

House Bill 1262

By: Representative Mainor of the 56th

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to
2 elementary and secondary education, so as to provide for a cause of action by aggrieved
3 students against local education agencies for breach of the duty to provide for an adequate
4 public education; to provide for definitions; to provide for construction; to require each local
5 education agency to provide for an adequate public education to each enrolled student in each
6 core academic course; to provide for remedies; to provide for waiver of sovereign immunity;
7 to amend Title 36, Chapter 21 of Title 50, and Code Section 5-6-34 of the Official Code of
8 Georgia Annotated, relating to local government, waiver of sovereign immunity as to actions
9 ex contractu and state tort claims, and judgments and rulings deemed directly appealable,
10 respectively, so as to provide for a limited waiver of sovereign immunity for breach of the
11 duty to provide for an adequate public education; to provide for definitions; to provide for
12 exceptions; to provide for immunity of officers and employees in their individual capacity;
13 to provide for appeals; to provide for legislative findings and intent; to provide for related
14 matters; to provide for an effective date and applicability; to provide for related matters; to
15 repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **PART I**
18 **SECTION 1-1.**

19 (a) The General Assembly finds that:

20 (1) Paragraph I of Section I of Article VIII of the Georgia Constitution states, "The
21 provision of an adequate public education shall be a primary obligation of the State of
22 Georgia.";

23 (2) Local boards of education, other public school governing bodies, local school
24 systems, public schools, private schools that receive state funds for educational purposes,
25 and the officers and employees thereof, are essentially responsible for ensuring the state
26 meets its constitutional obligation to provide an adequate public education;

27 (3) The proper functioning of state government requires that state officers and employees
28 be free to act and to make decisions, in good faith, without fear of thereby exposing
29 themselves to lawsuits and without fear of the loss of their personal assets;

30 (4) The responsibility of public school officers and employees to educate, monitor,
31 supervise, and control students is a discretionary action which is protected by the doctrine
32 of sovereign immunity as a matter of fact, law, and sound public policy; and

33 (5) While the officers and employees of Georgia's public schools have traditionally not
34 been subject to lawsuit or liability arising from the performance or nonperformance of
35 their official duties or functions, the strict application of the traditional doctrine of
36 sovereign immunity can result and has resulted in unfair and inequitable results for
37 residents of this state.

38 (b) It is the intent of the General Assembly to provide for a limited waiver of the state's
39 sovereign immunity for certain individual claims alleging deprivation of an adequate public
40 education.

41 **PART II**
42 **SECTION 2-1.**

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

45 "ARTICLE 18B

46 20-2-1005.

47 As used in this article, the term:

48 (1) 'Governing body' means the local board of education, governing council, governing
49 board, or other entity by whatever name responsible for creating and implementing the
50 budget of a local education agency.

51 (2) 'Local education agency' means any local school system, any charter school subject
52 to the provisions of Article 31 or 31A of this chapter, and any completion special school
53 subject to the provisions of Article 31C of this chapter, except this shall not include
54 college and career academies that are charter schools; conversion charter schools, as
55 defined in Code Section 20-2-2062, whose charter is not held by a nonprofit corporation;
56 or system charter schools, as defined in Code Section 20-2-2062.

57 (3) 'Public school' means any public school in this state.

58 (4) 'Student' means any person who has been enrolled as a student by a local education
59 agency.

60 20-2-1006.

61 (a) Each local education agency shall provide for an adequate public education to each
62 enrolled student in each core academic course.

63 (b) A student aggrieved by the failure or refusal of the local education agency enrolling
64 such student to provide for an adequate public education in one or more core academic
65 courses may recover against such local education agency for the breach of such legal duty
66 if he or she suffers damage thereby.

67 (c) A student who is entitled to recover against a local education agency for such local
68 education agency's breach of its duty to provide such student with an adequate public
69 education shall be entitled to an award of compensatory education services, reimbursement
70 for the costs of tuition and expenses directly related to enrollment for up to one year in an
71 accredited postsecondary preparation program or a workforce development program
72 recognized by the Office of Workforce Development, and attorney's fees or expenses of
73 litigation as provided in Code Section 9-15-14.

74 (d) If a judgment or finding is rendered in favor of a local education agency in any action,
75 complaint, or other proceeding brought by or on behalf of a student and arising out of or
76 resulting from the alleged failure to provide for an adequate public education and such
77 action or complaint is found to be nonmeritorious, frivolous, or without just cause, all
78 reasonable court costs, reasonable attorney's fees, and reasonable expenses incurred by the
79 public school in defending such action or complaint shall be assessed by the court and shall
80 be paid by the plaintiff.

81 (e) Except as expressly provided for in this article, in Article 2 of Chapter 80 of Title 36,
82 and in Article 3 of Chapter 21 of Title 50, nothing in this article shall be construed as
83 waiving any immunity or privilege now or hereafter enjoyed by the State Board of
84 Education, by the Department of Education, by the board of control of any cooperative
85 educational service agency, by any local board of education, by any other public school
86 governing body, by any school system, by any member or employee of any such board,
87 body, department, or system, or as waiving any immunity or privilege of any state or other
88 public body, board, agency, or political subdivision."

89

PART III

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SECTION 3-1.

91 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 92 in Code Section 36-33-1, relating to a municipal corporation's immunity from liability for
 93 damages and the waiver of immunity by the purchase of liability insurance, by adding a new
 94 subsection to read as follows:

95 "(c) Sovereign immunity of a municipal corporation shall be waived as provided in
 96 Article 2 of Chapter 80 of this title."

97

SECTION 3-2.

98 Said title is further amended in Chapter 80, relating to general provisions regarding
 99 provisions applicable to counties, municipal corporations, and other governmental entities,
 100 by designating the existing Code sections as Article 1 and adding a new article to read as
 101 follows:

102

"ARTICLE 2103 36-80-50.104 As used in this article, the term:

105 (1) 'Governmental entity' means a department, agency, division, bureau, board,
 106 commission, authority, office, or committee formed or established by a political
 107 subdivision.

108 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
 109 person who is:

110 (i) Elected to a political subdivision office;111 (ii) Appointed to a political subdivision governmental entity; or

112 (iii) Employed by a political subdivision or a political subdivision governmental
113 entity.

114 (B) Such term shall not include an independent contractor doing business with this
115 state, a political subdivision, a state governmental entity, or a political subdivision
116 governmental entity.

117 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

118 (4) 'Person' shall have the same meaning as set forth in Code Section 50-21-50.

119 (5) 'Political subdivision' means a county, municipal corporation, or consolidated
120 government.

121 (6) 'State' shall have the same meaning as set forth in Code Section 50-21-50.

122 (7) 'State mental health facility' shall have the same meaning as set forth in Code
123 Section 37-1-1.

124 (8) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
125 that is codified in the Official Code of Georgia Annotated or has become law.

126 (9) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

127 36-80-51.

128 (a) Sovereign immunity of a political subdivision as defined in Code Section 36-80-50, a
129 political subdivision governmental entity as defined in Code Section 36-80-50, or an officer
130 or employee as defined in Code Section 36-80-50 in his or her official capacity is hereby
131 waived as to any claim for the breach of the duty to provide for an adequate public
132 education to an aggrieved student as provided in Article 18B of Chapter 2 of Title 20 by
133 any officers and employees while acting within the scope of their official duties or
134 employment and shall be liable for such breach in the same manner as a private person or
135 entity would be liable under like circumstances; provided, however, that such sovereign
136 immunity is waived subject to all exceptions and limitations set forth in this article. The
137 governmental entity shall have no liability for losses resulting from conduct on the part of

138 officers or employees which was not within the scope of their official duties or
139 employment.

140 (b) This Code section shall not waive sovereign immunity of a political subdivision, a
141 political subdivision governmental entity, or an officer or employee in his or her official
142 capacity as to any claim:

143 (1) For which a state statute explicitly prohibits such waiver;

144 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
145 Code Section 9-15-14;

146 (3) Alleging a violation of federal law, other than the United States Constitution;

147 (4) Brought in a court of the United States; or

148 (5) Brought by, or on behalf of, a person in a penal institution or a state mental health
149 facility.

150 36-80-52.

151 This article shall be narrowly construed and shall not:

152 (1) Toll or extend any applicable period of limitations;

153 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;

154 (3) Be construed to waive other immunities provided by state statute or recognized by
155 the courts of this state, including, but not limited to, grand juror immunity, judicial
156 immunity, legislative immunity, official immunity, prosecutorial immunity, or qualified
157 immunity; or

158 (4) Except as expressly waived by this article, alter or amend any other legal requirement
159 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
160 exhaustion of administrative or other remedies, notice requirements, and defenses to or
161 limitations on the exercise of equitable jurisdiction.

162 36-80-53.

163 (a) An officer or employee shall not be subject to a suit under this article in his or her
164 individual capacity for performance or nonperformance of his or her official duties.

165 (b) The immunity conferred by subsection (a) of this Code section shall:

166 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
167 or injunctive relief, unless such suit against such officer or employee in his or her
168 individual capacity is expressly authorized by state statute; and

169 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
170 was ultra vires, unconstitutional, or illegal.

171 36-80-54.

172 A suit for which sovereign immunity is waived under this article shall name only the
173 political subdivision, a political subdivision governmental entity, an officer or employee
174 in his or her official capacity, or a combination thereof. If an officer or employee is named
175 in such suit in his or her individual capacity, upon proper motion, the court shall dismiss
176 him or her as the party defendant and, if appropriate, order such officer or employee in his
177 or her official capacity be joined as a party defendant.

178 36-80-55.

179 (a) No suit for which sovereign immunity is waived under this article against a political
180 subdivision, a political subdivision governmental entity, or an officer or employee in his
181 or her official capacity as provided in Code Section 36-80-51 shall be commenced, and the
182 courts of this state shall not have jurisdiction thereof, until 30 days after the date that a
183 written notice is mailed by certified mail, return receipt requested, or by statutory overnight
184 delivery to:

185 (1) The sole county commissioner or chairperson of the county commission, as the case
186 may be, in the case of a county; or

- 187 (2) The mayor or chairperson of the city council or city commission, as the case may be,
 188 in the case of a municipal corporation or consolidated government.
- 189 (b) Such notice shall identify the action being challenged pursuant to this article and the
 190 nature of the relief being sought.
- 191 (c) No suit containing a claim under Code Section 36-80-51 shall proceed in the courts of
 192 this state until the plaintiff provides the court with proof of service upon the appropriate
 193 authority as provided in this Code section.
- 194 (d) The notice required by this Code section shall not be required for suits brought
 195 pursuant to paragraph (3) of subsection (b) of Code Section 36-80-51.
- 196 (e) A suit for which notice has been provided in accordance with this Code section shall
 197 be filed no later than 90 days after such notice has been provided."

198 **PART IV**

199 **SECTION 4-1.**

200 Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of
 201 sovereign immunity as to actions ex contractu and state tort claims, is amended by adding
 202 a new article to read as follows:

203 "ARTICLE 3

204 50-21-50.

205 As used in this article, the term:

206 (1) 'Governmental entity' means a department, agency, division, bureau, board,
 207 commission, authority, office, or committee.

208 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
 209 person who is:

- 210 (i) Elected to a state office;
211 (ii) Appointed to a state governmental entity; or
212 (iii) Employed by the state or a state governmental entity.
213 (B) Such term shall not include an independent contractor doing business with this
214 state or a state governmental entity.
215 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.
216 (4) 'Person' means an individual, corporation, partnership, firm, business trust,
217 joint-stock company, association, syndicate, group, pool, joint venture, unincorporated
218 association or group, county, municipal corporation, consolidated government, or school
219 system, but such term shall not include a hospital authority, housing or other local
220 authority, or any other unit of local government.
221 (5) 'State' means the State of Georgia, but such term shall not include a county,
222 municipal corporation, consolidated government, school system, hospital authority,
223 housing or other local authority, or any other unit of local government.
224 (6) 'State mental health facility' shall have the same meaning as set forth in Code Section
225 37-1-1.
226 (7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
227 that is codified in the Official Code of Georgia Annotated or has become law.
228 (8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.
229 50-21-51.
230 (a) The state waives its sovereign immunity for the breach of the duty to provide for an
231 adequate public education to an aggrieved student as provided in Article 18B of Chapter
232 2 of Title 20 by any state officers or employees while acting within the scope of their
233 official duties or employment and shall be liable for such breach in the same manner as a
234 private person or entity would be liable under like circumstances; provided, however, that
235 the state's sovereign immunity is waived subject to all exceptions and limitations set forth

236 in this article. The state shall have no liability for losses resulting from conduct on the part
237 of state officers or employees which was not within the scope of their official duties or
238 employment.

239 (b) This Code section shall not waive sovereign immunity of this state, a state
240 governmental entity, or an officer or employee in his or her official capacity as to any
241 claim:

242 (1) For which a state statute explicitly prohibits such waiver;

243 (2) For attorney's fees or expenses of litigation except as provided in Code Section
244 9-15-14 or for compensatory relief except as provided in Code Section 20-2-1006;

245 (3) Alleging a violation of federal law, other than the United States Constitution;

246 (4) Brought in a court of the United States; or

247 (5) Brought by, or on behalf of, a person in a penal institution or a state mental health
248 facility.

249 50-21-52.

250 This article shall be narrowly construed and shall not:

251 (1) Toll or extend any applicable period of limitations;

252 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;

253 (3) Be construed to waive other immunities provided by state statute or recognized by
254 the courts of this state, including, but not limited to, grand juror immunity, judicial
255 immunity, legislative immunity, official immunity, prosecutorial immunity, or qualified
256 immunity; or

257 (4) Except as expressly waived by this article, alter or amend any other legal requirement
258 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
259 exhaustion of administrative or other remedies, notice requirements, and defenses to or
260 limitations on the exercise of equitable jurisdiction.

261 50-21-53.

262 (a) An officer or employee shall not be subject to a suit under this article in his or her
263 individual capacity for performance or nonperformance of his or her official duties.

264 (b) The immunity conferred by subsection (a) of this Code section shall:

265 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
266 or injunctive relief, unless such suit against such officer or employee in his or her
267 individual capacity is expressly authorized by state statute; and

268 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
269 was ultra vires, unconstitutional, or illegal.

270 50-21-54.

271 A suit for which sovereign immunity is waived under this article shall name only the state,
272 a state governmental entity, an officer or employee in his or her official capacity, or a
273 combination thereof. If an officer or employee is named in such suit in his or her
274 individual capacity, upon proper motion, the court shall dismiss him or her as the party
275 defendant and, if appropriate, order such officer or employee in his or her official capacity
276 be joined as a party defendant.

277 50-21-55.

278 (a) No suit for which sovereign immunity is waived under this article shall be commenced,
279 and the court shall not have jurisdiction thereof, until 30 days after the date that a written
280 notice is sent to the state governmental entity or officer or employee to be named as a party
281 defendant and the Attorney General by certified mail, return receipt requested, by statutory
282 overnight delivery, or delivered personally to such entity and persons and obtaining a
283 receipt for such delivery. Such notice shall identify the specific law or action being
284 challenged and the nature of the relief being sought.

285 (b) No suit for which sovereign immunity is waived under this article shall proceed until
286 the plaintiff provides the court with proof of service upon the Attorney General or his or
287 her designee and the state governmental entity that is charged with enforcing the state
288 statute being challenged.

289 (c) A suit for which notice has been provided in accordance with this Code section shall
290 be filed no later than 90 days after such notice has been provided."

291 **PART V**

292 **SECTION 5-1.**

293 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
294 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
295 not subject to direct appeal, scope of review, hearings in criminal cases involving a capital
296 offense for which death penalty is sought, and appeals involving nonmonetary judgments in
297 child custody cases, is amended in subsection (a) by deleting "and" at the end of paragraph
298 (12), by replacing the period with "; and" at the end of paragraph (13), and by adding a new
299 paragraph to read as follows:

300 "(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or
301 more parties based upon sovereign, official, qualified, or any other immunity established
302 by the United States Constitution or the Constitution, laws, or common law of this state
303 when such party or parties are the state, state governmental entities, political
304 subdivisions, political subdivision governmental entities, or officers or employees as such
305 are defined in Code Section 36-80-50 or 50-21-50, as applicable; provided, however, that
306 the right of direct appeal under this paragraph shall not be exercised by any one party
307 more than once in a case. This paragraph shall not preclude taking an appeal pursuant
308 to any other paragraph in this subsection."

309

PART VI

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SECTION 6-1.

311 This Act shall become effective July 1, 2024, and shall apply to causes of action occurring
312 on or after July 1, 2024.

313

SECTION 6-2.

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