

SENATE BILL 90¹: EDUCATION; PROVIDE THE OPTION FOR PARENTS TO ENROLL THEIR CHILD IN ANOTHER SCHOOL WITHIN THE LOCAL SCHOOL SYSTEM OR IN PRIVATE SCHOOL

Amending O.C.G.A. §§ 20-2-2130 to -2137

First Signature: Senator Eric Johnson (1st)

Co-Sponsors: Senator Chip Rogers (21st), Senator Judson Hill (32nd), Senator Renee Unterman (45th), and Senator Dan Moody (56th)

Summary: Senate Bill 90 seeks to amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated to allow funding provided by the State of Georgia for a child’s education to be transferable to a school selected by the child’s parent.² The Bill allows parents to use the allocated state funding to transfer their child from one public school to a different public school in the local school system, transfer their child to a different public school system, or transfer their child to a private school through the use of “vouchers.”³ The Bill conditions the vouchers upon the child’s acceptance to the elected public or private school and

1. S.B. 90, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2009), *available at* http://www.legis.ga.gov/legis/2009_10/pdf/sb90.pdf (last visited Mar. 22, 2010).

2. *Id.*

3. The idea of school “vouchers” or allowing a parent a “choice” on education for her child is not new in the State of Georgia. Following the United States Supreme Court’s decision in *Brown v. Bd. of Educ. of Topeka*, 348 U.S. 886 (1954), the State of Georgia responded by authorizing financial assistance through “vouchers” to parents who chose to enroll their children in private, segregated schools. *See* GABRIEL CHIN & ROGER HARTLEY, JIM CROW STUDY GROUP, LAW, CRIMINAL JUSTICE, AND SECURITY PROGRAM, UNIV. OF ARIZ., STILL ON THE BOOKS: JIM CROW AND FIFTY YEARS AFTER BROWN V. BOARD OF EDUCATION 13 (Feb. 23, 2004), *available at* <http://www.uchastings.edu/racism-race/docs/JimCrowReport.pdf>. However, that law has since been repealed. O.C.G.A. § 20-2-642 (1954) (repealed).

leaves parents responsible for transporting their child to that school.⁴

Status: Senate Recommitted on January 11, 2010⁵

TEXT OF SENATE BILL 90

§ 1.

Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, is amended by adding a new article to read as follows:

“ARTICLE 34

20-2-2130.

As used in this article, the term:

- (1) ‘Board’ means the State Board of Education.
- (2) ‘Department’ means the Department of Education.
- (3) ‘Parent or guardian’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a child.
- (4) ‘Participating school’ means a private school that has notified the department of its intention to participate in the program and that complies with the department’s requirements.
- (5) ‘Prior school year in attendance’ means that the student was enrolled and reported by a public school system or school systems for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.
- (6) ‘Private school’ means a nonpublic school, sectarian or nonsectarian, which is accredited or in the process of becoming accredited by one or more of the entities listed in subparagraph (A) of paragraph(6) of Code Section 20-3-519.

4. Ga. S.B. 90.

5. Ga. Gen. Assem., S.B. 90 (Mar. 20, 2010), http://www.legis.ga.gov/legis/2009_10/sum/sb90.htm [hereinafter S.B. 90 Status Sheet].

(7) 'Program' means the scholarship program established pursuant to this article.

(8) 'Resident school system' means the public school system in which the student would be enrolled based on his or her residence.

(9) 'Scholarship' means a scholarship awarded pursuant to this article.

(10) 'Scholarship student' means a student who receives a scholarship pursuant to this article.

20-2-2131.

(a) Any parent of a student in a public school in this state may:

(1) Request a transfer for the student to attend another public school within the resident school system. It shall be in the sole discretion of the school, in accordance with an annual policy established by the school council, to accept students pursuant to this paragraph. If the parent chooses this option, then the parent shall be responsible for transportation to and from such school. The parent of a student transferring to another school pursuant to this paragraph shall be required to sign a contract with the receiving school agreeing that the parent and student will abide by all school rules and procedures and that the violation of any such rules or procedures may result in being removed from the school. If accepted, and unless there is a contract violation, the student may attend such public school pursuant to this paragraph until the student completes all grades of the school, graduates, or reaches the age of 20, whichever occurs first;

(2) Request a transfer for the student to attend a public school outside of the student's resident school system. It shall be in the sole discretion of the local board of education, with input from the school council of the desired school, to accept students pursuant to this paragraph. If the parent chooses this option, then the parent shall be responsible for transportation to and from such school. The parent of a student transferring to another school pursuant to this paragraph shall be required to sign a contract with the receiving school agreeing that the parent and student will abide by all school rules and procedures and that the violation of any such rules or procedures may result in being removed from the school. If the school accepts the student, such system shall report the student for purposes of funding to the department. The department

shall pay to each receiving school through appropriation of state and federal funds an amount equal to the sum of:

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

(B) A proportional share of state categorical grants, non-QBE state grants, state equalization grants, and all other state and federal grants; and

(C) An amount determined by the department for each student enrolled in such school equal to a proportional share of local revenue from the local school system in which the student attending the school resides;

The total allotment of state and federal funds to the resident school system of a student attending another school pursuant to this paragraph shall be calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of state and federal funds appropriated to the receiving school pursuant to this paragraph; or

(3) Request and receive from the department a scholarship for the student to enroll in and attend a participating school in accordance with Code Section 20-2-2132.

(b) Each local school system shall annually notify prior to the beginning of each school year the parents of each student by letter, electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article.

20-2-2132.

(a) A student shall qualify for a scholarship under this article if:

(1) The student's parent currently resides within Georgia and has been a Georgia resident for at least one year;

(2) The student has spent the prior school year in attendance at a Georgia public school;

(3) The parent obtains acceptance for admission of the student to a participating school; and

(4) The parent submits an application for a scholarship to the department no later than the deadline established by the department.

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student, including transportation to and from the participating school.

(c) For a student who participates in the program whose parent requests that the student take the state-wide assessments pursuant to Code Section 20-2-281, the resident school system shall make available to the student locations and times to take all state-wide assessments. Test scores of private school students participating in the state-wide assessments shall not be applied to the system averages of the resident school system for data reported for federal and state requirements.

(d) Students enrolled in a school operated by the Department of Juvenile Justice are not eligible for the scholarship.

(e) The scholarship shall remain in force until the student returns to his or her assigned school in the resident public school system, graduates from high school, or reaches the age of 20, whichever occurs first. However, at any time, the student's parent may remove the student from the participating school and place the student in another participating school or public school as provided for in Code Section 20-2-2131.

(f) The creation of the program or the granting of a scholarship pursuant to this article shall not be construed to imply that a public school did not provide an adequate education for a student or constitute a waiver or admission by the state.

(g) Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.

(h) The parent of each student participating in the scholarship program shall comply fully with the participating school's rules and policies.

(i) Any parent who fails to comply with the provisions of this article and department regulations relating to the scholarship shall forfeit the scholarship.

20-2-2133.

(a) To be eligible to enroll a scholarship student, a participating school shall:

(1) Have a physical location in Georgia where the scholarship students attend classes and have direct contact with the school's teachers;

(2) Demonstrate fiscal soundness by having been in operation for one school year or by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The report must confirm that the school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. The report shall be limited in scope to those records that are necessary for the department to make a determination on fiscal soundness and to make payments to schools for scholarships;

(3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

(4) Comply with all health and safety laws or codes that apply to private schools;

(5) Comply with all provisions of Code Section 20-2-690 and any other state law applicable to private schools;

(6) Regularly report to the parent and the department on the student's academic progress, including the results of pre-academic assessments and post-academic assessments given to the student, in accordance with department guidelines; and

(7) Employ or contract with teachers who hold a bachelor's degree or higher degree or have at least three years of experience in education and annually provide to the parents the relevant credentials of the teachers who will be teaching their students.

(b) A home school operating under the provisions of Code Section 20-2-690 shall not be eligible to enroll scholarship students.

(c) Residential treatment facilities licensed or approved by the state shall not be eligible to enroll scholarship students.

(d) The creation of the program shall not be construed to expand the regulatory authority of the state, its officers, or any local school system to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce the requirements of this article.

(e) A participating school intending to enroll scholarship students shall submit an application to the department by a date determined by the department preceding the school year in which it intends to enroll scholarship students. The notice shall specify the grade levels that the school has available for students who are participating in the scholarship program. A school intending to enroll scholarship students in the 2009-2010 school year shall submit an application no later than June 30, 2009.

(f) The board shall approve a participating school's application to enroll scholarship students if the school meets the eligibility requirements of this article and complies with board rules established pursuant to Code Section 20-2-2117. The board shall make available to local school systems and the public a list of participating schools.

(g) The board may bar a school from participation in the program if it determines that the school has intentionally and substantially misrepresented information or failed to refund to the state any scholarship overpayments in a timely manner.

20-2-2134.

(a) The amount of the scholarship provided pursuant to this article shall be the lesser of:

(1) The costs of the educational program that would have been provided for the student in the resident school system as calculated under Code Section 20-2-161, which shall not include any federal or local funds; or

(2) The amount of the participating school's tuition and fees, including any assessment fee required by the participating school.

(b) Scholarship students shall be counted in the enrollment of their resident school system; provided, however, that this count shall only be for purposes of determining the amount of the scholarship and the scholarship students shall not be included as enrolled for purposes of state or federal accountability requirements, including, but not limited to, the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L.

107-110). The funds needed to provide a scholarship shall be subtracted from the allotment payable to the resident school system.

(c) Each local school system shall submit quarterly reports to the department on dates established by the department stating the number of scholarship students in the resident school system. Following each notification, the department shall transfer from the state allotment to each school system the amount calculated under Code Section 20-2-161 to a separate account for the scholarship program for quarterly disbursement to the parents of scholarship students. When a student enters the program, the department must receive all documentation required for the student's participation, including the participating school's and student's fee schedules at least 30 days before the first quarterly scholarship payment is made for the student. The department shall not make any retroactive payments.

(d) Upon proper documentation received by the department, the department shall make quarterly scholarship payments to the parents of scholarship students on dates established by the department during each academic year in which the scholarship is in force. The initial payment shall be made upon evidence of admission to the participating school, and subsequent payments shall be made on evidence of continued enrollment and attendance at the participating school.

(e) Payment to the parents shall be made by individual warrant made payable to the student's parent and mailed by the department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school.

(f) A person, on behalf of a participating school, shall not accept a power of attorney from a parent to sign a warrant, and a parent of a scholarship student shall not give a power of attorney designating a person, on behalf of a participating school, as the parent's attorney in fact.

(g) If the participating school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, that partial payment may be paid by the department prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from subsequent scholarship payments. If a student decides not to attend the participating school, the partial

reservation payment must be returned to the department by such school. Only one reservation payment per student may be made per year.

20-2-2135.

The board shall adopt rules to administer the program regarding eligibility and participation of participating schools, including, but not limited to, timelines that will maximize student and public and private school participation, the calculation and distribution of scholarships to eligible students and participating schools, and the application and approval procedures for eligible students and participating schools. The department shall develop and utilize a compliance form for completion by participating schools. The department shall be authorized to require any pertinent information as it deems necessary from participating schools for the purpose of implementing the program. Participating schools shall be required to complete such forms and certify their accuracy.

20-2-2136.

No liability shall arise on the part of the department, the board, or the state or of any local board of education based on the award or use of a scholarship awarded pursuant to this article.

20-2-2137.

The Office of Student Achievement, in conjunction with the department, shall provide the General Assembly not later than December 1 of each year with a report regarding the scholarship program for the previous fiscal year. The report shall include, but not be limited to, numbers and demographics of students participating and numbers of participating schools. Such report shall also be posted on the Office of Student Achievement's website."

§ 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to the 2009-2010 school year and all school years thereafter.

§ 3.

All laws and parts of laws in conflict with this Act are repealed.

FIRST SIGNATURE'S RATIONALE

Senator Eric Johnson, of the 1st district, believes that the education system is failing the students in the State of Georgia.⁶ He believes that for Georgia students to be competitive on a national and international scale, education should be individualized to each particular student's needs.⁷ School vouchers are one way to allow students an opportunity to obtain an individualized education because it forces local school systems to become competitive and offer students quality education.⁸ Senator Johnson cites the HOPE Scholarship as one example of competitive practices forcing schools to adopt and provide a quality education.⁹ In particular, students are able to use their HOPE Scholarship funds to "shop around" for a college that meets their individual needs, fostering competition among post-secondary educational institutions.¹⁰

Senator Johnson points to wide and popular support for the Georgia Special Needs Scholarship Act, a school vouchers program for special needs children, to bolster his campaign for statewide school vouchers for all public school children as proposed in Senate Bill 90.¹¹ In his mind, if children designated as "special needs" students can obtain vouchers to attend private school, then school choice should be allowable for parents of all children educated in the State of Georgia.¹² Essentially, Senate Bill 90 allows parents to redirect state allocated per pupil funds

6. Sen. Eric Johnson, Remarks on S.B. 90, *available at* <http://www.youtube.com/watch?v=rINfznYI2Bw> (last visited Mar. 22, 2010) (stating that the State of Georgia ranked 33rd in the nation in education).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. O.C.G.A. § 20-2-2110 to -2118 (2007). Also known as Senate Bill 10, the Special Needs Scholarship Act allows parents of special needs children meeting certain criteria to fund private school education by reallocating state funds from the public school system to the private school of the parent's choice. *Id.*

12. Telephone Interview with Melanie Stockwell, Chief of Staff to Sen. Eric Johnson, Sen. Dist. 1 (Jan. 11, 2010) [hereinafter Stockwell Interview].

to a participating public or private school of their choice, so long as the chosen school accepts the child.¹³

Senator Johnson understood that school vouchers were controversial and would be contested.¹⁴ The Georgia Association of Educators (“G.A.E.”) immediately voiced their objection to the proposed legislation.¹⁵ Specifically, the President of G.A.E., Jeff Hubbard, opined that it was a “four-hundred-twenty-five-million-dollar bailout” for private schools.¹⁶ Recognizing the concerns about the impact that a reallocation of state funds may have on public school systems, Senator Johnson proposed a limitation that only children currently attending public schools could receive a voucher.¹⁷ Further, the proposed Bill does not impact funding at the local level.¹⁸ In particular, revenue raised through local sales and property taxes would not be affected and the local school systems would continue to utilize those funds.¹⁹

LEGISLATIVE GENEALOGY

Senate Bill 90 was read and referred in the Senate on February 3, 2009.²⁰ Senator Johnson presented Senate Bill 90 to the Senate Committee on Education and Youth on February 18, 2009.²¹ During this Committee hearing, Senator Tate, of the 38th district, expressed his belief that the citizens should decide whether the vouchers program proposed by Senate Bill 90 is

13. Walter C. Jones, *Senator Promotes Voucher Bill; Measure Covers All Georgia Students*, THE ATHENS BANNER-HERALD (Feb. 3, 2009), available at http://www.onlineathens.com/stories/020309/gen_384130556.shtml.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Stockwell Interview, *supra* note 12.

19. *Id.*

20. S.B. 90 Status Sheet, *supra* note 5.

21. *Parental School Choice Options: Hearing on S.B. 90 Before the S. Comm. on Educ. & Youth*, 150th Gen. Assem., 1st Reg. Sess. 14 (Ga. Feb. 18, 2009), available at http://www.legis.ga.gov/legis/2009_10/senate/publications/09minutes/educationandyouth.pdf (last visited Mar. 22, 2010) [hereinafter *Hearing on S.B. 90*].

appropriate for Georgia.²² Senator Buckner, of the 44th district, and Senator Sims, of 12th district, both expressed concerns about the Bill.²³ The Committee also heard from Senator Brown, of the 26th district; Jeff Hubbard, President of G.A.E.; Kisa Clark, of the League of Women Voters; Kem Hulse, of the Georgia PTA; and Margaret Ciccarelli, of the Professional Association of Georgia Educators, all of whom testified against Senate Bill 90.²⁴ Kelly McCutchen, of the Georgia Public Policy Foundation, and Andrew O'Brian, a parent from Cobb County, spoke in favor of the Bill.²⁵ Ultimately, the Committee did not vote on Senate Bill 90 at the February 18, 2009 meeting, but Committee Chairman Dan Weber, of the 40th district, indicated that the Committee would take up the Bill at another meeting.²⁶

As promised, the Senate Committee on Education and Youth again discussed Senate Bill 90 on February 25, 2009.²⁷ At this meeting, the Committee heard testimony favoring the Bill from twelve parents and two school representatives, as well as Diane Starkovich, of the Archdiocese of Atlanta; Andy Lord, of the Alliance for School Choice; and Robert Enlow, of the Friedman Foundation.²⁸ Also, Patricia Levesque, of the Foundation for Excellence in Education, presented to the Committee slides and handouts in support of Senate Bill 90.²⁹ Speakers in opposition of the Bill included two parents and four school board representatives, as well as Elisha Hammond, of the American Civil Liberties Union; Andrew Broy of the Georgia Department of Education; and Peter Islem, of the Mexican American Association.³⁰

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Hearing on S.B. 90, supra* note 21, at 18; *Lawmakers: Day 23* (Ga. Pub. Broadcasting television broadcast Feb. 25, 2009) available at <http://www.gpb.org/lawmakers-tv/2009/02/25> (last visited Mar. 22, 2010).

28. *Hearing on S.B. 90, supra* note 21, at 18; *Lawmakers: Day 23, supra* note 27.

29. *Hearing on S.B. 90, supra* note 21, at 18; *Lawmakers: Day 23, supra* note 27.

30. *Hearing on S.B. 90, supra* note 21, at 18; *Lawmakers: Day 23, supra* note 27.

At the close of the discussion, Senator Don Thomas, of the 54th district, moved to pass Senate Bill 90, and Senator Dan Moody, of the 56th district, seconded the motion.³¹ The Bill passed the Committee by a vote of seven to four, and the Committee favorably reported on the Bill to the Senate on February 26, 2009.³²

Senate Bill 90 was read on the Senate floor for the second time on March 3, 2009.³³ While no further action occurred on the Bill in the 2009 legislative session, the Senate recommitted the Bill on January 11, 2010.³⁴ However, Senate Bill 90 received no attention and died after failing to pass the Senate before crossover day on March 26, 2010.³⁵

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31. *Hearing on S.B. 90, supra* note 21, at 19.

32. *Hearing on S.B. 90, supra* note 21; S.B. Status Sheet, *supra* note 5.

33. S.B. 90 Status Sheet, *supra* note 5.

34. *Id.*

35. *Id.*