.*

42. *Id.* at 1 hr., 14 min., 08 sec. (remarks by Sen. Emanuel Jones (D-10th)).

43. Senate Video, *supra* note 37, at 1 hr., 14 min., 20 sec. (remarks by Sen. Eric Johnson (R-1st)).

44. *Id.*

45. *Id.* at 1 hr., 17 min., 28 sec. (remarks by Sen. Eric Johnson (R-1st)).

46. *Id.* at 1 hr., 20 min., 40 sec. (remarks by Sen. Emanuel Jones (D-10th)).

47. *Id.* at 1 hr., 20 min., 45 sec. (remarks by Sen. Eric Johnson (R-1st)).

48. *Id.* at 1 hr., 28 min., 10 sec. (remarks by Sen. Daniel Weber (R-40th)).

49. Senate Video, *supra* note 37, at 1 hr., 29 min., 52 sec. (remarks by Sen. Eric Johnson (R-1st)).

50. *Id.* at 1 hr., 34 min., 42 sec. (remarks by Sen. Valencia Seay (D-34th)).

51. *Id.* at 1 hr., 36 min., 48 sec. (remarks by Sen. Valencia Seay (D-34th)).

52. *Id.* at 1 hr., 37 min., 01 sec. (remarks by Sen. Eric Johnson (R-1st)).

53. *Id.* at 1 hr., 39min., 09sec. (remarks by Sen. Horacena Tate (D-38th)).

Cross does not give Bill Gates help, the charitable scholarship organizations are not going to give money to somebody with \$250,000.⁵⁴ Furthermore, he did not think someone with \$250,000 would even apply.⁵⁵ Senator Horacena wanted to include a specific income level in the bill, but Senator Johnson said that the scholarship organizations would have to be trusted.⁵⁶

The bill was engrossed,⁵⁷ which means that, although it can be discussed, no amendments can be made to the bill. After discussion was completed, the Senate passed the bill, unchanged, by a vote of 32 to 20.⁵⁸ Governor Sonny Perdue signed the bill into law on May 14, 2008.⁵⁹

The Act

The Act amends Titles 20 and 48 of the Official Code of Georgia Annotated, related to education, by adding new chapters which allow taxpayers to claim tax credits for donations to scholarship organizations that provide scholarships for public school students to attend private schools and provides limitations and procedures under which the tax credits will be allowed.⁶⁰

The Act creates Code section 22-2A-1, which defines students eligible for the scholarships as “Georgia resident[s] enrolled in a Georgia secondary or primary public school or eligible to enroll in a qualified kindergarten program or pre-kindergarten program.”⁶¹ The Act defines “qualified school or program” as “a nonpublic primary school or secondary school that:” (1) is accredited ; and (2) is located in the state of Georgia.⁶² The Act goes on to define “student scholarship organization” as a non-profit 501(c)(3) organization that allocates ninety percent of its annual revenue for scholarships to

54. *Id.* at 1 hr., 39 min., 31 sec. (remarks by Sen. Eric Johnson (R-1st)).

55. Senate Video, *supra* note 37, at 1 hr., 39 min., 31 sec. (remarks by Sen. Eric Johnson (R-1st)).

56. *Id.* at 1 hr., 42 min., 05 sec. (remarks by Sen. Horacena Tate (D-38th)); *Id.* at 1 hr. 40 min., 43 sec. (remarks by Sen. Eric Johnson (R-1st)).

57. *Id.* at 1 hr., 29 min., 52 sec. (remarks by Sen. Eric Johnson (R-1st)).

58. State of Georgia Final Composite Status Sheet, HB 1133, Apr. 1, 2008 (Apr. 4, 2008); Georgia Senate Voting Record, HB 1133 (April 1, 2008).

59. State of Georgia Final Composite Status Sheet, HB 1133, May 14, 2008 (Apr. 4, 2008).

60. O.C.G.A. §§ 20-2A-1 to -6 (Supp. 2008); O.C.G.A. § 48-7-29.16 (Supp. 2008).

61. O.C.G.A. § 20-2A-1(1) (Supp. 2008).

62. O.C.G.A. § 20-2A-1(2) (Supp. 2008).

“allow students to attend any qualified school of their parent’s choice . . . without limiting availability to only students of one school.”⁶³

The Act requires a scholarship organization to commit ninety percent of its revenue for scholarships, hold scholarship funds and operating funds in separate accounts, audit its accounts annually, and report to the Department of Education annually.⁶⁴ The Act also requires scholarship organizations to report contributions and donors to the Georgia Department of Revenue annually.⁶⁵

Under the Act the Department of Revenue must provide a list of scholarship organizations receiving contributions each year to the General Assembly by January 30th of the following year.⁶⁶ Parents or guardians of scholarship recipients must restrictively endorse the award directly to the private school.⁶⁷ The Act requires the Department of Education to maintain an online list of eligible scholarship organizations.⁶⁸

The Act creates Code section 48-7-29.13 to address the tax implications of donations.⁶⁹ The Act limits individual tax credits to \$1,000 and credits for married couples filing jointly to \$2,500.⁷⁰ The Act allows corporations to claim credits up to their actual donation or 75% of their yearly tax liability—whichever is less.⁷¹ If the taxpayer makes a contribution to a qualified scholarship organization and designates any of the taxpayer’s dependents as the beneficiary, then the tax credit will not be allowed.⁷² The Act limits the total tax credits allowed each year to \$50 million and allows for tax credits to be issued on a first-come, first-served basis.⁷³ After the legislature enacted the bill creating 48-7-29.13, the Code Commission redesignated 48-7-29.13 as 48-7-29.16.

63. O.C.G.A. § 20-2A-1(3) (Supp. 2008).

64. O.C.G.A. § 20-2A-2 (Supp. 2008).

65. O.C.G.A. § 20-2A-3 (Supp. 2008).

66. O.C.G.A. § 20-2A-4 (Supp. 2008).

67. O.C.G.A. § 20-2A-5 (Supp. 2008).

68. O.C.G.A. § 20-2A-6 (Supp. 2008).

69. O.C.G.A. § 48-7-29.13 (Supp. 2008).

70. O.C.G.A. § 48-7-29.13(b) (Supp. 2008).

71. O.C.G.A. § 48-7-29.13(c) (Supp. 2008).

72. O.C.G.A. § 48-7-13(d) (Supp. 2008).

73. O.C.G.A. § 48-7-29.13(f) (Supp. 2008).

Analysis

Support for the Act appeared to be split roughly along party lines, as Democrats generally opposed it and Republicans generally gave it their support.⁷⁴ Opponents claim that the Act is a “‘dangerous’ back-door effort to subsidize private school[s] with taxpayer dollars.”⁷⁵ Supporters uphold the Act as a “plan to help lower-income schoolchildren get out of shoddy public schools.”⁷⁶ A major flashpoint of discussion is the current situation in Clayton County, where the public school system may lose its accreditation in the fall of 2008, leaving thousands of students faced with the specter of graduating with a virtually worthless degree.⁷⁷ Supporters of HB 1133 and other school choice legislation have argued that these bills would provide a remedy for students in Clayton County.⁷⁸ However, Governor Sonny Perdue has stated that “there aren’t enough private schools to accommodate Clayton’s students.”⁷⁹ Rather than seeing Clayton County students go to private school, the Governor would like to see a restoration of Clayton County’s school system.⁸⁰ Opponents of the Act may also be misguided in their belief that the Legislature has given up on fixing public schools in favor of replacing them.⁸¹ In fact, House Speaker Pro Tem Mark Burkhalter (R-50th) stated that “[e]verybody supports public education” and resistance to changes in education is inherent in the public education system establishment.⁸² He further asserted that the Act does not threaten the vitality of the public school system because “school systems that are confident in the work they’re doing will have no problem with legislation that involves options and choice.”⁸³ Thus, the Act is not a significant step towards school choice as supporters may have hoped, nor is it a step by the legislature towards

74. Smith, *Legislature 2008*, *supra* note 23.

75. *Id.*

76. *Id.*

77. Downey, *Achieving Failure*, *supra* note 6.

78. *Id.*

79. *Id.*

80. *Id.*

81. Downey, *Gutting Our Schools*, *supra* note 12 (HB 881, HB 1133, and SB 458 “confirm the theory that lawmakers are more interested in developing an exit strategy than a reform strategy”).

82. Sheinin, *School Choice*, *supra* note 3.

83. *Id.*

dismantling the public school system, as opponents feared. In order for the Act to accomplish its purpose – to provide a choice between public and private schools to children whose parents cannot afford it – public schools have to remain viable so that there is capacity for all students.

This Act creates a program similar to programs that already exist in Arizona, Florida, Iowa, Pennsylvania, and Rhode Island.⁸⁴ The program in Florida has recently come under attack from the teachers' union.⁸⁵ Currently the program takes \$80 million out of the state budget to pay the tuition of 20,000 students.⁸⁶ The union argues that it does not make financial sense to take that much money out of the state budget while school budgets are stretched thin and public schools are facing cutbacks.⁸⁷ Supporters claim that the program actually saves the state money because each voucher is for \$3,750 while the state spends \$6,700 per student.⁸⁸ Detractors counter that while the state may spend less money, school systems have fixed costs such as school buildings that do not decrease as student enrollment decreases.⁸⁹ Opposition in Georgia has been along the same lines as has appeared in other states.⁹⁰ The Georgia teachers' union, the Georgia Association of Educators, opposes the bill.⁹¹ Its president, Jeff Hubbard, believes that "public funds should be used for education of students in public schools."⁹² He also claims that school choice would not benefit many students and would weaken the public education system in Georgia, which has already been burdened by funding cuts.⁹³ Representative Kathy Ashe (D-56th) expressed concern that the public schools will lose their best students to private schools because these students will become aware of the available

84. Wooten, *supra* note 4.

85. See Mike Vasilinda, WJHG, *School Vouchers Latest*, Mar. 25, 2008, <http://www.wjhg.com/news/headlines/16992526.html>.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. See *supra* text accompanying notes 84-89.

91. Welcome to JasonPye.com, *Damn Teacher's Unions*, <http://www.jasonpye.com/blog/2008/03/>, (Mar. 26, 2008, 13:19 EST) [hereinafter Pye].

92. *Id.*

93. *Id.*

funds and choose to attend private school.⁹⁴ Poor children, however, are unlikely to benefit from the bill because they probably will not become aware of the available funds.⁹⁵ While placing an income cap on the families who can benefit from the bill might help to reduce this potential problem, such a limitation was not introduced into the bill.⁹⁶

Representative Jeff Lewis (R-15th), supports the Act and believes that as students move from public to private schools, the dollar-per-pupil ratio in public schools should improve, because public schools will continue to receive the same amount of money for fewer students.⁹⁷ In fact, because of the complicated funding system in Georgia, some funding for public schools will decrease while some funding sources will remain static.⁹⁸

Representative Earl Erhart (R-36th), one of the bills co-sponsors, claims that Georgia could save \$94 million in public education funding.⁹⁹ These savings would be realized because the Act will result in fewer students in the public school system, and thus the need for fewer resources.¹⁰⁰ However, opponents here, as in Florida, point out that school systems' static costs reduce the actual savings because school building maintenance, administrators' salaries, and teachers' salaries don't change based on reduced enrollment.¹⁰¹

Senator Steve Thompson (D-33rd) adds that the Act is at odds with efforts to support the public school system and predicts that children at the elementary school level in particular will opt for private schools upon receipt of scholarship funding from charitable

94. Ashe Interview, *supra* note 33.

95. *Id.*

96. See *supra* text accompanying notes 53-56; see also *infra* text accompanying notes 105-109.

97. See Interview with Rep. Jeff Lewis (R-15th), (Apr. 28, 2008) [hereinafter Lewis Interview].

98. The state funds education both in lump sum grants and per-student allotment. So, while the amount of grant money will not change as enrollment drops, funding tied to the per-student allotment will decrease. Additionally, local funding is not tied to the number of students. Through an attempt at equalization, Georgia also takes money away from local districts and gives it to poorer districts. See Georgia School Council Institute, *The Basics of Georgia School Finance* (2007), http://www.georgiaeducation.org/documents/Basics%20of%20GA%20School%20Finance_2007.pdf (explaining the funding system in Georgia); Sheinin, *School Choice*, *supra* note 3 (“Schools would lose the state’s per pupil funding if a students leaves, but that would not affect local funding.”).

99. Smith, *Legislature 2008*, *supra* note 23.

100. Sheinin, *School Choice*, *supra* note 3.

101. Smith, *Legislature 2008*, *supra* note 23.

organizations.¹⁰² Bill sponsor David Casas (R-103rd) points out, however, that “education is about children, not preserving our school districts.”¹⁰³ This is in line with the attitude held by many supporters that the money should follow the child, not the school.¹⁰⁴

Senator Horacena Tate (D-38th) expressed concern that the Act does not impose an income cap on families receiving scholarships.¹⁰⁵ Several states have imposed an income cap to ensure that wealthy families don’t take advantage of charitable funds.¹⁰⁶ Senator Eric Johnson (R-1st), however, did not see the need to impose an income cap—stating that charitable organizations inherently would not give a scholarship to a wealthy family, nor would a wealthy family bother to apply for a scholarship.¹⁰⁷ This assumption of a self-imposed restriction may be reason for concern. There is nothing in the language of the bill expressly limiting the ability of wealthy parents and students from benefitting.¹⁰⁸ There is also no indication that the legislature intended for the Department of Revenue to establish an income limit.¹⁰⁹ Without firm restrictions in place, the intent of the legislature to provide scholarship opportunities for families in need, may be lost.

The Act represents a major victory for supporters of school choice, but opponents claim that the victory comes at the expense of public school education.¹¹⁰ Currently, many students do not attend private school because their parents cannot afford the tuition.¹¹¹ Presumably, with charitable scholarships, many of these students would be able to

102. Senate Video, *supra* note 37, at 1 hr., 25 min., 20 sec. (remarks by Sen. Steve Thompson (D-33rd)).

103. Downey, *Gutting Our Schools*, *supra* note 12.

104. Wooten, *supra* note 4.

105. Senate Video, *supra* note 37, at 1 hr., 42 min., 05 sec., (remarks by Sen. Horacena Tate (D-38th)).

106. Sheinin, *School Choice*, *supra* note 3.

107. Senate Video, *supra* note 37 at 1 hr., 39 min., 31 sec. (remarks by Sen. Eric Johnson (R-1st)).

108. See O.C.G.A. § 20-2A-1 to -5 (Supp. 2008).

109. While Senator Johnson said that the Department of Revenue would clarify which date controls for the first-come-first-serve tax credits, Senate Video, *supra* note 37 at 1 hr., 29 min., 52 sec., and how long a student must be in public school before being eligible for a scholarship, *id.* at 1 hr., 17 min., 28 sec., he did not say that the Department of Revenue would set an income cap for student eligibility.

110. See generally Downey, *Gutting Our Schools*, *supra* note 12.

111. See Robert Enlow, The Friedman Foundation for Educational Choice, *Scholarships Would Save Public Schools Money: Legislative Proposal Could Add \$94 Million To Local Coffers*, Feb. 19, 2008, http://www.schoolchoice101.com/New/PressReleases/pressRelease_02192008.html (last visited Mar. 2, 2009).

attend private school. A potential problem with more students attending private school is the stress that may be placed on private schools' resources. In Georgia, there are currently 1.61 million public school students but only 82,000 private school students—approximately five percent.¹¹² Thus, while more public school students would be able to attend private school because of the Act, the question remains whether this would result in an overall benefit to education in Georgia. Private school resources, as Governor Perdue indicated, are not adequate to educate all public school students.¹¹³ This suggests that Georgia will have duplicate efforts underway to support education, one for public schools and one for private schools. It was this duplicity that concerned Senator Steve Thompson (D-33rd).¹¹⁴ If public schools must continue to survive so that students have a choice of education, then the state will have to continue to invest funds to make public school a viable option. Opponents of school choice challenge the Legislature to focus on fixing the public school system.¹¹⁵

Senator Johnson's concurrent introduction of a bill to offer vouchers to students whose schools lose accreditation or remain on the "needs improvement" list for seven years, shows that the legislature is making piecemeal attempts to move students out of poorly performing public schools into private ones.¹¹⁶ Under the Act, students who are caught in this unfortunate situation would potentially have the option to receive scholarship funding to attend private schools.¹¹⁷ Though attendance at a failing school is not a requirement of eligibility, it at least gives students in that situation an option they would not otherwise have.

Though the Act will effectively put pressure on struggling public schools to perform or lose their students, research suggests that students in public schools that have more school choice do not perform noticeably better than students in public schools without

112. Downey, *Gutting Our Schools*, *supra* note 12.

113. Downey, *Achieving Failure*, *supra* note 6.

114. Senate Video, *supra* note 37, at 1 hr., 25 min., 20 sec. (remarks by Sen. Steve Thompson (D-33rd)).

115. Downey, *Gutting Our Schools*, *supra* note 12.

116. Downey, *Achieving Failure*, *supra* note 6.

117. See Sheinin, *School Choice*, *supra* note 3.

school choice.¹¹⁸ Further, research showed that there is “little difference in academic achievements between voucher recipients enrolled in private schools and their public school counterparts.”¹¹⁹ The best argument in favor of the Act may be that it is unfair to the poor to force them to attend a failing school with few resources while the children of the wealthy are able to send their children to private schools. It is telling that the majority of opposition is not from students or parents, but from the teachers’ unions and public school administrators.¹²⁰ The legislators who sponsored the bill realize that there might be unintended consequences to any major overhaul, so the current limited program is intended as a trial to see how the school system as a whole is affected.¹²¹ Continuing to support poorly performing public schools is not going to improve education, and neither will continuing to pour money into the public school system.¹²² Opponents claim the Act is a step towards dismantling the public school system, but supporters point out that a completely private system is not a viable option and likely will never be.¹²³ Public schools are a necessary part of the education system, but children deserve the opportunity for other options if their parents feel the schools the children currently attend are not meeting the students’ needs, and the Act makes that option more of a possibility.

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118. Downey, *Achieving Failure*, *supra* note 6.

119. *Id.* (analogizing HB 1133 with vouchers).

120. *See generally* Pye, *supra* note 91.

121. *See* Lewis Interview, *supra* note 97.

122. *See generally* Brian Gottlob, FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, THE FISCAL IMPACT OF TAX CREDIT SCHOLARSHIPS IN GEORGIA, (2008), available at <http://www.gppf.org/pub/Education/Choice/taxcreditscholarships.pdf> (finding that increasing state funding for education is inefficient, because local governments respond by reducing local spending on education).

123. *See generally id.*; Sheinin, *School Choice*, *supra* note 3.