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SB 133 - SR 287 – Education: Education Accountability (Opportunity School District)

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EDUCATION

Education Accountability: Amend Chapter 14 of Title 20 of the Official Code of Georgia Annotated, Relating to the Education Coordinating Council, so as to Provide for the Establishment of the Opportunity School District; Provide for Definitions; Authorize the Opportunity School District to Assume the Supervision of Public Elementary and Secondary Schools that Are Qualifying; Provide for a Superintendent for the District; Provide Criteria; Provide for Rating of Schools; Provide for Intervention Models; Provide for Opportunity Schools Seeking State Charter School Status; Provide for Successful Opportunity Schools to Exit State Supervision; Provide for Funding; Provide for Applicability; Provide for Support Services and Flexibility for Schools on Warning, Schools on Probation, and Qualifying Schools that Are Not Selected; Repeal a Provision Relating to Appropriate Levels of Intervention for Failing Schools; Provide for Conforming Amendments; Provide for Related Matters; Provide for Contingent Effectiveness; Provide for Automatic Repeal under Certain Conditions; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 20-2-84, -186, -2068 (amended); 20-14-41 (amended), -100, -101, -102, -103, -104, -105, -106, -107, -108, -109, -110, -111, -112, -113 (new)
BILL NUMBER:	SB 133
ACT NUMBER:	24
GEORGIA LAWS:	2015 Ga. Laws 92
SUMMARY:	The Act establishes the Opportunity School District and authorizes the district to supervise, manage, and operate qualifying public elementary and secondary schools that receive unsatisfactory ratings based on student achievement by subjecting such schools to one of four intervention

models: (1) Direct Management, (2) Shared Governance, (3) Reconstitution as an Opportunity School District Charter School, or (4) Closure. The Act also provides significant details regarding the creation of the Opportunity School District and selection of qualifying schools, including how the new district will be funded, appointment and confirmation of a superintendent for the Opportunity School District, criteria and rating of schools for qualification and selection, and support services and flexibility for schools on warning, probation, or qualifying but not selected.

EFFECTIVE DATE: January 1, 2017¹

EDUCATION

Local School Systems: Proposing an Amendment to the Constitution of Georgia so as to Allow the General Assembly to Authorize the Establishment of an Opportunity School District to Provide for State Intervention for Failing Schools; Provide for Related Matters; Provide for the Submission of This Amendment for Ratification or Rejection; and for Other Purposes

PARAGRAPH: GA. CONST. art. VIII, § 5, para. 8 (new)
RESOL. NUMBER: SR 287
ACT NUMBER: 309
GEORGIA LAWS: 2015 Ga. Laws 1498

1. Senate Bill (SB) 133 becomes effective January 1, 2017, and will be implemented during the 2017–2018 school year, “only if an amendment to the Constitution is ratified at the November, 2016, general election expressly allowing the General Assembly to authorize the establishment of an Opportunity School District to provide for state intervention for failing schools.” 2015 Ga. Laws 92, § 6, at 103. “If such an amendment to the Constitution is not so ratified, then [SB 133] shall not become effective and shall stand repealed by operation of law on January 1, 2017.” *Id.*

SUMMARY: The Resolution provides for submission for ratification of an amendment to the Constitution of Georgia that authorizes the General Assembly to establish the Opportunity School District as an intervention measure for failing schools.

History

Georgia’s Waiver from Inflexibility under No Child Left Behind

On January 8, 2002, President Bush signed into law the No Child Left Behind Act (NCLB) of 2001, reauthorizing the Elementary and Secondary Education Act.² “[The] NCLB significantly raise[d] expectations for states, local school districts, and schools” with the goal “that all students w[ould] meet or exceed state standards in reading and mathematics within twelve years.”³ To meet this goal by 2014, the “NCLB require[d] all States, including the State of Georgia, to establish state academic standards and a state testing system that meet federal requirements.”⁴

One of the cornerstones of the federal NCLB was a measure of year-to-year student achievement on statewide assessments, referred to as Adequate Yearly Progress (AYP).⁵ Each state set annual levels of improvement for student performance on state standardized tests that school districts and schools must achieve.⁶ “These levels of improvement . . . establish[ed] the percent of students that must meet or exceed proficiency on math and reading/English tests each year,” and the bar was raised higher and higher each subsequent year to reach the 2014 goal.⁷ For students attending public schools that did

2. *About the No Child Left Behind Act of 2001*, GA. DEP’T OF EDUC., <https://www.gadoe.org/AYP/Pages/AboutNCLB.aspx> (last visited Oct. 3, 2015) [hereinafter *About the No Child Left Behind Act*].

3. *Id.*

4. *Id.*

5. *Id.*

6. Susan Walker, *Georgia’s 2010 Adequate Yearly Progress Results: What Does the Data Really Mean?*, GA. PARTNERSHIP FOR EXCELLENCE IN EDUC. 2 (July 2010), http://www.gpee.org/fileadmin/files/PDFs/GPEE_Policy_Brief_AYP_July_2010.pdf.

7. *Id.*

not make AYP for two or more consecutive years—classifying it as a “Needs Improvement” school—there were options of moving to a higher performing public school and receiving supplemental services that include before- and after-school tutoring or remedial classes in reading, language arts, and math.⁸

Though considered admirable by some, the NCLB received harsh criticism by many that the 2014 deadline was “unrealistic,” the law was “too rigid and led to teaching to the test,” and “too many schools [felt they were] labeled as ‘failures.’”⁹ Arne Duncan, the United States Secretary of Education, referred to the NCLB as “outmoded and [a law that] constrains state and district efforts for innovation and reform.”¹⁰ Critics also stated that the NCLB placed too much pressure on students and teachers and contributed to school cheating in Atlanta and other locations.¹¹ In 2010, a reported 28.9% of all public schools in Georgia failed to make AYP—the State’s highest figure in the five previous years.¹² With data showing that the percentage of Georgia schools making AYP dropped at every level of education (elementary, middle, and high schools), questions began surfacing among public school stakeholders about the effectiveness of recent reform efforts and the direction in which the state’s schools are heading.¹³ By 2014, nearly half of the schools in the nation were failing to meet requirements under the federal law.¹⁴ The Center on Education Policy attributed this failure to some states having harder tests, having high numbers of immigrant and low-income children,

8. *About the No Child Left Behind Act*, *supra* note 2.

9. Nancy Badertscher, *Georgia to Receive Waiver from No Child Left Behind*, ATLANTA J.-CONST. (Feb. 9, 2012), <http://www.ajc.com/news/news/local/georgia-to-receive-waiver-from-no-child-left-behind/nQQ9w/>.

10. Press Release, U.S. Dep’t of Educ., States Granted Waivers From No Child Left Behind Allowed to Reapply for Renewal for 2014 and 2015 School Years (Aug. 29, 2013), <http://www.ed.gov/news/press-releases/states-granted-waivers-no-child-left-behind-allowed-reapply-renewal-2014-and-2015-school-years> [hereinafter States Granted Waivers].

11. Badertscher, *supra* note 9. In 2011, the Governor’s Office initiated a twenty-one-month criminal investigation “into testing irregularities and cheating allegations on [the] 2008-2009 CRCT exams in dozens of Atlanta Public Elementary Schools.” Press Release, Office of the Fulton Cnty Dist. Attorney, Grand Jury Indicts 35 in Connection with Atlanta Public Schools Cheating Scandal (Mar. 29, 2013), http://www.atlantada.org/pr_032913-1.php. This investigation resulted in a grand jury returning indictments against the district’s former superintendent and thirty-four subordinates. *Id.*

12. Walker, *supra* note 6, at 1.

13. *See id.* at 2.

14. Badertscher, *supra* note 9.

and the NCLB requiring states to raise the bar each year for how many children must pass the test.¹⁵

The NCLB was due for reauthorization in 2007, but Congress failed to act—“stymied for years by competing priorities, disagreements over how much of a federal role there should be in schools, and . . . partisan gridlock.”¹⁶ In response to the law’s continued rigidity and inflexibility, President Barack Obama (D) announced in September 2011 that the Administration would provide State Education Agencies with flexible requirements under the NCLB if states applied for waivers.¹⁷ Thirty-four states applied for and received waivers, with Georgia being one of the first to submit an application.¹⁸ State School Superintendent, Dr. John Barge (R), lauded the waiver as freedom from “the narrow definitions of success found in [the NCLB],” and Governor Nathan Deal (R) stated that the waiver would “give Georgia the flexibility . . . to pursue [the state’s] goals of student achievement.”¹⁹

Georgia Schools’ Continued Failures Under the College and Career Ready Performance Index

In exchange for flexibility the State received under its waiver from demanding NCLB provisions, Georgia “had to agree to raise standards, improve accountability, and undertake essential reforms to improve teacher effectiveness”²⁰ Georgia began fulfilling this promise by implementing a new statewide accountability system in 2012 to replace the AYP measurement, the College and Career

15. *Id.*

16. *Id.*

17. States Granted Waivers, *supra* note 10. Accused by Republicans with overreaching his authority by granting waivers, President Obama “said action was necessary because Congress failed to update the law despite widespread bipartisan agreement that it need[ed] fixing.” Badertscher, *supra* note 9.

18. States Granted Waivers, *supra* note 10; Badertscher, *supra* note 9 (“Georgia was among the first to submit an application.”). These states were Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin. States Granted Waivers, *supra* note 10.

19. Press Release, Ga. Dep’t of Educ., Georgia Receives Waiver from No Child Left Behind (Feb. 29, 2012), <https://www.gadoe.org/External-Affairs-and-Policy/communications/Pages/PressReleaseDetails.aspx?PressView=default&pid=19>.

20. Badertscher, *supra* note 9.

Ready Performance Index (CCRPI).²¹ “CCRPI is a comprehensive school improvement, accountability, and communication platform for all educational stakeholders that will promote college and career readiness for all Georgia public school students.”²² The new system measures schools and districts on a 100-point scale.²³ The simplified scale is considered helpful for “parents and the public [to] better understand how schools are performing in a more comprehensive manner than the pass/fail system . . . under [the] AYP.”²⁴

Critics consider the Georgia CCRPI an improvement over AYP, which relied heavily on student performance on state exams, because the new system considers more factors.²⁵ The overall score for a school and its district is composed of three areas: Achievement (70 points possible), Progress (15 points possible), and Achievement Gap (15 points possible).²⁶ Additionally, schools can obtain extra “Challenge Points” for their score (up to 10 points) if they challenge students to participate in college and career-ready programs; or have a significant number of economically disadvantaged students, students learning English as a second language, or students with disabilities meeting expectations.²⁷

Still, under a new system that takes more factors into account and releases Georgia from the rigid constraints of the NCLB,²⁸ the 2014 school ratings released by the Georgia Department of Education showed that statewide, on average, elementary, middle, and high schools’ ratings on the 100-point scale were falling in comparison to the 2013 CCRPI ratings.²⁹ Georgia’s high schools scored lower and

21. Maureen Downey, *State Releases 2013-14 School Grades. State Averages Falter.*, ATLANTA J.-CONST. (Dec. 16, 2014), http://getschooled.blog.ajc.com/2014/12/16/state-releases-2013-14-school-grades-scores-fall/#__federated=1.

22. *College and Career Ready Performance Index*, GA. DEP’T OF EDUC., <http://www.gadoe.org/CCRPI/Pages/default.aspx> (last visited Oct. 3, 2015).

23. Press Release, Ga. Dep’t of Educ., Georgia Releases 2014 CCRPI Scores (Dec. 16, 2014), <http://www.gadoe.org/ExternalAffairsandPolicy/communications/Pages/PressReleaseDetails.aspx?PressView=default&pid=254> [hereinafter Georgia Releases 2014 CCRPI Scores].

24. *Id.*

25. Downey, *supra* note 21.

26. *College & Career Ready Performance Index*, GA. DEP’T OF EDUC. (May 2013), http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Accountability/Documents/Archive/CCRPI_Summary.pdf.

27. *Id.*

28. See Badertscher, *supra* note 9. Under the NCLB waiver, some schools gained “more flexibility in how they spen[t] federal dollars . . .” *Id.*

29. Georgia Releases 2014 CCRPI Scores, *supra* note 23.

lower for three consecutive years.³⁰ A school is classified as failing by scoring 60 or less on the CCRPI and 141 schools across the state, sixty of which are in metro Atlanta, have earned a failing score for three consecutive years.³¹ The results suggest that schools continued to struggle with providing quality education statewide, even under the flexible CCRPI. Hoping to address Georgia’s continued school failures by implementing a solution based on similar successful initiatives in Louisiana and Tennessee, Senator Butch Miller (R-49th), one of Governor Deal’s Senate floor leaders, officially introduced Senate Bill (SB) 133, known as the Opportunity School District (OSD) bill, and Senate Resolution (SR) 287 in the Georgia Senate during the 2015 legislative session.³²

Bill Tracking of SR 287

Consideration and Passage by the Senate

Majority Whip Steve Gooch (R-51st), Administration Floor Leader Butch Miller (R-49th), Senators Lindsey Tippins (R-37th), Rick Jeffares (R-17th), Freddie Powell Sims (D-12th), and Jeff Mullis (R-53rd) sponsored SR 287.³³ The Senate read the resolution for the first time on February 19, 2015, and assigned it to the Senate Education and Youth Committee.³⁴ The Committee favorably reported the resolution by substitute on March 3, 2015.³⁵ The

30. *Id.*

31. Nicole Snyder, “*Failing Schools Law*” *Makes Progress in Georgia*, WJBF.COM ABC NEWS CHANNEL 6 (Mar. 25, 2015), <http://wjbf.membercenter.worldnow.com/story/28615600/failing-schools-law-makes-progress-in-georgia>; see OFFICE OF THE GOVERNOR, GEORGIA PUBLIC SCHOOLS EARNING LESS THAN 60 ON CCRPI FOR PREVIOUS THREE YEARS (2012-2014*), [https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/site_page/Georgia%20Public%20Schools%20Earning%20Less%20than%2060%20on%20CCRPI%20for%20Previous%20Three%20Years%20\(1\).pdf](https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/site_page/Georgia%20Public%20Schools%20Earning%20Less%20than%2060%20on%20CCRPI%20for%20Previous%20Three%20Years%20(1).pdf) (last visited Oct. 3, 2015); see also *Governor Signs Failing Schools Bill; Opponents Call It a Gimmick*, WSBTV.COM (Apr. 21, 2015, 8:56 PM), http://www.wsbtv.com/news/news/local/governor-signs-failing-schools-bill-opponents-call/nkzRd/#__federated=1.

32. See Kristina Torres, *School Takeover Plan Officially Filed in Georgia Senate*, ATLANTA J.-CONST. (Feb. 18, 2015), <http://www.ajc.com/news/news/state-regional-govt-politics/school-takeover-plan-officially-filed-in-georgia-s/nkDdb/>; *Opportunity School District Proposal*, OFF. OF THE GOVERNOR, <https://gov.georgia.gov/opportunity-school-district-proposal> (last visited Oct. 3, 2015).

33. Georgia General Assembly, SR 287, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/287>.

34. State of Georgia Final Composite Status Sheet, SR 287, May 14, 2015.

35. *Id.*

Committee substitute to SR 287 offered one change.³⁶ The alteration added language to one sentence at the end of the new paragraph being added to the Constitution.³⁷ A day later, the resolution was read for the second time.³⁸

After the resolution was read for the third time on March 5, 2015, multiple amendments were proposed.³⁹ The first four amendments attempted to add language to the Senate Education and Youth Committee substitute.⁴⁰ The first proposed amendment came from Senators Lester G. Jackson (D-2nd), Harold V. Jones II (D-22nd), Michael ‘Doc’ Rhett (D-33rd), Gail Davenport (D-44th) and Democratic Whip Vincent Fort (D-39th).⁴¹ This amendment would have added:

The Opportunity School District shall be limited to no more than 5 percent of the total number of public elementary and secondary schools in this state under its supervision at any one time and the addition of no more than 1 percent of the total number of public elementary and secondary schools in this state under its supervision in any school year.⁴²

The amendment failed.⁴³

36. See SR 287 (SCS), § 1, p. 1, ln. 13–17, 2015 Ga. Gen. Assem.

37. *Id.* (changing the sentence from “[s]uch authorization shall include the power to receive, control, and expend state, federal, and local funds appropriated, all in the manner provided by and in accordance with general law” to “[s]uch authorization shall include the power to receive, control, and expend state, federal, and local funds appropriated *for schools under the current or prior supervision, management, or operation of the Opportunity School District*, all in the manner provided by and in accordance with general law.”) (emphasis added).

38. State of Georgia Final Composite Status Sheet, SR 287, May 14, 2015.

39. Georgia General Assembly, SR 287, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/287>.

40. See Failed Senate Floor Amendment to SR 287, introduced by Sen. Lester G. Jackson (D-2nd), Mar. 5, 2015; Failed Senate Floor Amendment to SR 287, introduced by Sen. Vincent Fort (D-39th), Mar. 5, 2015; Failed Senate Floor Amendment to SR 287, introduced by Sen. Gail Davenport (D-44th), Mar. 5, 2015; Failed Senate Floor Amendment to SR 287, introduced by Sen. Elena Parent (D-42nd), Mar. 5, 2015.

41. Failed Senate Floor Amendment to SR 287, introduced by Sen. Lester G. Jackson (D-2nd), Mar. 5, 2015.

42. *Id.*

43. *Id.*

The second proposed amendment came from Democratic Whip Fort, Democratic Leader Steve Henson (D-41st), and Democratic Caucus Chair Horacena Tate (D-38th).⁴⁴ This amendment added, “For purposes of this paragraph, a public elementary or secondary school shall be deemed to be failing if the annual state accountability rating for the school has declined two times over the past three years.”⁴⁵ The proposed amendment lost by a vote of 16 to 36.⁴⁶

Senator Davenport, Democratic Caucus Chair Tate, Democratic Caucus Secretary Nan Orrock (D-36th), Senator Jones II, Senator Rhett, and Democratic Caucus Vice Chair of Campaigns and Fundraising Gloria Butler (D-55th) offered the third proposed amendment.⁴⁷ This amendment would have added, “The General Assembly shall provide for an administrative and judicial appeal process for public elementary and secondary schools that are deemed to be failing to contest such determination.”⁴⁸ The amendment lost by a vote of 14 to 36.⁴⁹

The fourth proposed amendment came from Senator Parent, and attempted to add that a “public elementary or secondary school supervised, managed, or operated by the Opportunity School District . . . shall not be supervised, managed, or operated pursuant to a contract with a private for profit entity.”⁵⁰ This amendment also lost by a vote of 14 to 36.⁵¹

Democratic Caucus Vice Chair Valencia Seay (D-34th), Democratic Caucus Chair Tate, Democratic Leader Henson, and Democratic Caucus Secretary Orrock offered the fifth proposed amendment.⁵² This amendment sought to insert language that provided for “local funds appropriated, all in the manner provided by

44. Failed Senate Floor Amendment to SR 287, introduced by Sen. Vincent Fort (D-39th), Mar. 5, 2015.

45. *Id.*

46. Georgia Senate Voting Record, SR 287, Vote #80 (Mar. 5, 2015).

47. Failed Senate Floor Amendment to SR 287, introduced by Sen. Gail Davenport (D-44th), Mar. 5, 2015.

48. *Id.*

49. Georgia Senate Voting Record, SR 287, Vote #81 (Mar. 5, 2015).

50. Failed Senate Floor Amendment to SR 287, introduced by Sen. Elena Parent (D-42nd), Mar. 5, 2015.

51. Georgia Senate Voting Record, SR 287, Vote #82 (Mar. 5, 2015).

52. Failed Senate Floor Amendment to SR 287, introduced by Sen. Valencia Seay (D-34th), Mar. 5, 2015.

and in accordance with general law.”⁵³ This amendment lost by a vote of 15 to 36.⁵⁴

The Committee substitute offered by the Senate Committee on Education and Youth remained unchanged because all of the proposed floor amendments failed.⁵⁵ The Senate adopted the Committee substitute by a vote of 38 to 16.⁵⁶ The Senate then adopted the resolution by a vote of 38 to 15.⁵⁷ Thirty-eight votes was the minimum number required to pass a constitutional amendment, thus, SR 287 barely passed, with no votes to spare.⁵⁸

Consideration and Passage by the House

Representative Christian Coomer (R-14th) sponsored SR 287 in the House.⁵⁹ The House read the resolution for the first time on March 9, 2015, and the second time on March 11, 2015.⁶⁰ The resolution was referred to the House Committee on Education, and the Committee favorably reported the resolution on March 24, 2015.⁶¹ The next day, the House read the resolution for the third time and voted on it.⁶² SR 287 was adopted by a vote of 121 to 47.⁶³ The minimum vote this resolution could receive and still pass was 119 plus Speaker David Ralston’s (R-7th) deciding vote.⁶⁴ Thus, the resolution passed with two additional votes to spare.⁶⁵ That same day, the House sent the resolution back to the Senate, and on April 9, 2015, the Senate sent the resolution to Governor Nathan Deal (R).⁶⁶ On May 12, 2015, Governor Deal signed the resolution.⁶⁷

53. *Id.*

54. Georgia Senate Voting Record, SR 287, Vote #83 (Mar. 5, 2015).

55. SR 287 (SCS), 2015 Ga. Gen. Assem.

56. Georgia Senate Voting Record, SR 287, Vote #84 (Mar. 5, 2015).

57. Georgia Senate Voting Record, SR 287, Vote #85 (Mar. 5, 2015).

58. Interview with Erin Hames, Deputy Chief of Staff for Policy and Legislative Affairs, Office of Governor Nathan Deal (Apr. 24, 2015) [hereinafter Hames Interview].

59. Georgia General Assembly, SR 287, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/287>.

60. State of Georgia Final Composite Status Sheet, SR 287, May 14, 2015.

61. *Id.*

62. *Id.*

63. Georgia House of Representatives Voting Record, SR 287 (Mar. 25, 2015).

64. Hames Interview, *supra* note 58.

65. *Id.*

66. State of Georgia Final Composite Status Sheet, SR 287, May 14, 2015.

67. *Id.*

*Bill Tracking of SB 133**Consideration and Passage by the Senate*

Administration Floor Leader Butch Miller (R-49th), Senators Lindsey Tippins (R-37th), Rick Jeffares (R-17th), Freddie Powell Sims (D-12th), Brandon Beach (R-21st), and Jeff Mullis (R-53rd) sponsored SB 133.⁶⁸ The Senate read the bill for the first time on February 19, 2015, and referred it to the Senate Education and Youth Committee.⁶⁹ The Committee favorably reported the bill by substitute on March 3, 2015.⁷⁰ A day later, the Senate read the bill for the second time.⁷¹ The substitute made a few changes to the original bill. For example, the substitute changed the term “State charter school” to “OSD charter school.”⁷² Further, the Committee assured that they would stay adequately informed of the Opportunity School District’s progress by adding that the OSD Superintendent must “provide a report to the General Assembly” on an annual basis.⁷³

The bill was read for the third time on March 5, 2015, and multiple amendments were proposed.⁷⁴ The first proposed amendment came from Democratic Whip Vincent Fort (D-39th), Democratic Leader Steve Henson (D-41st), and Democratic Caucus Chair Horacena Tate (D-38th).⁷⁵ This amendment suggested striking lines 156 through 166 of the Senate Committee on Education and Youth substitute to SB 133 and inserting language about what happens to teachers once the school is taken into the Opportunity School District.⁷⁶ The proposed amendment lost by a vote of 16 to 38.⁷⁷

Democratic Whip Fort, Democratic Leader Henson, Democratic Caucus Secretary Nan Orrock (D-36th), Democratic Caucus Chair

68. Georgia General Assembly, SB 133, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/133>.

69. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015.

70. *Id.*

71. *Id.*

72. SB 133 (SCS), § 1, p. 2, ln. 24–25, 2015 Ga. Gen. Assem.

73. *Id.* § 1, p. 2, ln. 49–51.

74. Georgia General Assembly, SB 133, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/133>.

75. Failed Senate Floor Amendment to SB 133 (1 AM 33 1519), introduced by Sen. Vincent Fort (D-39th), Mar. 5, 2015.

76. *Id.*

77. Georgia Senate Voting Record, SB 133, Vote #86 (Mar. 5, 2015).

Tate, and Senator Michael ‘Doc’ Rhett (D-33rd) offered the second proposed amendment.⁷⁸ This amendment presented many changes, such as: defining what “community school plan” means,⁷⁹ listing the different intervention models,⁸⁰ and elaborating what “community school programming shall provide.”⁸¹ The proposed amendment lost by a vote of 16 to 38.⁸²

Senator Curt Thompson (D-5th) raised the next amendment, which recommended inserting the following between “support” and the period on line sixty of the Committee substitute: “provided, however that only qualifying schools in the bottom third of all qualifying schools, when ranked by the previous year’s graduation rate or state achievement scores for all qualifying schools, may be selected. The [Opportunity School District] Superintendent shall annually notify the qualifying schools in such bottom third ranking.”⁸³ The proposed amendment lost by a vote of 16 to 38.⁸⁴

The fourth proposed amendment came from Democratic Caucus Vice Chair Valencia Seay (D-34th), Democratic Caucus Chair Tate, Democratic Leader Henson, and Democratic Caucus Secretary Orrock.⁸⁵ This amendment suggested deleting lines 318 through 320, which stated: “(d) Opportunity schools that become OSD charter schools and subsequently exit the OSD shall continue to be eligible for the same level of funding provided for in this Code section that they were eligible for while under the authority of the OSD.”⁸⁶ The proposed amendment lost by a vote of 14 to 38.⁸⁷

78. Failed Senate Floor Amendment to SB 133 (2 AM 33 1528), introduced by Sen. Vincent Fort (D-39th), Mar. 5, 2015.

79. *Id.* (defining “community school plan” as “a plan to implement community school programming, including services, activities, and opportunities as included in Code Section 20-14-105.1”).

80. *Id.* (adding one additional intervention model that allowed “the school to develop and implement a community school plan pursuant to Code Section 20-14-105.1”).

81. *Id.* (inserting additional community programs that deal with early childhood education, academic support, parental involvement, mental and physical health, and community involvement).

82. Georgia Senate Voting Record, SB 133, Vote #87 (Mar. 5, 2015).

83. Failed Senate Floor Amendment to SB 133 (3 AM 33 1525), introduced by Sen. Curt Thompson (D-5th), Mar. 5, 2015.

84. Georgia Senate Voting Record, SB 133, Vote #88 (Mar. 5, 2015).

85. Failed Senate Floor Amendment to SB 133 (4 AM 33 1512), introduced by Sen. Valencia Seay (D-34th), Mar. 5, 2015.

86. *Id.*; SB 133 (SCS) § 1, p. 10, ln. 318–20, 2015 Ga. Gen. Assem.

87. Georgia Senate Voting Record, SB 133, Vote #89 (Mar. 5, 2015).

The fifth proposed amendment came from Senator Emanuel Jones (D-10th).⁸⁸ The proposed amendment sought to replace lines sixty through sixty-three, which gave the Opportunity School District Superintendent full discretion over which schools to select, with language that leaves the selection process to the school’s faculty and parents of the students enrolled by secret ballot.⁸⁹ The proposed amendment lost by a vote of 15 to 38.⁹⁰ Senator E. Jones also proposed an amendment to include a definition section that would alter Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education.⁹¹ The proposed amendment lost by a vote of 16 to 38.⁹²

Senator Mike Crane (R-28th) offered an amendment to insert after line 118 the provision: “(5) A parent may request and receive from the [Opportunity District] a scholarship for the student currently enrolled in an opportunity school in a manner consistent with scholarships currently available.”⁹³ Although this was the first proposed amendment by a Republican, the proposed amendment still by a vote of 15 to 36.⁹⁴

The eighth amendment came from Democratic Caucus Vice Chair of Campaigns and Fundraising Gloria Butler (D-55th), Democratic Caucus Chair Tate, Democratic Leader Henson, and Democratic Whip Fort.⁹⁵ This amendment sought to replace lines 242 through 244 with “In the event that the OSD Superintendent closes a qualifying school, the local board of education shall not use the facility to open a school with the same grade span or attendance zone

88. Failed Senate Floor Amendment to SB 133 (5 AM 33 1524), introduced by Sen. Emanuel Jones (D-10th), Mar. 5, 2015.

89. *Id.*

90. Georgia Senate Voting Record, SB 133, Vote #90 (Mar. 5, 2015).

91. Failed Senate Floor Amendment to SB 133 (6 AM 33 1523), introduced by Sen. Emanuel Jones (D-10th), Mar. 5, 2015.

92. Georgia Senate Voting Record, SB 133, Vote #91 (Mar. 5, 2015).

93. Failed Senate Floor Amendment to SB 133 (7), introduced by Sen. Mike Crane (R-28th), Mar. 5, 2015. Amendment 7a replaced “Department” in Amendment 7 with “Opportunity District.” Failed Senate Floor Amendment to SB 133 (7a), introduced by Sen. Mike Crane (R-28th), Mar. 5, 2015.

94. Georgia Senate Voting Record, SB 133, Vote #92 (Mar. 5, 2015).

95. Failed Senate Floor Amendment to SB 133 (8 AM 33 1511), introduced by Sen. Gloria Butler (D-55th), Mar. 5, 2015.

for three years.”⁹⁶ The proposed amendment lost by a vote of 15 to 38.⁹⁷

Senator E. Jones then proposed his third amendment, which inserted the following between the period and quotation mark at the end of line seventeen: “There shall be an Opportunity School District Board of Education which shall consist of eight members, three of whom shall be appointed by the Governor and five of whom shall be elected by the people.”⁹⁸ The proposed amendment further elaborates on issues such as term limits.⁹⁹ This amendment was withdrawn before it went to vote, but it shows some legislators’ concern about the Opportunity School District Superintendent having full discretion when he or she is not an elected official.¹⁰⁰ The Senate passed the Committee substitute, unchanged by the failed floor amendments, by a vote of 38 and 17.¹⁰¹

Consideration and Passage by the House

Representative Christian Coomer (R-14th) sponsored SB 133 in the House.¹⁰² The House read the bill for the first time on March 9, 2015, and for the second time on March 11, 2015.¹⁰³ The House Committee on Education favorably reported the bill by substitute on March 24, 2015.¹⁰⁴ The House Committee substitute added technical language throughout the bill. But the House Committee substitute also included substantive changes to the Senate Committee substitute. For example, the House Committee substitute attempts to increase transparency.¹⁰⁵ Also, addressing concerns about only

96. *Id.*

97. Georgia Senate Voting Record, SB 133, Vote #93 (Mar. 5, 2015).

98. Failed Senate Floor Amendment to SB 133 (Floor Amend 9), introduced by Sen. Emanuel Jones (D-10th), Mar. 5, 2015.

99. *Id.*

100. *See id.*; *see, e.g.*, Video Recording of House Education Committee Meeting, Mar. 18, 2015 at 33 min., 22 sec. (remarks by Rep. Dave Belton (R-112th)), http://original.livestream.com/gahln606/video?clipId=pla_907d49b3-2e8e-434e-9ae9-afa9f354af64 [hereinafter House Video].

101. Georgia Senate Voting Record, SB 133, Vote #94 (Mar. 5, 2015).

102. Georgia General Assembly, SB 133, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/133>.

103. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015.

104. *Id.*

105. SB 133 (HCS), § 1, p. 2, ln. 54–55, 2015 Ga. Gen. Assem. (adding that the report the OSD

schools in certain geographic regions being selected,¹⁰⁶ the substitute added that the “schools selected for inclusion in the OSD should represent geographic diversity, including urban and rural schools.”¹⁰⁷ The House Committee substitute further allows for waiver from specific Department of Education rules and outlines the specific procedure and limitations for the waiver.¹⁰⁸

The next day, March 25, 2015, the House read the bill for the third time and voted on it.¹⁰⁹ The House adopted the Committee substitute to SB 133 by a vote of 108 to 53.¹¹⁰ SB 133 was then sent back to the Senate to approve the House’s substitute.¹¹¹ On March 27, 2015, the Senate agreed to the House’s changes by a vote of 33 to 16.¹¹² The Senate sent SB 133 to Governor Nathan Deal (R) on April 8, 2015, and he signed it into law on April 21, 2015.¹¹³

The Resolution: SR 287

The resolution amends article VIII of the Georgia Constitution to give the General Assembly the authority to establish an Opportunity School District that will provide state intervention for failing schools in Georgia.¹¹⁴ Section 1 of the resolution amends article VIII, section 5 of the Georgia Constitution—which covers education in regards to local school systems.¹¹⁵ This amendment adds article VIII, section 6, paragraph 8 that will be titled “Opportunity School District.”¹¹⁶ This paragraph provides for the creation of the Opportunity School District and authorizes the State to “assume the supervision, management, and operation of public elementary and secondary

Superintendent is required to annually submit to the General Assembly also must be published on the office website).

106. *See, e.g.*, House Video, *supra* note 100, at 27 min., 45 sec. (remarks by Rep. Tommy Benton (R-31st)).

107. SB 133 (HCS), § 1, p. 3, ln. 59–61, 2015 Ga. Gen. Assem.

108. *Id.* § 1, p. 11, ln. 354–71.

109. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015.

110. Georgia House of Representatives Voting Record, SB 133 (Mar. 25, 2015).

111. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015; Georgia Senate Voting Record, SB 133 (Mar. 27, 2015)

112. Georgia Senate Voting Record, SB 133 (Mar. 27, 2015).

113. State of Georgia Final Composite Status Sheet, SB 133, May 14, 2015.

114. 2015 Ga. Laws 1498, at 1498.

115. 2015 Ga. Laws 1498, § 1, at 1499; *see also* GA. CONST. art. VIII, § 5.

116. 2015 Ga. Laws 1498, § 1, at 1499.

schools which have been determined to be failing through any governance model allowed by law.”¹¹⁷ This authorization extends to the power to “receive, control, and expend state, federal, and local funds”¹¹⁸

However, the resolution only amends the Constitution if it is ratified by popular vote in November 2016.¹¹⁹ The ballot submitting the proposed amendment to the public will ask, “[s]hall the Constitution of Georgia be amended to allow the state to intervene in chronically failing public schools in order to improve student performance?”¹²⁰ Governor Deal’s Office is confident the resolution will pass.¹²¹

The resolution refers to the schools that are subject to being taken into the Opportunity School District as “failing schools,”¹²² “schools which have been determined to be failing”¹²³ and “chronically failing public schools.”¹²⁴ Because of the negative connotation that “failing” carries, there was a lot of debate and concern, especially in the Georgia House of Representatives, about using the term.¹²⁵ The main goal was to use terminology on the ballot that would clarify the issue for Georgia voters.¹²⁶

Additionally, it is important to note what is not included in the resolution. The resolution is very broad and simply addresses the question of whether the State can intervene in a chronically failing public school.¹²⁷ It does not have any limits on the number of schools the Opportunity School District can accept, how long the schools can

117. *Id.*

118. *Id.*

119. 2015 Ga. Laws 1498, § 2, at 1499; *see also* GA. CONST. art. X, § 1, para. 2 (detailing ratification procedures for constitutional amendments proposed by the General Assembly); *supra* note 1 and accompanying text.

120. 2015 Ga. Laws 1498, § 2, at 1499; *see also* GA. CONST. art. X, § 1, para. 2.

121. Hames Interview, *supra* note 58 (“[W]e are confident that [the amendment] will pass. There are a lot of reasons for that. One, the charter school constitutional amendment passed with 58% of the vote. . . . We have also polled this issue. It polls higher than the charter school constitutional amendment does.”).

122. 2015 Ga. Laws 1498, § 1, at 1499.

123. *Id.*

124. 2015 Ga. Laws 1498, § 2, at 1499.

125. Hames Interview, *supra* note 58.

126. *Id.* (“[C]hronically failing is something that voters understand. . . . While people did not like the term failing, they had a very difficult time articulating to us what could be put in the place of failing that would make sense to voters across the state.”).

127. *See* 2015 Ga. Laws 1498, § 1, at 1499.

be in the Opportunity School District, how the schools can exit the Opportunity School District, or the specifications about what “intervention” means.¹²⁸ Such information can only be found in the enabling legislation, SB 133.¹²⁹ The benefit of this approach is if the Georgia General Assembly wants to make changes to the specifics of the Opportunity School District’s operation, it can do so without going through another constitutional amendment because they will be making changes to the enabling legislation rather than to the Georgia Constitution.¹³⁰

The Act: SB 133

The Act amends Title 20, Chapter 14 of the Official Code of Georgia Annotated to provide the enabling legislation for the creation of the Opportunity School District.¹³¹ Section 1 outlines everything related to the creation and operation of the Opportunity School District.¹³² Section 2 repeals Code section 20-14-41 of the Official Code of Georgia Annotated.¹³³ Section 3 amends Code section 20-2-84 of the Official Code of Georgia Annotated,¹³⁴ Section 4 amends Code section 20-2-186,¹³⁵ and Section 5 amends Code Section 20-2-2068.¹³⁶ Section 6 provides the effective date if the amendment to the Constitution is ratified in November 2016.¹³⁷

Section 1 of the Act amends Chapter 14 of Title 20 of the Official Code of Georgia Annotated.¹³⁸ It begins with Code section 20-14-100, which sets forth definitions of various terms used throughout the Act¹³⁹ and explains, among other things, the difference between a “qualifying school,”¹⁴⁰ a “school on

128. *See id.*; *see also* Hames Interview, *supra* note 58.

129. *See infra* Part *The Act: SB 133*.

130. Hames Interview, *supra* note 58.

131. 2015 Ga. Laws 92, at 92.

132. 2015 Ga. Laws 92, § 1, at 92.

133. 2015 Ga. Laws 92, § 2, at 102.

134. 2015 Ga. Laws 92, § 3, at 102.

135. 2015 Ga. Laws 92, § 4, at 102.

136. 2015 Ga. Laws 92, § 5, at 102.

137. 2015 Ga. Laws 92, § 6, at 103.

138. 2015 Ga. Laws 92, § 1, at 92.

139. O.C.G.A. § 20-14-100 (Supp. 2015).

140. O.C.G.A. § 20-14-100(6) (Supp. 2015) (“Qualifying school means’ a public elementary or secondary school that earns a rating of F pursuant to Code Section 20-14-104 for a minimum of three

probation,”¹⁴¹ and a “school on warning.”¹⁴² These terms and definitions are important because they relate to a highly debated topic, whether there should be an appeals process for the schools that are selected to enter the Opportunity School District.¹⁴³ The Act does not provide an appeals process for schools that are chosen because, by the time the school is chosen as a “qualifying school,” the schools have already been “on warning” and “on probation.”¹⁴⁴ During those periods, the districts have had additional flexibility and school improvement services from the State Department of Education, provided for in Code section 20-14-112.¹⁴⁵

Code section 20-14-101 creates the Opportunity School District with the authority granted in article VIII, section 5, paragraph 8 of the Georgia Constitution by SR 287.¹⁴⁶ The Opportunity School District is created under the Office of Student Achievement.¹⁴⁷ Code section 20-14-102 establishes the Opportunity School District Superintendent position, and notes that he or she will be appointed by the Governor and confirmed by the Senate.¹⁴⁸ The qualifications required for the position are set forth in Code section 20-2-101, and the Governor determines the salary.¹⁴⁹ Although the Superintendent will report directly to the Governor, he or she will provide annual reports to the General Assembly “on all aspects of operation, including the selection, intervention chosen, and progress of the opportunity schools.”¹⁵⁰

consecutive years.”).

141. O.C.G.A. § 20-14-100(7) (Supp. 2015) (“School on probation means’ a public elementary or secondary school that earns a rating of F pursuant to Code Section 20-14-104 for two consecutive years.”).

142. O.C.G.A. § 20-14-100(8) (Supp. 2015) (“School on warning means’ a public elementary or secondary school that earns a rating of F pursuant to Code Section 20-14-104 for one year.”).

143. Hames Interview, *supra* note 58 (“This was debated a lot. The question was before you take a school into the Opportunity School District, shouldn’t they have an appeal? And our response to that is no.”).

144. *See* O.C.G.A. § 20-14-100 (Supp. 2015); *see also* Hames Interview, *supra* note 58.

145. O.C.G.A. § 20-14-112 (Supp. 2015); *see also* Hames Interview, *supra* note 58 (“At that point, to allow an appeals process is just dragging out things, when instead, you need to be getting in there and turning things around for kids.”).

146. O.C.G.A. § 20-14-101(a) (Supp. 2015).

147. O.C.G.A. § 20-14-101(b) (Supp. 2015).

148. O.C.G.A. § 20-14-102(a) (Supp. 2015).

149. O.C.G.A. § 20-2-101(b) (2009); O.C.G.A. § 20-14-102(a) (Supp. 2015).

150. O.C.G.A. § 20-14-102(b) (Supp. 2015).

Code section 20-14-103 outlines the limitations of the Opportunity School District.¹⁵¹ This section restricts the Opportunity School District's selection to twenty qualifying schools in any single year and no more than 100 schools at any given time.¹⁵² Further, the selection of the qualifying schools should be based on the schools' performances over the past three years "with emphasis on student growth and progress and other considerations, including geographic clusters of qualifying schools, feeder patterns with multiple eligible schools, current turn-around efforts, availability of qualified partners, and community engagement and support."¹⁵³ Although the Opportunity School District will conduct a public hearing to allow input from parents and the community, the sole discretion of the school selection remains with the Opportunity School District Superintendent.¹⁵⁴ Additionally, the OSD Superintendent is authorized to waive some State Board of Education rules, regulations, policies and procedures.¹⁵⁵

Code section 20-14-104 states the Office of Student Achievement will issue an annual rating of "A, B, C, D, or F for each public elementary and secondary school in [Georgia] based on student achievement, achievement gap closure, and student growth" using "the state accountability system approved by the State Board of Education."¹⁵⁶ Code section 20-14-105 provides the four different intervention models the OSD Superintendent may use for an opportunity school: "(1) Direct management of the opportunity school by the OSD;¹⁵⁷ (2) Shared governance . . . by the OSD and the local board of education . . . ;¹⁵⁸ (3) Reconstitution of the school as an OSD charter school . . . ;¹⁵⁹ [and] (4) Closure of an opportunity school and . . . reassigning the students to a nonqualifying school within the local school system."¹⁶⁰ However, the decision to close a

151. See O.C.G.A. § 20-14-103 (Supp. 2015).

152. O.C.G.A. § 20-14-103(a) (Supp. 2015).

153. O.C.G.A. § 20-14-103(b) (Supp. 2015).

154. *Id.*

155. O.C.G.A. § 20-14-103(d) (Supp. 2015).

156. O.C.G.A. § 20-14-104 (Supp. 2015).

157. O.C.G.A. § 20-14-105(a)(1) (Supp. 2015).

158. O.C.G.A. § 20-14-105(a)(2) (Supp. 2015).

159. O.C.G.A. § 20-14-105(a)(3) (Supp. 2015).

160. O.C.G.A. § 20-14-105(a)(4) (Supp. 2015).

school is an “intervention of last resort” and is only available for schools that are not enrolled at full capacity.¹⁶¹

Code section 20-14-105 also elaborates on the staffing options for opportunity schools.¹⁶² The OSD Superintendent will select and hire the school principal.¹⁶³ The principal, OSD Superintendent, or OSD charter school governing board will interview all existing staff members of the school, and evaluate the member’s student growth and performance data, to decide whether that member should become an employee of the opportunity school.¹⁶⁴ If the teacher is subject to Code section 20-2-942, also known as “tenure,” but is not selected to work at the opportunity school, he or she will remain an employee of the local board of education.¹⁶⁵ The local board of education may use Code section 20-2-943 to reassign the employee, or Code section 20-2-948 to implement a reduction in force policy.¹⁶⁶

Code section 20-14-106 mandates the OSD Superintendent “set clear goals,”¹⁶⁷ and requires the creation of a governing board for each Opportunity School District charter school.¹⁶⁸ Code section 20-14-107 addresses the selection process for governing board members¹⁶⁹ and private vendors.¹⁷⁰ The Section further addresses the application procedures for the State Charter Schools Commission for “opportunity schools” applying to gain “OSD charter school status,”¹⁷¹ implications of renewing a state charter,¹⁷² and results of a rejected application.¹⁷³ In Code section 20-14-108, the Act mandates that the OSD take control of the selected qualifying school’s

161. *Id.*

162. *See* O.C.G.A. § 20-14-105(h) (Supp. 2015).

163. *Id.*

164. *Id.*; *see also* Hames Interview, *supra* note 58 (“We require that the Opportunity School District interview and review the student achievement data of every teacher in the school. And the goal of that is if you have a teacher there that is performing, they’re not going to get rid of a high performing teacher, because it is going to be a fast timeline. . . . Why in the world would you get rid of a teacher that is performing well?”).

165. O.C.G.A. § 20-14-105(h) (Supp. 2015); *see also* O.C.G.A. § 20-2-942 (2012 & Supp. 2015).

166. O.C.G.A. § 20-14-105(h) (Supp. 2015).

167. O.C.G.A. § 20-14-106(a) (Supp. 2015).

168. O.C.G.A. § 20-14-106(d) (Supp. 2015).

169. O.C.G.A. § 20-14-107(a) (Supp. 2015).

170. O.C.G.A. § 20-14-107(b) (Supp. 2015).

171. O.C.G.A. § 20-14-107(c) (Supp. 2015).

172. O.C.G.A. § 20-14-107(d) (Supp. 2015).

173. O.C.G.A. § 20-14-107(e) (Supp. 2015).

facilities,¹⁷⁴ and become responsible for all routine maintenance and repair of the facility and property.¹⁷⁵ However, in the event that the OSD Superintendent decides to close a qualifying school, the local board of education is not allowed to use the facility to open a school “with the same grade span and attendance zone that is substantially the same for three years.”¹⁷⁶

Code section 20-14-109 details the exiting strategies for the qualifying schools that are taken into the Opportunity School District.¹⁷⁷ An opportunity school will remain under the District’s supervision for a minimum of five consecutive years, unless it is permitted to exit the OSD because the school earns a rating above an F for three consecutive years.¹⁷⁸ The maximum amount of time an opportunity school may stay under the District’s supervision is ten years.¹⁷⁹ Code section 20-14-110 discusses the treatment of the OSD and each OSD charter school as a “single local education agency”¹⁸⁰ and implements data reporting requirements.¹⁸¹

Code section 20-14-111 outlines the funding structure.¹⁸² The Act is structured so that students at the Opportunity School District get a per student amount of state, local, and federal dollars that go to the local district, which follow them to the opportunity school.¹⁸³ The actual Opportunity School District is funded by a 3% withholding from those dollars for administration.¹⁸⁴ Additionally, the General Assembly may appropriate other funds for opportunity schools or private funds may be solicited and accepted by the Opportunity

174. O.C.G.A. § 20-14-108(a) (Supp. 2015).

175. O.C.G.A. § 20-14-108(b) (Supp. 2015).

176. O.C.G.A. § 20-14-108(a) (Supp. 2015).

177. *See* O.C.G.A. § 20-14-109 (Supp. 2015).

178. O.C.G.A. § 20-14-109(a) (Supp. 2015).

179. O.C.G.A. § 20-14-109(b) (Supp. 2015).

180. O.C.G.A. § 20-14-110(a) (Supp. 2015).

181. O.C.G.A. § 20-14-110(b) (Supp. 2015).

182. O.C.G.A. § 20-14-111 (Supp. 2015).

183. O.C.G.A. § 20-14-111(a) (Supp. 2015).

184. O.C.G.A. § 20-14-111(b) (Supp. 2015); *see also* Hames Interview, *supra* note 58 (“What this will actually mean in almost all cases is that more money will go to the schools and more money will go to the students. . . . [Atlanta Public Schools] withhold about 7.5% of all their dollars for their central office. Which is a lot. The state average is about 4%. So just in [Atlanta Public Schools] alone, it would free up about \$50 million dollars by taking 3% instead of taking 7.5%.”).

School District.¹⁸⁵ Lastly, Code section 20-14-113 provides that the Act is applicable beginning with the 2017-2018 school year.¹⁸⁶

Section 2 of this Act repeals Code section 20-14-41, which relates to the “appropriate levels of intervention for failing schools, master or management team, school improvement team, annual reports, data revision, and hearings.”¹⁸⁷ Section 3 amends Code section 20-2-84, relating to “the accountability, flexibility, and consequences components of contracts” to omit the reference to Code section 20-14-41.¹⁸⁸ Section 4 amends Code section 20-2-186, relating to “the allocation of funds for local systems to pay beginning salaries of superintendents, secretaries, accountants, nurses, and certain other personnel,” to omit the reference to Code section 20-14-41.¹⁸⁹ Section 5 amends Code section 20-2-2068, relating to “termination of a charter for a charter school,” to omit the reference to Code section 20-14-41.¹⁹⁰ Section 6 provides the effective date of January 1, 2017, if the Constitution is ratified in November 2016, but also states that if the amendment to the Constitution is not ratified, then the Act will be repealed by operation of law on January 1, 2017.¹⁹¹

Analysis

“Next-Step” for SB 133’s Enactment

Before SB 133 can be enacted and allow the OSD to provide state intervention for failing schools, Governor Nathan Deal (R) and sponsoring officials are dependent on the will of ordinary citizens.¹⁹² Georgia voters must ratify SR 287, an amendment to the Constitution of Georgia that “allow[s] the General Assembly to authorize the establishment of an Opportunity School District”¹⁹³ Ratification is necessary because the Constitution of Georgia declares that

185. O.C.G.A. § 20-14-111(e) (Supp. 2015).

186. O.C.G.A. § 20-14-113 (Supp. 2015).

187. 2015 Ga. Laws 92, § 2, at 102.

188. O.C.G.A. § 20-2-84 (2012 & Supp. 2015); 2015 Ga. Laws 92, § 3, at 102.

189. O.C.G.A. § 20-2-186 (2012 & Supp. 2015); 2015 Ga. Laws 92, § 4, at 102.

190. O.C.G.A. § 20-2-2068 (2012 & Supp. 2015); 2015 Ga. Laws 92, § 5, at 102.

191. 2015 Ga. Laws 92, § 6, at 103.

192. *See id.*

193. *Id.*

“[a]uthority is granted to county and area boards of education to establish and maintain public schools within their limits.”¹⁹⁴ Additionally, in *Gwinnett County School District v. Cox*, the Supreme Court of Georgia held that “[n]o other constitutional provision authorizes any other governmental entity to compete with or duplicate the efforts of local boards of education in establishing and maintaining general K–12 schools.”¹⁹⁵ Accordingly, the Supreme Court struck down as unconstitutional the 2008 Georgia Charter Schools Commission Act, Code sections 20-2-2080 to -2092, an Act “authorizing a State commission to establish competing State-created general K–12 schools under the guise of being ‘special schools.’”¹⁹⁶

Acknowledging the additional hurdle that this decision puts in front of SB 133, Governor Deal’s Deputy Chief of Staff for Policy and Legislative Affairs, Erin Hames, stated that before the decision, “it would not have taken a constitutional amendment” to pass the OSD.¹⁹⁷ Now, according to Hames, this decision “has created a tremendous amount of work,” and the Supreme Court “necessitate[s] a constitutional amendment to create the Opportunity School District.”¹⁹⁸ Deputy Chief of Staff Hames emphasized that the “toughest votes” are Democrats.¹⁹⁹ This is a “bill being pushed by Republicans,” but it takes a bipartisan effort to pass a constitutional amendment.²⁰⁰ Five House Democrats that she cited as being proponents of this Act, and of getting the amendment passed by voters, are Representatives Bob Bryant (D-162nd), Mickey Stephens (D-165th), Craig Gordon (D-163rd), Mike Glanton (D-75th), and Valencia Stovall (D-74th).²⁰¹

Democratic Whip Vincent Fort (D-39th) expressed uncertainty regarding whether the amendment would be passed by voters, stating “[i]t’s going to be difficult to predict whether or not [it will] pass.”²⁰² Regardless, Hames, who was “very involved in [successfully] writing

194. GA. CONST. art. VIII, § 5, para. 1.

195. *Gwinnett Cnty. Sch. Dist. v. Cox*, 289 Ga. 265, 266, 710 S.E.2d 773, 776 (2011).

196. *Cox*, 289 Ga. at 265, 710 S.E.2d at 775.

197. See Hames Interview, *supra* note 58.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* (“[T]hey believe the students in their district could learn, and they are fed up with the status quo, and they want something better for their community.”)

202. Interview with Sen. Vincent Fort (D-39th) (Apr. 24, 2015) [hereinafter Fort Interview].

the first constitutional amendment [in 2012] . . . to create a state charter school commission” after the decision in *Cox*, remains hopeful.²⁰³ Hames said that the Governor’s Office is “confident the voters will approve the Opportunity School District proposal.”²⁰⁴ Fort even stated, “If the 2012 Charter School Amendment is any indication, it will pass—that may or may not be the case.”²⁰⁵

Public Concerns Surrounding SB 133 & SR 287

Now that SB 133 has passed both the Senate and House, there are a myriad of concerns that voters will debate as they head to the polls in November of 2016 to ratify or reject SR 287. These concerns include the credibility of the models underlying the OSD to transform underperforming schools into successful schools,²⁰⁶ the impact of such legislation on the employment of teachers by local school boards,²⁰⁷ and the bill’s neglect of what some opponents consider the source of the problem: poverty.²⁰⁸

The Credibility of Louisiana and Tennessee Models

Now that SB 133 has passed both the Senate and House, an issue of concern that voters will ponder—raised in the Senate Education and Youth Committee and the House Education Committee—is the legitimacy of the success achieved by the Louisiana and Tennessee models.²⁰⁹ The OSD legislation is based on the model created by those states.²¹⁰ Senator Fort stated that the Senate Education and Youth Committee discussed “the New Orleans model because . . . [it] was what was offered as the model that should be replicated.”²¹¹ “[Democrats] were very skeptical of . . . the idea that the New Orleans model was really viable since the fact is that when they

203. See Hames Interview, *supra* note 58.

204. *Id.*

205. See Fort Interview, *supra* note 202.

206. See discussion *infra* Part *The Credibility of Louisiana and Tennessee Models*.

207. See discussion *infra* Part *Teachers’ Employment*.

208. See discussion *infra* Part *The Bill’s Neglect of Poverty*.

209. See Fort Interview, *supra* note 202.

210. See Hames Interview, *supra* note 58; House Video, *supra* note 100, at 53 min., 27 sec. (remarks by Rep. Margaret Kaiser (D-59th)).

211. See Fort Interview, *supra* note 202.

talked about improvement, what they didn't tell us was that they had changed the criteria," said Fort.²¹² "They changed the criteria, and then there was all this improvement."²¹³ Similarly, in the House Education Committee, Representative Margaret Kaiser (D-59th) raised the issue by stating, "We've heard from Louisiana and Tennessee. I specifically remember Louisiana saying they moved from an F to a C- in Committee. . . . When I visited Tennessee on Monday, what I felt like I saw was a district being very punitive toward these schools, toward the movement that these schools were making."²¹⁴

Representative Christian Coomer (R-14th), who sponsored SB 133 and SR 287 in the House, replied to Representative Kaiser:

To say that we shouldn't intervene because we don't know if the data is dependable enough is like saying 'my house is on fire, but I'm not sure if I'm goin' put it out because I don't know if it's hot enough.' I know that there is a problem, but I don't know if it's a big enough problem that I should really deal with it.²¹⁵

Representative Coomer continued, "We know that the children coming out of these schools are not getting the same level and opportunity for education as children in other districts. . . . We know there's a problem that you've got to address."²¹⁶

Representative Henry Howard (D-124th) could not understand what the Louisiana and Tennessee model districts were doing differently from what was already being done in Georgia.²¹⁷ Representative Howard asked, "What are we going to do different?"²¹⁸ He expressed frustration, saying "I'm still—that was a question I had when the New Orleans group came down as well as Tennessee, and I still have not heard what will be done different within those classrooms where the rubber meets the road with those

212. *Id.*

213. *Id.*

214. House Video, *supra* note 100, at 53 min., 27 sec. (remarks by Rep. Margaret Kaiser (D-59th)).

215. *Id.* at 56 min., 37 sec. (remarks by Rep. Christian Coomer (R-14th)).

216. *Id.*

217. *Id.* at 36 min., 32 sec. (remarks by Rep. Henry Howard (D-124th)).

218. *Id.*

kids?”²¹⁹ In response, Representative Coomer emphasized that the first goal was a major change in the culture and expectations of the school.²²⁰ He asserted that these schools existed within a system for decades that failed to provide children with a basic, quality education.²²¹ This necessitates a push for a change in the mindsets—described by Representative Coomer as “this is the way it’s always been, this is the way it’s always gonna be, we’re never gonna have success, we’re just gonna be a failing district, we’re gonna be a failing school . . . no matter what”—of the people in the community, families, teachers, students and leaders.²²² Representative Coomer also stated that one thing different from the Louisiana model is that OSD would not include for-profit charter schools.²²³ Feedback from Louisiana, per Representative Coomer, was that all of Louisiana’s for-profit charters were unsuccessful and went out of business, mainly because there was not enough money to be made.²²⁴

If Georgia voters do not “buy-in” on this theory of changing culture and expectations as a solution, and carry the same skepticism concerning Louisiana and Tennessee’s success shown by elected officials during the Senate and House Committee meetings, SR 287 may not pass, effectively blocking SB 133 from becoming law in 2017.

Teachers’ Employment

An additional area of concern for voters, including many educators who will vote on this amendment, is the uncertainty surrounding teacher employment if the OSD decides not to employ them upon adding their qualifying school to the OSD.²²⁵ SB 133 provides, in relevant part, the following concerning teacher employment:

The OSD or OSD charter school governing board shall have the authority to decide whether any leader, teacher, or

219. *Id.*

220. House Video, *supra* note 100, at 37 min., 54 sec. (remarks by Rep. Christian Coomer (R-14th)).

221. *Id.*

222. *Id.*

223. *Id.* at 55 min., 21 sec. (remarks by Rep. Christian Coomer (R-14th)).

224. *Id.*

225. *See id.* at 49 min., 11 sec. (remarks by Rep. Pam Dickerson (D-113th)).

staff member previously assigned to a qualifying school selected to become an opportunity school shall continue as an employee of the opportunity school. Any such employees retained shall become employees of the OSD or OSD charter school governing board, on the principal's recommendation, and be under their control. Any teacher subject to Code Section 20-2-942 who is not given the option to continue as an employee for the opportunity school shall remain an employee of the local board of education. The local board of education may determine whether or not to continue the employment of any teacher who is not given the option to continue as an employee for the opportunity school, subject to Code Section 20-2-942.²²⁶

While this provision also covers leaders and staff of a school selected for inclusion in the OSD, officials voting on the bill have mostly expressed concern for teachers.²²⁷ Representative Pam Dickerson (D-113th) mentioned the concern over what would happen to teachers not retained by the OSD upon inclusion of a school in the OSD in the House Education Committee, referencing that, in the New Orleans model, “all of the teachers were let go.”²²⁸ Representative Coomer's response clarified that the bill did not outright terminate teachers but allowed the local school board to determine what to do with the teachers employed for more than four years when the OSD decides not to retain them.²²⁹ Representative Coomer's rationale was that if a local board has retained a teacher for more than four years, it would presumably “find a place for that teacher to go and teach in a classroom.”²³⁰ When Representative Dickerson asked what would happen if the local school board determined there was not enough space to accommodate another teacher,²³¹ Representative Coomer stated that there were discussions about a solution being Reduction in

226. O.C.G.A. § 20-14-105(h) (Supp. 2015).

227. House Video, *supra* note 100, at 48 min., 50 sec. (remarks by Rep. Pam Dickerson (D-113th)).

228. *Id.*

229. *Id.* at 49 min., 24 sec. (remarks by Rep. Christian Coomer (R-14th)).

230. *Id.*

231. *See id.* at 50 min., 17 sec. (remarks by Rep. Pam Dickerson (D-113th)).

Force, or “RIF.”²³² He considered SB 133’s approach to tenured teachers a better avenue than what he claimed members of both caucuses on this bill privately stated that they would have preferred: “to just have a complete repeal of the teacher tenured program in Georgia.”²³³

Deputy Chief of Staff Hames added, “One important thing to note in the bill is that it requires the school principal to interview all of the teachers in the school and to review those teachers, their previous evaluations, and their student achievement data.”²³⁴ She stressed that the OSD did not want talented teachers in low-performing schools to fear that their jobs were at-risk upon inclusion into the OSD.²³⁵ The fear of tenured teachers losing their jobs after the passage of SR 287 is an obstacle for the Governor’s Office in convincing voters to amend the constitution.

The Bill’s Neglect of Poverty

Beyond concerns for teacher employment regarding SB 133, a major concern not widely discussed or addressed by officials, with the exception of Deputy Chief of Staff Hames and Senator Fort, is whether the Governor should be focusing on improving education or solving poverty—a circumstance Senator Fort claims causes poor education results.²³⁶ In discussing the urgent need for the OSD, Deputy Chief of Staff Hames stressed that “[t]he whole motivation is to break the cycle of poverty, to give kids an opportunity, and to ensure that kids all across the state have the opportunity for a good education.”²³⁷ She explained that there is a strong correlation between poverty and lower-performing schools, and she believes that students can never break that cycle of poverty in economically disadvantaged communities with low-performing schools.²³⁸ Deputy Chief of Staff Hames’s solution is holding a “core, fundamental

232. *Id.* at 50 min., 26 sec. (remarks by Rep. Christian Coomer (R-14th)).

233. House Video, *supra* note 100, at 50 min., 40 sec. (remarks by Rep. Christian Coomer (R-14th)).

234. *Id.* at 51 min., 20 sec. (remarks by Erin Hames, Deputy Chief of Staff for Policy and Legislative Affairs, Office of the Governor Nathan Deal).

235. *Id.*

236. *See* Fort Interview, *supra* note 202.

237. *See* Hames Interview, *supra* note 58.

238. *Id.*

belief that poverty is not an excuse,” and that “children that come from economically disadvantaged families can learn.”²³⁹

Senator Fort noted that OSD legislation fails to consider and address the impediments that children face.²⁴⁰ Instead of addressing the obstacles created by poverty, Senator Fort believes that the Governor’s Office, through OSD, provides platitude in saying “all children can learn.”²⁴¹ He agrees that all children can learn but wants legislation that “dismantl[es] the impediments [to education] that children do face: poverty, hunger, [and] violence”²⁴² Additionally, Senator Fort wants legislation that addresses this issue holistically.²⁴³ He gave the following example: “A child that doesn’t get a meal after a free lunch . . . until the next morning. . . . Can that child learn? Yes! What is the likelihood of that child learning [during class or doing homework at home]? Slim.”²⁴⁴

Possible Unintended Consequences: After Deal Leaves Office

If the aforementioned public concerns do not prevent the rejection of SR 287, and thus the enactment of SB 133 in January of 2017, the Office of the Governor may still be concerned with possible unintended consequences of the bill’s enactment. According to Deputy Chief of Staff Hames, Republican legislators were comfortable giving the State the kind of authority authorized by SB 133 because they “trust that [the Governor] . . . really cares about kids.”²⁴⁵ However, those same legislators also acknowledge that the Governor is in his final term.²⁴⁶ There is a fear that once Governor Deal leaves office in 2018, a subsequent governor will take office and use this power in an unfavorable way.²⁴⁷ One power, in particular, is the ability to change the definition of “chronically failing” since the definition is in the enabling legislation but not in

239. *Id.*

240. *See* Fort Interview, *supra* note 202.

241. *Id.*

242. *Id.*

243. *See id.*

244. *Id.*

245. *See* Hames Interview, *supra* note 58.

246. *Id.*

247. *Id.*

the constitutional amendment.²⁴⁸ A Democratic governor, who is a voucher proponent, could deem a huge number of schools to be failing and make all students in failing schools eligible for vouchers, concerning Republican legislators.²⁴⁹

Deputy Chief of Staff Hames believes that this fear is “unfounded” but is at least partly the reason the Governor lost some Republicans.²⁵⁰ She is more concerned about another possible unintended consequence: SB 133 not being used “to do great things for kids.”²⁵¹ Once the resolution is ratified, and the legislation is enacted, her “concern is that some future administration would not be bold in their action for the benefits of the kids.”²⁵² Hames believes that issues like generational poverty and youth incarceration will continue unabated unless “we’re [] willing to make tough decisions.”²⁵³ Governor Deal has a “deep concern about kids that are in failing schools,” and the Office of the Governor is hoping that SB 133 and SR 287 will be an effective solution.²⁵⁴

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248. *Id.*

249. *Id.*

250. *Id.*

251. See Hames Interview, *supra* note 58.

252. *Id.*

253. *Id.*

254. See *id.*