

SENATE BILL 233¹: 'THE GEORGIA PROMISE SCHOLARSHIP ACT';
ESTABLISHMENT OF PROMISE SCHOLARSHIP ACCOUNTS

Amending O.C.G.A. Title 20 of the Education Code by Adding Chapter 2

First signature: Senator Dolezal (27th)

Co-Sponsors Senator Matt Brass (28th), Senator Shawn Still (48th), Senator Colton Moore (53rd), Senator Ed Setzler (37th), Senator Steve Gooch (51st), Senator John F. Kennedy (18th), Senator Ben Watson (1st), House Representative Jones (25th).

Summary: "A BILL to be entitled an Act to amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to provide for the establishment of promise scholarship accounts to be funded by the state in the amount of \$6,000.00 per school year for each participating student; to provide for definitions; to provide for related matters; to repeal conflicting laws; and for other purposes."²

Status: House Withdrawn, Recommitted.³

TEXT OF SENATE BILL 233 (SENATE SUBSTITUTE LC 49 1473S)⁴

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by adding a new chapter to read as follows:

"CHAPTER 2B
2120-2B-1.

This chapter shall be known and may be cited as the 'Georgia Promise Scholarship Act.'

¹ S.B. 233 (Education Committee), 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), *available at* <https://www.legis.ga.gov/api/legislation/document/20232024/219366> (last visited Sept. 13, 2024).

² 2023-2024 Regular Session S.B. 233, *Georgia Promise Scholarship Act; establishment of promise scholarship accounts*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/64762> (last visited Sept. 13, 2024) [hereinafter S.B. 233 Status Sheet].

³ *Id.*

⁴ S.B. 233, *supra* note 1.

20-2B-2.

As used in this chapter, the term:

(1) 'Account' or 'promise scholarship account' means a consumer directed account established pursuant to this chapter and composed of state funds deposited on behalf of a participating student and which may be used for qualified education expenses.

(2) 'Account funds' means the funds awarded on behalf of a participating student.

(3) 'Commission' means the Georgia Student Finance Commission.

(4) 'Curriculum' or 'curricula' means a complete course of study for a particular content area or grade level, including any supplemental materials required by the course of study.

(5) 'Educationally disadvantaged students' means all or a subset of the following: students who are economically disadvantaged, students with disabilities, limited English proficient students, neglected or delinquent students, and homeless students, as each such subset is defined by the State Board of Education in accordance with federal education guidelines and regulations.

(6) 'Parent' means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a student.

(7) 'Participating school' means a private school that has notified the commission of its intention to participate in the program, that complies with the commission's requirements, and meets the requirements provided for in Code Section 20-2B-4.

(8) 'Participating student' means a student for whom an account has been established pursuant to this chapter.

(9) '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.

(10) 'Program' means the account program provided pursuant to this chapter.

(11) 'Qualified education expenses' means any one or more of the following:

(A) Tuition, fees, and required textbooks for eligible core courses and eligible CTAE courses, as such terms are defined in Code Section 20-2-161.3, at a participating school, accredited community college or postsecondary education institution, or nonpublic online learning program or course;

(B) Tutoring services provided by an educator certified by the Professional Standards Commission;

(C) Payment for the purchase of a curriculum, including any supplemental materials required by the curriculum;

(D) Services from a physician or therapist licensed pursuant to Chapter 10A, 28, 33, 34, or 44 of Title 43, including, but not limited to, for occupational, behavioral, physical, or speech-language therapies;

(E) No more than \$500.00 per year to a fee-for-service transportation provider for transportation to or from a participating school or service provider;

(F) Fees for the management of account funds in accordance with subsection (e) of Code Section 20-2B-7;

(G) Other expenses authorized by the State Board of Education or the commission; or

(H) Individual education expenses authorized by a majority of the parent review committee provided for in Code Section 20-2B-6.

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

(13) 'Service provider' means a person or entity that provides services that are covered as qualified education expenses other than a participating school.

71 20-2B-3.

(a) A student shall qualify for a promise scholarship account under this chapter if:

(1) The student's parent resides within Georgia and has been a Georgia resident for at least one year; provided, however, that the one-year requirement shall not apply if the student's parent is an active duty military service member stationed in Georgia within the previous year;

(2) The student is currently enrolled and has been continuously enrolled in a Georgia public school for a period of time that includes at least two consecutive enrollment counts conducted pursuant to Code Section 20-2-160.

(3) The student resides in the attendance zone of a public school that is included on the list of public schools provided for in Code Section 20-2B-10;

(4) The student does not meet any of the ineligibility criteria provided for in subsection (b) of Code Section 20-3-519.1;

(5) The student is not the recipient or beneficiary of a scholarship or other benefit provided for under Article 33 of Chapter 2 of this title, the 'Georgia Special Needs Scholarship Act,' nor shall the student or the student's parent seek to receive such scholarship or other benefit at any time during which such student is a participating student;

(6) The student is not the recipient or beneficiary of a scholarship, tuition grant, or other benefit from a student scholarship organization, as such term is defined in Code Section 20-2A-1, nor shall the student or the student's parent seek to receive such scholarship, tuition grant, or other benefit at any time during which such student is a participating student;

(7) The student's parent signs an agreement promising:

(A) To provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;

(B) Not to enroll the student in a local school system school, local charter school, or state charter school while participating in the program; provided, however, that this subparagraph shall not be construed to prohibit participating students from part-time enrollment in a college and career academy, as such term is defined in subsection (b) of Code Section 20-4-37, which has been approved by the commission to be a service provider; and

(C) To use account funds only for qualified education expenses of the participating student; and

(8) The student's parent submits an application for an account to the commission no later than the deadline established by the commission; provided, however, that the commission shall provide quarterly application periods that correspond with quarterly funding dates pursuant to subsection (b) of Code Section 20-2B-5.

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

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

(d) A participating student shall continue to be eligible to receive account funds until the student returns to a public school, graduates from high school, or reaches the age of 20 years, or for special education students, reaches the age of 21 years; provided, however, that a student who participated in the program for any length of time before returning to a public school must submit a new application for an account in order to participate in the program for a second or subsequent time.

(e) The creation of the program or the granting of an account pursuant to this chapter shall not be construed to imply that a public school did not provide a free and appropriate public education for a student or constitute

a waiver or admission by the state. A participating student's resident school system shall not be obligated to provide services to such student that would be required if such student were enrolled in such resident school system unless such student re-enrolls in such school system.

(f) Any account funds directed to a participating school or service provider are so directed on behalf of the participating student's parent, the recognized recipient of such participating student's account funds, and wholly as a result of the genuine and independent private choice of the parent.

(g) The parent of each student participating in the program shall comply fully with the participating school or service provider's rules and policies.

(h) Any parent who fails to comply with the provisions of this chapter and commission regulations relating to the program shall forfeit the account and all account funds therein.

20-2B-4.

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

(1) 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 commission 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 commission to make a determination on fiscal soundness of the school;

(2)(A) Beginning on August 1 of the first year following the year in which this chapter becomes effective and by August 1 each year thereafter, submit to the commission and the Department of Education a report of:

(i) The aggregate data of student attendance rates and course completion rates for eligible core courses and eligible CTAE courses, as such terms are defined in Code Section 20-2-161.3, of all participating students enrolled in such participating school;

(ii) The dates of enrollment for each participating student enrolled in such participating school during the previous school year; and

(iii) The amount of account funds, if any, received on behalf of each participating student during the previous school year; and

(B) Beginning on August 1 of the fourth year following the year in which this chapter becomes effective and by August 1 each year thereafter, submit to the commission and the Department of Education a report of the on-time graduation rate of participating students enrolled in such participating school. For purposes of this subparagraph, the on-time graduate rate shall be calculated using the four-year adjusted cohort graduation rate criteria which are used by the Department of Education for state and federal accountability purposes.

(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; and

(6) Be located in Georgia.

(b) A participating school or service provider may apply to the commission to participate in the program and accept account funds for providing services covered as qualified education expenses.

(c) The commission shall, not later than 60 days after receiving a participating school's or service provider's application for approval, notify such school or service provider as to whether its application has been approved or denied. If the commission denies an application, the commission shall provide a reason and notify the school or service provider that it may appeal the decision to the parent review committee created pursuant to Code Section 20-2B-6.

(d) A participating school and service provider shall not refund, rebate, or share account funds with a parent or student in any manner.

(e) 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 chapter.

(f) The commission shall not require a participating school or service provider to alter such school's or provider's creed, practices, admissions policies, employment policies, or curricula in order to receive funds under the program.

(g) A participating school or service provider shall not be deemed an agent of the state or federal government as a result of participating in the program or accepting account funds.

20-2B-5.

(a) Upon this chapter becoming effective, the account funds granted to each participating student pursuant to this chapter shall be \$6,500.00 for the first school year. Each subsequent school year, the amount of account funds granted to each participating student shall reflect austerity adjustments, if any, and shall be adjusted by an amount equal to the difference between:

(1) The product of multiplying the base amount provided for in Code Section 20-2-161 for the current school year by the percentage at which the Quality Basic Education Formula is initially funded for such school year; and

(2) The base amount provided for in Code Section 20-2-161 for the previous school year.

(b)(1) When a student enters the program, the commission shall receive all documentation required for the student's participation during a quarterly enrollment period provided for in paragraph (8) of subsection (a) of Code Section 20-2B-3 before the first quarterly account payment is made for the student.

(2) Upon proper documentation received by the commission, the commission shall make quarterly payments to the account of a participating student, beginning with the first quarterly payment that corresponds with the enrollment period in which the student's application was received. As nearly as practical, such quarterly payments shall be equal.

The state auditor shall cite as an audit exception any failure by the commission to meet any payment deadlines and shall include such audit exceptions on the website established pursuant to Code Section 50-6-32.

(3) The commission shall develop a system for parents to direct account funds to participating schools and service providers by electronic funds transfer, automated clearing-house transfer, or another system that the commission finds to be commercially viable, cost-effective, and easy for parents of participating students to use. The commission shall not adopt a system that relies solely on reimbursing parents for out-of-pocket expenses, but may determine certain qualified education expenses that must require reimbursement or preapproval for purchase. The commission is authorized to qualify private financial management firms to manage the payment system. The commission, at its discretion, shall be authorized to create a system of individually funded accounts or notional accounts funded through a single state omnibus account.

(4) 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, such partial payment may be paid by the commission prior to the first quarterly payment of the year in which the account is awarded, up to a maximum of \$1,000.00, and deducted from subsequent account payments. If a student decides not to attend the participating school, the partial reservation payment must be returned to the commission by such school. Only one reservation payment per student may be made per year.

(c) Funds received pursuant to this Code section shall not constitute taxable income of the parent of the participating student.

(d) Funds deposited into an account shall be used only for qualified education expenses for the participating student. Unused funds in an account, up to an amount not greater than 50 percent of the total funds deposited into the account for the current school year, shall roll over to the following school year; provided, however, that, if an account has been inactive for two consecutive years or the participating student graduates from high school, the funds in such account shall be returned to the state general fund and the account shall be closed.

(e) Nothing in this chapter shall be deemed to prohibit a parent or student from making a payment for any tuition, fee, service, or product described in this chapter from a source other than the account funds of the student.

20-2B-6.

(a) To assist in the determination of whether certain expenses meet the requirements to be considered a qualified education expense under this chapter, a parent review committee shall be established.

(b)(1) The committee shall comprise one person with relevant knowledge, skills, and abilities and eight parents of participating students appointed by the president of the commission. Four of the parents shall reside in local school systems with student enrollment greater than 10,000, and four of the parents shall reside in local school systems with student enrollment less than 10,000.

(2)(A) Members of the committee shall serve for staggered three-year terms and may be reappointed; provided, however, that no individual shall be permitted to serve more than three terms.

(B) The commission shall adopt rules for staggering the terms of members as required in subparagraph (A) of this paragraph.

(3) The president of the commission or his or her designee shall serve as the chair of the committee and shall only vote in the event of a tie.

(c) The commission may request the committee to determine whether an expenditure of account funds from an account qualifies as a qualified education expense under this chapter.

(d) The commission may request the committee review appeals of participating schools or service provider application denials pursuant to subsection (c) of Code Section 20-2B-4.

20-2B-7.

(a) The commission shall adopt rules and regulations as necessary for the administration of the program and shall include rules and regulations prioritizing the selection of educationally disadvantaged students if either the number of participating students or the number of applications for accounts exceeds the funds available for the program; provided, however, that continued participation in the program by participating students shall be prioritized over new applications for accounts. The commission shall adopt rules and regulations regarding eligibility and participation of participating schools and service providers, including, but not limited to, timelines that will maximize student and private school participation, the calculation and distribution of accounts to participating students, and the application and approval procedures for participating students, participating schools, and service providers. The commission shall develop and utilize a compliance form for completion by participating schools and service providers. The commission shall be authorized to require any pertinent information as it deems necessary from participating schools and service providers for the purpose of implementing the program. Participating schools and service providers shall be required to complete such forms and certify their accuracy.

(b) No liability shall arise on the part of the commission or the state or of any local board of education based on the award or use of an account awarded pursuant to this chapter.

(c) The commission shall have the authority to conduct or contract for the auditing of accounts and shall, at a minimum, conduct random audits on an annual basis. The commission shall have the authority to make any parent or participating student ineligible for the program in the event of misuse of account funds.

(d) The commission shall have the authority to refer cases of substantial misuse of account funds to the Attorney General for investigation if evidence of fraudulent use is obtained.

(e) The commission may deduct an amount from accounts to cover the costs of overseeing and administering the program, up to a maximum of 5 percent annually.

(f) The commission may contract with a qualified organization to administer the program or specific functions of the program.

(g) The commission shall provide parents of participating students with an explanation of the allowable uses of account funds, the responsibilities of parents, and the duties of the commission.

20-2B-8.

(a)(1) In order to allow parents and taxpayers to measure the achievements of the program, the commission shall annually approve no fewer than three nationally norm-referenced tests that measure student academic progress in math and language arts.

(2) Private schools enrolling participating students shall ensure that at least one of the following is administered each school year to each participating student:

(A) A nationally norm-referenced test approved by the commission, as provided in paragraph (1) of this subsection; or

(B) A state-wide assessment administered pursuant to Code Section 20-2-281, if such participating student is enrolled in a grade for which such state-wide assessment is administered. Such state-wide assessment shall be made available to such participating student by his or her resident school system.

(3) The commission shall develop a process for the annual administration of the nationally norm-referenced tests and the state-wide assessments provided for in paragraph (2) of this subsection and for the collection of results for participating students not enrolled full time in a private school.

(b) The results of such norm-referenced tests and state-wide assessments shall be provided to and collected by the commission or an organization chosen by the commission on an annual basis.

(c) Student information shall be reported and collected in a manner that allows the state to aggregate data by grade level, gender, race, socioeconomic status, and English language proficiency.

(d) The commission or an organization chosen by the commission shall collect information regarding the high school graduation rate of all participating students.

20-2B-9.

(a) The commission shall provide the General Assembly not later than December 1 of each year with a report regarding the program for the previous fiscal year. Such report shall also be posted on the commission's website.

(b) The report shall include, but not be limited to, numbers and demographics of participating students and numbers of participating schools. The report shall also include:

(1) Participating student performance on nationally norm-referenced tests or state-wide assessments, including aggregate information on long-term performance gains;

(2) The level of satisfaction with the program from parents of participating students;

(3) The percentage of funds used for each type of qualified education expense included in paragraph (11) of Code Section 20-2B-2; and

(4) The fiscal impact to the state and resident school systems of the program, taking into consideration both the impact on revenue and the impact on expenses. The fiscal savings associated with students departing public schools shall be explicitly quantified, even if the public school losing the student or students does not reduce its spending.

(c) The report shall apply appropriate analytical and behavioral science methodologies to ensure public confidence in such report.

(d) The report shall protect the identity of participating students through whatever means the commission deems appropriate, including, but not limited to, by keeping anonymous all disaggregated data and complying with state and federal guidelines for student privacy. The names of participating schools and the number of participating students at each such school shall be included in the report.

(e) The Department of Audits and Accounts shall audit the program annually. Audit reports, including, but not limited to, any findings and recommendations by the Department of Audits and Accounts, shall be included in the first annual report submitted by the commission pursuant to this Code section following completion of each audit of the program

by the Department of Audits and Accounts. Nothing in this subsection shall be construed to limit the authority of the Department of Audits and Accounts to conduct an audit at any time.

20-2B-10.

(a) In the annual report required by paragraph (2) of subsection (a) of Code Section 20-14-27, the Office of Student Achievement shall include a separate list of public schools that performed in the lowest 25 percent of all public schools based on the cumulative individual school ratings, as provided for in subsection (d) of Code Section 20-14-33, for the two most recent school years for which the Office of Student Achievement issued such ratings; provided, however, that in the event of a tied rating, the public school with the lower performance in student achievement shall be prioritized; provided, further, however, that such list shall not include any school with more than 50 percent of its enrolled students assigned to an education program provided for in Code Section 20-2-154.1.

(b) By December 1 of each year, the Office of Student Achievement shall publish on its website the list provided for in subsection (a) of this Code section.

20-2B-11.

The provisions of this chapter shall not apply or be construed to apply to any student in a home study program provided for in Code Section 20-2-690 unless such student is a participating student as such term is defined in Code section 20-2B-2."

SECTION 2.

Said title is amended further in Code Section 20-3-231, relating to legislative findings and purposes of commission, by revising subsection (b) as follows:

"(b) **Purpose of commission.** The purpose of the commission shall be to help improve the higher educational opportunities of citizens and persons in this state by serving as an agency and budget unit within the executive branch of state government for the purpose of carrying out and effectuating the powers, duties, and functions set forth in this part and in Chapter 2B of this title."

SECTION 3.

(a) This Act shall become effective only if the "Quality Basic Education Act," as provided for in Article 6 of Chapter 2 of Title 20, is fully funded in an appropriations Act making specific reference to the full funding of the "Quality Basic Education Act" and shall become effective when funds so appointed become available for expenditure.

(b) Subject to the provisions of subsection (a) of this Section, this Act shall be applicable beginning on July 1, 2024.

SECTION 4.

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

SPONSOR'S RATIONALE

Senator Greg Dolezal ("Senator Dolezal") sponsored Senate Bill 233 with the intent to bring funding in the amount of Six Thousand Dollars (\$6,000.00) per year to a student in a public school district where the school's performance is in the lower quartile of the state.⁵ Senator Dolezal is a member of the Senate Committee on Education and Youth where the committee has general jurisdiction over K-12 education including school employees, facilities, and legislative reviews related to childcare and Pre-K activities.⁶ This funding will allow the parents of the students in eligible districts to choose how the money is spent on their child's education in lieu of attending the low performing public school of their district.⁷ Senator Dolezal states that Senate Bill 233 will allow the money being invested in a child's education to follow the child for the best educational solution

⁵ Georgia State Senate, Legislative day 28 (Crossover Part II), VIMEO, (Mar. 6, 2023), <https://vimeo.com/showcase/9076378?video=805227571> [Georgia State Senate].

⁶ 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), <https://www.legis.ga.gov/committees/senate/120>.

⁷ Georgia State Senate, *supra* note 5.

possible.⁸ Representative Todd Jones supports this choice for parents stating, "They should have the option of public school, of private school, of hybrid and also of homeschooling."⁹

One of the arguments in support of Senate Bill 233 is the Bill will create competition for public schools because they stand to lose students and funding if they perform in the lower quartile of schools within the state of Georgia, therefore creating an incentive to perform in the 26th percentile or greater.¹⁰ Senator Colton Moore, envisioning Senate Bill 233 as a mechanism to allow education to take advantage of free market principles thereby giving incentive to have higher performance, stated:

"This gives parents rich or poor an opportunity to take access into other education. We see the free-market principal work in all areas of business and...providing a little competition in the system especially these under-performing schools, that's a great way to get people back on track and competing with one another."¹¹

Senator Dolezal backed up this argument by stating that a Direct Forrester Study provided data from schools involved in school choice programs, where competition was created among the schools, and that data showed 31 out of 100 schools had performance improvements.¹²

In addition to competition within the schools themselves, Senate Bill 233's main focus is not the school or the physical structure but rather the students.¹³ Senator Matt Brass, a co-sponsor of the bill, does not want the student aspect of the bill to be lost in the debate over private and public education.¹⁴ Senator Brass stated, "we lose focus on what matters most in

⁸ *Id.*

⁹ Claire Simms, *School Voucher Bill Fails in Georgia House*, FOX5 ATLANTA, (March 29, 2023) <https://www.fox5atlanta.com/news/georgia-house-school-voucher-bill-fails>.

¹⁰ Georgia State Senate, *supra* note 5.

¹¹ Gabriela Johnson, *Georgia Senate Bill Proposes Vouchers for Eligible Students*, WTVM, (Mar. 9, 2023) <https://www.wtvm.com/2023/03/09/georgia-senate-bill-proposes-vouchers-eligible-students/> [hereinafter Johnson on Vouchers].

¹² Georgia State Senate, *supra* note 5.

¹³ *Id.*

¹⁴ *Id.*

this debate and that is the child and... the parents that are working hard so that they can provide opportunity for their children.”¹⁵

Additional support for the students themselves has come from Representative Mesha Mainor who has become known as a “parent rights loyalist” and has committed herself to ensuring that all students have the necessary resources for success.¹⁶ Mainor’s support for Senate Bill 233 also represents the current state of hyperpartisan identity politics because support for Senate Bill 233 has traditionally come from conservatives and not liberals, Representative Mainor, representing the city of Atlanta, gave her support notwithstanding her democratic party alignment.¹⁷ Interestingly, Representative Mainor’s support would be followed by her making a “historic party switch sending shock waves throughout the nation” as she became the first African American woman to serve in the Georgia General Assembly as a Republican.¹⁸ Representative Mainor, who has been outspoken about Senate Bill 233, stated:

“I refuse to tell these parents that the Democratic agenda does not care how broke parents are and that these children deserve to stay in that school with three percent reading proficiency. Are we going to keep telling these families to wait and see if we can get it right in the next 50 years?”¹⁹

Representative Mainor analogized The Georgia Promise Scholarship with the concept of charter schools to rebut the argument that poor black parents will not take advantage of the program.²⁰ She stated, “I have the most charter schools within my district in the entire state because poor Black parents want something different, and they deserve it.”²¹ Representative Mainor argues that we cannot close the charter schools just because they take children away

¹⁵ *Id.*

¹⁶ 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), <https://www.legis.ga.gov/api/document/docs/default-source/bios/mainor-mesha-4995.pdf>. [hereinafter Mainor on Choice].

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Dr. Keri D. Ingraham, *Georgia Fails on School Choice but Lays Groundwork for 2024, REAL CLEAR EDUCATION*, (Apr. 13, 2023) https://www.realcleareducation.com/articles/2023/04/13/georgia_fails_on_school_choice_but_lays_groundwork_for_2024_110848.html.

²⁰ *Id.*

²¹ *Id.*

from the public school system.²² Representative Mainor points out that the opposition's argument that Senate Bill 233 is just taking students away from public education, and the benefits will not be available to underprivileged families, is contrary to the current charter system already being utilized because the purpose of Senate Bill 233, just like charter schools, is to offer parents and students additional educational options.²³

OPPOSITION'S RATIONALE

The most common argument made by the opposition is the concern with funding two school systems.²⁴ Senator Freddie Powell Sims stated, "We cannot afford to fund two different educational systems, one public, one private, on the taxpayers' dime."²⁵ Senator Nabilah Islam stated that support for this bill is essentially defunding public education and subsidizing "rich kids."²⁶ Senator Derek Mallow pointed out that Georgia Pre-K is still on a lottery basis and not available to all students.²⁷ In addition, Senator Mallow furthered his point drawing attention to the fact that Five Hundred Dollars (\$500.00) per year would be allocated by Senate Bill 233 for student transportation when public schools are already struggling with funding, and labor, for transportation.²⁸ Senator Elena Parent used her time on the debate floor to oppose the bill for similar funding reasons pointing out that Georgia already lacked funding in public schools for teacher training, literacy and other relevant issues.²⁹ Specifically noting that Georgia has yet to fund S.B. 48 for dyslexia screeners and that bill was passed three years ago.³⁰

Senator Nan Orrock sees the bill as "toying with public education" and is concerned that teachers are already leaving public schools and voucher-like systems will cause more educators to leave the public system.³¹ Senator Orrock remains in the position of supporting more funding for the public

²² *Id.*

²³ *Id.*

²⁴ Georgia State Senate, *supra* note 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Georgia State Senate, *supra* note 5.

³¹ *Id.*

system and believes bills like this one will re-route those funds into the private institutions thereby creating less jobs and incentives for public educators.³² Patricia Hughley Green, a Muscogee County school board member stated that 90% of students in her county were attending public school.³³ Hughley Green is concerned that Senate Bill 233 would create other educational priorities for government funding rather than the public school system.³⁴ Hughley Green has been an advocate against the bill stating, “If you are diverting any funds from public education, you are not making public education a priority.”³⁵ Green shares a view with the democrats voting for the Bill, making it clear, their stance of opposition will remain as long as any amount of funding is proposed to be removed from the local public schools.³⁶

In addition, those opposing Senate Bill 233 believe the communities where the public schools are in the bottom 25% of the performance standards will not be able to use the Scholarship funds due to a number of issues.³⁷ Senator Jason Esteves stated, “The private schools that would provide a quality education are not in the communities where these students live.”³⁸ Senator Esteves further backed up his remarks with the point that \$6,000 would not cover the entire tuition for a private education and the qualifying students would be faced with trying to make up the gap in order to pay tuition.³⁹ While this may be possible for some, many families in the communities with qualifying schools are already in poverty, thus, unable to cover the additional costs beyond what the scholarship fund will provide.⁴⁰ Representative Stacy Evans shared this concern stating, “It would be difficult for those families to cover the gap” and “Where are they going to make up the difference?”⁴¹

³² *Id.*

³³ Johnson on Vouchers, *supra* note 11.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Georgia State Senate, *supra* note 5.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Ty Tagami, *Georgia Voucher Bill Cam Close to Passing but Lacked Enough GOP Votes*, THE ATLANTA J. CONST., (Mar. 30, 2023) <https://www.ajc.com/education/georgia-voucher-bill-came-close-to-passing-but-lacked-enough-gop-votes/DNBHKAWSRBBFKVEI6NIU355AE/>.

Another notable argument among those in opposition is the accountability of the “new” private schools and how they will be measured and whether they will open overnight in order to receive state funds.⁴² While Senator Elena Parent asserted that private schools should submit a three year healthy track record to qualify to receive state funds, she also asserted that she would still not vote for Senate Bill 233 even if the private schools would be vetted more closely.⁴³ Senator Jason Esteves agrees and is hesitant to fund a private system where there would be “limited visibility” on the performance because the amount of data being submitted for performance reviews from qualifying private schools would not rival the amount of data collected and reviewed by public schools.⁴⁴

Finally, during the Senate debates, Senator Derek Mallow, from Savannah, and speaking on behalf of Senators from rural areas, asserted his logistical concerns that Senate Bill 233 would not effectively serve rural Georgia students.⁴⁵ Rural Georgia would be challenged because the amount of private schools is far less than the urban areas.⁴⁶ Senator Mallow stated, “Look at the map and see where the private schools [are].” Ultimately, Senator Mallow is apprehensive that Senate Bill 233 would further divide the gap of quality of education that already exists between rural and urban communities specifically in the number of schools available, private or public, to serve students in rural areas.⁴⁷ Senator Mallow’s view is echoed by those in opposition where the arguments are highly focused on the vast differences in demographics throughout the state, indicating that support for the Bill, or any future bill of this nature, will not be supported because the belief is, this is not a viable option at the state level.⁴⁸

IMPLICATIONS IN GEORGIA

If Senate Bill 233 is passed, students in school districts in the lowest 25% of school performance standards would be eligible to have access to \$6,000 per year for private education.⁴⁹ An additional \$500 would also be available

⁴² Georgia State Senate, *supra* note 5.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ S.B. 233, *supra* note 1.

to qualifying students to spend on education related transportation.⁵⁰ However, there is a discrepancy between the \$6,000 available in the scholarship fund for each student because the Quality Basic Education formula (“QBE”), which provides the exact amount of money allocated to individual schools based on the number of students, the student’s grade level and needs requirements, only provides an average of \$3,120 for an individual non special education student attending public school grades one through twelve.⁵¹ This discrepancy, based on the QBE formula and the proposed bill, provides at least two separate implications. First, the school at the local level will not lose the full \$6000 for each student taking advantage of the fund because the amount lost for each student is much closer to the average amount allocated by the QBE formula of \$3,120.⁵² Second, additional taxpayer money will need to be allocated to education, in general, to make up for the difference between the \$6,500 available in the scholarship fund, for each participating student, and the \$3,120 currently allocated to each school per student.⁵³ This difference would require an additional \$3,400 being allocated to education for each participating student in order to make up for the additional amounts required to reach the full \$6,500.⁵⁴

Senate Bill 233 seeks to expand the educational resources available for students required to attend failing schools.⁵⁵ By expanding these resources, families would be offered with more of a “choice” regarding their student’s taxpayer funded education.⁵⁶ Theoretically, establishing taxpayer funds, that are only available for private education tuition and resources, would create an expansion in the market of private education resulting in more options for students to find a program that is better fitting for their specific learning style or scheduling needs.⁵⁷ When students begin to use these funds to leave failing public schools in favor of privatized education, those public schools would have incentives to perform at a higher level in order to prevent students from being eligible thereby preserving their student body and financial resources.⁵⁸ However, the expansion of educational resources into both private and public

⁵⁰ *Id.*

⁵¹ O.C.G.A. § 20-2-161 (2023).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ S.B. 233, *supra* note 1.

⁵⁶ *Id.*

⁵⁷ Johnson on Vouchers, *supra* note 11.

⁵⁸ *Id.*

institutions does mean the state, and taxpayers, would be funding two separate educational systems requiring additional taxpayer dollars and resulting in a net loss for the public education system.⁵⁹

In addition, if the Bill is passed, there is a future argument, pointed out by the opposition during debates, concerning whether using Georgia's taxpayer dollars for private schools, thereby promoting a specific religion or religious program, would violate the United States Constitution.⁶⁰ However, in 2022, in *Carson v. Makin*, the Supreme Court heard a similar argument from Maine where the state legislature created a tuition assistance program.⁶¹ Using a similar mechanism to Senate Bill 233, the Maine program used public school funds to subsidize tuition for students attending qualified private schools.⁶² In order to qualify as an eligible private school, the school was not allowed to be affiliated with or provide religious instruction and must qualify as "nonsectarian."⁶³ The Court found this to be a form of discrimination citing the Free Exercise Clause of religion and held this portion of the statute to be unconstitutional.⁶⁴ The Supreme Court concluded that states cannot "promote stricter separation of church and state than the Federal Constitution requires."⁶⁵ This holding sets a precedent allowing states the freedom to subsidize, and qualify, eligible private education programs based on performance and not religious content, or lack thereof.⁶⁶ While the Georgia Bill lends itself to a constitutional challenge, due to separation of church and state, the Federal Supreme Court precedent tips in favor of the Bill being constitutional concerning the taxpayer dollars being used at both religious and nonreligious institutions.⁶⁷ As an interesting note, the decision in *Carson* was along party lines with the six conservative justices joining in the majority with two liberal justices joining in a dissent and the third liberal justice writing a separate dissent which further displays the general support, or opposition, for bills and mechanisms like Senate Bill 233 can be predicted based on political affiliation.⁶⁸

⁵⁹ Georgia State Senate, *supra* note 5.

⁶⁰ *Id.*

⁶¹ *Carson v. Makin*, 142 S. Ct. 1987 (2022)

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Carson v. Makin*, 142 S. Ct. 1987 (2022)

⁶⁸ *Id.*

Since 2023 was the first Legislative Session of a two-year Legislative Term, Senate Bill 233 can be reconsidered during the 2024 Legislative Session.⁶⁹ With additional rural republican support and no change in the democrat votes, the Bill has a viable chance to be signed into law because the votes have been along party lines, decided by narrow margins, with rural republicans voting against Senate Bill 233.⁷⁰

LEGISLATIVE GENEALOGY

Senate Bill 233 was introduced into the Senate Hopper on February 22nd, 2023.⁷¹ Senate first readers and referral was on February 23rd, 2023.⁷² The Senate Committee favorably reported by substitute on March 1st, 2023.⁷³ The Senate second reading was on March 2nd, 2023.⁷⁴ The Senate tabled on March 6th, 2023.⁷⁵ The Senate took the Bill from the table on March 6th, 2023.⁷⁶ The Senate third reading was on March 6th, 2023.⁷⁷ The Senate passed/adopted by substitute on March 6th, 2023.⁷⁸ The House's first reading was on March 7th, 2023.⁷⁹ The House's second reading was on March 8th, 2023.⁸⁰ The House Committee favorably reported by substitute on March 21st, 2023.⁸¹ The House's third reading was on March 23rd, 2023.⁸² The House tabled on March 23rd, 2023.⁸³ The House took the Bill from the table on March 29th, 2023.⁸⁴ The Bill was withdrawn from the General Calendar and recommitted on March 29th, 2023.⁸⁵ The Bill lost during the House third

⁶⁹ S.B. 233 Status Sheet *supra* note 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ S.B. 233 Status Sheet *supra* note 2.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ S.B. 233 Status Sheet *supra* note 2.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ S.B. 233 Status Sheet *supra* note 2.

reading on March 29th, 2023.⁸⁶ The House reconsidered on March 29th, 2023.⁸⁷ The Bill was again withdrawn from the General Calendar and recommitted on March 29th, 2023.⁸⁸ On March 13th, 2024, the House committee favorably reported the bill by substitute.⁸⁹ The House adopted the reconsidered bill by substitute on March 14th 2024.⁹⁰ The Senate agreed to the House substitution on March 20th, 2024.⁹¹ The Senate sent SB 233 to Governor Kemp on April 2nd, 2024.⁹² SB 233 was signed by Governor Kemp on April 23rd, 2024.⁹³

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⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ S.B. 233 Status Sheet *supra* note 2.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*