

The Senate Education and Youth Committee offered the following substitute to HB 797:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to  
2 repeal an article relating to the Georgia Charter Schools Commission; to provide for  
3 legislative findings and intent; to provide for definitions; to provide for the establishment of  
4 the State Charter Schools Commission; to provide for its membership, duties, and powers;  
5 to provide for requirements for state charter schools; to provide for information to parents;  
6 to provide for an annual report; to provide for financial responsibility; to provide for funding  
7 for state charter schools; to provide for rules and regulations; to provide for related matters;  
8 to provide for contingent effectiveness; to provide for automatic repeal under certain  
9 conditions; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
13 repealing Article 31A of Chapter 2, relating to the Georgia Charter Schools Commission, and  
14 enacting a new article to read as follows:

15 "ARTICLE 31A

16 20-2-2080.

17 (a) The General Assembly finds that:

18 (1) State charter schools can serve as a complement to the educational opportunities  
19 provided by local boards of education in the state's system of public education; and

20 (2) State charter schools do not supplant public schools operated by local boards of  
21 education but provide options to enhance public educational opportunities.

22 (b) It is the intent of the General Assembly that there be established a state-level  
23 commission under the authority of the State Board of Education whose primary focus is the  
24 development and support of state charter schools in order to better meet the growing and

25 diverse needs of students in this state and to further ensure that state charter schools of the  
 26 highest academic quality are approved and supported throughout the state in an efficient  
 27 manner.

28 20-2-2081.

29 As used in this article, the term:

30 (1) 'Attendance zone' means all or a portion of a local school system, one or more local  
 31 school systems or portions thereof, or all local school systems in this state.

32 (2) 'Commission' means the State Charter Schools Commission established pursuant to  
 33 Code Section 20-2-2082.

34 (3) 'Department' means the state Department of Education.

35 (4) 'Governing board' means the governing board of the nonprofit organization which is  
 36 the charter petitioner for a state charter school and which is the same as the governing  
 37 board of the state charter school which is involved in school-level governance of the state  
 38 charter school.

39 (5) 'State charter school' means a school authorized by the commission pursuant to this  
 40 article whose creation is authorized as a special school pursuant to Article VIII, Section  
 41 V, Paragraph VII of the Constitution. A state charter school shall be a public school.

42 The definitions set forth in Code Section 20-2-2062 shall be applicable to this article.

43 20-2-2082.

44 (a) The State Charter Schools Commission is established as a state-level authorizing entity  
 45 working in collaboration with the Department of Education under the authority of the State  
 46 Board of Education. Start-up funds necessary to establish and operate the commission may  
 47 be received by the State Board of Education in addition to such other funds as may be  
 48 appropriated by the General Assembly. The department shall assist in securing federal and  
 49 other institutional grant funds to establish the commission.

50 (b) The commission shall be appointed by the State Board of Education and shall be  
 51 composed of a total of seven members and made up of three appointees recommended by  
 52 the Governor, two appointees recommended by the President of the Senate, and two  
 53 appointees recommended by the Speaker of the House of Representatives. The Governor,  
 54 the President of the Senate, and the Speaker of the House of Representatives shall each  
 55 recommend a list of no fewer than two nominees for each appointment to the commission.  
 56 The appointments shall be made as soon as feasible but no later than the first regular  
 57 meeting of the State Board of Education in February, 2013. Each member shall serve a  
 58 term of two years; provided, however, that, for the purpose of providing staggered terms,  
 59 of the initial appointments, three members shall be appointed to one-year terms and four

60 members shall be appointed to two-year terms as determined by the State Board of  
61 Education. Thereafter, each appointee shall serve a two-year term unless the State Board  
62 of Education, after review and upon recommendation by the initial recommending  
63 authority, extends the appointment. If a vacancy occurs on the commission, it shall be  
64 filled by the State Board of Education from a recommendation by the appropriate authority  
65 according to the procedure set forth in this subsection. The members of the commission  
66 shall annually vote to appoint a chairperson and a vice chairperson from among its  
67 membership. Each member of the commission shall hold a bachelor's degree or higher, and  
68 the commission should include a group of diverse individuals representative of Georgia's  
69 school population, to the extent possible, with respect to race, sex, and geography who  
70 have experience in finance, administration, law, and education.

71 (c) The commission is encouraged to convene its first meeting no later than March 1,  
72 2013, and thereafter shall meet at least bimonthly at the call of the chairperson or upon the  
73 request of four members of the commission. Four members of the commission shall  
74 constitute a quorum.

75 (d) The commission shall determine the manner in which it reviews state charter school  
76 petitions and may, in its discretion, use existing department personnel to conduct such  
77 review.

78 (e) The members of the commission shall not be compensated for their services on the  
79 commission but may be reimbursed for per diem and travel expenses in the same manner  
80 as provided for in Code Section 45-7-21.

81 (f) No commission member shall solicit or accept any gift, favor, loan, contribution,  
82 service, promise of future employment, or other thing of value based upon an  
83 understanding that the gift, favor, loan, contribution, service, promise, or other thing of  
84 value was given or offered for the purpose of influencing that commission member in the  
85 discharge of his or her duties as a commission member.

86 20-2-2083.

87 (a) The commission shall have the power to:

88 (1) Approve or deny petitions for state charter schools and renew, nonrenew, or  
89 terminate state charter school petitions in accordance with rules and regulations  
90 established pursuant to this article. At its discretion, the commission may preliminarily  
91 approve a petition for a state charter school before the petitioner has secured space,  
92 equipment, or personnel, if the petitioner indicates such preliminary approval is necessary  
93 for it to raise working capital. The State Board of Education shall review and may  
94 overrule the approval or renewal of a state charter school by the commission within 60

95 days of such decision by the commission upon a majority vote of the members of the state  
96 board; and

97 (2) Conduct facility and curriculum reviews of state charter schools.

98 (b) The commission shall have the following duties:

99 (1) Review petitions for state charter schools and assist in the establishment of state  
100 charter schools throughout this state. The commission shall ensure that all charters for  
101 state charter schools are consistent with state education goals;

102 (2) Develop, promote, and disseminate best practices for state charter schools in order  
103 to ensure that high-quality schools are developed and encouraged. At a minimum, the  
104 best practices shall encourage the development and replication of academically and  
105 financially proven state charter school programs;

106 (3) Develop, promote, and require high standards of accountability for state charter  
107 schools. The commission shall ensure that each state charter school participates in the  
108 state's education accountability system. If a state charter school falls short of  
109 performance measures included in the approved charter, the commission shall report such  
110 shortcomings to the Department of Education;

111 (4) Monitor and annually review and evaluate the academic and financial performance,  
112 including revenues and expenditures, of state charter schools and hold the schools  
113 accountable for their performance pursuant to the charter and to the provisions of this  
114 article. The commission shall also review the citizenship and immigration status of each  
115 individual that works at a state charter school and aggregate the information by school  
116 on an annual basis. The commission's duties to monitor the state charter school shall not  
117 constitute the basis for a private cause of action;

118 (5) Direct state charter schools and persons seeking to establish state charter schools to  
119 sources of private funding and support;

120 (6) Actively seek, with the assistance of the department, supplemental revenue from  
121 federal grant funds, institutional grant funds, and philanthropic organizations. The  
122 commission may receive and expend gifts, grants, and donations of any kind from any  
123 public or private entity to carry out the purposes of this article;

124 (7) Review and recommend to the General Assembly any necessary revisions to statutory  
125 requirements regarding standards and accountability for state charter schools;

126 (8) Act as liaison for state charter schools in cooperating with local boards of education  
127 that may choose to allow state charter schools to utilize excess space within school  
128 facilities;

129 (9) Encourage collaboration with municipalities, counties, consolidated governments,  
130 universities or colleges of the board of regents, technical institutions of the Technical  
131 College System of Georgia, and regional educational service agencies;

132 (10) Meet the needs of state charter schools and local school systems by uniformly  
 133 administering high-quality state charter schools, thereby removing administrative burdens  
 134 from the local school systems;

135 (11) Assist state charter schools in negotiating and contracting with local boards of  
 136 education that choose to provide certain administrative or transportation services to the  
 137 state charter schools on a contractual basis; and

138 (12) Provide for annual training, as determined by the commission, for members of state  
 139 charter school governing boards. The training shall include, but not be limited to, best  
 140 practices on school governance, the constitutional and statutory requirements relating to  
 141 public records and meetings, and the requirements of applicable statutes and rules and  
 142 regulations.

143 (c)(1) The commission shall establish rules and regulations requiring each state charter  
 144 school to provide adequate notice of its enrollment procedures, including any provision  
 145 for the use of a random selection process where all applicants have an equal chance of  
 146 being admitted in the event that the number of applications to enroll in the school exceeds  
 147 the capacity of the program, grade, or school.

148 (2) The commission shall provide adequate notice to local boards of education and to the  
 149 public regarding meetings to be held by the commission. Such notice shall include the  
 150 charter petitions to be discussed and acted upon. Such notice shall be provided in  
 151 accordance with Chapter 14 of Title 50, relating to open and public meetings.

152 20-2-2084.

153 (a) Petitions submitted to the commission shall be subject to rules and regulations  
 154 established pursuant to this article.

155 (b) The commission shall be authorized to approve a petition for a state charter school that  
 156 meets the following requirements:

157 (1) Has a state-wide attendance zone; or

158 (2)(A) Has a defined attendance zone; and

159 (B) Demonstrates that it has special characteristics, such as a special population, a  
 160 special curriculum, or some other feature or features which enhance educational  
 161 opportunities, which may include the demonstration of a need to enroll students across  
 162 multiple communities or an alternative delivery system; provided, however, that the  
 163 petitioner shall demonstrate a reasonable justification for any proposed special  
 164 curriculum that has a narrow or limited focus.

165 (c)(1) For petitions for state charter schools with a state-wide attendance zone, the  
 166 petitioner shall submit such petition to the commission and concurrently to the local  
 167 board of education in which the school is proposed to be located for information

168 purposes; provided, however, that this shall not apply to a proposed state charter school  
 169 which will solely provide virtual instruction.

170 (2) For petitions for state charter schools with a defined attendance zone, the petitioner  
 171 shall concurrently submit such petition to the commission, to the local board of education  
 172 in which the school is proposed to be located, and to each local school system from which  
 173 the proposed school plans to enroll students. The commission shall not act on a petition  
 174 unless the local board of education in which the school is proposed to be located denies  
 175 the petition; provided, however, that such local board shall approve or deny the petition  
 176 no later than 60 days after its submission, as required pursuant to subsection (b) of Code  
 177 Section 20-2-2064, unless the petitioner requested an extension. Failure to approve or  
 178 deny such petition by such local board, in violation of Code Section 20-2-2064, shall be  
 179 deemed a denial for purposes of this paragraph. A local board that has denied a petition  
 180 for a state charter school shall be permitted to present to the commission in writing or in  
 181 person the reasons for denial and the deficiencies in such petition resulting in such denial.

182 (3) The commission may take into consideration any support or opposition by the local  
 183 board of education or local boards of education on the start-up charter school petition  
 184 when it votes to approve or deny a corresponding state charter school petition.

185 (d) A state charter school shall:

186 (1) Seek highly qualified, properly trained teachers and other qualified personnel for  
 187 such schools; provided, however, that such schools shall give preference to hiring an  
 188 individual who is a citizen or national of the United States over another individual who  
 189 is not a citizen or national of the United States if the two individuals are equally qualified,  
 190 unless a teacher is a foreign exchange teacher; provided, however, that prior to hiring an  
 191 individual other than a citizen or national of the United States or a protected individual  
 192 as defined in 8 U.S.C. Section 1324b, the school shall receive approval by the  
 193 commission and demonstrate that qualified teachers and other personnel were sought but  
 194 not available in such area which warrants hiring an individual other than a citizen or  
 195 national of the United States or a protected individual as defined in 8 U.S.C. Section  
 196 1324b, unless a teacher is a foreign exchange teacher; provided, further, that the  
 197 commission and the state charter school shall not construe this paragraph in a manner in  
 198 violation of 8 U.S.C. Section 1324b or other provisions of law; and

199 (2) Give preference in contracting and purchasing of services and materials to businesses  
 200 incorporated under the laws of this state or qualified to do business within this state and  
 201 having a regularly maintained and established place of business within this state, so long  
 202 as such businesses are otherwise similarly situated and qualified as compared to a  
 203 business from out of state.

204 (e)(1) The members of the governing board for the state charter school shall meet the  
 205 following qualifications:

206 (A) Must be a United States citizen;

207 (B) Must be a resident of Georgia; and

208 (C) Must not be an employee of the state charter school.

209 (2) No member of the governing board of the state charter school shall:

210 (A) Act in his or her official capacity in any matter where he or she, his or her  
 211 immediate family member, or a business organization in which he or she has an interest  
 212 has a material financial interest that would reasonably be expected to impair his or her  
 213 objectivity or independence of judgment;

214 (B) Solicit or accept or knowingly allow his or her immediate family member or a  
 215 business organization in which he or she has an interest to solicit or accept any gift,  
 216 favor, loan, political contribution, service, promise of future employment, or other thing  
 217 of value based upon an understanding that the gift, favor, loan, contribution, service,  
 218 promise, or other thing of value was given or offered for the purpose of influencing that  
 219 board member in the discharge of his or her duties as a board member;

220 (C) Use, or knowingly allow to be used, his or her position or any information not  
 221 generally available to the members of the public which he or she receives or acquires  
 222 in the course of and by reason of his or her position for the purpose of securing  
 223 financial gain for himself or herself, his or her immediate family member, or any  
 224 business organization with which he or she is associated; or

225 (D) Be an officer or serve on the board of directors of any organization that sells goods  
 226 or services to that state charter school.

227 As used in this paragraph, the term 'immediate family member' means a spouse, child,  
 228 sibling, or parent or the spouse of a child, sibling, or parent.

229 (f) The members of the governing board of each state charter school shall participate in  
 230 annual training conducted by the commission pursuant to paragraph (12) of subsection (b)  
 231 of Code Section 20-2-2083.

232 (g) An individual that works at a state charter school or an individual that has  
 233 administrative oversight at a state charter school shall not serve on the board of directors  
 234 of an organization that sells goods or services to such state charter school.

235 20-2-2085.

236 A petition may be submitted pursuant to this Code section by an existing charter school  
 237 approved by a local board of education or the State Board of Education provided that the  
 238 obligations of its charter with the local board of education or State Board of Education will  
 239 expire prior to entering into a new charter with the commission. Upon the existing charter

240 school's request, a local board of education or the State Board of Education in the case of  
241 a state chartered special school may agree to rescind or waive the obligations of a current  
242 charter to allow a petition to be submitted by an existing charter school pursuant to this  
243 Code section. An existing charter school that is established as a state charter school  
244 pursuant to this Code section shall be allowed to continue the use of all facilities,  
245 equipment, and other assets it used prior to the expiration or rescission of its charter with  
246 a local board of education; provided, however, that the local board shall be authorized to  
247 charge or continue to charge a reasonable fee for use of the facilities.

248 20-2-2086.

249 The commission shall provide maximum access to information regarding state charter  
250 schools to all parents in this state. It shall maintain information systems, including, but not  
251 limited to, a user-friendly Internet website, that will provide information and data necessary  
252 for parents to make informed decisions. At a minimum, the commission shall provide  
253 parents with information on its accountability standards, links to state charter schools  
254 throughout this state, and public education programs concerning state charter schools.

255 20-2-2087.

256 Each year, the chairperson of the commission shall appear before the State Board of  
257 Education and submit a report regarding the academic performance and fiscal responsibility  
258 of all state charter schools approved under this article.

259 20-2-2088.

260 If a charter for a state charter school is not renewed or is terminated, the state charter  
261 school shall be responsible for all debts of such school. Neither the state, the State Board  
262 of Education, or the commission shall be liable for any debts of the school in the event the  
263 charter is not renewed or is terminated. The local school system may not assume the debt  
264 from any contract for services made between the governing body of the state charter school  
265 and a third party, except for a debt for which the local school system has agreed upon in  
266 writing to assume responsibility.

267 20-2-2089.

268 (a)(1) The earnings for a student in a state charter school shall be equal to the earnings  
269 for any other student with similar student characteristics in a state charter school,  
270 regardless of the local school system in which the student resides or the school system  
271 in which the state charter school is located, and, except as otherwise provided in

272 paragraph (2) of this subsection, the department shall pay to each state charter school  
 273 through appropriation of state funds an amount equal to the sum of:

274 (A)(i) QBE formula earnings and QBE grants earned by the state charter school  
 275 based on the school's enrollment, school profile, and student characteristics. For  
 276 purposes of this subparagraph, the term 'QBE formula earnings' means funds earned  
 277 for the Quality Basic Education Formula pursuant to Code Section 20-2-161,  
 278 including the portion of such funds that are calculated in accordance with Code  
 279 Section 20-2-164. QBE formula earnings shall include the salary portion of direct  
 280 instructional costs, the adjustment for training and experience, the nonsalary portion  
 281 of direct instructional costs, and earnings for psychologists and school social workers,  
 282 school administration, facility maintenance and operation, media centers, additional  
 283 days of instruction in accordance with Code Section 20-2-184.1, and staff  
 284 development, as determined by the department.

285 (ii) A proportional share of earned state categorical grants, non-QBE state grants,  
 286 transportation grants, school nutrition grants, and all other state grants, except state  
 287 equalization grants, as determined by the department;

288 (B) The average amount of the total revenues less federal revenues less state revenues  
 289 other than equalization grants per full-time equivalent for the lowest five school  
 290 systems ranked by assessed valuation per weighted full-time equivalent count, as  
 291 determined by the department; and

292 (C) The state-wide average total capital revenue per full-time equivalent, as determined  
 293 by the department.

294 (2) In the event that a state charter school offers virtual instruction:

295 (A) The amount of funds received pursuant to subparagraph (B) of paragraph (1) of  
 296 this subsection shall be equal to two-thirds of such calculated amount; provided,  
 297 however, that this two-thirds amount may be increased by any amount up to the  
 298 originally calculated amount in the discretion of the commission if relevant factors  
 299 warrant such increase; and

300 (B) The commission may reduce the amount of funds received pursuant to  
 301 subparagraph (C) of paragraph (1) of this subsection in proportion to the amount of  
 302 virtual instruction provided and based on factors that affect the cost of providing  
 303 instruction.

304 (3) For purposes of this subsection, the terms:

305 (A) 'Assessed valuation' is defined as 40 percent of the equalized adjusted property tax  
 306 digest reduced by the amount calculated pursuant to subsection (g) of Code Section  
 307 20-2-164.

308 (B) 'Assessed valuation per weighted full-time equivalent count' is defined as the  
309 assessed valuation for the most recent year available divided by the weighted full-time  
310 equivalent count for the year of the digest.

311 (b) The department may withhold up to 3 percent of the amount determined pursuant to  
312 subsection (a) of this Code section for each state charter school for use in administering the  
313 duties required pursuant to Code Section 20-2-2083; provided, however, that any amount  
314 withheld pursuant to this subsection shall be spent solely on expenses incurred by the  
315 commission in performing the duties required by this article.

316 (c) No deduction shall be made to any state funding which a local school system is  
317 otherwise authorized to receive pursuant to this chapter as a direct result or consequence  
318 of the enrollment in a state charter school of a specific student or students who reside in the  
319 geographical area of the local school system.

320 (d) For purposes of funding students enrolled in a state charter school in the first year of  
321 such school's operation or for the first year that an existing state charter school offers a new  
322 grade level and prior to the initial student count, the commission shall calculate and the  
323 department shall distribute the funding for the state charter school on the basis of its  
324 projected enrollment according to an enrollment counting procedure or projection method  
325 stipulated in the terms of the charter. No later than July 1 of each year, the commission  
326 shall notify the department and the Office of Planning and Budget of the funding estimates  
327 calculated pursuant to this subsection for any new state charter schools and for any new  
328 grade levels offered by existing state charter schools. After the initial student count during  
329 the first year of such state charter school's operation or newly offered grade level and in all  
330 years of operation thereafter, each state charter school's student enrollment shall be based  
331 on the actual enrollment in the current school year according to the most recent student  
332 count. Nothing in this Code section shall be construed to require the department to conduct  
333 more than two student counts per year.

334 (e) Funding for state charter schools pursuant to this Code section shall be subject to  
335 appropriations by the General Assembly and such schools shall be treated consistently with  
336 all other public schools in this state, pursuant to the respective statutory funding formulas  
337 and grants.

338 20-2-2090.

339 The commission shall work in collaboration with the department on all matters related to  
340 authorizing state charter schools and shall be assigned to the department for administrative  
341 purposes only, as prescribed in Code Section 50-4-3. For administrative purposes,  
342 including data reporting, student enrollment counting procedures, student achievement  
343 reporting, funding allocations, and related purposes as defined by the State Board of

344 Education, each state charter school shall, consistent with department rules and regulations,  
345 be treated as a single local education agency.

346 20-2-2091.

347 The commission and the State Board of Education, as appropriate, shall adopt rules and  
348 regulations necessary to facilitate the implementation of this article. Except as otherwise  
349 provided in this article, any rules and regulations adopted by the State Board of Education  
350 pursuant to this article, to the extent practicable, shall be established in the same manner  
351 and subject to the same requirements as for state chartered special schools under Article  
352 31 of this chapter."

353 **SECTION 2.**

354 (a) This Act shall become effective on January 1, 2013, only if a Constitutional amendment  
355 expressly authorizing the General Assembly to create state charter schools as special schools  
356 is ratified at the November, 2012, general election.

357 (b) If such an amendment to the Constitution is not so ratified, then this Act shall not  
358 become effective and shall stand repealed by operation of law on January 1, 2013.

359 **SECTION 3.**

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