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EDUCATION

Postsecondary Education: Amend Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, Relating to Scholarships, Loans, and Grants, so as to Provide Comprehensive Revisions to the HOPE Scholarship and Grant Program; Revise Definitions; Revise Eligibility Requirements; Combine and Revise the HOPE Scholarship Programs Relating to Public and Private Postsecondary Institutions; Revise Requirements Relating to HOPE Grants and HOPE GED Vouchers; Revise Provisions Relating to the Georgia Student Finance Commission; Repeal Certain Laws Relating to HOPE Scholarships at Private Postsecondary Institutions, PROMISE Teacher's Scholarships, HOPE Teacher's Scholarships, PROMISE II Teacher's Scholarships, and the HOPE Scholarship/Pre-K Legislative Oversight Committee; Provide for Service Cancelable Loans for Certain Direct Loans to Students on the Basis of Need and Merit; Provide for Loans to Cover the Difference Between the Amount of Tuition and the HOPE Award; Revise Definitions Relating to Tuition Equalization Grants at Private Colleges and Universities; Amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to the Uniform Reporting System for Determining Eligibility of Students Seeking Enrollment in Postsecondary Courses, so as to Require Certain Coursework; Amend Article 1 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, Relating to General Provisions Relative to the "Georgia Lottery for Education Act," so as to Revise Provisions Relating to Compensation of Employees of the Georgia Lottery Corporation; Eliminate a Reserve Subaccount and Automatic Reduction Triggers Relating to Books and Fees; Revise a Provision Relating to Retailers; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A §§ 20-2-73, -157 (amended); 20-3-250, -395, -400, -411, -519

	(amended); 50-27-12, -13, -17 (amended)
BILL NUMBER:	HB 326
ACT NUMBER:	3
GEORGIA LAWS:	2011 Ga. Laws 1
SUMMARY:	The Act limits the HOPE scholarship and grant by a factor rate determined each fiscal year. The Act provides for Zell Miller Scholars—students who will receive the full HOPE scholarship amount. The Act creates a loan forgiveness program for teaching in a Georgia public school at the elementary, middle, or secondary level. The Act limits the compensation and bonuses of the Georgia Lottery Corporation. The Act increases a reserve account for the HOPE program. The Act limits the incentive compensation for lottery retailers.
EFFECTIVE DATE:	March 15, 2011

History

The HOPE (Helping Outstanding Pupils Educationally) program has provided educational funding to over 1.4 million students since its first awards were dispersed in the 1993–1994 school year.[1] The HOPE program has proved immensely popular, growing from 42,000 recipients in its first year to over 250,000 recipients in the 2010–2011 school year.[2] From its beginnings as a program intended to provide college scholarships for low-income students,[3] it has developed into a program designed to keep high-performing Georgia students in the state.[4] However, with the growing popularity of HOPE-funded tuition

1. *See* Georgia Student Finance Commission, Scholarship & Grant Award History, https://www.gsfc.org/GSFCNEW/SandG_facts.CFM (last visited Apr. 17, 2011).

2. *Id.*

3. Jim Galloway, *Democrats Get Say on HOPE*, ATLANTA J.-CONST., Feb. 27, 2011, at B1, *available at* 2011 WLNR 3851016.

4. Chris Cornwell & David B. Mustard, *HOPE, the Brain Drain, and Diversity: The Impact of the*

came a growing concern about the continued financial viability of the HOPE program.[5] Various changes and attempted changes to the HOPE scholarship and grant have been made over the years to address this concern.[6]

Even after these changes, the concern over the financial future of the HOPE scholarship program has remained.[7] The HOPE program is funded by Georgia Lottery proceeds.[8] While more and more students take advantage of the HOPE program, revenue from the lottery has remained static.[9] The increasing number of students using HOPE and the stagnant lottery ticket sales has been exacerbated by a weaker economy, with more students choosing to stay in state rather than going out of state for college.[10] The HOPE program withdrew nearly $150 million out of its $1 billion reserve in fiscal 2010 and was going to need to withdraw more than $500 million from its reserves in fiscal 2011 and 2012 if the HOPE program was not altered.[11] Simply put, the HOPE program was going broke.[12]

Attempting to reduce award amounts from the HOPE scholarship or grant is politically unpopular, however.[13] Any cuts in the HOPE

Scholarship on High Achievers and African Americans, 3 CARL VINSON INST. OF GOV'T POL'Y NOTES 1 (2002) ("In 1993, only 23 percent of Georgia high school graduates with SAT scores over 1500 matriculated at a Georgia college or university; [2002], 76 percent remain in state.").

5. Elizabeth Ballard & Emily Pittman, Note, *Education: Elementary and Secondary Education and Postsecondary Education*, 21 GA. ST. U. L. REV. 107 (2004) (detailing two bills attempting to alter the method for determining eligibility for the HOPE program and other modifications to the program).

6. *Id.*; Kevin A. McGill, Note, *Constitution of the State of Georgia: A Resolution*, 23 GA. ST. U. L. REV. 1 (2006); Christopher J. Sullivan, Note, *Education: Definitions for the Parameters of Georgia's Hope Scholarship*, 22 GA. ST. U. L. REV. 100 (2005) (detailing one bill attempting to amend certain definitions related to the HOPE program, limiting the number of quarter or semester hours the HOPE program would provide for, and other modifications to the program).

7. Eric Stirgus, *HOPE Among Richest Programs in Nation*, ATLANTA J.-CONST., Mar. 15, 2011, at B1, *available at* 2011 WLNR 5093024.

8. *Id. See also* Georgia Lottery, Proceeds to Education, http://www.galottery.com/education (last visited Apr. 17, 2011).

9. Stirgus, *supra* note 7; Scholarship & Grant Award History, *supra* note 1.

10. Veronica Buckman, *Don't Wait to Learn What Can Change College Admissions*, ATLANTA J.-CONST., Mar. 2, 2009, at A9, *available at* 2009 WLNR 3984430.

11. Stirgus, *supra* note 7.

12. Laura Diamond, *Study Guide to HOPE Changes*, ATLANTA J.-CONST., Mar. 13, 2011, at B9, *available at* 2011 WLNR 4961366. *See* Telephone Interview with Rep. Stacey Abrams (D-84th) (Apr. 1, 2011) [hereinafter Abrams Interview] (on file with the Georgia State University Law Review); Telephone Interview with Rep. Doug Collins (R-27th) (Mar. 31, 2011) [hereinafter Collins Interview] (on file with the Georgia State University Law Review).

13. Galloway, *supra* note 3 ("[T]he HOPE program . . . is so popular that altering it remains a dangerous proposition.").

program have always been met with resistance.[14] The debate over changes to the HOPE program often comes down to party lines, with Democrats suggesting eligibility changes based on family income, and Republicans suggesting eligibility changes that are entirely merit-based.[15] Entering the 2011 legislative session, legislators knew the HOPE program needed to be addressed given its financial state.[16]

Governor Nathan Deal, a Republican, created the first draft of the new HOPE legislation; but it was important to both Republicans and Democrats to have a bipartisan plan for addressing the financial concerns.[17] After the legislation was proposed, but before it was introduced to the House, language addressing several Democratic concerns was added.[18] First, remedial courses at Georgia technical colleges would continue to be funded by the HOPE program.[19] Second, proprietary colleges and universities would still be eligible for HOPE funding.[20] Finally, a student loan program that charges students only one percent interest would be funded to help students make up the difference between their future HOPE awards and their tuition amounts.[21] Although some people were surprised that the legislation had Democratic support, the legislation won bipartisan

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14. James Salzer, *HOPE SCHOLARSHIP: Tuition Limits to Cut Classes Legislators Want to Freeze Aid for College Students at 127 Credit Hours*, ATLANTA J.-CONST., Feb. 23, 2005, at A1, *available at* 2005 WLNR 2766396 (quoting former Representative Terry Coleman as stating that "if you vote for [reduced HOPE awards], you are going to get kicked around at home"); Laura Diamond, *State Democrats, Students Rip Bill*, ATLANTA J.-CONST., Mar. 3, 2011, at B1, *available at* 2011 WLNR 4149974 (stating that "more than 100 college and high school students protested the job lawmakers have done so far on HOPE").

15. Diamond, *supra* note 14 (noting that "Senate Democrats proposed giving full tuition scholarships to high-achieving students whose families earn up to $140,000 a year" while Brian Robinson, Governor Nathan Deal's spokesman, stated, "We believe HOPE should be merit-based").

16. Collins Interview, *supra* note 12.

17. Galloway, *supra* note 3; Abrams Interview, *supra* note 12; Collins Interview, *supra* note 12.

18. Galloway, *supra* note 3; Abrams Interview, *supra* note 12; Collins Interview, *supra* note 12.

19. Galloway, *supra* note 3; Abrams Interview, *supra* note 12.

20. Galloway, *supra* note 3; Abrams Interview, *supra* note 12. Proprietary schools, such as DeVry University, are for-profit colleges and universities as opposed to more traditional, public or nonprofit schools. Bob Barr, *Feds Beat Up on For-Profit Colleges*, ATLANTA J.-CONST., Dec. 20, 2010, at A16, *available at* 2010 WLNR 25071092.

21. Galloway, *supra* note 3; Abrams Interview, *supra* note 12. The one percent student loan program provides low-interest loans to students that can be used to make up the difference between the cost of tuition and the funds that the HOPE scholarship will provide. Video Recording of House Appropriations Committee, Feb. 24, 2011 at 16 min., 48 sec. (remarks by Rep. Doug Collins (R-27th)), http://www1.legis.ga.gov/legis/2011_12/house/Committees/appropriations/appArchives.htm [hereinafter House Committee Video].

support with the additional language and was introduced to the House.[22]

Bill Tracking of HB 326

Consideration and Passage by the House

Representatives Doug Collins (R-27th), David Ralston (R-7th), Jan Jones (R-46th), Stacey Abrams (D-84th), and Larry O`Neal (R-146th) sponsored HB 326.[23] The House read the bill for the first time on February 22, 2011, and for the second time on February 23, 2011.[24] The bill was assigned to the House Committee on Appropriations (the Committee).[25]

The bill, as originally introduced, revised the award amounts of the HOPE scholarship and grant program by adding in a factor rate in section 1 that limited the amount of money per year paid to each recipient.[26] The factor rate is a percentage established annually by the General Assembly based on lottery revenues, enrollment rates, and tuition rates.[27] The HOPE amount given to students each year equals the factor rate multiplied by the previous year's HOPE amount.[28] For the fall of 2011, the factor rate will be ninety percent.[29] So, for the 2011–2012 school year, each HOPE recipient will receive ninety percent of the 2010–2011 year's HOPE amount towards her tuition

22. Galloway, *supra* note 3; Abrams Interview, *supra* note 12. Former Democratic Governor Roy Barnes summed up Democratic concerns about HOPE reform when he stated, "What we have done is give HOPE to the affluent families who can already afford to send their kids to college, and deprive poorer white and black kids an opportunity to break out. Bad policy." Galloway, *supra* note 3. While Abrams took another approach, stating, "A bill is going to pass. I thought it best that we have a seat at the table. This is a Democratic program." Galloway, *supra* note 3.

23. HB 326, as introduced, 2011 Ga. Gen. Assem.

24. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.

25. *Id.*

26. HB 326, as introduced, § 1, p. 4, ln. 103–05, 2011 Ga. Gen. Assem.; House Committee Video, *supra* note 21, at 5 min., 25 sec. (remarks by Rep. Doug Collins (R-27th)).

27. HB 326, as introduced, § 1, p. 4, ln. 103–05, 2011 Ga. Gen. Assem.; House Committee Video, *supra* note 21, at 4 min., 50 sec. (remarks by Rep. Doug Collins (R-27th)).

28. HB 326, as introduced, § 1, p. 4, ln. 103–05, 2011 Ga. Gen. Assem.; House Committee Video, *supra* note 21, at 4 min., 50 sec. (remarks by Rep. Doug Collins (R-27th)). For example, if a student had received $10,000 towards tuition from HOPE for the 2010–11 school year and the factor rate was set at ninety-percent for the 2011–12 school year, the student would receive $9,000 towards tuition for the 2011–12 school year (despite what the 2011–12 tuition actually was).

29. House Committee Video, *supra* note 21, at 4 min., 55 sec. (remarks by Rep. Doug Collins (R-27th)).

for 2011–2012.[30] The HOPE amount given each year will be a percentage of the previous year's HOPE amount, not a percentage of the current year's tuition.[31] The bill also prevented any HOPE award amount from being paid for remedial or developmental courses taught at either public or private postsecondary institutions.[32]

The bill also created a Zell Miller Scholar.[33] A Zell Miller Scholar at a public institution would receive the full, current academic undergraduate tuition.[34] A Zell Miller Scholar at a private institution would receive the difference between the HOPE award amount and the HOPE tuition payment for a private institution.[35] A Zell Miller Scholar is a student who receives a score of at least 1200 on the SAT or a 26 on the ACT, graduates high school with a 3.7 grade point average (GPA), or completes a home study program.[36] To continue being a Zell Miller Scholar, a student needs to have a cumulative GPA of at least 3.5 at the end of the student's freshman, sophomore, junior, senior, or first professional year.[37] Should a student lose their status as a Zell Miller Scholar, the student will be given the opportunity to earn back that status one time by achieving a 3.5 GPA at the end of one of the previously mentioned points.[38] This classification was created to keep top performing students from leaving the state.[39]

In section 2, the bill detailed the residency requirements to participate in the HOPE program found in other sections into section 2.[40] In section 3, the bill established points at which a student needs to have a cumulative 3.0 GPA to continue to receive HOPE awards.[41]

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30. *Id.*
31. *Id.*
32. HB 326, as introduced, § 1, p. 5, ln. 136–43, 2011 Ga. Gen. Assem.
33. *Id.* § 1, p. 6, ln. 193–218.
34. HB 326, as introduced, § 3, p. 15, ln. 501–07, 2011 Ga. Gen. Assem.; House Committee Video, *supra* note 21, at 8 min. (remarks by Rep. Doug Collins (R-27th)).
35. HB 326, as introduced, § 3, p. 15, ln. 501–07, 2011 Ga. Gen. Assem.
36. HB 326, as introduced, § 1, p. 6, ln. 193–218, 2011 Ga. Gen. Assem.
37. *Id.* First professional year refers to an individual in a professional degree program that, at a minimum, accepts students after sophomore or junior year of their undergraduate program and awards a non-undergraduate degree. HB 326, as introduced, § 1, p. 4, ln. 106–11, 2011 Ga. Gen. Assem.
38. HB 326, as introduced, § 1, p. 6, ln. 193–218, 2011 Ga. Gen. Assem.
39. House Committee Video, *supra* note 21, at 8 min., 25 sec. (remarks by Rep. Doug Collins (R-27th)).
40. HB 326, as introduced, § 2, p. 7, ln. 223–44, 2011 Ga. Gen. Assem.; House Committee Video, *supra* note 21, at 10 min., 40 sec. (remarks by Rep. Doug Collins (R-27th)).
41. HB 326, as introduced, § 3, p. 13, ln. 428–33, 2011 Ga. Gen. Assem.

A student would be able to regain the HOPE scholarship if the student loses it due to GPA, but only once.[42] The bill also establishes limits at which point a student could no longer receive a HOPE award. These limits prevent a student who has already received a professional degree from receiving a HOPE award.[43] These limits also prevent an individual who waited at least seven years after graduating high school before returning to school from receiving a HOPE award.[44]

In section 4, the bill added in GPA check points for students attending a technical college to ensure students have an incentive to keep their GPAs above the GPA check point values.[45] It also prevents a student that already has a baccalaureate degree or a higher degree from receiving a HOPE grant to attend a technical college.[46] In section 5, the bill provided that a student who earns a general educational development (GED) diploma would receive a voucher only to be used to help cover costs of attending a postsecondary institution in Georgia,[47] which encouraged GED students to attend postsecondary institutions in Georgia.[48] Section 6 explained that the HOPE scholarship and HOPE grants would never exceed a student's tuition.[49] Additionally, it established that the HOPE program would not pay for remedial classes at public and private institutions, books, and fees.[50] Section 7 of the bill established the authority of the Georgia Student Finance Commission to create and enforce rules and regulations related to grants, loans, and scholarships.[51]

Section 8 repealed Code sections for programs that are no longer in effect, such as the PROMISE teacher's scholarship, the HOPE teacher's scholarship, and the PROMISE II teacher's scholarship.[52] Section 9 of the bill corrected the numbering of a reference to another

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42. *Id.* § 3, p. 13, ln. 433–35, 439–41, 451–53.
43. *Id.* § 3, p. 13–14, ln. 458–70.
44. *Id.*
45. HB 326, as introduced, § 4, p. 15, ln. 523–27, 2011 Ga. Gen. Assem; House Committee Video, *supra* note 21, at 13 min., 50 sec. (remarks by Rep. Doug Collins (R-27th)).
46. HB 326, as introduced, § 4, p. 16, ln. 548–49, 2011 Ga. Gen. Assem.
47. HB 326, as introduced, § 5, p. 17, ln. 573–94, 2011 Ga. Gen. Assem.
48. House Committee Video, *supra* note 21, at 14 min., 30 sec. (remarks by Rep. Doug Collins (R-27th)).
49. HB 326, as introduced, § 6, p. 17, ln. 600–01, 2011 Ga. Gen. Assem.
50. House Committee Video, *supra* note 21, at 15 min. (remarks by Rep. Doug Collins (R-27th)).
51. HB 326, as introduced, § 7, p. 18, ln. 608–34, 2011 Ga. Gen. Assem.
52. *Id.* § 8, p. 19, ln. 608–34.

Code section concerning proprietary institutions.[53] Section 10 provided for a one percent student loan program to ensure that students who needed to borrow the portion of their school expenses that was no longer covered by the HOPE program would be able to obtain inexpensive loans.[54] The section also provided for a loan cancelation program if a graduate agreed to teach in a Georgia public school as a science, technology, engineering, or math teacher.[55] The forgiveness program was designed to encourage graduates to teach and to provide a way for students to have any loans they may have accumulated given the reduction in HOPE awards forgiven.[56]

Section 11 of the bill explained that if a proprietary school was currently receiving HOPE awards then it would continue to receive them.[57] Section 12 of the bill corrected the numbering of a reference to another Code section concerning accrediting agencies.[58] Section 13 of the bill set new standards for high school students, requiring students to take an increasing number of Advanced Placement courses to be eligible for a HOPE scholarship.[59] The requirement raised the standards for accessing HOPE and encouraged students to take more challenging classes.[60]

Section 14 of the bill provided that the Georgia Lottery Corporation could not pay any bonuses that exceeded twenty-five percent of an employee's base salary.[61] Bonuses also would not be paid unless there was an increase in net proceeds over the previous year's amount transferred to the Lottery for Education Account.[62] This provision was intended to provide a large incentive for employees of the Georgia Lottery Corporation to increase the funds available in the Lottery for Education Account.[63] Section 15 of the

53. *Id.* § 9, p. 19, ln. 667.
54. *Id.* § 10, p. 19, ln. 669–770.
55. *Id.* at p. 20, ln. 672–78.
56. House Committee Video, *supra* note 21, at 20 min., 40 sec. (remarks by Rep. Doug Collins (R-27th)).
57. HB 326, as introduced, § 11, p. 21, ln. 736–40, 2011 Ga. Gen. Assem.
58. *Id.* § 12, p. 22, ln. 767.
59. *Id.* § 13, p. 23–24, ln. 779–820.
60. House Committee Video, *supra* note 21, at 21 min., 45 sec. (remarks by Rep. Doug Collins (R-27th)).
61. HB 326, as introduced, § 14, p. 24, ln. 828–33, 2011 Ga. Gen. Assem.
62. *Id.*
63. House Committee Video, *supra* note 21, at 23 min., 10 sec. (remarks by Rep. Doug Collins (R-27th)).

bill changed the timing of deposits into the Lottery for Education Account.[64] It also increased the reserve account for the HOPE program.[65] Section 16 limited commissions to lottery retailers at no more than five percent.[66]

The House Committee on Appropriations favorably reported the bill on February 24, 2011.[67] The Committee offered a substitute which changed only two sections of the bill as originally introduced. Section 14 was changed to limit bonuses paid to employees of the Georgia Lottery Corporation to not more than one percent of the net increase in the previous year's deposits to the Lottery for Education Account.[68] Again, this change was intended to provide an increased incentive for the Georgia Lottery Corporation to increase funding to the Lottery for Education Account.[69] Section 16 was changed to allow compensation to lottery retailers to be set at not less than five percent and not more than six percent of gross sales.[70] It also kept the incentive compensation constant for lottery retailers for the next five years, but allowed other forms of incentive compensation to be provided to retailers if the Lottery for Education Account exceeded $1 billion.[71] If the HOPE program reached a point where it had a sufficient reserve, the increased compensation provided incentives to the lottery retailers to further increase sales.[72]

The bill was read for a third time and passed the House on March 1, 2011. Despite lengthy debate on the House floor, only two sections were amended.[73] Specifically, the qualifications required for a

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64. HB 326, as introduced, § 15, p. 24, ln. 837–41, 2011 Ga. Gen. Assem.

65. *Id.* at ln. 849–50, 859–63.

66. HB 326, as introduced, § 16, p. 27, ln. 928–30, 2011 Ga. Gen. Assem.

67. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.

68. *Compare* HB 326 (HCS), § 14, p. 24, ln. 828–33, 2011 Ga. Gen. Assem., *with* HB 326, as introduced, § 14, p. 24, ln. 828–33, 2011 Ga. Gen. Assem.

69. House Committee Video, *supra* note 21, at 23 min., 10 sec. (remarks by Rep. Doug Collins (R-27th)).

70. *Compare* HB 326 (HCS), § 16, p. 27, ln. 928–33, 2011 Ga. Gen. Assem., *with* HB 326, as introduced, § 16, p. 27, ln. 928–30, 2011 Ga. Gen. Assem.

71. *Compare* HB 326 (HCS), § 16, p. 27, ln. 928–33, 2011 Ga. Gen. Assem., *with* HB 326, as introduced, § 16, p. 27, ln. 928–30, 2011 Ga. Gen. Assem.

72. House Committee Video, *supra* note 21, at 24 min., 15 sec. (remarks by Rep. Doug Collins (R-27th)).

73. Video Recording of House Floor Proceedings, Mar. 1, 2011 at 1 min. (remarks by Rep. Doug Collins (R-27th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_030111_AM.wmv [hereinafter House Floor Video].

student to be a Zell Miller Scholar were lowered slightly.[74] Instead of the requirement that a student maintain a 3.5 GPA as a sophomore, junior, senior, or first professional year, a student had to maintain a 3.3 GPA.[75] Section 16 was changed to provide commissions to lottery retailers of exactly 6% instead of not more than 6% to provide incentives for retailers to sell more lottery tickets.[76] HB 326 passed the House with a vote of 152 to 22.[77]

Consideration and Passage by the Senate

The bill was read for the first time in the Senate on March 2, 2011.[78] The bill was assigned to the Senate Higher Education Committee by Lieutenant Governor Casey Cagle (R).[79] The Committee introduced a substitute to the bill which only made changes to the bill.[80] Section 1 of the bill provided that the factor rate used to alter the HOPE awards on an annual basis would be established by the Georgia Student Finance Commission instead of the General Assembly in an annual appropriation act.[81] Section 1 also explained that a Zell Miller Scholar would have to maintain a 3.3 GPA at the end of the student's freshman year to remain a Zell Miller Scholar rather than a 3.5 GPA.[82] The freshman year GPA requirement was thus made equal to the sophomore, junior, senior, and first professional year GPA requirement.[83] Section 1 also required a sophomore, junior, senior, or first professional Zell Miller Scholar to meet the same high school requirements as incoming

74. *Compare* HB 326 (HCSFA), § 1, p. 7, ln. 210, 2011 Ga. Gen. Assem., *with* HB 326 (HCS), § 1, p. 7, ln. 210, 2011 Ga. Gen. Assem.

75. *Compare* HB 326 (HCSFA), § 1, p. 7, ln. 210, 2011 Ga. Gen. Assem., *with* HB 326 (HCS), § 1, p. 7, ln. 210, 2011 Ga. Gen. Assem.

76. *Compare* HB 326 (HCSFA), § 16, p. 27, ln. 928, 2011 Ga. Gen. Assem., *with* HB 326 (HCS), § 16, p. 27, ln. 928, 2011 Ga. Gen. Assem.; House Floor Video, *supra* note 73, at 21 min., 30 sec. (remarks by Rep. Doug Collins (R-27th)).

77. Georgia House of Representatives Voting Record, HB 326 (Mar. 1, 2011).

78. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.

79. *Id.*

80. *Compare* HB 326 (SCS), 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), 2011 Ga. Gen. Assem.

81. *Compare* HB 326 (SCS), § 1, p. 4, ln. 103–04, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 1, p. 4, ln. 103–04, 2011 Ga. Gen. Assem.

82. *Compare* HB 326 (SCS), § 1, p. 6, ln. 204, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 1, p. 6, ln. 205, 2011 Ga. Gen. Assem.

83. *Id.*

freshman Zell Miller Scholars, again bringing the requirements in line with each other.[84]

Section 2 allowed the spouse or dependents of military service members on active duty to qualify for in-state privileges if the member was stationed in Georgia or listed Georgia as the member's home of record.[85] Previously, the benefit was only given to spouses and dependents of members who were stationed in Georgia, even if the military service member was from Georgia but had been stationed out of state.[86] Section 3 combined the requirements for a full-time student and a part-time student to regain the HOPE scholarship after losing it.[87] The section provided the requirements for students in general, since the requirements for both full-time students and part-time students had been equivalent.[88] Section 4 added the requirement that a technical college student would have to maintain a 3.0 GPA after two check points instead of just one, making the program more rigorous.[89] The same section allowed a technical college student to regain a HOPE grant if the student lost it, but only once.[90] This addition mirrored the structure of the HOPE scholarship language.[91]

Section 15 credited funds to the Lottery for Education Fund on a quarterly basis instead of a monthly basis.[92] Section 15 also removed a sentence allowing any program or project that was started with lottery proceeds to be continued from the general fund.[93] Finally, the bill in section 17 provided that the Act would become effective as of

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84. *Compare* HB 326 (SCS), § 1, p. 6, ln. 209, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 1, p. 7, ln. 209, 2011 Ga. Gen. Assem.

85. *Compare* HB 326 (SCS), § 2, p. 7, ln. 241, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 2, p. 7, ln. 241, 2011 Ga. Gen. Assem. A home of record is the state a military service member was living in when he or she enlisted. House Committee Video, *supra* note 21, at 35 min., 30 sec. (remarks by Rep. Carl Rogers (R-26th)).

86. *Id.*

87. *Compare* HB 326 (SCS), § 3, p. 13, ln. 430, 436–39, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 3, p. 13, ln. 430, 436–41, 2011 Ga. Gen. Assem.

88. *Id.*

89. *Compare* HB 326 (SCS), § 4, p. 15, ln. 522–28, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 4, p. 15, ln. 523–27, 2011 Ga. Gen. Assem.

90. *Compare* HB 326 (SCS), § 4, p. 15, ln. 528–31, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 4, p. 15, ln. 523–27, 2011 Ga. Gen. Assem.

91. *Compare* HB 326 (SCS), § 4, p. 15, ln. 528–31, 2011 Ga. Gen. Assem., *with* HB 326 (SCS), § 3, p. 13, ln. 430–35, 2011 Ga. Gen. Assem.

92. *Compare* HB 326 (SCS), § 15, p. 24, ln. 841, 843, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 15, p. 24, ln. 837–40, 2011 Ga. Gen. Assem.

93. *Compare* HB 326 (SCS), § 15, p. 27, ln. 924, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 15, p. 26, ln. 920–23, 2011 Ga. Gen. Assem.

July 1, 2011 instead of upon approval by the Governor or its becoming law without approval.[94] The Committee favorably reported the bill substitute on March 4, 2011.[95]

The Senate read the bill a second time on March 7, 2011, and a third time on March 8, 2011.[96] The Senate passed the bill on March 8, 2011.[97] The bill was amended several times prior to passage.[98]

An amendment to section 1 by Senators Cowsert (R-46th), Staton (R-18th), Butterworth (R-50th), Williams (R-19th), and Sims (D-12th) allowing the valedictorian or salutatorian of each high school to qualify as a Zell Miller Scholar was adopted.[99]

An amendment to section 13 by Senators Albers (R-56th), Butterworth (R-50th), Jackson (D-2nd), Williams (R-19th), and Jones (D-10th) allowing students to take certain courses at a unit of the University System of Georgia to qualify for the HOPE program in addition to advance placement courses was adopted.[100]

An amendment to section 17 by Senators Chance (R-16th), Staton (R-18th), Jackson (R-24th), Rogers (R-21st), Butterworth (R-50th) and Jeffares (R-17th) making the bill effective upon approval of the Governor or upon it becoming law without approval was adopted.[101] The amendment also ensured that the bill would apply to postsecondary students in the fall of 2011.[102]

An amendment to section 9 by Senators Cowsert (R-46th), Butterworth (R-50th), Staton (R-18th), Bethel (R-54th) and Ligon (R-3rd) converting any Graduate-On-Time (GOT) Student Loan into a one percent loan retroactive to the origination date was adopted.[103] Several other amendments were offered, but failed. These

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94. *Compare* HB 326 (SCS), § 17, p. 27, ln. 936, 2011 Ga. Gen. Assem., *with* HB 326 (HCSFA), § 17, p. 27, ln. 935–36, 2011 Ga. Gen. Assem.

95. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.

96. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.

97. *Id.*

98. HB 326 (11 AM 33 1009-EC), 2011 Ga. Gen. Assem.

99. HB 326 (11 AM 33 1009-EC), § 1, p. 6, ln. 195–206, 2011 Ga. Gen. Assem.

100. HB 326 (11 AM 33 1020-EC), § 13, p. 23–24, ln. 783–824, 2011 Ga. Gen. Assem.

101. HB 326 (11 AM 33 1010-EC), § 17, p. 27, ln. 936, 2011 Ga. Gen. Assem.

102. *Id.*

103. HB 326 (11 AM 21 3764), § 9, p. 19–20, ln. 671, 2011 Ga. Gen. Assem. A GOT Student Loan is a Graduate-On-Time Loan that "reduces the interest rate [of a student loan] to one percent if a student 'graduates on time.'" *One Percent Student Loan Program Receives First Check from Georgia Department of Revenue*, GSFC411 E-NEWSLETTER, Nov. 2009, *available at* http://www.gsfc.org/main/publishing/newsletter/november09/gsfc411_1109_article1.cfm.

amendments affected the eligibility of HOPE recipients, altered the disposition of lottery funds, and altered the Zell Miller Scholar requirements.[104] An amendment was offered but withdrawn that altered the tax exemption status for contributions made to an education savings plan.[105] The Senate passed the bill by a vote of 35 to 20.[106] On March 10, 2011, the House agreed to the Senate Committee's substitute bill as amended by the Senate by a vote of 136 to 32.[107] On March 15, 2010, the Governor signed the bill into law.[108]

The Act

Section 1 of the Act amends Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated with the purpose of revising the award amounts of the HOPE scholarship and grant program by adding in a factor rate, which limits the HOPE award amount paid to each recipient.[109] The factor rate is a percentage established by the Georgia Student Finance Commission annually.[110] The HOPE award given to students each year equals the factor rate multiplied by the previous year's HOPE award.[111] The Act prevents any HOPE award amount from being paid for remedial or developmental courses taught at either public or private postsecondary institutions.[112] The Act eliminates the PROMISE teacher's scholarship program, HOPE teacher's scholarship program, and PROMISE II teacher's scholarship program.[113]

The Act also creates the Zell Miller Scholar program.[114] A Zell Miller Scholar is a student who received a score of at least 1200 on the SAT or a 26 on the ACT, graduated high school with a 3.7 GPA,

104. HB 326 (11 AM 33 1030), 2011 Ga. Gen. Assem.; HB 326 (11 AM 33 1023), 2011 Ga. Gen. Assem.; HB 326 (11 AM 33 1027), 2011 Ga. Gen. Assem.
105. HB 326 (11 AM 33 1028), 2011 Ga. Gen. Assem.
106. Georgia Senate Voting Record, HB 326 (Mar. 8, 2011).
107. Georgia House of Representatives Voting Record, HB 326 (Mar. 10, 2011).
108. State of Georgia Final Composite Status Sheet, HB 326, May 24, 2011.
109. O.C.G.A. § 20-3-519 (Supp. 2011).
110. *Id. See supra* text accompanying notes 26–31 for a more detailed discussion of the factor rate.
111. *Id.*
112. *Id.*
113. *Id.*
114. O.C.G.A. § 20-3-519 (Supp. 2011).

graduated valedictorian or salutatorian, or completed a home study program.[115] To continue being a Zell Miller Scholar, a student must earn at least a 3.3 GPA at check points at the end of the student's freshman, sophomore, junior, senior, or first professional year.[116] Should a student lose his or her status as a Zell Miller Scholar, a student is able to earn back the title one time if the student achieves a 3.3 GPA at the end of the next academic year.[117] A Zell Miller Scholar receives the entire HOPE scholarship award amount without having the amount reduced by the factor rate.[118]

In section 2, the Act defines the residency requirements to participate in the HOPE program.[119] The spouse and dependents of an active member of the military can claim residency in Georgia if the service member is stationed in Georgia or lists Georgia as their home of record.[120] In section 3, the Act establishes points at which a student has to have the specified 3.0 GPA to continue to receive HOPE awards.[121] For part-time students, the points occur either at the end of three consecutive quarters or semesters for part-time students.[122] Whereas, for full time students the points occur either at 45, 90, or 135 quarter hours, or 30, 60, or 90 semester hours.[123] A student is eligible to regain the HOPE scholarship one time if the student loses it due to his or her GPA falling below a 3.0.[124] The Act also establishes limits at which point a student can no longer receive a HOPE award.[125] A student can no longer receive HOPE awards if the student has earned a baccalaureate degree or first professional degree, the student has attempted at any postsecondary institution a total of 190 quarter hours or 127 semester hours, or the student has been out of high school for seven years.[126] In addition, the Act states that the Zell Miller Scholars attending a public institution will receive

115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. O.C.G.A. § 20-3-519.1 (Supp. 2011).
120. *Id.*
121. O.C.G.A. § 20-3-519.2 (Supp. 2011).
122. *Id.*
123. *Id.*
124. *Id.*
125. O.C.G.A. § 20-3-519.2 (Supp. 2011).
126. *Id.*

the full, current academic undergraduate tuition.[127] Zell Miller Scholars attending a private institution will receive the difference between the HOPE award amount and the HOPE tuition payment for a private institution.[128]

Section 4 of the Act establishes intervals at which HOPE grant recipients attending a technical college must have achieved or maintained a GPA of 3.0 to retain the grant.[129] It also provides HOPE grant funding for remedial or developmental courses, unlike the HOPE scholarship.[130] It further prevents a student who already had a baccalaureate degree or a higher degree from receiving a HOPE grant to attend a technical college.[131]

In section 5, the Act states that a student who earns a GED diploma receives a voucher to help cover costs of attending a postsecondary institution in Georgia.[132] Section 6 provides that the HOPE scholarship and HOPE grants will never exceed a student's tuition.[133] Section 7 of the Act establishes the authority of the Georgia Student Finance Commission to create and enforce rules and regulations related to grants, loans, and scholarships.[134]

Section 8 repeals Code sections that are no longer in effect, such as the PROMISE teacher's scholarship, the HOPE teacher's scholarship, and the PROMISE II teacher's scholarship.[135] Section 9 of the Act makes a minor renumbering change in the law.[136] Section 9.1 states that the annual interest rate for GOT Student Loans shall be converted to the one percent loan retroactively for any student qualifying for HOPE.[137] Section 10 provides for a one percent student loan program and provides a loan cancelation program if a

127. *Id.*
128. *Id.*
129. O.C.G.A. § 20-3-519.5 (Supp. 2011).
130. *Id.*
131. *Id.*
132. O.C.G.A. § 20-3-519.6 (Supp. 2011).
133. O.C.G.A. § 20-3-519.10 (Supp. 2011).
134. O.C.G.A. § 20-3-519.11 (Supp. 2011).
135. O.C.G.A. § 20-3-519.3 (Supp. 2011); O.C.G.A. § 20-3-519.7 (Supp. 2011); O.C.G.A. § 20-3-519.8 (Supp. 2011); O.C.G.A. § 20-3-519.9 (Supp. 2011); O.C.G.A. § 20-3-519.12 (Supp. 2011); O.C.G.A. § 20-3-519.13 (Supp. 2011).
136. O.C.G.A. § 20-3-250.5 (Supp. 2011).
137. O.C.G.A. § 20-3-400.2 (Supp. 2011).

graduate teaches in a Georgia public school as a science, technology, engineering, or math teacher.[138]

Section 11 addresses proprietary schools.[139] If a proprietary school is currently receiving HOPE awards then it will continue to receive them.[140] However, unless a proprietary school is domiciled or incorporated in Georgia it will not be able to start receiving HOPE awards.[141] Section 12 renumbers one item.[142] Section 13 requires students to take an increasing number of advanced courses or courses at a unit of the University System of Georgia to be eligible for a HOPE scholarship.[143]

Section 14 provides that the Georgia Lottery Corporation cannot pay any bonuses that exceed twenty-five percent of an employee's base salary.[144] The Act also states that bonuses shall not exceed one percent of the net increase over last year's deposit into the Lottery for Education Account.[145] Bonuses will only be paid if there is an increase in net proceeds over the previous year's amount transferred to the Lottery for Education Account.[146] Section 15 increases the reserve account for the HOPE program to at least fifty percent of the net proceeds that were deposited into the account from the preceding fiscal year.[147] Section 16 sets commissions to lottery retailers at six percent.[148] It also keeps incentive compensation constant for the next five years unless the Lottery for Education Account exceeds $1 billion, in which case changes can be made to the compensation plan for lottery retailers with the approval of the Governor.[149]

138. O.C.G.A. § 20-3-395.3 (Supp. 2011).
139. O.C.G.A. § 20-3-411 (Supp. 2011).
140. *Id.*
141. *Id.*
142. O.C.G.A. § 20-2-73 (Supp. 2011).
143. O.C.G.A. § 20-2-157 (Supp. 2011).
144. O.C.G.A. § 50-27-12 (Supp. 2011).
145. *Id.*
146. *Id.*
147. O.C.G.A. § 50-27-13 (Supp. 2011).
148. O.C.G.A. § 50-27-17 (Supp. 2011).
149. *Id.*

Analysis

Governor Nathan Deal touted HB 326 as an effort to prolong the life of Georgia's celebrated HOPE scholarship, which, without efforts to scale it back, would have "face[d] a $300 million shortfall in the fiscal year starting July 1, [2011]."[150] While all have agreed that HOPE reform was necessary, opinions have differed on exactly who should be excluded in light of the scarcity of HOPE resources. The debate on HOPE reform boils down to a fundamental political disagreement on whether the more important purpose behind HOPE is to provide a college education to students who could not otherwise afford it, or to give Georgia's "best and brightest" students an incentive to remain in-state for college.[151] Arguably, the new changes to HOPE minimize the success of the former purpose and maximize the latter.

Rapid tuition increases over the past decade,[152] along with increased enrollment in Georgia colleges, are to blame for the scholarship's threatened bankruptcy.[153] The Act—hailed as a result of bipartisan cooperation—decouples HOPE from tuition and ties the amount of scholarship money provided to HOPE recipients to the availability of lottery funds, as determined by a "factor rate" set by the Georgia Student Finance Commission on a yearly basis.[154] Based on the factor rate for the 2011–2012 school year, the amount paid to HOPE students will be ninety percent of tuition, but that percentage

150. Dave Williams, *Gov. Deal Signs HOPE Overhaul*, ATLANTA BUS. CHRON., Mar. 15, 2011, *available at* 2011 WLNR 5108185.

151. House Floor Video, *supra* note 73, at 41 min., 28 sec. (remarks by Rep. Stacey Evans (D-40th)); *Id.* at 3 min. (remarks by Rep. Doug Collins (R-27th)).

152. "In the last 10 years tuition has increased at a rate of over 200% in the state of Georgia." House Floor Video, *supra* note 73, at 46 min., 5 sec. (remarks by Rep. James Mills (R-25th)).

153. "Georgia's 35 colleges and universities have a 6% increase in enrollment this year alone. The enrollment at our technical colleges is up 25% alone." *Id.*, at 1 hr., 18 min. (remarks by Rep. Jan Jones (R-46th)).

154. HB 326, as introduced, § 7, p. 18, ln. 608–34, 2011 Ga. Gen. Assem.; House Floor Video, *supra* note 73, at 3 min. (remarks by Rep. Doug Collins (R-27th)) ("The factor rate is the amount that will be established by the General Assembly during the appropriations process that will help determine the amount that will be paid for tuition for the students for the upcoming year."). HOPE students at public colleges will receive a percentage of total tuition, while those at private colleges will receive a percentage of the current $4,000 grant. *Id. See also* James Salzer & Laura Diamond, *Private College Funds Draw Public Criticism*, ATLANTA J.-CONST., Mar. 20, 2011, at A1, *available at* 2011 WLNR 5456666.

may change from year to year as the factor rate fluctuates.[155] The full-tuition scholarship previously enjoyed by all B-average students is now reserved for Georgia's "best and brightest," those students who qualify for the Zell Miller Scholarship, requiring a 3.7 grade point average and a 1200 combined critical reading and math score on the SAT, or an ACT score of 26.[156] A provision added by the Senate also extends the Zell Miller Scholarship to the valedictorian and salutatorian of each graduating high school class in Georgia.[157] This amendment was added in response to the "long-standing complaint from rural Georgia educators and their allies in the General Assembly that the benefits of the lottery-funded program go disproportionately to students from middle- and upper-income families in metro Atlanta at the expense of low-income rural students."[158]

While many Democrats, including House Minority Leader Stacey Abrams (D-84th), found the Act a "reasonable and thoughtful approach" to solving HOPE's financial problems,[159] the bill received considerable criticism from Democrats in both the House and the Senate. Those opposing HB 326 objected to the bill's use of the SAT and ACT in providing full-tuition scholarships, citing evidence that these tests are inherently biased against economically disadvantaged students and will result in withdrawing college funding from those who need it the most.[160] The disparity in scholarship funding for rural

155. House Floor Video, *supra* note 73, at 3 min. (remarks by Rep. Doug Collins (R-27th)).

156. These are the Zell Miller Scholarship requirements for graduating seniors. *Id.* Once enrolled in college, Zell Miller scholars must maintain a 3.3 grade point average. *Id.* The full-tuition scholarship applies only to students at public colleges; students at private colleges will receive the full $4,000 grant. *Id.* Neither the HOPE Scholarship nor the Zell Miller Scholarship will pay for books and fees under the new plan. *Id.*

157. However, the Bill does not include definitions for the words "valedictorian" and "salutatorian," which may leave open the possibility for Georgia high schools to allow multiple students to qualify for each title. *See* Get Schooled with Maureen Downey, *If School Has 10 Valedictorians, Do They All Get Full HOPE?*, Mar. 18, 2011, http://blogs.ajc.com/get-schooled-blog/2011/03/18/if-school-has-five-valedictorians-do-they-all-get-full-HOPE/.

158. Dave Williams, *Boost for Rural Kids Tucked into HOPE Cuts*, ATLANTA BUS. CHRON., Mar. 18, 2011, *available at* 2011 WLNR 5399663.

159. Abrams Interview, *supra* note 12.

160. House Floor Video, *supra* note 73, at 41 min., 28 sec. (remarks by Rep. Stacey Evans (D-40th)). *See also* Video Recording of Senate Proceedings, Mar. 8, 2011 at 3 hrs., 29 min. (remarks by Sen. Vincent Fort (D-39th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-senate_030811_PM.wmv ("I'm very disturbed that this governor would adopt a policy that links a child's future to the discriminatory Scholastic Aptitude Test.") [hereinafter Senate Floor Video].

districts and districts with high minority populations is most striking when paired with the amount of money those districts spend in the lottery. Senator George Hooks (D-14th) remarked that in Sumter County, for example, $21 million was spent on lottery tickets in 2010, while only one graduating senior made the 1200 SAT score required for the Zell Miller Scholarship.[161] This measure, some Democrats have claimed, betrays the original goal behind HOPE scholarship: to provide a hope of higher education and upward social mobility for those students who would not otherwise be able to afford to attend college.[162] These legislators have pointed out that the original HOPE scholarship employed means testing, as it included a family income cap, first at $66,000 and later at $100,000.[163] Those opposed to HB 326 have claimed that imposition of SAT and ACT requirements will serve to reinforce the class divide between lower-income students, who often do not attend college, and high-income students who usually do.[164] Indeed, there is evidence that the new 1200 SAT requirement will only include "2.7 percent of black students in Georgia . . . in contrast to 21.5 percent of white students" and "5.4 percent of working-class Georgia students (whose parents make less than $40,000) . . . in contrast to 30.8 percent of upper-class students (whose parents make more than $140,0000)."[165] Instead, some Democrats insist that the state could afford to retain full-tuition funding for up to ninety-four percent of students currently receiving the HOPE scholarship by employing means testing.[166] Higher-income

161. Senate Floor Video, *supra* note 160, at 3 hrs., 34 min. (remarks by Sen. George Hooks (D-14th)). Further, Senator Hooks observed that in 2010, Macon County would have had one eligible student with over $8 million spent on the lottery, while Stewart County spent $4 million on the lottery with no students meeting the 3.7 GPA and 1200 SAT requirements. *Id*.

162. *See* House Floor Video, *supra* note 73, at 41 min., 28 sec. (remarks by Rep. Stacey Evans (D-40th)); *Id*. at 52 min., 36 sec. (remarks by Rep. David Lucas (D-139th)); Senate Floor Video, *supra* note 160, at 2 hrs., 57 min. (remarks by Sen. Steve Thompson (D-33rd)).

163. Senate Floor Video, *supra* note 160, at 2 hrs., 42 min. (remarks by Sen. Steven Henson (D-41st)); House Floor Video, *supra* note 73, at 1 hr., 18 min. (remarks by Rep. Jan Jones (R-46th)) (speaking in favor of HB 326).

164. "Those families with incomes less than $36,000, 5% of the children from those families will go to college. $36,000-63,000, 15% of those kids will go to college. [If] your family earns over $95,000 . . . you have a 75% chance of going to college." House Floor Video, *supra* note 73, at 41 min., 28 sec. (remarks by Rep. Stacey Evans (D-40th)).

165. Vincent Lloyd & Devin Fergus, *HOPE Reduction Creates New Losers*, ATLANTA J.-CONST., Mar. 13, 2011, at A19, *available at* 2011 WLNR 4961349.

166. "Means testing" refers to providing the HOPE scholarship only to those students whose family income is lower than a predetermined income "cap." One suggestion in the House of Representatives

students, they claim, are likely to attend college even without the assistance of HOPE funds.[167] However, Republicans have disputed the accuracy of these statistics, claiming that means testing would not cut out enough students to solve the HOPE scholarship's financial troubles.[168]

But House Minority Leader Stacey Abrams adopted a pragmatic approach to HB 326, acknowledging that means testing was a futile goal since the Republican majority was fundamentally opposed to it.[169] Instead, Representative Abrams has praised Governor Deal's desire to garner Democratic support, despite the fact that such support was unnecessary to the Act's passage, and has used this cooperation to incorporate several Democratic concerns into the Act.[170] By agreeing to support HB 326, she asserts that Democrats have managed to preserve funding for remedial courses, to retain the eligibility of proprietary schools, and to fund a low-interest loan program for those students who need to "make up the gap" between HOPE's new factor rate and actual school expenses.[171] These measures are an attempt to keep college education an attainable goal for lower-income students. While it is not an explicit part of this legislation, preserving funding for the Georgia Pre-K program was also an important part of the bill's consideration for Representative Abrams and many other legislators.[172] Bipartisan cooperation, Representative Abrams says, helped to preserve the full-day Pre-K program, rather than cutting the program back to four and a half hours per day.[173] Protecting early childhood education through the Pre-K program, which shares lottery funding with the HOPE scholarship, is vital to many because, as Senator Fran Millar (R-40th)

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was to limit HOPE recipients to those students with a family income of $100,000 or less. *See* House Floor Video, *supra* note 73, at 52 min., 36 sec. (remarks by Rep. David Lucas (D-139th)). Senate Democrats suggested placing the cap at $140,000. *See* Senate Floor Video, *supra* note 160, at 3 hrs., 29 min. (remarks by Sen. Vincent Fort (D-39th)).

167. *See* House Floor Video, *supra* note 73, at 1 hr., 3 min. (remarks by Rep. Gloria Tinubu (D-60th)); Galloway, *supra* note 3.

168. House Floor Video, *supra* note 73, at 1 hr., 18 min. (remarks by Rep. Jan Jones (R-46th)). *See also* Collins Interview, supra note 12.

169. *See* Abrams Interview, *supra* note 12.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

observed, "if [a] child can't read by third grade, we don't have to worry about the HOPE scholarship."[174]

But other Democrats have vigorously disputed the assertion that HB 326 is a bipartisan Act, finding the compromises insufficient, and in the case of proprietary school funding, even contrary to the interests of their constituents.[175] Further, others have insisted that HB 326 is only a temporary solution to the ongoing problem involving the Board of Regents' excessive tuition hikes in the midst of a struggling economy.[176] Still others have maintained that our problems with HOPE will persist because HB 326 failed to adequately address the Georgia Lottery Corporation's contribution to education funding. When Georgians voted for the lottery nearly twenty years ago, they did so with the promise that the percentage of the gross lottery revenue that was devoted to educational programs would be as close as practical to thirty-five percent.[177] Since that time, contribution to the education fund has increased in real numbers, but percentages of the total lottery revenues have steadily decreased, with only 26.1% of gross lottery revenues being contributed to educational programs in 2010.[178]

This decline is justified, the Georgia Lottery Corporation asserts, because it allows for higher jackpots, which leads to higher overall lottery revenues.[179] Certainly, if overall lottery revenues decrease, educational funding will suffer as well. Still, some have been critical of allowing educational funding, the "only public benefit" of the lottery, to be minimized at the expense of higher lottery payouts.[180]

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174. Senate Floor Video, *supra* note 160, at 3 hrs, 22 min. (remarks by Sen. Fran Millar (R-40th)).

175. *Id*. at 3 hrs., 29 min. (remarks by Sen. Vincent Fort (D-39th)) (citing evidence that proprietary schools, which tend to be more expensive than traditional colleges and lead to more loan defaults, are disproportionately attended by minority students).

176. *See* House Floor Video, *supra* note 73, at 46 min., 5 sec. (remarks by Rep. James Mills (R-25th)).

177. Senate Floor Video, *supra* note 160, at 1 hr., 40 min. (remarks by Rep. Jason Carter (D-42nd)). *See also* Chris Joyner, *Jackpots Share Less with HOPE, Pre-k*, ATLANTA J.-CONST., Mar. 23, 2011, at A1, *available at* 2011 WLNR 5638081.

178. Senate Floor Video, *supra* note 160, at 1 hr., 40 min. (remarks by Rep. Jason Carter (D-42nd)). *See also* Failed Senate Floor Amendment Six to HB 326, introduced by Sen. Jason Carter (D-42nd), Mar. 8, 2011. This amendment would have gradually increased the percentage of lottery contribution to educational funding until it reached thirty-percent, the national average of lottery contribution to state educational accounts, by the year 2016. *Id.*

179. Joyner, *supra* note 177. *See also* Collins Interview, supra note 12.

180. Senate Floor Video, *supra* note 160, at 1 hr., 40 min. (remarks by Rep. Jason Carter (D-42nd)); Joyner, *supra* note 177.

However, HB 326 has a provision that addresses this concern by capping Georgia Lottery Corporation employee bonuses and prohibiting the sum of all employee bonuses from exceeding "one percent of the net increase over the prior year's deposit into the Lottery for Education Account."[181] In this way, the Act creates a personal incentive for Georgia Lottery Corporation employees to continue to increase contributions into the Lottery for Education Account. This provision has been called a "bold step" on the part of the Governor toward funding education, but it remains to be seen whether it will succeed in raising educational contributions back to the levels promised to the original Georgia voters.[182]

Continuing to increase contributions to the Lottery for Education Account is vital under the new HOPE plan because each year's contributions will have a profound effect on the factor rate set each year. Because the amount HOPE pays out is no longer equal to tuition, the factor rate will determine exactly how much money students will need to cover the gap between the scholarship and school expenses. If contributions to the educational account fall, enrollment increases, or the General Assembly finds that other factors make the current rate untenable in future years, the factor rate will continue to fall.[183] While concerns have been expressed about the potential unpredictability of the new factor rate and whether students will have advanced notice of the amount of money they will receive, Representative Collins has assured the House of Representatives that there will be certainty and notice of the factor rate in advance of each school year.[184]

Still another new requirement, the effects of which remain to be seen, is that, starting with the graduating class of 2015, high school students must take at least two courses defined as "advanced" by the new legislation, including advanced math and science courses,

181. O.C.G.A. § 50-27-12(a) (Supp. 2011).

182. House Floor Video, *supra* note 73, at 3 min. (remarks by Rep. Doug Collins (R-27th)).

183. *See* Senate Floor Video, *supra* note 160, at 2 hrs., 42 min. (remarks by Sen. Steven Henson (D-41st)) (noting that although the factor rate is currently set at ninety percent, "tuition is going up. And next year, they may only receive 80% of what tuition is. Ten years from now, it may be significantly less than 50% of what their tuition is, making it impossible and taking away HOPE for many, many Georgians.").

184. "There will be certainty in this. By the time the appropriations process is done in the General Assembly each year the factor rate will be set through appropriations and you will know what factor you're getting." House Floor Video, *supra* note 73, at 3 min. (remarks by Rep. Doug Collins (R-27th)).

Advanced Placement courses in core subjects, International Baccalaureate courses in core subjects, advanced foreign language courses, and courses students have taken through dual enrollment in high school and college classes.[185] These requirements will gradually increase until May 1, 2017, when graduating high school students must earn credit for at least four courses from these categories in order to be eligible to receive the HOPE scholarship.[186] This measure is intended to better prepare students for the rigors of the college curriculum, but it may have the added effect of making the 3.7 GPA required for a full-tuition scholarship even less attainable.[187] Commentators have also worried that this requirement will have the effect of excluding many students from rural high schools, since this type of "advanced course work is offered less frequently in Georgia's rural school districts than in suburban Atlanta."[188] While the Governor has addressed this concern with the suggestion that schools could use technology to include these course offerings, this has been criticized as "a hypothetical, untested, and possibly impractical response."[189]

With HOPE resources becoming increasingly scarce, the need for change has been unanimously admitted. While many have predicted that the new HOPE will have the effect of forcing minorities and rural students to make up the difference for potentially hefty school expenses, the letter of the Act leaves the full-tuition scholarship open to all students who can achieve the scholarship's high standards. But high achievement standards seem appropriate for such a generous scholarship; after all, as Representative Amos Amerson (R-9th) pointed out, "the 'O' [in HOPE] stands for 'outstanding.'"[190] Although responses to the Act have ranged from scathing to laudatory and the practical effects of the new provisions remain unseen, its proponents have promised that the new measures will preserve the celebrated scholarship for future generations. HOPE remains one of the nation's most generous scholarship programs,

185. O.C.G.A. § 20-2-157 (Supp. 2011).
186. *Id.*
187. House Floor Video, *supra* note 73, at 3 min. (remarks by Rep. Doug Collins (R-27th)).
188. Lloyd and Fergus, *supra* note 165.
189. *Id.*
190. House Floor Video, *supra* note 73, at 39 min., 20 sec. (remarks by Rep. Amos Amerson (R-9th)).

making college education an attainable goal for any Georgia student who seeks to pursue it.

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